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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-K**

(Mark One)

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

**For the fiscal year ended December 31, 2021**

**OR**

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**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: 001-34811**

**Ameresco, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**111 Speen Street, Suite 410  
Framingham, Massachusetts**

(Address of Principal Executive Offices)

**04-3512838**

(I.R.S. Employer  
Identification No.)

**01701**

(Zip Code)

**(508) 661-2200**

(Registrant's Telephone Number, Including Area Code)  
Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, par value \$0.0001 per share	AMRC	New York Stock Exchange

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if 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 Section 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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a smaller reporting company, or an emerging growth company. See 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 ☒

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold on the New York Stock Exchange on June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, was \$1,929,538,589.

Indicate the number of shares outstanding of each of the registrant's classes of common stock as of the latest practicable date.

<u>Class</u>	<u>Shares outstanding as of February 25, 2022</u>
Class A Common Stock, \$0.0001 par value per share	33,724,309
Class B Common Stock, \$0.0001 par value per share	18,000,000

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the definitive proxy statement for our 2022 annual meeting of stockholders are incorporated by reference into Part III.

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## NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (“Form 10-K” or “Report”) contains “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (“the Exchange Act”). All statements, other than statements of historical fact, including statements regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans, objectives of management, expected market growth and other characterizations of future events or circumstances are forward-looking statements. These statements are often, but not exclusively, identified by the use of words such as “may,” “will,” “expect,” “believe,” “anticipate,” “intend,” “could,” “estimate,” “target,” “project,” “predict” or “continue,” and similar expressions or variations. These forward-looking statements include, among other things, statements about:

- our expectations as to the future growth of our business and associated expenses,
- our expectations as to revenue generation,
- the future availability of borrowings under our revolving credit facility,
- the expected future growth of the market for energy efficiency and renewable energy solutions,
- our backlog, awarded projects and recurring revenue and the timing of such matters,
- our expectations as to acquisition activity,
- the impact of any restructuring,
- the uses of future earnings,
- our intention to repurchase shares of our Class A common stock,
- the expected energy and cost savings of our projects,
- the expected energy production capacity of our renewable energy plants,
- the results of the SEC’s investigation into our revenue recognition and compensation practices in our software-as-a-service businesses, and
- the impact of the current COVID-19 pandemic.

These forward-looking statements are based on current expectations and assumptions that are subject to risks, uncertainties, and other factors that could cause actual results and the timing of certain events to differ materially and adversely from the future results expressed or implied by such forward-looking statements. Risks, uncertainties, and factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled “Risk Factors,” set forth in Item 1A of this Form 10-K and elsewhere in this Report. The forward-looking statements in this Form 10-K represent our views as of the date of this Report. Subsequent events and developments may cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we have no current intention of doing so and undertake no obligation to do so except to the extent required by applicable law. You should, therefore, not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this Form 10-K.

## ADDITIONAL NOTES

The terms “Ameresco,” “Company,” “we,” “our,” “us,” or “ourselves” included in this Report mean Ameresco, Inc. and its consolidated subsidiaries, collectively.

Rounding adjustments applied to individual numbers and percentages shown in this Report may result in these figures differing immaterially from their absolute values.

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## PART I

### Item 1. Business

#### Company Overview

Ameresco is a leading clean technology integrator with a comprehensive portfolio of energy efficiency and renewable energy supply solutions.

Our core services include the development, design, arrangement of financing, construction, and installation of solutions that deliver measurable cost and energy savings while enhancing the operations, energy security, infrastructure, and resiliency of a facility. These solutions range from upgrades to a facility's energy infrastructure to the development, construction, and operation of renewable energy plants. As a trusted sustainability partner, we are always on a mission to help customers lower their overall carbon footprint and reduce their environmental impact.

Our product independence coupled with our deep technical bench allows us to integrate best-in-class advanced technology solutions for the unique needs of each customer.

Drawing from decades of experience, we develop these tailored energy projects for federal, state, and local governments, educational and healthcare institutions, airports, public housing authorities, commercial/industrial customers, and utilities across North America and the U.K.

We have sourced and raised approximately \$3.9 billion in project financing while delivering \$11.2 billion in energy solutions since our inception. Our growth is driven by staying ahead of the curve and at the leading edge of innovation taking place in the energy sector, offering new products and services to new and existing customers. In 2020, we launched our first owned and operated wind power project in Ireland, that became our first renewable energy asset outside of North America.

Mergers and acquisitions of complementary businesses and assets have been an important part of our growth enabling us to broaden our service offerings, expand our geographical reach, and continue to be an important component to our growth strategy. Over the past three years, we have acquired businesses and energy assets under construction in Washington DC, Hawaii, Massachusetts, New York, Illinois, Connecticut, Ohio and Florida.

To best serve our expansive customer base, we have approximately 65 regional offices located throughout North America and the U.K. and more than 1,200 dedicated energy and business professionals with years of proven experience and a strong commitment to customer satisfaction. We offer our customers the resources needed to successfully plan, finance, execute and operate energy programs to create real, sustained economic and operating benefits to fulfill their unique requirements.



## Our Services

Our portfolio of services aims to create value and provide energy efficient and renewable solutions to the organizations we serve in the pursuit of a sustainable future.

### ***Energy Efficiency Measures & Upgrades***

- Water management, efficiency and reclamation
- Renewable energy, storage & microgrids
- Heating, ventilation, cooling, building envelope
- Smart metering and controls
- Chillers and boilers

### ***Renewable Energy, Storage & Microgrids***

- Solar photovoltaic (“PV”)
- Combined heat and power (“CHP”) and co-generation plants
- Geothermal
- Renewable natural gas (“RNG”)
- Wind power
- Microgrid
- Battery storage
- EV charging infrastructure
- Hydrogen

### ***Energy Infrastructure***

- Smart building modernization and retrofits
- Design-build new construction
- Utilize a full range of technologies related to building systems, facility infrastructure, energy- and water-consuming systems
- Integrated project design and implementation

### ***Energy Analytics & Supply***

- Energy supply management
- Proprietary asset management software
- Energy procurement services

### ***Operations & Maintenance (“O&M”)***

- End-to-end technical guidance
- Skilled technicians to operate and maintain renewable energy systems

One of our core services is the development, design, engineering, and installation of projects (“Projects”) that reduce the energy and O&M costs of our customers’ facilities. These Projects generally include a variety of measures that incorporate innovative technology and techniques, customized for the facility and designed to improve the efficiency of major building systems, such as heating, ventilation, cooling and lighting systems, while enhancing the comfort and usability of the buildings.

We also offer the ability to incorporate analytical tools that provide improved building energy management capabilities and enable customers to identify opportunities for energy cost savings. We typically commit to customers that our energy efficiency projects will satisfy agreed upon performance standards upon installation or achieve specified increases in energy efficiency. Generally, the forecasted lifetime energy and operating cost savings of the energy efficiency measures we install defrays all or almost all of the cost of such measures. In many cases, we assist customers in obtaining third-party financing, grants, or rebates for the cost of constructing the facility improvements, resulting in little or no upfront capital expenditure by the customer. After a project is complete, we may operate, maintain and repair the customer’s energy systems under a multi-year O&M contract, designed to provide us with recurring revenue and visibility into the customer’s evolving needs.

In addition, we serve certain customers by developing and building small-scale renewable energy plants located at or close to a customer’s site. Depending on the customer’s preference, we will either retain ownership of the completed plant or build it for the customer. Most of our small-scale renewable energy plants to date consist of solar PV installations and plants constructed adjacent to landfills, that use landfill gas (“LFG”) to generate energy. We also design and build, and own, operate and maintain plants that utilize biogas from wastewater treatment processes. Our largest renewable energy project that we operate for a customer uses biomass as the primary source of energy. For information on how we finance the projects that we own and operate, please see the disclosures under Note 2, “Summary of Significant Accounting Policies”, Note 9, “Debt and Financing Lease Liabilities” and Note 11, “Variable Interest Entities and Equity Method Investments” to our consolidated financial statements in Item 8 of this Report.

## Our Lines of Business

### ***Smart Energy Solutions Projects***

Our Smart Energy Solutions Projects are primarily energy efficiency projects, which entail the design, engineering, and installation of an ever-increasing array of innovative technologies and techniques to improve the energy efficiency and control the operation, of a building’s energy- and water-consuming systems. In certain projects, we provide financing and design and construct a central plant or cogeneration system providing power, heat and/or cooling to a building, or a small-scale plant that produces electricity, gas, heat or cooling from renewable sources of energy for a customer, as well as battery energy storage. Our projects generally range in size and scope from a one-month project to design and retrofit a lighting system to a more complex 30-month project to design and install a central plant or cogeneration system or other small-scale plant. Projects we have constructed or are currently working on include designing, engineering and installing energy conservation and resiliency measures across

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school buildings, large, complex energy conservation, and energy security projects for the federal government, and municipal-scale street lighting projects incorporating smart city controls.

### ***O&M***

After an energy efficiency or renewable energy project is completed, we often provide ongoing O&M services under multi-year contracts. These services offer end-to-end technical guidance and include operating, maintaining, and repairing facility energy systems, such as boilers, chillers, and building controls, as well as central power and small-scale plants. For larger projects, we frequently maintain staff on-site to perform these services. In addition to providing O&M services for our own projects, we also provide similar services on projects we did not construct for various customers.

### ***Ameresco-owned Energy Assets***

Our service offerings also include the sale of electricity, heat, cooling, processed biogas, and renewable biomethane fuel from the portfolio of assets that we own and operate.

We have constructed and are currently developing, designing, and constructing a wide range of renewable energy plants using:

- biogas (generated from landfills, wastewater treatment plants, and the agricultural sector)
- advanced biofuels
- biomass and other bio-derived fuels
- solar PV
- wind and hydro sources of energy
- battery storage

Most of our renewable energy assets to date have involved the generation and sale of:

- electricity from solar PV
- electricity, thermal, renewable fuel, or biomethane using biogas as a feedstock

In the case of our biogas-fueled projects, we purchase biogas that otherwise would be combusted or vented, process it, and either use it as a renewable fuel source in our energy plants to produce and sell electricity and/or thermal, or sell it as a renewable fuel source to a third party. We also design and build, and operate and maintain facilities that process biogas into biomethane (or RNG) that can be transported, primarily through the nation's natural gas pipeline grid or in some cases through tanker trucks, and sold to third parties. For Ameresco-owned and operated energy assets, we typically enter into long-term agreements with third parties for the sale of the energy produced by the facility.

As of December 31, 2021, we owned and operated 147 small-scale renewable energy plants and solar PV installations which generate electricity or deliver renewable gas fuel with a combined capacity of approximately 343 megawatt equivalents ("MWe"), and have energy assets in development and construction with a combined capacity of approximately 414 MWe.

The table below shows the type and number of plants we owned as of December 31, 2021:

<b>Plants Owned and Operated</b>	<b>Quantity</b>
Biogas: RNG	6
Biogas: non-RNG	22
Solar assets	116
Other	3
Total plants owned and operated	147

### ***Other***

Our service and product offerings also include photovoltaic solar energy products and systems ("integrated-PV"), consulting, and enterprise energy management services.

### **Customer Arrangements**

#### ***Energy Savings Performance Contracts ("ESPCs")***

For our energy efficiency projects, we typically enter into ESPCs, under which we agree to develop, design, engineer and construct a project and also commit that the project will satisfy agreed upon performance standards that vary from project to

project. These performance commitments are typically based on the design, capacity, efficiency, or operation of the specific equipment and systems we install. Our commitments generally fall into three categories:

- **Pre-agreed energy reduction commitment:** our customer reviews the project design in advance and agrees that, upon or shortly after completion of the installation of the specified equipment comprising the project, the commitment will have been met.
- **Equipment-level commitment:** we commit to a level of energy use reduction based on the difference in use measured first with the existing equipment and then with the replacement equipment.
- **Whole building-level commitment:** requires demonstration of energy usage reduction for a whole building, often based on readings of the utility meter where usage is measured. Depending on the project, the measurement and demonstration may be required only once, upon installation, based on an analysis of one or more sample installations, or may be required to be repeated at agreed upon intervals generally over periods of up to 25 years. We often assist these customers in identifying and obtaining financing through rebate programs, grant programs, third-party lenders, and other sources.

Under our contracts, we typically do not take responsibility for a wide variety of factors outside of our control and exclude or adjust for such factors in commitment calculations. These factors include, among others, variations in energy prices and utility rates, weather, facility occupancy schedules, the amount of energy-using equipment in a facility, and the failure of the customer to operate or maintain the project properly. Typically, our performance commitments apply to the aggregate overall performance of a project rather than to individual energy efficiency measures. Therefore, to the extent an individual measure underperforms, it may be offset by other measures that overperform during the same period. In the event that an energy efficiency project does not perform according to the agreed upon specifications, our agreements typically allow us to satisfy our obligation by adjusting or modifying the installed equipment, installing additional measures to provide substitute energy savings or paying the customer for lost energy savings based on the assumed conditions specified in the agreement. Many of our equipment supply, local design, and installation subcontracts contain provisions that enable us to seek recourse against our vendors or subcontractors if there is a deficiency in our energy reduction commitment. See “We may have liability to our customers under our ESPCs if our projects fail to deliver the energy use reductions to which we are committed under the contract” in Item 1A, Risk Factors.

#### ***Federal Government Contracts, Indefinite Delivery, Indefinite Quantity (“IDIQ”) Agreements***

The projects that we perform for governmental agencies are governed by particular qualification and contracting regimes. Certain states require qualification with an appropriate state agency as a precondition to performing work or appearing as a qualified energy service provider for state, county, and local agencies within the state. For example, the Commonwealth of Massachusetts and the states of Colorado and Washington pre-qualify energy service providers and provide contract documents that serve as the starting point for negotiations with potential governmental customers. Most of the work that we perform for the federal government is performed under IDIQ agreements between government agencies and us. These IDIQ agreements allow us to contract with the relevant agencies to implement energy projects, but no work may be performed unless we and the agency agree on a task order or delivery order governing the provision of a specific project. The government agencies enter into contracts for specific projects on a competitive basis. We and our affiliates are currently parties to an IDIQ agreement with the U.S. Department of Energy (“DOE”) expiring in 2026. We are also party to similar agreements with other federal agencies, including the U.S. Army Corps of Engineers and the U.S. General Services Administration.

Payments by the federal government for energy efficiency measures are based on the services provided and the products installed but are limited to the savings derived from such measures, calculated in accordance with federal regulatory guidelines and the specific contract’s terms. The savings are typically determined by comparing energy use and other costs before and after the installation of the energy efficiency measures, adjusted for changes that affect energy use and other costs but are not caused by the energy efficiency measures.

#### ***Energy Supply Contracts***

For projects involving the construction of a small-scale renewable energy plant that we own and operate, we generally enter into (i) long-term power purchase agreements (“PPAs”) to supply electricity, (ii) long-term energy supply agreements (“ESAs”) to supply medium British Thermal Unit (“BTU”) biogas or thermal energy, or (iii) gas purchase agreements (“GPAs”) to supply RNG to a third party. These third parties include, but are not limited to, brokers, traders, utilities, municipalities, industrial facilities, or other large purchasers of energy. The rights to use the site for the plant and the purchase of raw feedstock fuel for the plant are also obtained by us under long-term agreements with terms at least as long as the associated output supply agreement. Our supply agreements typically provide for fixed prices or prices that escalate at a fixed rate or vary based on a market benchmark. See “We may assume responsibility under customer contracts for factors outside our control, including, in connection with some customer projects, the risk that fuel prices will increase” in Item 1A, Risk Factors.

## Our Business Segments

Our reportable business segments for the year ended December 31, 2021 were as follows:

- U.S. Regions
- U.S. Federal
- Canada
- Non-Solar Distributed Generation (“Non-Solar DG”)
- All Other

On January 1, 2021, we changed the structure of our internal organization and our U.S. Regions segment now includes our U.S.-based enterprise energy management services previously included in our “All Other” segment. As a result, previously reported amounts have been reclassified for comparative purposes. Our U.S. Regions, U.S. Federal and Canada segments offer energy efficiency products and services which include the design, engineering, and installation of equipment and other measures to improve the efficiency and control the operation of a facility’s energy infrastructure, renewable energy solutions, and services which include the construction of small-scale plants that we own or develop for customers that produce electricity, gas, heat, or cooling from renewable sources of energy and O&M services. Our Non-Solar DG segment sells electricity, thermal, processed renewable gas fuel, or biomethane produced from renewable sources of energy, other than solar, and generated by small-scale plants that we own and operate, as well as O&M services for customer owned small-scale plants. Our U.S. Regions segment also includes certain small-scale solar grid-tie plants developed for customers. The “All Other” category offers enterprise energy management services, consulting services, and the sale of solar PV energy products and systems which we refer to as integrated-PV.

The table below shows the percentage of revenues by segment for the last three years:

	2021	2020	2019
<b>% of Revenues by Segment <sup>(1)</sup></b>			
U.S. Regions	43.5 %	39.2 %	42.6 %
U.S. Federal	32.3 %	36.6 %	33.2 %
Canada	4.1 %	4.6 %	4.4 %
Non-Solar DG	11.3 %	10.3 %	9.8 %
All Other	8.8 %	9.3 %	10.0 %
Total revenues	100.0 %	100.0 %	100.0 %

(1) See Note 3 “Revenue from Contracts with Customers” for our disaggregated revenue and Note 20 “Business Segment Information” for additional information.

## Sales and Marketing

Our sales and marketing approach is to offer customers customized and comprehensive energy efficiency solutions tailored to meet their economic, operational, and technical needs. The sales, design and construction process for energy efficiency and renewable energy projects recently has been averaging from 18 to 54 months. We identify project opportunities through referrals, requests for proposals (“RFPs”), conferences and events, website, digital campaigns, telemarketing, and repeat business from existing customers. Our direct sales force develops and follows up on customer leads. As of December 31, 2021, we had 179 employees in direct sales.

In preparation for a proposal, our team typically conducts a preliminary audit of the customer’s needs and requirements and identifies areas to enhance efficiencies and reduce costs. We collect and analyze the customer’s utility bill and other data related to energy use. If the bills are complex or numerous, we often utilize our proprietary enterprise energy management software tools to scan, compile and analyze the information. Our experienced engineers visit and assess the customer’s current energy systems and infrastructure. Through our knowledge of the federal, state, and local governmental and utility environments, we assess the availability of energy, utility or environmental-based payments for usage reductions or renewable power generation, which helps us optimize the economic benefits of a proposed project for a customer. Once awarded a project, we perform a more detailed audit of the customer’s facilities, which serves as the basis for the final specifications of the project and final contract terms.

For renewable energy plants that are not built or located on a customer’s site or use sources of energy not within the customer’s control, the sales process also involves the identification of sites with attractive sources of renewable energy and obtaining necessary rights and governmental permits to develop a plant on that site. For example, for LFG projects, we start with gaining control of an LFG resource located close to the prospective customer. For solar and wind projects, we look for sites where utilities are interested in purchasing renewable energy power at rates that are sufficient to make a project feasible. Where governmental agencies control the site and resource, such as a landfill owned by a municipality, the customer may be required to issue an RFP

to use the site or resource. Once we believe we are likely to obtain the rights to the site and the resource, we seek customers for the energy output of the potential project, with whom we can enter into a long-term PPA.

## Customers

We strive to be a trusted sustainability partner creating valued, single-sourced, efficient energy solutions delivered with passion, expertise, teamwork, and a relentless focus on customer satisfaction.

Our customers choose to prioritize efficiency and the development of clean, green energy sources and our solutions are customized to serve the specific needs of each customer and meaningfully reduce or offset their carbon footprint. From energy conservation through a variety of measures to the generation of green, renewable power, our customers and their communities reap the benefits of reducing energy consumption, costs, and associated carbon emissions.

In 2021, we served customers throughout the United States, Canada, the U.K., and Greece and approximately 67.0% of our revenues were derived from federal, state, provincial, or local government entities, including public housing authorities and public universities. Our federal customers include various divisions of the U.S. federal government. The U.S. federal government is considered a single customer and segment for reporting purposes (see table above under “Our Segments”). For the year ended December 31, 2021, our largest 20 customers accounted for approximately 64.0% of our total revenues. Other than the U.S. federal government, one customer represented 10.2% of our revenues during this period.

See “Provisions in our government contracts may harm our business, financial condition and operating results” in Item 1A, Risk Factors for a discussion of special considerations applicable to government contracting and “The loss of one of our significant customers or our failure to perform our contract with that customer in accordance with its terms could adversely affect us” in Item 1A, Risk Factors for further discussion.

## Competition

While we face significant competition from a large number of companies, we believe that few offer the objective technical expertise and full range of services we do.

Our principal competitors include:

- **Smart Energy Solutions:** Constellation Energy Group, Inc. (an Exelon company), Energy Systems Group, Honeywell, Johnson Controls, NORESKO (a unit of Carrier Global Corporation), Schneider Electric, Siemens Building Technologies, and Trane Technologies (an Ingersoll-Rand company). We compete primarily on the basis of our comprehensive, independent offering of energy efficiency and renewable energy services and the breadth and depth of our expertise.
- **Renewable energy plants:** many large independent power producers and utilities, as well as a large number of developers of renewable energy projects.
- **LFG market:** primarily large, national project developers and owners of landfills who self-develop projects using LFG from their own landfills.
- **Solar PV market:** Borrego Solar Systems, BlueWave Solar, Citizens Energy Group, Clean Energy Collective, Nexamp Inc., SunPower Corp., Solect Energy, and Syncarpha Capital. We compete for renewable energy projects primarily on the basis of our experience, reputation, and ability to identify and complete high quality and cost-effective projects.
- **O&M services:** EMCOR Energy Services, Comfort Systems USA, Honeywell, Johnson Controls, and Veolia. In this area, we compete primarily on the basis of our expertise and quality of service.

See “We operate in a highly competitive industry, and our current or future competitors may be able to compete more effectively than we do, which could have a material adverse effect on our business, revenues, growth rates, and market share” in Item 1A, Risk Factors for further discussion of competition.

## Regulatory

Various regulations affect the conduct of our business. Federal and state legislation and regulations enable us to enter into ESPCs with government agencies in the United States. The applicable regulatory requirements for ESPCs differ in each state and between agencies of the federal government.

Our projects must conform to all applicable electric reliability, building and safety, and environmental regulations and codes, which vary from place to place and time to time. Various federal, state, provincial, and local permits are required to construct an energy efficiency project or renewable energy plant.

Renewable energy projects are also subject to specific governmental safety and economic regulation. States and the federal government typically do not regulate the transportation or sale of LFG unless it is combined with and distributed with natural gas, but this is not uniform among states and may change from time to time. States regulate the retail sale and distribution of natural gas to end-users, although regulatory exemptions from regulation are available in some states for limited gas delivery activities, such as sales only to a single customer. The sale and distribution of electricity at the retail level is subject to state and provincial regulation, and the sale and transmission of electricity at the wholesale level is subject to federal regulation. While we do not own or operate retail-level electric distribution systems or wholesale-level transmission systems, the prices for the products we offer can be affected by the tariffs, rules and regulations applicable to such systems, as well as the prices that the owners of such systems are able to charge. The construction of power generation projects typically is regulated at the state and provincial levels, and the operation of these projects also may be subject to state and provincial regulation as “utilities.” At the federal level, the ownership and operation of, and sale of power from, generation facilities may be subject to regulation under the Public Utility Holding Company Act of 2005 (“PUHCA”), the Federal Power Act (“FPA”), and Public Utility Regulatory Policies Act of 1978 (“PURPA”). However, because all of the plants that we have constructed and operated to date are small power “qualifying facilities” under PURPA, they are subject to less regulation under the FPA, PUHCA and related state utility laws than traditional utilities.

If we pursue projects employing different technologies or with a single project electrical capacity greater than 20 megawatts, we could become subject to some of the regulatory schemes which do not apply to our current projects. In addition, the state, provincial, and federal regulations that govern qualifying facilities and other power sellers frequently change, and the effect of these changes on our business cannot be predicted.

LFG power generation facilities require an air emissions permit, which may be difficult to obtain in certain jurisdictions. Renewable energy projects may also be eligible for certain governmental or government-related incentives from time to time, including tax credits, cash payments in lieu of tax credits, and the ability to sell associated environmental attributes, including carbon credits. Government incentives and mandates typically vary by jurisdiction.

Some of the demand reduction services we provide for utilities and institutional customers are subject to regulatory tariffs imposed under federal and state utility laws. In addition, the operation of, and electrical interconnection for, our renewable energy projects are subject to federal, state, or provincial interconnection and federal reliability standards also set forth in utility tariffs. These tariffs specify rules, business practices, and economic terms to which we are subject. The tariffs are drafted by the utilities and approved by the utilities’ state, provincial, or federal regulatory commissions.

See our section entitled “Risks related to Regulations or Governmental Actions” in Item 1A, Risk Factors.

## **Human Capital Management**

We believe our employees are Ameresco’s greatest resource, as they come together to creatively integrate our advanced technology portfolio and develop innovative, transformative energy solutions for our customers.

The diversity of our team coupled with our deep bench of technical expertise enables us to tackle the most complex energy opportunities. Supporting our employees and the communities in which we serve is paramount to our success.

We focus on team-based employee philanthropy, wellness-focused employee benefits, and donating our time to our local communities through education and training.

As of December 31, 2021, we had a total of 1,272 employees based in 46 states, the District of Columbia, four Canadian provinces, and three office locations throughout the U.K.

### ***Philanthropic Activities***

We actively participate in philanthropic activities that support our local communities and provide an opportunity for dynamic team building. During 2021, our employees were encouraged to use paid community service days to donate time and creative energy to the organizations that touch them personally and to give back to the environment and their communities.

### ***Diversity, Equity, Inclusion and Justice***

We welcome, support, and celebrate unique ways of thinking. We believe innovation demands diversity of thought, and Ameresco has done well by welcoming and celebrating employees from diverse backgrounds. We are proud to be an equal opportunity workplace and an Affirmative Action employer.

To educate, support, and promote the culture of diversity, equity, inclusion and justice at Ameresco, diversity in the workplace is discussed at all levels in the organization. Annual diversity in the workplace training is rolled out to all Ameresco employees.

This comprehensive training is critical to ensuring we are focused on educating our teams and fostering a culture that is all-inclusive.

Recruiting is a key element in our commitment to diversity, equity, inclusion and justice. Our talent team focuses on attracting and recruiting a diverse workforce by partnering with organizations such as the National Society of Women in Construction, Browning The Green Space, New England Women in Energy and the Environment, Hire Heroes USA, and Dolce Center for Advancement of Veterans and Service Members.

We have demonstrated meaningful growth over the last five years in the number and percentage of employees from diverse backgrounds, with these classes representing 43% of all employees as of December 31, 2021. In addition, we have a 39% rolling three-year average of diverse promotions among all promotions throughout Ameresco. In 2021, 37% of all management position promotions were employees with diverse backgrounds. Diverse backgrounds include women, ethnicity, veterans, and individuals with a disability. This data represents U.S. employees only due to personal information privacy regulations in Canada and Europe.

#### ***Benefits with a Purpose***

The health, safety, and well-being of our employees continues to be a top priority at Ameresco. In addition to competitive salaries, we are committed to regularly evaluating a competitive benefits portfolio, striving to provide resources to our employees that assist with work-life balance.

While employee healthcare costs and access to a wide variety of doctors have always been at the top of our criteria list, we also focused our 2022 benefit renewal objectives on expanding our mental health and well-being offerings. We wanted to ensure our employees have a variety of help and resources available, offered in platforms and services they felt comfortable using, should they need it.

In addition, we offered a comprehensive Employee Assistance Plan to all Ameresco employees and their family members should they need assistance with any life planning matters. And in support of some of the new applications and corporate programs, we rolled out memberships to Care.com, Gympass, and the Headspace mobile app.

#### ***Energy Outside the Office***

Whether it is through our philanthropic activities, our quest to provide an inclusive culture, or our focus on the well-being of our people, Ameresco benefits from the open communication seen between our employees. We encourage activities outside of our offices to enhance the employee experience. While the COVID-19 pandemic continues to present challenges for in-person gatherings, our employees have continued to find creative ways to interact virtually and in-person with proper safety protocols in place.

#### ***Career Advancement***

Ameresco strives to implement creative ways for our employees to support career advancement. To facilitate our employees' career development with a focus on retention, we have improved on the frequency of career path discussions, training, and succession planning. Career path training was offered to all employees in 2021 and we intend to continue it in the coming years. The career path discussions identified specific training programs, mentorship opportunities, continued degree programs and certification programs – all of which will provide the tools necessary to assist our employees in their career development.

When it comes to the innovative solutions that we deliver to our customers, it is critical for the Ameresco team to be at the forefront. Every month our Corporate Marketing Team hosts a Center of Excellence in Advance Technology training session available to all employees. Each session features a different topic to cover various aspects of Ameresco's solution portfolio and is presented by our internal subject matter experts. All employees are encouraged to attend live and participate in the Q&A.

In 2021, we invested in a Learning Management System ("LMS") in our Workday Enterprise Management platform to centralize and have the capability to measure development metrics such as training hours per employee. The new LMS system allows for easy access to training materials and more frequent training as needed.

We provide a tuition reimbursement program to support career development within our organization. In addition, we support employee growth by investing in career advancing certification programs for our employees.

For more information on our initiatives noted above, please see our 2021 Environmental, Social and Governance Report which is available at [www.ameresco.com](http://www.ameresco.com).

## Seasonality

See “Our business is affected by seasonal trends and construction cycles, and these trends and cycles could have an adverse effect on our operating results” in Item 1A, Risk Factors and “Overview — Effects of Seasonality” in Item 7, Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of seasonality in our business.

## Geographic Information

Financial information about our domestic and international operations may be found in Note 16, “Geographic Information” of our consolidated financial statements included in Item 8 of this Form 10-K, which information is incorporated herein by reference.

## Additional Information

Periodic reports, proxy statements, and other information are available to the public, free of charge, on our website, [www.ameresco.com](http://www.ameresco.com), as soon as reasonably practicable after they have been filed with the Securities and Exchange Commission (“SEC”), and through the SEC’s website, [www.sec.gov](http://www.sec.gov). We include our website address in this report only as an inactive textual reference and do not intend it to be an active link to our website. None of the material on our website is part of this Report.

## Executive Officers

The following is a list of our executive officers, their ages as of February 25, 2022 and their principal positions:

<u>Name</u>	<u>Age</u>	<u>Position(s)</u>
George P. Sakellaris	75	Chairman of the Board of Directors, President, and Chief Executive Officer
Michael T. Bakas	53	Executive Vice President, Distributed Energy Systems
Nicole A. Bulgarino	49	Executive Vice President and General Manager, Federal Solutions
David J. Corrsin	63	Executive Vice President, General Counsel, and Secretary and Director
Robert Georgeoff	57	Executive Vice President, South Region
Britta MacIntosh	54	Senior Vice President, Western Region and U.K. and Europe Operations
Louis P. Maltezos	55	Executive Vice President, Central Region and Canada Operations
Spencer Doran Hole	53	Executive Vice President and Chief Financial Officer
Mark A. Chiplock	52	Senior Vice President of Finance and Chief Accounting Officer
Lauren K. Todd	46	Senior Vice President, Human Resources and Operations

**George P. Sakellaris:** Mr. Sakellaris has served as chairman of our board of directors and our president and chief executive officer since founding Ameresco in 2000.

**Michael T. Bakas:** Mr. Bakas has served as our executive vice president, distributed energy systems, since November 2017. Prior to this, Mr. Bakas served in various capacities with our company since 2000, including as our senior vice president, renewable energy, from March 2010 to November 2017.

**Nicole A. Bulgarino:** Ms. Bulgarino has served as our executive vice president and general manager of federal solutions since May 2017. Prior to this, Ms. Bulgarino served in various capacities with our company since 2004, including as our senior vice president and general manager of federal solutions from May 2015 to May 2017.

**David J. Corrsin:** Mr. Corrsin has served as our executive vice president, general counsel, and secretary, as well as a director, since 2000.

**Robert Georgeoff:** Mr. Georgeoff has served as our executive vice president, south region, since February 2021. Prior to this, Mr. Georgeoff served in various management capacities with our company since 2011, including as vice president, south region and President at Ameresco Southwest, a subsidiary of Ameresco, from August 2011 through February 2021.

**Britta MacIntosh:** Ms. MacIntosh has served as our senior vice president of the west region and UK & Europe operations since July 2020. Prior to this, Ms. MacIntosh served as our vice president of U.K. operations from February 2016 to July 2020.

**Louis P. Maltezos:** Mr. Maltezos has served as executive vice president since April 2009 and oversees central region and Canada operations. Prior to this, Mr. Maltezos served in various management capacities with our company since 2004, including as vice president and general manager of our Midwest regions from June 2004 to April 2009.

**Spencer Doran Hole:** Mr. Hole has served as our executive vice president and chief financial officer since February 2022 and served as senior vice president and chief financial officer since July 2019. Prior to joining Ameresco, Mr. Hole served as chief



executive officer, North America and Group vice president - strategy at ReneSola Ltd., a manufacturer and supplier of green energy products, since November 2017 and served as the chief financial officer for the US division of ReneSola since December 2016.

**Mark A. Chiplock:** Mr. Chiplock has served as senior vice president of finance and chief accounting officer since February 2022 and served as vice president of finance and chief accounting officer since July 2019. Prior to this, Mr. Chiplock served as our interim chief financial officer and treasurer from October 2018 through July 2019 and as our corporate controller from June 2014 to December 2019.

**Lauren K. Todd:** Ms. Todd has served as senior vice president, human resources and operations since May 2021. Prior to this, Ms. Todd served in various capacities with our company since 2012, including as vice president, human resources and operations from April 2016 to May 2021.

## **Item 1A. Risk Factors**

*We face many risks. If any of the events or circumstances described below actually occur, we and our businesses, financial condition or results of operations could suffer, and the trading price of our Class A Common Stock could decline. Our current and potential investors should consider the following risks and the information contained under the heading “Cautionary Note Regarding Forward-Looking Statements” before deciding to invest in our securities.*

### **Risks Related to Our Business**

***If demand for our energy efficiency and renewable energy solutions does not develop as we expect, our revenues will suffer, and our business will be harmed.***

We believe, and our growth plans assume, that the market for energy efficiency and renewable energy solutions will continue to grow, that we will increase our penetration of this market and that our revenues from selling into this market will continue to increase over time. If our expectations as to the size of this market and our ability to sell our products and services in this market are not correct, our revenues will suffer, and our business will be harmed.

***In order to secure contracts for new projects, we typically face a long and variable selling cycle that requires significant resource commitments and requires a long lead time before we realize revenues.***

The sales, design, and construction process for energy efficiency and renewable energy projects recently has been taking from 18 to 54 months on average, with sales to federal government and housing authority customers tending to require the longest sales processes. Our sales cycle has been further lengthened as a result of the impacts of the COVID-19 pandemic. We cannot predict the timeline of the COVID-19 pandemic and, therefore, cannot predict the timeline for our selling cycle in the current conditions. Our existing and potential customers generally follow extended budgeting and procurement processes, and sometimes must engage in regulatory approval processes related to our services. Our customers often use outside consultants and advisors, which contributes to a longer sales cycle. Most of our potential customers issue an RFP, as part of their consideration of alternatives for their proposed project. In preparation for responding to an RFP, we typically conduct a preliminary audit of the customer’s needs and the opportunity to reduce its energy costs. For projects involving a renewable energy plant that is not located on a customer’s site or that uses sources of energy not within the customer’s control, the sales process also involves the identification of sites with attractive sources of renewable energy, such as a landfill or a favorable site for solar PV, and it may involve obtaining necessary rights and governmental permits to develop a project on that site. If we are awarded a project, we then perform a more detailed audit of the customer’s facilities, which serves as the basis for the final specifications of the project. We then must negotiate and execute a contract with the customer. In addition, we or the customer typically need to obtain financing for the project.

This extended sales process requires the dedication of significant time by our sales and management personnel and our use of significant financial resources, with no certainty of success or recovery of our related expenses. A potential customer may go through the entire sales process and not accept our proposal. All of these factors can contribute to fluctuations in our quarterly financial performance and increase the likelihood that our operating results in a particular quarter will fall below investor expectations. These factors could also adversely affect our business, financial condition and operating results due to increased spending by us that is not offset by increased revenues.

***We may not recognize all revenues from our backlog or receive all payments anticipated under awarded projects and customer contracts.***

As of December 31, 2021 and 2020, we had backlog of approximately \$1,509.3 million and \$895.7 million, respectively, in expected future revenues under signed customer contracts for the installation or construction of projects, which we sometimes refer to as fully-contracted backlog; and we also had been awarded projects for which we do not yet have signed customer contracts with estimated total future revenues of an additional \$1,542.8 million and \$1,318.7 million, respectively. As of December 31, 2021 and 2020, we had O&M backlog of approximately \$1,131.7 million and \$1,131.1 million, respectively. Our O&M backlog represents expected future revenues under signed multi-year customer contracts for the delivery of O&M services, primarily for energy efficiency and renewable energy construction projects completed by us for our customers.

Our customers have the right under some circumstances to terminate contracts or defer the timing of our services and their payments to us. In addition, our government contracts are subject to the risks described below under “Provisions in government contracts may harm our business, financial condition and operating results.” The payment estimates for projects that have been awarded to us but for which we have not yet signed contracts have been prepared by management and are based upon a number of assumptions, including that the size and scope of the awarded projects will not change prior to the signing of customer contracts, that we or our customers will be able to obtain any necessary third-party financing for the awarded projects, and that we and our customers will reach agreement on and execute contracts for the awarded projects. We are not always able to enter into a contract for an awarded project on the terms proposed. As a result, we may not receive all of the revenues that we include in the awarded projects component of our backlog or that we estimate we will receive under awarded projects. If we do not receive all of the

revenue we currently expect to receive, our future operating results will be adversely affected. In addition, a delay in the receipt of revenues, even if such revenues are eventually received, may cause our operating results for a particular quarter to fall below our expectations.

***We may be unable to complete or operate our projects on a profitable basis or as we have committed to our customers.***

Development, installation, and construction of our energy efficiency and renewable energy projects, and operation of our renewable energy projects, entails many risks, including:

- failure to receive critical components and equipment that meet our design specifications and can be delivered on schedule,
- failure to obtain all necessary rights to land access and use,
- failure to receive quality and timely performance of third-party services,
- increases (including as a result of inflation) in the cost of labor, equipment, and commodities needed to construct or operate projects,
- permitting and other regulatory issues, license revocation, and changes in legal requirements,
- shortages of equipment or skilled labor,
- unforeseen engineering problems,
- failure of a customer to accept or pay for renewable energy that we supply,
- weather interferences, catastrophic events including fires, explosions, earthquakes, droughts, and acts of terrorism; and accidents involving personal injury or the loss of life,
- health or similar issues, a pandemic, or epidemic, such as COVID-19,
- labor disputes and work stoppages,
- mishandling of hazardous substances and waste, and other events outside of our control.

Any of these factors could give rise to construction delays and construction and other costs in excess of our expectations. We have, for example, experienced disruptions in development, installation and construction as a result of COVID-19 and the related quarantines, facility closures, and supply chain, travel and logistics challenges, and we may continue to experience such disruptions. In addition, the impacts of climate change have caused us to experience more frequent and severe weather interferences, and this trend may continue. These factors and events could prevent us from completing construction of our projects, cause defaults under our financing agreements or under contracts that require completion of project construction by a certain time, cause projects to be unprofitable for us, or otherwise impair our business, financial condition and operating results.

***A significant decline in the fiscal health of federal, state, provincial, and local governments could reduce demand for our energy efficiency and renewable energy projects.***

Historically, including for the years ended December 31, 2021 and 2020, more than 67% of our revenues have been derived from sales to federal, state, provincial, or local governmental entities, including public housing authorities and public universities. We expect revenues from this market sector to continue to comprise a significant percentage of our revenues for the foreseeable future. A significant decline in the fiscal health of these existing and potential customers may make it difficult for them to enter into contracts for our services or to obtain financing necessary to fund such contracts, or may cause them to seek to renegotiate or terminate existing agreements with us. In addition, if there is a partial or full shutdown of any federal, state, provincial or local governing body this may adversely impact our financial performance.

***Provisions in our government contracts may harm our business, financial condition and operating results.***

A significant majority of our fully-contracted backlog and awarded projects is attributable to customers that are governmental entities. Our contracts with the federal government and its agencies, and with state, provincial, and local governments, customarily contain provisions that give the government substantial rights and remedies, many of which are not typically found in commercial contracts, including provisions that allow the government to:

- terminate existing contracts, in whole or in part, for any reason or no reason,
- reduce or modify contracts or subcontracts,
- decline to award future contracts if actual or apparent organizational conflicts of interest are discovered, or to impose organizational conflict mitigation measures as a condition of eligibility for an award,
- suspend or debar the contractor from doing business with the government or a specific government agency, and
- pursue criminal or civil remedies under the False Claims Act, False Statements Act, and similar remedy provisions unique to government contracting.

Under general principles of government contracting law, if the government terminates a contract for convenience, the terminated company may recover only its incurred or committed costs, settlement expenses, and profit on work completed prior to the

termination. If the government terminates a contract for default, the defaulting company is entitled to recover costs incurred and associated profits on accepted items only and may be liable for excess costs incurred by the government in procuring undelivered items from another source. In most of our contracts with the federal government, the government has agreed to make a payment to us in the event that it terminates the agreement early. The termination payment is designed to compensate us for the cost of construction plus financing costs and profit on the work completed.

In ESPCs for governmental entities, the methodologies for computing energy savings may be less favorable than for non-governmental customers and may be modified during the contract period. We may be liable for price reductions if the projected savings cannot be substantiated. In addition to the right of the federal government to terminate its contracts with us, federal government contracts are conditioned upon the continuing approval by Congress of the necessary spending to honor such contracts. Congress often appropriates funds for a program on a September 30 fiscal-year basis even though contract performance may take more than one year. Consequently, at the beginning of many major Governmental programs, contracts often may not be fully funded, and additional monies are then committed to the contract only if, as and when appropriations are made by Congress for future fiscal years. Similar practices are likely to also affect the availability of funding for our contracts with Canadian, as well as state, provincial, and local government entities. If one or more of our government contracts were terminated or reduced, or if appropriations for the funding of one or more of our contracts is delayed or terminated, our business, financial condition and operating results could be adversely affected.

***The projects we undertake for our customers generally require significant capital, which our customers or we may finance through third parties, and such financing may not be available to our customers or to us on favorable terms, if at all.***

Our projects for customers are typically financed by third parties. For small-scale renewable energy plants that we own, as well as certain larger projects for customers, such as the battery storage project with SCE, we typically rely on a combination of our working capital and debt to finance construction costs. If we or our customers are unable to raise funds on acceptable terms when needed or if we do not have sufficient working capital or availability under our existing financing arrangements, we may be unable to secure customer contracts, the size of contracts we do obtain may be smaller or we could be required to delay the development and construction of projects, reduce the scope of those projects or otherwise restrict our operations. Delays in customer projects could also subject us to claims by customers. The terms of financing arrangements that we may enter into, including increases in interest rates as compared to historical rates, could impact the profitability of our projects. Furthermore, any inability by us or our customers to raise the funds necessary to finance our projects or construction costs could materially harm our business, financial condition, and operating results.

***The loss of Southern California Edison Company (“SCE”), which is one of our most significant customers, or our failure to perform on our contract with that customer in accordance with its terms could adversely affect us.***

We expect that a material portion of our revenue for 2022 will be generated from our design and build of battery energy storage system facilities for SCE under our Turnkey Engineering, Procurement, Construction and Maintenance Agreement and the underlying purchase orders dated as of October 21, 2021 (the “SCE Agreement”) with SCE. The SCE Agreement and related purchase orders obligate us to achieve certain substantial completion milestone dates (as they may be extended) for the facilities no later than August 1, 2022, and for at least two years thereafter meet specified availability and capacity guarantees. The SCE Agreement also requires us to expend significant capital, and if we are unable to fund such capital needs on acceptable terms, on a timely basis, or at all, this could adversely impact the construction timeline under the agreement. If we fail to satisfy these milestone obligations or fail to meet the availability and capacity guarantees, we may be subject to liquidated damages and under certain circumstances SCE may have a right to terminate the agreement. The requirement to pay liquidated damages or the loss of business from SCE could have a material adverse effect on our reputation, business or results of operations.

***Project development or construction activities may not be successful, and we may make significant investments without first obtaining project financing, which could increase our costs and impair our ability to recover our investments.***

The development and construction of small-scale renewable energy plants and other energy infrastructure projects involve numerous risks. We may be required to spend significant sums for preliminary engineering, permitting, legal and other expenses before we can determine whether a project is feasible, economically attractive or capable of being built. In addition, we will often choose to bear the costs of such efforts prior to obtaining project financing, prior to getting final regulatory approval and prior to our final sale to a customer, if any.

Successful completion of a particular project may be adversely affected by numerous factors, including: failures or delays in obtaining desired or necessary land rights, including ownership, leases and/or easements; failures or delays in obtaining necessary permits, licenses, or other governmental support or approvals, or in overcoming objections from members of the public or adjoining land owners; uncertainties relating to land costs for projects; unforeseen engineering problems; access to available transmission for electricity generated by our small-scale renewable energy plants; construction delays and contractor performance

shortfalls; work stoppages or labor disruptions and compliance with labor regulations; cost over-runs; availability of products and components from suppliers; adverse weather conditions; environmental, archaeological and geological conditions; and availability of construction and permanent financing.

If we are unable to complete the development of a small-scale renewable energy plants or fail to meet one or more agreed target construction milestone dates, we may be subject to liquidated damages and/or penalties under the Engineering Procurement and Construction agreement or other agreements relating to the power plant or project, and we typically will not be able to recover our investment in the project. We expect to invest a significant amount of capital to develop projects whether owned by us or by third parties. If we are unable to complete the development of a project, we may write-down or write-off some or all of these capitalized investments, which would have an adverse impact on our net income in the period in which the loss is recognized.

***We are exposed to the credit risk of some of our customers.***

Most of our revenues are derived under multi-year or long-term contracts with our customers, and our revenues are therefore dependent to a large extent on the creditworthiness of our customers. During periods of economic downturn, our exposure to credit risks from our customers' increases, and our efforts to monitor and mitigate the associated risks may not be effective in reducing our credit risks. Our reliance on one or a few customers for a material portion of our revenue further exacerbates this risk. In the event of non-payment by one or more of our customers, our business, financial condition and operating results could be adversely affected.

***Our business is affected by seasonal trends and construction cycles, and these trends and cycles could have an adverse effect on our operating results.***

We are subject to seasonal fluctuations and construction cycles, particularly in climates that experience colder weather during the winter months, such as the northern United States and Canada, and climates that experience extreme weather events, such as wildfires, storms, or flooding, or at educational institutions, where large projects are typically carried out during summer months when their facilities are unoccupied. In addition, government customers, many of which have fiscal years that do not coincide with ours, typically follow annual procurement cycles and appropriate funds on a fiscal-year basis even though contract performance may take more than one year. Further, government contracting cycles can be affected by the timing of, and delays in, the legislative process related to government programs and incentives that help drive demand for energy efficiency and renewable energy projects. As a result, our revenues and operating income in the third and fourth quarter are typically higher, and our revenues and operating income in the first quarter are typically lower, than in other quarters of the year. As a result of such fluctuations, we may occasionally experience declines in revenue or earnings as compared to the immediately preceding quarter, and comparisons of our operating results on a period-to-period basis may not be meaningful.

***Failure of third parties to manufacture quality products or provide reliable services in a timely manner could cause delays in the delivery of our services and completion of our projects, which could damage our reputation, have a negative impact on our relationships with our customers and adversely affect our growth.***

Our success depends on our ability to provide services and complete projects in a timely manner, which in part depends on the ability of third parties to provide us with timely and reliable products and services. In providing our services and completing our projects, we rely on products that meet our design specifications and components manufactured and supplied by third parties, as well as on services performed by subcontractors. We also rely on subcontractors to perform substantially all of the construction and installation work related to our projects; and we often need to engage subcontractors with whom we have no experience for our projects. We, our subcontractors and other third parties have been impacted by the global supply chain delays as well as quarantine and other restrictions imposed because of the COVID-19 pandemic. This has resulted in and may continue to result in delays in our ability to provide our services and complete our projects in a timely manner. In addition, some of the third parties we engage for our design, construction and operation projects operate internationally and our reliance on their products and services may be impacted by economic, political, and labor conditions in those regions as well as the uncertainty caused by the evolving relations between the United States and these regions, including China.

If any of our subcontractors are unable to provide services that meet or exceed our customers' expectations or satisfy our contractual commitments, our reputation, business and operating results could be harmed. In addition, if we are unable to avail ourselves of warranty and other contractual protections with providers of products and services, we may incur liability to our customers or additional costs related to the affected products and components, which could have a material adverse effect on our business, financial condition, and operating results. Moreover, any delays, malfunctions, inefficiencies, or interruptions in these products or services could adversely affect the quality and performance of our solutions and require considerable expense to establish alternate sources for such products and services. This could cause us to experience difficulty retaining current customers and attracting new customers, and could harm our brand, reputation, and growth.

***We may have liability to our customers under our ESPCs if our projects fail to deliver the energy use reductions to which we are committed under the contract.***

For our energy efficiency projects, we typically enter into ESPCs under which we commit that the projects will satisfy agreed-upon performance standards appropriate to the project. These commitments are typically structured as guarantees of increased energy efficiency that are based on the design, capacity, efficiency, or operation of the specific equipment and systems we install. Our commitments generally fall into three categories: pre-agreed, equipment-level and whole building-level. Under a pre-agreed efficiency commitment, our customer reviews the project design in advance and agrees that, upon or shortly after completion of installation of the specified equipment comprising the project, the pre-agreed increase in energy efficiency will have been met. Under an equipment-level commitment, we commit to a level of increased energy efficiency based on the difference in use measured first with the existing equipment and then with the replacement equipment upon completion of installation. A whole building-level commitment requires future measurement and verification of increased energy efficiency for a whole building, often based on readings of the utility meter where usage is measured. Depending on the project, the measurement and verification may be required only once, upon installation, based on an analysis of one or more sample installations, or may be required to be repeated at agreed upon intervals generally over periods of up to 25 years.

Under our contracts, we typically do not take responsibility for a wide variety of factors outside our control and exclude or adjust for such factors in commitment calculations. These factors include variations in energy prices and utility rates, weather, facility occupancy schedules, the amount of energy-using equipment in a facility, and failure of the customer to operate or maintain the project properly. We rely in part on warranties from our equipment suppliers and subcontractors to back-stop the warranties we provide to our customers and, where appropriate, pass on the warranties to our customers. However, the warranties we provide to our customers are sometimes broader in scope or longer in duration than the corresponding warranties we receive from our suppliers and subcontractors, and we bear the risk for any differences, as well as the risk of warranty default by our suppliers and subcontractors.

Typically, our performance commitments apply to the aggregate overall performance of a project rather than to individual energy efficiency measures. Therefore, to the extent an individual measure underperforms, it may be offset by other measures that overperform during the same period. In the event that an energy efficiency project does not perform according to the agreed-upon specifications, our agreements typically allow us to satisfy our obligation by adjusting or modifying the installed equipment, installing additional measures to provide substitute energy savings, or paying the customer for lost energy savings based on the assumed conditions specified in the agreement. However, we may incur additional or increased liabilities or expenses under our ESPCs in the future. Such liabilities or expenses could be substantial, and they could materially harm our business, financial condition, or operating results. In addition, any disputes with a customer over the extent to which we bear responsibility to improve performance or make payments to the customer may diminish our prospects for future business from that customer or damage our reputation in the marketplace.

***We may assume responsibility under customer contracts for factors outside our control, including, in connection with some customer projects, the risk that fuel prices will increase.***

We typically do not take responsibility under our contracts for a wide variety of factors outside our control. We have, however, in a limited number of contracts assumed some level of risk and responsibility for certain factors — sometimes only to the extent that variations exceed specified thresholds — and may also do so under certain contracts in the future, particularly in our contracts for renewable energy projects. For example, under a contract for the construction and operation of a cogeneration facility at the U.S. Department of Energy Savannah River Site in South Carolina, a subsidiary of ours is exposed to the risk that the price of the biomass that will be used to fuel the cogeneration facility may rise during the 19-year performance period of the contract. Several provisions in that contract mitigate the price risk. In addition, although we typically structure our contracts so that our obligation to supply a customer with biogas, electricity or steam, for example, does not exceed the quantity produced by the production facility, in some circumstances we may commit to supply a customer with specified minimum quantities based on our projections of the facility's production capacity. In such circumstances, if we are unable to meet such commitments, we may be required to incur additional costs or face penalties. Despite the steps we have taken to mitigate risks under these and other contracts, such steps may not be sufficient to avoid the need to incur increased costs to satisfy our commitments, and such costs could be material. Increased costs that we are unable to pass through to our customers could have a material adverse effect on our operating results.

***Our business depends on experienced and skilled personnel and substantial specialty subcontractor resources, and if we lose key personnel or if we are unable to attract and integrate additional skilled personnel, it will be more difficult for us to manage our business and complete projects.***

The success of our business and construction projects depends in large part on the skill of our personnel and on trade labor resources, including with certain specialty subcontractor skills. Competition for personnel, particularly those with expertise in the

energy services and renewable energy industries, is high. In the event we are unable to attract, hire and retain the requisite personnel and subcontractors, we may experience delays in completing projects in accordance with project schedules and budgets. Further, any increase in demand for personnel and specialty subcontractors may result in higher costs, causing us to exceed the budget on a project. Either of these circumstances may have an adverse effect on our business, financial condition, and operating results, harm our reputation among and relationships with our customers and cause us to curtail our pursuit of new projects.

Our future success is particularly dependent on the vision, skills, experience, and effort of our senior management team, including our executive officers and our founder, principal stockholder, president, and chief executive officer, George P. Sakellaris. If we were to lose the services of any of our executive officers or key employees, our ability to effectively manage our operations and implement our strategy could be harmed and our business may suffer.

***If we cannot obtain surety bonds and letters of credit, our ability to operate may be restricted.***

Federal and state laws require us to secure the performance of certain long-term obligations through surety bonds and letters of credit. In addition, we are occasionally required to provide bid bonds or performance bonds to secure our performance under energy efficiency contracts. In the future, we may have difficulty procuring or maintaining surety bonds or letters of credit, and obtaining them may become more expensive, require us to post cash collateral or otherwise involve unfavorable terms. Because we are sometimes required to have performance bonds or letters of credit in place before projects can commence or continue, our failure to obtain or maintain those bonds and letters of credit would adversely affect our ability to begin and complete projects, and thus could have a material adverse effect on our business, financial condition and operating results.

***We operate in a highly competitive industry, and our current or future competitors may be able to compete more effectively than we do, which could have a material adverse effect on our business, revenues, growth rates, and market share.***

Our industry is highly competitive, with many companies of varying size and business models, many of which have their own proprietary technologies, competing for the same business as we do. Many of our competitors have longer operating histories and greater resources than us and could focus their substantial financial resources to develop a competitive advantage. Our competitors may also offer energy solutions at prices below cost, devote significant sales forces to competing with us or attempt to recruit our key personnel by increasing compensation, any of which could improve their competitive positions. Any of these competitive factors could make it more difficult for us to attract and retain customers, cause us to lower our prices in order to compete, and reduce our market share and revenues, any of which could have a material adverse effect on our financial condition and operating results. We can provide no assurance that we will continue to effectively compete against our current competitors or additional companies that may enter our markets. In addition, we may also face competition based on technological developments that reduce demand for electricity, increase power supplies through existing infrastructure or otherwise compete with our products and services. We also encounter competition in the form of potential customers electing to develop solutions or perform services internally rather than engaging an outside provider such as us.

***Our small-scale renewable energy plants may not generate expected levels of output.***

The small-scale renewable energy plants that we construct and own are subject to various operating risks that may cause them to generate less than expected amounts of processed biogas, electricity, or thermal energy. These risks include a failure or degradation of our, our customers' or utilities' equipment; an inability to find suitable replacement equipment or parts; less than expected supply of the plant's source of renewable energy, such as biogas or biomass; or a faster than expected diminishment of such supply. Any extended interruption in the plant's operation, or failure of the plant for any reason to generate the expected amount of output, could have a material adverse effect on our business and operating results. In addition, we have in the past, and could in the future, incur material asset impairment charges if any of our renewable energy plants incur operational issues that indicate that our expected future cash flows from the plant are less than its carrying value. Any such impairment charge could have a material adverse effect on our operating results in the period in which the charge is recorded.

***We have not entered into long-term offtake agreements for a portion of the output from our small-scale renewable energy plants and a portion of the related renewable identification numbers ("RINs") are not subject to long term contracts.***

We have not entered into long-term offtake agreements for a portion of the output from our small-scale renewable energy plants, particularly RNG and non-RNG plants, and we may sell portions of the processed RNG, medium-BTU gas or electricity produced by the facility at wholesale prices, which are exposed to market fluctuations and risks. Similarly, we have not entered into long-term agreements with respect to the RINs for which the production and sale of such biofuel may qualify. The failure to sell such processed RNG, medium-BTU gas, electricity, or the related RINs at a favorable price, or at all could have a material adverse effect on our business and operating results.

***We may not be able to replace expiring offtake agreements with contracts on similar terms. If we are unable to replace an expired offtake agreement with an acceptable new contract, we may be required to remove the small-scale renewable energy plant from the site or, alternatively, we may sell the assets to the customer.***

We may not be able to replace an expiring offtake agreement with a contract on equivalent terms and conditions, including at prices that permit operation of the related facility on a profitable basis. If we are unable to replace an expiring offtake agreement with an acceptable new revenue contract, the affected site may temporarily or permanently cease operations or we may be required to sell the power produced by the facility at wholesale prices which are exposed to market fluctuations and risks. In the case of a solar photovoltaic installation that ceases operations, the offtake agreement terms generally require that we remove the assets, including fixing or reimbursing the site owner for any damages caused by the assets or the removal of such assets. Alternatively, we may agree to sell the assets to the site owner, but the terms and conditions, including price, that we would receive in any sale, and the sale price may not be sufficient to replace the revenue previously generated by the small-scale renewable energy plant.

***We plan to expand our business in part through future acquisitions and joint ventures, but we may not be able to identify or complete suitable acquisitions.***

Historically, acquisitions have been a significant part of our growth strategy. We plan to continue to use acquisitions of companies or assets and co-investments with third parties using joint ventures to expand our project skill-sets and capabilities, expand our geographic markets, add experienced management, increase our product and service offerings and add to our energy producing asset portfolio. However, we may be unable to implement this growth strategy if we cannot identify suitable acquisition or joint venture candidates or partners, reach agreement with targets on acceptable terms or arrange required financing for acquisitions or joint ventures on acceptable terms. In addition, the time and effort involved in identifying acquisition or joint venture candidates and consummate transactions may divert the attention and efforts of members of our management from the operations of our company.

***We may be required to write-off or impair capitalized costs or intangible assets in the future, or we may incur restructuring costs or other charges, each of which could harm our earnings.***

In accordance with generally accepted accounting principles in the United States, we capitalize certain expenditures and advances relating to our acquisitions, pending acquisitions, project development costs, interest costs related to project financing and certain energy assets. In addition, we have considerable unamortized assets. From time to time in future periods, we may be required to incur a charge against earnings in an amount equal to any unamortized capitalized expenditures and advances, net of any portion thereof that we estimate will be recoverable, through sale or otherwise, relating to: (i) any operation or other asset that is being sold, permanently shut down, impaired or has not generated or is not expected to generate sufficient cash flow; (ii) any pending acquisition that is not consummated; (iii) any project that is not expected to be successfully completed; and (iv) any goodwill or other intangible assets that are determined to be impaired.

In response to such charges and costs and other market factors, we may be required to implement restructuring plans in an effort to reduce the size and cost of our operations and to better match our resources with our market opportunities. As a result of such actions, we would expect to incur restructuring expenses and accounting charges which may be material. Several factors could cause a restructuring to adversely affect our business, financial condition, and results of operations. These include potential disruption of our operations, the development of our small-scale renewable energy projects and other aspects of our business. Employee morale and productivity could also suffer and result in unintended employee attrition. Any restructuring would require substantial management time and attention and may divert management from other important work. Moreover, we could encounter delays in executing any restructuring plans, which could cause further disruption and additional unanticipated expense. See also Note 2, “Summary of Significant Accounting Policies” and Note 5, “Goodwill and Intangible Assets, Net”, to our consolidated financial statements appearing in Item 8 of this Report.

***Any future acquisitions that we may make could disrupt our business, cause dilution to our stockholders and harm our business, financial condition or operating results, and our use of joint ventures could expose us to additional risks and liabilities.***

If we are successful in consummating acquisitions, those acquisitions could subject us to a number of risks, including:

- the purchase price we pay could significantly deplete our cash reserves or result in dilution to our existing stockholders,
- we may find that the acquired company or assets do not improve our customer offerings or market position as planned,
- we may have difficulty integrating the operations and personnel of the acquired company,
- key personnel and customers of the acquired company may terminate their relationships with the acquired company as a result of the acquisition,
- we may experience additional financial and accounting challenges and complexities in areas such as tax planning and financial reporting,
- we may incur additional costs and expenses related to complying with additional laws, rules or regulations in new jurisdictions,



- we may assume or be held liable for risks and liabilities (including for environmental-related costs) as a result of our acquisitions, some of which we may not discover during our due diligence or adequately adjust for in our acquisition arrangements,
- our ongoing business and management's attention may be disrupted or diverted by transition or integration issues and the complexity of managing geographically or culturally diverse enterprises,
- we may incur one-time write-offs or restructuring charges in connection with the acquisition,
- we may acquire goodwill and other intangible assets that are subject to amortization or impairment tests, which could result in future charges to earnings, and
- we may not be able to realize the cost savings or other financial benefits we anticipated.

Furthermore, the use of joint ventures can result in additional risks as a result of our holding non-controlling interests in or having shared responsibility for managing the affairs of the joint venture. For example, our joint venture partners may have economic and business interests that are inconsistent with ours, we may lack sole decision-making authority, and disputes between us and our joint venture partners could subject us to litigation and increased expenses. These factors could have a material adverse effect on our business, financial condition, and operating results.

***International expansion is one of our growth strategies, and international operations will expose us to additional risks that we do not face in the United States, which could have an adverse effect on our operating results.***

We generate a portion of our revenues from operations outside of the United States, mainly in Canada and the United Kingdom. International expansion is one of our growth strategies, and we expect our revenues and operations outside of the United States will expand in the future. These operations will be subject to a variety of risks that we do not face in the United States, and that we may face only to a limited degree in Canada and the United Kingdom, including:

- building and managing a highly experienced foreign workforce and overseeing and ensuring the performance of foreign subcontractors,
- increased travel, infrastructure and legal and compliance costs associated with multiple international locations,
- additional withholding taxes or other taxes on our foreign income, and tariffs or other restrictions on foreign trade or investment,
- imposition of, or unexpected adverse changes in, foreign laws or regulatory requirements, many of which differ from those in the United States,
- increased exposure to foreign currency exchange rate risk,
- longer payment cycles for sales in some foreign countries and potential difficulties in enforcing contracts and collecting accounts receivable,
- difficulties in repatriating overseas earnings,
- international and regional economic, political and labor conditions in the countries in which we operate, including the uncertainty caused by the United Kingdom's departure from the European Union (Brexit) on January 31, 2020 and the effects of the Trade and Cooperation Agreement between the European Union and the United Kingdom signed on December 30, 2020, and the uncertainty caused by the evolving relations between the United States and China; and
- political unrest, war, incidents of terrorism, pandemics, or responses to such events, including fluctuations in the severity and duration of the COVID-19 pandemic and resulting restrictions on business activity which may vary significantly by region.

Our overall success in international markets will depend, in part, on our ability to succeed in differing legal, regulatory, economic, social, and political conditions. We may not be successful in developing and implementing policies and strategies that will be effective in managing these risks in each country where we do business. Our failure to manage these risks successfully could harm our international operations, reduce our international sales, and increase our costs, thus adversely affecting our business, financial condition and operating results. Some of our third-party business partners have international operations and are also subject to these risks and if our third-party business partners are unable to appropriately manage these risks, our business may be harmed.

#### **Risks related to Regulations or Governmental Actions**

***Our business depends in part on federal, state, provincial and local government support for energy efficiency and renewable energy, and a decline in such support could harm our business.***

We depend in part on legislation and government policies that support energy efficiency and renewable energy projects that enhance the economic feasibility of our energy efficiency services and small-scale renewable energy projects. This support includes legislation and regulations that authorize and regulate the manner in which certain governmental entities do business with us; encourage or subsidize governmental procurement of our services; encourage or in some cases require other customers to procure power from renewable or low-emission sources, to reduce their electricity use or otherwise to procure our services; and

provide us with tax and other incentives that reduce our costs or increase our revenues. Without this support, on which projects frequently rely for economic feasibility, our ability to complete projects for existing customers and obtain project commitments from new customers could be adversely affected. Due to the uncertainty in the regulatory and legislative processes, we cannot determine the effect such legislation and regulation may have on our products and operations.

***A substantial portion of our earnings are derived from the sale of renewable energy certificates (“RECs”) and other environmental attributes, and our failure to be able to sell such attributes could materially adversely affect our business, financial condition and results of operation.***

A substantial portion of our earnings are attributable to our sale of renewable energy certificates (“RECs”) and other environmental attributes generated by our energy assets. These attributes are used as compliance purposes for state-specific or U.S. federal policy.

We own and operate solar PV installations which derive a significant portion of their revenues from the sale of solar renewable energy certificates (“SRECs”), which are produced as a result of generating electricity. The value of these SRECs is determined by the supply and demand of SRECs in the states in which the solar PV installations are installed. Supply is driven by the amount of installations and demand is driven by state-specific laws relating to renewable portfolio standards.

We also own and operate renewable natural gas plants that may deliver biofuels into to the nation’s natural gas pipeline grid. Such biofuel may qualify for certain environmental attribute mechanisms, such as RINs which are used for compliance purposes under the Renewable Fuel Standard (“RFS”) program. The RFS is a U.S. federal policy that requires transportation fuel to contain a minimum volume of renewable fuel. The U.S. Environmental Protection Agency (“EPA”) administers the RFS program and may periodically undertake regulatory action involving the RFS, including annual volume standards for renewable fuel. Some of our biofuel may also qualify for various state incentives, such as the Low Carbon Fuel Standard (“LCFS”), the pricing or availability of which may fluctuate.

We sometimes seek to sell forward a portion of our SRECs and other environmental attributes under contracts to fix the revenues from those attributes for financing purposes or hedge against future declines in prices of such environmental attributes. If our renewable energy facilities do not generate the amount of renewable energy attributes sold under such forward contracts or if for any reason the renewable energy we generate does not produce SRECs or other environmental attributes for a particular state, we may be required to make up the shortfall of SRECs or other environmental attributes under such forward contracts through purchases on the open market or make payments of liquidated damages. RECs are created through state law requirements for utilities to purchase a portion of their energy from renewable energy sources and changes in state laws or regulation relating to RECs may adversely affect the availability of RECs or other environmental attributes and the future prices for RECs or other environmental attributes, which could have an adverse effect on our business, financial condition, and results of operations.

***We may have exposure to additional tax liabilities and our effective tax rate may increase or fluctuate, which could increase our income tax expense and reduce our net income.***

Our provision for income taxes is subject to volatility and could be adversely affected by changes in tax laws or regulations, particularly changes in tax incentives in support of energy efficiency. For example, certain deductions relating to energy efficiency have expiration dates which could significantly alter the existing tax code, including the removal of these credits prior to their scheduled expiration. The 30% investment tax credit (“ITC”) relating to the installation of solar power fell to 26% in 2020 which will be retained for solar projects that begin construction through the end of 2022. It will decrease to 22% in 2023 and 10% in 2024 and future years. We took advantage of the Safe Harbor commence-construction provisions contained in IRS Notice 2018-59 by pre-purchasing solar equipment in 2019 thereby preserving the ability to take 30% ITC for projects placed in service before 2024. If these or other deductions and credits expire without being extended, or otherwise are reduced or eliminated, our effective tax rate would increase, which could increase our income tax expense and reduce our net income.

Our tax rate has historically been significantly impacted by the IRC Section 179D deduction. This deduction is related to energy efficient improvements we provide under government contracts. The Consolidated Appropriations Act, 2021 made permanent the Section 179D Energy Efficient Commercial Building Deduction. That Act made changes to the way the deduction is calculated. If those changes result in lower levels of energy efficiency improvements, it could impact the deduction available and the tax rate.

In addition, like other companies, we may be subject to examination of our income tax returns by the U.S. Internal Revenue Service and other tax authorities; our U.S. federal tax returns for 2018 through 2021 are subject to audit by federal, state and foreign tax authorities. Though we regularly assess the likelihood of adverse outcomes from such examinations and the adequacy of our provision for income taxes, there can be no assurance that such provision is sufficient and that a determination by a tax authority will not have an adverse effect on our net income.

***Changes in the laws and regulations governing the public procurement of ESPCs could have a material impact on our business.***

We derive a significant amount of our revenue from ESPCs with our government customers. While federal, state and local government rules governing such contracts vary, such rules may, for example, permit the funding of such projects through long-term financing arrangements; permit long-term payback periods from the savings realized through such contracts; allow units of government to exclude debt related to such projects from the calculation of their statutory debt limitation; allow for award of contracts on a “best value” instead of “lowest cost” basis; and allow for the use of sole source providers. To the extent these rules become more restrictive in the future, our business could be harmed.

***We need governmental approvals and permits, and we typically must meet specified qualifications, in order to undertake our energy efficiency projects and construct, own and operate our small-scale renewable energy projects, and any failure to do so would harm our business.***

The design, construction, and operation of our energy efficiency and small-scale renewable energy projects require various governmental approvals and permits and may be subject to the imposition of related conditions that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. We cannot predict whether 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 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 permits will attract significant opposition or 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 ability to develop that project or increase the cost so substantially that the project is no longer attractive to us. We have experienced delays in developing our projects due to delays in obtaining permits and may experience delays in the future. If we were to commence construction in anticipation of obtaining the final, non-appealable permits needed for that project, we would be subject to the risk of being unable to complete the project if all the permits were not obtained. If this were to occur, we would likely lose a significant portion of our investment in the project and could incur a loss as a result. Further, the continued operations of our projects require continuous compliance with permit conditions. This compliance may require capital improvements or result in reduced operations. Any failure to procure, maintain and comply with necessary permits would adversely affect ongoing development, construction and continuing operation of our projects.

In addition, the projects we perform for governmental agencies are governed by particular qualification and contracting regimes. Certain states require qualification with an appropriate state agency as a precondition to performing work or appearing as a qualified energy service provider for state, county, and local agencies within the state. For example, the Commonwealth of Massachusetts and the states of Colorado and Washington pre-qualify energy service providers and provide contract documents that serve as the starting point for negotiations with potential governmental clients. Most of the work that we perform for the federal government is performed under IDIQ agreements between a government agency and us or a subsidiary. These IDIQ agreements allow us to contract with the relevant agencies to implement energy projects, but no work may be performed unless we and the agency agree on a task order or delivery order governing the provision of a specific project. The government agencies enter into contracts for specific projects on a competitive basis. We and our subsidiaries and affiliates are currently party to an IDIQ agreement with the U.S. Department of Energy expiring in 2026. We are also party to similar agreements with other federal agencies, including the U.S. Army Corps of Engineers and the U.S. General Services Administration. If we are unable to maintain or renew our IDIQ qualification under the U.S. Department of Energy program for ESPCs, or similar federal or state qualification regimes, our business could be materially harmed.

***Many of our small-scale renewable energy projects are, and other future projects may be, subject to or affected by U.S. federal energy regulation or other regulations that govern the operation, ownership, and sale of the facility, or the sale of electricity from the facility.***

PUHCA and the FPA regulate public utility holding companies and their subsidiaries and place constraints on the conduct of their business. The FPA regulates wholesale sales of electricity and the transmission of electricity in interstate commerce by public utilities. Under PURPA, all of our current small-scale renewable energy projects are small power “qualifying facilities” (facilities meeting statutory size, fuel, and filing requirements) that are exempt from regulations under PUHCA, most provisions of the FPA and state rate and financial regulation. None of our renewable energy projects are currently subject to rate regulation for wholesale power sales by the Federal Energy Regulatory Commission (“FERC”) under the FPA, but certain of our projects that are under construction or development could become subject to such regulation in the future. Also, we may acquire interests in or develop generating projects that are not qualifying facilities. Non-qualifying facility projects would be fully subject to FERC corporate and rate regulation, and would be required to obtain FERC acceptance of their rate schedules for wholesale sales of energy, capacity, and ancillary services, which requires substantial disclosures to and discretionary approvals from FERC. FERC may revoke or revise an entity’s authorization to make wholesale sales at negotiated, or market-based, rates if FERC determines that we can exercise market power in transmission or generation, create barriers to entry or engage in abusive affiliate transactions

or market manipulation. In addition, many public utilities (including any non-qualifying facility generator in which we may invest) are subject to FERC reporting requirements that impose administrative burdens and that, if violated, can expose the company to civil penalties or other risks.

All of our wholesale electric power sales are subject to certain market behavior rules. These rules change from time to time, by virtue of FERC rulemaking proceedings and FERC-ordered amendments to utilities' or power pools' FERC tariffs. If we are deemed to have violated these rules, we will be subject to potential disgorgement of profits associated with the violation and/or suspension or revocation of our market-based rate authority, as well as potential criminal and civil penalties. If we were to lose market-based rate authority for any non-qualifying facility project we may acquire or develop in the future, we would be required to obtain FERC's acceptance of a cost-based rate schedule and could become subject to, among other things, the burdensome accounting, record keeping and reporting requirements that are imposed on public utilities with cost-based rate schedules. This could have an adverse effect on the rates we charge for power from our projects and our cost of regulatory compliance. Wholesale electric power sales are subject to increasing regulation. The terms and conditions for power sales, and the right to enter and remain in the wholesale electric sector, are subject to FERC oversight. Due to major regulatory restructuring initiatives at the federal and state levels, the U.S. electric industry has undergone substantial changes over the past decade. We cannot predict the future design of wholesale power markets, or the ultimate effect ongoing regulatory changes will have on our business. Other proposals to further regulate the sector may be made and legislative or other attention to the electric power market restructuring process may delay or reverse the movement towards competitive markets.

If we become subject to additional regulation under PUHCA, FPA, or other regulatory frameworks, if existing regulatory requirements become more onerous, or if other material changes to the regulation of the electric power markets take place, our business, financial condition, and operating results could be adversely affected.

***Changes in utility regulation and tariffs could adversely affect our business.***

Our business is affected by regulations and tariffs that govern the activities and rates of utilities. For example, utility companies are commonly allowed by regulatory authorities to charge fees to some business 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 increase the cost to our customers of taking advantage of our services and make them less desirable, thereby harming our business, financial condition, and operating results. Our current generating projects are all operated as qualifying facilities. FERC regulations under the FPA confer upon these facilities key rights to interconnection with local utilities and can entitle qualifying facilities to enter into power purchase agreements with local utilities, from which the qualifying facilities benefit. Changes to these federal laws and regulations could increase our regulatory burdens and costs and could reduce our revenues. State regulatory agencies could award renewable energy certificates or credits that our electric generation facilities produce to our power purchasers, thereby reducing the power sales revenues we otherwise would earn. In addition, modifications to the pricing policies of utilities could require renewable energy systems to charge lower prices in order to compete with the price of electricity from the electric grid and may reduce the economic attractiveness of certain energy efficiency measures.

Some of the demand-reduction services we provide for utilities and institutional clients are subject to regulatory tariffs imposed under federal and state utility laws. In addition, the operation of, and electrical interconnection for, our renewable energy projects are subject to federal, state, or provincial interconnection and federal reliability standards that are also set forth in utility tariffs. These tariffs specify rules, business practices, and economic terms to which we are subject. The tariffs are drafted by the utilities and approved by the utilities' state and federal regulatory commissions. These tariffs change frequently, and it is possible that future changes will increase our administrative burden or adversely affect the terms and conditions under which we render service to our customers.

***The Securities and Exchange Commission's investigation into our revenue recognition and compensation practices in our software-as-a-service businesses could result in a restatement of our consolidated financial statements, investment in remediation of our internal controls, sanctions, or penalties, distraction of our management, and litigation from third parties, each of which could adversely affect or cause variability in our financial results.***

We are cooperating with requests by the staff of the United States Securities and Exchange Commission, or SEC, for information with respect to revenue recognition for our software-as-a-service businesses during the period beginning January 1, 2014. The Audit Committee of our Board of Directors is overseeing a review by our outside counsel of our software-as-a-service revenue recognition, including review procedures with respect to the revenue recognized during the period from 2018 to September 30, 2020. Although, our review to date has not identified material misstatements of our financial results, the SEC's inquiry is not complete, and there can be no assurance that SEC will not reach a contrary conclusion. In that event, we may be required to restate previously filed financial statements and invest in remediation of our internal controls; the SEC or another regulator could make further inquiries or pursue further action that could result in significant costs, expenses, sanctions, and penalties; we may be subject to litigation from shareholders; and our management may be distracted by these circumstances.

***Compliance with environmental laws could adversely affect our operating results.***

Costs of compliance with federal, state, provincial, local and other foreign existing and future environmental regulations could adversely affect our cash flow and profitability. We are required to comply with numerous environmental laws and regulations and to obtain numerous governmental permits in connection with energy efficiency and renewable energy projects. In addition, we may become subject to additional legislation and regulation regarding climate change, and we may incur significant additional costs to comply with existing and new requirements. If we fail to comply with these requirements, we could be subject to civil or criminal liability, damages, and fines. Existing environmental regulations could be revised or reinterpreted, and new laws and regulations could be adopted or become applicable to us or our projects, and future changes in environmental laws and regulations, including those intended to combat climate change, could occur. These factors may materially increase the amount we must invest to bring our projects into compliance and impose additional expense on our operations. In addition, private lawsuits or enforcement actions by federal, state, provincial, and/or foreign regulatory agencies may materially increase our costs. Certain environmental laws make us potentially liable on a joint and several basis for the remediation of contamination at or emanating from properties or facilities we currently or formerly owned or operated or properties to which we arranged for the disposal of hazardous substances. Such liability is not limited to the cleanup of contamination we actually caused. Although we seek to obtain indemnities against liabilities relating to historical contamination at the facilities we own or operate, we cannot provide any assurance that we will not incur liability relating to the remediation of contamination, including contamination we did not cause. We may not be able to obtain or maintain, from time to time, all required environmental regulatory approvals. A delay in obtaining any required environmental regulatory approvals or failure to obtain and comply with them could adversely affect our business and operating results.

***Our activities and operations are subject to numerous health and safety laws and regulations, and if we violate such regulations, we could face penalties and fines.***

We are subject to numerous health and safety laws and regulations in each of the jurisdictions in which we operate. These laws and regulations require us to obtain and maintain permits and approvals and implement health and safety programs and procedures to control risks associated with our projects. Compliance with those laws and regulations can require us to incur substantial costs. Moreover, if our compliance programs are not successful, we could be subject to penalties or to revocation of our permits, which may require us to curtail or cease operations of the affected projects. Violations of laws, regulations and permit requirements may also result in criminal sanctions or injunctions. Health and safety laws, regulations and permit requirements may change or become more stringent. Any such changes could require us to incur materially higher costs than we currently have. Our costs of complying with current and future health and safety laws, regulations and permit requirements, and any liabilities, fines or other sanctions resulting from violations of them, could adversely affect our business, financial condition, and operating results.

***We are subject to various privacy and consumer protection laws.***

Our privacy policy is posted on our website, and any failure by us or our vendor or other business partners to comply with it or with federal, state, or international privacy, data protection or security laws or regulations could result in regulatory or litigation-related actions against us, legal liability, fines, damages and other costs. We may also incur substantial expenses and costs in connection with maintaining compliance with such laws. Globally, laws such as the General Data Protection Regulation (“GDPR”) in Europe and new and emerging state laws in the United States on privacy, data, and related technologies, have created new compliance obligations and significantly increases fines for noncompliance. Although we take steps to protect the security of our customers’ personal information, we may be required to expend significant resources to comply with data breach requirements if third parties improperly obtain and use the personal information of our customers or we otherwise experience a data loss with respect to customers’ personal information. A major breach of our network security and systems could have negative consequences for our business and future prospects, including possible fines, penalties and damages, reduced customer demand for our services, and harm to our reputation and brand.

**Risks Related to our Indebtedness**

***Our senior credit facility, project financing term loans and construction loans contain financial and operating restrictions that may limit our business activities and our access to credit and they may not be sufficient to fund our capital needs and growth.***

Provisions in our senior credit facility and term loan, project financing term loans and construction loans impose customary restrictions on our and certain of our subsidiaries’ business activities and uses of cash and other collateral. These agreements also contain other customary covenants, including covenants that require us to meet specified financial ratios and financial tests.

We have a \$180 million revolving senior secured credit facility and \$65 million term loan that mature June 2024 (collectively, the “Senior Credit Facilities”), which are subject to the quarter end ratio covenant described below as well as certain other customary

operational covenants. As of December 31, 2021, the balance of our Senior Credit Facilities were \$97.8 million. These Senior Credit Facilities may not be sufficient to meet our needs as our business grows, and we may be unable to extend or replace them on acceptable terms, or at all. Under these facilities, we are required to maintain a maximum ratio of total funded debt to EBITDA (as defined in the agreement) of less than 3.5 to 1.0. We are also required to maintain a debt service coverage ratio (as defined in the agreements) of at least 1.5 to 1.0. EBITDA for purposes of the facilities excludes the results of certain renewable energy projects that we own and for which financing from others remains outstanding.

In addition, our project financing term loans and construction loans require us to comply with a variety of financial and operational covenants. Although we do not consider it likely that we will fail to comply with any material covenants for the next twelve months, we cannot assure that we will be able to do so. Our failure to comply with these covenants may result in the declaration of an event of default and cause us to be unable to borrow under our Senior Credit Facilities. In addition to preventing additional borrowings under these facilities, an event of default, if not cured or waived, may result in the acceleration of the maturity of indebtedness outstanding under it or the applicable project financing term loan, which would require us to pay all amounts outstanding. If an event of default occurs, we may not be able to cure it within any applicable cure period, if at all. Certain of our debt agreements, including our Senior Credit Facilities, also contain subjective acceleration clauses based on a lender deeming that a “material adverse change” in our business has occurred. If these clauses are implicated, and the lender declares that an event of default has occurred, the outstanding indebtedness would likely be immediately due and owing. If the maturity of our indebtedness is accelerated, we may not have sufficient funds available for repayment or we may not have the ability to borrow or obtain sufficient funds to replace the accelerated indebtedness on terms acceptable to us or at all.

***If our subsidiaries default on their obligations under their debt instruments, we may need to make payments to lenders to prevent foreclosure on the collateral securing the debt.***

We typically set up subsidiaries to own and finance our renewable energy projects. These subsidiaries incur various types of debt which can be used to finance one or more projects. This debt is typically structured as non-recourse debt, which means it is repayable solely from the revenues from the projects financed by the debt and is secured by such projects’ physical assets, major contracts and cash accounts and a pledge of our equity interests in the subsidiaries involved in the projects. Although our subsidiary debt is typically non-recourse to Ameresco, if a subsidiary of ours defaults on such obligations, or if one project out of several financed by a particular subsidiary’s indebtedness encounters difficulties or is terminated, then we may from time to time determine to provide financial support to the subsidiary in order to maintain rights to the project or otherwise avoid the adverse consequences of a default. In the event a subsidiary defaults on its indebtedness, its creditors may foreclose on the collateral securing the indebtedness, which may result in our losing our ownership interest in some or all of the subsidiary’s assets. The loss of our ownership interest in a subsidiary or some or all of a subsidiary’s assets could have a material adverse effect on our business, financial condition and operating results.

***The LIBOR calculation method under certain of our financing arrangements may change as LIBOR is expected to be phased out by June 2023.***

Our senior credit facility and certain of our project financing term loans permit or require interest on the outstanding principal balance to be calculated based on LIBOR. The U.K. Financial Conduct Authority (the “FCA”) announced in 2017 that it will no longer require banks to submit rates for the calculation of LIBOR after 2021. This date has been extended to June 30, 2023. As a result, actions by the FCA, other regulators, or law enforcement agencies may result in changes to the method by which LIBOR is calculated. At this time, it is not possible to predict the effect of any such changes or any other reforms to LIBOR that may be enacted in the U.K. or elsewhere.

#### **Risks Related to Ownership of Our Class A Common Stock**

***The trading price of our Class A common stock is volatile.***

The trading price of our Class A common stock is volatile and could be subject to wide fluctuations, some of which are beyond our control. During the year ended December 31, 2021, our Class A common stock has traded at a low of \$37.70 and a high of \$101.86. The stock market in general has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of publicly traded companies. If the stock market in general experiences a significant decline, the trading price of our Class A common stock could decline for reasons unrelated to our business, financial condition, or operating results. As a result of this volatility, you may not be able to sell your Class A common stock at or above the price you paid for it, and you may lose some or all of your investment. Additionally, although historically there has not been a large short position in our Class A common stock, securities of certain companies have recently experienced extreme and significant volatility as a result of a large aggregate short position driving up the stock price over a short period of time, which is known as a “short squeeze.” Furthermore, some companies that have had volatile market prices for their securities have had securities class actions filed against them. If a suit were filed against us, regardless of its merits or outcome, it would likely result

in substantial costs and divert management's attention and resources. This could have a material adverse effect on our business, operating results, and financial condition.

***Holders of our Class A common stock are entitled to one vote per share, and holders of our Class B common stock are entitled to five votes per share. The lower voting power of our Class A common stock may negatively affect the attractiveness of our Class A common stock to investors and, as a result, its market value.***

We have two classes of common stock: Class A common stock, which is listed on the NYSE and which is entitled to one vote per share, and Class B common stock, which is not listed on any security exchange and is entitled to five votes per share. The difference in the voting power of our Class A and Class B common stock could diminish the market value of our Class A common stock because of the superior voting rights of our Class B common stock and the power those rights confer.

***For the foreseeable future, Mr. Sakellaris or his affiliates will be able to control the selection of all members of our board of directors, as well as virtually every other matter that requires stockholder approval, which will severely limit the ability of other stockholders to influence corporate matters.***

Except in certain limited circumstances required by applicable law, holders of Class A and Class B common stock vote together as a single class on all matters to be voted on by our stockholders. Mr. Sakellaris, our founder, principal stockholder, president, and chief executive officer, owns all of our Class B common stock, which, together with his Class A common stock, represents approximately 74% of the combined voting power of our outstanding Class A and Class B common stock. Under our restated certificate of incorporation, holders of shares of Class B common stock may generally transfer those shares to family members, including spouses and descendants or the spouses of such descendants, as well as to affiliated entities, without having the shares automatically convert into shares of Class A common stock. Therefore, Mr. Sakellaris, his affiliates, and his family members and descendants will, for the foreseeable future, be able to control the outcome of the voting on virtually all matters requiring stockholder approval, including the election of directors and significant corporate transactions such as an acquisition of our company, even if they come to own, in the aggregate, as little as 20% of the economic interest of the outstanding shares of our Class A and Class B common stock. Moreover, these persons may take actions in their own interests that you or our other stockholders do not view as beneficial.

***Though we may repurchase shares of our Class A common stock pursuant to our share repurchase program, we are not obligated to do so and if we do, we may purchase only a limited number of shares of Class A common stock.***

In May 2016, we announced a stock repurchase program under which the Company is currently authorized to repurchase, in the aggregate, up to \$17.6 million of our outstanding Class A common stock. However, we are not obligated to acquire any shares of our Class A common stock, and holders of our Class A common stock should not rely on the share repurchase program to increase their liquidity. The amount and timing of any share repurchases will depend upon a variety of factors, including the trading price of our Class A common stock, liquidity, securities laws restrictions, other regulatory restrictions, potential alternative uses of capital, and market and economic conditions. We intend to purchase through open market transactions or in privately negotiated transactions, in accordance with applicable securities laws and regulatory limitations. We may reduce or eliminate our share repurchase program in the future. The reduction or elimination of our share repurchase program, particularly if we do not repurchase the full number of shares authorized under the program, could adversely affect the market price of our common stock.

#### **General Risk Factors**

***A failure of our information technology ("IT") and data security infrastructure, or if we or our vendors experience cyber security incidents or have a vulnerability or other deficiency in cybersecurity, could adversely impact our business and operations.***

We rely upon the capacity, reliability, and security of our IT and data security infrastructure and our ability to expand and continually update this infrastructure in response to the changing needs of our business. As we implement new systems, they may not perform as expected. We also face the challenge of supporting our older systems and implementing necessary upgrades. If we experience a problem with the functioning or a security breach of our IT systems, including during system upgrades and/or new system implementations, the resulting disruptions could have an adverse effect on our business. We receive and store personal information in connection with our human resources operations and other aspects of our business. Despite our implementation of security measures, our IT systems are vulnerable to damages from computer viruses, natural disasters, unauthorized access, cyber-attacks, and other similar disruptions, and we have experienced such incidents in the past. Any system failure, accident, or security breach could result in disruptions to our operations. A material network breach in the security of our IT systems could include the theft of our intellectual property, trade secrets, customer information, human resources information, or other confidential matter.



We have been subject to and may in the future experience cybersecurity threats, including advanced and persistent cyberattacks, phishing and social engineering schemes, particularly on internet applications. Furthermore, some of the assets we own or operate constitute critical infrastructure which could become targets for cyberattacks. These threats could compromise the confidentiality, availability, and integrity of data in our systems. In addition, cybersecurity incidents at our vendors, customers and partners may have similar negative impact on our business operations. For example, we engage third-party vendors who receive and store personal and sensitive information in connection with our operations, including our human resources functions such as background checks. We do not have control over or access to the IT infrastructure of these vendors. Our vendors have and may in the future experience network breaches, unauthorized access, hacking and other cyberattacks. In such instances, we are not be able to fully investigate the incidents and may not be able to implement measures to defend such attacks. Furthermore, third-party vendors may not notify us of such incidents timely or at all, making it more difficult for us to identify and mitigate cybersecurity risks. Although we devote resources to our cybersecurity programs and have implemented security measures to protect our systems and data, and to prevent, detect and respond to data security incidents, there can be no assurance that our efforts will prevent these threats. Because the techniques used to obtain unauthorized access, or to disable or degrade systems, change frequently, have become increasingly more complex and sophisticated, and may be difficult to detect for periods of time, we may not anticipate these acts or respond adequately or timely.

As these threats continue to evolve and increase, we may be required to devote significant additional resources in order to modify and enhance our security controls and to identify and remediate any security vulnerabilities. To the extent that any disruptions or security breach results in a loss or damage to our data, or an inappropriate disclosure of confidential, personal, proprietary or customer information, or inability for us to operate the assets we own or operate for our customers, it could cause significant damage to our reputation, affect our relationships with our customers and employees, lead to claims against us and ultimately harm our business.

***The COVID-19 pandemic has had and may continue to have an adverse effect on our business and future public health threats or outbreaks of communicable diseases could have a material adverse effect on our operations and financial results.***

We may face risks related to public health threats or outbreaks of communicable diseases. A widespread healthcare crisis, such as an outbreak of a communicable disease could adversely affect the global economy our ability to conduct business for an indefinite period of time. For example, the ongoing COVID-19 pandemic, has negatively impacted global economy, disrupted financial markets and international trade and significantly impacted global supply chains. In addition, Federal, state, and local governments have implemented various mitigation measures, including travel restrictions, border closings, and limitations on business. Some of these actions have adversely impacted and may continue to adversely impact the ability of our employees, contractors, suppliers, customers, and other business partners to conduct business activities, and depending on development of the pandemic, could ultimately do so for an indefinite period of time. The COVID-19 impacts described above could have a material adverse effect on our results of operations, financial condition, and liquidity. In particular, the continued effects of COVID-19 and efforts to contain the virus:

- has lengthened and could continue to lengthen our sales cycles,
- could cause us to experience an increase in delayed payments from customers and uncollectible accounts,
- has caused and could continue to cause delays and disruptions in the completion of certain projects (including as a result of the global supply chain challenges),
- could impact availability of qualified personnel and general labor shortages, and
- could cause other unpredictable events.

Vaccines for COVID-19 continue to be administered in the United States and other countries around the world, but the extent and rate of vaccine adoption, the long-term efficacy of these vaccines, and other factors remain uncertain, and the potential for a material impact on our results of operations, financial condition, and liquidity increases the longer the virus impacts activity levels in the United States and globally. Furthermore, current or future vaccine requirements (such as the executive order issued by President Biden in October 2021, which required us as an employer with federal government contracts to ensure that our U.S.-based employees, contractors, and subcontractors, that work on or in support of federal contracts, were fully vaccinated) may result in additional compliance cost and impact our ability to retain and recruit critically skilled workforce. Overall, the situation surrounding COVID-19 remains fluid and the extent to which it may impact our business, operating results, financial condition, or liquidity will depend on future developments, including the duration of the outbreak, the emergence and spread of more transmissible variants, travel restrictions, business, workforce disruptions, and the effectiveness of actions taken to contain and treat the disease.

**Item 1B. Unresolved Staff Comments**

None.



## **Item 2. Properties**

Our corporate headquarters is located in Framingham, Massachusetts, where we occupy approximately 27,000 square feet under a lease expiring on June 30, 2025. We occupy nine regional offices in Phoenix, Arizona; Islandia, New York; Oak Brook, Illinois; Columbia, Maryland; Charlotte, North Carolina; Knoxville, Tennessee; Tomball, Texas; Spokane, Washington, and Richmond Hill, Ontario, each less than 25,000 square feet, under lease or sublease agreements. In addition, we lease space, typically of lesser size, for 56 field offices throughout North America and the U.K. We also own 146 small-scale renewable energy plants throughout North America and one in Ireland, which are located on sites we own or lease, or sites provided by customers. We expect to add new facilities and expand existing facilities as we continue to add employees and expand our business into new geographic areas.

## **Item 3. Legal Proceedings**

In the ordinary conduct of our business we are subject to periodic lawsuits, investigations, and claims. Although we cannot predict with certainty the ultimate resolution of such lawsuits, investigations, and claims against us, we do not believe that any currently pending or threatened legal proceedings to which we are a party will have a material adverse effect on our business, results of operations, or financial condition.

We are cooperating with requests by the staff of the United States Securities and Exchange Commission, or SEC, for information with respect to revenue recognition for our software-as-a-service, or SaaS, businesses during the period beginning January 1, 2014 through September 30, 2020. The Audit Committee of our Board of Directors is overseeing a review by our outside counsel of our software-as-a-service revenue recognition, including review procedures with respect to the revenue recognized during the period from 2018 to September 30, 2020. The review to date has not identified material misstatements of our financial results. We intend to continue to cooperate fully with the SEC and promptly address any material accounting errors or material control weaknesses which may be identified in connection with the inquiry and review.

For additional information about certain proceedings, please refer to Note 15, “Commitments and Contingencies”, to our consolidated financial statements included in this Report, which is incorporated into this item by reference.

## **Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

### Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities

Our Class A common stock trades on the New York Stock Exchange under the symbol “AMRC”.

As of February 25, 2022, and according to the records of our transfer agent, there were 11 shareholders of record of our Class A common stock. A substantially greater number of holders of our Class A common stock are “street name” or beneficial holders, whose shares are held of record by banks, brokers, and other financial institutions.

Our Class B common stock is not publicly traded and is held of record by George P. Sakellaris, our founder, principal stockholder, president, and chief executive officer, and a trust which Mr. Sakellaris’s immediate family members are trustee and beneficiaries.

#### Dividend Policy

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain earnings, if any, to finance the growth and development of our business and do not expect to pay any cash dividends for the foreseeable future. Our revolving senior secured credit facility contains provisions that limit our ability to declare and pay cash dividends during the term of that agreement. Payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in current or future financing instruments, provisions of applicable law and other factors our board of directors deems relevant.

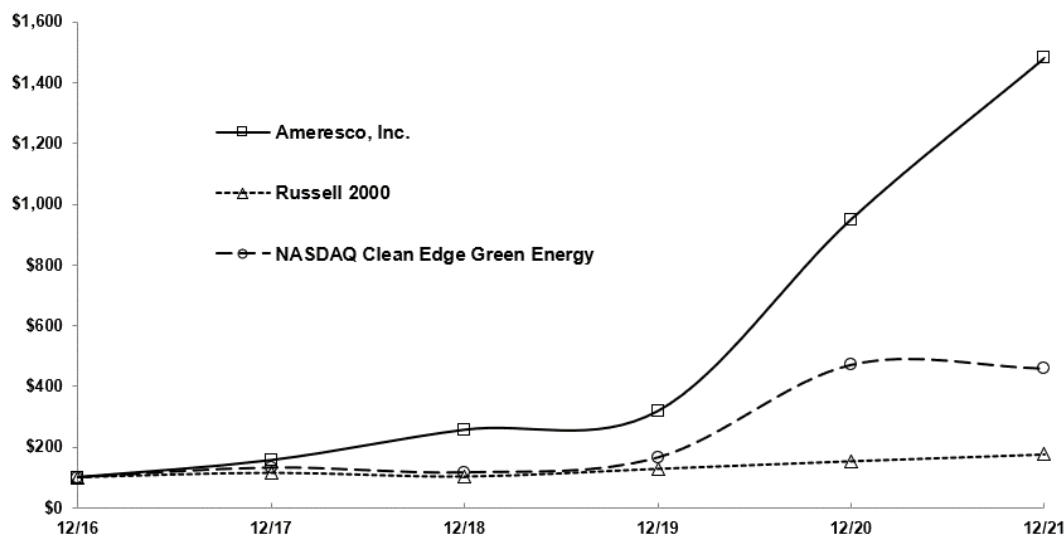
#### Stock Performance Graph

*The following performance graph and related information shall not be deemed “soliciting material” or to be “filed” with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933 (the “Securities Act”) or the Exchange Act, except to the extent that we specifically incorporate it by reference into such filing.*

The following graph compares the cumulative total return attained by our Class A common shareholders with the Russell 2000 index and the NASDAQ Clean Edge Green Energy index. The information presented assumes an investment of \$100 on December 31, 2016 and that all dividends were reinvested. The graph shows the value that each of these investments would have had at the end of each year.

# COMPARISON OF FIVE-YEAR CUMULATIVE TOTAL SHAREHOLDER RETURN <sup>(1)</sup>

Among Ameresco, Inc., the Russell 2000 Index  
and the NASDAQ Clean Edge Green Energy Index



	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Ameresco, Inc.	\$100.00	\$156.36	\$256.36	\$318.18	\$949.82	\$1,480.73
Russell 2000 Index	\$100.00	\$114.65	\$102.02	\$128.06	\$153.62	\$176.39
NASDAQ Clean Edge Green Energy Index	\$100.00	\$132.05	\$116.05	\$165.57	\$471.59	\$459.13

(1) \$100 invested on December 31, 2016 in our Class A common stock or index, including reinvestment of dividends, as of December 31, 2021.

Shareholder returns over the indicated period should not be considered indicative of future shareholder returns.

## Issuer Purchases of Equity Securities

We did not repurchase any shares of our common stock under our stock repurchase program authorized by the Board of Directors on April 27, 2016 (the “Repurchase Program”) during the quarter ended December 31, 2021. As of December 31, 2021, there were shares having a dollar value of approximately \$5.9 million that may yet be purchased under the Repurchase Program.

Under the Repurchase Program, we are authorized to repurchase up to \$17.6 million of our Class A common stock. Stock repurchases may be made from time to time through the open market and privately negotiated transactions. The amount and timing of any share repurchases will depend upon a variety of factors, including the trading price of our Class A common stock, liquidity, securities laws restrictions, other regulatory restrictions, potential alternative uses of capital, and market and economic conditions. The Repurchase Program may be suspended or terminated at any time without prior notice and has no expiration date.

## Item 6. [Reserved]

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes and other financial information included in Item 8 of this Report. Some of the information contained in this discussion and analysis are set forth elsewhere in this Report, including information with respect to our plans and strategy for our business and related financing, and includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" included in Item 1A of this Report 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

Ameresco is a leading clean technology integrator with a comprehensive portfolio of energy efficiency and renewable energy supply solutions. We help organizations meet energy saving and energy management challenges with an integrated, comprehensive approach to energy efficiency and renewable energy. Leveraging budget neutral solutions, including ESPCs and PPAs, we aim to eliminate the financial barriers that traditionally hamper energy efficiency and renewable energy projects.

Drawing from decades of experience, Ameresco develops tailored energy management projects for its customers in the commercial, industrial, local, state and federal government, K-12 education, higher education, healthcare, public housing sectors, and utilities.

We provide solutions primarily throughout North America and the U.K. and our revenues are derived principally from energy efficiency projects, which entail the design, engineering, and installation of equipment and other measures that incorporate a range of innovative technology and techniques to improve the efficiency and control the operation of a facility's energy infrastructure; this can include designing and constructing a central plant or cogeneration system for a customer providing power, heat and/or cooling to a building, or other small-scale plant that produces electricity, gas, heat or cooling from renewable sources of energy. We also derive revenue from long-term O&M contracts, energy supply contracts for renewable energy operating assets that we own, integrated-PV, and consulting and enterprise energy management services.

In addition to organic growth, strategic acquisitions of complementary businesses and assets have been an important part of our growth enabling us to broaden our service offerings and expand our geographical reach. In December 2021, we completed the acquisition of Plug Smart, an Ohio-based energy services company that specializes in the development and implementation of budget neutral capital improvement projects including building controls and building automation systems. This acquisition allows us to expand our existing pipeline and solution offerings in the smart buildings sector. The pro forma effects of this acquisition were not material to our operations for the fiscal years presented.

### Key Factors and Trends

#### *The SCE Agreement*

In October 2021, we entered into a contract with SCE to design and build three grid scale battery energy storage systems at existing substation parcels throughout SCE's service territory in California. The engineering, procurement and construction price is approximately \$892.0 million, in the aggregate, including two years of O&M revenues, subject to customary potential adjustments for changes in the work.

We are obligated under the SCE Agreement to achieve substantial completion of all facilities, subject to extension for customary force majeure events and customer-caused delays, no later than August 1, 2022 (the "Guaranteed Completion Date"). If we fail to achieve substantial completion of any of the facilities by the Guaranteed Completion Date, as extended, we are obligated to pay liquidated damages. In addition, we provided availability and capacity guarantees under the SCE Agreement, failure of which entitles the customer to liquidated damages. We expect a material portion of our revenue for 2022 will be generated from this SCE Agreement, and expect a material portion of the contract expenditures under this agreement will be incurred during the first half of 2022. If we fail to achieve the milestone dates or fail to meet the availability and capacity guarantees, we may be subject to liquidated damages and under certain circumstances SCE may have a right to terminate the agreement. See "The loss of SCE, which is one of our most significant customers or our failure to perform our contract with that customer in accordance with its terms could adversely affect us" in Item 1A, Risk Factors for further discussion.

#### *COVID-19*

Fiscal year 2020 was marked with unrivaled global challenges, including the public health and economic downturn caused by the COVID-19 pandemic. During the first half of 2020, after COVID-19 was declared a pandemic by the World Health Organization, we experienced some delays in our project award conversions and some construction slowdowns due to shelter-in-place

restrictions, however, the opportunities to reduce emissions and limit the effects of climate change remained. We responded to the pandemic by ensuring the health and safety of our employees. We implemented a seamless transition to remote operations for many months, and, while following all CDC guidelines, continued front-line work at our essential facilities.

The resurgence of COVID-19 and its variants during the latter part of 2021 has caused some governments to extend travel and other restrictions. On September 9, 2021, President Biden issued an Executive Order requiring COVID-19 vaccinations for Federal employees. As a result, we implemented this mandate for our employees and subcontractors who work in our Federal business segment. This vaccine mandate was blocked by a federal district court in Texas in January 2022 and the directive is now on hold pending a Justice Department appeal of the ruling. Future vaccine requirements could result in a potential loss of employees or subcontractors who have not been vaccinated or impact our ability to retain and recruit critically skilled workforce. See “The Covid-19 pandemic has had and may continue to have an adverse effect on our business and future public health threats or outbreaks of communicable diseases could have a material adverse effect on our operations and financial results” in Item 1A. Risk Factors in this Form 10-K, for discussion of this risk.

We continue to monitor the impact of COVID-19 on our operations, financial results, and liquidity. The impact to our future operations and results, however, remains uncertain and will depend on a number of factors, including, but not limited to, the emergence and spread of more transmissible variants, the overall duration and severity of the pandemic and its impact on the global economy, our customers, and business and workforce disruptions.

#### ***Supply Chain Disruptions***

During the second half of the year ended December 31, 2021, we experienced supply chain disruptions resulting in delays in the timely delivery of material to customer sites and delays and disruptions in the completion of certain projects. This negatively impacted our results of operations during this time. We expect this trend to continue into 2022. See “We may be unable to complete or operate our projects on a profitable basis or as we have committed to our customers”, “Failure of third parties to manufacture quality products or provide reliable services in a timely manner could cause delays in the delivery of our services and completion of our projects, which could damage our reputation, have a negative impact on our relationships with our customers and adversely affect our growth”, and “The COVID-19 pandemic has had and may continue to have an adverse effect on our business and future public health threats or outbreaks of communicable diseases could have a material adverse effect on our operations and financial results” in Item 1A. Risk Factors..

#### ***The Energy Act of 2020***

On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 into law, a legislative package that included the Energy Act of 2020, reauthorizing a number of U.S. Department of Energy programs, with a \$2.3 trillion spending bill containing appropriations for fiscal year 2021, COVID-19 relief funds, and extensions of a number of expiring tax incentives important to the energy sector. It includes \$35 billion in energy research and development programs, a two-year extension of the 26% Investment Tax Credit (“ITC”) rate for solar power that will retain the current 26% credits for solar projects that begin construction through the end of 2022. In addition, the Section 179D Energy Efficient Commercial Building Deduction, which historically has impacted our tax rate significantly, was made permanent under the tax code.

#### ***The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)***

On March 27, 2020, the U.S. government enacted the CARES Act which includes modifications to the limitation on business interest expense and net operating loss provisions and provides a payment delay of employer payroll taxes during 2020 after the date of enactment. The payment of \$2.3 million of employer payroll taxes otherwise due in 2020 was paid in December 2021 and the remaining \$2.3 million is due by December 31, 2022. The CARES Act permitted net operating losses from the 2018, 2019, and 2020 tax years to be carried back to the previous five tax years (beginning with the earliest year first). We received a federal income tax refund of approximately \$4.0 million as a result of the CARES Act which permitted us to carry our 2018 operating loss back to previous years and utilize Alternative Minimum Tax Credits.

#### ***Climate Change and Effects of Seasonality***

The global emphasis on climate change and reducing carbon emissions has created opportunities for our industry. Sustainability has been at the forefront of our business since its inception and we are committed to staying at the leading edge of innovation taking place in the energy sector. We believe the next decade will be marked by dramatic changes in the power infrastructure with resources shifting to more distributed assets, storage, and microgrids to increase overall reliability and resiliency. The sustainability efforts are impacted by regulations, and changes in the regulatory climate may impact the demand for our products and offerings. See “Our business depends in part on federal, state, provincial and local government support for energy efficiency

and renewable energy, and a decline in such support could harm our business” and “Compliance with environmental laws could adversely affect our operating results” in Item 1A, Risk Factors..

Climate change also brings risks, as the impacts have caused us to experience more frequent and severe weather interferences, and this trend may continue. We are subject to seasonal fluctuations and construction cycles, particularly in climates that experience colder weather during the winter months, such as the northern United States and Canada, and climates that experience extreme weather events, such as wildfires, storms or flooding, or at educational institutions, where large projects are typically carried out during summer months when their facilities are unoccupied. In addition, government customers, many of which have fiscal years that do not coincide with ours, typically follow annual procurement cycles and appropriate funds on a fiscal-year basis even though contract performance may take more than one year. Further, government contracting cycles can be affected by the timing of, and delays in, the legislative process related to government programs and incentives that help drive demand for energy efficiency and renewable energy projects. As a result, our revenues and operating income in the third and fourth quarter are typically higher, and our revenues and operating income in the first quarter are typically lower, than in other quarters of the year, however, this may become harder to predict with the potential effects of climate change. As a result of such fluctuations, we may occasionally experience declines in revenues or earnings as compared to the immediately preceding quarter, and comparisons of our operating results on a period-to-period basis may not be meaningful.

Our annual and quarterly financial results are also subject to significant fluctuations as a result of other factors, many of which are outside our control. See “Our business is affected by seasonal trends and construction cycles, and these trends and cycles could have an adverse effect on our operating results” in Item 1A, Risk Factors.

### **Stock-based Compensation**

During the year ended December 31, 2021, we granted 1,341,500 common stock options to certain employees under our 2020 Stock Incentive Plan. As a result, our stock-based compensation expense increased from \$1.9 million for the year ended December 31, 2020 to \$8.7 million for the year ended December 31, 2021. The increase in the number of stock options granted and higher grant date fair value resulted in the increased stock-based compensation in 2021. In addition, our unrecognized stock-based compensation expense increased from \$12.1 million at December 31, 2020 to \$41.1 million at December 31, 2021, and is expected to be recognized over a weighted-average period of three years. See Note 14 “Stock-based Compensation and Other Employee Benefits” for additional information.

### **Backlog and Awarded Projects**

Backlog is an important metric for us because we believe strong order backlogs indicate growing demand and a healthy business over the medium to long term, conversely, a declining backlog could imply lower demand.

The following table presents our backlog:

(In Thousands)	As of December 31,	
	2021	2020
<b>Project Backlog</b>		
Fully-contracted backlog	\$ 1,509,300	\$ 895,660
Awarded, not yet signed customer contracts	1,542,760	1,318,660
Total project backlog	<u>\$ 3,052,060</u>	<u>\$ 2,214,320</u>
12-month project backlog	\$ 1,296,410	\$ 593,860
<b>O&amp;M Backlog</b>		
Fully-contracted backlog	\$ 1,131,660	\$ 1,131,110
12-month O&M backlog	\$ 70,306	\$ 63,980

Total project backlog represents energy efficiency projects that are active within our sales cycle. Our sales cycle begins with the initial contact with the customer and ends, when successful, with a signed contract, also referred to as fully-contracted backlog. Our sales cycle recently has been averaging 18 to 42 months. Awarded backlog is created when a potential customer awards a project to Ameresco following a request for proposal. Once a project is awarded but not yet contracted, we typically conduct a detailed energy audit to determine the scope of the project as well as identify the savings that may be expected to be generated from upgrading the customer’s energy infrastructure. At this point, we also determine the subcontractor, what equipment will be used, and assist in arranging for third party financing, as applicable. Recently, awarded projects have been taking an average of 12 to 24 months to result in a signed contract and convert to fully-contracted backlog. It may take longer, as it depends on the size

and complexity of the project. Historically, approximately 90% of our awarded backlog projects have resulted in a signed contract. After the customer and Ameresco agree to the terms of the contract and the contract becomes executed, the project moves to fully-contracted backlog. The contracts reflected in our fully-contracted backlog typically have a construction period of 12 to 36 months and we typically expect to recognize revenue for such contracts over the same period.

Our O&M backlog represents expected future revenues under signed multi-year customer contracts for the delivery of O&M services, primarily for energy efficiency and renewable energy construction projects completed by us for our customers.

We define our 12-month backlog as the estimated amount of revenues that we expect to recognize in the next twelve months from our fully-contracted backlog. See Note 2 “Summary of Significant Accounting Policies” for our revenue recognition policies. See “We may not recognize all revenues from our backlog or receive all payments anticipated under awarded projects and customer contracts” and “In order to secure contracts for new projects, we typically face a long and variable selling cycle that requires significant resource commitments and requires a long lead time before we realize revenues” in Item 1A, Risk Factors.

### Assets in Development

Assets in development, which represents the potential estimated design/build construction value of small-scale renewable energy plants that have been awarded or for which we have secured development rights, was \$1,247.5 million as of December 31, 2021 and \$1,021.8 million as of December 31, 2020. This is another important metric because it helps us gauge our future capacity to generate electricity or deliver renewable gas fuel which contributes to our recurring revenue stream.

### Results of Operations

The following table sets forth certain financial data from the consolidated statements of income for the periods indicated <sup>(1)</sup>:

(In Thousands)	Year Ended December 31,				Year-Over-Year Change	
	2021		2020		Dollar Change	% Change
	Dollar Amount	% of Revenues	Dollar Amount	% of Revenues		
Revenues	\$ 1,215,697	100.0 %	\$ 1,032,275	100.0 %	\$ 183,422	17.8 %
Cost of revenues	985,340	81.1 %	844,726	81.8 %	140,614	16.6 %
Gross profit	230,357	18.9 %	187,549	18.2 %	42,808	22.8 %
Selling, general and administrative expenses	134,923	11.1 %	116,050	11.2 %	18,873	16.3 %
Operating income	95,434	7.9 %	71,499	6.9 %	23,935	33.5 %
Other expenses, net	17,290	1.4 %	15,071	1.5 %	2,219	14.7 %
Income before income taxes	78,144	6.4 %	56,428	5.5 %	21,716	38.5 %
Income tax benefit	(2,047)	(0.2) %	(494)	— %	(1,553)	314.4 %
Net income	\$ 80,191	6.6 %	\$ 56,922	5.5 %	\$ 23,269	40.9 %
Net income attributable to redeemable non-controlling interest	\$ (9,733)	(0.8) %	\$ (2,870)	(0.3) %	\$ (6,863)	239.1 %
Net income attributable to common shareholders	\$ 70,458	5.8 %	\$ 54,052	5.2 %	\$ 16,406	30.4 %

(1) A comparison of our 2020 and 2019 results can be found in Item 7 of our [2020 Form 10-K](#) filed with the SEC.

Our results of operations for the year-ended December 31, 2021 reflect year-over-year growth in terms of revenues, operating income, and net income attributable to common shareholders. All financial result comparisons are against the prior year period.

Our strong operating results are due to the following:

- **Revenue:** total revenues increased primarily due to a \$139.4 million, or 18%, increase in our project revenue attributed to the timing of revenue recognized as a result of the phase of active projects versus the prior year, including our SCE battery storage project, a \$33.1 million, or 28%, increase in our energy asset revenue attributed to the continued growth of our operating portfolio, strong renewable gas production and higher pricing on RINs generated from certain non-solar distributed generation assets in operation, and a \$6.3 million increase in O&M revenue.
- **Cost of Revenues and Gross Profit:** the increase in cost of revenues is primarily due to the increase in project revenues described above. The increase in gross profit as a percentage of revenue increased as our revenue mix continued to shift towards our higher margin recurring Energy Assets and O&M businesses.

- **Selling, General and Administrative Expenses:** the increase is primarily due to higher net salaries and benefits of \$18.4 million as a result of increased headcount and an increase in non-cash stock-based compensation expense.
- **Other Expenses, Net:** Other expenses, net, includes gains and losses from derivatives transactions, foreign currency transactions, interest expense, interest income, amortization of deferred financing costs and certain government incentives. Other expenses, net increased primarily due to a foreign currency transaction loss of \$0.9 million compared to a foreign currency transaction gain of \$0.5 million in 2020, a loss on derivatives of \$0.2 million compared to a gain of \$0.7 million in 2020, and a decrease in government incentives of \$0.8 million, partially offset by lower interest expenses of \$1.1 million related to a lower average balance on our senior secured debt facility and lower interest rates on this facility.
- **Income before Income Taxes:** the increase is due to reasons described above.
- **Income Tax Benefit:** the benefit for income taxes is based on various rates set by federal, state, provincial, and local authorities and is affected by permanent and temporary differences between financial accounting and tax reporting requirements. The effective tax benefit rate was lower in 2021 as compared to 2020 primarily due to increases in the benefits associated with energy efficiency tax incentives including Section 48 Solar Investment Tax Credits, deductions associated with the Section 179D Commercial Buildings Energy Efficiency Tax Deduction and compensation deductions resulting from employee stock option disqualifying dispositions. The tax benefit rate for 2020 was favorable, which was affected by the release of a previously established valuation allowance on the Canadian tax assets and the benefit of employee stock option compensation. We additionally realized tax rate benefits associated with net operating loss carrybacks made possible by the passing of the CARES Act on March 27, 2020 and tax basis adjustments on certain partnership flip transactions.
- **Net Income and Earnings Per Share:** Net income attributable to common shareholders increased due to the reasons described above. Basic earnings per share for 2021 was \$1.38 an increase of \$0.25 per share compared to 2020. Diluted earnings per share for 2021 was \$1.35, an increase of \$0.25 per share, compared to 2020. The equity offering in March 2021 increased the weighted average shares outstanding by approximately 2,333,000 shares, which lowered basic and diluted earnings per share by \$0.07 and \$0.06 per share, respectively.

## Business Segment Analysis

Our reportable segments for the year ended December 31, 2021 were U.S. Regions, U.S. Federal, Canada, Non-Solar Distributed Generation (“Non-Solar DG”), and All Other. On January 1, 2021, we changed the structure of our internal organization, and our U.S. Regions segment now includes our U.S.-based enterprise energy management services previously included in our “All Other” segment. As a result, previously reported amounts have been reclassified for comparative purposes. See Note 20 “Business Segment Information” for additional information about our segments.

## Revenues

(In Thousands)	Year Ended December 31,		Year-Over-Year Change	
	2021	2020	Dollar Change	% Change
U.S. Regions	\$ 528,293	\$ 404,152	\$ 124,141	30.7 %
U.S. Federal	392,948	377,882	15,066	4.0
Canada	49,457	47,797	1,660	3.5
Non-Solar DG	137,243	106,417	30,826	29.0
All Other	107,756	96,027	11,729	12.2
Total revenues	\$ 1,215,697	\$ 1,032,275	\$ 183,422	17.8 %

- **U.S. Regions:** the increase is primarily due to a \$116.0 million, or 33%, increase in project revenues attributable to the timing of revenue recognized as a result of the phase of active projects, including our SCE battery storage project, versus the prior year and a \$5.1 million, or 15%, increase in revenue from the growth of our energy assets in operation.
- **U.S. Federal:** the increase is primarily due to a \$13.1 million, or 4%, increase in project revenue attributable to the timing of revenue recognized as a result of the phase of active projects compared to the prior year.
- **Canada:** the increase is primarily due to favorable foreign exchange rates.
- **Non-Solar DG:** the increase is primarily due to a \$26.7 million, or 35%, increase in energy asset revenues resulting from the continued growth of our operating portfolio, increased renewable gas production levels and higher pricing on RINs generated from certain non-solar distributed generation assets in operation.
- **All Other:** the increase is primarily due to an increase in project revenues in the U.K. related to an increase in volume and progression of certain active projects, partially offset by a decrease in project revenues in Greece.



### Income before Taxes and Unallocated Corporate Activity

(In Thousands)	Year Ended December 31,		Year-Over-Year Change	
	2021	2020	Dollar Change	% Change
U.S. Regions	\$ 40,051	\$ 28,339	\$ 11,712	41.3 %
U.S. Federal	52,386	44,560	7,826	17.6
Canada	1,584	2,560	(976)	(38.1)
Non-Solar DG	26,345	13,040	13,305	102.0
All Other	6,195	8,117	(1,922)	(23.7)
Unallocated corporate activity	(48,417)	(40,188)	(8,229)	20.5
Income before taxes	\$ 78,144	\$ 56,428	\$ 21,716	38.5 %

- **U.S. Regions:** the increase is primarily due to the increase in revenues described above, a \$1.8 million decrease in project development costs, a \$1.5 million decrease in bad debt expense, partially offset by an increase of \$3.8 million in salary and benefit costs resulting from increased headcount and higher health insurance costs.
- **U.S. Federal:** the increase is due to the increase in revenues described above, partially offset by an increase in salaries and benefits of \$2.3 million resulting from increased average salaries and higher health insurance costs.
- **Canada:** the decrease is primarily due to a \$0.5 million increase in salaries and benefits, a \$0.8 million increase in project development costs, partially offset by an increase in revenues described above.
- **Non-Solar DG:** the increase is primarily due to the higher contribution attributed to the increase in higher margin energy asset revenue described above, partially offset by higher mark to market losses on our unhedged commodity gas swaps, and higher interest expense.
- **All Other:** the decrease is due to higher operating expenses, primarily salaries and benefits and project development costs, partially offset by higher revenues noted above.
- Unallocated corporate activity includes all corporate level selling, general and administrative expenses and other expenses not allocated to the reportable segments. We do not allocate any indirect expenses to the segments. Corporate activity increased primarily due to higher salaries and benefit costs of \$9.3 million, which includes a \$6.8 million increase in non-cash stock-based compensation expense due to increased option grants with a higher grant date fair value.

### Liquidity and Capital Resources

#### Overview

Since inception, we have funded operations primarily through cash flow from operations, advances from Federal ESPC projects, our senior secured credit facility and various forms of other debt (see “Project Financing” below). In addition, in March 2021, we completed an underwritten public offering of 2,875,000 shares of our Class A Common Stock, for total net proceeds of \$120.1 million. See below, Note 9 “Debt and Financing Lease Liabilities”, and Note 13 “Equity and Earnings per Share” for additional information.

Working capital requirements, which can be susceptible to fluctuations during the year due to seasonal demands, generally result from revenue growth, our solar equipment purchase patterns, the timing of funding under various contracts, or advances from Federal ESPC projects, and payment terms for receivables and payables.

We expect to incur additional expenditures in connection with the following activities:

- equity investments, project asset acquisitions and business acquisitions that we may fund from time to time
- capital investment in current and future energy assets
- material, equipment, and other expenditures for our SCE battery storage project, particularly during the first half of 2022

We regularly monitor and assess our ability to meet funding requirements. We believe that cash and cash equivalents, working capital and availability under our revolving senior secured credit facility, combined with our right (subject to lender consent) to increase our revolving credit facility by \$100.0 million, and our general access to credit and equity markets, will be sufficient to fund our operations for twelve months from filing this Report and thereafter. However, we consistently evaluate and take action, as necessary, to preserve adequate liquidity and ensure that our business can continue to operate and that we can meet our capital requirements during these uncertain times. This may include limiting discretionary spending across the organization and re-

prioritizing our capital projects amid times of international political unrest and for the time periods we expect to fund significant capital expenditures for our SCE battery storage project and depending on the evolution of the COVID-19 pandemic.

### ***Equity Offering***

On March 9, 2021, we closed on an underwritten public offering of 2,500,000 shares of our Class A common stock at a public offering price of \$44.00 per share. Net proceeds from the offering were \$104.3 million, after deducting offering costs of \$5.7 million. On March 15, 2021, we closed on the underwriters' option to purchase 375,000 additional shares of our Class A common stock from us at \$44.00 per share, resulting in net proceeds of \$15.8 million after deducting offering costs of \$0.7 million. In the offering, selling shareholders sold 805,000 shares of our Class A Common Stock at a public offering price of \$44.00 per share, less the underwriting discount. We did not receive any proceeds from the sale of the shares by the selling stockholders. We used \$80.0 million of the net proceeds to repay in full the outstanding U.S. dollar balance under our senior secured revolving credit facility and used the remaining proceeds for general corporate purposes.

### ***Senior Secured Credit Facility — Revolver and Term Loan***

In June 2021, we entered into an amendment to our senior secured revolving credit facility with three banks which increased the amount of the revolving commitment by the lenders under the credit facility from \$115.0 million to \$180.0 million. The amendment also increased the total funded debt to EBITDA covenant ratio from a maximum of 3.25 to 3.50, and decreased the Eurocurrency rate floor from 1% to 0%. At December 31, 2021, our senior secured credit facility outstanding was \$97.8 million, and we had funds of \$121.2 million available under the revolving credit facility.

### ***Project Financing***

#### ***Construction and Term Loans***

We have entered into a number of construction and term loan agreements for the purpose of constructing and owning certain renewable energy plants. The physical assets and the operating agreements related to the renewable energy plants are generally owned by wholly owned, single member "special purpose" subsidiaries of Ameresco. These construction and term loans are structured as project financings made directly to a subsidiary, and upon commercial operation and achieving certain milestones in the credit agreement, the related construction loan converts into a term loan. While we are required under generally accepted accounting principles ("GAAP") to reflect these loans as liabilities on our consolidated balance sheets, they are generally non-recourse and not direct obligations of Ameresco, Inc. As of December 31, 2021, our construction and term loans outstanding were \$249.8 million.

Our project financing facilities contain various financial and other covenant requirements which include debt service coverage ratios and total funded debt to EBITDA, as defined. Any failure to comply with the financial or other covenants of our project financings would result in inability to distribute funds from the wholly-owned subsidiary to Ameresco, Inc. or constitute an event of default in which the lenders may have the ability to accelerate the amounts outstanding, including all accrued interest and unpaid fees.

#### ***Federal ESPC Liabilities***

We have arrangements with certain third-parties to provide advances to us during the construction or installation of projects for certain customers, typically federal governmental entities, in exchange for our assignment to the lenders of our rights to the long-term receivables arising from the ESPCs related to such projects. These financings totaled \$532.3 million in principal amounts as of December 31, 2021 and \$440.2 million as of December 31, 2020. Under the terms of these financing arrangements, we are required to complete the construction or installation of the project in accordance with the contract with our customer, and the liability remains on our consolidated balance sheets until the completed project is accepted by the customer.

We are the primary obligor for financing received, but only until final acceptance of the work by the customer. At this point recourse to us ceases and the ESPC receivables are transferred to the investor. The transfers of receivables under these agreements do not qualify for sales accounting until final customer acceptance of the work, so the advances from the investors are not classified as operating cash flows. Cash draws that we received under these ESPC agreements were \$159.2 million during the year ended December 31, 2021 and are recorded as financing cash inflows. The use of the cash received under these arrangements is to pay project costs classified as operating cash flows and totaled \$249.7 million during the year ended December 31, 2021. Due to the manner in which the ESPC contracts with the third-party investors are structured, our reported operating cash flows are materially impacted by the fact that operating cash flows only reflect the ESPC contract expenditure outflows and do not reflect any inflows from the corresponding contract revenues. Upon acceptance of the project by the federal customer the ESPC receivable and corresponding ESPC liability are removed from our consolidated balance sheets as a non-cash settlement. See Note 2, "Summary of Significant Accounting Policies", to our consolidated financial statements in this Report.

### *Sale-Leaseback and Financing Liabilities*

We have entered into sale-leaseback arrangements for solar PV energy assets with multiple investors and in accordance with Topic 842, Leases, all sale-leaseback transactions that occurred after December 31, 2018, were accounted for as failed sales and the proceeds received from the transactions were recorded as long-term financing facilities. See Notes 8 “Leases” and 9 “Debt and Financing Lease Liabilities” for additional information on these financing facilities. As of December 31, 2021, our financing leases and financing liabilities outstanding were \$123.8 million, and \$228.6 million remained available under these lending commitments, although this full amount is not expected to be used.

While we are required under GAAP to reflect these lease payments as liabilities on our consolidated balance sheets, they are generally non-recourse and not direct obligations of Ameresco Inc., except that we have guaranteed certain obligations relating to taxes and project warranties, operation, and maintenance.

### *Other*

We issue letters of credit and performance bonds, from time to time, with our third-party lenders, to provide collateral.

### *Selected Measures of Liquidity and Capital Resources*

(In Thousands)	December 31,	
	2021	2020
Cash and cash equivalents	\$ 50,450	\$ 66,422
Working capital	\$ 164,361	\$ 107,618
Availability under revolving credit facility	\$ 121,176	\$ 50,011

### *Cash Flows*

The following table summarizes our changes in cash and cash equivalents:

(In Thousands)	Year Ended December 31,	
	2021	2020
Cash flows used in operating activities	\$ (172,296)	\$ (102,583)
Cash flows used in investing activities	(205,257)	(181,015)
Cash flows provided by financing activities	365,461	305,169
Effect of exchange rate changes on cash	309	2
Net (decrease) increase in cash, cash equivalents, and restricted cash	\$ (11,783)	\$ 21,573

Our service offering also includes the development, construction, and operation of small-scale renewable energy plants. Small-scale renewable energy projects, or energy assets, can either be developed for the portfolio of assets that we own and operate or designed and built for customers. Expenditures related to projects that we own are recorded as cash outflows from investing activities. Expenditures related to projects that we build for customers are recorded as cash outflows from operating activities as cost of revenues.

### *Cash Flows from Operating Activities*

Our cash flow from operating activities in 2021 decreased over 2020 primarily due to a \$132.7 million increase in unbilled revenue (costs and estimated earnings in excess of billings) due to the timing of when certain projects are invoiced, including our SCE battery storage project, and an increase of \$22.7 million in Federal ESPC receivables, partially offset by an increase of \$54.4 million in accounts payable, accrued expenses and other current liabilities and an increase of \$23.3 million in net income.

### *Cash Flows from Investing Activities*

During 2021, we paid \$14.9 million, net of cash received, for the acquisition of Plug Smart and also contributed \$9.0 million to an equity investment. We also spent \$4.9 million related to purchases of other property and equipment, which is \$2.7 million more than last year and made capital investments, net of grant proceeds, of \$178.1 million related to the development and acquisition of renewable energy plants, which is comparable to last year.

We currently plan to invest approximately \$225.0 million to \$275.0 million in capital investments in 2022, principally for the construction or acquisition of new renewable energy plants.

### *Cash Flows from Financing Activities*

Our primary sources of financing during 2021 were proceeds of \$186.0 million from long-term debt financings, \$161.2 million from advances on Federal ESPC projects and energy assets and net proceeds of \$120.1 million from our equity offering. These proceeds were partially offset by repayments of long-term debt totaling \$98.2 million.

During 2020, proceeds from Federal ESPC projects and energy assets provided \$250.3 million in cash and received long-term debt financing proceeds of \$116.1 million. These proceeds were partially offset by repayments of long-term debt totaling \$73.6 million.

We currently plan additional financings of \$175.0 million to \$225.0 million in 2022 to fund the construction or acquisition of new renewable energy plants as discussed above.

We may also, from time to time, finance our operations through issuance or offering of equity or debt securities.

### **Critical Accounting Policies and Estimates**

Preparing our consolidated financial statements in accordance with GAAP involves us making estimates and assumptions that affect reported amounts of assets and liabilities, net sales, and expenses, and related disclosures in the accompanying notes at the date of our financial statements. We base our estimates on historical experience, industry and market trends, and on various other assumptions that we believe to be reasonable under the circumstances. However, by their nature, estimates are subject to various assumptions and uncertainties, and changes in circumstances could cause actual results to differ from these estimates, sometimes materially.

We believe that our policies and estimates that require our most significant judgments are considered our critical accounting policies and are discussed below. In addition, refer to Note 2 “Summary of Significant Accounting Policies” for further details.

### ***Revenue Recognition***

As described in Note 2, we recognize revenue from the installation or construction of projects over time using the cost-based input method. We use the total costs incurred on the project relative to the total expected costs to satisfy the performance obligation. When the estimate on a contract indicates a loss or claims against costs incurred reduce the likelihood of recoverability of such costs, we record the entire estimated loss in the period the loss becomes known. In addition, some contracts contain an element of variable consideration, including liquidated damages and/or penalties, which requires payment to the customer in the event that construction timelines or milestones are not met. We estimate the total consideration payable by the customer when the contracts contain variable consideration provisions, based on the most likely amount anticipated to be recognized for transferring the promised goods or services. As a result, we may constrain revenue to the extent that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

To the extent a contract is deemed to have multiple performance obligations, we allocate the transaction price of the contract to each performance obligation using our best estimate of the standalone selling price of each distinct good or service in the contract.

Significant judgement is required to estimate the total expected costs and variable consideration for projects that typically have a construction period of 12 to 36 months. Any increase or decrease in estimated costs to complete a performance obligation without a corresponding change to the contract price could impact the calculation of cumulative revenue to date and gross profit on the project. Similarly, if we recognize revenue based upon our current estimate of variable consideration, and our estimate is later adjusted, we may be required to increase or decrease cumulative revenue to date and gross profit on the project. Factors that may result in a change to our estimates include unforeseen engineering problems, construction delays, the performance of contractors and major material suppliers, and unusual weather conditions, among others.

We have a long history of working with multiple types of projects and preparing cost estimates, and we rely on the expertise of key personnel to prepare what we believe are reasonable best estimates given available facts and circumstances. Due to the nature of the work involved, however, judgment is involved to estimate the costs to complete and the amounts estimated could have a material impact on the revenue we recognize in each accounting period. We cannot estimate unforeseen events and circumstances which may result in actual results being materially different from previous estimates.

### ***Impairment Assessments***

We evaluate our long-lived assets, including goodwill and intangible assets, for impairment as events or changes in circumstances indicate the carrying value of these assets may not be fully recoverable, and at least annually (December 31st) for goodwill and

intangible assets that have indefinite lives. Examples of such triggering events applicable to our assets include a significant decrease in the market price of a long-lived asset or asset group, a current-period operating or cash flow loss combined with a history of operating or cash flow losses, a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset or asset group, or adverse industry or economic trends.

We evaluate recoverability of long-lived assets and definite-lived intangible assets by estimating the undiscounted future cash flows associated with the expected uses and eventual disposition of those assets. When these comparisons indicate that the carrying value of those assets is greater than the undiscounted cash flows, we recognize an impairment loss for the amount that the carrying value exceeds the fair value.

The process of evaluating the potential impairment of long-lived assets, goodwill and intangible assets requires significant judgment. For goodwill, we estimate the reporting unit's fair value and compare it with the carrying value of the reporting unit, including goodwill. If the fair value is greater than the carrying value of its reporting unit, no impairment is recorded. Fair value is determined using both an income approach and a market approach. The estimates and assumptions used in our calculations include revenue growth rates, expense growth rates, expected capital expenditures to determine projected cash flows, expected tax rates and an estimated discount rate to determine present value of expected cash flows. These estimates are based on historical experiences, our projections of future operating activity and our weighted-average cost of capital. Unforeseen events and changes in circumstances or market conditions could adversely affect these estimates, which could result in an impairment charge.

Based on our goodwill impairment assessment, all of our reporting units with goodwill had estimated fair values that exceeded their carrying values by at least 61% as of December 31, 2021 and 67% as of December 31, 2020. During the year ended December 31, 2021, we recognized a long-lived asset impairment charge of \$1.9 million on one of our energy asset groups. See Note 7 "Energy Assets" for additional information.

### ***Income Taxes***

We are subject to income taxes in the U.S. and five foreign jurisdictions. Significant judgment is required in determining income tax expense, deferred tax assets and liabilities and uncertain tax positions. The underlying assumptions are also highly susceptible to change from period to period. We took advantage of the Safe Harbor commence-construction provisions contained in IRS Notice 2018-59 by pre-purchasing solar equipment in 2019 thereby preserving the ability to take 30% ITC for projects placed in service before 2024. If these or other deductions and credits expire without being extended, or otherwise are reduced or eliminated, our effective tax rate would increase, which could increase our income tax expense and reduce our net income. In addition, our tax rate has historically been significantly impacted by the IRC Section 179D deduction. This deduction is related to energy-efficient improvements we provide under government contracts. The Consolidated Appropriations Act, 2021 made permanent the Section 179D Energy Efficient Commercial Building Deduction. That Act made changes to the way the deduction is calculated. If those changes result in lower levels of energy efficiency improvements, it could impact the deduction available and the tax rate.

We accrue for the estimated additional tax and interest that may result from tax authorities disputing uncertain tax positions. We believe we have made adequate provisions for income taxes for all years that are subject to audit based upon the latest information available. We operate within multiple taxing jurisdictions and are subject to tax audits in these jurisdictions. These audits can involve complex issues and may require an extended period of time to resolve. We recognize tax benefits from uncertain tax positions only if we believe that it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. Although we believe that we have adequately reserved for our uncertain tax positions, we can provide no assurance that the final tax outcome of these matters will not be materially different. We adjust these reserves when facts and circumstances change, such as the closing of a tax audit or the refinement of an estimate. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences may affect the provision for income taxes in the period in which such determination is made and could have an impact on our results of operations.

On a quarterly basis, we assess our current and projected earnings by jurisdiction to determine whether or not our earnings during the periods when the temporary differences become deductible will be sufficient to realize the related future tax benefits. Should we determine that we would not be able to realize all or part of our net deferred tax asset in a particular jurisdiction in the future, a valuation allowance to the deferred tax asset would be charged to income in the period such determination was made. This valuation allowance is maintained for deferred tax assets that we estimate are more likely than not to be unrealizable based on available evidence at the time the estimate is made. In 2020 we determined that it was more likely than not that the non-capital net operating loss carryforwards at our Canadian parent company would be realized before they expire. In 2020 we reversed the previously established valuation allowance on the tax assets associated with the carryforwards. The determination of whether a valuation allowance for deferred tax assets is appropriate is subject to considerable judgment and requires an evaluation of all positive and negative evidence, including our historical financial results, the source and consistency of those results, whether they

should be adjusted for certain one-time or nonrecurring items, whether losses cumulatively exceed income over a reasonable period of time, the availability of tax planning strategies, availability of carryback and carryforward periods, and other factors, including our expectations of future taxable income. Adjustments to income tax expense to the extent we establish a valuation allowance or adjust this allowance in a period could have a material impact on our financial condition and results of operations.

#### **Recent Accounting Pronouncements**

See Note 2 of the “Notes to Consolidated Financial Statements” for a discussion of recent accounting standards.

#### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to changes in interest rates and foreign currency exchange rates because we finance certain operations through fixed and variable rate debt instruments and denominate our transactions in U.S. dollars, Canadian dollars, and British pounds sterling (“GBP”) and Euros. Changes in these rates may have an impact on future cash flows and earnings. We manage these risks through normal operating and financing activities and, when deemed appropriate, through the use of derivative financial instruments.

##### ***Interest Rate Risk***

We had cash and cash equivalents totaling \$50.5 million as of December 31, 2021 and \$66.4 million as of December 31, 2020. Our exposure to interest rate risk primarily relates to the interest expense paid on our senior secured credit facility.

##### ***Derivative Instruments***

We do not enter into financial instruments for trading or speculative purposes. However, through our subsidiaries we do enter into derivative instruments for purposes other than trading purposes. Certain of the term loans that we use to finance our renewable energy projects bear variable interest rates that are indexed to short-term market rates. We have entered into interest rate swaps in connection with these term loans in order to seek to hedge our exposure to adverse changes in the applicable short-term market rate. In some instances, the conditions of our renewable energy project term loans require us to enter into interest rate swap agreements in order to mitigate our exposure to adverse movements in market interest rates. All but three of the interest rate swaps that we have entered into qualify and have been designated as cash flow hedges. We have entered into one commodity swap contracts in order to hedge our exposure to adverse changes in the short-term market rates of natural gas, which have not been designated for hedge accounting.

We have also entered into term loan agreements that contain make-whole provisions that qualify as embedded derivatives and are required to be bifurcated from their host term loan agreement and valued separately. These derivatives cannot be hedged.

By using derivative instruments, we are subject to credit and market risk. The fair market value of the interest rate and commodity swaps are determined by using valuation models whose inputs are derived using market observable inputs, including interest rate yield curves, and reflects the asset or liability position as of the end of each reporting period. When the fair value of a derivative contract is positive, the counterparty owes us, thus creating a receivable risk for us. We are exposed to counterparty credit risk in the event of non-performance by counterparties to our derivative agreements. We minimize counterparty credit (or repayment) risk by entering into transactions with major financial institutions of investment grade credit rating. The fair value of these make-whole provisions was determined based on available market data and a with and without model.

Our exposure to market interest rate risk is not hedged in a manner that completely eliminates the effects of changing market conditions on earnings or cash flow. See Notes 2, 18 and 19 included in Item 8 of this Report for additional information about our derivative instruments.

##### ***Foreign Currency Risk***

We have revenues, expenses, assets, and liabilities that are denominated in foreign currencies, principally the Canadian dollar and British pound sterling. Also, a significant number of employees are located in Canada and the U.K., and our subsidiaries in those countries transact business in those respective currencies. As a result, we have designated the Canadian dollar as the functional currency for Canadian operations. Similarly, the GBP has been designated as the functional currency for our operations in the U.K. When we consolidate the operations of these foreign subsidiaries into our financial results, because we report our results in U.S. dollars, we are required to translate the financial results and position of our foreign subsidiaries from their respective functional currencies into U.S. dollars. We translate the revenues, expenses, gains, and losses from our Canadian and U.K. subsidiaries into U.S. dollars using a weighted average exchange rate for the applicable fiscal period. We translate the assets and liabilities of our Canadian and U.K. subsidiaries into U.S. dollars at the exchange rate in effect at the applicable balance sheet date. Translation adjustments are not included in determining net income for the period but are disclosed and accumulated in a

separate component of consolidated equity until sale or until a complete or substantially complete liquidation of the net investment in our foreign subsidiary takes place. Changes in the values of these items from one period to the next which result from exchange rate fluctuations are recorded in our consolidated statements of changes in stockholders' equity as accumulated other comprehensive income (loss). For the year ended December 31, 2021, due to the weakening of the GBP versus the U.S. dollar, our foreign currency translation resulted in a loss of \$0.2 million which we recorded as a decrease in accumulated other comprehensive loss. For the year ended December 31, 2020, we recorded a currency translation gain of \$1.0 million. As a consequence, gross profit, operating results, profitability, and cash flows are impacted by relative changes in the value of the Canadian dollar and GBP. We have not repatriated earnings from our foreign subsidiaries but have elected to invest in new business opportunities there. See Note 10, "Income Taxes" to our consolidated financial statements in this Report. We do not hedge our exposure to foreign currency exchange risk.

Item 8. Financial Statements and Supplementary Data

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Ameresco, Inc.

### **Opinions on the Financial Statements and Internal Control over Financial Reporting**

We have audited the accompanying consolidated balance sheets of Ameresco, Inc. (the Company) as of December 31, 2021 and 2020, and the related consolidated statements of income, comprehensive income, changes in redeemable non-controlling interests and stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively, the financial statements). We also have audited the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

### **Basis for Opinion**

The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### **Definition and Limitations of Internal Control Over Financial Reporting**

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

#### **Critical Audit Matters**

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### **Goodwill Impairment**

As described in Notes 2 and 5 to the financial statements, the Company's goodwill balance was \$71.2 million as of December 31, 2021. Management tests goodwill for impairment, at the reporting unit level, as of December 31 of each fiscal year, or more frequently if events or changes in circumstances indicate the asset might be impaired. To test goodwill for impairment, management compares the estimated fair value of each reporting unit with the carrying amount of each reporting unit, including the recorded goodwill. In estimating the fair value of each reporting unit, management uses a methodology which combines an income approach, using a discounted cash flows method, with a market approach, using a peer-based guideline company method based on the average of published multiples of earnings of comparable entities with similar operations and economic characteristics.

We identified the goodwill impairment assessment for certain of the Company's reporting units as a critical audit matter because of the significant estimates and assumptions used by management when estimating the fair value of these reporting units, including management's forecasts of revenue and expense growth rates and management's selection of the discount rates for the income approaches and management's estimates of the multiples of earnings of comparable entities with similar operations and economic characteristics for the market approaches. Auditing management's estimates and assumptions involved a high degree of auditor judgment and increased audit effort, including the use of our valuation specialists, due to the impact these assumptions have on the goodwill impairment assessment.

Our audit procedures related to the assessment of goodwill impairment included the following, among others:

- We obtained an understanding of the relevant controls relating to management's goodwill impairment assessment and tested such controls for design and operating effectiveness, including controls over management's review of the significant assumptions used in the estimate of fair value of certain of the Company's reporting units, including forecasted revenue and expense growth rates, the selected discount rates, and the selected multiples of earnings.
- We evaluated the reasonableness of management's forecasts of revenue and expense growth rates by comparing the projections to historical results.
- We tested the underlying data used by management in their development of forecasts of revenue and expense growth rates for accuracy and completeness.
- We evaluated the reasonableness of management's selection of comparable entities with similar operations and economic characteristics.
- With the assistance of our valuation specialists, we evaluated the reasonableness of the Company's valuation methodology and significant assumptions by:
  - Evaluating the reasonableness of the discount rate and multiples of earnings by comparing the underlying source information to publicly available market data and verifying the accuracy of the calculations.
  - Developing an independent expectation of discount rates and compared against that selected by management.
  - Evaluating the appropriateness of the valuation methods used by management and testing their mathematical accuracy.

#### **Revenue from Contracts with Customers – Project Revenue**

As described in Notes 2 and 3 to the financial statements, the Company recognized revenue of \$903.96 million during the year ended December 31, 2021 from the projects line of business which relates to the construction of energy efficiency projects, including the design, engineering and installation of an array of innovative technologies and techniques to improve energy efficiency and control the operation of a building's energy- and-water-consuming systems. Typically, the Company provides a service of integrating a complex set of tasks and components such as design, engineering, construction management, and equipment procurement for a project contract. The Company's project revenues are generated from long-term contracts whereby revenue is recognized over time using the cost-based input method. The Company uses total costs incurred on the project relative to the total expected costs to estimate progression towards the satisfaction of the performance obligation.

Estimating the amount of project revenue to record from the Company's long-term contracts requires management's judgment in estimating final construction contract profits, which are driven by the total estimated consideration payable by the customer and total estimated contract costs. The Company estimates the total consideration payable by the customer when the contracts contain variable consideration provisions, which can include liquidated damages and/or penalties, based on the most likely amount anticipated to be recognized for transferring the promised goods or services. As a result, the Company may constrain revenue to the extent that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Anticipated contract costs can be incurred over several years and are largely determined based on negotiated or estimated purchase contract terms and consider factors such as historical performance, seasonal and construction schedule risks, estimated subcontractor costs and contingency costs.

We identified the Company's accounting for revenue recognition from the project line of business to be a critical audit matter due to the significant judgments used by management related to the estimation of final construction profits. Estimating the final construction profit on these long-term contracts requires management to develop estimates of the total consideration payable by the customer, when contracts contain variable consideration provisions, as well as total expected contract costs, including costs associated with labor, materials, equipment, subcontracting and outside engineering cost. Auditing management's estimates and assumptions involved a high degree of auditor judgment and increased audit effort due to the impact these assumptions have on the revenue recognized.

Our audit procedures related to project revenue included the following, among others:

- We obtained an understanding of the relevant controls related to the recognition of project revenue and tested such controls for design and operating effectiveness, including controls over the determination of the final estimated construction profit, which includes management's review of the assumptions and key inputs used to recognize revenue on project contracts using the cost-to-cost input method, including costs associated with labor, materials, equipment, subcontracting and outside engineering along with estimates of total consideration payable when contracts contain variable consideration provisions.
- We performed substantive analytical procedures on the Company's project revenue line of business, with a focus on significant changes in gross margin, contract budgets and contract pricing from the prior year, on contracts open in both the current year and prior year.
- We selected a sample of project contracts and evaluated the estimates of total costs for each of the project contracts by:
  - Evaluating management's judgments related to the Company's ability to achieve the estimates of final construction contract profit as well as achievement on project timelines by performing corroborating inquiries with Company personnel, including project managers, and comparing the estimates to documentation such as management's internal budgets and specified contract terms.
  - Confirmation of project progression with customers, including identification of any delays in project timeline.

/s/ RSM US LLP

We have served as the Company's auditor since 2010.

Boston, Massachusetts

March 1, 2022

**AMERESCO, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share amounts)

	December 31,	
	2021	2020
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents <sup>(1)</sup>	\$ 50,450	\$ 66,422
Restricted cash <sup>(1)</sup>	24,267	22,063
Accounts receivable, net <sup>(1)</sup>	161,970	125,010
Accounts receivable retainage	43,067	30,189
Costs and estimated earnings in excess of billings <sup>(1)</sup>	306,172	185,960
Inventory, net	8,807	8,575
Prepaid expenses and other current assets <sup>(1)</sup>	25,377	26,854
Income tax receivable	5,261	9,803
Project development costs, net	13,214	15,839
Total current assets <sup>(1)</sup>	638,585	490,715
Federal ESPC receivable	557,669	396,725
Property and equipment, net <sup>(1)</sup>	13,117	8,982
Energy assets, net <sup>(1)</sup>	856,531	729,378
Goodwill, net	71,157	58,714
Intangible assets, net	6,961	927
Operating lease assets <sup>(1)</sup>	41,982	39,151
Restricted cash, non-current portion	12,337	10,352
Deferred income tax assets, net	3,703	3,864
Other assets <sup>(1)</sup>	22,779	15,307
Total assets <sup>(1)</sup>	\$ 2,224,821	\$ 1,754,115
<b>LIABILITIES, REDEEMABLE NON-CONTROLLING INTERESTS AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt and financing lease liabilities <sup>(1)</sup>	\$ 78,934	\$ 69,362
Accounts payable <sup>(1)</sup>	308,963	230,916
Accrued expenses and other current liabilities <sup>(1)</sup>	43,311	41,748
Current portion of operating lease liabilities <sup>(1)</sup>	6,276	6,106
Billings in excess of cost and estimated earnings	35,918	33,984
Income taxes payable	822	981
Total current liabilities <sup>(1)</sup>	474,224	383,097
Long-term debt and financing lease liabilities, net of current portion, unamortized discount, and debt issuance costs <sup>(1)</sup>	377,184	311,674
Federal ESPC liabilities	532,287	440,223
Deferred income tax liabilities, net	3,871	6,227
Deferred grant income	8,498	8,271
Long-term operating lease liabilities, net of current portion <sup>(1)</sup>	35,135	35,300
Other liabilities <sup>(1)</sup>	43,176	37,660
Commitments and contingencies		
Redeemable non-controlling interests, net	46,182	38,850

<sup>(1)</sup> Includes restricted assets of consolidated variable interest entities ("VIEs") of \$124,454 as of December 31, 2021 and \$162,198 as of December 31, 2020. Includes non-recourse liabilities of consolidated VIEs of \$31,125 as of December 31, 2021 and \$33,335 as of December 31, 2020. See Note 11.

**AMERESCO, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share amounts) (Continued)

	December 31,	
	2021	2020
Stockholders' equity:		
Preferred stock, \$0.0001 par value, 5,000,000 shares authorized, no shares issued and outstanding at December 31, 2021 and 2020	\$ —	\$ —
Class A common stock, \$0.0001 par value, 500,000,000 shares authorized, 35,818,104 shares issued and 33,716,309 shares outstanding at December 31, 2021, 32,326,449 shares issued and 30,224,654 shares outstanding at December 31, 2020	3	3
Class B common stock, \$0.0001 par value, 144,000,000 shares authorized, 18,000,000 shares issued and outstanding at December 31, 2021 and 2020	2	2
Additional paid-in capital	283,982	145,496
Retained earnings	438,732	368,390
Accumulated other comprehensive loss, net	(6,667)	(9,290)
Treasury stock, at cost, 2,101,795 shares at December 31, 2021 and 2020	(11,788)	(11,788)
Total stockholder's equity	704,264	492,813
Total liabilities, redeemable non-controlling interests and stockholders' equity	\$ 2,224,821	\$ 1,754,115

See accompanying notes to consolidated financial statements.

**AMERESCO, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In thousands, except per share amounts)

	Year Ended December 31,		
	2021	2020	2019
Revenues	\$ 1,215,697	\$ 1,032,275	\$ 866,933
Cost of revenues	985,340	844,726	698,815
Gross profit	230,357	187,549	168,118
Selling, general and administrative expenses	134,923	116,050	116,504
Operating income	95,434	71,499	51,614
Other expenses, net	17,290	15,071	15,061
Income before income taxes	78,144	56,428	36,553
Income tax benefit	(2,047)	(494)	(3,748)
Net income	80,191	56,922	40,301
Net (income) loss attributable to redeemable non-controlling interest	(9,733)	(2,870)	4,135
Net income attributable to common shareholders	\$ 70,458	\$ 54,052	\$ 44,436
Net income per share attributable to common shareholders:			
Basic	\$ 1.38	\$ 1.13	\$ 0.95
Diluted	\$ 1.35	\$ 1.10	\$ 0.93
Weighted average common shares outstanding:			
Basic	50,855	47,702	46,586
Diluted	52,268	49,006	47,774

See accompanying notes to consolidated financial statements.

**AMERESCO, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(In thousands)**

	Year Ended December 31,		
	2021	2020	2019
Net income	\$ 80,191	\$ 56,922	\$ 40,301
Other comprehensive income (loss):			
Unrealized gain (loss) from interest rate hedges, net of tax effect of \$662, \$(1,014) and \$(984), respectively	2,793	(2,784)	(2,944)
Foreign currency translation adjustment	(170)	1,008	1,379
Total other comprehensive income (loss)	2,623	(1,776)	(1,565)
Comprehensive income	82,814	55,146	38,736
Comprehensive (income) loss attributable to redeemable non-controlling interests	(9,733)	(2,870)	4,135
Comprehensive income attributable to common shareholders	\$ 73,081	\$ 52,276	\$ 42,871

See accompanying notes to consolidated financial statements.

**AMERESCO, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN REDEEMABLE NON-CONTROLLING INTERESTS AND STOCKHOLDERS' EQUITY**  
(In thousands, except share amounts)

	Redeemable Non- controlling Interests	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Retained Earnings	Treasury Stock		Accumulated Other Comprehensive Loss	Total Stockholders' Equity
		Shares	Amount	Shares	Amount			Shares	Amount		
<b>Balance, December 31, 2018</b>	\$ 14,719	28,275,506	\$ 3	18,000,000	\$ 2	\$ 124,651	\$ 269,806	2,091,040	\$ (11,638)	\$ (5,949)	\$ 376,875
Cumulative impact from the adoption of ASU No. 2018-02	—	—	—	—	—	—	217	—	—	(217)	—
Exercise of stock options, net	—	915,834	—	—	—	6,742	—	—	—	—	6,742
Stock-based compensation expense	—	—	—	—	—	1,620	—	—	—	—	1,620
Employee stock purchase plan	—	48,965	—	—	—	675	—	—	—	—	675
Open market purchase of common shares	—	(10,300)	—	—	—	—	—	10,300	(144)	—	(144)
Unrealized loss from interest rate hedges, net	—	—	—	—	—	—	—	—	—	(2,727)	(2,727)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	1,379	1,379
Contributions from redeemable non-controlling interests	21,835	—	—	—	—	—	—	—	—	—	—
Distributions to redeemable non-controlling interests	(803)	—	—	—	—	—	—	—	—	—	—
Net (loss) income	(4,135)	—	—	—	—	—	44,436	—	—	—	44,436
<b>Balance, December 31, 2019</b>	31,616	29,230,005	3	18,000,000	2	133,688	314,459	2,101,340	(11,782)	(7,514)	428,856
Exercise of stock options, net	—	946,139	—	—	—	8,995	—	—	—	—	8,995
Stock-based compensation expense	—	—	—	—	—	1,933	—	—	—	—	1,933
Employee stock purchase plan	—	48,965	—	—	—	880	—	—	—	—	880
Open market purchase of common shares	—	(455)	—	—	—	—	—	455	(6)	—	(6)
Unrealized loss from interest rate hedges, net	—	—	—	—	—	—	—	—	—	(2,784)	(2,784)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	1,008	1,008
Contributions from redeemable non-controlling interests, net of tax equity financing fees of \$622	5,777	—	—	—	—	—	—	—	—	—	—
Distributions to redeemable non-controlling interests	(1,534)	—	—	—	—	—	—	—	—	—	—
Accretion of tax equity financing fees	121	—	—	—	—	—	(121)	—	—	—	(121)
Net income	2,870	—	—	—	—	—	54,052	—	—	—	54,052
<b>Balance, December 31, 2020</b>	38,850	30,224,654	3	18,000,000	2	145,496	368,390	2,101,795	(11,788)	(9,290)	492,813
Equity offering of common stock, net of offering costs of \$6,416	—	2,875,000	—	—	—	120,084	—	—	—	—	120,084
Exercise of stock options, net	—	587,775	—	—	—	5,563	—	—	—	—	5,563
Stock-based compensation expense	—	—	—	—	—	8,716	—	—	—	—	8,716
Employee stock purchase plan	—	28,880	—	—	—	1,364	—	—	—	—	1,364
Unrealized gain from interest rate hedges, net	—	—	—	—	—	—	—	—	—	2,793	2,793
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	(170)	(170)
Contributions from redeemable non-controlling interests, net of tax equity financing fees of \$65	2,251	—	—	—	—	—	—	—	—	—	—
Distributions to redeemable non-controlling interests	(1,009)	—	—	—	—	—	—	—	—	—	—
Accretion of tax equity financing fees	116	—	—	—	—	—	(116)	—	—	—	(116)
Investment fund call option exercise	(3,759)	—	—	—	—	2,759	—	—	—	—	2,759
Net income	9,733	—	—	—	—	—	70,458	—	—	—	70,458
<b>Balance, December 31, 2021</b>	\$ 46,182	33,716,309	\$ 3	18,000,000	\$ 2	\$ 283,982	\$ 438,732	2,101,795	\$ (11,788)	\$ (6,667)	\$ 704,264

See accompanying notes to consolidated financial statements.



**AMERESCO, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year Ended December 31,		
	2021	2020	2019
<b>Cash flows from operating activities:</b>			
Net income	\$ 80,191	\$ 56,922	\$ 40,301
Adjustments to reconcile net income to net cash flows from operating activities:			
Depreciation of energy assets	43,113	38,039	35,543
Depreciation of property and equipment	3,143	3,317	2,987
Amortization of debt discount and debt issuance costs	2,849	2,686	2,229
Amortization of intangible assets	321	685	909
Accretion of ARO and contingent consideration	123	93	137
Provision for (recoveries of) bad debts	187	282	(216)
Impairment of long-lived assets / loss on disposal	1,901	2,696	—
Gain on sale of equity investments / deconsolidation of a VIE	(575)	—	(2,160)
Net loss (gain) from derivatives	240	(705)	(1,068)
Stock-based compensation expense	8,716	1,933	1,620
Deferred income taxes, net	(4,760)	3,401	(3,346)
Unrealized foreign exchange loss (gain), net	142	(306)	(130)
Changes in operating assets and liabilities:			
Accounts receivable	(15,953)	(24,178)	(8,499)
Accounts receivable retainage	(12,882)	(13,113)	(3,370)
Federal ESPC receivable	(249,728)	(227,078)	(188,060)
Inventory, net	(232)	660	(1,471)
Costs and estimated earnings in excess of billings	(113,192)	19,474	(106,696)
Prepaid expenses and other current assets	1,770	517	(18,397)
Project development costs	1,949	(3,085)	8,120
Other assets	(1,752)	536	1,056
Accounts payable, accrued expenses and other current liabilities	83,473	29,047	43,531
Billings in excess of cost and estimated earnings	(693)	8,042	2,662
Other liabilities	(5,036)	1,844	(1,625)
Income taxes payable, net	4,389	(4,292)	(350)
Cash flows from operating activities	(172,296)	(102,583)	(196,293)
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(4,896)	(2,211)	(6,674)
Capital investment in energy assets	(178,879)	(180,546)	(134,738)
Grant award proceeds for energy assets	774	1,874	784
Proceeds from sale of equity investment	1,672	—	—
Acquisitions, net of cash received	(14,928)	—	(1,294)
Contributions to equity investment	(9,000)	(132)	(301)
Cash flows from investing activities	(205,257)	(181,015)	(142,223)

See accompanying notes to consolidated financial statements.

**AMERESCO, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands) (Continued)

	Year Ended December 31,		
	2021	2020	2019
<b>Cash flows from financing activities:</b>			
Proceeds from equity offering, net of offering costs	\$ 120,084	\$ —	\$ —
Payments of debt discount and debt issuance costs	(2,919)	(5,234)	(1,666)
Proceeds from exercises of options and ESPP	6,927	9,875	7,417
Repurchase of common stock	—	(6)	(144)
(Payments on) proceeds from senior secured credit facility, net	(8,073)	3,000	73,347
Proceeds from long-term debt financings	185,994	116,067	43,883
Proceeds from Federal ESPC projects	159,216	248,917	199,358
Proceeds for energy assets from Federal ESPC	2,033	1,378	2,277
Investment fund call option exercise	(1,000)	—	—
Proceeds from investments by redeemable non-controlling interests, net	1,399	4,805	21,372
Payments on long-term debt and financing leases	(98,200)	(73,633)	(28,425)
Cash flows from financing activities	365,461	305,169	317,419
Effect of exchange rate changes on cash	309	2	447
Net (decrease) increase in cash, cash equivalents, and restricted cash	(11,783)	21,573	(20,650)
Cash, cash equivalents, and restricted cash, beginning of year	98,837	77,264	97,914
Cash, cash equivalents, and restricted cash, end of year	\$ 87,054	\$ 98,837	\$ 77,264
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid for interest	\$ 18,782	\$ 20,143	\$ 17,467
Cash paid for income taxes	\$ 2,670	\$ 1,465	\$ 3,897
Non-cash Federal ESPC settlement	\$ 67,286	\$ 54,139	\$ 242,519
Accrued purchases of energy assets	\$ 37,064	\$ 43,807	\$ 35,248
Non-cash portion of investment fund call option exercise	\$ 2,759	\$ —	\$ —
Conversion of revolver to term loan	\$ —	\$ —	\$ 25,000

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the consolidated balance sheets to the total of the same such amounts shown above:

	Year Ended December 31,		
	2021	2020	2019
Cash and cash equivalents	\$ 50,450	\$ 66,422	\$ 33,223
Short-term restricted cash	24,267	22,063	20,006
Long-term restricted cash	12,337	10,352	24,035
Total cash, cash equivalents, and restricted cash	\$ 87,054	\$ 98,837	\$ 77,264

See accompanying notes to consolidated financial statements.

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## **1. DESCRIPTION OF BUSINESS**

Ameresco, Inc. (including its subsidiaries, the “Company,” “Ameresco,” “we,” “our,” or “us”) was organized as a Delaware corporation on April 25, 2000. We are a leading cleantech integrator and renewable energy asset developer, owner and operator. Our comprehensive portfolio includes energy efficiency, infrastructure upgrades, asset sustainability and renewable energy solutions delivered to clients throughout North America and the United Kingdom. We provide solutions, both services and products, that enable our customers to reduce their energy consumption, lower their operating and maintenance costs and realize environmental benefits. Our comprehensive set of solutions includes upgrades to a facility’s energy infrastructure and the development, construction, and operation of distributed energy resources. We also sell certain solar photovoltaic (“solar PV”) equipment worldwide and operate in the United States, Canada and Europe. We have successfully completed energy saving, environmentally responsible projects with Federal, state and local governments, healthcare and educational institutions, housing authorities, and commercial and industrial customers.

We are compensated through a variety of methods, including: 1) direct payments based on fee-for-services contracts (utilizing lump-sum or cost-plus pricing methodologies), 2) the sale of energy from our energy assets, and 3) direct payment for solar PV equipment and systems.

## **2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### ***Principles of Consolidation***

The accompanying consolidated financial statements include the accounts of Ameresco, our subsidiaries, certain contracts in which we have a controlling financial interest and four investment funds formed to fund the purchase and operation of solar energy systems, which are consolidated with Ameresco as VIEs. We use a qualitative approach in assessing the consolidation requirement for VIEs. This approach focuses on determining whether we have the power to direct the activities of the VIE that most significantly affect the VIE’s economic performance and whether we have the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. For all periods presented, we have determined that we are the primary beneficiary in all of our operational VIEs. We evaluate our relationships with the VIEs on an ongoing basis to ensure that we continue to be the primary beneficiary. All significant intercompany accounts and transactions have been eliminated. Gains and losses from the translation of all foreign currency financial statements are recorded in accumulated other comprehensive loss, net, within stockholders’ equity. We prepare our consolidated financial statements in conformity with the accounting principles generally accepted in the United States of America (“GAAP”). Certain prior period amounts were reclassified or rounded to conform to the presentation in the current period.

### ***Reclassification***

Certain prior period amounts were reclassified to conform to the presentation in the current period.

### ***Use of Estimates***

GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Changes in circumstances could cause actual results to differ materially from those estimates. The most significant estimates and assumptions used in these consolidated financial statements relate to management’s estimates of final construction contract profit in accordance with accounting for long-term contracts, allowance for credit losses, inventory reserves, realization of project development costs, leases, fair value of derivative financial instruments, accounting for business acquisitions, stock-based awards, impairment of goodwill and long-lived assets, asset retirement obligations (“AROs”), income taxes, self-insurance reserves, potential liability in conjunction with certain commitments and contingencies, and recognition of the investors’ share of net assets of certain subsidiaries as redeemable non-controlling interests.

### ***Self-insured Health Insurance***

We are self-insured for employee health insurance and the maximum exposure in fiscal year 2021 under the plan was \$150 per covered participant, after which reinsurance takes effect. The liability for unpaid claims and associated expenses, including incurred but not reported claims, is determined by management and reflected in our consolidated balance sheets in accrued expenses and other current liabilities. The liability is calculated based on historical data, which considers both the frequency and

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settlement amount of claims. Our estimated accrual for this liability could be different than our ultimate obligation if variables such as the frequency or amount of future claims differ significantly from management's assumptions.

***Significant Risks and Uncertainties***

The COVID-19 pandemic has continued to result in global supply chain disruptions and the resurgence of COVID-19 and its variants has caused some governments to extend travel and other restrictions. On September 9, 2021, President Biden issued an Executive Order requiring COVID-19 vaccinations for Federal employees. As a result, we implemented this mandate for our employees and subcontractors who work in our Federal business segment.

We have considered the impact of COVID-19 on the assumptions and estimates used, which may change in response to this evolving situation. Results of future operations and liquidity could be adversely impacted by a number of factors associated with the COVID-19 pandemic including payments of outstanding receivable amounts beyond normal payment terms, supply chain disruptions, potential loss of employees due to vaccine mandates, and uncertain demand. As of the date of issuance of these consolidated financial statements, we cannot reasonably estimate the extent to which the COVID-19 pandemic may impact our financial condition, liquidity, or results of operations in the foreseeable future. The ultimate impact of the pandemic on us is highly uncertain and will depend on future developments, and such impacts could exist for an extended period of time, even after the pandemic subsides.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") which includes modifications to the limitation on business interest expense and net operating loss provisions, and provides a payment delay of employer payroll taxes during 2020 after the date of enactment. The payment of \$2,266 of employer payroll taxes otherwise due in 2020 was paid in December 2021 and the remaining \$2,266 is due by December 31, 2022. The CARES Act permitted net operating losses from the 2018, 2019, and 2020 tax years to be carried back to the previous five tax years (beginning with the earliest year first).

***Cash and Cash Equivalents***

Cash and cash equivalents include cash on deposit, overnight repurchase agreements and amounts invested in highly liquid money market funds. Cash equivalents consist of short-term investments with original maturities of three months or less. We maintain our accounts with financial institutions and the balances in such accounts, at times, exceed federally insured limits. This credit risk is divided among a number of financial institutions that management believes to be of high quality. The carrying amount of cash and cash equivalents approximates its fair value measured using level 1 inputs per the fair value hierarchy as defined in Note 18.

***Restricted Cash***

Restricted cash consists of cash and cash equivalents held in escrow accounts in association with operations and maintenance ("O&M") reserve accounts, cash collateralized letters of credit, as well as cash required under term loans to be maintained in reserve accounts until all obligations have been indefeasibly paid in full for energy assets. The carrying amount of the cash and cash equivalents in these accounts approximates its fair value measured using level 1 inputs per the fair value hierarchy as defined in Note 18. Restricted cash also includes funds held for clients, which represent assets that, based upon our intent, are restricted for use solely for the purposes of satisfying the obligations to remit funds to third parties, primarily utility service providers, relating to our enterprise energy management services.

***Accounts Receivable***

Accounts receivable are stated at the amount management expects to collect from outstanding balances. Our methodology to estimate the allowance for credit losses includes quarterly assessments of historical bad debt write-off experience, current economic and market conditions, management's evaluation of outstanding accounts receivable, anticipated recoveries and our forecasts. Due to the short-term nature of our receivables, the estimate of credit losses is primarily based on aged accounts receivable balances and the financial condition of our customers. In addition, specific allowance amounts are established to record the appropriate provision for customers that have a higher probability of default. Bad debts are written off against the allowance when identified. As part of our assessment, we also considered the current and expected future economic and market conditions due to the COVID-19 pandemic and determined that the estimate of credit losses was not significantly impacted as of December 31, 2021 and 2020.

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Changes in the allowance for credit losses was as follows:

	Year Ended December 31,					
	2021		2020		2019	
Allowance for credit loss, beginning of period	\$	2,266	\$	2,260	\$	2,765
Charges to (recoveries of) costs and expenses, net		187		282		(216)
Account write-offs and other		(190)		(276)		(289)
Allowance for credit loss, end of period	\$	2,263	\$	2,266	\$	2,260

***Accounts Receivable Retainage***

Accounts receivable retainage represents amounts due from customers, but where payments are withheld contractually until certain construction milestones are met. Amounts retained typically range from 5% to 10% of the total invoice. We classify retainages that are expected to be billed in the next twelve months as current assets. As of December 31, 2021 and 2020, no amounts were determined to be uncollectible.

***Inventory***

Inventories, which consist primarily of PV solar panels, batteries and related accessories, are stated at the lower of cost (“first-in, first-out” method) or net realizable value (determined as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation). Provisions have been made to reduce the carrying value of inventory to the net realizable value.

***Federal ESPC Receivable***

Federal ESPC receivable represents the amount to be paid by various federal government agencies for work performed and earned by Ameresco under specific ESPCs. We assign certain of our rights to receive those payments to third-parties that provide construction and permanent financing for such contracts. Upon completion and acceptance of the project by the government, typically within 24 to 36 months of construction commencement, the assigned ESPC receivable from the government and corresponding ESPC liability are eliminated from our consolidated financial statements.

***Project Development Costs***

We capitalize only those costs incurred in connection with the development of energy projects, primarily direct labor, interest costs, outside contractor services, consulting fees, legal fees, and travel, if incurred after a point in time where the realization of related revenue becomes probable. Project development costs incurred prior to the probable realization of revenue are expensed as incurred. We classify project development efforts that are expected to proceed to construction activity in the next twelve months as a current asset. We periodically review these balances and write off any amounts where the realization of the related revenue is no longer probable. Project development costs of \$2,217 and \$1,543 were included in other long-term assets as of December 31, 2021 and 2020, respectively.

***Property and Equipment***

Property and equipment consist primarily of office and computer equipment, and is recorded at cost. Major additions and improvements are capitalized as additions to the property and equipment accounts, while replacements, maintenance, and repairs that do not improve or extend the life of the respective assets, are expensed as incurred. Depreciation and amortization of property and equipment are computed on a straight-line basis over the following estimated useful lives:

<u>Asset Classification</u>	<u>Estimated Useful Life</u>
Furniture and office equipment	Five years
Computer equipment and software costs	Three to five years
Leasehold improvements	Lesser of term of lease or five years
Automobiles	Five years
Land	Unlimited

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Gains or losses on disposal of property and equipment are reflected in selling, general, and administrative expenses in the consolidated statements of income.

***Energy Assets***

Energy assets consist of costs of materials, direct labor, interest costs, outside contract services, deposits, and project development costs incurred in connection with the construction of small-scale renewable energy plants that we own. These amounts are capitalized and amortized to cost of revenues in our consolidated statements of income on a straight-line basis over the lives of the related assets or the terms of the related contracts.

Routine maintenance costs are expensed as incurred in our consolidated statements of income to the extent that they do not extend the life of the asset. Major maintenance, upgrades, and overhauls are required for certain components of our energy assets. In these instances, the costs associated with these upgrades are capitalized and are depreciated over the shorter of the remaining life of the asset or the period up to the next required major maintenance or overhaul.

Financing lease assets and accumulated depreciation of financing lease assets are included in energy assets. For additional information see the Sale-Leaseback section below and Notes 7 and 8.

***Capitalized Interest***

We capitalize interest costs relating to construction financing during the period of construction on energy assets we own. Capitalized interest is included in energy assets, net, in our consolidated balance sheets. Capitalized interest is amortized to cost of revenues in our consolidated statements of income on a straight-line basis over the useful life of the associated energy asset.

***Long-lived Asset Impairment***

We evaluate our long-lived assets, including operating lease right-of-use assets, for impairment as events or changes in circumstances indicate the carrying value of these assets may not be fully recoverable. Examples of such triggering events applicable to our assets include a significant decrease in the market price of a long-lived asset or asset group or a current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset or asset group.

We evaluate recoverability of long-lived assets to be held and used by estimating the undiscounted future cash flows before interest associated with the expected uses and eventual disposition of those assets. When these comparisons indicate that the carrying value of those assets is greater than the undiscounted cash flows, we recognize an impairment loss for the amount that the carrying value exceeds the fair value of the asset group. Impairment losses are reflected in selling, general, and administrative expenses in the consolidated statements of income.

***Government Grants***

From time to time, we have applied for and received cash grant awards from the U.S. Treasury Department (the “Treasury”) under Section 1603 of the American Recovery and Reinvestment Act of 2009 (the “Act”). The Act authorized the Treasury to make payments to eligible persons who place in service qualifying renewable energy projects. The grants are paid in lieu of investment tax credits. All of the cash proceeds from the grants were used and recorded as a reduction in the cost basis of the applicable energy assets. If we dispose of the property, or the property ceases to qualify as specified energy property, within five years from the date the property is placed in service, then a prorated portion of the Section 1603 payment must be repaid. For tax purposes, the Section 1603 payments are not included in federal and certain state taxable income and the basis of the property is reduced by 50% of the payment received.

We last received a Section 1603 grant during the year ended December 31, 2014. No further Section 1603 grant payments are expected to be received as the program has expired and no repayments will be required.

We received grant proceeds from the Canadian government in connection with the construction of our energy assets in Canada of \$774 during the year ended December 31, 2021 and \$1,874 during the year ended December 31, 2020. We have a contribution agreement in place with Natural Resources Canada to fund 50% of the construction costs on a specific pilot project in Ontario. Cash proceeds are recorded as a deferred grant liability. Following commercial operation, the grant is subject to repayment to the government for a five-year period.

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Deferred grant income of \$8,498 and \$8,271 in the accompanying consolidated balance sheets as of December 31, 2021 and 2020, respectively, represents the benefit of the basis difference to be amortized to depreciation expense over the life of the related property.

***Acquisitions***

For acquisitions that meet the definition of a business combination, we apply the acquisition method of accounting in accordance with Accounting Standards Codification (“ASC”) 805, Business Combinations, where assets acquired and liabilities assumed are recorded at fair value at the date of each acquisition. Any excess of the consideration we transferred over the amounts recognized for assets acquired and liabilities assumed is recorded as goodwill. Intangible assets, if identified, are also recorded.

Determining the fair value of certain assets and liabilities assumed is judgmental in nature, often involves the use of significant estimates and assumptions, and is calculated using level 3 inputs per the fair value hierarchy as defined in Note 18. We continue to evaluate acquisitions for a period not to exceed one year after the acquisition date of each transaction to determine whether any additional adjustments are needed to the allocation of the purchase price. The results of the acquired companies are included in our consolidated statements of income, comprehensive income, and cash flows from the date of the respective acquisition.

The consideration for our acquisitions often includes future payments that are contingent upon the occurrence of a particular event. We record a contingent consideration obligation for such contingent consideration payments at fair value on the acquisition date. We estimate the fair value of contingent consideration obligations through valuation models that incorporate probability adjusted assumptions related to the achievement of the milestones and the likelihood of making related payments. Each reporting period we revalue the contingent consideration obligations associated with our acquisitions to fair value and record changes in the fair value within the selling, general, and administrative expenses in our consolidated statements of income. Increases or decreases in the fair value of the contingent consideration obligations can result from changes in assumed discount periods and rates, changes in the assumed timing and amount of revenue and expense estimates and changes in assumed probability with respect to the attainment of certain financial and operational metrics, among others. Significant judgment is employed in determining these assumptions as of the acquisition date and for each subsequent period. Accordingly, future business and economic conditions, as well as changes in any of the assumptions described above, can materially impact the fair value of contingent consideration recorded at each reporting period. Deferred consideration related to certain holdbacks and completion payments are considered short-term in nature. These amounts are recorded at full value and are only revalued if one of those underlying assumptions changes. See Note 4 for additional information about our acquisitions.

In accordance with ASC 805, Business Combinations, our solar project acquisitions do not constitute a business as the assets acquired in each case could be considered a single asset or group of similar assets that made up substantially all of the fair market value of the acquisitions. See Note 7 for information on solar projects we have purchased or are under definitive agreement to purchase.

***Goodwill***

As noted in the Acquisitions section above, our goodwill is derived when we acquire another business. Goodwill is not amortized, but the potential impairment of goodwill is assessed at least annually (December 31st) and on an interim basis whenever events or changes in circumstances indicate that the carrying value may not be fully recoverable.

We estimate the fair value of our reporting units and compare it with the carrying value of the reporting unit, including goodwill. If the fair value is greater than the carrying value of the reporting unit, no impairment is recorded. Fair value is determined using both an income approach and a market approach. If the fair value is less than the carrying value, an impairment loss is recognized for the amount that the carrying amount of a reporting unit, including goodwill, exceeds its fair value, limited to the total amount of goodwill allocated to that reporting unit. The impairment charge would be recorded to earnings in the consolidated statements of income. Judgment is required in determining whether an event has occurred that may impair the value of goodwill or identifiable intangible assets.

***Intangible Assets***

Acquired intangible assets, other than goodwill, that are subject to amortization include customer contracts, customer relationships, technology, trade names and non-compete agreements. The intangible assets are amortized over periods ranging from one to fifteen years from their respective acquisition dates. We evaluate our intangible assets for impairment consistent with, and part of, our long-lived asset evaluation, as discussed in Energy Assets above. See Notes 4 and 5 for additional disclosures.

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***Leases***

Operating lease right-of-use (“ROU”) assets represent our right to use an underlying asset during the reasonably certain lease term and lease liabilities represent our obligation to make lease payments arising from the lease. ROU assets and lease liabilities for significant lease arrangements are recognized at commencement based on the present value of lease payments over the lease term. We use our incremental borrowing rate, which is updated annually or when a significant event occurs that would indicate a significant change in rates, to calculate the present value of lease payments. The operating lease ROU asset also includes any lease payments related to initial direct cost and prepayments and excludes lease incentives. Lease expense is recognized on a straight-line basis over the lease term which may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Our ROU assets are evaluated for impairment using the same method as described above under the Long-lived Asset Impairment section.

We do not record ROU assets and corresponding lease liabilities for leases with an initial term of 12 months or less (“short-term leases”) as we recognize lease expense for these leases as incurred over the lease term.

We elected the package of practical expedients and did not reassess lease classifications of existing contracts or leases at adoption or the initial direct costs associated with existing leases. Accordingly, our sale-leaseback arrangements entered into as of December 31, 2018 remain under the previous guidance. See the Sale-leasebacks section below and Note 8 for additional information on these sale-leasebacks.

We have historical leases under ASC 840, Leases, which may have lease and non-lease components. Upon adoption of Topic 842, we elected to continue to account for these historical leases as a single component, as permitted by Topic 842. As of January 1, 2019, as it relates to all prospective leases, we allocate consideration to lease and non-lease components based on pricing information in the respective lease agreement, or, if this information is not available, we make a good faith estimate based on the available pricing information at the time of the lease agreement. See Note 8 for additional information about our leases.

***Other Assets***

Other assets consist primarily of notes and contracts receivable due to Ameresco from various customers and also includes the fair value of derivatives determined to be assets, the non-current portions of project development costs, accounts receivable retainages, sale-leaseback deferred loss and deferred contract costs.

***Asset Retirement Obligations***

We recognize a liability for the fair value of required AROs on a discounted basis when these obligations are incurred and can be reasonably estimated, which is typically at the time the assets are in development, installed or operating. Over time, the liabilities increase due to the change in present value, and initial capitalized costs are depreciated over the useful life of the related assets. Upon satisfaction of the ARO conditions, any difference between the recorded ARO liability and the actual retirement cost incurred is recognized as an operating gain or loss in the consolidated statements of income. See Note 7 for additional disclosures on our AROs.

***Federal ESPC Liabilities***

Federal ESPC liabilities, for both projects and energy assets, represent the advances received from third-parties under agreements to finance certain ESPC projects with various federal government agencies. For projects related to the construction or installation of certain energy savings equipment or facilities developed for the government customer, the ESPC receivable from the government and corresponding ESPC liability is eliminated from our consolidated balance sheets upon completion and acceptance of the project by the government, typically within 24 to 36 months of construction commencement. We remain the primary obligor for financing received until recourse to us ceases for the ESPC receivables transferred to the investor upon final acceptance of the work by the government customer.

For small-scale energy assets developed for a government customer that we own and operate, we remain the primary obligor for financing received until the liability is eliminated from our consolidated balance sheets as contract payments assigned by the customer are transferred to the investor upon final acceptance of the work by the government customer.



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***Sale-leasebacks***

We entered into sale-leaseback arrangements that provided for the sale of solar PV energy assets to third-party investors and the simultaneous leaseback of the energy assets, which we then operate and maintain, recognizing revenue through the sale of the electricity and solar renewable energy credits generated by these energy assets.

In sale-leaseback arrangements, we first determine whether the solar PV energy asset under the sale-leaseback arrangement is “integral equipment”. A solar PV energy asset is determined to be integral equipment when the cost to remove the energy asset from its existing location, including the shipping and reinstallation costs of the solar PV energy asset at the new site, and any diminution in fair value, exceeds 10% of the fair value of the solar PV energy asset at the time of its original installation. When the leaseback arrangement expires, we have the option to purchase the solar PV energy asset for the then fair market value or, in certain circumstances, renew the lease for an extended term. We have determined that none of the solar PV energy assets sold to date under the sale-leaseback program have been considered integral equipment as the cost to remove the energy asset from its existing location would not exceed 10% of its original fair value.

For solar PV energy assets that are not considered integral equipment, we determine if the leaseback should be classified as a financing lease or an operating lease. We determined that most of the solar PV energy assets sold to date under the sale-leaseback program have been financing leases and we initially recorded a financing lease asset and financing lease obligation in our consolidated balance sheets equal to the lower of the present value of our future minimum leaseback payments or the fair value of the solar PV energy asset. We deferred any gain or loss, which represents the excess or shortfall of cash received from the investor compared to the net book value of the asset, at the time of the sale. We record the long-term portion of any deferred gain in other liabilities or deferred loss in other assets and the current portion in accrued expenses and other current liabilities or prepaid expenses and other current assets in our consolidated balance sheets. The deferred amounts are amortized over the lease term and are included in cost of revenues in our consolidated statements of income.

In accordance with our adoption of Topic 842, sale-leaseback transactions are accounted for as financing liabilities on a prospective basis as we retain control of the underlying assets. As these transactions meet the criteria of a failed sale, the proceeds received in prospective transactions, as of January 1, 2019, are accounted for as long-term financing liabilities with interest rates based upon the underlying details of each specific transaction. See Notes 8 and 9 for details of our sale lease-back and financing liability transactions.

***Debt Issuance Costs***

Debt issuance costs include external costs incurred to obtain financing. Debt issuance costs are amortized over the respective term of the financing using the effective interest method, with the exception of our revolving credit facility and construction loans, as discussed in Note 9, which are amortized on a straight-line basis over the term of the agreement. Debt issuance costs are presented on the consolidated balance sheets along with unamortized debt discounts as a reduction to long-term debt and financing lease liabilities.

***Other Liabilities***

Other liabilities consist primarily of the long-term portion of deferred revenue related to multi-year operation and maintenance contracts which expire at various dates through 2047. Other liabilities also include the fair value of derivatives and the long-term portions of sale-leaseback deferred gains. See Note 19 for additional derivative disclosures.

***Revenue Recognition***

We are a provider of comprehensive energy services, including energy efficiency, infrastructure upgrades, energy security and resilience, asset sustainability, and renewable energy solutions for businesses and organizations. Our sustainability services include capital and operational upgrades to a facility's energy infrastructure and the development, construction, ownership, and operation of renewable energy plants. Our revenue is generated from the primary lines of business described below and is recognized in accordance with Revenue from Contracts with Customers (Topic 606).

***Projects***

Our Projects service relates to energy efficiency projects, which include the design, engineering, and installation of an array of innovative technologies and techniques to improve energy efficiency and control the operation of a building's energy- and water-consuming systems. Renewable energy products and services include, but are not limited to, the design and construction of a

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central plant or cogeneration system providing power, heat and/or cooling to a building, or a small-scale plant that produces electricity, gas, heat or cooling from renewable sources of energy.

We recognize revenue from the installation or construction of projects over time using the cost-based input method. We use the total costs incurred on the project relative to the total expected costs to account for the satisfaction of the performance obligation. When the estimate on a contract indicates a loss, or reduces the likelihood of recoverability of such costs, we record the entire estimated loss in the period the loss becomes known. In addition, some contracts contain an element of variable consideration, including liquidated damages and/or penalties, which requires payment to the customer in the event that construction timelines or milestones are not met. We estimate the total consideration payable by the customer when the contracts contain variable consideration provisions, based on the most likely amount anticipated to be recognized for transferring the promised goods or services. As a result, we may constrain revenue to the extent that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

Contracts are often modified for a change in scope or other requirements. Contract modifications exist when the modification either creates new or changes the existing enforceable rights and obligations. Most of our contract modifications are for goods or services that are not distinct from the existing performance obligations. The effect of a contract modification on the transaction price, and the measure of progress for the performance obligation to which it relates, is recognized as an adjustment to revenue (either as an increase or decrease) on a cumulative catch-up basis.

#### *O&M*

After an energy efficiency or renewable energy project is completed, we often provide ongoing O&M services under a multi-year contract. These services include operating, maintaining and repairing facility energy systems such as boilers, chillers, and building controls, as well as central power and other small-scale plants. For larger projects, we frequently maintain staff on-site to perform these services.

Maintenance revenue is recognized using the input method to recognize revenue. In most cases, O&M fees are fixed annual fees and we record the revenue on a straight-line basis because the on-site O&M services are typically a distinct series of promises and those services have the same pattern of transfer to the customer (i.e., evenly over time). Some O&M service contract fees are based on time expended and in those cases, revenue is recorded based on the time expended in that month.

#### *Energy Assets*

Our service offerings include the sale of electricity, heat, cooling, processed biogas, and renewable biomethane fuel from the portfolio of assets that we own and operate. We have constructed and are currently designing and constructing a wide range of renewable energy plants using biogas, solar, biomass, other bio-derived fuels, wind, and hydro sources of energy. Most of our renewable energy projects to date have involved the generation of electricity from solar PV and the sale of electricity, thermal, renewable fuel, or biomethane using biogas as a feedstock. We purchase the biogas that otherwise would be combusted or vented, process it, and either sell it or use it in our energy plants. We have also designed and built, own, operate and maintain plants that take biogas generated in the anaerobic digesters of wastewater treatment plants and turn it into renewable natural gas that is either used to generate energy on-site or that can be sold through the nation's natural gas pipeline grid. We typically enter into a long-term power purchase agreement ("PPA") for the sale of the energy where we own and operate energy producing assets. Many of our energy assets also produce environmental attributes, including renewable energy credits and RINs. In most cases, we sell these attributes under separate agreements with parties other than the PPA customer.

In accordance with specific PPA contract terms, we recognize revenues from the sale and delivery of the energy output from renewable energy plants over time as produced and delivered to the customer. Environmental attributes revenue is recognized at a point in time when the environmental attributes are transferred to the customer in accordance with the transfer protocols of the environmental attributes market that we operate in. In the cases where environmental attributes are sold to the same customer as the energy output, we record revenue monthly for both the energy output and the environmental attribute output, as generated and delivered to the customer. We have determined that certain PPAs contained a lease component in accordance with ASC 840, Leases, prior to the adoption of Topic 842. We recognized \$11,726, \$9,143 and \$8,189 of operating lease revenue under these agreements during the years ended December 31, 2021, 2020, and 2019, respectively.

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*Other*

Our service and product offerings also include integrated-PV, engineering, consulting, and enterprise energy management services, which we recognize over time as the services are provided. We recognize revenue from the sale of solar materials at a point in time when we have transferred physical control of the asset to the customer upon shipment or delivery.

*Performance Obligations*

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account. Performance obligations are satisfied as of a point in time or over time and are supported by contracts with customers. For most of our contracts, there are multiple promises of goods or services. Typically, we provide a significant service of integrating a complex set of tasks and components such as design, engineering, construction management, and equipment procurement for a project contract. The bundle of goods and services are provided to deliver one output for which the customer has contracted. In these cases, we consider the bundle of goods and services to be a single performance obligation. We may also promise to provide distinct goods or services within a contract, such as a project contract for installation of energy conservation measures and post-installation O&M services. In these cases we separate the contract into more than one performance obligation and allocate the total transaction price to each performance obligation in an amount based on the estimated relative standalone selling prices of the promised goods or services underlying each performance obligation.

*Contract Acquisition Costs*

We are required to account for certain acquisition costs over the life of the contract, consisting primarily of commissions. Commission costs are incurred commencing at contract signing. Commission costs are allocated across all performance obligations and deferred and amortized consistent with the pattern of revenue recognition.

*Contract Assets and Contract Liabilities*

Contract assets represent our rights to consideration in exchange for services transferred to a customer that have not been billed as of the reporting date. Our rights to consideration are generally unconditional at the time our performance obligations are satisfied. Unbilled revenue, presented as costs and estimated earnings in excess of billings, represent amounts earned and billable that were not invoiced at the end of the fiscal period.

When we receive consideration, or such consideration is unconditionally due, from a customer prior to transferring goods or services to the customer under the terms of a sales contract, we record deferred revenue, which represents a contract liability. Deferred revenue, presented as billings in excess of cost and estimated earnings, typically results from billings in excess of costs incurred and advance payments received on project contracts.

At the inception of a contract, we expect the period between when we satisfy our performance obligations, and when the customer pays for the services, will be one year or less. As such, we elected to apply the practical expedient which allows us not to adjust the promised amount of consideration for the effects of a significant financing component, when a financing component is present.

*Cost of Revenues*

Cost of revenues includes the cost of labor, materials, equipment, subcontracting and outside engineering that are required for the development and installation of projects, as well as preconstruction costs, sales incentives, associated travel, inventory obsolescence charges, amortization of intangible assets related to customer contracts, and, if applicable, costs of procuring financing. A majority of our contracts have fixed price terms, however, in some cases we negotiate protections, such as a cost-plus structure, to mitigate the risk of rising prices for materials, services, and equipment.

Cost of revenues also includes the costs of maintaining and operating the small-scale renewable energy plants that we own, including the cost of fuel (if any) and depreciation charges.

*Income Taxes*

We account for income taxes based on the liability method that requires the recognition of deferred income taxes based on expected future tax consequences of differences between the financial statement basis and the tax basis of assets and liabilities. We calculate deferred income taxes using the enacted tax rates in effect for the year in which the differences are expected to be reflected in the tax return.

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We account for uncertain tax positions using a “more-likely-than-not” threshold for recognizing and resolving uncertain tax positions. The evaluation of uncertain tax positions is based on factors that include changes in tax law, the measurement of tax positions taken or expected to be taken in tax returns, the effective settlement of matters subject to audit, new audit activity and changes in facts or circumstances related to a tax position. We evaluate uncertain tax positions on a quarterly basis and adjust the level of the liability to reflect any subsequent changes in the relevant facts surrounding the uncertain positions.

Our liabilities for uncertain tax positions can be relieved only if the contingency becomes legally extinguished through either payment to the taxing authority or the expiration of the statute of limitations, the recognition of the benefits associated with the position meet the “more-likely-than-not” threshold or the liability becomes effectively settled through the examination process.

We consider matters to be effectively settled once the taxing authority has completed all of its required or expected examination procedures, including all appeals and administrative reviews; we have no plans to appeal or litigate any aspect of the tax position; and we believe that it is highly unlikely that the taxing authority would examine or re-examine the related tax position. We also accrue for potential interest and penalties related to unrecognized tax benefits as a component of income tax expense.

Under the guidance, we have recorded long term deferred tax assets and deferred tax liabilities based on the underlying jurisdiction in the consolidated balance sheets as of December 31, 2021 and 2020, respectively. See Note 10 for additional information on income taxes.

***Foreign Currency***

The local currency of our foreign operations is considered the functional currency of such operations. All assets and liabilities of these foreign operations are translated into U.S. dollars at year-end exchange rates. Income and expense items are translated at average exchange rates prevailing during the year. Translation adjustments are accumulated as a separate component of stockholders’ equity. Foreign currency translation gains and losses are reported in the consolidated statements of comprehensive income. Foreign currency transaction gains and losses are reported within other expenses, net in the consolidated statements of income. See Note 17.

***Fair Value Measurements***

We follow the guidance related to fair value measurements for all of our non-financial assets and non-financial liabilities, except for those recognized at fair value in the financial statements at least annually. These assets include goodwill and long-lived assets measured at fair value for impairment assessments, and non-financial assets and liabilities initially measured at fair value in a business combination.

Financial instruments consist of cash and cash equivalents, restricted cash, accounts and notes receivable, long-term contract receivables, accounts payable, accrued expenses and other current liabilities, financing lease assets and liabilities, contingent consideration, short- and long-term borrowings, make-whole provisions, interest rate swaps, and commodity swaps. Because of their short maturity, the carrying amounts of cash and cash equivalents, restricted cash, accounts and notes receivable, accounts payable, accrued expenses and other current liabilities, contingent consideration, and short-term borrowings approximate fair value.

The carrying value of long-term variable-rate debt approximates fair value. As of December 31, 2021, the carrying value of our long-term debt is less than its fair value of \$442,429 by approximately \$5,537. Fair value of our debt is based on quoted market prices or on rates available to us for debt with similar terms and maturities, which are level two inputs of the fair value hierarchy, as defined in Note 18.

***Stock-based Compensation Expense***

We measure and record stock-based compensation expense for all stock-based payment awards based on estimated fair value. We may provide stock-based awards of shares of restricted common stock and grants of stock options to employees, directors, outside consultants, and others through various equity plans including our Employee Stock Purchase Plan (the “ESPP”) for employees.

Stock-based compensation expense, net of actual forfeitures, is recognized based on the grant-date fair value on a straight-line basis over the requisite service period of the awards. Certain option grants have performance conditions that must be achieved prior to vesting and are expensed based on the expected achievement at each reporting period. We estimate the fair value of the stock-based awards, including stock options, using the Black-Scholes option-pricing model. Determining the fair value of stock-based awards requires the use of highly subjective assumptions, including the fair value of the common stock underlying the award, the expected term of the award and expected stock price volatility.

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The assumptions used in determining the fair value of stock-based awards represent management's estimates, which involve inherent uncertainties and the application of management judgment. The risk-free interest rates are based on the U.S. Treasury yield curve in effect at the time of grant, with maturities approximating the expected life of the stock options.

We have no history of paying dividends. Additionally, as of each of the grant dates, there was no expectation that we would pay dividends over the expected life of the options. The expected life of the awards is estimated based upon the period stock option holders will retain their vested options before exercising them. We use historical volatility as the expected volatility assumption required in the Black-Scholes model.

We recognize compensation expense for only the portion of options that are expected to vest. If there are any modifications or cancellations of the underlying invested securities or the terms of the stock option, it may be necessary to accelerate, increase or cancel any remaining unamortized stock-based compensation expense.

***Share Repurchase Program***

In April 2016, our Board of Directors authorized the repurchase of up to \$10,000 of our Class A common stock from time to time on the open market or in privately negotiated transactions. Our Board of Directors authorized an increase in the share repurchase to \$15,000 of our Class A common stock in February 2017 and to \$17,553 of our Class A common stock in August 2019. The timing and amount of any shares repurchased will be determined by management based on its evaluation of market conditions and other factors. Any repurchased shares will be available for use in connection with our stock plans and for other corporate purposes. The repurchase program has and will be funded using our working capital and borrowings under our revolving line of credit. We account for share repurchases using the cost method and the cost of the share repurchase is recorded entirely in treasury stock, a contra equity account. During the year ended December 31, 2021, we repurchased no shares. During the year ended December 31, 2020, we repurchased 0.5 shares of common stock in the amount of \$6, net of fees of immaterial amounts, and during the year ended December 31, 2019, we repurchased 10.3 shares of common stock in the amount of \$144, net of fees of immaterial amounts.

***Derivative Financial Instruments***

In the normal course of business, we utilize derivatives contracts as part of our risk management strategy to manage exposure to market fluctuations in interest and commodity rates. These instruments are subject to various credit and market risks. Controls and monitoring procedures for these instruments have been established and are routinely reevaluated. Credit risk represents the potential loss that may occur because a party to a transaction fails to perform according to the terms of the contract. The measure of credit exposure is the replacement cost of contracts with a positive fair value. We seek to manage credit risk by entering into financial instrument transactions only through counterparties that we believe are creditworthy.

Market risk represents the potential loss due to the decrease in the value of a financial instrument caused primarily by changes in interest rates and commodity prices. We seek to manage market risk by establishing and monitoring limits on the types and degree of risk that may be undertaken. As a matter of policy, we do not use derivatives for speculative purposes and consider the use of derivatives with all financing transactions to mitigate risk.

We account for our interest rate and commodity swaps as derivative financial instruments in accordance with ASC Topic 815, Derivatives and Hedging. Under this guidance, derivatives are carried on our consolidated balance sheets at fair value which is determined based on observable market data in combination with expected cash flows for each instrument. We account for our make-whole provisions as embedded derivatives in accordance with related guidance. Under this guidance, the derivative is bifurcated from its host contract and recorded on our consolidated balance sheets at fair value by either comparing it against the rates of similar debt instruments under similar terms without a make-whole provision obtained from various highly rated third-party pricing sources or evaluating the present value of the prepayment fee.

We recognize cash flows from derivative instruments not designated as hedges as operating activities in the consolidated statements of cash flows. We recognize all changes in fair value on interest rate swaps designated as effective cash flow hedges in our consolidated statements of comprehensive income. Changes in fair value on derivatives not designated as hedges are recognized in our consolidated statements of income. See Notes 18 and 19 for additional information on our derivative instruments.

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***Earnings Per Share***

Basic earnings per share is calculated using our weighted-average outstanding common shares, including vested restricted shares. When the effects are not anti-dilutive, diluted earnings per share is calculated using the weighted-average outstanding common shares; the dilutive effect of convertible preferred stock, under the “if converted” method; and the treasury stock method with regard to warrants and stock options; all as determined under the treasury stock method. See Note 13 for our computation of earnings per share.

***Variable Interest Entities***

Certain contracts are executed jointly through partnership and joint venture arrangements with unrelated third parties. The arrangements are often formed for the single business purpose of executing a specific project and allow us to share risks and/or secure specialty skills required for project execution.

We evaluate each partnership and joint venture at inception to determine if it qualifies as a VIE under ASC 810, Consolidation. A variable interest entity is an entity used for business purposes that either (i) does not have equity investors with voting rights or (ii) has equity investors who are not required to provide sufficient financial resources for the entity to support its activities without additional subordinated financial support. Upon the occurrence of certain events outlined in ASC 810, we reassess our initial determination of whether the partnership or joint venture is a VIE.

We also evaluate whether we are the primary beneficiary of each VIE and consolidate the VIE if we have both (i) the power to direct the economically significant activities of the entity and (ii) the obligation to absorb losses of, or the right to receive benefits from, the entity that could potentially be significant to the VIE. We consider the contractual agreements that define the ownership structure, distribution of profits and losses, risks, responsibilities, indebtedness, voting rights and board representation of the respective parties in determining whether we qualify as the primary beneficiary. We also consider all parties that have direct or implicit variable interests when determining whether we are the primary beneficiary. As required by ASC 810, management's assessment of whether we are the primary beneficiary of a VIE is continuously performed.

We generally aggregate the disclosures of our VIEs based on certain qualitative and quantitative factors including the purpose and design of the underlying VIEs, the nature of the assets in the VIE, and the type of involvement we have with the VIE including our role and type of interest held in the VIE. As of December 31, 2021, all the VIEs that make up our investment funds are similar in purpose, design, and our involvement and, as such, are aggregated in one disclosure. See Notes 11 and 12 for additional disclosures.

***Equity Method Investments***

We have entered into a number of joint ventures and using the methodology described above for VIEs, we determined that we are not the primary beneficiary. We do not consolidate the operations of these joint ventures and treat the joint ventures as equity method investments. See Note 11 for additional information on our equity method investments.

***Redeemable Non-Controlling Interests***

In September 2015, June 2017, June 2018, October 2018 and December 2019, we formed investment funds with different third-party investors which granted the applicable investor ownership interests in the net assets of certain of our renewable energy project subsidiaries. As of December 31, 2021, we have four such investment funds each with a different third-party investor.

We entered into these agreements in order to finance the costs of constructing energy assets which are under long-term customer contracts. We have determined that these entities qualify as VIEs and that we are the primary beneficiary in the operational partnerships for accounting purposes. Accordingly, we consolidate the assets and liabilities and operating results of the entities in our consolidated financial statements. We recognize the investors' share of the net assets of the subsidiaries as redeemable non-controlling interests in our consolidated balance sheets.

We have determined that the provisions in the contractual arrangements represent substantive profit-sharing arrangements and that the appropriate methodology for attributing income and loss to the redeemable non-controlling interests each period is a balance sheet approach referred to as the hypothetical liquidation at book value (“HLBV”) method. Under the HLBV method, the amounts of income and loss attributed to the redeemable non-controlling interests in the consolidated statements of income reflect changes in the amounts the investors would hypothetically receive at each balance sheet date under the liquidation provisions of the contractual agreements, assuming the net assets of this funding structure were liquidated at recorded amounts. The investors' non-controlling interest in the results of operations of this funding structure is determined as the difference in the non-controlling

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interest's claim under the HLBV method at the start and end of each reporting period, after taking into account any capital transactions, such as contributions or distributions, between our subsidiaries and the investors.

We classified the non-controlling interests with redemption features that are not solely within our control outside of permanent equity on our consolidated balance sheets. The redeemable non-controlling interests will be reported using the greater of their carrying value at each reporting date as determined by the HLBV method or the estimated redemption values in each reporting period. See Notes 11 and 12 for additional information.

***Recent Accounting Pronouncements***

*Income Taxes*

In December 2019, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") 2019-12, Simplifying the Accounting for Income Taxes, which simplifies the accounting for income taxes, eliminates certain exceptions within ASC 740, Income Taxes, and clarifies certain aspects of the current guidance to promote consistency among reporting entities. ASU 2019-12 is effective for our fiscal year beginning after December 15, 2020. We adopted this guidance as of January 1, 2021 and the adoption did not have an impact on our consolidated financial statements.

*Reference Rate Reform*

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 guidance for a limited period of time to ease the potential burden in accounting for (or recognizing the effects of) reference rate reform on financial reporting. Companies can apply the ASU immediately, however, the guidance will only be available until December 31, 2022. We are currently evaluating the impact that adopting this new accounting standard would have on our consolidated financial statements and related disclosures.

In January 2021, the FASB issued ASU 2021-01, Reference Rate Reform (Topic 848): Scope. The amendments in ASU 2021-01 provide optional expedients to the current guidance on contract modification and hedge accounting from the expected market transition from LIBOR and other interbank offered rates to alternative reference rates. The guidance generally can be applied to applicable contract modifications through December 31, 2022. We are currently evaluating the impact that adopting this new accounting standard would have on our consolidated financial statements and related disclosures.

*Codification Improvements*

In October 2020, the FASB issued ASU 2020-10, Codification Improvements. The amendments in this ASU represent changes to clarify the ASC, correct unintended application of guidance, or make minor improvements to the ASC that are not expected to have a significant effect on current accounting practice or create a significant administrative cost to most entities. ASU 2020-10 is effective for annual periods beginning after December 15, 2020 and interim periods within those annual periods, with early adoption permitted. The amendments in this ASU should be applied retrospectively. We adopted this guidance as of January 1, 2021 and the adoption did not have an impact on our consolidated financial statements.

*Business Combinations*

In October 2021, the FASB issued ASU 2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers, which requires entities to apply Topic 606 to recognize and measure contract assets and contract liabilities in a business combination. ASU 2021-08 is effective for our fiscal year beginning after December 15, 2022, however, early adoption is permitted. We early adopted this new accounting standard as of January 1, 2021 and applied it to our December 2021 acquisition discussed in Note 4. We elected the practical expedient related to contract modifications made before the acquisition date and the adoption did not have a material impact on our consolidated financial statements.

*Government Assistance*

In November 2021, the FASB issued ASU 2021-10, Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance, Accounting for Contract Assets and Contract Liabilities from Contracts with Customers, which requires annual disclosures about certain types of government assistance received. ASU 2021-10 is effective for our fiscal year beginning after December 15, 2021. We are currently evaluating the impact that adopting this new accounting standard would have on our consolidated financial statements.

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### 3. REVENUE FROM CONTRACTS WITH CUSTOMERS

#### *Disaggregation of Revenue*

Our reportable segments for the year ended December 31, 2021 were U.S. Regions, U.S. Federal, Canada, Non-Solar Distributed Generation (“Non-Solar DG”), and All Other. On January 1, 2021, we changed the structure of our internal organization, and our U.S. Regions segment now includes our U.S.-based enterprise energy management services previously included in our “All Other” segment. As a result, previously reported amounts have been reclassified for comparative purposes.

The following table presents our revenue disaggregated by line of business and reportable segment for the year ended December 31, 2021:

	US Regions	U.S. Federal	Canada	Non-Solar DG	All Other	Total
Project revenue	\$ 463,173	\$ 340,686	\$ 36,755	\$ 25,377	\$ 37,969	\$ 903,960
O&M revenue	21,117	47,072	71	9,724	629	78,613
Energy assets	39,533	4,913	4,529	101,804	472	151,251
Integrated-PV	—	—	—	—	41,202	41,202
Other	4,470	277	8,102	338	27,484	40,671
Total revenues	\$ 528,293	\$ 392,948	\$ 49,457	\$ 137,243	\$ 107,756	\$ 1,215,697

The following table presents our revenue disaggregated by line of business and reportable segment for the year ended December 31, 2020:

	US Regions	U.S. Federal	Canada	Non-Solar DG	All Other	Total
Project revenue	\$ 347,137	\$ 327,626	\$ 36,708	\$ 21,883	\$ 31,252	\$ 764,606
O&M revenue	18,209	45,423	169	8,261	300	72,362
Energy assets	34,403	4,358	4,075	75,150	211	118,197
Integrated-PV	—	—	—	—	39,112	39,112
Other	4,403	475	6,845	1,123	25,152	37,998
Total revenues	\$ 404,152	\$ 377,882	\$ 47,797	\$ 106,417	\$ 96,027	\$ 1,032,275

The following table presents our revenue disaggregated by line of business and reportable segment for the year ended December 31, 2019:

	US Regions	U.S. Federal	Canada	Non-Solar DG	All Other	Total
Project revenue	\$ 321,973	\$ 240,656	\$ 27,995	\$ 9,221	\$ 11,219	\$ 611,064
O&M revenue	15,753	41,599	5	9,183	169	66,709
Energy assets	25,719	3,652	3,306	65,365	—	98,042
Integrated-PV	—	—	—	—	47,953	47,953
Other	5,803	1,519	6,613	914	28,316	43,165
Total revenues	\$ 369,248	\$ 287,426	\$ 37,919	\$ 84,683	\$ 87,657	\$ 866,933

See Note 16 for our revenue disaggregated by geographical region.

The following table presents information related to our revenue recognized over time:

	Year Ended December 31,		
	2021	2020	2019
Percentage of revenue recognized over time	94 %	94 %	92 %

The remainder of our revenue is for products and services transferred at a point in time, at which point revenue is recognized.



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**Contract Balances**

The following table provides information about receivables, contract assets, and contract liabilities from contracts with customers:

	December 31, 2021	December 31, 2020
Accounts receivable, net	\$ 161,970	\$ 125,010
Accounts receivable retainage	43,067	30,189
<b>Contract Assets</b>		
Costs and estimated earnings in excess of billings	306,172	185,960
<b>Contract Liabilities</b>		
Billings in excess of cost and estimated earnings	35,918	33,984
Billings in excess of cost and estimated earnings, non-current <sup>(1)</sup>	6,481	6,631
Total contract liabilities	<u>\$ 42,399</u>	<u>\$ 40,615</u>

(1) Performance obligations that are expected to be completed beyond the next twelve months and are included in other liabilities in the consolidated balance sheets.

The increase in contract assets for the year ended December 31, 2021 was primarily due to revenue recognized of \$708,384, offset in part by billings of \$618,041. The increase in contract liabilities was primarily driven by the receipt of advance payments from customers, and related billings, exceeding recognition of revenue as performance obligations were satisfied. For the year ended December 31, 2021, we recognized revenue of \$207,746 and billed \$181,284 to customers that had balances which were included in contract liabilities at December 31, 2020. Changes in contract liabilities are also driven by reclassifications to or from contract assets as a result of timing of customer payments, as well as acquired contract assets and liabilities.

The decrease in contract assets for the year ended December 31, 2020 was primarily due to billings of \$644,583, offset in part by revenue recognized of \$618,839. The increase in contract liabilities was primarily driven by the receipt of advance payments from customers, and related billings, exceeding recognition of revenue as performance obligations were satisfied. For the year ended December 31, 2020, we recognized revenue of \$132,622, and billed customers \$140,275 to customers that had balances which were included in contract liabilities at December 31, 2019.

**Backlog**

Our remaining performance obligations (“fully-contracted backlog”) represent the unrecognized revenue value of our contract commitments. Our backlog may vary significantly each reporting period based on the timing of major new contract commitments and the fully-contracted backlog may fluctuate with currency movements. In addition, our customers have the right, under some circumstances, to terminate contracts or defer the timing of our services and their payments to us. At December 31, 2021, we had fully-contracted backlog of \$2,640,960 and approximately 52% of our fully-contracted backlog is anticipated to be recognized as revenue in the next twelve months. The remaining performance obligations primarily relate to the energy efficiency and renewable energy construction projects, including long-term O&M services related to these projects. The long-term services have varying initial contract terms, up to 25 years.

We applied the practical expedient for certain revenue streams to exclude the value of remaining performance obligations for (i) contracts with an original expected term of one year or less or (ii) contracts for which we recognize revenue in proportion to the amount we have the right to invoice for services performed.

**Contract Acquisition Costs**

As of December 31, 2021 and 2020, we had capitalized commission costs of \$1,735, related to contracts that were not completed, which were included in other assets in the accompanying consolidated balance sheets. For contracts that have a duration of less than one year, we follow a practical expedient and expense these costs when incurred. During the years ended December 31, 2021 and 2020, the amortization of commission costs related to contracts was not material and have been included in the accompanying consolidated statements of income.

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The following table presents information related to our project development costs recognized in the consolidated statements of income on projects that converted to customer contracts:

	Year Ended December 31,		
	2021	2020	2019
Project development costs recognized	\$ 12,737	\$ 12,790	\$ 35,172

No impairment charges in connection with our commission costs or project development costs were recorded during the years ended December 31, 2021 and 2020.

#### 4. BUSINESS ACQUISITIONS AND RELATED TRANSACTIONS

In November 2021, we entered into a stock purchase agreement to acquire all of the stock of Juice Technologies, Inc. (d/b/a Plug Smart), an Ohio-based energy services company that specializes in the development and implementation of budget neutral capital improvement projects including building controls and building automation systems. In December 2021, we completed the acquisition of Plug Smart, which allows us to expand our existing pipeline and solution offerings in the smart buildings sector. Total purchase consideration was \$21,240, of which \$17,692 has been paid to date. The consideration also includes a hold-back of \$750 and other accruals related to possible adjustments to net working capital at the acquisition date and future claims about representations and warranties by the sellers, if any, and a potential contingent consideration earn-out that had a fair value of \$2,160 on the date of acquisition. The earn-out includes contingent consideration of up to \$5,000 based upon meeting certain future EBITDA targets over the next five years. Cash acquired was \$2,771 and no debt was assumed. The transaction costs, pro-forma effects of this acquisition on our operations, and contribution to revenue and net income for the year ended December 31, 2021 and periods presented in the consolidated statements of income were not material.

The estimated goodwill of \$12,499 from the Plug Smart acquisition consists largely of expected benefits, including the combined entities experience, technical problem-solving capabilities, and the acquired workforce. This goodwill is not deductible for income tax purposes. The estimated fair value of tangible and intangible assets acquired and liabilities assumed are based on management's estimates and assumptions that are preliminary and subject to final working capital adjustments as of the acquisition date. Any measurement period adjustments made to working capital within one year from acquisition date, are recorded as adjustments to goodwill. Any adjustments made beyond the measurement period will be included in our consolidated statements of income.

In January 2019, we completed an acquisition of a Massachusetts based solar operations and maintenance firm for consideration of \$1,294. No debt was assumed. The pro-forma effect of this acquisition on our operations was not material.

The fair value of the contingent consideration from the 2018 acquisition of Chelsea Group Limited was \$678 as of December 31, 2020, and remained consistent as of December 31, 2021.

See Note 18 for additional information on contingent consideration.

A summary of the cumulative consideration paid and the allocation of the purchase price of all of the acquisitions in each respective year is presented in the table below. We did not complete any acquisitions during the year ended December 31, 2020.

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	2021	2019
Cash and cash equivalents	\$ 2,771	\$ —
Accounts receivable	3,370	232
Costs and estimated earnings in excess of billings	1,663	—
Prepaid expenses and other current assets	1,499	2
Property and equipment and energy assets	—	315
Goodwill	12,499	337
Intangible assets	6,354	500
Operating lease assets	488	—
Accounts payable	(1,795)	(30)
Accrued expenses and other current liabilities	(964)	(1)
Current portion of operating lease liabilities	(145)	—
Billings in excess of cost and estimated earnings	(2,464)	(61)
Deferred income tax liabilities	(1,693)	—
Long-term operating lease liabilities, net of current portion	(343)	—
Purchase price	\$ 21,240	\$ 1,294
Purchase price, net of cash acquired	\$ 18,469	\$ 1,294
Total fair value of consideration	\$ 21,240	\$ 1,294

## 5. GOODWILL AND INTANGIBLE ASSETS, NET

### *Goodwill, Net*

The changes in the goodwill balances by reportable segment are as follows:

	U.S. Regions	U.S. Federal	Canada	Other	Total
<b>Carrying Value of Goodwill</b>					
Balance, December 31, 2019	\$ 26,705	\$ 3,981	\$ 3,369	\$ 24,359	\$ 58,414
Foreign currency translation	—	—	72	228	300
Balance, December 31, 2020	26,705	3,981	3,441	24,587	58,714
Goodwill acquired during the year	12,499	—	—	—	12,499
Foreign currency translation	—	—	13	(69)	(56)
Balance, December 31, 2021	\$ 39,204	\$ 3,981	\$ 3,454	\$ 24,518	\$ 71,157
<b>Accumulated Goodwill Impairment</b>					
Balance, December 31, 2020	\$ —	\$ —	\$ (1,016)	\$ —	\$ (1,016)
Balance, December 31, 2021	\$ —	\$ —	\$ (1,016)	\$ —	\$ (1,016)

Our annual goodwill impairment review was performed each year-end using a quantitative approach, and we determined that there was no goodwill impairment for the years ended December 31, 2021 and 2020. We tested goodwill for impairment at the reporting unit level utilizing the income approach which included a discounted cash flow method with a market approach. Based on our assessment, all our reporting units with goodwill had estimated fair values that exceeded their carrying values by at least 61% as of December 31, 2021 and 67% as of December 31, 2020. During the course of our valuation analysis for the year ended December 31, 2020, we determined that although the fair value of our U.S. Federal reporting unit exceeded the carrying amount of this reporting unit, the carrying value of the reporting unit was negative.

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***Intangible Assets, Net***

Definite-lived intangible assets, net consisted of the following:

	As of December 31,	
	2021	2020
<b>Gross carrying amount</b>		
Customer contracts	\$ 8,459	\$ 7,977
Customer relationships	18,723	12,914
Non-compete agreements	3,054	3,061
Technology	2,745	2,743
Tradenames	545	545
Total gross carrying amount	33,526	27,240
<b>Accumulated Amortization</b>		
Customer contracts	7,961	7,977
Customer relationships	12,268	12,006
Non-compete agreements	3,054	3,061
Technology	2,744	2,734
Tradenames	538	535
Total accumulated amortization	26,565	26,313
Intangible assets, net	\$ 6,961	\$ 927

Customer contracts are amortized ratably over the period of the acquired customer contracts ranging in periods from approximately one to eight years. All other intangible assets are amortized over periods ranging from approximately four to fifteen years, as defined by the nature of the respective intangible asset.

Separable intangible assets that are not deemed to have indefinite lives are amortized over their useful lives. We annually assess whether a change in the useful life is necessary, or more frequently if events or circumstances warrant. No changes to useful lives were made during the years ended December 31, 2021, 2020, and 2019.

The table below sets forth amortization expense:

		Year Ended December 31,		
		2021	2020	2019
Customer contracts	Cost of revenues	\$ —	\$ 59	\$ 90
Customer relationships	Selling, general and administrative expenses	310	604	806
Non-compete agreements	Selling, general and administrative expenses	—	—	1
Technology	Selling, general and administrative expenses	8	19	12
Tradenames	Selling, general and administrative expenses	3	3	—
Total amortization expense		\$ 321	\$ 685	\$ 909

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Amortization expense for our definite-lived intangible assets for the next five years to be included in selling, general, and administrative expenses is as follows:

	Estimated Amortization Expense
2022	\$ 1,892
2023	1,300
2024	1,299
2025	1,298
2026	1,172
Thereafter	—
Total	<u>\$ 6,961</u>

## 6. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consisted of the following:

	December 31,	
	2021	2020
Furniture and office equipment	\$ 3,008	\$ 2,905
Computer equipment and software costs	17,593	14,531
Leasehold improvements	2,472	2,373
Automobiles	1,419	1,268
Land	6,781	3,041
Property and equipment, gross	31,273	24,118
Less: accumulated depreciation	(18,156)	(15,136)
Property and equipment, net	<u>\$ 13,117</u>	<u>\$ 8,982</u>

The following table sets forth our depreciation expense on property and equipment:

	Year Ended December 31,		
Location	2021	2020	2019
Selling, general & administrative expenses	\$ 3,143	\$ 3,317	\$ 2,987

## 7. ENERGY ASSETS, NET

Energy assets, net consisted of the following:

	December 31,	
	2021	2020
Energy assets <sup>(1)</sup>	\$ 1,120,712	\$ 954,426
Less: accumulated depreciation and amortization	(264,181)	(225,048)
Energy assets, net	<u>\$ 856,531</u>	<u>\$ 729,378</u>

(1) Includes financing lease assets (see Note 8), capitalized interest and ARO assets (see tables below).

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The following table sets forth our depreciation and amortization expense on energy assets, net of deferred grant amortization:

<u>Location</u>	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Cost of revenues <sup>(1)</sup>	\$ 43,113	\$ 38,039	\$ 35,543

(1) Includes depreciation and amortization expense on financing lease assets. See Note 8.

The following table presents the interest costs relating to construction financing during the period of construction, which were capitalized as part of energy assets, net:

	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Capitalized interest	\$ 2,814	\$ 4,341	\$ 2,966

During September 2021, there was a triggering event which caused us to perform an impairment analysis on an energy asset group within the Non-solar DG segment. This triggering event was related to a decision by the applicable state environmental agency to discontinue an environmental permit. This action materially modified the obligation of the landfill owner to continue maintaining the wellfield, therefore, we plan to decommission the impacted landfill gas plant. As a result, we recorded an impairment charge of \$1,901, which fully impaired this asset group.

During August 2020, we performed an engine overhaul on one of our energy assets, however, the engine consistently failed to achieve emissions compliance and we considered the engine unsalvageable. As a result of this event, we performed an impairment analysis on this energy asset group within the Non-Solar DG segment and recorded an impairment charge of \$1,028, which fully impaired this asset group.

The impairment charges are included in selling, general, and administrative expenses within the consolidated statements of income for the years ended December 31, 2021 and 2020.

We assessed the impact that the current macroeconomic environment surrounding the COVID-19 pandemic has or is expected to have on the business, and concluded that it was not a triggering event for impairment purposes and there was no indication of impairment of long-lived assets, except as indicated above, for the years ended December 31, 2021 and 2020.

As of December 31, 2021 there were four ESPC asset projects which were included in energy assets and as of December 31, 2020, there were three. We control and operate the assets as well as obtain financing during the construction period of the assets. We record a liability associated with these energy assets as we have an obligation to the customer for performance of the asset, although, the customer is responsible for payments to the lender based on the energy asset's production.

The liabilities recognized in association with these ESPC assets were as follows:

<u>Location</u>	<u>December 31,</u>	
	<u>2021</u>	<u>2020</u>
Accrued expenses and other current liabilities	\$ 245	\$ 229
Other liabilities	12,827	10,794
Total ESPC projects liability	<u>\$ 13,072</u>	<u>\$ 11,023</u>

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In order to expand our portfolio of energy assets, we have acquired energy projects, which did not constitute businesses under the guidance discussed in Note 2.

We acquired and closed on the following energy projects:

	December 31,	
	2021	2020
Number of projects	1	1
Purchase price <sup>(1)</sup>	\$ 3,461	\$ 1,251
Remaining deferred purchase consideration on previously closed projects <sup>(2)</sup>	\$ 303	\$ 1,446

(1) The 2020 purchase price included cash we paid in the amount of \$1,031, issuance of a promissory note payable to the sellers of \$204, detailed further in Note 9, and \$16 of rollover equity in connection with shares of one of our subsidiaries issued to the sellers.

(2) Included in accrued expenses and other current liabilities.

We also have definitive agreements to purchase an additional eight solar projects from a developer for a total purchase price of \$10,242, however, the closing on these sites is uncertain. No payments have been made to the developers of the projects.

Our ARO assets and ARO liabilities relate to the removal of equipment and pipelines at certain renewable gas projects and obligations related to the decommissioning of certain solar facilities.

The following tables sets forth information related to our ARO assets and ARO liabilities:

		December 31,	
		2021	2020
ARO assets, net	Energy assets, net	\$ 1,939	\$ 1,468
ARO liabilities, current	Accrued expenses and other current liabilities	\$ 6	\$ 86
ARO liabilities, non-current	Other liabilities	2,342	1,561
		<u>\$ 2,348</u>	<u>\$ 1,647</u>

	Year Ended December 31,		
	2021	2020	2019
Depreciation expense of ARO assets	\$ 113	\$ 78	\$ 45
Accretion expense of ARO liabilities	\$ 123	\$ 93	\$ 44

## 8. LEASES

We enter into a variety of operating lease agreements through the normal course of business including certain administrative offices. The leases are long-term, non-cancelable real estate lease agreements, expiring at various dates through fiscal 2029. The agreements generally provide for fixed minimum rental payments and the payment of utilities, real estate taxes, insurance, and repairs. We also lease vehicles, IT equipment and certain land parcels related to our energy projects, expiring at various dates through fiscal 2050. The office and land leases make up a significant portion of our operating lease activity. Many of these leases have one or more renewal options that allow us, at our discretion, to renew the lease for six months to seven years. Only renewal options that we believed were likely to be exercised were included in our lease calculations. Many land leases include minimum lease payments that commence or increase when the related project becomes operational. In these cases, we estimated the commercial operation date used to calculate the ROU asset and minimum lease payments.

A portion of our real estate leases are generally subject to annual changes in the Consumer Price Index ("CPI"). We utilized each lease's minimum lease payments to calculate the lease balances upon transition. The subsequent increases in rent based on changes in CPI were excluded and will be excluded for future leases from the calculation of the lease balances, but will be recorded to the consolidated statements of income as part of our operating lease costs.

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The discount rate was calculated using an incremental borrowing rate based on financing rates on secured comparable notes with comparable terms and a synthetic credit rating calculated by a third party. We elected to apply the discount rate using the remaining lease term at the date of adoption.

We also enter into leases for service agreements and other leases related to our construction projects such as equipment, mobile trailers, and other temporary structures. We utilize the portfolio approach for this class of lease, which are either short-term leases or are not material.

Rent and related expenses were as follows:

	Year Ended December 31,		
	2021	2020	2019
Rent and related expenses	\$ 9,740	\$ 8,891	\$ 8,179

We have a number of leases that are classified as financing leases, which related to transactions that were considered sale-leasebacks under ASC 840. See the sale-leaseback section below for additional information on our financing leases.

The table below sets forth supplemental balance sheet information related to leases:

	December 31,	
	2021	2020
<b>Operating Leases</b>		
Operating lease assets	\$ 41,982	\$ 39,151
Current portion of operating lease liabilities	\$ 6,276	\$ 6,106
Long-term operating lease liabilities, net of current portion	35,135	35,300
Total Operating lease liabilities	<u>\$ 41,411</u>	<u>\$ 41,406</u>
Weighted-average remaining lease term	12 years	12 years
Weighted-average discount rate	5.7 %	5.9 %
<b>Financing Leases <sup>(1)</sup></b>		
Energy assets, net	\$ 31,876	\$ 34,005
Current portions of financing lease liabilities	\$ 3,125	\$ 4,273
Long-term financing lease liabilities, net of current portion, unamortized discount and debt issuance costs	16,101	19,227
Total financing lease liabilities	<u>\$ 19,226</u>	<u>\$ 23,500</u>
Weighted-average remaining lease term	15 years	16 years
Weighted-average discount rate	12.08 %	11.94 %

(1) Includes sale-leaseback transactions entered into prior to January 1, 2019 and failed sales under ASC 842.



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The costs related to our leases were as follows:

	Year Ended December 31,	
	2021	2020
<b>Operating Leases</b>		
Operating lease costs	\$ 8,780	\$ 7,970
<b>Financing Leases</b>		
Amortization expense	2,129	2,129
Interest on lease liabilities	2,541	3,019
Total financing lease costs	4,670	5,148
Total lease costs	\$ 13,450	\$ 13,118

Supplemental cash flow information related to our leases was as follows:

	Year Ended December 31,	
	2021	2020
Cash paid for amounts included in the measurement of operating lease liabilities	\$ 11,385	\$ 7,600
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 10,007	\$ 12,158

The table below sets forth our estimated minimum future lease obligations under our leases:

	Operating Leases	Financing Leases
Year ended December 31,		
2022	\$ 8,331	\$ 5,178
2023	7,162	3,676
2024	5,989	2,565
2025	4,790	2,213
2026	2,971	2,054
Thereafter	29,540	19,812
Total minimum lease payments	\$ 58,783	\$ 35,498
Less: interest	17,372	16,272
Present value of lease liabilities	\$ 41,411	\$ 19,226

***Sale-leasebacks***

We entered into sale-leaseback arrangements for solar PV energy assets prior to January 1, 2019, which remain under the previous guidance.

The following table presents a summary of amounts related to these sale-leasebacks included in our consolidated balance sheets:

	December 31,	
	2021	2020
Deferred loss, short-term, net	115	115
Deferred loss, long-term, net	1,571	1,686
Total deferred loss	\$ 1,686	\$ 1,801
Deferred gain, short-term, net	345	345
Deferred gain, long-term, net	4,775	5,120
Total deferred gain	\$ 5,120	\$ 5,465

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Net gains and (losses) from amortization expense in cost of revenues related to deferred gains and losses were \$230, \$228 and \$230 for the years ended December 31, 2021, 2020, and 2019, respectively.

During the year ended December 31, 2019, we amended an August 2018 agreement with an investor to extend the end date of the agreement to November 24, 2019 and sold and leased back three energy assets for \$13,700 in cash. The agreements have low interest rates ranging from 0% to 0.28%, as a result of tax credits which were transferred to the counterparty.

In January 2020, we amended the August 2018 agreement to extend the end date of the agreement to November 24, 2020 and increased the maximum funding amount up to \$150,000. In December 2020, we amended the agreement to extend the end date of the agreement to February 22, 2021 and in February 2021, we entered into a fourth amendment to extend this agreement to May 23, 2021. We entered into a fifth amendment dated March 22, 2021 to our August 2018 agreement and increased the maximum funding amount from \$150,000 up to \$350,000 and extended the end date of the agreement from May 23, 2021 to March 31, 2022.

We sold and leased back ten energy assets for \$83,138 under this facility during the year ended December 31, 2021. The lease agreements executed in connection with the sale of these energy assets bear interest at a rate of 0% to 1.17%, as a result of tax credits which were transferred to the counterparty. As of December 31, 2021, approximately \$228,569 remained available under this lending commitment. In January 2022, we sold and leased back one energy asset for \$6,644 under this facility.

During the year ended December 31, 2020, we entered into a master lease agreement with an investor and sold and leased back two energy assets for \$4,342 in cash. On July 9, 2021, we entered into an amendment to our master lease agreement which increased our maximum commitment from \$4,500 to \$23,559 and extended the end date of the agreement to December 31, 2021. During the ended December 31, 2021, we sold and leased back one energy asset for \$3,281. The lease agreements executed in connection with the sale of these energy assets bear interest at a rate of 0%, as a result of tax credits which were transferred to the counterparty, and have an expiration date of December 30, 2030, with an option to extend to December 30, 2040.

All sale-leaseback transactions that occurred after December 31, 2018, were accounted for as failed sales and the proceeds received from the transactions were recorded as long-term financing facilities. See Note 9 for additional information on these financing facilities.

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**9. DEBT AND FINANCING LEASE LIABILITIES**

Long-term debt was comprised of the following:

	As of December 31,	
	2021	2020
Senior secured credit facility, 2.66%, due June 2024 <sup>(1)</sup>	\$ 97,813	\$ 110,761
Construction revolver, 1.74%, due March 2022 <sup>(2)</sup>	\$ 23,935	\$ 15,177
Construction revolver, 1.99%, due July 2022 <sup>(2)</sup>	7,763	11,581
Subtotal non-recourse construction revolvers	\$ 31,698	\$ 26,758
Term loans, due 2021	\$ —	\$ 12,142
Variable rate term loan, 2.49%, due June 2024 <sup>(2)(3)</sup>	4,264	6,081
Term loan, 6.11% due June 2028 <sup>(5)</sup>	2,933	3,339
Variable rate term loan, 2.49%, due May 2025 <sup>(4)</sup>	38,844	40,750
Variable rate term loan, 2.99%, due March 2023 <sup>(4)</sup>	14,442	14,867
Term loan, 4.95%, due July 2031 <sup>(4)</sup>	3,157	3,527
Term loan, 5.00%, due March 2028 <sup>(4)</sup>	2,688	3,118
Term loan, 4.50%, due April 2027 <sup>(5)</sup>	10,302	18,403
Term loan, 5.61%, due February 2034 <sup>(4)</sup>	2,423	2,589
Variable rate term loan, 2.69%, due December 2027 <sup>(4)</sup>	9,238	10,541
Variable rate term loan, 6.24%, due March 2026 <sup>(2)(4)</sup>	38,753	34,451
Term loan, 5.15%, due December 2038 <sup>(2)(4)</sup>	25,465	27,695
Variable rate term loan, 2.29%, due June 2033 <sup>(2)(3)</sup>	7,657	8,348
Variable rate term loan, 2.61%, due October 2029 <sup>(2)(5)</sup>	7,762	8,503
Fixed rate note, 5.00%, due April 2040	224	222
Fixed rate note, 3.58%, due December 2027 <sup>(4)</sup>	3,072	3,548
Fixed rate note, 4.92%, due June 2045 <sup>(4)</sup>	3,776	—
Fixed rate note, 3.25%, due March 2046 <sup>(4)</sup>	39,474	—
Variable rate term loan, 3.63%, due July 2030 <sup>(4)</sup>	3,662	—
Subtotal non-recourse term loans	\$ 218,136	\$ 198,124
Long-term financing facility, 0.28%, due July 2039 <sup>(3)(6)</sup>	\$ 3,462	\$ 3,625
Long-term financing facility, —%, due November 2039 <sup>(3)(6)</sup>	6,361	6,675
Long-term financing facility, —%, due July 2040 <sup>(3)(6)</sup>	1,050	1,107
Long-term financing facility, —%, due December 2040 <sup>(3)(6)</sup>	14,130	18,287
Long-term financing facility, —%, due December 2040 <sup>(4)(6)</sup>	2,810	2,924
Long-term financing facility, 1.17%, due March 2041 <sup>(3)(6)</sup>	850	—
Long-term financing facility, —%, due March 2041 <sup>(3)(6)</sup>	18,378	—
Long-term financing facility, —%, due July 2041 <sup>(4)(6)</sup>	2,151	—
Long-term financing facility, 0.03%, due September 2041 <sup>(3)(6)</sup>	3,382	—
Long-term financing facility, 0.41%, due October 2041 <sup>(3)(6)</sup>	2,822	—
Long-term financing facility, 0.23%, due November 2041 <sup>(3)(6)</sup>	1,880	—
Long-term financing facility, —%, due December 2041 <sup>(3)(6)</sup>	43,712	—
Long-term financing facility, 0.13%, due December 2041 <sup>(3)(6)</sup>	3,627	—
Subtotal non-recourse long-term financing facilities	\$ 104,615	\$ 32,618

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	As of December 31,	
	2021	2020
Financing leases <sup>(7)</sup>	\$ 19,226	\$ 23,500
Total debt and financing leases	\$ 471,488	\$ 391,761
Less: current maturities	78,934	69,362
Less: unamortized discount and debt issuance costs	15,370	10,725
Long-term debt and financing lease liabilities, net of current portion, unamortized discount and debt issuance costs	\$ 377,184	\$ 311,674

(1) Facility has interest at varying rates monthly in arrears.

(2) These agreements have acceleration causes that, in the event of default, as defined, the payee has the option to accelerate payment terms and make the remaining principal and the required interest balance due according to the agreement.

(3) Facility is payable in semi-annual installments.

(4) Facility is payable in quarterly installments.

(5) Facility is payable in monthly installments.

(6) These agreements are sale-leaseback arrangements and are accounted for as failed sales under the guidance and are classified as financing liabilities. See Note 8.

(7) Financing leases are sale-leaseback arrangements under previous guidance and do not include approximately \$16,272 in future interest payments as of December 31, 2021 and \$18,791 as of December 31, 2020. See Note 8.

The following table presents the aggregate maturities of long-term debt and financing leases as of December 31, 2021:

2022	\$ 78,934
2023	49,931
2024	116,071
2025	51,961
2026	34,213
Thereafter	140,378
Total maturities	\$ 471,488

**Senior Secured Credit Facility - Revolver and Term Loan**

On June 28, 2019, we entered into a fourth amended and restated bank credit facility with three banks. The new credit facility replaced and extended our existing credit facility, which was scheduled to expire on June 30, 2020. The amended term loan increased amounts outstanding to \$65,000 and contains quarterly repayment provisions discussed further below. The amended revolving credit and term loan facility mature on June 28, 2024, when all amounts will be due and payable in full. The June 28, 2019 amendment increased the total commitment under the amended credit facility (revolving credit, term loan and swing line) from \$125,000 to \$185,000.

In March 2020, we amended this credit facility which increased the total funded debt to EBITDA covenant ratio to a maximum of 3.75 for the year ended December 31, 2020, which reverted back to 3.25 on March 31, 2021. The amendment also increased the Eurocurrency rate floor from 0% to 1%.

On June 22, 2021, we entered into the second amendment to the fourth amended and restated bank credit facility we have syndicated with three banks, which increased the amount of the revolving commitment by the lenders under the credit facility by \$65,000 and included the following amendments:

- increased the aggregate amount of the revolving commitments from \$115,000 to \$180,000 through the existing June 28, 2024 maturity date,
- increased the total funded debt to EBITDA covenant ratio from a maximum of 3.25 to 3.50, and
- decreased the Eurocurrency rate floor from 1% to 0%.

We accounted for this amendment as a modification and at closing we incurred \$78 in lender fees which were reflected as debt discount. The unamortized debt discount and issuance costs are being amortized over the remaining term of the amended

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agreement.

The revolving credit facility may be increased up to an additional \$100,000 in increments of at least \$25,000 at the approval of lenders, subject to certain conditions. Up to \$20,000 of the revolving credit facility may be borrowed in Canadian dollars, Euros, or pounds sterling. We are the sole borrower under the credit facility. The obligations under the credit facility are guaranteed by certain of our direct and indirect wholly owned domestic subsidiaries and are secured by a pledge of all of Ameresco's and such subsidiary guarantors' assets, other than the equity interests of certain subsidiaries and assets held in non-core subsidiaries (as defined in the agreement).

The table below sets forth amounts outstanding under the credit facility, net of unamortized debt discounts and debt issuance costs:

	Rate as of December 31, 2021	As of December 31,	
		2021	2020
Term loan	1.95 %	\$ 52,720	\$ 57,574
Revolving credit facility	3.50 %	\$ 44,681	\$ 52,696
Total senior secured credit facility outstanding <sup>(1)</sup>		\$ 97,401	\$ 110,270

(1) Net of unamortized debt discount and debt issuance costs of \$412 in 2021 and \$491 in 2020.

As of December 31, 2021, funds of \$121,176 were available for borrowing under the revolving credit facility and we had \$13,824 in letters of credit outstanding. We expect to use the remaining funds available under the credit facility for general corporate purposes, including permitted acquisitions, refinancing of existing indebtedness and working capital.

The interest rate for borrowings under the credit facility is based on, at our option, either (1) a base rate equal to a margin of 0.50% or 0.25%, depending on our ratio of total funded debt to EBITDA (as defined in the agreement), over the highest of (a) the federal funds effective rate, plus 0.50%, (b) Bank of America's prime rate and (c) a rate based on the London interbank deposit rate ("LIBOR") plus 1.50%, or (2) the one-, two- three- or six-month LIBOR plus a margin of 2.00% or 1.75%, depending on our ratio of total funded debt to EBITDA, as defined. A commitment fee of 0.375% is payable quarterly on the undrawn portion of the revolving credit facility.

The revolving credit facility does not require amortization of principal. The term loan requires quarterly principal payments of \$1,219, with the balance due at maturity. All borrowings may be paid before maturity in whole or in part at our option without penalty or premium, other than reimbursement of any breakage and deployment costs in the case of LIBOR borrowings.

The credit facility limits Ameresco's and our subsidiaries' ability to, among other things: incur additional indebtedness; incur liens or guarantee obligations; merge, liquidate or dispose of assets; make acquisitions or other investments; enter into hedging agreements; pay dividends and make other distributions and engage in transactions with affiliates, except in the ordinary course of business on an arms' length basis.

Under the credit facility, Ameresco and our subsidiaries may not invest cash or property in, or loan to, our non-core subsidiaries in aggregate amounts exceeding 49% of our consolidated stockholders' equity. In addition, we and our core subsidiaries must maintain a ratio of total funded debt to EBITDA as noted above, and a debt service coverage ratio (as defined in the agreement) of at least 1.5 to 1.0.

Any failure to comply with the financial or other covenants of the credit facility would not only prevent us from being able to borrow additional funds, but would constitute a default, permitting the lenders to, among other things, accelerate the amounts outstanding, including all accrued interest and unpaid fees, under the credit facility, to terminate the credit facility, and enforce liens against the collateral.

The credit facility also includes several other customary events of default, including a change in control of Ameresco, permitting the lenders to accelerate the indebtedness, terminate the credit facility, and enforce liens against the collateral.

For purposes of our senior secured facility EBITDA, as defined, excludes the results of certain renewable energy projects that we own and for which financing from others remains outstanding; total funded debt, as defined, includes amounts outstanding under both the term loan and revolver portions of the senior secured credit facility plus other indebtedness, but excludes non-recourse indebtedness of project company subsidiaries; and debt service, as defined, includes principal and interest payments on the indebtedness included in total funded debt other than principal payments on the revolver portion of the facility.

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***Variable Rate Term Loan, 6.24%, due March 2026***

In October 2020, we entered into an amended and restated credit agreement with a bank primarily to increase the commitments under the existing credit agreement and add projects eligible for financing. The new credit agreement increased the commitment from \$28,500 to \$35,000 and included an option for the lender to increase the commitment by up to an additional \$15,000 for a total not to exceed \$50,000.

In February 2021, the lender increased its commitment by \$15,000 and we received net proceeds of \$14,848. The quarterly payments consist of \$1,250 in principal plus an additional principal prepayment based on project cash flows in addition to interest to be paid through the earlier of maturity, March 2026, or when the principal balance is paid in full. We accounted for this amendment as a modification and at closing we incurred \$150 in lender fees which were reflected as debt discount and \$2 in third-party fees which were expensed in selling, general and administrative expenses during the twelve months ended December 31, 2021. The unamortized debt discount and issuance costs from the October 2020 loan modification are being amortized over the remaining term of the amended agreement. The balance of the loan outstanding as of December 31, 2021 was \$38,016, net of unamortized debt discount and issuance costs.

***Construction Revolvers***

***Construction Revolver; 1.74%, due March 2022***

In June 2020, we entered into a revolving credit agreement with a bank, with an aggregate borrowing capacity of \$100,000 for use in financing the construction cost of our owned projects. In March 2021, we entered into a third amendment to this agreement to extend this facility from May 2021 to March 2022. All remaining unpaid amounts outstanding under the facility are due at that time.

The balance of this construction revolver as of December 31, 2021 was \$23,792, net of unamortized debt issuance costs and funds of \$76,065 were available for borrowing under this facility.

***Construction Revolver; 1.99%, due July 2022***

The balance of our July 2020 construction revolver as of December 31, 2021 was \$7,638, net of unamortized debt discount and issuance costs and we have funds of \$22,237 available for borrowing under this construction revolver.

***Fixed Rate Note, 3.25%, due March 2046 and Variable Rate Term Loan, 3.63%, due July 2030***

On July 27, 2021, we entered into a \$44,748 non-recourse debt agreement with a group of lenders. The financing facility consists of gross proceeds of \$40,683 in senior secured first lien term notes due March 2046 ("Senior Notes"), gross proceeds of \$4,065 in floating rate senior secured second lien term notes due July 2030 ("Second Lien Notes"), and a shelf facility of up to \$60,000 available until July 2024. There were no notes issued under the shelf facility at December 31, 2021 and the lenders, in their sole discretion, have the right to approve or deny our funding requests.

The Senior Notes bear interest at a fixed rate of 3.25% per annum, are payable quarterly commencing September 30, 2021, and require that the project's debt service coverage ratio for both the historical 12-month and projected 12-month periods at each payment date equal or exceed 1.2 to 1.0.

The Second Lien Notes bear a floating rate equal to the applicable LIBOR rate plus 3.50% from July 27, 2021 to July 26, 2025 and on July 27, 2025 the rate increases to the applicable LIBOR rate plus 3.75%. The Second Lien Notes are payable on each quarterly payment date commencing September 30, 2021, as specified in the debt agreement.

The agreement also requires us to maintain six months of scheduled payments of principal and interest as the minimum debt service reserve and to make additional principal prepayments based on project cash flows and certain other conditions through the earlier of maturity or when the principal balance is paid in full.

At closing, we incurred \$957 in lender fees and debt issuance costs. In connection with the Senior Notes, we recorded a derivative instrument for make-whole provisions with an initial value of \$5,164, which was recorded as a debt discount. See Note 19 for additional information. The aggregate balance of the Senior Notes and Second Lien Notes as of December 31, 2021 was \$37,263, net of unamortized debt discount and issuance costs.

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# 10. INCOME TAXES

The following table sets forth components of income before income taxes:

	Year Ended December 31,		
	2021	2020	2019
Domestic	\$ 74,256	\$ 52,595	\$ 34,700
Foreign	3,888	3,833	1,853
Income before income taxes	<u>\$ 78,144</u>	<u>\$ 56,428</u>	<u>\$ 36,553</u>

The components of the (benefit) provision for income taxes were as follows:

	Year Ended December 31,		
	2021	2020	2019
Current income tax provision (benefit):			
Federal	\$ (779)	\$ (4,566)	\$ 109
State	1,779	1,522	474
Foreign	844	298	(1)
Total current	<u>1,844</u>	<u>(2,746)</u>	<u>582</u>
Deferred income tax (benefit) provision:			
Federal	(8,025)	3,655	(4,794)
State	3,561	2,207	202
Foreign	573	(3,610)	262
Total deferred	<u>(3,891)</u>	<u>2,252</u>	<u>(4,330)</u>
Total income tax benefit	<u>\$ (2,047)</u>	<u>\$ (494)</u>	<u>\$ (3,748)</u>

Our deferred tax assets and liabilities result primarily from temporary differences between financial reporting and tax recognition of depreciation, energy efficiency and net operating loss carryforwards.



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Deferred tax assets and liabilities consisted of the following:

	December 31,	
	2021	2020
Deferred income tax assets:		
Compensation accruals	\$ 2,570	\$ 2,485
Reserves	4,150	3,861
Other	27,806	15,583
Net operating losses	28,807	14,435
Interest rate swaps	1,928	2,587
Energy efficiency	59,618	42,084
Deferred revenue	2,181	1,270
Gross deferred income tax assets	127,060	82,305
Valuation allowance	(4,039)	(3,877)
Total deferred income tax assets	\$ 123,021	\$ 78,428
Deferred income tax liabilities:		
Depreciation	\$ (112,896)	\$ (66,694)
Deferred effect of derivative liability	(1,541)	(284)
Canadian capital cost, allowance and amortization	(984)	(2,195)
United Kingdom goodwill amortization	(718)	(732)
Outside basis difference	(7,050)	(10,886)
Total deferred income tax liabilities	(123,189)	(80,791)
Deferred income tax liabilities, net	\$ (168)	\$ (2,363)

Our valuation allowance related to the following items:

	December 31,	
	2021	2020
Interest rate swaps <sup>(1)</sup>	\$ 50	\$ 106
Foreign net operating loss <sup>(2)</sup>	3,724	3,479
State net operating loss at one of our subsidiaries <sup>(3)</sup>	265	292
Total valuation allowance	\$ 4,039	\$ 3,877

(1) The deferred tax asset represents a future capital loss which can only be recognized for income tax purposes to the extent of capital gain income. Although we anticipate sufficient future taxable income, it is more likely than not that it will not be the appropriate character to allow for the recognition of the future capital loss.

(2) It is more likely than not that we will not generate sufficient taxable income at the foreign subsidiary level to utilize the net operating loss.

(3) It is more likely than not that we will not generate sufficient taxable income at the subsidiary level to utilize the net operating loss.

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As of December 31, 2021, we had the following tax loss and credit carryforwards to offset taxable income in prior and future years:

	Amount	Expiration Period
Federal net operating loss carryforwards	\$ 98,490	Indefinite
State net operating loss carryforwards	40,230	Various
Canadian net operating loss carryforwards	22,603	2028 through 2041
United Kingdom net operating loss carryforwards	1,986	Indefinite
Greece net operating loss carryforwards	108	2026
Spain net operating loss carryforwards	2,447	Indefinite
Total tax loss carryforwards	<u>\$ 165,864</u>	
Federal Energy Investment and Production tax credit carryforward	\$ 59,618	2030 through 2041

The provision for income taxes is based on the various rates set by federal and local authorities and is affected by permanent and temporary differences between financial accounting and tax reporting requirements.

The principal reasons for the difference between the statutory rate and the estimated annual effective rate for 2021 were the effects of investment tax credits we are entitled from solar plants which have been placed into service during 2021, the tax deductions related to the Section 179D Commercial Buildings Energy-Efficiency deduction, the benefit of disqualifying dispositions on certain employee stock options and favorable tax basis adjustments on certain partnership flip transactions.

The principal reasons for the difference between the statutory rate and the estimated annual effective rate for 2020 were the effects of investment tax credits we are entitled from solar plants which have been placed into service during 2020, the tax deductions related to the Section 179D deduction, the release of the previously established valuation allowance on the Canadian tax assets and the benefit of employee stock option compensation. We additionally realized tax rate benefits associated with net operating loss carrybacks made possible by the passing of the CARES Act on March 27, 2020 and tax basis adjustments on certain partnership flip transactions.

The investment tax credits and production tax credits we may be entitled to fluctuate from year to year based on the cost of the renewable energy plants we place in service and production levels at facilities we own in that year.

On December 27, 2020 the President signed the Consolidated Appropriations Act, 2021 H.R. 133, which among other things made the Section 179D Energy Efficient Commercial Building Deduction permanent. The Section had previously been extended for years up to December 31, 2020. That Act also made changes to the way in which the deduction is calculated including adding an inflation adjustment and an update of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard by which energy improvements are measured.

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The following is a reconciliation of the effective tax rates:

	Year Ended December 31,		
	2021	2020	2019
Income before benefit for income taxes	\$ 78,144	\$ 56,428	\$ 36,553
Federal statutory tax expense	\$ 16,410	\$ 11,850	\$ 7,676
State income taxes, net of federal benefit	2,648	2,257	2,140
Net state impact of deferred rate change	(502)	(29)	(53)
Nondeductible expenses	2,572	987	150
Impact of reserve for uncertain tax positions	286	(124)	(925)
Stock-based compensation expense	(4,618)	(2,922)	(169)
Energy efficiency preferences	(17,639)	(8,595)	(12,699)
Foreign items and rate differential	4	160	56
Redeemable non-controlling interests	(2,546)	(767)	1,101
Valuation allowance	337	(4,308)	205
Miscellaneous	1,001	997	(1,230)
Total income tax benefit	\$ (2,047)	\$ (494)	\$ (3,748)
<b>Effective tax rate:</b>			
Federal statutory rate expense	21.0 %	21.0 %	21.0 %
State income taxes, net of federal benefit	3.4 %	4.0 %	5.9 %
Net state impact of deferred rate change	(0.6)%	(0.1)%	(0.1)%
Nondeductible expenses	3.3 %	1.7 %	0.4 %
Impact of reserve for uncertain tax positions	0.4 %	(0.2)%	(2.5)%
Stock-based compensation expense	(5.9)%	(5.2)%	(0.5)%
Energy efficiency preferences	(23.2)%	(15.2)%	(34.7)%
Foreign items and rate differential	— %	0.3 %	0.2 %
Redeemable non-controlling interests	(3.3)%	(1.4)%	3.0 %
Valuation allowance	0.4 %	(7.6)%	0.6 %
Miscellaneous	1.9 %	1.8 %	(3.6)%
Effective tax rate	(2.6)%	(0.9)%	(10.3)%

The following table provides a reconciliation of gross unrecognized tax benefits which are included in other liabilities within the consolidated balance sheets:

	Year Ended December 31,	
	2021	2020
Balance, beginning of year	\$ 600	\$ 400
Additions for current year tax positions	300	100
Additions for prior year tax positions	—	100
Balance, end of year	\$ 900	\$ 600

The amount of unrecognized tax benefits that, if recognized, would favorably affect the effective income tax rate in any future periods was \$440 as of December 31, 2021 and \$190 as of December 31, 2020 (both net of the federal benefit on state amounts).

We do not accrue U.S. tax for foreign earnings that we consider to be permanently reinvested outside the United States. Consequently, we have not provided any withholding tax on the unremitted earnings of our foreign subsidiaries. As of December 31, 2021 and 2020, we estimated that there were no earnings for which repatriation tax has not been provided.

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The tax years 2018 through 2021 remain open to examination by major taxing jurisdictions. We recognize interest and penalties related to uncertain tax positions as components of our income tax provision (benefit) in our consolidated statements of income. We increased income tax expense for these items by \$14 in 2021, \$0 in 2020, and \$19 in 2019.

**11. VARIABLE INTEREST ENTITIES AND EQUITY METHOD INVESTMENTS**

***Investment Funds***

Over a period of five years (2015 through 2019), we formed five investment funds with third party investors which granted the applicable investor ownership interests in the net assets of certain of our renewable energy project subsidiaries. As of December 31, 2021, we had four such investment funds each with a different third-party investor.

We consolidate the investment funds, and all inter-company balances and transactions between Ameresco and the investment funds are eliminated in our consolidated financial statements. We determined that the investment funds meet the definition of a VIE. We use a qualitative approach in assessing the consolidation requirement for VIEs that focuses on determining whether we have the power to direct the activities of the VIE that most significantly affect the VIE's economic performance and whether we have the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE.

We have considered the provisions within the contractual arrangements that grant us power to manage and make decisions that affect the operation of these VIEs, including determining the solar energy systems and associated long term customer contracts to be sold or contributed to the VIEs, and installation, operation, and maintenance of the solar energy systems. We considered the rights granted to the other investors under the contractual arrangements to be more protective in nature rather than participating rights. As such, we determined that we are the primary beneficiary of the VIEs for all periods presented. We evaluate our relationships with VIEs on an ongoing basis to ensure that we continue to be the primary beneficiary.

Under the related agreements, cash distributions of income and other receipts by the funds, net of agreed-upon expenses and estimated expenses, tax benefits and detriments of income and loss, and tax benefits of tax credits, are assigned to the funds' investor and our subsidiaries as specified in contractual arrangements. Certain of these arrangements have call and put options to acquire the investor's equity interest as specified in the contractual agreements. See Note 12 for additional information about these investment funds and the call and put options.

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The table below presents a summary of amounts related to our investment funds reflected in Note 1 on our consolidated balance sheets:

	As of December 31,	
	2021	2020
Cash and cash equivalents	\$ 4,915	\$ 5,828
Restricted cash	822	3,185
Accounts receivable, net	656	834
Costs and estimated earnings in excess of billings	1,421	968
Prepaid expenses and other current assets	151	120
Total VIE current assets	7,965	10,935
Property and equipment, net	1,266	1,266
Energy assets, net	108,498	143,133
Operating lease assets	6,271	6,439
Restricted cash, non-current portion	418	331
Other assets	36	94
Total VIE assets	\$ 124,454	\$ 162,198
Current portions of long-term debt and financing lease liabilities	\$ 2,210	\$ 2,230
Accounts payable	47	311
Accrued expenses and other current liabilities	643	1,092
Current portions of operating lease liabilities	142	125
Total VIE current liabilities	3,042	3,758
Long-term debt and financing lease liabilities, net of current portion, unamortized discount and debt issuance costs	20,952	22,822
Long-term operating lease liabilities, net of current portion	6,558	6,220
Other liabilities	573	535
Total VIE liabilities	\$ 31,125	\$ 33,335

**Other Variable Interest Entities**

We execute certain contracts jointly with third parties through various forms of joint ventures. Although the joint ventures own and hold the contracts with the clients, the services required by the contracts are typically performed by us and our joint venture partners, or by other subcontractors under subcontracting agreements with the joint ventures. Many of these joint ventures are formed for a specific project. The assets of these joint ventures generally consist almost entirely of cash and land, and the liabilities of our joint ventures generally consist almost entirely of amounts due to the joint venture partners.

We follow guidance on the consolidation of VIEs that requires companies to utilize a qualitative approach to determine whether it is the primary beneficiary of a VIE. The process for identifying the primary beneficiary of a VIE requires consideration of the factors that indicate a party has the power to direct the activities that most significantly impact the joint ventures economic performance, including powers granted to the joint ventures program manager, powers contained in the joint venture governing board and, to a certain extent, a company's economic interest in the joint venture. We analyze our joint ventures and classify them as either:

- a VIE that must be consolidated because we are the primary beneficiary or the joint venture is not a VIE and we hold the majority voting interest with no significant participative rights available to the other partners, or
- a VIE that does not require consolidation and is treated as an equity method investment because we are not the primary beneficiary or the joint venture is not a VIE and we do not hold the majority voting interest.

Many of our joint ventures are deemed to be VIEs because they lack sufficient equity to finance the activities of the joint venture.

In January 2019, we entered into a joint venture with one other party to co-own an entity whose purpose is owning and leasing a parcel of land and attached structures to third-party entities. The joint venture has no employees and is controlled by the board of directors made up of representatives from both companies. Prior to January 2019, we had determined we were the primary

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beneficiary of the VIE and fully consolidated the entity. Upon the formation of the joint venture, based on the assessment of considerations referenced above, we determined we were no longer the primary beneficiary and deconsolidated the VIE and recorded our investment in the joint venture as an equity method investment. With the deconsolidation of the VIE and the recognition of the equity method investment we recognized a gain of \$2,160 in operating income and recorded an equity method investment of \$1,361 in other assets during the year ended December 31, 2019. In addition, we loaned the joint venture \$1,506 and made an initial contribution at its formation in exchange for 50% of the shares in the joint venture. During the year ended December 31, 2021, we sold this equity investment for cash proceeds of \$1,672 and recognized a gain of \$571, which is included in selling, general and administrative expense in our consolidated statements of income.

**Equity Method Investments**

Unconsolidated joint ventures are accounted for under the equity method. For these joint ventures, our investment balances are included in other assets on the consolidated balance sheets and our pro rata share of net income or loss is included in operating income.

During the year ended December 31, 2021, we entered into three joint ventures and invested \$9,000 in one of them. No other material investments were made. Activity under these joint ventures as of December 31, 2021 was not material.

The following table provides information about our equity method investments in joint ventures:

	As of December 31,			
	2021		2020	
Equity method investments	\$	9,206	\$	1,189
Expense recognized	\$	118	\$	225

**12. REDEEMABLE NON-CONTROLLING INTERESTS**

Our subsidiaries with membership interests in the investment funds we formed have the right to elect to require the non-controlling interest holder to sell all of its membership units to our subsidiaries, a call option. Our investment funds also include rights for the non-controlling interest holder to elect to require our subsidiaries to purchase all of the non-controlling membership interests in the fund, a put option.

The following table sets forth information about the call and put options for our investment funds outstanding as of December 31, 2021:

Investment Fund Number	Formation Date	Call Option			Put Option		
		Start Date	End Date	Purchase Price	Start Date	End Date	Purchase Price
1	April 2017	December 2022	June 2023	(1)	December 2023	December 2024	(4)
2	June 2018	April 2024	October 2024	(2)	October 2024	April 2025	(5)
3	October 2018	June 2024	December 2024	(2)	December 2024	June 2025	(5)
4	December 2019	March 2026	September 2026	(3)	September 2026	September 2027	(6)

(1) Purchase price is equal to the fair market value of such interest at the time the option is exercised.

(2) Purchase price is equal to the greater of (i) the fair market value of such interests at the time the option is exercised or (ii) 7% of the investors' contributed capital balance at the time the option is exercisable.

(3) Purchase price is equal to the greater of (i) the fair market value of such interests at the time the option is exercised or (ii) 5% of the investors' contributed capital balance at the time the option is exercisable. The call options are exercisable beginning on the date that specified conditions are met for each respective fund. These dates are estimates, which are subject to change based on the final funding date.

(4) Purchase price is the lessor of fair market value at the time the option is exercised and a specified amount, ranging from \$659 to \$917.

(5) Purchase price is the sum of (i) the fair market value at the time the option is exercised, and (ii) the closing costs incurred by the investor in connection with the exercise of the put option.

(6) Purchase price is the lessor of fair market value at the time the option is exercised and the sum of (i) 5% of the investors' contributed capital balance at the time the option is exercisable, and (ii) the fair market value of any unpaid tax law change losses incurred by the investor in connection with the exercise of the put option. These dates are estimates, which are subject to change based on the final funding date.

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The call options are exercisable beginning on the date that specified conditions are met for each respective fund. The call option period for one of our investment funds began in March 2021. In September 2021 we finalized our purchase of the investor's membership interest for \$1,000 in cash and reclassified the remaining redeemable non-controlling interest balance to paid-in capital to reflect the additional contribution from us to our wholly-owned subsidiary.

Because the put options represent redemption features that are not solely within our control, the non-controlling interests in these funds are presented outside of permanent equity. Redeemable non-controlling interests are reported using the greater of their carrying value (which is impacted by attribution under the HLBV method) or their estimated redemption value at each reporting period. At both December 31, 2021 and 2020, redeemable non-controlling interests were reported in the accompanying consolidated balance sheets at their carrying values, as the carrying value at each reporting period was greater than the estimated redemption value.

### **13. EQUITY AND EARNINGS PER SHARE**

#### ***Equity Offering***

On March 9, 2021, we closed on an underwritten public offering of 2,500 shares of our Class A common stock at a public offering price of \$44.00 per share. Net proceeds from the offering were \$104,326, after deducting offering costs of \$5,674. On March 15, 2021, we closed on the underwriters' option to purchase 375 additional shares of Class A common stock from us, resulting in net proceeds of \$15,758 after deducting offering costs of \$742. We used \$80,000 of the net proceeds to repay in full the outstanding U.S. dollar balance under our senior secured revolving credit facility and used the remaining proceeds for general corporate purposes.

In the offering, selling shareholders sold 805 shares of our Class A Common Stock at a public offering price of \$44.00 per share, less the underwriting discount. We did not receive any proceeds from the sale of the shares by the selling stockholders.

#### ***Common and Preferred Stock***

The rights of the holders of our Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of our Class A common stock is entitled to one vote per share and is not convertible into any other shares of our capital stock. Each share of our Class B common stock is entitled to five votes per share, is convertible at any time into one share of Class A common stock at the option of the holder of such share and will automatically convert into one share of Class A common stock upon the occurrence of certain specified events, including a transfer of such shares (other than to such holder's family members, descendants or certain affiliated persons or entities). Our Board of Directors is authorized to fix the rights and terms for any series of preferred stock without additional shareholder approval.

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**Earnings Per Share**

The following is a reconciliation of the numerator and denominator for the computation of basic and diluted earnings per share:

	Year Ended December 31,		
	2021	2020	2019
<b>Numerator:</b>			
Net income attributable to common shareholders	\$ 70,458	\$ 54,052	\$ 44,436
Adjustment for accretion of tax equity financing fees	(116)	(121)	—
Income attributable to common shareholders	<u>\$ 70,342</u>	<u>\$ 53,931</u>	<u>\$ 44,436</u>
<b>Denominator:</b>			
Basic weighted-average shares outstanding	50,855	47,702	46,586
Effect of dilutive securities:			
Stock options	1,413	1,304	1,188
Diluted weighted-average shares outstanding	<u>52,268</u>	<u>49,006</u>	<u>47,774</u>
Net income per share attributable to common shareholders:			
Basic	<u>\$ 1.38</u>	<u>\$ 1.13</u>	<u>\$ 0.95</u>
Diluted	<u>\$ 1.35</u>	<u>\$ 1.10</u>	<u>\$ 0.93</u>
Potentially dilutive shares <sup>(1)</sup>	1,443	1,199	806

(1) Potentially dilutive shares attributable to stock options were excluded from the computation of diluted earnings per share as the effect would have been anti-dilutive.

**14. STOCK-BASED COMPENSATION AND OTHER EMPLOYEE BENEFITS**

Our 2010 Stock Incentive Plan (the “2010 Plan”) was adopted by our Board of Directors in May 2010 and approved by our stockholders in June 2010. The 2010 Plan provides for the grant of incentive stock options, non-statutory stock options, performance-based stock options, restricted stock awards and other stock-based awards. Upon its effectiveness, 10,000 shares of our Class A common stock were reserved for issuance under the 2010 Plan. As of December 31, 2020, there were no longer shares available for grant under the 2010 Plan.

Our 2020 Stock Incentive Plan (the “2020 Plan”), was adopted by our Board of Directors in February 2020 and approved by our stockholders in May 2020. The 2020 Plan provides for the grant of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards and other stock-based awards. Upon its effectiveness, 5,000 shares of our Class A common stock were reserved for issuance under the 2020 Plan. As of December 31, 2021, we granted options to purchase 1,552 shares of Class A common stock, of which 60 shares were forfeited or expired, leaving 3,508 shares available for grant under the 2020 Plan.

**Stock Options**

We did not grant awards to individuals who were not either an employee or director of ours during the years ended December 31, 2021, 2020, and 2019.



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The following table summarizes the collective activity under the plans:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at December 31, 2018	3,305	\$ 8.050		
Granted	1,330	14.026		
Exercised	(916)	7.362		
Forfeited	(210)	8.070		
Expired	(4)	9.904		
Outstanding at December 31, 2019	3,505	10.524		
Granted	406	25.668		
Exercised	(946)	9.491		
Forfeited	(49)	13.251		
Expired	—	—		
Outstanding at December 31, 2020	2,916	12.919		
Granted	1,342	58.826		
Exercised	(588)	9.482		
Forfeited	(134)	28.261		
Expired	(4)	22.530		
Outstanding at December 31, 2021	3,532	\$ 30.336	7.6 years	\$ 183,737
Options exercisable at December 31, 2021	693	\$ 9.148	4.6 years	\$ 50,094
Expected to vest at December 31, 2021	2,839	\$ 35.508	8.4 years	\$ 133,643

The following table sets forth additional disclosures about our plans:

	Year Ended December 31,		
	2021	2020	2019
Aggregate intrinsic value of options exercised	\$ 33,494	\$ 19,762	\$ 7,154
Cash received from stock option exercises	\$ 5,563	\$ 8,995	\$ 6,742
Weighted-average fair value of stock options granted	\$ 28.94	\$ 11.52	\$ 6.33
Stock-based compensation expense <sup>(1)</sup>	\$ 8,716	\$ 1,933	\$ 1,620

(1) Included in selling, general, and administrative expenses in the accompanying consolidated statements of income and includes expense in connection with our ESPP.

Under the terms of our 2010 Plan and 2020 Plan, all options expire if not exercised within ten years after the grant date. During 2011, we began awarding options which typically vest over a five-year period on an annual ratable basis. From time to time, we award options providing for vesting over three years, with one-third vesting on each of the first three anniversaries of the grant date. During the year ended December 31, 2019, we granted 1,000 common stock options to certain employees and directors under our 2010 Stock Incentive Plan, which have a contractual life of ten years and vest based upon the achievement of specific performance goals over three years. If the employee ceases to be employed by us for any reason before vested options have been exercised, the employee has 90 days to exercise options that have vested as of the date of such employee's termination, or they are forfeited.

During August and September 2019, our Chief Executive Officer ("CEO"), who is also a significant shareholder of Ameresco, exercised a nonqualified option to purchase 600 shares of our Class A common stock. In November 2019, we paid the required withholding taxes of \$2,292 to the Internal Revenue Service on the compensation element resulting from such exercise without a corresponding withholding from the CEO due to an administrative oversight. Accordingly, we recorded a reimbursement due from the CEO as of December 31, 2019 of \$2,292, which was included in prepaid expenses and other current assets in the accompanying consolidated balance sheet and was repaid in full in January 2020.

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We use the Black-Scholes option pricing model to determine the weighted-average fair value of options granted. We recognize the compensation cost of stock-based awards on a straight-line basis over the requisite service period of the award.

The determination of the fair value of stock-based payment awards utilizing the Black-Scholes model is affected by the stock price and a number of assumptions, including expected volatility, expected life, risk-free interest rate and expected dividends.

The following table sets forth the significant assumptions used in the model:

	Year Ended December 31,		
	2021	2020	2019
Expected dividend yield	—%	—%	—%
Risk-free interest rate	0.92% -1.46%	0.35%-0.76%	1.60%-2.39%
Expected volatility	48%-50%	43%-48%	43%-44%
Expected life	6.5 years	6.5 years	6.5 years

We will continue to use judgment in evaluating the expected term and volatility related to stock-based compensation on a prospective basis and incorporate these factors into the Black-Scholes pricing model. We record forfeitures as they occur. Higher volatility and longer expected lives result in an increase to stock-based compensation expense determined at the date of grant.

As of December 31, 2021, there was approximately \$41,074 of unrecognized compensation expense related to non-vested stock option awards that is expected to be recognized over a weighted-average period of 2.8 years.

#### ***Employee Stock Purchase Plan***

Our 2017 Employee Stock Purchase Plan permits eligible employees to purchase up to an aggregate of 200 shares of the Company's Class A common stock. In May 2020, we amended our ESPP, which permits eligible employees to purchase up to an aggregate of 350 shares of our Class A common stock. This plan commenced December 1, 2017 and was subsequently amended in August 2018. The ESPP allows participants to purchase shares of common stock at a 5% discount from the fair market value of the stock as determined on specific dates at six-month intervals.

During the years ended December 31, 2021 and 2020, we issued 29 and 49 shares, respectively, under the ESPP. As of December 31, 2021 and 2020, the amount that had been withheld from employees for future purchases under the ESPP was \$164 and \$99, respectively.

#### ***Other Employee Benefits***

We maintain a qualified 401(k) plan covering eligible U.S. employees who have completed the minimum service requirement, as defined by the plans. The plans require us to contribute 100% of the first six percent of base compensation that a participant contributes to the plans.

In 2016, we established a Group Personal Pension Plan for employees in the U.K., for eligible employees who may contribute a portion of their compensation, subject to their age and other limitations established by HM Revenue & Customs. The plan requires us to contribute 100% of the first six percent of base compensation that a participant contributes to the plans.

We also have a Registered Retirement Savings Plan for employees in Canada, for eligible employees who may contribute a portion of their compensation. The plan requires us to contribute 100% of the first six percent of base compensation that a participant contributes to the plans.

The following table sets forth our matching contributions under the plans:

	Year Ended December 31,		
	2021	2020	2019
401(k) plan	\$ 6,189	\$ 5,650	\$ 5,452
Group Personal Pension Plan	252	202	190
Registered Retirement Savings Plan	405	348	356
Total matching contributions	<u>\$ 6,846</u>	<u>\$ 6,200</u>	<u>\$ 5,998</u>

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**15. COMMITMENTS AND CONTINGENCIES**

From time to time, we issue letters of credit and performance bonds with our third-party lenders, to provide collateral.

***Legal Proceedings***

On November 6, 2017, we were served with a complaint filed by a customer against nine contractors, including us, claiming both physical damages to the customer's tangible property and damages caused by various alleged defects in the design of the project through negligent acts and/or omissions, breaches of contract and breaches of the "implied warranty of good and workmanlike manner." A mediation was held in January 2021, at which time we made an offer to settle the case, in an amount which we believe would be covered by our insurance. The trial has been set for April 2022 and both parties are in the process of discovery. Although the customer rejected our offer, both parties have agreed to continue to negotiate a settlement. We believe that it is probable that a loss will be incurred and, therefore, have accrued a reasonable estimate of the loss, which is included in accrued expenses and other current liabilities in our consolidated balance sheets as of December 31, 2021 and 2020. In addition, we have accrued a loss recovery from insurance proceeds as we believe the receipt of such proceeds is probable. The loss recovery accrual is included in prepaid expenses and other current assets in our consolidated balance sheets as of December 31, 2021 and 2020. The estimated loss and the loss recovery were included in selling, general, and administrative expenses in our consolidated statements of income for the year ended December 31, 2020 and there were no changes to our estimate during the year ended December 31, 2021.

We are involved in a variety of other claims and other legal proceedings generally incidental to our normal business activities. While the outcome of any of these proceedings cannot be accurately predicted, we do not believe the ultimate resolution of any of these existing matters would have a material adverse effect on our financial condition or results of operations.

***Commitments as a Result of Acquisitions***

In August 2018, we completed an acquisition of Chelsea Group Limited which provided for a revenue earn-out contingent upon the acquired business meeting certain cumulative revenue targets over five years from the acquisition date. We evaluated financial forecasts of the acquired business and concluded that the fair value of this earn-out was approximately \$555 upon acquisition. The fair value was subsequently increased to \$678 as of December 31, 2020, remained consistent as of December 31, 2021, and is included in other liabilities on the consolidated balance sheets. The contingent consideration will be paid annually in May, if any of the cumulative revenue targets are achieved. No payments have been made to date. The fair value of the earn-out will be re-evaluated at each reporting period and adjustments will be recorded as needed.

In April 2020, we completed an acquisition of an energy project which provided for a profit earn-out contingent upon the acquired project meeting certain financial return targets for a minimum of five years, and will continue annually thereafter, unless termination conditions are met. We evaluated the financial forecasts of the acquired asset and concluded that fair value of the earn-out was nil at completion of the acquisition. The contingent consideration will be re-evaluated at each reporting period and will be paid annually beginning in 2021, if the financial return targets are achieved. No financial targets were achieved during the year ended December 31, 2021, and no payments were made.

In December 2021, we completed our acquisition of Plug Smart which provided for an earn-out based on future EBITDA targets beginning with EBITDA performance for the month of December 2021 and each fiscal year thereafter, over a five-year period through December 31, 2026. The maximum cumulative earn-out is \$5,000 and we evaluated financial forecasts of the acquired business and concluded that the fair value of this earn-out was approximately \$2,160 upon acquisition and remained consistent as of December 31, 2021. The contingent consideration is included in other liabilities on the consolidated balance sheets.

See Notes 4 and 18 for additional information.

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## 16. GEOGRAPHIC INFORMATION

The following table presents our long-lived assets related to our operations by geographic area:

	As of December 31,	
	2021	2020
<b>Long-lived Assets</b>		
United States	\$ 839,231	\$ 706,177
Canada	2,453	29,768
Other	27,964	2,415
Total long-lived assets	<u>\$ 869,648</u>	<u>\$ 738,360</u>

We attribute revenues to customers based on the location of the customer. The following table presents revenues by geographic region:

	Year Ended December 31,		
	2021	2020	2019
<b>Revenues</b>			
United States	\$ 1,126,141	\$ 955,436	\$ 815,405
Canada	45,782	45,089	35,031
Other	43,774	31,750	16,497
Total revenues	<u>\$ 1,215,697</u>	<u>\$ 1,032,275</u>	<u>\$ 866,933</u>

## 17. OTHER EXPENSES, NET

The following table presents the components of other expenses, net:

	Year Ended December 31,		
	2021	2020	2019
Loss (gain) on derivatives	\$ 240	\$ (705)	\$ (1,068)
Interest expense, net of interest income	14,361	15,422	13,841
Amortization of debt discount and debt issuance costs	2,849	2,686	2,229
Foreign currency transaction loss (gain)	852	(481)	59
Government incentives	(1,012)	(1,851)	—
Other expenses, net	<u>\$ 17,290</u>	<u>\$ 15,071</u>	<u>\$ 15,061</u>

Estimated amortization expense for existing debt discount and debt issuance costs for the next five succeeding fiscal years is as follows:

	Estimated Amortization
2022	\$ 2,732
2023	\$ 2,126
2024	\$ 1,807
2025	\$ 1,396
2026	\$ 1,067

## 18. FAIR VALUE MEASUREMENT

We recognize our financial assets and liabilities at fair value on a recurring basis (at least annually). Fair value is defined as the price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market

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for the asset or liability in an orderly transaction between market participants on the measurement date. Three levels of inputs that may be used to measure fair value are as follows:

*Level 1:* Inputs are based on unadjusted quoted prices for identical instruments traded in active markets.

*Level 2:* Inputs are based on quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3:* Inputs are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability. The fair values are therefore determined using model-based techniques that include option pricing models, discounted cash flow models, and similar techniques.

The following table presents the input level used to determine the fair values of our financial instruments measured at fair value on a recurring basis:

		Fair Value as of December 31,	
	Level	2021	2020
<b>Assets</b>			
Interest rate swap instruments	2	\$ 919	\$ 2
Commodity swap instruments	2	—	363
Total assets		<u>\$ 919</u>	<u>\$ 365</u>
<b>Liabilities</b>			
Interest rate swap instruments	2	\$ 6,316	\$ 10,073
Commodity swap instruments	2	1,962	—
Make-whole provisions	2	4,800	412
Contingent consideration	3	2,838	678
Total liabilities		<u>\$ 15,916</u>	<u>\$ 11,163</u>

The fair value of our interest rate swaps was determined using cash flow analysis on the expected cash flow of the contract in combination with observable market-based inputs, including interest rate curves and implied volatility. As part of this valuation, we considered the credit ratings of the counterparties to the interest rate swaps to determine if a credit risk adjustment was required.

The fair value of our commodity swaps was determined using a cash flow analysis on the expected cash flow of the contract in combination with observable forward price inputs obtained from a third-party pricing source. As part of this valuation, we considered the credit ratings of the counterparties to the commodity swaps to determine if a credit risk adjustment was required.

The fair value of our make-whole provisions was determined by comparing them against the rates of similar debt instruments under similar terms without a make-whole provision obtained from various highly rated third-party pricing sources.

The fair value of our contingent consideration liabilities was determined by evaluating the acquired asset's future financial forecasts and evaluating which, if any, of the cumulative revenue targets, financial metrics and/or milestones are likely to be met. We classified contingent consideration related to certain acquisitions within level 3 of the fair value hierarchy because the fair value is derived using significant unobservable inputs, which include discount rates, probability-weighted cash flows, and volatility. We determined the fair value of our contingent consideration obligations based on a probability-weighted income approach derived from financial performance estimates and probability assessments of the attainment of certain targets for some acquisitions. For other acquisitions, we derived the fair value of contingent consideration using a Monte Carlo simulation in an option pricing framework. We established discount rates utilized in our valuation models based on the cost to borrow that would be required by a market participant for similar instruments. In determining the probability of attaining certain technical, financial and operational targets, we utilized data regarding similar milestone events from our own experience, while considering the inherent difficulties and uncertainties in developing a product. On a quarterly basis, we reassess the probability factors associated with the financial, operational, and technical targets for our contingent consideration obligations. Significant judgment is employed in determining the appropriateness of these assumptions as of the acquisition date and for each subsequent period.

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We derived the fair value of the contingent consideration of \$2,160 from the acquisition of Plug Smart in December 2021 using a Monte Carlo simulated model. The key assumptions used in the model include two scenarios of EBITDA projections, a base case and a higher case, a risk-adjusted discount rate of 14.2%, and estimated EBITDA volatility of 80.0%.

As of December 31, 2021, the key assumptions used in the model related to the contingent consideration from the acquisition of certain assets of Chelsea Group Limited include a discount rate of 18% for purposes of discounting the low and base case scenarios associated with achievement of the financial based earn-out. The probabilities assigned to these scenarios were 50% for both the low and base case scenarios. An increase or decrease in the probability of achievement of any scenario could result in a significant increase or decrease to the estimated fair value of the contingent consideration liability. The fair value of the contingent consideration from this acquisition was \$678 as of December 31, 2020 and remained consistent as of December 31, 2021.

The following table sets forth a summary of changes in the fair value of contingent consideration liability classified as level 3:

	Year Ended December 31,	
	2021	2020
Contingent consideration liability balance at the beginning of year	\$ 678	\$ 678
Contingent consideration issued in connection with acquisitions	2,160	—
Contingent consideration liability balance at the end of year	<u>\$ 2,838</u>	<u>\$ 678</u>

The fair value of financial instruments is determined by reference to observable market data and other valuation techniques, as appropriate. Long-term debt is the only category of financial instruments where the difference between fair value and recorded book value is notable. At December 31, 2021 and 2020, the fair value of our long-term debt was estimated using discounted cash flows analysis, based on our current incremental borrowing rates for similar types of borrowing arrangements which are considered to be level two inputs. There have been no transfers in or out of level two or three for the years ended December 31, 2021 and 2020.

The following table sets forth the fair value and the carrying value of our long-term debt, excluding financing leases:

	December 31, 2021		December 31, 2020	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Long-term debt value (level 2)	\$ 442,429	\$ 436,892	\$ 363,460	\$ 357,536

We are also required to periodically measure certain other assets at fair value on a nonrecurring basis, including long-lived assets, goodwill, and other intangible assets. We calculated the fair value used in our annual goodwill impairment analysis utilizing a discounted cash flow analysis and determined that the inputs used were level 3 inputs. Other than intangible assets acquired from the Plug Smart acquisition, as noted in Note 4, there were no other assets recorded at fair value on a non-recurring basis as of December 31, 2021 or 2020.

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**19. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES**

The following table presents information about the fair value amounts of our derivative instruments:

	Balance Sheet Location	Derivatives as of December 31,	
		2021	2020
		Fair Value	Fair Value
<b>Derivatives Designated as Hedging Instruments</b>			
Interest rate swap contracts	Other assets	\$ —	\$ —
Interest rate swap contracts	Other liabilities	\$ 6,316	\$ 9,994
<b>Derivatives Not Designated as Hedging Instruments</b>			
Interest rate swap contracts	Other assets	\$ 919	\$ 2
Commodity swap contracts	Other assets	\$ —	\$ 363
Interest rate swap contracts	Other liabilities	\$ —	\$ 79
Commodity swap contracts	Other liabilities	\$ 1,962	\$ —
Make-whole provisions	Other liabilities	\$ 4,800	\$ 412

As of December 31, 2021, all but four of our freestanding derivatives were designated as hedging instruments and as of December 31, 2020, all but five of our derivatives were designated as hedging instruments.

The following tables present information about the effects of our derivative instruments on the consolidated statements of income and consolidated statements of comprehensive income:

	Location of (Gain) Loss Recognized in Net Income	Amount of (Gain) Loss Recognized in Net Income for the Year Ended December 31,		
		2021	2020	2019
<b>Derivatives Designated as Hedging Instruments</b>				
Interest rate swap contracts	Other expenses, net	\$ 2,086	\$ 1,455	\$ 71
<b>Derivatives Not Designated as Hedging Instruments</b>				
Interest rate swap contracts	Other expenses, net	\$ (996)	\$ 51	\$ 56
Commodity swap contracts	Other expenses, net	\$ 2,325	\$ (165)	\$ (234)
Make-whole provisions	Other expenses, net	\$ (1,089)	\$ (591)	\$ (890)

The following table presents the changes in AOCI, net of taxes, from our hedging instruments:

	Year Ended December 31, 2021
<b>Derivatives Designated as Hedging Instruments:</b>	
Accumulated loss in AOCI at the beginning of the year	\$ (7,526)
Unrealized gain recognized in AOCI	707
Loss reclassified from AOCI to other expenses, net	2,086
Net gain on derivatives	2,793
Accumulated loss in AOCI at the end of the year	\$ (4,733)

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The following tables present all of our active derivative instruments as of December 31, 2021:

Active Interest Rate Swaps	Effective Date	Expiration Date	Initial Notional Amount (\$)	Status
11-Year, 5.77% Fixed	October 2018	October 2029	\$ 9,200	Designated
15-Year, 5.24% Fixed	June 2018	June 2033	\$ 10,000	Designated
10-Year, 4.74% Fixed	June 2017	December 2027	\$ 14,100	Designated
15-Year, 3.26% Fixed	February 2023	December 2038	\$ 14,084	Designated
7-Year, 2.19% Fixed	February 2016	February 2023	\$ 20,746	Designated
8-Year, 3.70% Fixed	March 2020	June 2028	\$ 14,643	Designated
8-Year, 3.70% Fixed	March 2020	June 2028	\$ 10,734	Designated
13-Year, 0.93% Fixed	May 2020	March 2033	\$ 9,505	Not Designated
13-Year, 0.93% Fixed	May 2020	March 2033	\$ 6,968	Not Designated
15.5-Year, 5.40% Fixed	September 2008	March 2024	\$ 13,081	Designated
2.75-Year, 0.41% Fixed	December 2020	September 2023	\$ 26,250	Not Designated

Active Commodity Swaps	Effective Date	Expiration Date	Initial Notional Amount (Volume)	Status
3.5-Year, \$2.65 MMBtu Fixed	December 2020	June 2024	3,296,160	Not Designated

Other Derivatives	Classification	Effective Date	Expiration Date	Fair Value (\$)
Make-whole provisions	Liability	June/August 2018	December 2038	\$ 370
Make-whole provisions	Liability	August 2016	April 2031	\$ 60
Make-whole provisions	Liability	April 2017	February 2034	\$ 67
Make-whole provisions	Liability	November 2020	December 2027	\$ 59
Make-whole provisions	Liability	October 2011	May 2028	\$ 9
Make-whole provisions	Liability	May 2021	April 2045	\$ 283
Make-whole provisions	Liability	July 2021	March 2046	\$ 3,952

## 20. BUSINESS SEGMENT INFORMATION

Our reportable segments for the year ended December 31, 2021 were U.S. Regions, U.S. Federal, Canada, Non-Solar Distributed Generation (“Non-Solar DG”), and All Other. On January 1, 2021, we changed the structure of our internal organization, and our U.S. Regions segment now includes our U.S.-based enterprise energy management services previously included in our “All Other” segment. As a result, previously reported amounts have been reclassified for comparative purposes.

Our U.S. Regions, U.S. Federal and Canada segments offer energy efficiency products and services which include the design, engineering, and installation of equipment and other measures to improve the efficiency and control the operation of a facility’s energy infrastructure, renewable energy solutions, and services which include the construction of small-scale plants that Ameresco owns or develops for customers that produce electricity, gas, heat, or cooling from renewable sources of energy and O&M services.

Our Non-Solar DG segment sells electricity, processed renewable gas fuel, heat or cooling, produced from renewable sources of energy, other than solar, and generated by small-scale plants that we own and O&M services for customer owned small-scale plants. Our U.S. Regions segment also includes certain small-scale solar grid-tie plants developed for customers. The “All Other” category offers enterprise energy management services, consulting services, and the sale of solar PV energy products and systems which we refer to as integrated-PV. These segments do not include results of other activities, such as corporate operating expenses not specifically allocated to the segments. Certain reportable segments are an aggregation of operating segments.

For the years ended December 31, 2021, 2020, and 2019 more than 67% of our revenues have been derived from federal, state, provincial, or local government entities, including public housing authorities and public universities. The U.S. federal government, which is considered a single customer for reporting purposes, constituted 32.3%, 36.6%, and 33.2% of our



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consolidated revenues for the years ended December 31, 2021, 2020, and 2019, respectively. Revenues from the U.S. federal government are included in our U.S. Federal segment. Other than the U.S. federal government, one customer represented 10.2% of our revenues during the year ended December 31, 2021 and revenues from this customer is included in our U.S. Regions segment.

The reports of our chief operating decision maker do not include assets at the operating segment level.

The table below presents our business segment information and reconciliation to our consolidated financial statements:

	U.S. Regions	U.S. Federal	Canada	Non-Solar DG	All Other	Total Consolidated
<b>2021</b>						
Revenues	\$ 528,293	\$ 392,948	\$ 49,457	\$ 137,243	\$ 107,756	\$ 1,215,697
(Gain) loss on derivatives	(1,017)	—	(73)	1,330	—	240
Net interest expense	6,255	1,294	879	5,793	327	14,548
Depreciation and intangible asset amortization	16,057	4,666	1,872	21,080	1,081	44,756
Unallocated corporate activity	—	—	—	—	—	(48,417)
Income before taxes, excluding unallocated corporate activity	40,051	52,386	1,584	26,345	6,195	126,561
<b>2020</b>						
Revenues	404,152	377,882	47,797	106,417	96,027	1,032,275
(Gain) loss on derivatives	(744)	—	153	(114)	—	(705)
Net interest expense	6,392	1,694	699	4,467	95	13,347
Depreciation and intangible asset amortization	12,627	3,945	1,580	20,717	1,268	40,137
Unallocated corporate activity	—	—	—	—	—	(40,188)
Income before taxes, excluding unallocated corporate activity	28,339	44,560	2,560	13,040	8,117	96,616
<b>2019</b>						
Revenues	369,248	287,426	37,919	84,683	87,657	866,933
Gain on derivatives	(890)	—	—	(178)	—	(1,068)
Net interest expense	6,582	623	691	5,338	(68)	13,166
Depreciation and intangible asset amortization	10,318	3,427	1,397	21,359	1,208	37,709
Unallocated corporate activity	—	—	—	—	—	(34,188)
Income before taxes, excluding unallocated corporate activity	18,536	40,553	562	3,813	7,277	70,741

See Note 3 for additional information about our revenues by product line.

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A. Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our principal executive officer and principal financial officer, 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 the end of the period covered by this annual report, or the evaluation date. Disclosure controls and procedures are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our management, after evaluating the effectiveness of our disclosure controls and procedures as of the evaluation date, concluded that as of the evaluation date, our disclosure controls and procedures were effective at the reasonable assurance level.

#### ***Management's Annual Report on Internal Control over Financial Reporting***

Our management, with the participation of our principal executive officer and principal financial officer, is responsible for establishing and maintaining adequate internal control over our financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act as a process designed by, or under the supervision of, a company's principal executive and principal financial officers and effected by our board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets,
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors, and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework (2013).

Based on this assessment and those criteria, our management concluded that, as of December 31, 2021, our internal control over financial reporting was effective.

The effectiveness of our internal control over financial reporting as of December 31, 2021 has been audited by RSM US LLP, an independent registered public accounting firm, as stated in their report, which appears under Item 8.

#### ***Changes in Internal Control over Financial Reporting***

There were no changes in our internal control over financial reporting, other than those stated above, during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Item 9B. Other Information**

None.

## PART III

### Item 10. Directors, Executive Officers, and Corporate Governance

The information concerning our executive officers is set forth under the heading “Executive Officers” at the end of Item 1 in Part I of this report.

We have adopted a code of business conduct and ethics that is applicable to all of our employees, officers and directors including our chief executive officer and senior financial officers, which is available under the Investor Relations section of our website located at [www.ameresco.com](http://www.ameresco.com). In addition, we intend to post on our website all disclosures that are required by law or applicable NYSE listing standards concerning any amendments to, or waivers from, any provision of the code. We include our website address in this report only as an inactive textual reference and do not intend it to be an active link to our website. None of the material on our website is part of this Form 10-K.

The response to the remainder of this item is incorporated by reference from the discussion responsive thereto in the sections titled “Corporate Governance” and “Stock Ownership - Section 16(a) Beneficial Ownership Reporting Compliance” contained in the definitive proxy statement for our 2022 annual meeting of stockholders.

### Item 11. Executive Compensation

The response to this item is incorporated by reference from the discussion responsive thereto in the sections titled “Executive Compensation and Related Information” and “Corporate Governance” contained in the definitive proxy statement for our 2022 annual meeting of stockholders.

### Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

#### Equity Compensation Plan Information

The following table provides information about the securities authorized for issuance under our equity compensation plans as of December 31, 2021:

**Equity Compensation Plan Information**

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders <sup>(1) (2)</sup>	3,532,000	\$ 30.336	3,680,310
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>3,532,000</b>	<b>\$ 30.336</b>	<b>3,680,310</b>

(1) Consists of our 2010 stock incentive plan, 2020 stock incentive plan and our 2017 employee stock purchase plan.

(2) Consists of 3,508,500 shares of our class A common stock remaining available for future issuance are under our 2020 stock incentive plan and 171,810 shares of our class A common stock remaining available for future issuance under our 2017 employee stock purchase plan, including shares subject to purchase during the current purchase period. In addition to being available for future issuance upon exercise of options that may be granted after December 31, 2021, shares under our 2010 and 2020 stock incentive plans may instead be issued in the form of stock appreciation rights, restricted stock, restricted stock units and other stock-based awards.

The response to the remainder of this item is incorporated by reference from the discussion responsive thereto in the section titled “Stock Ownership” contained in the definitive proxy statement for our 2022 annual meeting of stockholders.

### Item 13. Certain Relationships and Related Transactions, and Director Independence

The response to this item is incorporated by reference from the discussion responsive thereto in the sections titled “Certain Relationships and Related Person Transactions” and “Corporate Governance” contained in the definitive proxy statement for our 2022 annual meeting of stockholders.

### Item 14. Principal Accountant Fees and Services

The response to this item is incorporated by reference from the discussion responsive thereto in the section titled “Proposal 2 - Ratification of the Selection of our Independent Registered Public Accounting Firm” contained in the definitive proxy statement for our 2022 annual meeting of stockholders.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules

	Page
(a)(1) <b>Financial Statements:</b> See “Index to Consolidated Financial Statements”	<a href="#">41</a>
(a)(2) <b>Financial Statement Schedules:</b> None	
Schedules are omitted because they are not applicable, or are not required, or because the information is included in the consolidated financial statements and notes thereto.	
(a)(3) <b>Exhibits:</b>	

Exhibit Number	Exhibit Description
3.1	<a href="#">Restated Certificate of Incorporation of Ameresco, Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K dated July 27, 2010 and filed with the Commission on July 30, 2010 (file no. 001-34811) and incorporated herein by reference.</a>
3.2	<a href="#">Amended and Restated By-Laws of Ameresco, Inc. (as further amended May 22, 2014). Filed as Exhibit 3.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2014 and filed with the Commission on July 31, 2014 (file no. 001-34811) and incorporated herein by reference. Filed as Exhibit 3.1 to our Registration Statement on Form S-1 (pre-effective amendment no. 4; reg. no. 333-165821) and incorporated herein by reference.</a>
4.1	<a href="#">Specimen Certificate evidencing shares of Class A common stock. Filed as Exhibit 4.1 to our Registration Statement on Form S-1 (pre-effective amendment no. 4; reg. no. 333-165821) and incorporated herein by reference.</a>
4.16	<a href="#">Description of Ameresco, Inc. Securities Registered under Section 12 of the Exchange Act. Filed as Exhibit 4.16 to our Annual Report on Form 10-K for the year ended December 31, 2019 and filed with the Commission on March 4, 2020 (file no. 001-34811) and incorporated herein by reference.</a>
10.1.1	<a href="#">Fourth Amended and Restated Credit and Security Agreement dated as of June 28, 2019 among Ameresco, Inc., certain guarantors party thereto, certain lenders party thereto from time to time and Bank of America, N.A. as Administrative Agent. Filed as Exhibit 10.1 to our Current Report on Form 8-k filed with the Commission on July 1, 2019 (file no. 001-34811) and incorporated herein by reference.</a>
10.1.2	<a href="#">Amendment No. 1 to Fourth Amended and Restated Credit and Security Agreement dated March 31, 2020 among Ameresco, Inc., certain guarantors party thereto, certain lenders party thereto from time to time and Bank of America, N.A. as Administrative Agent. Filed as Exhibit 10.1.2 to our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2020 and incorporated herein by reference.</a>
10.3.1+	<a href="#">Ameresco, Inc. 2010 Stock Incentive Plan. Filed as Exhibit 10.10 to our Registration Statement on Form S-1 (pre-effective amendment no. 4; reg. no. 333-165821) and incorporated herein by reference.</a>
10.3.2+	<a href="#">Form of Incentive Stock Option Agreement granted under Ameresco, Inc. 2010 Stock Incentive Plan. Filed as Exhibit 10.11 to our Registration Statement on Form S-1 (pre-effective amendment no. 4; reg. no. 333-165821) and incorporated herein by reference.</a>

Exhibit Number	Description
10.3.3+	<a href="#">Form of Director Stock Option Agreement granted under Ameresco, Inc. 2010 Stock Incentive Plan. Filed as Exhibit 10.12 to our Registration Statement on Form S-1 (pre-effective amendment no. 4; reg. no. 333-165821) and incorporated herein by reference.</a>
10.4.1+	<a href="#">Ameresco, Inc. 2020 Stock Incentive Plan. Filed as Exhibit 99.2 Ameresco, Inc. 2020 Stock Incentive Plan. Filed as Exhibit 99.2 to our Registration Statement on Form S-8 (reg. no. 333-238792) and incorporated herein by reference.</a>
10.4.2+	<a href="#">Form of Incentive Stock Option Agreement granted under Ameresco, Inc. 2020 Stock Incentive Plan. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2020.</a>
10.4.3+	<a href="#">Form of Director Stock Option Agreement granted under Ameresco, Inc. 2020 Stock Incentive Plan. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2020.</a>
10.5.1+	<a href="#">Form of Indemnification Agreement entered into between Ameresco, Inc. and each non-employee director. Filed as Exhibit 10.6.1 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 and filed with the Commission on March 31, 2011 (file no. 001-34811) and incorporated herein by reference.</a>
10.5.2+	<a href="#">Form of Indemnification Agreement entered into between Ameresco, Inc. and each employee director. Filed as Exhibit 10.6.2 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 and filed with the Commission on March 31, 2011 (file no. 001-34811) and incorporated herein by reference.</a>
10.6+	<a href="#">Ameresco, Inc. 2017 Employee Stock Purchase Plan, as amended. Filed as Exhibit 10.8 to our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2020 and filed with the Commission on August 4, 2020 (file no. 001-34811) and incorporated herein by reference.</a>
10.7+	<a href="#">Ameresco, Inc. Executive Management Team Additional Annual Incentive Performance Program. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2019 and filed with the Commission on August 8, 2019 (file no. 001-34811) and incorporated herein by reference.</a>
10.8+	<a href="#">Executive Officer Stock Ownership Guidelines. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2020 filed with the Commission on November 3, 2020 (file no. 001-34811) and incorporated herein by reference.</a>
10.9+	<a href="#">Offer Letter between the Company and Doran Hole dated June 26, 2019. Filed as Exhibit 10.1 to our Current Report on Form 8-k filed with the Commission on July 1, 2019 (file no. 001-34811) and incorporated herein by reference.</a>
10.10* #	<a href="#">Turnkey Engineering, Procurement, Construction and Maintenance Agreement dated as of October 21, 2021, by and between Ameresco, Inc. and Southern California Edison Company.</a>
21.1*	<a href="#">Subsidiaries of Ameresco, Inc.</a>
23.1*	<a href="#">Consent of RSM US LLP.</a>
31.1*	<a href="#">Principal Executive Officer Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Principal Financial Officer Certification required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1**	<a href="#">Certifications pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101	The following consolidated financial statements from Ameresco, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2021, formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets (ii) Consolidated Statements of Income, (iii) Consolidated Statements of Comprehensive Income, (iv) Consolidated Statement of Changes in Redeemable Non-Controlling Interests and Stockholders' Equity, (v) Consolidated Statements of Cash Flows, and (vi) Notes to Consolidated Financial Statements.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)
*	Filed herewith.
**	Furnished herewith.
+	Identifies a management contract or compensatory plan or arrangement in which an executive officer or director of Ameresco participates.
#	Certain portions of this exhibit are considered confidential and have been omitted as permitted under SEC rules and regulations. Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K.

**SIGNATURE**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AMERESCO, INC.

Date: March 1, 2022

By: /s/ George P. Sakellaris

George P. Sakellaris

President and Chief Executive Officer

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ George P. Sakellaris George P. Sakellaris	Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer)	March 1, 2022
/s/ Spencer Doran Hole Spencer Doran Hole	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	March 1, 2022
/s/ Mark Chiplock Mark Chiplock	Vice President and Chief Accounting Officer (Principal Accounting Officer)	March 1, 2022
/s/ David J. Corrsin David J. Corrsin	Director	March 1, 2022
/s/ Douglas I. Foy Douglas I. Foy	Director	March 1, 2022
/s/ Claire Hughes Johnson Claire Hughes Johnson	Director	March 1, 2022
/s/ Thomas S. Murley Thomas S. Murley	Director	March 1, 2022
/s/ Nickolas Stavropoulos Nickolas Stavropoulos	Director	March 1, 2022
/s/ Jennifer L. Miller Jennifer L. Miller	Director	March 1, 2022
/s/ Joseph W. Sutton Joseph W. Sutton	Director	March 1, 2022
/s/ Frank V. Wisneski Frank V. Wisneski	Director	March 1, 2022

**CERTAIN INFORMATION HAS BEEN OMITTED FROM THIS DOCUMENT  
BECAUSE IT IS (I) NOT MATERIAL, AND (II) WOULD BE COMPETITIVELY HARMFUL IF  
PUBLICLY DISCLOSED. OMISSIONS ARE MARKED [\*\*\*\*\*].**



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**TURNKEY ENGINEERING, PROCUREMENT,  
CONSTRUCTION AND MAINTENANCE  
AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA EDISON COMPANY,  
a California corporation**

**AND**

**AMERESCO, INC.  
a Delaware Corporation**

Dated as of October 20, 2021

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**TURNKEY ENGINEERING, PROCUREMENT,  
CONSTRUCTION AND MAINTENANCE  
AGREEMENT**

THIS TURNKEY ENGINEERING, PROCUREMENT, CONSTRUCTION AND MAINTENANCE AGREEMENT (this "Agreement"), dated as of the date set forth on the cover page hereof ("Effective Date"), is by and between Southern California Edison Company, a California corporation (hereinafter called "Company") and Ameresco Inc., a Delaware corporation (hereinafter called "Contractor").

WITNESSETH:

WHEREAS, Company wishes to construct, own and operate a utility scale battery energy storage system, to be built on the Property Site (as hereinafter defined) located in the Job Sites identified in the Statement of Work;

WHEREAS, Contractor has represented that it is experienced and qualified in providing technical assistance, licensing, engineering, procurement, supply, assembly, management, construction, installation, commissioning, start-up, testing, and operations and maintenance services, and that it possesses the requisite expertise and resources to complete the Work (as hereinafter defined);

WHEREAS, Contractor has agreed to provide, through itself or through Subcontractors and Vendors (as such terms are hereinafter defined), such Work on a "turn-key" basis for the Contract Price (as hereinafter defined); and

WHEREAS, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Contractor hereby agree as follows:

**ARTICLE I.  
GENERAL MATTERS**

**1.1 DEFINED TERMS.**

As used in this Agreement, including the exhibits and other attachments hereto, each of the following terms shall have the meaning assigned to such term as set forth below:

"**Affiliate**" means, in relation to any Person, any other Person: (i) which directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (ii) which directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (iii) which has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (iv) who either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word "controls" means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

"**After-Tax Basis**" means, with respect to any indemnity payment to be received by any Person, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Person so that the sum of the base payment plus the additional payment shall, after

deduction of the amount of all Federal, state, and local income Taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account any reduction in such income Taxes resulting from Tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state, and local income tax rates applicable to the Person for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for Federal income tax purposes. The foregoing calculations shall be made by the recipient Person's third-party tax advisors.

**"Agreement"** has the meaning set forth in the first paragraph hereof, as same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

**"Applicable Laws"** means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Authority with jurisdiction over the ESS, the Job Site, the performance of the Work or other services to be performed under the Contract Documents.

**"Applicable Permits"** means any and all permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Government Authority that are necessary for the performance of the Work, including the clearances, licenses, authorizations, consents, filings, exemptions and approvals listed on Exhibit G and Exhibit H.

**"Authorized Recipients"** has the meaning set forth in Section 18.3(a).

**"BES Cyber System"** means [\*\*\*\*\*]

**"BES Cyber System Information"** means [\*\*\*\*\*]

**"Bulk Electric System" or "BES"** means [\*\*\*\*\*]

**"Builder's Risk Policy"** has the meaning set forth in Section 9.1(i).

**"Business Continuity Plans"** for the Work include (1) written disaster recovery plans for critical technology and infrastructure, including communications networks or manufacturing capability or capacity; (2) proper risk controls to enable continued performance under the Agreement in the event of a Disaster, and (3) demonstrated capability to provide uninterrupted Work during the Disaster within the recovery time objectives specified by the Company.

**"Business Day"** means any day other than a Saturday, Sunday or a legal holiday in the State of California where the Work is performed.

**"CPUC"** means the California Public Utilities Commission, or its regulatory successor, as applicable.

**"Change In Law"** means, with respect to any portion of the Work performed in the State of California, the enactment, adoption, promulgation, modification, repeal, decision, determination, interpretation or administration after the date of this Agreement of any Applicable Law of any Government Authority of the State of California or the modification after the date of this Agreement of any Company Permit issued or promulgated by any Government Authority of the State of California that establishes requirements that materially and adversely affect Contractor's costs or schedule for performing the Work;



provided, however, that a change in any state or local Tax law or any other law imposing a Tax, tariff, duty, levy, impost, fee, royalty, or charge for which Contractor is responsible hereunder shall not be a Change In Law pursuant to this Agreement.

**“Change Order”** has the meaning set forth in Section 6.1(a).

**“Changes”** has the meaning set forth in Section 6.1(a).

**“Company”** means Southern California Edison Company, a California corporation (as referenced in the opening paragraph hereof) and includes its legal successors and those assignees as may be designated by Company, in writing, pursuant to the terms of this Agreement.

**“Company Caused Delay”** means a material delay in Contractor’s performance of the Work, which is actually and demonstrably caused directly and solely by Company’s failure to perform any covenant of Company hereunder (other than by exercise of rights under this Agreement, including the exercise by Company of the right to have defective or nonconforming Work corrected or re-executed). Contractor expressly acknowledges and agrees that any delay that is due in part to Contractor’s action or inaction is not a Company Caused Delay.

**“Company’s Computing Systems”** means Company’s and its Affiliates’ respective Information Systems, computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, databases, data storage and other data resources, and Company-sponsored connections to the internet communications network. Company’s Computing Systems is referred to as “Edison’s Computing Systems” in the Cyber Requirements.

**“Company Data”** means any non-public information whether or not designated by Company or its representatives as Confidential Information at the time it is provided or made available to Contractor, and all information Contractor derives from such information. Company Data is referred to as “Edison Data” in the Cyber Requirements.

**“Company Event of Default”** has the meaning set forth in Section 15.6.

**“Company Permits”** means the Applicable Permits listed on Exhibit H.

**“Company Personal Information”** or “EPI” means any information in the possession or under the control of Company or any of its Affiliates, or that is furnished or made available by Company or any of its Affiliates to Contractor, that identifies, an individual, or that relates to, describes, or is capable of being associated with, an identifiable individual (whether Company employee, customer, or otherwise), including his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, insurance policy number, medical information or health insurance information, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, combination of online account user name/ID and password and/or security question together with the answer, or information regarding the individual’s electric energy usage or electric service, including service account number, electricity demand (in kilowatts), monthly billed revenue, credit history, rate schedule(s), meter data, or number or type of meters at a premise. Company Personal Information is referred to as “Edison Personal Information” or “EPI” in the Cyber Requirements. Company Personal Information includes “personal information” as defined in The California Consumer Privacy Act, California Civil Code Section 1798.100 – 1798.199.



**“Company Representative”** means the Company employee designated to direct, coordinate, expedite, inspect, and approve the Project.

**“Company Taxes”** has the meaning set forth in Section 4.5.

**“Computing System”** means Company’s computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, databases, data storage and other data resources, and Company-sponsored connections to the internet communications network.

**“Confidential Information”** has the meaning set forth in Section 18.3(a).

**“Contract Documents”** means the Purchase Order, this Agreement and all exhibits incorporated into this Agreement (as set forth in Section 1.3), as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

**“Contract Price”** means the “Contract Price” set forth in the Purchase Order, which shall equal the sum of the EPC Price and the Service Package Extension Fees including all Taxes, and which sum shall only be subject to adjustment in accordance with the Contract Documents.

**“Contractor”** means Ameresco Inc., a Delaware corporation (as referenced in the opening paragraph hereof), and includes its legal successors and permitted assignees as may be accepted by Company, in writing, pursuant to the terms of the Contract Documents.

**“Contractor Equipment”** means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors and Vendors, whether owned, leased, rented or hired, for performance of the Work but which is not intended to be incorporated into the ESS.

**“Contractor Event of Default”** has the meaning set forth in Section 15.1.

**“Contractor Insurance Policies”** has the meaning set forth in Section 9.1.

**“Contractor Permits”** means all Applicable Permits, except those Applicable Permits specifically listed on Exhibit G.

**“Contractor Project Engineering Manager”** means the person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for the engineering and design of the ESS.

**“Contractor Project Manager”** means the person designated by Contractor as having the centralized responsibility, authority and supervisory power of Contractor for design, procurement, construction, installation, testing and start-up of the ESS, as well as all matters relating to the administration of the provisions of the Contract Documents.

**“Contractor Records”** has the meaning set forth in Section 18.15(a).

**“Contractor Site Manager”** means an employee of Contractor, working under the supervision of the Contractor Project Manager, located at the Job Site on a daily basis.

**“Contractor Taxes”** has the meaning set forth in Section 3.27(a).

**“Contractor’s Representative”** has the meaning given in Section 3.18(e).

**“Corporate Communications Department”** means the company group responsible for control of the use of Company’s name and intellectual property, and for receiving asbestos notifications, whose specific title may be updated from time to time. Any questions about the identity of this group should be addressed to the Company Representative or Procurement Agent.

**“Corporate Security Department”** means the Company group responsible for physical security whose specific title may be updated from time to time. Any questions about the identity of this group should be addressed to the Company Representative or Procurement Agent.

**“Credit Rating”** means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

**“Critical Energy Infrastructure Information”** or **“CEII”** includes specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that: (1) relates details about the production, generation, transmission, or distribution of energy; (2) could be useful to a person planning an attack on critical infrastructure; and (3) gives strategic information beyond the location of the critical infrastructure.

**“Critical Milestones”** means the Milestones set forth in Exhibit A.

**“Critical Path”** means a determination of the Project Schedule specifically illustrating those unique activities and durations that must be completed in sequence to complete the Work, which sequence shall be determined using critical path method precedence networking techniques applied by Contractor and approved by Company.

**“Cyber Incident”** means [\*\*\*\*\*]

**“Cyber Requirements”** Cyber Requirements means Exhibit O - Information, Security, Cybersecurity, and Privacy Requirements for Suppliers.

**“Damages”** has the meaning set forth in Section 16.1.

**“Day”** or **“day”** means a period of twenty-four (24) consecutive hours from 12:00 midnight (Pacific Time), and shall include Saturdays, Sundays and all holidays except that in the event a time period set forth in the Contract Documents expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

**“DBE”** means Diverse Business Enterprise, as defined by the CPUC.

**“Defect”** means, any designs, engineering, software, drawings, components, tools, Equipment, installation, construction, workmanship or Work that [\*\*\*\*\*]. Anything to the contrary notwithstanding, the Parties agree that Work shall be considered to be defective if it does not conform to the usual and customary standards expected of experienced engineering, procurement, construction, installation and maintenance professionals in the electrical grid-connected battery energy storage industry.

**“Deliverables”** means the Equipment, Drawings and other materials, software, documentation, and any other works delivered by Contractor to Company under the Agreement.

**“Dispute”** has the meaning set forth in Section 17.1.



**“Disaster”** means an unanticipated incident or event, technological accidents, public health emergencies, or human-caused events, that may cause the Work, critical application, manufacturing capability or capacity, or communications network to be unavailable without any reasonable prediction for resumption, or that causes data loss, property damage or other business interruption without any reasonable prediction for recovery.

**“Dollars” or “USD”** means lawful currency of the United States of America.

**“Drawings”** means (i) all specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the ESS, including the structure and foundation thereof, and (ii) all technical drawings, operating drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-line’s, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors or Vendors, all of which are required to be delivered by Contractor, or any Subcontractor or Vendor, from time to time under the Contract Documents to Company which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

**“Energy Capacity Guarantee Service Package Period Letter of Credit or Payment and Performance Bonds”** means the Letter of Credit or Payment and Performance Bonds provided by Contractor during the Standard Service Package and Fixed Energy Capacity Guarantee Service Package Period.

**“EPC Price”** means the maximum sum payable by Company as stated in Section 7.1 for all labor, all materials, all equipment, and the Warranty, which sum shall be due in accordance with the terms of the Contract Documents as consideration for the timely performance of the Statement of Work to be performed by or through Contractor on a “turn-key” basis in order to complete the Project (excluding the Service Package Extension Fees), all in strict accordance with the terms of the Contract Documents, which maximum sum is guaranteed by Contractor not to exceed the amount set forth in Section 7.1, which sum shall only be subject to adjustment in accordance with the Contract Documents.

**“ESS”** means the electric energy storage system, including Software, to be located on the Property Site as more particularly described in the Statement of Work.

**“Equipment”** means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors and Vendors (or by Company pursuant to Section 3.1) that are installed or incorporated into the ESS or otherwise form or are intended to form part of the Work or the ESS (other than Contractor Equipment).

**“Equipment Tests”** means the tests further described in Exhibit A.

**“Exempt Equipment”** has the meaning set forth in Section 3.27(b).

**“Facilities”** means the energy storage system, including Software and balance of plant, to be located on the Property Site as more particularly described in the Statement of Work.

**“Final Acceptance”** shall mean that all of the following have occurred: [\*\*\*\*\*]; and (xiii) Company has approved of and signed the Final Acceptance Certificate pursuant to Section 10.5.

**“Final Acceptance Certificate”** means the certificate issued by Company indicating that Final Acceptance has been achieved by Contractor.

**“Final Acceptance Date”** means the date of achievement of Final Acceptance as indicated in the Final Acceptance Certificate pursuant to Section 10.5.

**“Final Plans”** means final Drawings and final specifications, as revised to reflect the changes during construction, and shall include, as relevant, as-built drawings, piping and instrumentation diagrams, underground structure drawings, electric one-lines, electric schematics and connection diagrams.

**“Fitch”** means Fitch Ratings Ltd. or its successor.

**“Fixed Energy Capacity Guarantee Service Package”** means a Service Package for Warranty, Maintenance and a Performance Guarantee with fixed energy capacity, as set forth in the Purchase Order.

**“Fixed Energy Capacity Guarantee Service Package Period”** means the period of time during which a Fixed Energy Capacity Guarantee Service Package is in effect.

**“Force Majeure Event”** has the meaning set forth in Section 14.1.

**“Government Authority”** means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

**“Guaranteed Completion Date”** means the date specified in the Statement of Work, which Contractor guarantees that the Project shall achieve Substantial Completion, as such date may be extended in accordance with the terms hereof.

**“Hazardous Material”** means any hazardous or toxic chemicals, hazardous materials, hazardous waste, hazardous constituents, hazardous or toxic or radioactive substances or petroleum products (including crude oil or any fraction thereof), defined or regulated as such under any Applicable Laws.

**“Indemnified Person”** has the meaning set forth in Section 16.3(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.3(a).

**“Information Systems”** means any information system(s) including internet services, computer systems, hardware, software, peripherals, data networks, broadband or telecommunications systems, servers, wireless communication systems, high-speed connectivity, cabling and other information or communication systems, regardless of the method of access to any of the foregoing, which may include but not be limited to via APIs, integration scripts, passwords, tokens or keys.

**“Initial Site Mobilization”** means the first instance when any of Contractor or its Subcontractors’ or Vendors’ Labor or other representatives is present on any of the Property Site after Company has issued a Limited Notice to Proceed or the Notice to Proceed.

**“Intellectual Property Rights”** has the meaning set forth in Section 3.32(a).



**“Job Site”** means the Property Site and any other areas where Contractor may temporarily obtain care, custody and control, use, easement or license for purposes directly, indirectly or incidentally related to performance of, or as an accommodation to, the Work.

**“Labor”** means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers.

**“Letter of Credit”** has the meaning set forth in Section 11.6

**“Lien”** means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest, including any mechanics lien, supplier lien or stop payment notice.

**“Limited Notice to Proceed”** means each notice given by Company to Contractor directing Contractor to commence a limited portion of the Work under Section 5.2.

**“Limited Notice to Proceed Date”** has the meaning set forth in Section 5.2(a).

**“Liquidated Damages”** has the meaning set forth in Section 11.4(a).

**“Maintenance”** has the meaning set forth in Exhibit P.

**“Maintenance Only Service Package”** means a Service Package for Maintenance only, as elected by Company pursuant to Section 12.2.

**“Major Equipment”** means either (a) any item or component of the Project, the proper or efficient function of which affects the ESS’s performance or reliability, or (b) without duplication, the long lead-time items of Equipment and critical items of Equipment listed on Exhibit I, which must be procured by, or through, Contractor at a certain stage of the Work in order to ensure the timely completion of the Project.

**“Major Manufacturers”** means the manufacturers of the Major Equipment.

**“Milestone Payment”** has the meaning set forth in Section 7.1.

**“Milestones”** means the activities, events and targets, or combination thereof, set forth in Exhibit A.

**“Moody’s”** means Moody’s Investor Services, Inc. or its successor.

**“NERC CIP Project”** means Work to be performed by Contractor that (1) requires Company to comply with cybersecurity regulations imposed by the North American Reliability Corporation or by the Federal Energy Regulatory Commission, and (2) is identified by Company as such in the Contract Documents.

**“Notice to Proceed”** means the notice given from Company to Contractor directing Contractor to commence performance of the Work as set forth in Section 5.2(b).

**“Notice to Proceed Date”** has the meaning set forth in Section 5.2(b).

**“Operating Spare Parts”** are each manufacturer’s recommended spare parts list for the Equipment as described in Section 3.29(a).

**“Operating Year”** means each twelve (12) month period commencing (i) in the case of the first Operating Year, on the Substantial Completion Date and (ii) thereafter, at 00:00 on the day following the completion of the immediately preceding Operating Year.

**“Parties”** means collectively, Company and Contractor.

**“Party”** means individually, Company or Contractor.

**“Payment and Performance Bonds”** has meaning set forth in Section 11.6.

**“Performance Guarantee”** has the meaning set forth in Section 11.3(a).

**“Performance Liquidated Damages”** has the meaning set forth in Section 11.3(b).

**“Performance Liquidated Damages Limitation”** has the meaning set forth in Section 11.4(c).

**“Performance Requirements”** means the performance requirements set forth in Exhibit D that the ESS must meet in order to achieve Substantial Completion.

**“Performance Tests”** means actions taken as described in Article X and Exhibit D to verify the performance of the Project, including whether the Performance Requirements have been achieved.

**“Person”** means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Authority or other entity of whatever nature.

**“Personnel”** means Contractor’s and its Subcontractor’s employees, temporary personnel, day laborers, agents and representatives involved in the performance of Contractor’s obligations under the Agreement.

**“Pre-Existing Hazardous Material”** means Hazardous Material that existed on or in the Property Site prior to Initial Site Mobilization by Contractor.

**“Procurement Agent”** means the procurement agent for Company or its Affiliate, as the case may be, responsible for a Purchase Order.

**“Prohibited Items”** means any pyrotechnics, explosives, firearms, weapons, alcoholic beverages, illegal drugs, or any items associated with those items.

**“Project”** means the ESS and all equipment, services and utilities related thereto which must be completed as part of the Statement of Work, all of which Contractor guarantees shall be designed, constructed, assembled, erected, commissioned, started, tested and otherwise completed by, or through, Contractor in strict accordance with the provisions of the Contract Documents.

**“Project Schedule”** means the schedule for completion of the Work developed and maintained by Contractor, provided to Company, including all scheduled activities and durations required to perform the Work attached hereto as Exhibit A and provided electronically to Company in the format and frequency required in Exhibit A, or any time upon Company’s request.

**“Property Site”** means that certain piece of real property located in such places as may be identified by Company in the Notice to Proceed.

**“Prudent Industry Practices”** means the practices generally followed by the United States electric utility industry with respect to design, construction, operation, and maintenance of utility scale, electric battery energy storage system facilities (including the engineering, operating and safety practices generally followed by the electric utility industry).

**“Punch List”** has the meaning set forth in Section 10.4(b).

**“Purchase Order”** means that certain Purchase Order issued by Company and accepted by Contractor, as of the date hereof, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof.

**“Qualified Institution”** means either (A) a commercial bank or financial institution (that is not an Affiliate of Contractor or Contractor’s Parent Guarantor) organized under the laws of the United States or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, with respect to both entities identified in clause (A) and (B), having (i) (a) Credit Ratings of at least [\*\*\*\*\*] by S&P, [\*\*\*\*\*] by Fitch and [\*\*\*\*\*] by Moody’s, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least [\*\*\*\*\*] by S&P, if such entity is rated by S&P, [\*\*\*\*\*] by Fitch, if such entity is rated by Fitch, and [\*\*\*\*\*] by Moody’s, if such entity is rated by Moody’s; or (c) a Credit Rating of at least [\*\*\*\*\*] by S&P or [\*\*\*\*\*] by Moody’s, or [\*\*\*\*\*] by Fitch if such entity is rated by only one Ratings Agency, and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least [\*\*\*\*\*].

**“Qualified Surety”** has the meaning set forth in Section 11.6.

**“Ratings Agency”** means any of S&P, Moody’s, and Fitch (collectively the ‘Ratings Agencies’).

**“Reference Rate”** means the lesser of (i) the prime rate of interest for United States of America financial institutions as reported from time to time by *The Wall Street Journal* (New York Edition) plus [\*\*\*\*\*] or (ii) the maximum rate permitted by Applicable Law.

**“Request for Payment”** means the written requests from Contractor to Company for payment hereunder.

**“Schedule Liquidated Damages”** has the meaning set forth in Section 11.2(a).

**“Service Package”** means the Standard Service Package, and any Fixed Energy Capacity Guarantee Service Package or Maintenance Only Service Package.

**“Service Package Extension”** means any Fixed Energy Capacity Guarantee Service Package or Maintenance Only Service Package following the Standard Service Package.

**“Service Package Extension Fee”** has the meaning set forth in Section 7.3.

**“Service Package Extension Period”** means the period after the expiration of the Standard Service Package Period during which a Service Package Extension is effective.

**“Service Package Period”** means the Standard Service Package Period and all Service Package Extension Periods.



**“Standard Service Package”** means the Warranty, Performance Guarantee and Maintenance that Contractor shall provide during the Standard Service Package Period.

**“Standard Service Package Period”** means the [\*\*\*\*\*] period following the Substantial Completion Date.

**“Statement of Work”** means the services and work to be provided, or caused to be provided, by or through Contractor under the Contract Documents for the Contract Price, as more particularly described in Exhibit A, as the same may be amended from time to time in accordance with the terms hereof, and which Statement of Work includes all licenses, technical assistance, engineering, assembly, construction management, construction, services, labor, materials, equipment, operations and management that are indicated on, inferable from, or incidental to, the Contract Documents or the Drawings prepared in connection with the Contract Documents or that are likely to be required in accordance with Applicable Law, or that are properly and customarily included within the general scope and magnitude of the work incorporated into similar projects having similar performance requirements, all in order to produce a Project that complies with the requirements of the Contract Documents.

**“Software”** means the object code Versions of any applications, programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications, programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

**“Subcontractor”** means any contractor, constructor or material man who performs any portion of the Statement of Work other than Contractor.

**“Substantial Completion”** shall mean that all of the following have occurred for the Project: (i) the Work has been completed in accordance with the Technical Specifications so that the ESS is ready for safe, efficient and reliable operation, including the completion of: (1) the Equipment for the Project has been installed with the required connections and controls; (2) all remaining electrical systems have been checked out and are ready for operation; (3) all electrical continuity and ground fault tests and all mechanical tests and calibrations have been completed; and (4) all instrumentation is operational and has been calibrated in accordance with manufacturers’ standards and guidelines and, where possible, loop checked.; (ii) [\*\*\*\*\*]; (iii) the ESS is capable of being operated safely, reliably and normally in accordance with the requirements of all Applicable Laws, Applicable Permits and the Contract Documents at all operating conditions and modes specified in the Statement of Work (although minor portions of the Work not essential to its safe, normal and continuous operation may remain to be completed); (iv) the Performance Tests have been satisfactorily completed and the Performance Requirements have been achieved; (v) [\*\*\*\*\*].

**“Substantial Completion Date”** means the actual date of achieving Substantial Completion as determined pursuant to Section 10.4(b).

**“Substantial Subcontractor”** means those Subcontractors listed on Exhibit J and any other Subcontractor whose contract or contracts (in the aggregate) with Contractor require payments by Contractor totaling at least [\*\*\*\*\*].

**“Substantial Vendor”** means those Vendors listed on Exhibit J and any other Vendor whose contract or purchase orders (in the aggregate) with Contractor require payments by Contractor of at least [\*\*\*\*\*].



**“Supplier Code of Conduct”** has the meaning set forth in Section 3.6.

**“S&P”** means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

**“Tax”** or **“Taxes”** shall mean all fees, taxes (including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), levies, assessments, withholdings and other charges and impositions of any nature), plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any federal, state, local or foreign government or other taxing authority (including penalties or other amounts payable pursuant to subtitle B of Title I of ERISA).

**“Technical Specifications”** means the design basis for the ESS, engineering plans and other technical data and documentation, all as specified in Exhibit A.

**“Termination Payment”** has the meaning set forth in Section 15.3(b).

**“Test Notice”** has the meaning set forth in Section 10.1(b).

**“Tests”** means collectively, actions taken to verify the performance of the Project, including achievement of the Performance Requirements.

**“Vendor”** means any supplier, manufacturer or vendor of Equipment to Contractor or any Subcontractor.

**“Version”** means a version of the Software, as signified by the number to the left of the decimal point (i.e., a change in numbers to the left of the decimal point represents a new Version, such as Version 1.0 to Version 2.0). A new Version of the Software shall include cumulative functionality of all prior Versions provided to Company.

**“Warranty”** has the meaning set forth in Article XII.

**“Warranty Period”** means the Standard Service Package Period and continuing through the Fixed Energy Capacity Guarantee Service Package Periods.

**“Work”** has the meaning set forth in Section 3.1(a). Work is also referred to as “Services”.

## 1.2 INTERPRETATION.

Unless the context of the Contract Documents otherwise requires:

(a) the headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner to construe or interpret this Agreement;

(b) the gender of all words used herein shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural words;

(c) the terms “hereof”, “herein” “hereto” and similar words refer to this entire Agreement and not to any particular Article, Section, Exhibit or any other subdivision of this Agreement;

(d) references to “Article,” “Section” or “Exhibit” are to this Agreement unless specified otherwise;

(e) reference to “this Agreement” (including any Exhibit hereto) or any other agreement, Exhibit, permit or document shall be construed as a reference to such agreement or document as the same may be amended, modified, supplemented or restated, and shall include a reference to any document which amends, modifies, supplements or restates, or is entered into, made or given pursuant to or in accordance with its terms;

(f) references to any law, statute, rule, regulation, notification or statutory provision (including Applicable Laws, Applicable Permits and the Technical Specifications) shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

(g) references to any Person shall be construed as a reference to such Person’s successors and permitted assigns; and

(h) references to “includes,” “including” and similar phrases shall mean “including, without limitation.”

### 1.3 EXHIBITS.

The following exhibits are attached to and incorporated into and made a part of this Agreement:

(a) Exhibit A – Statement of Work, to include:

- (1) Project Schedule
- (2) Milestone Payments Schedule
- (3) Critical Milestones
- (4) Requirements
- (5) Technical Specifications
- (6) Applicable Documents

(b) Exhibit B – Certificate of Substantial Completion

(c) Exhibit C – Certificate of Final Acceptance

(d) Exhibit D – Performance Requirements

(e) Exhibit E – Form of Contractor Certificate for Partial Waiver of Liens

(f) Exhibit E-1 – Form of Subcontractor Certificate for Partial Waiver of Liens

(g) Exhibit F – Not used

(h) Exhibit G – Contractor Permits

(i) Exhibit H – Company Permits

- (j) Exhibit I – Major Equipment
- (k) Exhibit J – Approved Substantial Subcontractors and Substantial Vendors
- (l) Exhibit K – Form of Contractor Certificate for Final Waiver of Liens
- (m) Exhibit K-1 – Form of Subcontractor Certificate for Final Waiver of Liens
- (n) Exhibit L – Form of Letter of Credit
- (o) Exhibit L-1 – Schedule to Letter of Credit
- (p) Exhibit M – Performance Guarantees and Performance Liquidated Damages
- (q) Exhibit N – Construction Maintenance Labor Agreement
- (r) Exhibit O – Information, Security, Cybersecurity, and Privacy Requirements for Suppliers
- (s) Exhibit P – Maintenance
- (t) Exhibit Q – Form of Bonds
- (u) Exhibit R – Schedule Liquidated Damages

1.4 ORDER OF PRECEDENCE.

(a) In the event of conflicts among the terms of the Contract Documents, interpretations shall be based upon the following Contract Documents which are set forth in ranked order of precedence:

- (1) amendments, addenda or other modifications to the Contract Documents (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;
- (2) the Purchase Order;
- (3) this Agreement; and
- (4) the exhibits to this Agreement.

(b) In the event of conflicts among the Exhibits, interpretations shall be based on the following order of precedence:

- (1) Exhibit A – Statement of Work; and
- (2) The remaining Exhibits shall apply in alphabetical order.

In the event of a conflict among, or within, any other Contract Document(s) within any one of the levels set forth in the foregoing order of precedence, the more stringent requirements of such Contract Document(s) which are applicable to the obligations of Contractor shall take precedence over the less stringent requirements applicable thereto.



## **ARTICLE II. RETENTION OF CONTRACTOR**

### **2.1     RETENTION OF CONTRACTOR.**

Company hereby engages Contractor, and Contractor hereby agrees to be engaged by Company to perform the Work in accordance with the terms and conditions set forth herein.

### **2.2     STATUS OF CONTRACTOR; NO PARTNERSHIP.**

Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Contract Documents. The Contract Documents shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

### **2.3     SUBCONTRACTORS AND VENDORS.**

(a) Subject to the terms hereof, Contractor shall have the right to have any portion of the Work performed by a Subcontractor or Vendor qualified to perform such Work pursuant to written subcontracts or written purchase orders; provided that Contractor shall not be relieved from any liability or obligation under the Contract Documents. Except as otherwise expressly provided in the Contract Documents, Contractor shall be solely responsible for engaging, managing, supervising and paying all such Subcontractors and Vendors. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors and Vendors are received, inspected and otherwise furnished in accordance with the Contract Documents, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of such Subcontractors and Vendors. Company shall not have any obligation or liability to any Subcontractor or Vendor. Nothing in any contract, subcontract or purchase order with any Subcontractor or Vendor shall in any way diminish or relieve Contractor from any duties and obligations under the Contract Documents; and each such contract, subcontract and purchase order must provide that the rights thereunder are assignable to Company or its designees at any time without the prior consent of the applicable Subcontractor or Vendor. No Subcontractor or Vendor is intended to be or shall be deemed a third-party beneficiary of the Contract Documents.

(b) A list of approved Substantial Subcontractors and Substantial Vendors as of the date hereof, including a brief description of the Work to be performed by such Persons, is attached hereto as Exhibit J. Contractor may retain those Substantial Subcontractors or Substantial Vendors which are set forth on Exhibit J. Company shall have the right to approve, in advance in writing, each additional Substantial Subcontractor and Substantial Vendor in accordance with the terms hereof. Prior to retaining any additional Substantial Subcontractors or Substantial Vendors, Contractor shall notify Company in writing and provide it with such information as necessary to enable Company to evaluate each such proposed Substantial Subcontractor or Substantial Vendor for the portion of the Work proposed to be performed by it. Within [\*\*\*\*\*] after receipt of such information, Company shall advise Contractor if any proposed Substantial Subcontractor or Substantial Vendor is unacceptable. If Company fails to object to any proposed Substantial Subcontractor or Substantial Vendor within such [\*\*\*\*\*] period, Contractor may retain such Substantial Subcontractor or Substantial Vendor for the portion of the Work proposed. If Company objects in writing within such [\*\*\*\*\*] period to such proposed Substantial Subcontractor or Substantial Vendor, Contractor shall not retain such proposed Substantial Subcontractor or Substantial Vendor. Approval of any Substantial Subcontractor or Substantial Vendor under this paragraph shall only be for the portion of the Work so approved. Contractor hereby acknowledges and agrees that the review

and/or acceptance of any subcontract by Company and the acceptance of the approved Substantial Subcontractors and Substantial Vendors shall not: (i) modify, in any way, the obligations of Contractor pursuant to the Contract Documents; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with the Contract Documents.

(c) Contractor shall submit to Company a copy of each purchase order or agreement entered into with a Subcontractor or Vendor. Each purchase order or agreement shall show, where applicable, the Vendor's or Subcontractor's name, manufacturer's or service provider's name, materials type, model number, size, quantity and lists of the Equipment ordered, or description of services, as appropriate, and shall be submitted to Company when issued for purchase.

(d) Each subcontract and purchase order shall require such Subcontractor and Vendor to assume toward Contractor those terms and conditions of contracting which Contractor customarily includes in its subcontracts. At a minimum, all subcontracts and purchase orders shall require the Subcontractors and Vendors to comply with Applicable Laws and Applicable Permits, shall provide that Company has the right of inspection as provided hereunder and require such Subcontractors and Vendors to (i) be subject to the labor obligations hereunder as well as the safety and security provisions of the Contract Documents, (ii) provide guarantees and warranties with respect to its portion of the Work and the Equipment, and (iii) provide certificates of insurance as set forth herein. All subcontracts and purchase orders shall preserve and protect the rights of Company, shall not prejudice such rights and shall require each Subcontractor and Vendor to enter into similar agreements with other Subcontractors and Vendors.

(e) Unless otherwise agreed in writing by the Parties, all Work performed by a Subcontractor shall be performed pursuant to a written agreement between Contractor and Subcontractor, which agreement shall (i) require the Subcontractors to comply with Applicable Laws and Applicable Permits, provide that Company has the right of inspection as provided hereunder and require such Subcontractors (A) be subject to the labor obligations hereunder as well as the safety and security provisions of this Agreement, (B) provide guarantees, warranties and remedies with respect to the portion of the Work that are at least as favorable to Company as Contractor's guarantees, warranties and remedies hereunder with respect to such Work, and (C) provide certificates of insurance substantially the same as required herein; (ii) prohibit each Subcontractor from entering into subcontracts regarding its portion of the Work; (iii) provide a limitation of liability of not less than [\*\*\*\*\*] of the agreement value; (iv) provide a remedy for breach of any warranties at least as favorable to Company as the remedy for breach of Warranty obligations contained herein; and (v) expressly provide that Company may direct Contractor to assign at any time Contractor's rights and obligations under such agreement to Company or its designees without the prior written consent of the applicable Subcontractor and shall include the following language to make Company an express third-party beneficiary of such agreement:

"The parties hereto agree and acknowledge that the services/work/equipment to be provided hereunder by Subcontractor will be incorporated into the energy storage system located at each Site. As such, the parties expressly agree that Company is a third-party beneficiary of the purchase order entitled, in its own name, to enforce the purchase order against Subcontractor without first having to proceed against Contractor."



**ARTICLE III.**  
**CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR**

3.1 STATEMENT OF WORK; APPLICABLE STANDARDS.

(a) Contractor shall (i) provide the services specified in the SOW and perform its other obligations hereunder, including completion of the Work and all Warranty or Maintenance work hereunder, and (ii) manage, supervise, inspect and furnish all Labor, Equipment, Contractor Equipment, products and services for the foregoing, all on a turnkey basis, in accordance with the Contract Documents, including the Project Schedule and Statement of Work, as the same may be modified from time to time in accordance with the terms hereof by a Change Order or other amendment hereto (all of the foregoing being collectively referred to in this Agreement as the "Work").

(b) Contractor shall perform the Work and turn the ESS over to Company in a manner that is (i) sufficient, complete and adequate in all respects necessary for the Project to successfully achieve Substantial Completion by the Guaranteed Completion Date; (ii) in conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in major power projects of similar size and nature to the Project; (iii) in compliance with the terms of the Contract Documents, the Technical Specifications, and all Applicable Laws and Applicable Permits; and (iv) approved as to form, use and content by public and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the ESS, or any portion thereof, is necessary for the construction, operation or [\*\*\*\*\*] of the ESS.

(c) Contractor has included within the Contract Price the cost to complete the entire Statement of Work. Items need not be specifically listed in the Contract Documents or in Exhibit A in order to be deemed to be items within the Statement of Work. It is understood that Contractor is better qualified to list exclusions than Company is to list inclusions. Therefore, any item or service indicated on the Contract Documents, inferable therefrom, incidental thereto or required in accordance with any Applicable Law is to be considered as part of the Statement of Work. In addition, the Statement of Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve Substantial Completion. As a result, Contractor hereby waives any and all claims for an increase in the Contract Price or an extension of the Guaranteed Completion Date based, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is beyond the Statement of Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is indicated in the Contract Documents, the Drawings or other instruments of service prepared in connection with the Contract Documents, inferable therefrom, incidental thereto, required in accordance with any Applicable Law, Applicable Permits or otherwise necessary in order to complete the Project in accordance with and subject to the requirements of the Contract Documents.

(d) Contractor acknowledges that this Agreement constitutes an obligation with a maximum Contract Price as specified in Section 7.1 to (i) engineer, design, procure, construct, test, install and start up through Substantial Completion a turnkey Project, complete in every detail, within the time and for the purpose designated herein, (ii) achieve Final Acceptance, (iii) maintain the ESS in accordance with the Maintenance requirements, and (iv) comply with all of the Warranty obligations set forth in this Agreement. References to the obligations of Contractor under this Agreement as being "turnkey" and performing the Work on a "turnkey basis" means that Contractor is obligated to supply all of the Equipment and design services, install all of the Equipment and supply all labor and to supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in this Agreement) to complete the Work such that the Project satisfies the applicable terms,

conditions, and Contractor's obligations concerning the Performance Requirements and all other guarantees and requirements set forth in the Contract Documents, all for the Contract Price.

### 3.2 CONTROL AND METHOD OF THE WORK.

Subject to the terms hereof, Contractor shall be solely responsible for performing or causing to be performed the Work in accordance with the terms of the Contract Documents, and for all means, methods, techniques, sequences, procedures, and safety and security programs in connection with such performance. Contractor shall inform Company in advance concerning its plans for carrying out the Work.

### 3.3 COMPLIANCE WITH LAW.

(a) Contractor shall comply, and shall cause all of its Subcontractors, Vendors and Persons that it has a right to direct and who are engaged in the performance of any of the Work to comply with, all Applicable Laws, and Applicable Permits. Contractor shall perform the Work in a manner designed to protect the environment on and off the Job Site and minimize damage or nuisance to Persons and property of the public or others, including damage or nuisance resulting from pollution, noise or other causes arising as a consequence of methods of construction or operation of the ESS. In the event of a conflict between the provisions of any of the Contract Documents and the requirements of any Applicable Laws or Applicable Permits applicable to the obligations of Contractor under the Contract Documents, the requirements of such Applicable Laws or Applicable Permits shall take precedence over such provisions of the Contract Documents. The provisions of this Section 3.3 shall not be construed as to limit Contractor's obligations and liabilities under Section 3.20.

(b) Rehabilitation Act and Vietnam Era Veterans Readjustment Assistance Act. Notwithstanding any provision to the contrary contained elsewhere in a Purchase Order (including this Agreement, terms and conditions, Scope of Work, specification, exhibit, attachment, or other document incorporated by reference) and to the extent the Equipment or Work are related to a government contract or subcontract, Contractor shall abide by the applicable government requirements, including 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). 41 CFR 60-741.5(a) prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. 41 CFR 60-300.5(a) prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

### 3.4 BUSINESS CONTINUITY AND DISASTER RECOVERY.

#### (a) Business Continuity Plans

(1) Contractor will, at its sole expense, establish and maintain written Business Continuity Plans for the performance of the Work, which shall include: (1) written disaster recovery plans for critical technology and infrastructure, including communications networks or manufacturing capability or capacity; (2) proper risk controls to enable continued performance under the Agreement in the event of a Disaster, and (3) demonstrated capability to provide uninterrupted Work during the Disaster within the recovery time objectives specified by the Company.

(2) The Business Continuity Plans must include information and advance procedures that are developed and maintained in readiness for use in the event of a Disaster. The Business Continuity Plans must focus on the core business processes, manufacturing facilities,



communications networks, lines of supply, information technology systems, infrastructure, and related personnel that are required for performance of the Work within the specified timeframe.

(b) Confirmation of Plans Provided to Company. Within [\*\*\*\*\*] after the Effective Date, Contractor will deliver to the Procurement Agent a letter confirming that the Business Continuity Plans are sufficient to ensure uninterrupted provision of the Work during the Disaster.

(c) Notification of Non-Compliance. If at any time Contractor becomes aware that it is not in compliance with its Business Continuity Plans, Contractor will promptly provide notice to the Company and provide a corrective action plan. Contractor will cure the non-compliance within [\*\*\*\*\*] after providing notice to the Company, or, if the non-compliance cannot be cured within this period, will immediately commence and continue diligent efforts so that the non-compliance is cured (as determined by the Company in its reasonable discretion) within a commercially reasonable time but not more than [\*\*\*\*\*].

(d) Testing of Plans. Contractor will: (1) update and test the operability of any applicable Business Continuity Plan at least annually; (2) annually confirm to Company in writing upon Contractor's completion of each test that the Business Continuity Plan is fully operational, and deliver to the Procurement Agent a copy of its most recent test results; (3) implement each plan upon the occurrence of a Disaster; and (4) at Company's request, participate in tests of Company's business continuity planning and disaster recovery plans.

(e) Notification of Disaster. Contractor will notify the Company immediately upon the occurrence of any Disaster that affects or could affect Contractor's performance of the Services or provision of Deliverables, and report to Company as often as requested by Company with respect to the effectiveness of its Business Continuity Plans. In the event of a Disaster, Contractor shall execute the applicable Business Continuity Plans without any additional charge to the Company.

### 3.5 CERTAIN MATTERS PERTAINING TO JOB SITE.

Contractor acknowledges that prior to the execution of this Agreement, Contractor (i) has made a complete and careful examination of the Job Site and the surrounding areas, drawings and specifications; (ii) has made a complete and careful examination to determine the difficulties and hazards incident to the performance of the Work, including (A) the location of the Project, (B) the proximity of the Project to adjacent facilities and structures, (C) the conditions of the roads and waterways in the vicinity of the Job Site, including the conditions affecting shipping and transportation, access, disposal, handling and storage of materials, (D) the nature and character of the soil, terrain, and surface conditions of the Job Site, (E) the labor conditions in the region of the Job Site, (F) Applicable Laws and Applicable Permits, (G) rights of Company regarding the Job Site as set forth herein, (H) the local weather conditions based upon previous weather data, (I) the qualifications of all Subcontractors and Vendors, and (J) all other matters known or which a prudent contractor should know that might affect Contractor's performance under this Agreement or the design, engineering, procurement, construction, installation, start-up, demonstration and testing of the ESS; and (iii) has determined to Contractor's satisfaction the nature and extent of such difficulties and hazards.

### 3.6 ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS.

(a) The "Southern California Edison ENVIRONMENTAL, HEALTH & SAFETY HANDBOOK FOR CONTRACTORS" and the "SUPPLIER CODE OF CONDUCT," which may be updated from time to time, are located on Company's website at <http://www.sce.com/contractorhandbook> and <https://www.edison.com/content/dam/eix/documents/investors/corporate-governance/supplier-code->



[of-conduct.pdf](#), respectively, and incorporated herein by reference in their entirety. Contractor shall immediately notify the Company Representative if Contractor is unable to satisfy any of these requirements. With at least [\*\*\*\*\*] advance notice, Company may terminate this Agreement for cause and without liability or notice to Contractor if Contractor fails to satisfy any of these requirements within [\*\*\*\*\*] of being notified in writing by Company. However, Company may immediately suspend the performance of the Work under this Agreement without notice if the Contractor violates any Federal, State, or local regulations or in the case of an emergency endangering life or property.

(b) Responsibility. Contractor shall be solely responsible for the safety and health of Personnel and the prevention of industrial accidents and illness arising out of the performance of the Work.

### 3.7 SAFETY NOTIFICATIONS.

(a) Hazardous Substances and Material Safety Data Sheets.

(1) Prior to performing the Project Work, Contractor shall submit to the Company Representative a list of all Hazardous Materials to be used in performing the Work. Contractor shall maintain a list of all Hazardous Materials used at the Job Site. A material safety data sheet (“SDS”) shall be readily available from Contractor for each Hazardous Material at the Job Site for which a manufacturer has prepared an SDS. For purposes of this Agreement, “readily available” means that Contractor shall produce an SDS for review within [\*\*\*\*\*] of the SDS being requested by Company Representative or by an official from a Governmental Authority.

(2) SDSs shall comply with the Federal (29 CFR 1910.1200) and California (Title 8, CCR 5194) OSHA Hazard Communication Standards.

(b) Container Labeling Requirements.

(1) All containers of Hazardous Materials shall be properly labeled in accordance with Applicable Laws.

(2) These labels shall be clearly legible and capable of withstanding normal shipping and handling while maintaining legibility. Any container received at the Project Site without labels, or with illegible information, is subject to rejection and return to Contractor at Contractor’s expense.

(3) Labels of new chemical products shall be legible and bear the manufacturer’s label and shall include, at a minimum:

(4) Identification of any Hazardous Material;

(5) Appropriate hazard warnings; and

(6) Name and address of manufacturer, importer, or other responsible party.

(7) Manufacturer labels that are illegible shall be replaced with a label bearing the required data. Each container of Hazardous Materials not in the manufacturer’s original container shall be labeled, tagged or marked with the following information:

(8) Identification of the Hazardous Material; and

(9) Appropriate hazard warnings.

(c) California's Proposition 65 – Toxic Enforcement Act Requirements.

(1) Contractor is hereby warned that exposure to chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm may occur at Company facilities. Upon request, Company shall make available to Contractor and its employees an SDS for such chemical exposures at the Job Site. Contractor shall inform the Contractor agents performing any of the Work at the Job Site of the above information.

(2) From the time that Contractor enters the Job Site or begins the Work until the time the Work is completed, Contractor shall issue warnings for exposure to chemicals that Contractor may use in connection with the Work or that Contractor is aware of, and that are known to the State of California to cause cancer, birth defects, or other reproductive harm to Personnel at the Job Site. Contractor shall also warn the Company Representative of any exposure which may continue after Contractor has completed the Project Work. Such warnings may take the form of an SDS.

(d) Asbestos Notification.

(1) Company's buildings and structures are of such an age that they may contain asbestos-containing materials ("ACMs") and asbestos-containing-construction-materials ("ACCMs"). Company has conducted limited surveys of its structures; therefore, all suspect ACMs are assumed to be asbestos containing until proven otherwise through survey and analysis.

(2) All suspect ACMs must be surveyed by a certified asbestos consultant in California prior to any renovation, demolition or other activity that could disturb suspect ACMs. The survey shall be provided to the Company Corporate Environment, Health and Safety Asbestos Program Manager ("APM") at least [\*\*\*\*\*] prior to the start of the Work. The APM will provide direction for projects that could disturb ACMs or ACCMs. ACMs or ACCMs that could be disturbed must be removed in compliance with Applicable Laws by a contractor that has the proper asbestos registrations.

3.8 SUBCONTRACTING WITH DIVERSE BUSINESS ENTERPRISES.

(a) As part of its registration in Company's online vendor contracting platform, Contractor shall submit its pledge to utilize a specified percentage of DBE subcontractors in its performance of the Services or provision of Deliverables.

(b) If required by Company, Contractor shall deliver to Company, using an electronic reporting tool and in a manner and at the time specified by Company, a monthly report setting forth the actual payments made to DBE subcontractors in support of Services performed or Deliverables provided by Contractor to Company under the Agreement. Contractor's failure to deliver to Company this monthly report shall be deemed a Contractor Event of Default.

3.9 BACKGROUND CHECKS.

All Personnel who will have unescorted access to a Jobsite, or any access to Company's Computing Systems or Confidential Information, are required to undergo a criminal background investigation and confirmation of identity prior to being provided such access and are subject to recurring background investigations throughout the duration of their performing any portion of the Services. The criminal background investigation shall be performed by Company, or a Company designee, at Company's sole



discretion. Company is responsible for its cost for performing the background investigation. Company's Corporate Security Department will be the sole determiner if access to the Jobsite should be granted, not granted, or revoked.

### 3.10 JOB SITE ACCESS REQUIREMENTS.

(a) Compliance with Job Site Access Requirements. If Contractor or its Subcontractors is given access to any Job Site, then such access is subject to all Personnel's compliance with all Company policies and Contractor's obligations set forth in this Agreement. Access to any Job Site is strictly for the purpose of Contractor's performance of the Work during the Term, but not otherwise. In no event shall Contractor, Subcontractor or Personnel access or make use of the Job Site for any other purpose. Contractor shall reimburse Company for any costs and expenses incurred due to any breach of this Section 3.10.

(b) Denial of Access. Company reserves the right to deny Job Site access to any employee, representative, agent, or invitee of Contractor or any Subcontractor, at Company's sole discretion.

(c) Notification of Convictions. Throughout the term of the Agreement, Contractor shall immediately notify Company whenever Contractor becomes aware that any Personnel is currently charged with, has been convicted of, or is on probation or parole for, any crime against person or property, or any felony. Contractor will also immediately remove that employee, representative, or agent from the Job Site, and revoke their access to Company's Computing Systems.

(d) Visitor Badge Requirement. All visitors to a Job Site must comply with that Job Site's specific visitor access requirements.

(e) Extended Stay Badge Requirement. Any Personnel requesting to have access to the Job Site at least [\*\*\*\*\*] times a week for a period of [\*\*\*\*\*] or more must obtain a Job Site badge from Company prior to performing any Work. Each such person must submit a complete "Temporary Access Authorization Questionnaire" or other form as required by Company.

(f) Escort Requirement. Pending approval of a badge or repeated visitor access, all persons requesting Job Site access must be escorted by Company personnel while at the Job Site. Contingent workers should not be given visitor access pending the approval of a badge; this should be completed prior to granting access.

(g) Fitness for Duty.

(1) Fitness. Personnel at the Job Site must:

(A) Report for work in a manner fit to do their job;

(B) Not consume or be under the influence of or in possession of any alcoholic beverages or of any controlled substance (except a controlled substance as prescribed by a physician that does not affect that individual's ability to properly and safely perform his or her duties); and

(C) Is not currently charged with, convicted of, or on probation or parole for any crime against person or property, or any felony.

(2) Inspection. Personnel shall not bring onto or keep any Prohibited Items at the Jobsite or on any Company-owned or -leased property. In order to ensure Contractor's compliance with this Section 3.10, Company-authorized representatives may, without notice, search work areas and other common areas, lockers, storage areas, vehicles, persons, or personal effects on Company-owned or -leased property at any time, using any reasonable means including detection dog teams.

(3) Compliance. Contractor shall advise all Personnel of the requirements of this Section 3.10 before they enter a Job Site and, if any violations are found, immediately remove the violating Personnel from the Job site.

(h) Harassment. Company supports a diverse work force and prohibits unlawful employment discrimination and harassment, including sexual harassment, in accordance with Applicable Laws. Whenever present on a Company Job Site, property or facilities, Contractor shall require all Personnel to comply with all Applicable Laws and standards prohibiting conduct that might reasonably be construed as violating Applicable Laws, including conduct such as making sexually suggestive or discriminatory jokes or remarks, touching, assaulting, making gestures of a threatening, sexual or suggestive nature, and impeding or blocking any Company's employee's, subcontractor's, or agent's movement.

### 3.11 REMOVAL OF PERSONNEL AND RETURN OF BADGES AND EQUIPMENT.

When any Personnel with Jobsite access is reassigned to non-Company work, or is no longer employed by Contractor or Subcontractor, Contractor shall immediately inform the Company Representative and, as applicable, Company Corporate Security. Upon receipt of notification, Company may immediately revoke that person's Jobsite access, as the case may be. Contractor shall confirm such verbal notification by providing notice to the Company Representative, or designee, within [\*\*\*\*\*] of the verbal notification. Contractor shall immediately deliver all equipment, access badges and other Company identification, and any other equipment that may have been issued or loaned to such re-assigned or terminated Personnel. If Contractor and Company agree that such access should be restored, the employee shall be re-processed as set forth in Sections 3.10, "Jobsite Access Requirements," and Section 3.9, "Background Checks," of this Agreement.

### 3.12 COMPANY ACCESS TO JOB SITE.

Contractor shall provide unrestricted access to the Job Site and the Work at all times to Company, Company's other contractors and their respective employees, representatives, agents and consultants; provided, however, that in the absence of an emergency or a default by Contractor hereunder, (i) Company or each such person shall give reasonable prior notice to Contractor and (ii) Contractor may provide, and each such person shall accept, an escort or any safety equipment or measures that Contractor, in its reasonable discretion, deems necessary or advisable.

### 3.13 INSPECTION AND TESTING OF WORK IN PROGRESS.

(a) Each item of Equipment to be supplied by Contractor shall be subject to inspection and testing during and upon completion of its fabrication and installation in accordance with the provisions of the Statement of Work. Without limiting the foregoing, Contractor shall be responsible for inspection and testing of the Equipment in accordance with standard inspection practices and as required by applicable specifications before their shipment and shall be responsible for successful completion of the Equipment Tests.

(b) Contractor shall perform such detailed inspection and testing of work in progress at intervals appropriate to the stage of construction or fabrication of the Project as is necessary to ensure that



such work is proceeding in accordance with the Contract Documents. At least [\*\*\*\*\*] prior to the time Contractor or its representative intends to inspect any item of Equipment, Contractor shall notify Company in writing of such inspection which notice shall state the date, time and place where such inspection is to be conducted. Company and its designated agent may, at their option and at its expense, accompany Contractor to the inspection by notifying Contractor in writing within [\*\*\*\*\*] of receipt of notice of the inspection. Company's failure to notify Contractor within the permitted time period shall be deemed to be a decision by Company not to attend the inspection. Contractor shall arrange for access to the manufacturer's facilities to permit any such inspection to be conducted smoothly. With respect to any inspection that Company chooses not to attend, Contractor (i) shall keep Company informed in all material respects of the progress and quality of all work; (ii) shall advise Company of any deficiencies revealed through such inspections and of the measures proposed to remedy such deficiencies; and (iii) shall, upon Company's request, provide Company with a reasonable opportunity to review Contractor's records with respect to such inspections. Contractor shall include the right to inspection by Company or its representative in all subcontracts and purchase orders.

(c) Contractor shall permit Company, and as authorized by Company, any party designated by Company to inspect, test and observe the Work from time to time; provided, however, that none of such Persons shall have any authority or responsibility for such Work. Contractor shall provide Company each month during performance of the Work with a schedule of all testing proposed for the following [\*\*\*\*\*] period in compliance with the requirements of the Statement of Work.

#### 3.14 NO WAIVER OF RESPONSIBILITY.

No inspection made, acceptance of Work, payment of money or approval given by Company shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Company may reject any Work with Defects or which is not in accordance with the requirements of the Contract Documents, regardless of the stage of completion, the time or place of discovery of error, and whether Company previously accepted any or all of such Work through oversight or otherwise. No approval given by Company, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

#### 3.15 DEFECTIVE WORK.

Contractor shall, at its sole cost and expense and without reimbursement hereunder, correct or replace any Work that contains a Defect, or is not otherwise in accordance with the Contract Documents. Equipment that has been replaced, if situated on the Job Site, shall be removed by Contractor from the Job Site at its sole cost and expense and without reimbursement hereunder. If Contractor or any Subcontractor defaults or neglects to carry out the Statement of Work in accordance with the Contract Documents and Contractor fails within a reasonable period of time (as reasonably determined by Contractor) after it knows or should have known of such default or neglects to commence and continue correction of such default or neglect with diligence and promptness, Company may, without prejudice to other remedies Company may have under this Agreement or otherwise at law or equity, correct such deficiencies. In such event, an appropriate Change Order shall be issued reducing the Contract Price and deducting from payments then or thereafter due to Contractor the cost of correcting such deficiencies, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Company within [\*\*\*\*\*] from Company's request therefor. Contractor shall correct any and all deficiencies as required by the Contract

Documents notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section 3.15 shall modify Contractor's obligation to achieve Final Acceptance in accordance with the Contract Documents. Contractor shall seek sales tax refund from the appropriate governmental entity on Equipment found to be defective or assist Company in seeking the refund, in the event Company direct pays the sales or use tax.

### 3.16 CLEAN-UP.

(a) Without limiting the provisions of Section 3.21, Contractor shall at all times keep the Job Site reasonably free from waste, rubbish and Hazardous Material, other than Pre-Existing Hazardous Material, relating to its Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. Contractor shall employ sufficient Personnel to clean its office at the Job Site and work areas each working day and shall cooperate with the other Persons working at the Job Site to keep the Job Site clean.

(b) Prior to the Final Acceptance Date, Contractor shall (i) remove all Contractor Equipment from the Job Site (other than equipment, supplies and materials necessary or useful to the operation or maintenance of the Facilities and Equipment and equipment, supplies and materials directed by Company to remain at the Job Site until completion of the Facilities), (ii) clean out all pits, pipes, chambers and conduits, (iii) tear down and remove all temporary structures on the Job Site built by it or its Subcontractors and restore such areas to their prior condition, except as required by Applicable Law, Section 3.21 or any other provision of this Agreement, and (iv) remove all waste, rubbish and Hazardous Material from and around the Job Site relating to its Work, except that Contractor shall not be required to excavate, remove, transport or otherwise dispose of (A) Pre-Existing Hazardous Material on the Job Site, other than as set forth in Section 3.21(a)(4), or (B) any waste, rubbish or Hazardous Material caused by Company or its representatives.

### 3.17 OBTAINING, MAINTAINING AND IDENTIFYING PERMITS.

(a) Contractor shall obtain and maintain all Contractor Permits in a timely manner. In addition, Contractor shall provide all assistance reasonably requested by Company in connection with Company's efforts to obtain and maintain the Company Permits, including witness's testimony, depositions, preparation of exhibits, technical calculations and attending meetings. In the event that any Applicable Permit is required for the Facilities or to perform the Work that is not identified in the Contract Documents, Contractor or Company, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. If such permit is of a nature typically obtained by contractors in similar projects, Contractor shall, at its sole cost and expense and without reimbursement hereunder, be obligated to obtain and maintain such Applicable Permit on behalf of Company. Otherwise, Company shall obtain and maintain such Applicable Permit.

(b) All Applicable Permits (other than any building permits, but excluding any applicable occupancy certificates) or other Applicable Permits designated as either "To be issued in the name of Contractor" or "To be issued in the name of the Company and Contractor" on Exhibit G or Exhibit H shall be issued in the name of Company unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Company or otherwise requires action by Company, Company shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate.

(c) Company reserves the right to review any such application of Contractor; provided, however, that Company's exercise of such right shall not under any circumstances, be considered an approval of the necessity, effect or contents of such application or related permit. Contractor shall deliver



to Company true and complete copies of all Applicable Permits obtained by Contractor upon its receipt thereof. Contractor shall use best efforts to identify in writing to Company all Applicable Permits and other government requirements for performance of the Work not identified in the Contract Documents, or shall confirm in writing that, to the best of Contractor's knowledge, there are no such Applicable Permits or other government requirements other than as identified in the Contract Documents prior to the date of this Agreement.

3.18 LABOR.

(a) General. Contractor shall be responsible for retaining all Labor necessary for it to perform its obligations hereunder and comply with the provisions hereof, all in accordance with Applicable Laws. Contractor shall comply with the provisions of the Construction Maintenance Labor Agreement and other applicable labor agreements as listed in Exhibit N and all successor or follow on agreements entered into by Company that are applicable to the Project. Contractor shall be responsible for all costs incurred in complying with this Section 3.18 or otherwise associated with its Labor, including costs incurred by any member of its Labor, whether by direct contract or subcontract, for medical treatment, transport and accommodation as a result of injuries or illness arising from engagement or employment in the execution of the Work.

(b) Engagement of Labor. Contractor shall make its own arrangements for the engagement of all Labor in connection with the Contract Documents and the performance of the Work. Contractor shall employ in the performance of the Work only Labor, whether supervisors, skilled workers or laborers, who are competent to perform their assigned duties in a safe and secure manner and shall use all reasonable efforts to cause its Subcontractors and Vendors to adhere to the same standard with respect to their Labor.

(c) Identification. Contractor shall identify each member of its and its Subcontractor's and Vendor's Labor in accordance with the standards and procedures that are mutually acceptable to the Parties.

(d) Supply of Services for Labor. Contractor shall provide and maintain at the Job Site, in accordance with Applicable Laws and Applicable Permits, such accommodations, services and amenities as necessary for all Labor employed for the purpose of or in connection with the Contract Documents, including all water supply (both for drinking and other purposes), electricity supply, sanitation, safety, security, fire prevention and fire-fighting equipment, refuse disposal systems and other requirements in connection with such accommodations or amenities.

(e) Project Management and Contractor's Representative.

(1) Project Management. Contractor has designated a project management team, as set forth in the Statement of Work, Exhibit A, and any future members of the project management team must be approved by Company in writing prior to his/her designation, which approval shall not be unreasonably withheld. During the performance of the Work from the Initial Site Mobilization through Substantial Completion, Contractor shall maintain continuously at the Job Site adequate management, supervisory, administrative, security and technical personnel, including the Contractor Site Manager, to ensure expeditious and competent handling of all matters related to the Work, according to its determination of the staffing required for this purpose. Contractor will not re-assign, remove or replace the Contractor Project Manager, Contractor Project Engineering Manager or Contractor Site Manager without Company's prior written consent, which consent shall not be unreasonably withheld; provided that if any such persons are no longer employed by the Contractor no such consent is required provided a person of similar skill and competency reasonably acceptable to Company is appointed as a replacement. Contractor shall promptly replace its Contractor Project Manager, Contractor Project Engineering Manager or

Contractor Site Manager, upon written request of Company, if such individual is disorderly or if in Company's opinion, such individual is otherwise unsuitable for his or her position and responsibilities.

(2) Contractor's Representative. Contractor shall appoint one individual (the "Contractor's Representative"), with the prior written consent of Company, which shall not be unreasonably withheld, who shall be authorized to act on behalf of Contractor and with whom Company may consult at all reasonable times, and whose instructions, requests and decisions in writing will be binding upon Contractor. Contractor shall not remove or replace such representative without Company's prior written consent, which consent shall not be unreasonably withheld; provided that if such representative is no longer employed by the Contractor no such consent is required provided a person of similar skill and competency reasonably acceptable to Company is appointed as a replacement.

### 3.19 COOPERATION WITH OTHER CONTRACTORS/COMMUNITY.

(a) Contractor acknowledges that work may be performed by others at the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that Company, through itself or through its employees, subcontractors or agents, may continue to work and perform activities in connection therewith at and around the Job Site during the execution of the Work under this Agreement. Contractor shall cooperate and cause its Subcontractors and Vendors to cooperate with Company and other unrelated contractors who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors or Vendors unreasonably hinders or increases, or makes more difficult than necessary the work being done by Company and such other unrelated contractors. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by Company, whether such Work is partially or entirely complete, when such access or use is reasonably necessary for the performance and completion of the work of others. All material and labor shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Contract Documents.

(b) In addition to complying with all Applicable Laws and Applicable Permits, Contractor shall use reasonable efforts, and cause its Subcontractors and Vendors to use their reasonable efforts, to assist Company in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the host community caused by the construction of the Project. Such programs shall include: (i) sequencing of the Work so as to minimize the impacts of noise and dust at and around the Job Site; and (ii) using local labor and other resources whenever possible and cost effective.

### 3.20 PROTECTION AND SAFETY.

(a) Prior to the Substantial Completion Date, Contractor shall be responsible for the security, protection and safety of all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Company, Contractor and its Subcontractors and Vendors, and other contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath, above, across or near the Job Site) that are at or near the Job Site or that are in any manner affected by the performance of the Work. As of the Substantial Completion Date, Company shall have operational control over the Project. Upon successful achievement of Substantial Completion and notwithstanding the foregoing, Contractor shall remain responsible for the security, protection and safety of all Persons performing any portion of the Work at the direction of Contractor.



(b) Contractor shall initiate and maintain reasonable safety precautions and accident prevention programs for the Job Site and in the performance of the Work, which shall be in compliance with all Applicable Laws and Applicable Permits, to prevent injury to persons or damage to property on, about or adjacent to the Job Site and in the performance of the Work at the Job Site. Without limiting the generality of the foregoing, Contractor shall furnish and maintain all necessary safety equipment such as signs and warning lights as required to provide adequate protection to persons and property.

(c) Contractor shall promptly provide Company with (i) written notification of all Occupational Safety and Health Act recordable events; (ii) written notifications and copies of all citations by Government Authorities concerning accidents or safety violations at the Job Site; (iii) written reports of near misses at the Job Site; and (iv) copies of written accident reports for lost time accidents.

### 3.21 ENVIRONMENTAL MATTERS.

(a) Hazardous Material. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with all Applicable Laws relating to Hazardous Material and all Applicable Permits. Without limiting the generality of the foregoing:

(1) Contractor shall, and shall cause its Subcontractors and Vendors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work. Contractor shall, and shall cause its Subcontractors and Vendors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Material under the Contract Documents if and as required under Applicable Laws or Applicable Permits.

(2) Contractor shall conduct its activities under the Contract Documents, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors and Vendors in a manner or at a level requiring remediation pursuant to any Applicable Law.

(3) Contractor shall not cause or allow the release or disposal of Hazardous Material at the Job Site, bring Hazardous Material to the Job Site, or transport Hazardous Material from the Job Site, except in accordance with Applicable Law and Applicable Permits. Contractor shall be responsible for the management of and proper disposal of all Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any. Contractor shall cause all such Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any, (A) to be transported only by carriers maintaining valid permits and operating in compliance with such permits and laws regarding Hazardous Material pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (B) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such permits and laws regarding Hazardous Material, from which, to the best of Contractor's knowledge, there has been and will be no release of Hazardous Material. Contractor shall submit to Company a list of all Hazardous Material to be brought onto or generated at the Job Site prior to bringing or generating such Hazardous Material onto or at the Job Site. Contractor shall keep Company informed as to the status of all Hazardous Material on the Job Site and disposal of all Hazardous Material from the Job Site.

(4) If Contractor or any of its Subcontractors or Vendors releases any Hazardous Material on, at, or from the Job Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Job Site during the Work, Contractor shall immediately notify Company in writing. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area. Contractor shall, at its sole cost and expense and without reimbursement hereunder, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by (A) any negligent release by Contractor or any of its Subcontractors or Vendors of any Pre-Existing Hazardous Material, and (B) any Hazardous Material that was brought onto or generated at the Job Site by Contractor or any of its Subcontractors or Vendors, whether on or off the Job Site. Company shall have the right to approve, in advance, the disposal site for such Hazardous Material and any subcontractor utilized by Contractor to dispose of such Hazardous Material. Prior to disposing of such Hazardous Material, Contractor shall notify Company in writing and provide Company with such information as necessary to enable Company to evaluate such disposal site and subcontractor. Contractor shall be responsible, at its sole cost and expense and without reimbursement hereunder, for remedial action to clean up fully the contamination referenced in clauses (A) and (B) of this Section 3.21(a)(4).

(b) Waste Treatment and Disposal. Without limiting the foregoing:

(1) *Toxic Waste and Industrial Hazards*: Contractor shall be responsible for the proper management and disposal of all toxic waste and industrial hazards brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with all Applicable Laws, Applicable Permits and applicable safety standards related to the treatment, storage, disposal, transportation and handling of toxic wastes and industrial hazards. Contractor shall not store or dispose of toxic wastes and industrial hazards near groundwater, surface water or drainage systems. Liquid wastes shall not be dumped onto the ground or in any groundwater, surface water or drainage systems. All waste oil and grease resulting from performance of the Work, including activities performed by Subcontractors and Vendors, shall be collected and disposed of in a manner that prevents contamination to soil, ground water, and surface water, and incinerated if possible. Vehicle maintenance shall be conducted in safe areas away from watercourses and oil or fluid runoff shall be collected in grease traps. Toxic waste and industrial hazard storage containers shall be well-labeled.

(2) *Environmentally sensitive areas*: Contractor shall perform the Work in such a manner so as to protect environmentally sensitive areas and water supplies.

(c) Fuel Storage. The location, facilities, safety measures and environmental and pollution control in connection with storage of fuel or like substances shall comply with all Applicable Laws and Applicable Permits.

### 3.22 FIRE PREVENTION.

(a) Contractor shall be responsible for providing adequate fire prevention and protection of the ESS and shall take all reasonable precautions to minimize the risk of fire at the Job Site. Contractor shall provide instruction to the Labor in fire prevention control and shall provide appropriate fire-fighting and fire protection equipment and systems at the Job Site.

(b) Contractor shall promptly collect and remove combustible debris and waste material from the Job Site in accordance with Applicable Laws and Applicable Permits, and shall not permit such debris



and material to accumulate. Contractor shall not allow fires for any purpose in the vicinity of the Work and shall agree upon the appropriateness of any such fires with Company. Any areas damaged by fire which are considered by Company to have been initiated by Contractor's or Subcontractors' Labor shall be re-cultivated and otherwise rehabilitated by Contractor.

(c) Contractor will design, install and complete all systems, procedures and Equipment constituting the ESS fire protection system as necessary during construction to protect Work in progress and to continue to protect the ESS during commercial operations.

### 3.23 REPORTS, PLANS AND MANUALS.

(a) Status Reports. Contractor shall prepare and submit to Company written progress reports as set forth in the Statement of Work. In accordance with Section 5.3 hereof, Contractor shall also report any events which may affect the Project Schedule, including any Force Majeure Events, liens on the Property Site or the Project, changes in Contractor's financial condition, or any asserted violations of Applicable Laws.

(b) Reporting of Accidents. Contractor shall report in writing to Company (and, to the extent required by any Applicable Law or Applicable Permit, the appropriate Government Authority) details of any accident that is on or about the Job Site immediately after its occurrence, but in any event not later than four (4) hours after such accident occurs. In the case of any fatality or serious injury or accident, Contractor shall, in addition, notify Company (and, to the extent required by any Applicable Law or Applicable Permit, the appropriate Government Authority) immediately.

(c) Contractor Not Relieved of Duties or Responsibilities. Neither the submission to or review or approval by Company of progress and other reports, plans and manuals, certifications, nor the provision of general descriptions shall relieve Contractor of any of its duties or responsibilities under the Contract Documents.

### 3.24 DRAWINGS, ENGINEERING DATA AND OTHER MATERIALS.

(a) All Drawings, Final Plans, reports and other information (except financial, accounting and payroll records) furnished to Contractor, or prepared by it, its Subcontractors or others in connection with the performance of the Work, whenever provided, shall be kept by Contractor in an orderly and catalogued fashion for reference by Company during the performance by Contractor of the Work. Contractor shall maintain at least one (1) copy of all Drawings, Final Plans, Change Orders and other modifications in good order and marked to record all changes made during performance of the Work, including all field deviations from the construction drawings. As a condition precedent to Final Acceptance, or upon the earlier termination of this Agreement, Contractor shall transfer the Final Plans to Company and they shall become the sole property of Company.

(b) Contractor shall furnish Company with documents that correctly reflect, with substantial completeness, the ESS or the Work against which progress is claimed as a condition precedent to Company's obligation to approve a Request for Payment. Final Plans (in both hard copy and magnetic media at no extra charge to Company), if not furnished earlier, shall be furnished to Company upon Contractor's request for a Final Acceptance Certificate or upon the earlier termination of this Agreement. Contractor and any of its Subcontractors, as applicable, may retain copies all such documents for their records, subject to the confidentiality provisions of this Agreement.

(c) Contractor shall submit all Drawings in electronic format to Company in accordance with Exhibit A for review and comment as provided in the Statement of Work. Based upon Company's

comments, if any, Contractor shall resolve Company's comments. Contractor shall revise such Drawings from time to time, as required to reflect any changes, in the actual installation of any individual Equipment or system or the ESS as a whole. Notwithstanding anything contained herein to the contrary, Company's review and/or acceptance of the Drawings, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Drawings.

### 3.25 OPERATING AND MAINTENANCE MANUALS.

Contractor shall supply Company copies of manuals and/or handbooks as set forth in the Statement of Work which provide, either in a single manual or handbook or collectively, complete operating and maintenance instructions (including inventories of spare parts and tools and parts lists with ordering instructions) for each major piece of Equipment and system of the ESS. Each such manual and handbook shall comply with the requirements of the Statement of Work, including with respect to matters such as quantity, content and the time when such manuals are to be supplied to Company, and shall be substantially complete and delivered to Company prior to Substantial Completion in order to support training of personnel and start-up and testing of the ESS.

### 3.26 ACCOUNTING INFORMATION.

During the term of this Agreement and continuing for [\*\*\*\*\*] after the completion of the Work, Contractor will provide Company with any reasonably necessary assistance, including providing all documents, cost information and other information that Company believes necessary, in a form reasonably acceptable to Company, for Company's federal, state or local tax filings, exemptions or positions advocated by Company, including sales, use and property taxes, and to address audits conducted by a Government Authority.

### 3.27 CONTRACTOR TAXES.

(a) Except for Company Taxes, Contractor shall, as required by Applicable Law, pay and administer any and all Taxes and duties incurred or payable in connection with the Work, including taxes based on or related to the income, receipts, capital or net worth of Contractor, except for Company Taxes (collectively, "Contractor Taxes"). Contractor shall cooperate with Company to endeavor to minimize any Company Taxes. Contractor shall make reasonable efforts to make available to Company and to claim any and all applicable sales and/or use tax exemptions, credits or deductions relating to the ESS and Equipment available to itself or Company, including any sale-for-resale exemption under Applicable Law and any manufacturing exemption under Applicable Law (as determined by Company with Contractor's reasonable assistance) and, at the direction of Company, Contractor agrees to take such action as may be reasonably required to allow such property, to the extent possible, to qualify for any applicable sales or use tax exemption. If required in connection with the purchase of any such property from its Vendors, to the extent permitted by Applicable Law, Contractor agrees to provide its Vendors a resale certificate as approved by the State of California, as applicable reflecting the fact that Contractor is purchasing such property for resale to Company. Company to provide Direct Pay Certificates, as applicable. Contractor agrees to take any other action reasonably necessary to ensure that the purchase of qualifying machinery with respect to the Work is exempt from sales and use tax under Applicable Law. To the extent Contractor is required by Applicable Law to collect sales tax from Company, Contractor shall collect sales tax from Company on all materials physically incorporated in the ESS that are not subject to exemption unless Company has elected to provide Contractor with a direct pay certificate issued to Company by the State of California. In the event that an assessment for sales and/or use or excise taxes are levied against Contractor, any Subcontractor or Vendor, Contractor shall promptly notify Company and furnish to Company a copy of such assessment. In the event that Company determines that the assessment should be contested and so notifies Contractor



in writing, Company may, at Company's sole cost and expense, file such documents as are necessary to contest such assessment. Company shall exclusively control any contest, assessment or other action regarding any such taxes or assessments, or any penalties or interest in respect thereof. In addition to Contractor's other obligations as set forth herein, Contractor shall cooperate with and assist Company, at Company's expense, in any contest or proceeding relating to Taxes payable by Company hereunder.

(b) Exempt Equipment. Some of the machinery, equipment, parts or other items of tangible personal property to be incorporated into the ESS may be exempt from certain taxes (such exempt items, the "Exempt Equipment"). Company, with Contractor's assistance, and will determine which purchases constitute purchases of Exempt Equipment, and Contractor and Company will take reasonably necessary actions to ensure that such Exempt Equipment qualifies for applicable tax exemptions.

### 3.28 CLAIMS AND LIENS FOR LABOR AND MATERIALS.

If Company is paying when due all undisputed amounts in accordance with the Contract Documents, Contractor shall, at its sole cost and expense and without reimbursement hereunder, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within [\*\*\*\*\*] after receipt of a written demand from Company, any Lien in respect to the ESS, the Contract Documents, the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials within the scope of Contractor's Work.

### 3.29 SPARE PARTS AVAILABILITY.

(a) Operating Spare Parts. At least [\*\*\*\*\*] prior to the end of the Warranty Period, Contractor shall provide Company with each manufacturer's recommended spare parts list for the Equipment, which list shall include part numbers, recommended quantities, price, mean times to failure, mean times to repair and a description of lead times necessary for orders of such spare parts, in each case to the extent reasonably available to Contractor. Contractor agrees to use all commercially reasonable efforts to:

(1) obtain from each Major Manufacturer an assignable guaranty that such Major Manufacturer will have available for purchase by Company for the longer of (i) [\*\*\*\*\*] after the Substantial Completion Date or (ii) [\*\*\*\*\*] after the end of the Warranty Period, all spare parts for the Major Equipment supplied by such Major Manufacturer required to keep the ESS in good operating condition, it being understood that some of such parts are not "shelf items" and will have to be manufactured by the Major Manufacturer after it receives an order for them;

(2) make spare parts (other than spare parts for the Major Equipment) available for purchase by Company for the longer of (i) [\*\*\*\*\*] after the Substantial Completion Date or (ii) [\*\*\*\*\*] after the end of the Warranty Period, to the extent that Contractor is able to obtain them from the manufacturer who supplied them for the ESS as originally built; and

(3) find another source that can supply such spare parts if Contractor is unable to obtain such spare parts from such manufacturer.

### 3.30 CONTRACTOR'S OBLIGATION TO NOTIFY.

Contractor shall keep Company advised as to the status of the Equipment and Work and shall promptly inform Company and the in writing upon the occurrence of any of the following: (i) any occurrence or event that may be expected to impact the schedule for delivery and/or installation of

Equipment; (ii) any technical problem not anticipated at the start of the Work or of significant magnitude that may impact the ESS or any component thereof or the Project Schedule; (iii) any Defect; and (iv) any material changes to previously submitted information. Company shall have the right to verify the information provided by Contractor. In connection therewith, Contractor shall identify those items provided to Company that would enable Company to verify such information in an expedient manner.

### 3.31 INTELLECTUAL PROPERTY RIGHTS.

(a) Rights and Ownership. Company's rights to inventions, discoveries, trade secrets, patents, copyrights and other intellectual property (hereinafter, collectively the "Intellectual Property Rights"), used or developed by Contractor in the performance of the Work, shall be governed by the following provisions:

(1) If Intellectual Property Rights conceived, developed or reduced to practice by Contractor prior to the performance of the Work are used in or become integral with the Work, or are necessary for Company to have complete enjoyment of the Work, Contractor hereby grants to Company a non-exclusive, irrevocable, royalty-free license, as may be required by Company for complete enjoyment of the Work, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Work and grant sublicenses to others with respect to the Work.

(2) If the Work, or Company's complete enjoyment of the Work, is likely to require Intellectual Property Rights that were conceived, developed or reduced to practice by a Subcontractor prior to the performance of the Work, then Contractor shall secure (before commencing Work that requires the use of these Intellectual Property Rights) on Company's behalf, the necessary Intellectual Property Rights by grant from the Subcontractor or in the form of a royalty-free license that is irrevocable and provides Company with the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Work. Contractor shall assure that the Intellectual Property Rights provided by its Subcontractors in all cases satisfy the following requirements for minimum Intellectual Property Rights: the Intellectual Property Rights include all of the rights described above, except the right to make "commercial use" of the Intellectual Property Rights, where commercial use is defined as a transfer or sale of the Intellectual Property Rights for consideration and where such transfer or sale is not part of any transfer or sale of participation or ownership rights in the Project. Commercial use as defined in the preceding sentence shall not be interpreted to include any use of the Intellectual Property Rights at the Job Site or at non-Job Site locations where Company determines that such use is necessary to repair, modify or replace any portion of the Work.

(3) If the Work requires inclusion of the Intellectual Property Rights of others and Company agrees such rights cannot be secured by Contractor as described in Section 3.31(a)(2), then Contractor shall either procure, at no additional cost to Company, the necessary Intellectual Property Rights so as to allow Company the complete enjoyment of the Work, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Work, and grant sublicenses to others with respect to the Work, or revise the Work so that no such license is required. Any Intellectual Property Rights procured hereunder shall be in writing and shall be irrevocable and royalty-free to Company.

(b) Contractor Cooperation. Cooperation by Contractor in assigning and transferring these Intellectual Property Rights shall consist of (i) obtaining written approval from all Subcontractors to grant Intellectual Property Rights, in the form described herein, as part of performance of the subcontracted Work; and (ii) where the Subcontractor refuses to grant these Intellectual Property Rights, then securing the minimum Intellectual Property Rights described in Section 3.31(a)(3) and use reasonable efforts to



obtain such additional Intellectual Property Rights as Company determines are necessary for Company's complete enjoyment of the Work, as further described in Section 3.31(a)(3). If Contractor is unable to obtain these lesser rights, then Company may refuse to allow Contractor to use the Subcontractor until this issue has been resolved, without such refusal constituting a Company Caused Delay or otherwise entitling Contractor to any relief through a Change Order.

(c) No Additional Compensation. Nothing in this Section 3.31 shall require payment by Company of any compensation for Intellectual Property Rights, or for any assignments or assurances required hereunder, since payment for the Work includes payment for any related Intellectual Property Rights. If Contractor is unable to secure Intellectual Property Rights from a Subcontractor without paying additional consideration for these rights, then Contractor must obtain Company's written approval to proceed with the Subcontractor and may only seek reimbursement for such payments where these payments are approved by Company in writing.

(d) Without limiting any of the provisions of this Agreement, if Company or contractor is prevented from completing the Work or any part thereof, or if Company is prevented from the use, operation, or enjoyment of the Project, the Work, or any Equipment as a result of a claim, action or proceeding by any person for unauthorized disclosure, infringement or use of any Intellectual Property Rights arising from (i) Contractor's performance (or that of its Affiliates or Subcontractors) under this Agreement, (ii) any Intellectual Property Rights licensed to Company hereunder, or (iii) use of any Equipment, then Contractor shall (at its sole cost and expense and without reimbursement hereunder) promptly, but in no event later than [\*\*\*\*\*] from the date of any action or proceeding (such period to be extended an additional [\*\*\*\*\*] if such cure is being diligently pursued but is not capable of cure within such initial [\*\*\*\*\*] period), take all actions necessary to remove such impediment, including (A) securing termination of the injunction and procuring for Company or its Affiliates or assigns, as applicable, the right to use such Work or Intellectual Property Rights in connection with the completion of the Work and for the use, operation, maintenance, repair, replacement, expansion and alteration of the Work and the Project, without obligation or liability; or (B) as approved by Company, replacing such Work with a non-infringing equivalent or modifying same to become non-infringing but subject to all the requirements of this Agreement. Contractor shall timely notify Company in writing of any claims which Contractor may receive alleging infringement of any Intellectual Property Rights which may affect Contractor's performance of the Work under this Agreement or the use, operation, maintenance, repair, replacement, expansion or alteration of the Work or the Project or any subsystem or component thereof.

(e) At Company's option and sole discretion and in addition to Company's other remedies provided in this Agreement or otherwise available at law or equity, Contractor shall immediately refund all monies paid by Company to Contractor for the Intellectual Property Rights, should Contractor fail to remove such impediment within a reasonable time.

(f) Contractor shall not include any unauthorized copyrighted or proprietary material not otherwise in compliance with this Section 3.31 in any documentation or written data furnished to Company, unless agreed to in writing by the Company Representative.

(g) This Section shall survive the termination or expiration of this Agreement.

### 3.32 EMERGENCIES.

In the event of any emergency that endangers or could endanger life or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response and actions with respect thereto, to Company.

**ARTICLE IV.  
CERTAIN OBLIGATIONS OF COMPANY**

**4.1     THE PROPERTY SITE.**

Company shall obtain the Company Permits necessary for Contractor to have access to, and perform the Work on the Property Site.

**4.2     PERMITS.**

Company shall, with Contractor's reasonable assistance, timely obtain and maintain, at its own cost and expense, all Company Permits. In addition, Company shall execute such applications as Contractor may reasonably request in connection with obtaining any of the Contractor Permits. Company shall deliver to Contractor evidence that the Company Permits necessary to begin construction of the ESS have been received by Company or, if any such required Company Permit has not actually been issued, that it has been approved for issuance, or in the opinion of Company, will be approved for issuance.

**4.3     ACCESS TO PROPERTY SITE.**

Subject to Section 3.9 and Section 3.10, from the date of this Agreement until Final Acceptance, Company shall permit the employees and agents of Contractor and its Subcontractors and Vendors to have uninterrupted access to the portions of the Property Site constituting the Job Site as may be reasonably required by Contractor in order to perform the Work, subject to all easements, restrictions, access road construction and other matters which may affect ingress and egress to the Job Site and such restrictions as may be reasonably imposed by Company in order to assure that only authorized persons enter the Property Site. Thereafter, upon reasonable notice and during reasonable times, and subject to such restrictions as may be reasonably imposed by Company and provided to Contractor in order to assure that only authorized persons enter the Property Site, Company shall permit the employees and agents of Contractor and its Subcontractors and Vendors to have access to the Property Site as necessary to repair or replace Defects or other Work that is not in compliance with the Contract Documents. As used above, the references to access contemplate that not only will the individuals referred to be permitted to enter upon and leave the Property Site but that they also will be permitted to bring onto and remove from the Property Site any and all kinds of Contractor Equipment.

**4.4     RIGHTS OF WAY.**

Company shall obtain, at its own cost and expense, any easements and rights of way over the property of others for the construction of the site access road as required, in order that Contractor Equipment, Personnel and its Subcontractors and Vendors have ingress to and egress from the Property Site.

**4.5     COMPANY TAXES.**

Company shall pay, or reimburse to the Contractor within [\*\*\*\*\*] of receipt of an invoice and evidence of payment by Contractor, all real property taxes assessed against the Property Site, any real or personal property taxes assessed against Equipment located at the Job Site, and any permanent use charges or assessments such as water or sewer, and, subject to Section 3.27, Company shall be responsible for the payment of, or reimbursement to Contractor of, state or local sales and/or use Taxes in connection with the purchase of all Equipment, except for such taxes Company contests in good faith (collectively, "Company Taxes"). Contractor shall be responsible for the cost of additional Taxes, penalties or interest, which shall be paid to Company within [\*\*\*\*\*] of request therefore, to the extent that Company is required to pay such



additional Taxes, penalties or interest because Contractor failed to use reasonable efforts to follow written instructions of Company appropriately or to comply with its obligations under Section 3.26.

4.6 COMPANY'S COOPERATION.

Company shall cooperate in all material respects to permit Contractor to perform its obligations hereunder and shall make reasonable efforts to supply to Contractor, in a timely manner, either directly or indirectly, material information and data that is available to Company and that is required for the performance of the Work; provided, however, Company does not warrant the correctness of the information and documentation provided hereunder, except that the Company Permits provided by Company to Contractor are true and correct copies of the permits issued by the applicable Governmental Authority. Company may provide or may have provided Contractor with copies of certain studies, reports or other information (including oral statements), Contractor acknowledges and agrees that (A) all such documents or information have been or will be provided as background information and as an accommodation to Contractor, (B) Company makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed and (C) it is not relying on Company for any information, data, inferences, conclusions, or other information with respect to the Job Site, including the surface and subsurface conditions of the Job Site and the surrounding areas; provided that Contractor may rely upon the information contained in the Company Permits.

**ARTICLE V.  
PROJECT SCHEDULE**

5.1 COMMENCEMENT OF WORK.

After the date hereof, subject to Section 5.2, Contractor will commence performance of the Work so as to ensure completion of the Work in accordance with the terms hereof.

5.2 NOTICES TO PROCEED.

(a) **Limited Notice to Proceed.** Prior to the issuance of the Notice to Proceed, Company may in its sole discretion issue one or more Limited Notices to Proceed, including a limited notice to proceed only with engineering or design Work and/or procurement of certain Equipment but no construction. The date on which Company provides Contractor with a Limited Notice to Proceed, if at all, shall be the respective "Limited Notice to Proceed Date." Any Work described in a Limited Notice to Proceed shall be subject to the terms of this Agreement and Contractor shall commence such portion of the Work after the Limited Notice to Proceed Date set forth therein and thereafter diligently pursue that portion of such Work. Any payment by Company with respect to such portions of the Work shall be determined and applied to the Contract Price in accordance with Article VII hereof. Contractor shall not be entitled to payment for any other portions of the Work not authorized by the Limited Notice to Proceed.

(b) **Notice To Proceed.** Unless Company has stated a different date in the Notice to Proceed, the Business Day on which Company provides Contractor with the Notice to Proceed shall be the "Notice to Proceed Date". On the Notice to Proceed Date, Contractor shall commence and shall thereafter diligently pursue the Work, assigning to it a priority that should reasonably permit the attainment of Substantial Completion on or before the Guaranteed Completion Date. Contractor shall proceed with the performance of the Work in accordance with the Project Schedules.



### 5.3 PROJECT SCHEDULE.

Contractor shall perform the Work in compliance with the Project Schedule, including completing the Work required by the Guaranteed Completion Date and the Final Acceptance Date. Contractor hereby covenants and warrants to Company that in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays incident to such Work. Contractor shall provide the reports as required herein, and shall provide any further information required by Company or as Company may reasonably request to verify actual progress and forecast future progress of the Work. Contractor shall promptly notify Company in writing of any occurrence that Contractor has reason to believe will adversely affect the completion of that phase of the Work by the Guaranteed Completion Date or materially adversely affect completion of the Work in accordance with the Project Schedule. Contractor will specify in said notice the corrective action planned by Contractor to overcome the effect of the delay or potential delay.

### 5.4 LIQUIDATED DAMAGES.

Nothing contained in this Article V shall relieve Contractor of its obligation to pay Schedule Liquidated Damages in the event that Substantial Completion is not achieved by the Guaranteed Completion Date.

## **ARTICLE VI. CHANGE ORDERS**

### 6.1 CHANGE ORDER AT COMPANY'S REQUEST.

(a) Company may at any time, by written notice to Contractor, request an addition to or deletion from or other changes in the Work (together with any necessary or requested amendments to this Agreement with respect thereto) (hereinafter "Change" or "Changes" by submitting a written request for Change Order). Contractor shall reasonably review and consider such requested Change and shall make a written response thereto to Company within [\*\*\*\*\*] after receiving such request. If Contractor believes that giving effect to any Change requested by Company will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Article XII or require a modification of any other provisions of the Contract Documents, its response to the Change request shall set forth such changes (including any amendments to the Contract Documents) that Contractor deems necessary as a result of the requested Change and its justification therefore. If Contractor accepts the Changes requested by Company (together with any amendments to the Contract Documents specified therein) or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Contract Documents, if any, in a written change order signed by the Parties (a "Change Order"). Each Change Order shall constitute a final settlement of all items covered therein, including any adjustment to the Contract Price for any impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Change Order or if the Parties dispute whether Contractor is entitled to a Change Order pursuant to any provision of this Article VI, Contractor shall proceed with such Work (including any Work covered by the disputed Change whether agreed to be within the Statement of Work or outside the Statement of Work) and the dispute shall be resolved in accordance with Article XVII; provided that if the Parties are unable to reach agreement on the cost of a requested Change, Contractor shall perform the requested Change and the cost therefor shall be determined in accordance with Section 6.3 pending resolution of the dispute pursuant to Article XVII.

(b) Company may at any time, by written notice to Contractor, propose Changes in the Work or the Project Schedule due to a Force Majeure Event or a Company Caused Delay. If there is an impact

that will actually, demonstrably, adversely and materially affect the Critical Path of the Work as a result of such Force Majeure Event or a Company Caused Delay, then the Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Change Order. Force Majeure Events will only entitle Contractor to extensions of the Project Schedule.

## 6.2 CHANGE ORDERS REQUESTED BY CONTRACTOR.

(a) It is the intent of Company and Contractor that the Statement of Work attached hereto as Exhibit A includes all items necessary for the proper execution and completion of the Work. As more particularly described in Section 3.1(c), work not described in the Statement of Work attached hereto as Exhibit A shall be considered part of the Work if such work is consistent with and reasonably inferable from the Statement of Work, so that an engineering, procurement construction and maintenance contractor of Contractor's experience and expertise should have anticipated that the work would have been required.

(b) Subject to Sections 6.2(c) and (d) below, Contractor may at any time, by written notice to Company, request a Change in the Work (together with any necessary or requested amendments to the Contract Documents) due to the events described in Section 6.2(c). If Contractor believes that such requested Change will increase or decrease its cost of performing the Work, lengthen or shorten the time needed for completion of the Work, require modification of its warranties in Article XII or require a modification of any other provisions of the Contract Documents, it shall notify Company of such, setting forth its justification for and effect of such changes, within [\*\*\*\*\*] after making a request for a Change. If Company accepts the Changes requested by Contractor (together with amendments to the Contract Documents specified therein, if any), or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Contract Documents, if any, in a written Change Order signed by the Parties.

(c) Contractor may at any time, by written notice to Company, propose Changes in the Work or the Critical Milestones: [\*\*\*\*\*]. Unless the foregoing conditions are met, Contractor may not request a Change in the Work or Critical Milestones due to a Force Majeure Event, Company Caused Delay, Change In Law or unforeseeable subsurface conditions. If Contractor has met all of the applicable condition precedents for a requested Change, then the Parties agree to bargain reasonably and in good faith for the execution of a mutually acceptable Change Order. If in such event the Parties are unable to agree on a mutually acceptable Change Order, then the dispute shall be resolved in accordance with Article XVII. Any extension permitted under this Section 6.2 shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's efforts to mitigate the same. Notwithstanding anything contained in this Agreement to the contrary, Force Majeure Events will only entitle Contractor to extensions of the Project Schedule; provided, however, if the Force Majeure Event exceeds [\*\*\*\*\*], Contractor shall be entitled to an increase in the Contract Price for all reasonable amounts incurred after such [\*\*\*\*\*] as a result of such Force Majeure Event.

(d) If Contractor knows of circumstances or events that do or may require a Change in the Work or Project Schedule, and Contractor does not provide written notification to Company of such within [\*\*\*\*\*] after the date Contractor knows or should have known (in the exercise of due diligence) of such circumstances or events, [\*\*\*\*\*].

## 6.3 CHANGES TO CONTRACT PRICE; DISPUTES.

A Change Order initiated by either Party may have the effect of either increasing or decreasing the Contract Price. Any Contractor response to a Change Order under Section 6.1 and any Contractor request for Changes under Section 6.2, shall be accompanied by a description of the estimated cost of such change (separating materials, labor and overhead) to Company. In addition, in the event that Company and



Contractor agree that Contractor is entitled to a Change Order but are unable to reach agreement on the terms of such a Change Order for a Change requested by either Company or Contractor pursuant to this Article VI, at the direction of Company (and only at the direction of Company), Company's proposed Changes shall become effective as a Change Order and Contractor shall continue to perform the Work in accordance with such Change Order and the proposed Changes shall be performed by Contractor based upon a [\*\*\*\*\*], as determined by Company, pending resolution of the dispute pursuant to Article XVII. In connection with any dispute regarding a Change, Company shall have the right to audit and inspect Contractor's records and accounts relating to any such Change, including composite rates for all labor and quantities and costs of material and equipment.

#### 6.4 INFORMATION REQUESTS.

Company may request that Contractor provide written information (prior to the issuance of a request for Changes) regarding the effect of a contemplated Change on pricing, scheduling, Warranty obligations or on other terms of the Contract Documents. The purpose of such a request will be to determine whether or not a Change will be requested. Contractor shall provide the requested information to Company within [\*\*\*\*\*] after the receipt of said request. Contractor will be allowed to reasonably delay its response to such request to the extent that fulfilling such request would significantly delay progress on the Work, unless Company agrees to extend the required completion date for the affected Milestone. Such an information request is not a Change Order and does not authorize Contractor to commence performance of the contemplated change in Statement of Work.

#### 6.5 MINOR CHANGES.

Company shall have the direct authority to issue clarifications and order minor changes in the Work, effected by written order, which do not involve any adjustment to the Contract Price or the Guaranteed Completion Date; provided that such clarifications and changes are consistent with the intent of the Contract Documents. Such clarifications and changes shall be binding on Company and Contractor. Contractor shall carry out such written orders promptly and Contractor shall receive no adjustment in the Contract Price nor shall there be any change to the Contract Documents.

#### 6.6 CYBER REQUIREMENTS CHANGES.

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### **ARTICLE VII. CONTRACT PRICE; PAYMENTS TO CONTRACTOR**

#### 7.1 CONTRACT PRICE.

Company shall pay to Contractor the "Contract Price" set forth in the Purchase Order as full payment for all Work to be performed by Contractor under the Contract Documents. The Purchase Order shall allocate the Contract Price between (1) [\*\*\*\*\*] for Contractor's obligation to engineer, design, procure, construct, test, install and start up the Project, within the time and for the purpose designated herein, achieve Final Acceptance, and comply with all of the Standard Service Package obligations set forth in this Agreement, payable as described below (the "EPC Price"), and (2) any Service Package Extension Fees. The Contract Price shall be subject to adjustment solely to the extent explicitly provided in this Agreement, including pursuant to Article VI. Except as expressly provided herein, payments of the EPC Price shall be made based on completion of milestones in accordance with the Milestone payments schedule as set forth in Exhibit A (each such payment, a "Milestone Payment"), subject to the terms and conditions hereof.

## 7.2 REQUESTS FOR PAYMENT.

(a) Commencing after the Effective Date of this Agreement, upon the date which Contractor successfully achieves one or more of the Milestones as listed in the Milestone payments table, Contractor shall submit to Company a Request for Payment for the Milestone Payment payable upon the achievement of such Milestones; [\*\*\*\*\*], including the language providing for the Company's additional assignment rights set forth in Section 15.9(b), with the only changes to such language being to conform the language to the applicable subcontract and which changes are acceptable to Company. Each Request for Payment shall be accompanied by a cover sheet summarizing the total amount invoiced to date, amounts previously invoiced and current invoice amount, and shall also recap the contract value, showing the original Contract Price, value of approved Change Orders and the revised Contract Price, and provide, for each Milestone in the Milestone payments table, (1) the amounts attributed to Milestones previously paid by Company, and (2) the amount attributed to Milestones for which the applicable Request for Payment is being submitted.

(b) Each Request for Payment shall be accompanied by appropriate supporting documentation that the applicable Milestone has been achieved (which, in the case of the Substantial Completion and Final Acceptance Milestone, shall be the Substantial Completion Certificate and the Final Acceptance Certificate, respectively).

(c) Following the completion of the applicable Milestone, provided that Contractor has delivered any amendments to the Payment Bond and Performance Bond required in accordance with Section 11.6 and all Lien waivers required in accordance with Section 7.5(c), Company shall pay, in accordance with the Purchase Order, to an account specified in a written notice by Contractor the amount that remains after the deduction from the payment requested of the following amounts: (i) any portion thereof that Company disputes in good faith as not being due and owing, (ii) any overpayment made by Company for any previous period, (iii) any Liquidated Damages (including interest thereon) and (v) any amounts withheld pursuant to Sections 7.4(c), 7.5(a) and (vi) any costs incurred by Company in enforcing any other provision hereof (including attorneys' and other consultants' fees) regardless of whether such provisions expressly provide for withholding or set-off. Company shall not be obligated to make more than [\*\*\*\*\*]. Disputes as to the completion of Work shall be resolved as soon as reasonably possible pursuant to Article XVII of this Agreement; provided, however, that Company shall be required to pay only those amounts for Work to be completed as set forth in the Milestone payments schedule during the month immediately following completion of such Milestone, except those amounts that are disputed in good faith, pending the resolution of such dispute pursuant to the terms of this Agreement.

## 7.3 SERVICE PACKAGE EXTENSION FEE.

(a) Contractor may invoice Company for the Service Package Extension Fee for an Operating Year no earlier than [\*\*\*\*\*] prior to the beginning of that Operating Year.

(b) Each invoice for the Service Package Extension Fee shall reference this Agreement and clearly set out the amount payable and the period in respect of which such amount is payable.

(c) Not later than [\*\*\*\*\*] following receipt of a valid invoice for the Service Package Extension Fee, Company shall pay the invoiced amount to an account specified in by Contractor in the applicable invoice, without offset, except that Company shall have the right to deduct from any payment requested the following amounts: (i) any portion thereof that Company disputes in good faith as not being due and owing (provided that Company provides notice of such dispute, with a reasonably detailed explanation of the reason for such dispute and supporting documentation); (ii) in all cases, any undisputed overpayment made by Company for any previous period; and (iii) any overdue and unpaid Liquidated Damages (including interest thereon).



#### 7.4 GENERAL PROVISIONS FOR PAYMENTS.

(a) If applicable, any payment by Company shall be accompanied by a notice to Contractor specifying the amount of each deduction and setting forth the reason(s) why the deduction is justified. If undisputed amounts are due and unpaid by Company, Contractor shall be entitled to payment of such amount, plus interest thereon at the [\*\*\*\*\*] (established as of the first day of the month on the month payment is due) from the date that such amount should have been paid until the date of such payment; provided, however, any amounts disputed by Company shall not be subject to the interest thereon. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, FAILURE BY COMPANY TO PAY ANY AMOUNT DISPUTED IN GOOD FAITH, UNTIL RESOLUTION OF SUCH DISPUTE IN ACCORDANCE WITH THIS AGREEMENT, SHALL NOT ALLEVIATE, DIMINISH, OR MODIFY IN ANY RESPECT CONTRACTOR'S OBLIGATIONS TO PERFORM HEREUNDER, INCLUDING CONTRACTOR'S OBLIGATION TO MEET THE GUARANTEED COMPLETION DATE.

(b) Failure or forbearance on the part of Company in withholding any amounts due under a Request for Payment or invoice shall not be construed as accepting or acquiescing to any disputed claims. In addition, the making of any payment by Company shall not constitute an admission by it that the Work covered by such payment (or any Work previously performed) is satisfactory or timely performed, and Company shall have the same right to challenge the satisfactoriness and timeliness of such Work as if it had not made such payment. If, after any such payment has been made, it is subsequently determined that Contractor was not entitled to all or a portion of any such payment, Contractor shall promptly refund all or a portion of such payment to Company with interest thereon at the Reference Rate (established as of the first day of the month in which the payment is due) from the date that Contractor received such payment to the date of refund.

(c) Notwithstanding any other provision to the contrary contained herein, Company, in addition to its rights set forth in Section 7.5, [\*\*\*\*\*]; (v) Contractor's, or any Subcontractor's or Vendor's failure to carry out the Statement of Work in accordance with the Contract Documents; or (vi) the occurrence of a Contractor Event of Default. Company shall release payments withheld pursuant to this Section 7.4(c) within [\*\*\*\*\*] from the date when Contractor cures all such breaches to the satisfaction of Company.

(d) Each payment made pursuant to this Article shall be paid directly to Contractor. Such payment shall be wire transferred to an account or accounts designated by Contractor in its Request for Payment.

#### 7.5 LIENS.

(a) Provided Company has paid Contractor all undisputed amounts due to Contractor as required in this Agreement, within [\*\*\*\*\*] of receiving any notice of any Lien filed by any Subcontractor, or any Person working for, or through, Contractor or any Subcontractor, Contractor shall cause such Lien to be discharged or satisfied by bond. The expense of discharging or satisfying by bond any such Lien shall not be a part of the Contract Price payable to Contractor. If Company receives notice of any such Lien, Company shall provide notice thereof to Contractor. Contractor shall promptly commence all necessary proceedings to discharge or satisfy by bond any such Lien as soon as possible. Without limiting Contractor's obligation to discharge or satisfy any Lien as required in this Section 7.5, Company shall have the right to retain and withhold from amounts payable to Contractor in an amount sufficient to indemnify Company against any such Lien until such time as Company becomes satisfied that such Lien is discharged or satisfied by bond.



(b) As a condition precedent to the making of any payment hereunder, Contractor and each of its Substantial Subcontractors and Substantial Vendors shall provide Company with a certificate in the form attached hereto as Exhibit K and Exhibit K-1. Contractor shall provide such certificates simultaneously with each Request for Payment.

(c) Acceptance by Contractor of the final payment shall constitute a release by Contractor of Company, Affiliates, and every officer and agent thereof from all Liens (whether statutory or otherwise and including mechanics' or suppliers' liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Company or of any person relating to or affecting this Agreement, except claims which (i) Contractor does not have actual knowledge of at the time of such payment, (ii) accrue after the date of such payment or (iii) for which Contractor has delivered a dispute notice to Company. No payment by Company shall be deemed a waiver by Company of any obligation of Contractor under this Agreement.

## **ARTICLE VIII.**

### **TITLE, RISK OF LOSS AND POSSESSION**

#### **8.1 CLEAR TITLE.**

Contractor warrants and guarantees that legal title to and the ownership of the Work delivered to Company pursuant to this Agreement (including all Equipment, patents, licenses, Drawings, Final Plans, operation and maintenance manuals and the Operating Spare Parts as required by the Statement of Work) shall pass to Company, free and clear of any and all Liens caused or created by Contractor, its Subcontractors or Vendors upon payment to Contractor of the portion of the Contract Price then actually due to Contractor in connection with the Request for Payment as provided in the Contract Documents; provided that for all Equipment, title shall pass to Company upon such payment only if title has previously been transferred to Contractor, otherwise, title shall pass to Company at such time as Contractor has acquired title to the Equipment, but in no event later than delivery of such Equipment to the Job Site. Notwithstanding anything to the contrary, the costs of unloading and transporting to the Job Site are included in the Contract Price.

#### **8.2 RISK OF LOSS.**

(a) From the date of Contractor's commencement of the Work at the Job Site until the Substantial Completion Date, Contractor shall have care, custody, and control of the Project and the Work, and hereby assumes the risk of loss for the Project and the Work, including: (i) any Equipment whether on or off the Job Site, (ii) all other Work completed on or off the Job Site and (iii) all Work in progress. All Equipment not yet incorporated into the ESS shall be stored in secured areas whether on or off the Job Site. Contractor shall bear the responsibility of preserving, safeguarding, and maintaining such Equipment and any other completed Work and Work in progress (including spare parts provided by Company). If any loss, damage, theft or destruction occurs to the Work, regardless of the cause, on or off the Job Site, for which Contractor has so assumed the risk of loss, Contractor shall promptly repair or replace the Project or the Work affected thereby and shall complete the Work in accordance with the Contract; provided that, subject to Contractor's obligations pursuant to Section 9.12, Company shall cooperate with Contractor in obtaining the proceeds of the Builder's Risk Insurance Policy required to be maintained pursuant to Section 9.1(i). Contractor shall be solely responsible for all damage, loss, liability and costs incurred that are not paid by the insurer under the Builder's Risk Insurance Policy in connection with repair or replacement of the Project or the Work, including any Builder's Risk Insurance Policy deductibles, and any such costs shall not be reimbursed by the Company. Contractor assumes risk of loss at all times for Contractor's Equipment. To the extent that any physical loss or damage to the pre-existing property results from Contractor's negligent acts or omissions, and/or failure to comply with the requirements of the Contract Documents, whether or

not such pre-existing property is insured, Contractor shall (i) bear all of the cost and expense of replacing or repairing such physical loss or damage; or (ii) be responsible, at its sole cost and expense and without reimbursement from Company, for Company's property insurance policy deductible [\*\*\*\*\*] for insured claims plus any additional costs for replacing or repairing such physical loss or damage that are not paid for by such property insurance.

(b) Risk of loss for the Project and the Work shall pass to Company (excluding Contractor Equipment not incorporated into the Work and other items to be removed by Contractor, which shall remain the responsibility of Contractor) until 11:59 pm, Pacific Time, on the Substantial Completion Date. Subject to the foregoing, from and after the date of the transfer of risk of loss (a) Company shall generally assume all risk of physical loss or damage thereto, and all responsibility for compliance by the ESS with applicable safety and environmental laws, and all other Applicable Laws. However, if any portion of the Project or the Work is damaged or destroyed after the Substantial Completion Date due to any negligent or intentional act or omission of Contractor, then Contractor shall (i) bear all of the cost and expense of replacing or repairing such physical loss or damage; or (ii) be responsible, at its sole cost and expense and without reimbursement from Company, for Company's property insurance policy deductible [\*\*\*\*\*] for physical loss or damage to the Project and the Work plus any additional costs for replacing or repairing such physical loss or damage that are not paid for by such property insurance. Company waives its right to claim a loss against Contractor to the extent that physical loss or damage to the Project or Work is paid for by property insurers, and property insurers waive their rights of subrogation against Contractor as to such payment.

## **ARTICLE IX. INSURANCE**

### **9.1 CONTRACTOR INSURANCE POLICIES.**

Upon execution of this Agreement and continuing through the Final Acceptance Date or Termination of this Agreement, whichever is later (except as otherwise provided below in this Section 9.1), Contractor shall, at its sole cost and expense, obtain and maintain in effect those insurance policies and minimum limits of coverage as specified below and such additional coverage as may be required by applicable law (the "Contractor Insurance Policies"). In no way do these minimum insurance requirements limit or relieve Contractor of the obligations assumed elsewhere in this Agreement, including Contractor's defense and indemnity obligations. By requiring these minimum insurance requirements, Company is not expressing or implying that such requirements are sufficient for the Project or the Work, and Contractor shall be solely responsible for assessing the sufficiency of the types and limits of insurance for the Project and the Work.

(a) Workers' Compensation Insurance with statutory limits, as required by and that complies with the laws of the state having jurisdiction over Contractor's employees, or the state in which the Work is performed and any other jurisdictions as may be applicable to its operations, and includes an alternate employer endorsement. Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws or similar employee benefit laws of the United States, and Employers' Liability Insurance in the amount of:

- (1) Bodily Injury by accident – [\*\*\*\*\*] each accident
- (2) Bodily Injury by disease – [\*\*\*\*\*] policy limit
- (3) Bodily Injury by disease – [\*\*\*\*\*] each employee

The Employers' Liability Insurance shall not contain an "Occupational Disease" exclusion.



(b) Commercial General Liability Insurance, written on an “occurrence,” not claims-made, basis covering third-party liability caused by or arising out of any operations by or on behalf of Contractor under the Agreement, including coverage for third-party bodily injury; property damage (including property damage to third-party property in Contractor’s care, custody, or control, and third-party property over which Contractor is exercising physical control); personal and advertising injury; products/completed operations (maintained for a period of [\*\*\*\*\*] from the Final Acceptance Date or termination of this Agreement, whichever is later); and (i) liability of Contractor that would be imposed in the absence of the Agreement or (ii) liability assumed by the Contractor in a contract or agreement that is an “insured contract” (applicable to damages and indemnities set forth in this Agreement). Any “Professional Liability” exclusion must except contractor means and methods. The “your work” exclusion must except damaged work or the work out of which the damage arises that is performed by a subcontractor of the insured. Such insurance shall be in limits of [\*\*\*\*\*] per occurrence, [\*\*\*\*\*] Products/Completed Operations aggregate limit dedicated to the Project, and [\*\*\*\*\*] general aggregate limit dedicated to the Project. Defense costs shall be outside of policy limits. The aggregate limits shall apply separately to the Project through the use of a designated project aggregate limit of insurance endorsement. Such insurance shall: (a) contain cross liability and severability of interests provisions; (b) contain coverage for Premises and Operations Liability (including explosion, collapse, and underground hazard), and (c) provide coverage that is equivalent in scope to or broader than the coverage provided by ISO form CG 00 01. If Contractor’s Services involve the use of cranes, such coverage shall include riggers coverage for any operations performed by or on behalf of Contractor. Contractor shall continue to maintain the policy for [\*\*\*\*\*] following Final Acceptance by Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than [\*\*\*\*\*] after Final Acceptance or termination of this Agreement, whichever is later.

(c) Automobile Liability Insurance, covering bodily injury and property damage liability caused by the use of Contractor’s owned, hired or non-owned automotive in the performance of the Scope of Work under this Agreement with a combined single limit of not less than [\*\*\*\*\*] per occurrence or accident or the amount required by Applicable Law, whichever is greater.

(d) Umbrella Liability or Excess Liability Insurance, written on a following-form policy (terms at least as broad as the underlying coverage) and on an occurrence basis, and not claims-made basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, and Commercial Automobile Liability insurance, with limits of [\*\*\*\*\*] per occurrence and [\*\*\*\*\*] annual aggregate using, at Company’s discretion and acceptance, either (i) Contractor’s corporate insurance program, or (ii) Contractor’s project-specific insurance dedicated solely to the Project; if a project-specific insurance policy is procured, Contractor shall ensure that it has limits of [\*\*\*\*\*] per occurrence and in the aggregate with a reinstatement provision whereby the project policy aggregate limit shall be reinstated if it becomes eroded due to claims incurred during the policy period or any extended reporting period. At the Contractor’s request, the Company may reduce the limits in this paragraph 9.1d on a case-by-case basis to facilitate Contractor’s hiring of necessary Subcontractors. Such insurance shall be maintained for not less than [\*\*\*\*\*] after Final Acceptance by Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than [\*\*\*\*\*] after Final Acceptance or termination of this Agreement, whichever is later.

(e) For Contractor and Subcontractors performing engineering, architecture, design or similar professional services Work, Professional Liability (Errors and Omissions) Insurance covering negligent acts, errors and omissions and wrongful acts in the performance of such professional services, including supervisory services. Such insurance shall have limits of not less than [\*\*\*\*\*] per claim and in the annual aggregate using, at Company’s discretion and acceptance, either (i) Contractor’s corporate insurance program, or (ii) Contractor’s project-specific insurance dedicated to the Project; if a project-specific insurance policy is procured for the Term of this Agreement, then limits of [\*\*\*\*\*] per claim and in the



aggregate with a reinstatement provision whereby the Contractor shall trigger reinstatement should the project policy aggregate limit become eroded due to claims incurred during the policy period. The review and approval of the design portions of the Work by Company shall not constitute a release of Contractor's or any Subcontractor's liability for any negligent acts, errors or omissions or wrongful acts associated therewith. Such insurance shall have a retroactive date that equals or precedes the Effective Date of this Agreement. This insurance shall be maintained for not less than [\*\*\*\*\*] after Final Acceptance by the Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than [\*\*\*\*\*] after Final Acceptance by the Company or termination of this Agreement, whichever is later.

(f) For Contractor and Subcontractors performing Work involving Hazardous Material, Contractors Pollution Liability Insurance, with limits of not less than [\*\*\*\*\*] each occurrence or each claim and in the annual aggregate using, at Company's discretion and acceptance, either (i) Contractor's corporate insurance program, or (ii) Contractor's project-specific insurance dedicated to the Project, covering losses caused by pollution conditions that arise from the operations of the Contractor or Subcontractors, including coverage for the following: (i) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (ii) property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; (iii) defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and (iv) natural resource damage, remediation costs (including on-site and off-site), restoration costs, emergency response costs, completed operations, transportation/movement of materials to or from the Project site (including loading and unloading), non-owned disposal sites. There shall be no exclusion or limitation for lead, naturally occurring hazardous substances, or contractual liability. Such insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability and provided that any failure to comply with reporting or other provisions, including breaches of warranties, shall not affect coverage provided to any other insureds. If a project-specific insurance policy is procured for the Term of this Agreement, then such insurance shall include a reinstatement provision whereby the Contractor triggers reinstatement should the project policy aggregate limit become eroded due to claims incurred during the policy period. Such insurance shall have a retroactive date that equals or precedes the Effective Date of this Agreement. This Insurance shall be maintained for not less than three [\*\*\*\*\*] after Final Acceptance by the Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than [\*\*\*\*\*] after Final Acceptance by the Company or termination of this Agreement, whichever is later.

(g) Inland Marine "Property or Equipment Floater" Insurance covering all risk of physical damage to Contractor's Equipment, including all property, apparatus, tools, structures, supplies, materials, equipment and other goods, and mobile construction equipment, owned, hired, rented or leased by Contractor and/or provided for use at the Job Site by Contractor or its Subcontractors or Vendors to perform Work while it is located at the Site or located at temporary off-site storage or staging areas, or while in land-based transit to the Site within the continental United States. Coverage shall apply to such Contractor's Equipment for the full replacement cost value of such equipment.

(h) Ocean Marine Cargo Insurance, if applicable to the Scope Of Work, for any supplies, machinery, Equipment, and other property intended to be permanently incorporated into the Project to be transported by ocean going vessels, unless such property is already insured by Contractor or other party under Incoterms 2010 rules or Incoterms 2000 rules.

(i) Builder's Risk Insurance. Within [\*\*\*\*\*] after Contractor notifies Company in writing that it will construct improvements at, or deliver supplies, materials or Equipment to the Job Site that may be insurable pursuant to a builder's risk insurance policy but not later than the date that any such activities



are performed at the Project, and continuing through the Substantial Completion Date, Contractor shall obtain and maintain in force a Builder's Risk Insurance Policy (the "Builder's Risk Policy"). The Builder's Risk Policy shall name Company (and any Affiliate that Company may request in writing be named as an insured), Contractor, and Subcontractors of any tier performing Work at the Job Site as named insureds, shall cover the Project, including all supplies, materials, Equipment, machinery, and other property intended to be permanently incorporated into the Project for which title or risk of loss shall have passed at the time of loss to an insured. Coverage shall be on an "all risk" basis, and shall not be less than 100% of the replacement cost value of the Project for physical damage, loss, or destruction to the Project and related expenses, and may also contain aggregate sub-limits for losses due to the perils of earthquake (including sinkhole), flood, as well as other sub-limits. Coverage shall apply to such Project property while it is located at the Job Site or located at temporary off-site storage or staging areas, or while in land-based transit to the Job Site within the continental United States, and shall include expediting expense coverage. The Builder's Risk Policy shall insure resulting damage from faulty workmanship, design, or materials. Company shall be named as loss payee. Company and Contractor agree to waive all rights of recovery against each other and Subcontractors for damages caused by fire and other perils to the extent paid by the Builder's Risk Policy. Contractor shall cause the Builder's Risk insurer to waive all rights of subrogation against Company, and shall cause Subcontractors to waive all rights of recovery against Company to the extent paid by the Builder's Risk Policy. Contractor shall provide Company with a copy of the Builders Risk Policy prior to commencing any Work, or as soon thereafter as the policy becomes available with Contractor's diligence in which case Contractor shall also provide Company with a proposed policy form or other documentation of the terms and conditions of the policy prior to commencing any Work. Company shall have the right to review the Builders Risk Policy including, without limitation, with respect to covered property, limits and sub-limits, exclusions, and coverage extensions, to ensure that the policy adequately insures the Project and the Work.

(j) Contractor shall have Cyber Insurance covering (a) liability arising from theft, dissemination and/or use of Confidential Information stored or transmitted in electronic form and (b) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third-person's computer, computer system, network or similar computer related property and the data, software and programs stored thereon. Such insurance will be maintained with limits of no less than [\*\*\*\*\*] per claim and in the annual aggregate, and may be maintained on a stand-alone basis, or as part of the required Errors and Omissions coverage. This insurance shall have a retroactive date that equals or precedes the Effective Date of this Agreement. Contractor shall maintain such coverage until the later of: (1) a minimum period of [\*\*\*\*\*] following termination or completion of the applicable Purchase Order, or (2) until Contractor has returned or destroyed all Company Data in its possession, custody or control, including any copies maintained for archival or record-keeping processes.

## 9.2 FORM OF CONTRACTOR INSURANCE POLICIES.

(a) Contractor shall be solely obligated, and Company shall bear no obligation, to pay any and all premiums, deductibles, retentions, co-pays, or other charges applicable to any of the Contractor Insurance Policies.

(b) Additional Insured: Contractor shall name Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees), as additional insureds under the Contractor Insurance Policies specified in Section 9.1(b), (c), (d) and (f), and with regard to the insurance specified in Section 9.1(b), the additional insured coverage shall include ongoing operations and products/completed operations coverage.

(c) Primary/Non-Contributory: Regardless of any conflicting provision in Contractor's policies to the contrary, Contractors Insurance Policies (i) required in Section 9.1(b) and (c) shall apply as



primary insurance to, and without a right of contribution from, any other insurance or self-insurance program maintained by or afforded to Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees); (ii) required in Section 9.1(d) shall apply as primary insurance to any other insurance or self-insurance program maintained by or afforded to Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees); (iii) required in Section 9.1(a) shall apply without a right of contribution from, any other insurance or self-insurance maintained by or afforded to Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees).

(d) Waiver of Subrogation: Contractor and its insurers of the coverages specified in Section 9.1, except for Section 9.1(e), shall be required to waive all rights of recovery from or subrogation against Company and any other designated Affiliates of Company and any other Person designated by Company with respect to the Project (including their respective directors, officers and employees). Contractor shall require the issuers of such Contractor Insurance Policies to waive all rights of subrogation.

(e) Contractor shall be responsible for additional costs associated with modifying inadequate coverage, terms and conditions to meet the requirements of this Agreement. Contractor shall comply with all the conditions stipulated in each of the insurance policies. Contractor shall make no material alteration to the terms of any insurance required herein without the prior written approval of Company. If an insurer makes (or purports to make) any such alteration, Contractor shall notify Company immediately. If any such notice is sent from an office outside the United States, it will be sent by international courier.

### 9.3 QUALIFIED INSURERS.

All Contractor Insurance Policies shall be written by insurers that are authorized to do business in the state in which the Work is to be performed, and rated [\*\*\*\*\*] or higher by [\*\*\*\*\*].

### 9.4 CERTIFICATES OF INSURANCE.

Contractor shall provide Company with certificates of insurance, in form and substance acceptable to Company, evidencing and describing Contractors Insurance Policies and endorsements maintained hereunder within [\*\*\*\*\*] of commencement of the Work, but in no event later than the date Contractor enters the Job Site, or upon issuance of such policies, if earlier, and on each issuance anniversary while such insurance is in effect. Contractor shall provide Company written notice at least [\*\*\*\*\*] in advance of any change in, non-renewal of or cancellation of such insurance policies. The certificates of insurance shall evidence and describe the insurance policies and endorsements, including the requirements for additional insured, primary/non-contributory and waiver of subrogation as described in Section 9.2. Notwithstanding anything to the contrary contained herein, evidence of such coverage shall be provided to Company as a condition precedent to Initial Site Mobilization.

### 9.5 INSPECTION OF CONTRACTOR'S INSURANCE POLICIES.

Contractor shall provide Company with complete copies of all (i) Project specific Contractor Insurance Policies prior to commencing any Work, or as soon thereafter as each policy becomes available with Contractor's diligence in which case Contractor shall also provide Company with a proposed policy form or other documentation of the terms and conditions of that policy prior to commencing any Work; and (ii) corporate-wide Contractor Insurance Policies promptly upon request of the Company in the event of an insured or potentially insured claim or loss. If policies have not been secured on a Project-specific basis, Contractor may redact proprietary information not relevant to the scope, terms, or conditions of coverage

prior to transmission. Contractor shall, when so requested by Company, promptly produce confirmation of premium payments for such policies. Company's receipt, non-objection, or approval of certificates of insurance, policy endorsements, copies of insurance policies, and any other insurance-related documentation from Contractor with respect to the Contractor Insurance Policies shall not be deemed an agreement or acknowledgement by Company that Contractor has fulfilled its obligations under this Article IX, nor shall it relieve Contractor of such obligations, which obligations shall remain in full force.

9.6 SUBCONTRACTORS' INSURANCE.

Before permitting any of its Subcontractors to perform any Work at the Job Site, Contractor shall obtain a certificate of insurance from each such Subcontractor evidencing that such Subcontractor has obtained the same types of insurance, except as set forth in section 9.1(d) and limits required of Contractor, subject to Company's agreement to reasonable changes to types of insurance or limits based upon the scope of Work of each Subcontractor. All policies of Subcontractors shall (i) include a waiver of any right of subrogation of the insurers thereunder against Company and Contractor and any right of the insurers to set-off or counterclaim, offset or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under such policy, and (ii) name Company and Contractor as additional insureds for both ongoing operations and products/completed operations coverage. Subcontractors shall provide the types of insurance set forth in Section 9.1 (a), (b), (c), and, where applicable, (e) and (f), with limits and upon conditions as are customarily and normally provided in the power transmission industry. Vendors shall provide the types of insurance, with limits and upon conditions, as are customarily and normally provided in the power transmission industry. Contractor shall, in its subcontracts, obligate each of its Subcontractors to provide to Company and Contractor complete copies of all Subcontractor procured insurance policies promptly upon request by Company or Contractor.

9.7 REMEDY ON FAILURE TO INSURE; INSURANCE INDEMNIFICATION.

Contractor shall not be entitled to any payment under the Agreement if it is not in compliance with all of its obligations with respect to the Contractor Insurance Policies as specified in this Article IX. If Contractor shall fail to obtain and keep in force all Contractor Insurance Policies, Company may, without limiting any other remedy it may have available under this Agreement or otherwise at law or equity, obtain and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and recover from Contractor whether by way of deduction, offset or otherwise the cost of obtaining and maintaining such insurance. If Contractor fails to comply with any of the provisions of this Article IX, Contractor, among other things and without restricting Company's remedies under the law or otherwise, shall, at its own cost and expense, provide insurance as an insurer would in accordance with the terms and conditions above. With respect to the required Contractor Insurance Policies, Contractor shall provide a current, full and complete defense to the Company, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to any claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

9.8 MANAGEMENT OF INSURANCE POLICIES.

Contractor shall be responsible for (a) managing and administering all Contractor Insurance Policies, including the payment of all deductibles and self-insured retention amounts, and (b) except for Company's rights under the Builder's Risk Policy, or as Company may otherwise direct, the filing of all claims and the taking of all necessary and proper steps to collect any proceeds on behalf of the relevant insured Person. Contractor shall immediately report to Company in writing the occurrence of any injury, loss, or damage at or to the Project or arising from the Work, including damage to property and bodily injury that might reasonably give rise to a loss or claim exceeding [\*\*\*\*\*]. Contractor shall at all times



keep Company informed of the filing and progress of any such loss or claim. In the event Contractor collects proceeds on behalf of other Persons, it shall ensure that these are paid directly from the insurers to the relevant Person and, in the event that it receives any such proceeds, it shall, unless otherwise directed by Company, pay such proceed to such Party forthwith and prior thereto, hold the same in trust for the recipient.

#### 9.9 COMPANY INSURANCE POLICIES.

Prior to the Initial Site Mobilization by Contractor and continuing through the Final Acceptance Date, Company shall obtain and maintain in force with responsible and reputable insurance carriers, the following insurance of the types set forth below; provided, however, Company may self-insure any or all of such coverages, and the terms, conditions, and limits of such insurance shall be determined in Company's sole discretion:

(a) Workers' Compensation covering all of Company's employees, and Employers' Liability covering all of Company's employees;

(b) General Liability Insurance in limits and on terms that Company deems reasonable; and

(c) Property Insurance. After Substantial Completion and until Final Acceptance or the termination of this Agreement, whichever comes first, Company shall provide property insurance for the Project in an amount and on terms that Company deems appropriate.

(d) Other Company Policy Provisions. Prior to the initial site mobilization by Contractor, Company shall provide Contractor with a certificate of insurance evidencing those policies set forth in this Section 9.9. As it applies to this Agreement, Company-provided insurance required pursuant to this Section 9.9 shall: (i) provide a waiver of subrogation in favor of Contractor for the insurance in Sections 9.9(a), (b) and (c); (ii) unless otherwise noted and where applicable, provide that all amounts of coverage, deductibles and claims payments be in Dollars; and (iii) shall not be inclusive of coverage of Contractor Equipment or any Subcontractor's mobile equipment, tools or other equipment similar to Contractor Equipment.

#### 9.10 CONTRACTOR'S ASSISTANCE.

In the event a loss is sustained under any of Company's policies, such loss will be adjusted by Company with the insurance companies. Contractor will assist Company in the adjustment of losses and shall cooperate fully and expeditiously with Company in Company's pursuit of insurance coverage. Contractor shall replace or repair any loss or damage and complete the Work in accordance with the Contract Documents (subject to any right, if any, Contractor may have to receive compensation therefor under this Agreement). Contractor shall provide all Drawings, Final Plans, certificates and other information that Company or its insurers may reasonably require. Contractor shall with all due diligence comply with the conditions of Company's insurance policies and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and shall bear, at its sole cost and expense and without reimbursement hereunder, the consequences of any failure to do so. Contractor shall ensure, by contractually obligating each of its Subcontractors in their subcontracts, that each Subcontractor shall provide such cooperation to Company. Cooperation, as used in this section, includes providing access to non-privileged documents, and to employees with knowledge of the facts or circumstances, relevant to the pursuit of such insurance coverage. The parties will bear their respective costs in cooperating in the pursuit of such insurance coverage. The duty to cooperate shall survive any termination of the Agreement.

9.11 REPAIR OR REPLACEMENT COST RESPONSIBILITY OF CONTRACTOR.

Until the Substantial Completion Date, Contractor shall have the risk of loss to the Project in accordance with Section 8.2 and full responsibility for the cost of replacing the loss of or repairing the damage to any portion of the Project, including all Equipment, regardless of whether Company has title thereto under this Agreement, except to the extent such loss or damage is the result of gross negligence or willful misconduct of Company.

9.12 RESPONSIBILITY FOR SAFE DELIVERY OF MATERIALS OF CONTRACTOR.

In addition to Section 8.2, Contractor shall comply with all insurer requirements set forth in all policies or other insurer requirements or recommendations, including inland transport and ocean marine cargo insurance policies.

9.13 NO LIMITATION ON LIABILITY.

Nothing in this Article IX shall be deemed to limit Contractor's liability under the Contract Documents regardless of the insurance coverages required by this Article. No limitation of liability provided to Contractor under the Contract Documents is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable or available to Company or Contractor under Contractor Insurance Policies, it being the intent of the Parties that the full amount of such insurance be actually available notwithstanding any limitation of liability contained in the Contract Documents, if any. In the event that Contractor procures a Contractor Insurance Policy with limits greater than that required under this Agreement, the higher limits of that policy shall apply, regardless of any provision in such policy seeking to limit the insurer's obligation to the lower limits set forth in this Agreement. Company assumes no responsibility for the solvency of any insurer or the failure of any insurer to settle any claim.

9.14 CANCELLATION OF CONTRACTOR INSURANCE POLICIES.

Should any insurer that issues any of the Contractor Insurance Policies withdraw or cancel its policy, or should any such insurer become insolvent, make an assignment for the benefit of creditors, or file for or be placed into bankruptcy, run-off, receivership, or liquidation, (a) Contractor shall promptly give Company written notice thereof, (b) Contractor shall promptly replace such insurance through another insurer acceptable to Company, and (c) Company shall have no obligation to make payment to Contractor until Contractor has complied with subpart (b) above.

**ARTICLE X.  
TESTS, SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE**

10.1 GENERAL.

(a) All Tests conducted by either Party shall be in accordance with the Contract Documents, applicable manufacturers' instructions and Warranty requirements, Applicable Laws, Applicable Permits, Prudent Industry Practices and any and all applicable rules. Except as otherwise provided in this Agreement, the Party performing the Tests shall provide the other Party with at least [\*\*\*\*\*] advance written notice of the Tests. Company and its respective authorized representatives or third parties, shall have the right to inspect the Work and to be present during the Tests performed by Contractor. The Party performing the Test shall provide a written report of the Test results to the other Party immediately upon such report becoming available to the Party performing the Test.



(b) Prior to performing any Test, Contractor shall deliver to Company a written notice thereof (a "Test Notice") specifying a date for commencement of any or all of the Tests. Contractor shall deliver a Test Notice at [\*\*\*\*\*] prior to the commencement of any Test. Company shall, within [\*\*\*\*\*] after its receipt of such Test Notice, deliver to Contractor a written notice (i) accepting such Test Notice or (ii) denying that the prerequisites for performing such Test have been completed and stating the facts upon which such reasonable denial is based. Upon receipt of such notice, Contractor shall take such action as is appropriate to remedy the conditions described in such notice from Company. Following any such remedial action, Contractor shall deliver to Company a new Test Notice conforming to the requirements of this paragraph (b), and the provisions of this paragraph (b) shall apply with respect to such new Test Notice in the same manner as they applied with respect to the original Test Notice. The foregoing procedure shall be repeated as often as necessary until Company no longer rejects the Test Notice; provided, however, if Contractor is required to notify following receipt of Company's written notice in which Company denies that the prerequisites for performing a task have been completed, such re-notification may be given within [\*\*\*\*\*] of such notice by Company, and Company shall have [\*\*\*\*\*] following the receipt of such resubmitted notice to file written objections as described above. Contractor shall reschedule Tests as requested by Company to reasonably accommodate the schedules of Persons whom Company deems necessary to attend the Tests. Contractor shall promptly notify Company of any proposed change in the schedule of Tests and may not conduct any such test under such proposed changed schedule unless Company receives reasonable advance notice of the actual date of commencement of such rescheduled test. Contractor shall reimburse Company for all additional direct costs reasonably and necessarily incurred by Company due to Contractor's failure to provide written notice in accordance with this Section 10.1(b) or due to Contractor's failure to prepare any portion of the Work for inspections or testing after having provided notice to Company of any such inspection or test.

#### 10.2 PERFORMANCE TESTS.

No Performance Tests will be performed unless the Project (a) is capable of being energized and operated safely, normally and continuously in accordance with the requirements of the Contract Documents at all operating conditions and modes specified in the Statement of Work (although minor portions of the Project not essential to its safe, continuous and reliable operation may remain to be completed), and (b) is ready for the Performance Tests to be performed in accordance with the Contract Documents. The Performance Tests shall be performed by Contractor or Company, as set forth in Exhibit D, with the cooperation of the other Party. Contractor acknowledges and agrees that Company may engage third parties to assist with or conduct the Performance Tests. Each Performance Test shall be conducted in accordance with the terms of the Contract Documents, including the Statement of Work, after complying with the notice provisions of Section 10.1(b). If the Project achieves the Performance Requirements, Contractor shall, upon satisfaction of the other requirements to Substantial Completion, submit a notice of Substantial Completion in accordance with Section 10.4(a). If the Project fails all or any part of the Performance Tests, Contractor shall take appropriate corrective action and the Performance Tests shall be performed again. If the Project fails all or any part of the retest, Contractor shall take appropriate corrective action and the Performance Tests shall be repeated. If Contractor fails to achieve the Performance Requirements and satisfy all of the other requirements of Substantial Completion on or prior to the Guaranteed Completion Date, Contractor shall pay Schedule Liquidated Damages in accordance with Section 11.2 hereof. In addition, the Performance Tests shall be repeated in accordance with this Section 10.2 during the applicable time periods set forth in Section 11.1.

#### 10.3 PUNCH LIST.

(a) At all times during performance of the Work, Contractor shall maintain a list setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of the Contract Documents. Contractor shall promptly provide a copy of such list to Company upon



request. Contractor shall make such revisions to such list as and when requested by Company from time to time.

(b) No later than [\*\*\*\*] after the Substantial Completion Date, Contractor shall prepare and submit to Company a comprehensive list (the “Punch List”) of items to be completed for the Project to reach Final Acceptance. Contractor shall make such revisions to the Punch List as and when requested by Company from time to time. However, Contractor shall not be obligated to include any items on the Punch List if such items: (i) directly relate to any part of the Work for which Company has taken operational care, custody and control and (ii) are submitted by Company more than [\*\*\*\*] after Company took operational care, custody and control over such part of the Work.

(c) Upon request of Company, the Parties shall reasonably agree upon the commercial value of all items on the Punch List that have not been completed. The Parties agree that with respect to Punch List items that remain uncompleted and which are preventing Final Acceptance, it may be more expedient for Company to complete such Punch List items, at its election and option. If the Parties are able to agree upon the commercial value of all items on the Punch List, and Company so elects, at its sole discretion, Company may, in lieu of requiring Contractor to complete the Punch List items, require Contractor to pay to Company an amount equal to [\*\*\*\*] of the commercial value of the remaining Punch List items as agreed upon by Company. Company shall have the right to offset such amount owed by Contractor against any amounts owed by Company to Contractor at Final Acceptance, or otherwise under the Contract Documents.

#### 10.4 SUBSTANTIAL COMPLETION.

(a) After Contractor determines that all of the requirements for Substantial Completion have been completed, Contractor shall provide written notice thereof to Company.

(b) Within [\*\*\*\*] following receipt by Company of such notice of Substantial Completion, Company shall notify Contractor in writing whether or not Contractor has fulfilled the requirements of Substantial Completion. If Contractor has fulfilled the requirements of Substantial Completion, Company shall notify Contractor that it has achieved Substantial Completion. If Contractor has not fulfilled such requirements for Substantial Completion, Company shall specify in such notice to Contractor in reasonable detail the reasons for determining that the requirements for Substantial Completion have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Substantial Completion as soon as possible (and no later than by the Guaranteed Completion Date if such date has not already passed). Following any such remedial action, Contractor shall deliver to Company a new notice of Substantial Completion and the provisions of this Section 10.4(b) shall apply with respect to such new Substantial Completion notice in the same manner as they applied to the original Substantial Completion notice. The foregoing procedure shall be repeated as often as necessary, so long as Contractor is paying when due Schedule Liquidated Damages (if applicable), until Substantial Completion has been achieved. The date on which Substantial Completion is achieved by Contractor shall be the “Substantial Completion Date.”

#### 10.5 FINAL ACCEPTANCE OF THE ESS.

Contractor shall achieve Final Acceptance within [\*\*\*\*] after the Substantial Completion Date. After achieving Substantial Completion in accordance with Section 10.4, when Contractor determines that all of the requirements for Final Acceptance have been completed (other than execution of the Final Acceptance Certificate by Company), or when Contractor has elected to or is required to declare Final Acceptance pursuant to this Section 10.5, Contractor shall submit a proposed Final Acceptance Certificate, in substantially the form attached hereto as Exhibit C, to Company. As soon thereafter as reasonably practicable, a team consisting of representatives of Company and Contractor shall make a final inspection

of the ESS. Within [\*\*\*\*\*] following such final inspection, Company shall notify Contractor in writing whether Contractor has fulfilled the requirements of the Contract Documents to reach Final Acceptance (other than execution of the Final Acceptance Certificate by Company). If such requirements have been fulfilled, Company will execute the proposed Final Acceptance Certificate. If the requirements for Final Acceptance have not been fulfilled, then Company shall deliver a written notice to such effect to Contractor describing in reasonable detail the deficiencies noted and corrective action recommended, including projected target dates for the completion of such incomplete or remedial Work. Contractor shall promptly act to correct any such deficiencies. The procedure set forth in this Section 10.5 shall be repeated as necessary, until the earlier of (i) Contractor has fulfilled the requirements for the issuance of the Final Acceptance Certificate and Company executes such certificate or (ii) termination of this Agreement.

#### 10.6 CHANGES IN GUARANTEED DATES.

Except as otherwise set forth herein, no action by Company or Contractor (unless Company specifically agrees to the contrary) required or permitted under this Article X shall affect the Guaranteed Completion Date or any other scheduled date described or defined under the terms of the Project Schedule or other Contract Document.

### **ARTICLE XI. CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES**

#### 11.1 COMPLETION GUARANTEE.

(a) Contractor hereby guarantees that Substantial Completion will occur no later than the Guaranteed Completion Date.

(b) Subject to Company's other rights as set forth in this Agreement and subject to the provisions of this Section 11.1, in the event that Substantial Completion occurs after the Guaranteed Completion Date but Contractor achieves Substantial Completion within sixty (60) Days after the Guaranteed Completion Date, Contractor shall pay and Company shall accept as its sole remedy for each and every day of such delay after the Guaranteed Completion Date the Schedule Liquidated Damages described in Section 11.2.

(c) If and in the event Contractor fails to achieve Substantial Completion within sixty (60) Days of the Guaranteed Completion Date, then (i) Contractor shall be considered in default, and may, at Company's sole and exclusive discretion, be terminated in accordance with Article XV of this Agreement, and (ii) Contractor shall continue to pay the Schedule Liquidated Damages described in Section 11.2 until the exhaustion of the aggregate amount of Schedule Liquidated Damages, payable by Contractor hereunder in accordance with Section 11.4(c).

#### 11.2 SCHEDULE LIQUIDATED DAMAGES.

(a) Company and Contractor acknowledge and agree that any failure to achieve Substantial Completion for the Project by the Guaranteed Completion Date will directly cause substantial damage to Company, which damage cannot be ascertained with reasonable certainty. If Contractor fails to achieve Substantial Completion for the Project by the Guaranteed Completion Date, subject to Section 11.4(c), it shall pay to Company, as liquidated and agreed damages and not as a penalty, an amount (collectively, the "Schedule Liquidated Damages") as set forth in Exhibit R for each applicable Day (or portion thereof) as set forth in such Exhibit R that Substantial Completion is delayed beyond the Guaranteed Completion Date, commencing with the first Day following the Guaranteed Completion Date.



(b) It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article XI as Schedule Liquidated Damages are reasonable, considering the damages that Company would sustain, and that these amounts are agreed upon and fixed as Schedule Liquidated Damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by Company. Payment of Schedule Liquidated Damages are the exclusive remedies for delays if and in the event the Project ultimately achieves Substantial Completion before the earlier of sixty (60) Days after the Guaranteed Completion Date or such date on which the aggregate amount of Schedule Liquidated Damages is exhausted. Further, subject to the last sentence of this paragraph and Section 15.1(a) and Section 15.1(c) and provided Contractor (i) has not otherwise materially breached this Agreement and (ii) is paying the assessed Schedule Liquidated Damages, the failure to achieve Substantial Completion by the Guaranteed Completion Date shall not be considered an event of default under the Contract Documents. Notwithstanding anything contained herein to the contrary, in the event that Contractor has not achieved Substantial Completion but has reached its maximum liability hereunder for payment of Schedule Liquidated Damages in accordance with Section 11.4(c), Contractor shall be in breach of this Agreement.

### 11.3 PERFORMANCE GUARANTEES.

(a) As set forth in the Purchase Order, Contractor guarantees that the ESS will operate to meet or exceed the performance levels set forth in Exhibit M (the "Performance Guarantees") during the Standard Service Package Period and any Fixed Energy Capacity Guarantee Service Package Period.

(b) Company and Contractor acknowledge and agree that any failure to meet the Performance Guarantees will directly cause substantial damage to Company, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor shall fail to meet the Performance Guarantees, subject to Section 11.4(c), it shall pay to Company, as liquidated and agreed damages and not as a penalty, an amount (collectively, the "Performance Liquidated Damages") as set forth in Exhibit M within [\*\*\*\*\*] after the end of any Operating Year (or portion thereof) during which Contractor shall fail to meet the Performance Guarantees.

(c) (c) It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article XI as Performance Liquidated Damages are reasonable, considering the damages that Company would sustain, and that these amounts are agreed upon and fixed as Performance Liquidated Damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by Company. Payment of Performance Liquidated Damages are the exclusive remedies for Contractor's failure to meet the Performance Guarantees.

### 11.4 PAYMENT OF LIQUIDATED DAMAGES.

(a) Schedule Liquidated Damages and Performance Liquidated Damages (together, "Liquidated Damages"), if any, under this Article XI shall accrue as set forth in the applicable Purchase Order and Exhibit M, respectively. Any amounts not paid when due shall accrue interest from the due date until paid at the Reference Rate (established as of the first day of the month in which payment is due).

(b) Except as provided in Section 11.4(c), Contractor's obligation to pay Liquidated Damages when and as provided in this Article XI is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by (i) any default by Company in the performance or observance of any of its obligations hereunder; provided that Company has paid all undisputed amounts due to Contractor hereunder, or any other circumstances, happening, condition or event. Contractor shall pay such Liquidated Damages without deduction, set-off, reduction or counterclaim.

(c) Notwithstanding anything contained herein to the contrary (i) Schedule Liquidated Damages shall not exceed an amount equal to ten percent (10%) of the EPC Price, and (ii) Performance Liquidated Damages shall not exceed an amount equal to: (1) three percent (3%) of the EPC Price during each twelve (12) month period following the Substantial Completion Date; and (2) twenty percent (20%) of the EPC Price in the aggregate during the Term (collectively, the "Performance Liquidated Damages Limitation").

(d) Company shall have the right to offset any amounts owing to Company under this Article XI against payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Company may elect in its sole discretion.

#### 11.5 ABSOLUTE OBLIGATIONS.

The Parties understand and agree that Contractor's obligation to achieve the Substantial Completion is an absolute obligation, which must be achieved. There are no Liquidated Damages payable by Contractor hereunder which would excuse Contractor from achieving Substantial Completion for the Project. Notwithstanding anything contained herein to the contrary, after the Project has achieved Substantial Completion and during the time period prior to Final Acceptance, the Project shall be capable of being operated in accordance with all the ESS's operating procedures and all Applicable Laws, Applicable Permits and the other requirements of the Contract Documents, and all operating conditions specified in the Statement of Work. The obligations set forth in this Section 11.5 are absolute obligations of Contractor regardless of the amounts and expenses required to be incurred by Contractor to satisfy such obligation, and notwithstanding that such amounts may exceed the Contract Price.

#### 11.6 PERFORMANCE SECURITY.

a. Prior to commencing the Work, Contractor shall deliver to Company payment and performance bonds in the form attached hereto as Exhibit Q acceptable to Company and issued by an approved surety acceptable to Company in its reasonable discretion ("Payment and Performance Bonds"). Contractor shall maintain a Payment Bond in an amount equal to [\*\*\*\*\*] of the EPC Price and shall maintain a Performance Bond in an amount equal to [\*\*\*\*\*] of the Contract Price, as such amount may be increased or decreased over time through Change Orders, or such lesser amount designated by Company, until Contractor provides Company the Standard Service Package Period Performance Security as set forth in Subsection (b) below. All sureties must be companies that (A) are listed on the United States Department of Treasury's most recent and effective listing of Approved Sureties (as listed in Circular 570 or its successor); (B) are admitted surety insurers authorized to transact the business of surety in the State of California; (C) have [\*\*\*\*\*] of not less than [\*\*\*\*\*]; and (D) are writers of bonds of value not greater than surety's underwriting limitation, as set forth in Circular 570 or its successor ("Qualified Surety"). Should any surety withdraw or cancel its bond, whether voluntarily or involuntarily, or should any surety become insolvent, make an assignment for benefit of creditors, or file for or be placed into bankruptcy, run off, receivership or liquidation, Contractor shall promptly give Company written notice. In such event, Contractor shall also promptly provide a substitute surety and bond acceptable to Company. Company shall have no obligation to make payments to Contractor during any period of time in which either a Performance Bond or a Payment Bond required by the Agreement is not in effect or during any period of time when a surety is insolvent, or when a surety has made an assignment for the benefit of creditors, or has filed for or been placed into bankruptcy, run off, receivership or liquidation. If Contractor fails or is unable to substitute bonds and sureties Company shall have the right, exercisable in its sole discretion, to proceed as set forth below: (1) permit Contractor to continue its performance and withhold [\*\*\*\*\*] additional retention from Contractor until Contractor provides substitute bonds and sureties or until all obligations under this Agreement have been satisfied, whichever first occurs; (2) permit Contractor to



continue performance subject to Contractor providing an alternative form of security acceptable to Company; or (3) terminate Contractor's right to perform any of the Work remaining after withdrawal or cancellation of the bond and withhold from Contractor any amounts due until all obligations under this Agreement have been satisfied by a completion contractor. Company's decision shall not constitute an election of remedies and shall not operate to deprive Company of any remedies to which Company is entitled, whether legal or equitable in nature. Provided that no Contractor Event of Default has occurred and remains uncured, if a cure period is applicable to such Contractor Event of Default, or otherwise unresolved at such time, Company shall return the Payment and Performance Bond to Contractor upon receipt of the Energy Capacity Guarantee Service Package Period Performance Security as set forth in Subsection (b) below.

(b) Upon achieving Final Acceptance of the Work and during the Standard Service Package Period, Contractor shall deliver to Company either a letter of credit in substantially the form attached hereto as Exhibit L and otherwise acceptable to Company, issued by a Qualified Institution (the "Standard Service Package Period Letter of Credit"), or performance bond issued by a Qualified Surety, in the form attached hereto as Exhibit Q (the "Standard Service Package Period Payment and Performance Bonds" and collectively the "Standard Service Package Period Performance Security"), in the amount of [\*\*\*\*] of the EPC Price, as may be amended, to secure Contractor's obligations during the Standard Service Package Period. A drawing against the Standard Service Package Period Letter of Credit or a claim against the Standard Service Package Period Performance Bonds, as applicable, may be made by Company, its successors and assigns, in the event that (a) a Defect or other breach of a Warranty under Section 12.1 arises during the Warranty Period that Contractor fails to remedy as required under Section 12.3; (b) a Contractor Event of Default has occurred and remains uncured, if a cure period is applicable to such Contractor Event of Default, or otherwise unresolved at such time; (c) the Contractor fails to meet the Standard Service Package requirements during the Standard Service Package Period; (d) the issuer of the Standard Service Package Period Letter of Credit no longer qualifies as a Qualified Institution, or the issuer of the Standard Service Package Period Performance Bonds no longer qualifies as a Qualified Surety, as applicable; (e) the Standard Service Package Period Performance Security was amended or modified without the prior written consent of Company; or, (f) a provision of the Standard Service Package Period Performance Security has ceased to be valid and binding on, or enforceable against, the issuer or the issuer has disaffirmed an obligation under the Standard Service Package Period Performance Security. A claim upon the Standard Service Package Period Performance Bond or drawing against the Standard Service Package Letter of Credit may be made by Company, its successors or permitted assigns, in the event that: (1) a Contractor Event of Default has occurred and remains uncured, if a cure period is applicable to such Contractor Event of Default, or otherwise unresolved at such time; (2) Company has not received proof of replacement of the Standard Service Package Period Performance Security reasonably satisfactory to it at least [\*\*\*\*] prior to the expiration date of the Standard Service Package Period Performance Security; (3) the issuer of the Standard Service Package Letter of Credit no longer qualifies as a Qualified Institution or the issuer of Standard Service Package Period Performance Bond no longer qualifies as a Qualified Surety; (4) the Standard Service Package Period Performance Security was amended or modified without the prior written consent of Company; (5) a provision of the Standard Service Package Period Performance Security has ceased to be valid and binding on, or enforceable against, the issuer; or (6) the issuer has disaffirmed an obligation under the Standard Service Package Period Performance Security. In the event that Company draws upon the Standard Service Package Period Letter of Credit for any cause set forth above, inclusive, Company shall hold the proceeds from such drawing in trust, for the benefit of Contractor, pending the delivery by Contractor to Company of a replacement Standard Service Package Period Letter of Credit which satisfies the requirements set forth in this Section 11.6(b), and upon the delivery thereof, Company shall return to Contractor the proceeds held in trust, less any sums to which Company may be entitled pursuant to the above clauses. Provided that none of the events listed in this subparagraph (b) above has occurred and remains uncured or otherwise unresolved at such time, and (i) Company has not elected a Fixed Energy Capacity Guarantee Service Package, or (ii) Company has elected a Fixed Energy Capacity



Guarantee Service Package and Contractor has delivered the Energy Capacity Guarantee Service Package Period Performance Security, as provided below, Company shall return the Standard Service Package Period Letter of Credit to Contractor upon conclusion of the Standard Service Package Period.

(c) Upon completion of the Standard Service Package Period and during any Fixed Energy Capacity Guarantee Service Package Period, Contractor shall deliver to Company either a letter of credit in substantially the form attached hereto as Exhibit L and otherwise acceptable to Company, issued by a Qualified Institution (the "Energy Capacity Guarantee Service Package Period Letter of Credit"), or annually renewable performance bonds issued by a Qualified Surety, in a form to be provided by Contractor at least [\*\*\*\*\*] in advance of the expiration of the Standard Service Package Period and reasonably approved by Company, (the "Energy Capacity Guarantee Service Package Period Performance Bond") (either of the foregoing, as applicable, being referred to herein as the "Energy Capacity Guarantee Service Package Period Performance Security"), in the amount of [\*\*\*\*\*] of the EPC Price, as may be amended, to secure Contractor's obligations during each year that the Fixed Energy Capacity Guarantee Service Package Period is in effect. A drawing against the Energy Capacity Guarantee Service Package Period Letter of Credit or a claim against the Energy Capacity Guarantee Service Package Period Performance Bond, as applicable, may be made by Company, its successors and assigns, in the event that (a) a Defect or other breach of a Warranty under Section 12.1 arises during the Warranty Period that Contractor fails to remedy as required under Section 12.3; (b) a Contractor Event of Default has occurred and remains uncured, if a cure period is applicable to such Contractor Event of Default, or otherwise unresolved at such time; (c) the Contractor fails to meet the Fixed Energy Capacity Guarantee Service Package requirements during the Fixed Energy Service Package Period; (d) the issuer of the Energy Capacity Guarantee Service Package Period Letter of Credit no longer qualifies as a Qualified Institution, or the issuer of the Energy Capacity Guarantee Service Package Period Performance Bond no longer qualifies as a Qualified Surety, as applicable; (e) the Energy Capacity Guarantee Service Package Period Performance Security was amended or modified without the prior written consent of Company; or, (f) a provision of the Energy Capacity Guarantee Service Package Period Performance Security has ceased to be valid and binding on, or enforceable against, the issuer or the issuer has disaffirmed an obligation under the Energy Capacity Guarantee Service Package Period Performance Security. A claim upon the Energy Capacity Guarantee Service Package Period Payment and Performance Bonds or drawing against the Energy Capacity Guarantee Service Package Letter of Credit may be made by Company, its successors or permitted assigns, in the event that: (1) a Contractor Event of Default has occurred and remains uncured, if a cure period is applicable to such Contractor Event of Default, or otherwise unresolved at such time; (2) Company has not received proof of replacement of the Energy Capacity Guarantee Service Package Period Performance Security reasonably satisfactory to it at least [\*\*\*\*\*] prior to the expiration date of the Energy Capacity Guarantee Service Package Period Performance Security; (3) the issuer of the Energy Capacity Guarantee Service Package Letter of Credit no longer qualifies as a Qualified Institution or the issuer of Energy Capacity Guarantee Service Package Performance Bond no longer qualifies as a Qualified Surety; (4) the Energy Capacity Guarantee Service Package Period Performance Security was amended or modified without the prior written consent of Company; (5) a provision of the Energy Capacity Guarantee Service Package Period Performance Security has ceased to be valid and binding on, or enforceable against, the issuer; or (6) the issuer has disaffirmed an obligation under the Energy Capacity Guarantee Service Package Period Performance Security. In the event that Company draws upon the Energy Capacity Guarantee Service Package Period Letter of Credit for any cause set forth above, inclusive, Company shall hold the proceeds from such drawing in trust, for the benefit of Contractor, pending the delivery by Contractor to Company of a replacement Energy Capacity Guarantee Service Package Period Letter of Credit which satisfies the requirements set forth in this Section 11.6(c), and upon the delivery thereof, Company shall return to Contractor the proceeds held in trust, less any sums to which Company may be entitled pursuant to the above clauses. Provided that none of the events listed in this subparagraph (c) above has occurred and remains uncured or otherwise unresolved at such time, Company shall return the Energy Capacity



Guarantee Service Package Period Letter of Credit to Contractor upon conclusion of the Fixed Energy Capacity Guarantee Package Period.

## **ARTICLE XII. CONTRACTOR'S WARRANTIES**

### **12.1    WARRANTIES.**

(a) Contractor warrants to Company that all Equipment shall be (i) new and of good quality, (ii) free from improper workmanship and Defects, (iii) conform to all applicable requirements of all Applicable Laws and all Applicable Permits, and (iv) fit for Company's use in connection with battery storage facilities.

(b) Contractor warrants to Company that the Work will be performed in a good and workmanlike manner, and that the ESS will: (i) conform to and be designed, engineered and constructed in accordance with the Drawings, Statement of Work, all Applicable Laws and Applicable Permits and other terms of the Contract Documents; (ii) conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in battery storage facilities similar to the Project; and (iii) contain the Equipment, supplies and materials described in the Statement of Work.

(c) Contractor warrants to Company that none of the Work, the ESS, the Equipment, the Drawings, Final Plans and the design, engineering and other services rendered by Contractor hereunder, nor the use or ownership thereof by Company in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks.

(d) Except as expressly stated herein to the contrary, Contractor warrants that it shall remedy, in accordance with Section 12.2, any Defects in the Work due to faulty design, materials or workmanship which appear within the Warranty Period. Contractor shall bear all costs of corrections, repairs, and required maintenance during the Warranty Period. The provisions of this Section 12.1 apply to Work performed by Subcontractors and Vendors as well as Work performed directly by Contractor. The provisions of this Article XII do not apply to corrective work caused by the acts or omissions of Company or any separate contractor of Company. If and in the event Company notifies Contractor of a Defect within the Warranty Period, Contractor, at Contractor's expense, shall perform all Work necessary to remedy the Defect, and the repair or replacement Work performed by Contractor to accomplish that purpose shall be subject to the same Warranty Period. Contractor agrees to reasonably cooperate with Company to effect the collection of any such insurance proceeds.

(e) THE WARRANTIES OF CONTRACTOR SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

### **12.2    SERVICE PACKAGE EXTENSION ELECTIONS**

Company shall have the right to purchase the Fixed Energy Capacity Guarantee Service Packages or Maintenance Only Service Packages, by notifying Contractor of such election within [\*\*\*\*\*] prior to the conclusion of the then-current Service Package Period; provided, however, that Company may not elect

any Fixed Energy Capacity Guarantee Service Packages after Company has elected any Maintenance Only Service Packages. The Parties shall execute a Change Order to document any such election by Company.

#### 12.3 REPAIR OF NONCONFORMING WORK.

(a) If the Work or the ESS are found to contain Defects, or Contractor is otherwise in breach of any of the warranties set forth in Section 12.1 within the Warranty Period, Contractor shall at its sole cost and expense and without reimbursement hereunder, correct, repair or replace such Defect or otherwise cure such breach as promptly as practicable upon being given notice thereof. Company shall provide Contractor with reasonable access to the ESS in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the ESS. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of Warranty, including necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Company’s satisfaction that there is not a risk of the reoccurrence of such problem. Contractor’s obligations under this Section 12.3 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any Vendor or Subcontractor to Contractor or Company concerning any Defect or breach of Warranty.

(b) If Contractor fails to complete or commence with due diligence to complete the correction of any Defect or cure of any breach of Warranty as required herein within [\*\*\*\*\*] after receipt of written request from Company to perform such obligations, then Company may correct or cause to be corrected such Defect or cure such breach of Warranty and Contractor shall be liable for all reasonable costs, charges, and expenses incurred by Company in connection therewith (including reasonable and necessary consultants’ fees), and Contractor shall, within [\*\*\*\*\*] after request therefore, pay to Company an amount equal to such costs, charges, and expenses. Any such request by Company shall be accompanied by proper documentation evidencing such costs, charges and expenses. Any amounts not paid when due shall accrue interest at the Reference Rate (established as of the first day of the month in which payment is due) from the date due until paid. Company and Contractor agree to treat (and shall cause each of their respective Affiliates to treat) any payment made pursuant to this Section 12.3(b) as an adjustment to the Contract Price.

(c) If, during the Warranty Period, Contractor shall change, repair or replace any Major Equipment item or component, Company, in its reasonable discretion, may require Contractor to assist Company in conducting any test required by Company with respect to the affected Equipment and will require Contractor to provide technical data for review by Company, for the Company to confirm that any repair or replacement shall not impact the terms of the system’s interconnection agreement; provided, however, in connection with any performance of a test pursuant to this Section 12.3(c), appropriate allowance with respect to the performance of such Equipment shall be made for the fact that such Equipment may have operated prior thereto. If after running such test pursuant to this Section 12.3(c), the results indicate Contractor has not fulfilled any of its Warranty obligations and there is a degradation in the performance of the Project and such degradation results from the Warranty Work performed in accordance with this Article XII, then Contractor shall repair, correct or replace such affected Equipment and assist the Company in re-running such test until the results no longer indicate a degradation in the performance of the Project resulting from the Warranty Work performed in accordance with this Article XII.

#### 12.4 PROPRIETARY RIGHTS.



Without limiting any of the provisions of this Agreement, if Company or Contractor is prevented from completing the ESS, the Work or any part thereof, or from the use, operation, or enjoyment of the ESS, the Work or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from Contractor's performance (or that of its Subcontractors or Vendors) under the Contract Documents, including the Work, Equipment, the Drawings, the Final Plans or other items and services provided by Contractor or any Subcontractor or Vendor hereunder, Contractor shall promptly, but in no event later than [\*\*\*\*\*] from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Company or its Affiliates or assigns, as applicable, the right to use such materials, Equipment, Drawings or Final Plans in connection with the operation and maintenance of the Project, without obligation or liability; or (b) replace such materials, Equipment, Drawings or Final Plans, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole cost and expense and without reimbursement hereunder, but subject to all the requirements of the Contract Documents.

#### 12.5 REPAIRS AND TESTING BY COMPANY.

(a) During the Warranty Period, without prior notice to Contractor and without affecting the warranties of Contractor hereunder, Company shall be permitted to (i) make repairs or replacements on Equipment so long as the repair or replacement involves the correct installation of spare parts, and (ii) adjust the Equipment as outlined in the instruction manuals provided by Contractor or any Subcontractor or Vendor, or as agreed by Contractor or any Subcontractor or Vendor.

(b) In the event of an emergency and if, in the reasonable judgment of Company, the delay that would result from giving notice to Contractor could cause serious loss or damage which could be prevented by immediate action, any action (including correction of Defects) may be taken by Company or a third-party chosen by Company, without giving prior notice to Contractor, and in the case of a Defect, the reasonable cost of correction shall be paid by Contractor. In the event such action is taken by Company, Contractor shall be promptly notified within [\*\*\*\*\*] after correction efforts are implemented and shall assist whenever and wherever possible in making the necessary corrections. All such warranties obtained shall be in addition to, and shall not alter the warranties of, Contractor. Upon Company's request, Contractor shall use all reasonable efforts to force Subcontractors to honor warranties including filing suit to enforce same.

#### 12.6 VENDORS AND SUBCONTRACTORS.

Contractor shall, for the protection of Contractor and Company, obtain from the Vendors and Subcontractors such guarantees and warranties with respect to Work performed and Equipment supplied, used and installed hereunder as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in Section 12.1 and shall be made available and assignable to Company to the full extent of the terms thereof upon the expiration of Contractor's warranty hereunder. Company shall be an express third-party beneficiary of all such guarantees and warranties, provided such third-party beneficiary rights shall not be effective unless this Agreement has been terminated. To the extent available, Company shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Change Order issued in accordance with the provisions of Article VI. Upon the earlier of the Substantial Completion Date or termination of this Agreement, Contractor shall deliver to Company copies of all relevant contracts providing for such guarantees and warranties.



12.7 ASSIGNMENT OF WARRANTIES.

Upon the expiration of the Warranty Period or termination of this Agreement, Contractor shall assign to Company all warranties received by it from Subcontractors and Vendors or otherwise obtained under Section 12.6 (or the ESS or Work in the event of termination of this Agreement). Such assignment of warranties to Company must also allow Company to further assign such warranties.

12.8 SURVIVAL OF WARRANTIES.

The provisions of this Article XII shall survive the expiration or termination of this Agreement.

**ARTICLE XIII.  
REPRESENTATIONS**

13.1 REPRESENTATIONS AND WARRANTIES.

(a) Contractor represents and warrants to Company that:

(1) Contractor is a corporation, duly incorporated/formed/organized, validly existing and in good standing under the laws of the State of Delaware, and is duly authorized and qualified to conduct business in the State of California;

(2) Contractor has all requisite power and authority to conduct its business, own its properties and execute and deliver this Agreement and perform its obligations hereunder in accordance with the terms hereof;

(3) the execution, delivery, and performance of the Contract Documents have been duly authorized by all requisite corporate action and this Agreement constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;

(4) neither the execution, delivery or performance of the Contract Documents conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, the organizational documents of Contractor or any agreement, contract, indenture or other instrument under which Contractor or its assets are bound, nor violates or conflicts with any Applicable Law or any judgment, decree, order, writ, injunction or award applicable to Contractor;

(5) Contractor is not in violation of any Applicable Law or Applicable Permit, which violations, individually or in the aggregate, would affect its performance of its obligations under the Contract Documents;

(6) Contractor is an equal opportunity employer and, as required by 41 CFR 60-1.4(a), does not and will not discriminate in employment and personnel practices (including hiring, transferring and promotion practices) on the basis of race, sex, age, disability, religion, national origin, color, sexual orientation, gender identity, or any other basis or characteristic prohibited by Applicable Laws;

(7) Contractor is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by the Contract Documents, other than Contractor Permits and Company Permits which will be obtained in accordance with the terms of the Contract Documents;

(8) there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of Contractor's knowledge threatened, against or affecting, or that could affect, the legality, validity and enforceability of the Contract Documents or the performance by Contractor of its obligations under the Contract Documents, nor does Contractor know of any basis for any such controversy, action, proceeding or investigation;

(9) Contractor has examined this Agreement, including all Exhibits attached hereto, thoroughly and become familiar with all its terms and provisions;

(10) Contractor, by itself and through its Subcontractors and Vendors, has the *full* experience and proper qualifications to design and perform the Work and to construct the ESS in accordance with the terms of the Contract Documents;

(11) Contractor has visited and examined the Property Site and is fully familiar with such Property Site and surrounding areas and based on such visit and examination has no reason to believe that Contractor will be unable to complete the Work in accordance with the Contract Documents;

(12) to the best of its knowledge, Contractor has reviewed all other documents and information necessary and available to Contractor in order to ascertain the nature, location and scope of the Work, the character and accessibility of the Property Site, the existence of obstacles to construction of the ESS and performance of the Work, the availability of facilities and utilities, and the location and character of existing or adjacent work or structures;

(13) Contractor owns or has the right to use all patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits and intellectual property rights necessary to perform the Work without conflict with the rights of others;

(14) Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement;

(15) all Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement;

(16) Contractor is not and has not been a party to any current, pending, threatened or resolved enforcement action of any government agency, or any consent decree or settlement with any governmental agency or private person or entity regarding any failure in Contractor's data security safeguards, or otherwise regarding information privacy or security; Contractor further represents that it has read and understood the Cyber Requirements and that Contractor is fully compliant with the Cyber Requirements; Contractor further warrants that, throughout the term of the Agreement and as required in Section 18.20 ("Survivability"), Contractor will continue to comply fully with the Cyber Requirements;

(17) to the extent this Agreement is funded by or the Work involves activities subject to a contract or subcontract with a state or federal entity, Contractor is qualified and shall remain qualified to perform the work for such entities; and

(18) the access rights granted to or obtained by Contractor to the Job Site are adequate for the performance of the Work and operation of the ESS.



(19) as of the Effective Date, it has not received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the performance of the Work, the operation of the ESS or the delivery of materials and equipment necessary to complete the Work, in each case that would cause Substantial Completion to be later than the Guaranteed Completion Date.

(b) Company represents and warrants to Contractor that:

(1) Company is a corporation, duly incorporated, validly existing, and in good standing under the laws of the State of California and is duly authorized and qualified to conduct business in the State of California;

(2) Company has all requisite power and authority to conduct its business, own its properties and execute and deliver the Contract Documents and perform its obligations hereunder in accordance with the terms hereof;

(3) the execution, delivery, and performance of the Contract Documents have been duly authorized by all requisite corporate action and this Agreement constitutes the legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms;

(4) neither the execution, delivery or performance of the Contract Documents conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, the organizational documents of Company or any agreement, contract, indenture or other instrument under which Company or its assets are bound, nor violates or conflicts with any Applicable Law or any judgment, decree, order, writ, injunction or award applicable to Company;

(5) Company is not in violation of any Applicable Law or Applicable Permit, which violations, individually or in the aggregate, would affect its performance of its obligations under the Contract Documents;

(6) Company is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by the Contract Documents, other than Company Permits which will be obtained in accordance with the terms of the Contract Documents;

(7) there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of Company's knowledge threatened, against or affecting, or that could affect, the legality, validity and enforceability of the Contract Documents or the performance by Company of its obligations under the Contract Documents, nor does Company know of any basis for any such controversy, action, proceeding or investigation; and

(8) Company shall be financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

### 13.2 SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

The representations and warranties of Contractor and Company herein shall survive execution and termination of this Agreement.

**ARTICLE XIV.  
FORCE MAJEURE AND OWNER CAUSED DELAY**

**14.1 DEFINITION OF FORCE MAJEURE EVENT.**

As used herein, the term “Force Majeure Event” shall mean any event or circumstance, or combination of events or circumstances, that arises after the date hereof [\*\*\*\*\*], is beyond the reasonable control of the Party claiming the Force Majeure Event, and is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event. Without limiting the generality of the foregoing, events that may give rise to a Force Majeure Event include acts of God, natural disasters, fires, earthquakes, lightning, floods, storms, [\*\*\*\*\*], civil disturbances, terrorism, riots, war, and the action of or failure to act on the part of any Government Authority having or asserting jurisdiction that is binding upon the Parties and has been opposed by all reasonable means, in each case, that meet the definition of Force Majeure Event as set forth above. Notwithstanding the foregoing, the definition of “Force Majeure Event” shall not include: strikes, work stoppages (or deteriorations), slowdowns or other labor actions; any labor or manpower shortages; [\*\*\*\*\*]; weather conditions as recorded by the National Oceanic and Atmospheric Administration over the past fifty (50) years in the vicinity of the Project Site or elsewhere; actions of a Government Authority with respect to Contractor’s compliance with Applicable Laws or Applicable Permits; any failure by the Contractor to obtain and/or maintain any Applicable Permit it is required obtain and/or maintain hereunder; [\*\*\*\*\*].

**14.2 NOTICE OF FORCE MAJEURE EVENT.**

The Party claiming a Force Majeure Event shall within [\*\*\*\*\*] after it knows or should have known of the occurrence of the Force Majeure Event (or in any event, no later than [\*\*\*\*\*] after the commencement of the Force Majeure Event), give the other Party written notice describing the details of the cause and nature of the Force Majeure Event, the anticipated length of delay due to the Force Majeure Event and any other effect on the Party’s performance of its obligations hereunder; provided that if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party claiming a Force Majeure Event shall give such notice as soon as reasonably practicable after the reinstatement of communications, but no later than [\*\*\*\*\*] after such reinstatement. Within [\*\*\*\*\*] after initial notification, such Party shall provide sufficient proof of the occurrence and duration of such Force Majeure Event to the other Party’s reasonable satisfaction and shall thereafter provide the other Party with periodic supplemental updates to reflect any change in information given to the other Party as often as requested by the other Party. The Party claiming the Force Majeure Event shall give notice to the other Party of (a) the cessation of the relevant Force Majeure Event and (b) the cessation of the effects of such Force Majeure Event on the performance by it of its obligations under the Contract Documents as soon as practicable after becoming aware thereof. No Force Majeure Event shall relieve any Party from performing those of its obligations that are not affected by the Force Majeure Event.

**14.3 DELAY AND ADJUSTMENT TO GUARANTEED COMPLETION DATE DUE TO FORCE MAJEURE EVENT.**

So long as the conditions set forth in this Section 14.3 are satisfied, and subject to Section 14.6, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to the Contract Documents to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:



(a) except as otherwise provided herein, the performance by the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, and in the event that such Party is required to start or complete an action during a specific period of time, such start date or period for completion shall be extended, on the condition that: (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Force Majeure Event; (ii) the Party claiming the Force Majeure Event complies with Section 14.2; and (iii) the Party claiming the Force Majeure Event continually uses commercially reasonable efforts to alleviate and mitigate the cause and effect of the Force Majeure Event and remedy its inability to perform;

(b) in the event Contractor desires to claim a Force Majeure Event, it must submit a request for Changes pursuant to Section 6.2(b) and Contractor shall be entitled to suspension of performance or extension of time (including an extension of the Guaranteed Completion Date if otherwise allowed pursuant to Section 6.1(b)) pursuant to a Change Order in accordance with the principles of this Section 14.3 and 6.1(b); provided Contractor shall not be entitled to any relief for a Force Majeure Event unless such Force Majeure Event has been shown to Company's reasonable satisfaction to actually, demonstrably, adversely and materially affect the Critical Path of the Work; and

(c) Contractor's failure to comply with this Section 14.3 shall constitute a waiver of any claims as a result of a Force Majeure Event.

#### 14.4 REMOVAL OF FORCE MAJEURE.

If, within a reasonable time after an Force Majeure Event that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Company has been identified and recommended to Contractor, and Contractor has failed within [\*\*\*\*\*] after receipt of notice thereof from Company to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure Event or its direct or indirect effects, Company may, in its sole discretion and after notice to Contractor, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work. If the action recommended by Company is agreed to by Contractor but Contractor does not take such action and Company performs such measures, to the extent Contractor's failure to take such measures results in expense in addition to what Company would have paid to Contractor (as part of the original Contract Price) had Contractor taken such measures, such additional expense shall be for Contractor's account.

#### 14.5 NOTICE OF COMPANY CAUSED DELAY.

In the event Contractor desires to claim a Company Caused Delay, Contractor shall within [\*\*\*\*\*] after it knows or should have known of the occurrence of the Company Caused Delay, give Company written notice describing the details of the Company Caused Delay, the anticipated length of such delay and any other effect on Contractor's performance of its obligations hereunder. Within [\*\*\*\*\*] after initial notification, Contractor shall (i) provide to Company reasonable evidence of the occurrence and duration of such Company Caused Delay; and (ii) thereafter provide Company with periodic supplemental updates to reflect any change in information given to Company as often as requested by Company.

#### 14.6 DELAY AND ADJUSTMENT TO CONTRACT PRICE DUE TO COMPANY CAUSED DELAY.

So long as the conditions set forth in this Section 14.6 are satisfied and subject to Section 14.7, Contractor shall not be responsible or liable for or deemed in breach of the Contract Documents because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving Substantial Completion by the Guaranteed Completion Date to the extent that such failure has been caused

by one or more Company Caused Delays, and in such event, the start date or period for completion of any portion of the Work shall be extended and the Contract Price shall be equitably adjusted pursuant to a Change Order, on the condition that: (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Company Caused Delay; (ii) Contractor complies with Section 14.5; (iii) the Company Caused Delay actually, demonstrably, adversely and materially affects the Critical Path of the Work; and (iv) Contractor provides all assistance reasonably requested by Company for the elimination or mitigation of the Company Caused Delay. In the event Contractor desires to claim a Company Caused Delay, it must submit a request for Changes pursuant to Section 6.2(b), and Contractor shall be entitled to suspension of performance or extension of time (including an extension of the Guaranteed Completion Date) together with demonstrated, justified and reasonable additional costs, including idle equipment costs, incurred by reason of such delay to the extent agreed upon by the Parties pursuant to a Change Order in accordance with Section 6.2(b). Failure to comply with the terms of this Section 14.6 shall constitute a waiver of any claims for an adjustment in the Project Schedule or an increase in the Contract Price as a result of a Company Caused Delay.

#### 14.7 PERFORMANCE NOT EXCUSED.

The payment of money owed shall not be excused because of a Force Majeure Event or Company Caused Delay. In addition, a Party shall not be excused under this Article XIV from timely performance of its obligations hereunder to the extent that the claimed Force Majeure Event or Company Caused Delay was caused by any negligent or intentional acts, errors, or omissions, or for any breach or default of the Contract Documents by such Party. Furthermore, no suspension of performance or extension of time shall relieve the Party benefiting therefrom from any liability for any breach of the obligations that were suspended or failure to comply with the time period that was extended to the extent such breach or failure occurred prior to the occurrence of the applicable Force Majeure Event or Company Caused Delay. Notwithstanding anything contained herein to the contrary, Contractor shall not withdraw Contractor's Equipment and Personnel from the Job Site or otherwise demobilize without the prior authorization of Company. Contractor shall be entitled to receive reimbursement for its reasonably incurred costs of a demobilization and/or remobilization required as a result of any Force Majeure Event.

### **ARTICLE XV. TERMINATION**

#### 15.1 CONTRACTOR EVENTS OF DEFAULT.

The occurrence and continuation of any of the following events shall constitute an event of default by Contractor (each a "Contractor Event of Default"):

(a) the failure of Contractor to achieve Substantial Completion within [\*\*\*\*\*] after the Guaranteed Completion Date;

(b) the failure of Contractor to achieve Final Acceptance prior to [\*\*\*\*\*] after the Substantial Completion Date;

(c) the ESS, during the period of time between Substantial Completion and Final Acceptance, is not capable of being operated in accordance with ESS operating procedures and all Applicable Laws and Applicable Permits, and other requirements of this Agreement, and all operating conditions specified in the Statement of Work;

(d) Performance Liquidated Damages owing and payable by Contractor exceed the Performance Liquidated Damages Limitation, unless and for as long as Contractor pays the full amount of



Performance Liquidated Damages owing, including all amounts in excess of the Performance Liquidated Damages Limitation.

(e) any failure by Contractor to make any payment or payments required to be made to Company under the Contract Documents within [\*\*\*\*\*] after receipt of written notice from Company of Contractor's failure to make such other payment or payments (except, in the case of payments other than Liquidated Damages, to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

(f) any breach by Contractor of any representation or warranty contained in Sections 13.1(a)(1) through 13.1(a)(18);

(g) any breach by Contractor of any obligation, covenant or agreement hereunder other than those breaches specified in this Section 15.1 and (i) such breach is not cured by Contractor within [\*\*\*\*\*] after notice thereof from Company, or (ii) if such breach is not capable of being cured within such [\*\*\*\*\*] period (as determined by Company in its sole discretion), Contractor fails to (A) commence to cure such breach within such [\*\*\*\*\*] period, (B) thereafter diligently proceed to cure such breach in a manner satisfactory to Company in its sole discretion, or (C) cure such breach within [\*\*\*\*\*] after notice thereof from Company;

(h) any of the following occurs: (i) Contractor consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answers or consents, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than [\*\*\*\*\*]; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than [\*\*\*\*\*], or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within [\*\*\*\*\*] of such filing;

(i) the dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under the Contract Documents;

(j) the transfer by Contractor of (i) all or a substantial portion of the rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of Contractor or the transferee, as applicable, to perform its obligations under the Contract Documents, as determined by Company in its sole discretion;

(k) the failure of Contractor to provide and maintain in full force and effect any Letter of Credit, or Payment and Performance Bonds, as required pursuant to Section 11.6;

(l) any failure by Contractor to maintain the insurance coverages required of it in accordance with Article IX; or

(m) any failure of Contractor to maintain any Letter of Credit, or Payment or Performance Bonds, once it has been issued in accordance with Section 11.6.

15.2 TERMINATION BY COMPANY DUE TO CONTRACTOR DEFAULT; OTHER REMEDIES.

(a) Upon the occurrence and during the continuance of a Contractor Event of Default, Company may, at its option, terminate this Agreement, without prejudice to any other rights and remedies available to Company under this Agreement or otherwise at law or equity, by giving written notice thereof to Contractor, which termination shall be effective upon the giving of such notice by Company.

(b) In the event of a termination by Company under this Section 15.2, Company shall have the right to take possession of and use all of the Contractor Equipment located at the Job Site on the date of such termination for the purpose of completing the Work and may employ any other Person to complete the Work by whatever method that Company may deem necessary. In addition, Company may make such expenditures as in Company's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof.

(c) In the event of termination by Company under this Section 15.2, Contractor shall not be entitled to receive any further payments under the Contract Documents, except for payments for Work completed prior to such termination for which Contractor has not previously been paid. Company shall be entitled to offset against such amount due to Contractor any amounts due to Company by Contractor and any estimated damages as result of the termination, including estimated amounts for the items set forth in Section 15.2(d). Any amounts due to Contractor under this Section 15.2(c) shall be paid to Contractor within [\*\*\*\*\*] after the Final Acceptance Date (as achieved by the substitute contractor).

(d) In the event of termination by Company under this Section 15.2, Contractor shall be responsible for and shall reimburse Company for the following amounts: (i) all costs and expenses incurred by Company to engage a substitute contractor to complete (or cure deficiencies in) the Work, including overhead and legal, engineering and other professional expenses; (ii) all costs and expenses incurred in connection with the termination of the Contract Documents, including costs and expenses incurred in connection with the obligations set forth under Section 15.9; (iii) the amount by which (A) the cost to complete (or cure deficiencies in) the Work, exceeds (B) the balance of the Contract Price unpaid at the time of the termination; and (iv) all actual damages occasioned by reason of said default, except that Contractor agrees that Schedule Liquidated Damages shall apply in lieu of delay damages for late completion.

(e) Upon the occurrence and during the continuance of a Contractor Event of Default and after the expiration of any applicable cure periods but prior to termination of this Agreement by Company, Company may, without prejudice to any of its other rights or remedies available under this Agreement or otherwise at law or equity, (i) seek performance by any guarantor of Contractor's obligations hereunder, (ii) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (iii) make such payments or perform such obligations as are required to cure such Contractor Event of Default, draw on or make a claim against the Letter of Credit, Payment and Performance Bond, or other security provided pursuant to this Agreement and/or offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement; provided that Company shall be under no obligation to cure any such Contractor Event of Default, or (iv) seek damages as provided in Section 15.2(d), including



proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement.

(f) The rights and remedies available to Company pursuant to this Section 15.2 shall not be exclusive with respect to any other right or remedy of the Company provided for in this Agreement or otherwise available at law or equity.

#### 15.3 TERMINATION BY COMPANY FOR CONVENIENCE.

(a) Company may terminate this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor, which termination shall be effective upon the giving of such notice by Company. Upon receiving any such notice of termination, Contractor shall stop performing the Work and, except as otherwise directed by Company, shall cancel as quickly as possible all orders placed by it with Subcontractors and Vendors and shall use all reasonable efforts to minimize cancellation charges and other costs and expenses associated with the termination of this Agreement. Contractor shall also promptly assign all subcontracts and purchase orders which Company wishes to retain in accordance with Section 15.9.

(b) In the event of a termination by Company under this Section 15.3, Contractor shall be entitled to receive a termination payment (the "Termination Payment") equal to the sum of the following, without duplication: (i) that portion of the Contract Price that is applicable to Work completed up to the date of termination that has not previously been paid to Contractor (as determined below); (ii) the expenses reasonably incurred by Contractor in withdrawing Contractor's Equipment and Personnel from the Job Site and in otherwise demobilizing; (iii) the expenses reasonably incurred by Contractor in terminating contracts with Subcontractors and Vendors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Company has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Company, subject to Company's assumption of same and, if required, Company's adequate assurance to such Subcontractors or Vendors regarding Company's ability to pay; and (iv) the expenses incurred in connection with Contractor's obligations set forth under Section 15.9 (to the extent not otherwise reimbursed pursuant to the preceding clause (i)).

(c) Company and Contractor shall determine the amount due to Contractor pursuant to the preceding clause (b)(i) in accordance with the rates set forth in the Purchase Order for partially completed Work. Contractor shall document the costs claimed under clauses (b)(ii), (b)(iii), and (b)(iv) above to Company's reasonable satisfaction and shall supply Company with copies of the Subcontractor and Vendor invoices and other receipts covering amounts claimed under such clauses. Contractor shall submit an invoice to Company for the Termination Payment with the supporting information and documents referred to above, and Company shall pay such invoice within [\*\*\*\*\*] after its receipt of same unless it disputes any portion thereof, in which event Company shall only pay the undisputed portion of the Termination Payment within such [\*\*\*\*\*] period and the dispute over the remainder of the claimed Termination Payment may be resolved pursuant to Article XVII. Contractor shall utilize reasonable commercial efforts to include termination for convenience provision with terms similar to the foregoing in all subcontracts, contracts and purchase orders.

(d) Any amount owed pursuant to Section 15.3(b) shall be subject to adjustment to the extent any Work contains Defects.

#### 15.4 SUSPENSION BY COMPANY FOR CONVENIENCE.

(a) Company may suspend all or a portion of the Work to be performed under the Contract Documents at any time for any reason in its sole discretion by giving written notice thereof to Contractor.

Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Company. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (i) immediately discontinue the Work on the date and to the extent specified in the notice; (ii) place no further orders or subcontracts for Equipment, services or facilities with respect to suspended Work, other than to the extent required in the notice; (iii) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Company, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (iv) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (v) take any other reasonable steps to minimize costs and expenses associated with such suspension.

(b) Except as provided in Section 15.4(c), as full compensation for any suspension under this Section 15.4, Contractor will be reimbursed by Company for the costs, as reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of the Work and to the extent that they do not reflect reimbursement for Contractor's, Vendors' or Subcontractors' anticipated profit from unperformed Work, including: (i) a standby charge, without mark-up or multiplier, sufficient to compensate Contractor for the direct costs attributable to keeping, to the extent required in the suspension notice, its organization and the Contractor Equipment committed to the Work on a standby basis, as agreed to by Company and Contractor; provided that Contractor shall substantiate such charge with supporting information acceptable to Company; (ii) all necessary and reasonable costs incurred in connection with demobilization and remobilization of Contractor's facility and Labor and the Contractor Equipment; and (iii) an equitable amount to reimburse Contractor for the cost of receiving, maintaining and protecting that portion of Work upon which performance has been suspended, as agreed to by Company and Contractor.

(c) Upon delivery of notice by Company to Contractor to resume suspended Work, Contractor shall immediately resume performance under the Contract Documents to the extent required in the notice. Contractor may request a Change Order as a result of a suspension of Work under this Section 15.4 within [\*\*\*\*\*] after receipt of notice to resume the suspended Work; provided that such suspension was not due to Contractor's negligence, willful misconduct or noncompliance with the terms of this Agreement and; provided, further, that during resumption of the Work Contractor shall use reasonable efforts to minimize the effect on the Critical Path of the Work. Contractor shall submit to Company a request for Changes in accordance with Article VI and such request shall be accompanied by sufficient documentation setting forth the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis by Company; provided that if such information is not available within such [\*\*\*\*\*] period, Contractor shall notify Company of such circumstance within such [\*\*\*\*\*] period and provide an expected date (which shall be as soon as reasonably practicable) for providing such information. If Contractor does not submit a request for Changes within such [\*\*\*\*\*] period and provide the information regarding schedule and monetary impact as required above within such [\*\*\*\*\*] period (or by the expected date if not possible during such [\*\*\*\*\*] period), Contractor shall not be entitled to any additional consideration or other amendments hereto and shall be deemed to have waived all claims and offsets against Company as a result of the suspension of Work. Contractor shall permit access by Company to pertinent records for purposes of reviewing the claims by Contractor of schedule and monetary impact.

(d) No adjustment to the Guaranteed Completion Date, Contract Price or other terms herein shall be made for any suspension of Work under this Section 15.4 to the extent that performance would have been suspended, delayed or interrupted as a result of any Force Majeure Event or Contractor's noncompliance with the requirements of the Contract Documents. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts and purchase orders.



#### 15.5 TERMINATION DUE TO FORCE MAJEURE EVENT.

If a Force Majeure Event has occurred and continues for a period of at least [\*\*\*\*\*], then, notwithstanding that the Parties may by reason thereof have been granted an extension of required dates, either Party may deliver a written notice to the other Party stating its intention to terminate this Agreement. If at the expiration of [\*\*\*\*\*] after the other Party's receipt of such notice, the Force Majeure Event is continuing, this Agreement shall terminate immediately. In the event of such termination, Contractor shall be entitled to receive payments accrued for Work completed prior to such termination for which Contractor has not previously been paid. The amount of consideration for such completed Work shall be determined by Company in accordance with the rates set forth in the Purchase Order for partially completed Work. Each Party shall bear its own costs and expenses in connection with a termination of this Agreement pursuant to this Section 15.5.

#### 15.6 COMPANY EVENTS OF DEFAULT.

The occurrence and continuation of any of the following events shall constitute an event of default by Company (each, a "Company Event of Default"):

(a) a failure by Company to make payment of any undisputed amount when due, and such breach is not cured by Company within [\*\*\*\*\*] after Company's receipt of notice thereof from Contractor;

(b) any breach by Company of any representation or non-monetary obligation herein, and such breach is not cured by Company within [\*\*\*\*\*] after Company's receipt of notice thereof from Contractor, or if such breach is not capable of being cured within such [\*\*\*\*\*] period (as determined by Contractor in its reasonable discretion), Company (A) fails to commence to cure such breach within such [\*\*\*\*\*] period, or (B) fails to thereafter diligently proceed to cure such breach; or

(c) any breach by Company of any representation or warranty contained in Sections 13.1(b)(1) through 13.1(b)(8).

#### 15.7 TERMINATION BY CONTRACTOR DUE TO COMPANY DEFAULT.

(a) Subject to Section 15.7(b), upon the occurrence and during the continuance of a Company Event of Default beyond the applicable grace period, Contractor may terminate this Agreement [\*\*\*\*\*] after giving written notice thereof to Company (or [\*\*\*\*\*] after giving written notice of a default pursuant to Section 15.6(a)) so long as the amount owed by Company (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such period.

(b) In the event of such termination, Contractor shall have the rights afforded to it for a termination for convenience pursuant to Section 15.3.

#### 15.8 CONTINUING OBLIGATIONS AND REMEDIES DURING EVENT OF DEFAULT.

In the event of the occurrence of any default hereunder (a) neither Party shall be relieved of any of its liabilities or obligations hereunder, unless and until such liabilities and obligations are terminated in accordance with the provisions hereof, and (b) each Party shall have the right to pursue any right or remedy available to it.

#### 15.9 OBLIGATIONS UPON TERMINATION.

(a) Upon a termination of this Agreement pursuant to this Article XV: (i) Contractor shall leave the Job Site and remove from the Job Site all the Contractor Equipment, waste, rubbish and Hazardous Material (for which Contractor is responsible to remove pursuant to Section 3.21(a)) as Company may request; (ii) Company shall take possession of the Job Site and of the Equipment (whether at the Job Site, in transit or otherwise); (iii) Contractor shall promptly assign to Company or its designee any contract rights (including warranties, licenses, patents and copyrights) that it has to any and all Equipment and the Work, including contracts with Subcontractors and Vendors, and Contractor shall execute such documents as may be reasonably requested by Company to evidence such assignment, subject to Company's assumption of same; (iv) Contractor shall promptly furnish Company with copies of all Drawings and, to the extent available, Final Plans; (v) Contractor shall provide Company and its designee with the right to use, free of charge, all patented, copyrighted and other proprietary information relating to the Work that Company deems necessary to complete the Work, and Contractor shall execute such documents as may be reasonably requested by Company to evidence such right; (vi) Contractor shall assist Company in preparing an inventory of all Equipment in use or in storage at the Job Site; and (vii) Contractor shall take such other action as required hereunder upon termination of this Agreement.

(b) Upon a termination of this Agreement pursuant to this Article XV, whether by Contractor or Company, Company shall have the additional assignment rights set forth in this subparagraph as to the following Subcontractors or Vendors: [\*\*\*\*\*] (collectively, "Selective Subcontractors/Vendors"). Upon such termination, Company shall have the right to direct Contractor to assign Contractor's rights and obligations under subcontracts, purchase orders, or other agreements with one or more Selective Subcontractors/Vendors. Any such assignment and assumption shall be made by Company's written notice to Contractor and the Selective Subcontractor/Vendor of such right. Such assignment shall be effective upon the date indicated in such notice but no earlier than delivery of such notice to Company and Selective Subcontractor/Vendor. From and after the effective date of such assignment, Company shall assume all of Contractor's rights and obligations under the subcontracts, purchase orders, or other agreements with Selective Subcontractors/Vendors that are the subject of a notice of assignment. Company shall provide notice of assignment by email to Contractor and a Selective Subcontractor/Vendor; Contractor shall promptly forward to the Selective Subcontractor/Vendor any such notice from Company. Any provision of this Agreement pertaining to assignment shall not be applicable to the extent inconsistent with this right of Company to direct and effectuate assignment as set forth above. Company's right to direct assignment may not be modified, altered or abridged absent written consent of Company and Contractor shall not take any steps to frustrate Company's rights under this subparagraph. Contractor shall flow this subparagraph into the subcontracts, purchase orders, or other agreements with Selective Subcontractors/Vendors and/or insert a provision in such subcontracts, purchase order, or other agreements to implement this subparagraph.

#### 15.10 TERMINATION AND SURVIVAL OF TERMS.

Upon termination of this Agreement pursuant to this Article XV, the rights and obligations of the Parties hereunder shall terminate, except for (a) rights and obligations accrued as of the date of termination, (b) rights and obligations arising out of events occurring prior to the date of termination and (c) the rights and obligations of the Parties which survive termination, including the rights and obligations forth in Articles VII and XII.

#### 15.11 CURE PERIOD NOT REQUIRED.

Company may issue a notice of termination without first issuing a cure notice or prior to the expiration of a cure period where waiting for the expiration of the cure period would be futile or where the default is deemed not curable as set forth below. In the event Company so terminates the Agreement,



Company shall promptly meet with Contractor at Contractor's request to discuss the action taken by Company and whether Company might consider other options. Providing a cure notice does not constitute a waiver and does not give rise to estoppels as to Company's right to subsequently conclude that the reasons for termination are not curable. defaults which are not curable include, but are not limited to, the following:

- (a) A Contractor Event of Default under Section 15.1(a).
- (b) Submission of information that is false or misleading in itself, or by virtue of the omission of other information or incompleteness, to Company or to any person acting for or on behalf of Company or any Government Authority in connection with any Work performed for or on behalf of Company.
- (c) A representation or warranty shall have been incorrect or misleading as of the date such representation or warranty was made or deemed to have been made.
- (d) Any deliberate or intentional misconduct or misrepresentation by Contractor in the performance of the Work or in seeking payment for the Work.
- (e) [\*\*\*\*\*]
- (f) Any other breach which by its nature is not subject to cure, is not curable within a reasonable time or is part of an ongoing pattern that raises a reasonable doubt as to whether an isolated cure would be satisfactory.

#### 15.12 RETRIEVAL OF COMPANY DATA.

For [\*\*\*\*\*] following any termination for cause or convenience, Company will have the right to retrieve any Company Data in Contractor's possession, which shall be effected either by Contractor returning the data, or by granting Company access to Contractor's network solely for purposes of retrieving such data, without charge to Company.

### **ARTICLE XVI. INDEMNIFICATION**

#### 16.1 CONTRACTOR INDEMNIFICATION.

Contractor agrees to indemnify, defend and hold Company and its Affiliates, respective directors, officers, employees, representatives, agents, advisors, consultants, counsel and assigns harmless from and against, on an After-Tax Basis, any and all [\*\*\*\*\*] losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages and expenses (including attorneys' fees and expenses) (collectively, "Damages") asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following:

- (a) Any [\*\*\*\*\*] claims for bodily injury, death or damage to property, including Company's property, to the extent caused by [\*\*\*\*\*] of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable, relating to or arising out of the performance of the Work;
- (b) any [\*\*\*\*\*] (excluding Affiliates of Company) claims resulting in bodily injury, death or damage to property arising out of defective and/or nonconforming Work relating to or arising out of the performance of the Work;
- (c) claims by any Government Authority for any Contractor Taxes;

(d) any pollution or contamination [\*\*\*\*\*] which may originate from sources in Contractor's and its Subcontractors' and Vendors' possession, use and control or caused by the negligent release by Contractor or its Subcontractors or Vendors (excluding Pre-Existing Hazardous Material, other than as provided in (e) below, and Hazardous Material brought to the Job Site by Company), including from Hazardous Material, toxic waste, industrial hazards, sanitary waste, fuel, lubricant, motor oil, paint, solvent, bilge and garbage;

(e) any release or exacerbation of Pre-Existing Hazardous Materials or rendering removal or remediation of Pre-Existing Hazardous Materials more costly, which in any of such events is caused by any negligent act or omission of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(f) to the extent Company has paid all undisputed amounts due pursuant to the Contract Documents, any Lien, as set forth in Section 3.28, on the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any negligent act or omission (or alleged act or omission) of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials in connection with the Work;

(g) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from (i) Contractor's performance (or that of its Affiliates, Subcontractors or Vendors) under the Contract Documents, including the Work, Equipment, Drawings, Final Plans or other items and services provided by Contractor or any Subcontractor or Vendor hereunder, (ii) the design, use or ownership of the Drawings and Final Plans in accordance with the use intended therefore pursuant to the Contract Documents, (iii) the design, construction, use, operation or ownership of the ESS or any portion thereof. Without limiting the provisions of Section 12.4, if Company is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to Company;

(h) any vitiation of any insurance policy procured under Article IX as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor or Vendor;

(i) any failure of Contractor to comply with Applicable Laws or the conditions or provisions of Applicable Permits, including any Applicable Laws or Applicable Permits related to endangered species;

(j) any failure of Contractor to comply with the [\*\*\*\*\*]; and

(k) any claims that Company is liable as an employer or joint employer, or as a client employer within the meaning of California Labor Code Section 2810.3 (as amended), or as the hirer of an independent contractor, with respect to Contractor, Subcontractor, or any Personnel, or the failure of any Personnel to be recognized as exclusively employed by Contractor or Subcontractor and not by Company, including any claims relating to visa status, payment or non-payment of any statutory withholding charges, Company employee benefits, or other legal or financial obligations, (including but not limited to any wage and hour-related claim such as overtime, minimum wage, meal/rest break, wage statement, waiting time or other wage penalties, claims for enforcement of wage and hour-related claims, unfair business practices/unfair competition), the California Private Attorneys General Act, paid or unpaid medical or family leave, reimbursement of necessary work expenses, contribution taxes, benefits and penalties payable under Workers' Compensation (including Workers' Compensation Reform Act of 1989), unemployment



compensation, disability benefit, accommodation of or discrimination or retaliation concerning a disability, old age benefit, or tax withholding laws.

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#### 16.2 COMPANY INDEMNIFICATION.

Company agrees to indemnify, defend and hold Contractor and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel harmless from and against, on an After-Tax Basis, any and all Damages asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following:

- (a) claims by any Government Authority for any Company Taxes;
- (b) any Pre-Existing Hazardous Material on the Property Site, except to the extent covered by Section 16.1(e); and
- (c) Company's or any of its Affiliates' or a contractor's (excluding Contractor) use of Drawings or Final Plans in connection with any other facility to be owned, operated, constructed or developed by Company or any of its Affiliates.

#### 16.3 CONDITIONS OF INDEMNIFICATION.

The respective rights and obligations of the Parties and the other indemnitees under this Article XVI with respect to claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

- (a) Notice of Proceedings. Within [\*\*\*\*\*] (or such earlier time as might be required to avoid prejudicing the indemnifying Party's position) after receipt of notice of commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, the Person claiming to be indemnified under the terms of this Section 16.3 (the "Indemnified Person") shall give the Party from which indemnification is sought (the "Indemnifying Party") written notice thereof, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article XVI.
- (b) Conduct of Proceedings. Each Party and each other indemnitee shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third-party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys' fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person. The Indemnified Person shall provide reasonable assistance to the Indemnifying Party, at the Indemnifying Party's expense, in connection with such claim, action, suit or proceeding. Upon such assumption, the Indemnifying Party shall reimburse the Indemnified Person for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the Indemnifying Party. The Indemnifying Party shall keep the Indemnified Person informed as to the status and progress of such claim, action, suit or proceeding. Except as set forth in

paragraph (c) below, in the event the Indemnifying Party assumes the control of the defense, the Indemnifying Party will not be liable to the Indemnified Person under this Article XVI for any legal fees or expenses subsequently incurred by the Indemnified Person in connection with such defense. The Indemnifying Party shall control the settlement of all claims over which it has assumed the defense; provided, however, that the Indemnifying Party shall not agree to or conclude any settlement that affects the Indemnified Person without the prior written approval of the Indemnified Person, (whose said approval shall not be unreasonably withheld).

(c) Representation. In the event the Indemnifying Party assumes control of the defense, the Indemnified Person shall have the right to employ its own counsel and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, when and as incurred, unless: (i) the employment of counsel by such indemnified Person has been authorized in writing by the Indemnifying Party; (ii) the Indemnified Person shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Person in the conduct of the defense of such action; or (iii) the Indemnified Person shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defense available to it which are different from or additional to those available to the Indemnifying Party. If any of the preceding clauses (i) through (iii) shall be applicable, then counsel for the Indemnified Person shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Person and the reasonable fees and expenses of such counsel shall be reimbursed by the Indemnifying Party.

#### 16.4 CONTRIBUTORY NEGLIGENCE.

Except as provided in Section 16.2(b), if the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the Parties gives rise to Damages for which a Party is entitled to indemnification under this Article, then such Damages shall be allocated between the Parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such Damages.

#### 16.5 REMEDIES NOT EXCLUSIVE.

The rights of indemnity shall not be exclusive with respect to any other right or remedy provided for in the Contract Documents or otherwise available at law or equity.

#### 16.6 SURVIVAL OF INDEMNIFICATION.

The indemnification provisions of this Article shall survive the Final Acceptance Date and the termination of this Agreement.

### **ARTICLE XVII. DISPUTE RESOLUTION**

#### 17.1 NEGOTIATIONS.

In the event of any dispute, controversy or claim between the Parties arising out of or relating to the Contract Documents (including their interpretation and performance thereunder), or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute by negotiations between an Executive of Company, or their designee, and an Officer of Contractor. The disputing Party shall give the other Party written notice of the Dispute. The receiving Party shall submit a written response to the disputing Party within a reasonable period of time after receipt of such notice. The notice and response shall include a statement of the relevant Party's position and a summary of the evidence and arguments supporting its position. The Executive of Company, or designee,



and the Officer of Contractor shall meet at a mutually acceptable time and place within a reasonable period of time after the date of the disputing Party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute.

#### 17.2 ARBITRATION OF DISPUTE.

(a) If a Dispute has not been resolved through negotiation within a reasonable period of time after the date of the notice of Dispute received pursuant to Section 17.1 (and no later than [\*\*\*\*] from notice of the Dispute unless such longer time is agreed to by the Parties), and Company invokes the provisions of this Section 17.2, the Dispute shall be finally resolved by binding arbitration. Any Dispute involving [\*\*\*\*] or less shall be before a single, neutral arbitrator; any Dispute in involving in excess of [\*\*\*\*] shall be before a panel of three neutral arbitrators. Except to the extent inconsistent with this Section 17.2, the arbitration shall be conducted in accordance with the JAMS Construction Arbitration Rules & Procedures in effect as of the Effective Date ("JAMS Rules"). Company may exercise its right to arbitrate a Dispute in accordance with this Section 17.2 at any time, and any such dispute shall be thereafter exclusively treated as subject to the arbitration proceeding. The arbitrator(s), not the courts, shall decide whether a Dispute is arbitrable. Notwithstanding anything in the JAMS Rules to the contrary, the arbitrator(s) shall apply the law specified in Section 18.7.

(b) The Parties will cooperate with one another in promptly selecting the arbitrator(s) and shall further cooperate in scheduling the arbitration to commence not later than [\*\*\*\*] from the date of Company's initial written demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree on a mutually acceptable arbitrator or arbitrators, the arbitrator(s) shall be appointed as provided for in the JAMS Rules. The arbitrator(s) shall be either a retired state or federal judge with experience with construction disputes or attorneys with at least twelve (12) years of experience as a construction lawyer.

(c) The arbitration proceeding shall be conducted in the County of Los Angeles, California, United States of America, or such other location upon which the Parties to the arbitration proceeding may agree, in the English language; and all testimony or documentary evidence shall be submitted in English. If witness testimony or documents of a Party or its subcontractors or suppliers is not in English, such Party shall be responsible for the translation costs associated with such documents of testimony.

(d) To facilitate the comprehensive resolution of related Disputes, and upon request by either Party, the arbitrator(s) may, at any time before the first oral hearing of evidence, consolidate the arbitration proceeding with any other arbitration proceeding between or among the Parties arising from or out of any other contract or relationship between or among them as permitted under the JAMS Rules and by California law.

(e) At any hearing of oral evidence, each Party to the arbitration proceeding or its legal counsel shall have the right to present and examine its witnesses and to cross-examine the witnesses of the other Party. No evidence of any Party's witness shall be presented in written form unless the other Party shall have the opportunity to cross examine such witness, except as the Parties to the arbitration proceeding otherwise agree in writing or except under extraordinary circumstances where the interest of justice requires a different procedure. A Party shall communicate to the arbitrator(s) and the opposing parties the names and addresses of each witness whose written or spoken testimony it intends to present in the arbitration proceeding and the subject matters upon which, and the languages in which, they will testify at least [\*\*\*\*] prior to the date of the hearing at which such witness may testify. Furthermore, any Person named by a Party to be a witness shall be made available for deposition by the opposing parties at least [\*\*\*\*] prior to the hearing at which such witness may testify. Such deposition shall be permitted under Section 1283.05 of California Code of Civil Procedure.

(f) The Parties may designate experts to testify at the hearing. Any such experts shall be designated in accordance with the scheduling order of the arbitrator(s). Such experts shall prepare written reports and any rebuttal reports as provided for in such scheduling order. The scope of expert testimony shall not be broader than the scope of issues addressed in the expert report. Experts shall be subject to deposition consistent with a scheduling order adopted by the arbitrator(s). With the exception of depositions, expert discovery shall consist only of final reports and documents relied upon; draft reports and communications with counsel and those assisting counsel shall not be produced or inquired into during deposition and hearing testimony. The arbitrator(s) shall not have authority to retain experts to assist the arbitrator(s) as any expert input shall be submitted by the experts retained by the Parties.

(g) If the prevailing Party makes a claim during the arbitration proceeding, the arbitral award in favor of such Party shall include an award for pre-award (pre-judgment) interest as provided by California law and costs for legal representation and assistance.

(h) The arbitrator(s) shall issue a reasoned arbitration award in writing indicating the facts that support the findings and any relief granted or denied. The award of the arbitrator(s) shall be final and binding upon the Parties to the arbitration proceeding. The Parties hereby waive, to the extent permitted by any Applicable Law, and agree not to invoke or exercise, any and all rights to appeal, review or impugn such decision or award by any court or tribunal. The Parties agree that the arbitral decision or award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found, and that a judgment upon the arbitral decision or award may be entered in any court having jurisdiction thereof.

(i) If any Party to an arbitration proceeding fails or refuses to comply with any arbitral decision or award within [\*\*\*\*\*] after the date on which it receives notice of the decision or award, the other Party may immediately proceed to request the judicial approval necessary for the execution of such decision or award before a competent judge of the domicile of such refusing Party or before any other court of competent jurisdiction. Any award of monetary damages shall bear interest from and including the award date to but excluding the date of payment in full at the [\*\*\*\*\*]. Further, if any prevailing Party is required to retain counsel to enforce the arbitral decision or award, the Party against which the decision or award is made shall reimburse the prevailing Party for all reasonable fees and expenses incurred and paid to said counsel for such service, together with interest thereon from and including the payment date to, [\*\*\*\*\*].

(j) All deadlines specified in this Section 17.2 may be extended by the written agreement of the Parties to the Dispute.

(k) If decided by the arbitrator(s) in consultation with the Parties, the arbitration may be conducted virtually in compliance with the procedures established by the arbitrator(s) in consultation with the Parties in the event that an in-person arbitration cannot be safely conducted due to public health concerns.

### 17.3 LITIGATION.

If a Dispute has not been resolved through negotiation within [\*\*\*\*\*] after the date of the notice of Dispute received pursuant to Section 17.1 and Company has not exercised its right to arbitration of such Dispute pursuant to Section 17.2, any litigation related to any Dispute shall be brought and enforced in, and each of the Parties hereby submits to the jurisdiction of, the federal courts of the United States for the Central District of California or the courts of the State of California in Los Angeles County. The Parties irrevocably waive any objection which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective courts, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of personal jurisdiction



as each Party consents to personal jurisdiction in any such forum. The Parties agree that, if Company exercises its right to arbitrate pursuant to Section 17.2 any Dispute that is the subject of litigation under this Section 17.3, the Parties shall cause such litigation to be dismissed in favor of arbitration. Notwithstanding Company's failure to initiate arbitration prior to Contractor's initiation of litigation and despite the passage of time after a notice of Dispute, Company may require that the Dispute be submitted to arbitration in lieu of litigation provided Company demands arbitration in a timely manner after initiation of litigation by Contractor.

#### 17.4 CONTINUING OBLIGATIONS AND RIGHTS.

When any Dispute occurs and is the subject of negotiations or litigation, Contractor shall continue the Work in accordance with the Project Schedule and the terms hereof and Company shall continue to make payments of undisputed amounts in accordance with the Contract Documents, and the Parties shall otherwise continue to exercise their rights, and fulfill their respective obligations, under the Contract Documents.

#### 17.5 TOLLING STATUTE OF LIMITATIONS.

All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this Article XVII are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article XVII, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Article XVII.

#### 17.6 SOLE AND EXCLUSIVE PROCEDURES.

The procedures specified in this Article XVII shall be the sole, exclusive procedures for the resolution of Disputes; provided, however, that any Party may seek a preliminary injunction or other preliminary judicial relief if, in its reasonable, good-faith judgment, such action is necessary to avoid irreparable damage. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Article XVII.

#### 17.7 CYBER REQUIREMENTS BREACH.

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### **ARTICLE XVIII. MISCELLANEOUS**

#### 18.1 ASSIGNMENT.

(a) Except as expressly permitted in the Contract Documents, neither Party shall assign this Agreement, the Contract Documents or any portion hereof, or any of the rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party not to be unreasonably withheld, conditioned or delayed. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties.

(b) Company shall be entitled to assign this Agreement, the Contract Documents and its rights herein without the consent of Contractor to any of Company's Affiliates that has a direct or indirect interest in the Project.

(c) Contractor hereby assigns to Company, subject to acceptance of such assignment by Company, all agreements with the Substantial Vendors and Substantial Subcontractors, to perform any portion of the Work pursuant to this Agreement, together with all other agreements that may be required pursuant to this Agreement, including, NERC CIP Agreements and confidentiality agreements.

#### 18.2 GOOD FAITH DEALINGS.

The Parties undertake to act fairly and in good faith in relation to the performance and implementation of the Contract Documents and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives.

#### 18.3 CONFIDENTIALITY.

(a) For purposes of this Agreement, "Confidential Information" shall mean (i) the contents of the Contract Documents, (ii) and any information relating to the negotiations or performance of the Contract Documents, and (iii) any information provided pursuant to the Contract Documents relating to the Project, Facilities, Company, Contractor or their Affiliates which (A) the disclosing Party designates in writing as confidential, proprietary or the like and which is received by the other Party; or (B) by its nature is such that the receiving Party should reasonably conclude that possession of such information is of material commercial or competitive value to the disclosing Party; or (C) relates to the configuration, operation, management processes or profitability of the Facilities. All non-public Company Data, including Critical Energy Infrastructure Information, [\*\*\*\*\*] and EPI is Company Confidential Information regardless of whether it is marked as "confidential" or "proprietary." Information shall be Confidential Information for the purposes hereof regardless of (x) the form in which it is communicated or maintained (whether oral, written, electronic or visual); (y) whether of a business, financial, legal, technical, managerial or other nature; and (z) whether prepared by the disclosing Party or otherwise. Each Party agrees to hold all Confidential Information in confidence and not disclose it other than to its Affiliates, Subcontractors, Vendors, employees, directors, officers, agents, advisors or representatives (collectively, the "Authorized Recipients"). Notwithstanding the foregoing, Contractor shall comply with the additional requirements of the [\*\*\*\*\*], received, or maintained by Contractor. Each Party agrees that only Authorized Recipients who need to have access to Confidential Information in order to perform their duties will be authorized to receive the same, and then only to the extent needed and provided such Authorized Recipients have been advised of the obligations and restrictions set forth in this Section 18.3. Each Party shall be responsible for any breach of this Agreement by its Authorized Recipients.

(b) Notwithstanding the foregoing, information shall not be deemed to be Confidential Information where: (i) it is or becomes public information or otherwise generally available to the public through no act of or failure to act by the receiving Party; (ii) it was, prior to the date of this Agreement, already in the possession of the receiving Party and was not received by such Party directly or indirectly from the other Party; (iii) it is rightfully received by the receiving Party from a third-party who is not prohibited from disclosing it to such Party and is not breaching any agreement by disclosing it to such Party; (iv) it is independently developed by the receiving Party without benefit of Confidential Information received from the other Party; (v) a license has been granted to the disclosing Party with respect to such information hereunder, (vi) it is necessary or advisable for Company to exercise its Intellectual Property Rights under this Agreement; or (vii) it is necessary or advisable to disclose such information for the purpose of enforcing the disclosing Party's rights hereunder. Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed to be within such exceptions merely because the individual features are within such exceptions.



(c) If a Party is required by Applicable Law or any Government Authority to disclose any Confidential Information, such Party shall promptly notify the other Party of such requirement prior to disclosure so that the other Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 18.3. If such protective order or other remedy is not obtained, then such Party shall furnish only that portion of the Confidential Information which is legally required to be furnished by the court order; provided, however, that prior to making any such disclosure, such Party will (i) minimize the amount of Confidential Information to be provided consistent with the interests of the other Party and (ii) make every reasonable effort (which shall include participation by the other Party in discussions with the Government Authority involved) to secure confidential treatment of the Confidential Information to be provided. If efforts to secure confidential treatment are not successful, the other Party shall have the prior right to revise such information in a manner consonant with its interests and the requirements of the Government Authority involved.

(d) Each Party acknowledges that the other Party would not have an adequate remedy at law for money damages if the covenants contained in this Section 18.3 were breached and that any such breach would cause the other Party irreparable harm. Accordingly, each Party also agrees that in the event of any breach or threatened breach of this Section 18.3 by such Party or its Authorized Recipients, the other Party, in addition to any other remedies it may have at law or equity, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.

(e) All right and title to, and interest in, Company's Confidential Information shall remain with Company. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Company whether delivered to Company or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information owned by Company by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. At any time upon written request by a disclosing Party, the other Party shall promptly return to such Party all its Confidential Information, including all copies thereof, and shall promptly purge all electronic copies of such Confidential Information; provided that the other Party shall be entitled to keep one (1) copy of such Confidential Information for its legal records; provided, however, Contractor may only keep [\*\*\*\*\*] Critical Energy Infrastructure Information in Contractor's archives for a maximum of [\*\*\*\*\*] after the Work is complete. The return of Confidential Information to the disclosing Party, the purging of electronic copies of Confidential Information or the retention of a copy of Confidential Information for legal records shall not release a Party from its obligations hereunder with respect to such Confidential Information.

(f) In the event of any reasonably suspected disclosure or loss of, or inability to account for, any of disclosing Party's Confidential Information, receiving Party shall promptly and at its own expense: (i) notify disclosing Party in writing; (ii) take such actions as may be necessary or reasonably requested by disclosing Party to minimize the breach; and (iii) cooperate in all reasonable respects with disclosing Party to minimize the breach and any damage resulting therefrom.

(g) Contractor shall coordinate with Company with respect to, and provide advance copies to Company for review of, the text of any proposed announcement or publication that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors, Vendors, or advisors of Contractor, in each case, who agree to keep such information confidential. If Company delivers written notice to Contractor rejecting any such proposed announcement or publication within [\*\*\*\*\*] after receiving such advance copies, Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Government Authorities.

(h) Notwithstanding anything to the contrary in this Section 18.3, Company shall not be in violation of the Agreement: (i) if it provides Contractor Confidential Information to the California Public Utilities Commission pursuant to Public Utilities Code Section 583, or to any other regulatory agency or administrative agency, under applicable protective language, if possible, regardless whether the Contractor Confidential Information is formally requested and without notice to Contractor; and (ii) if it provides Contractor Confidential Information to a third-party to enable Company to make improvement to Company's internal business operations, including by undertaking performance and post-performance evaluations and assessments, for use in future projects or procurements.

(i) If any of the Work, or portion thereof, contains or is derived from Company Confidential Information, Contractor shall clearly mark the Work, or portion thereof, as Company Confidential Information. Additionally, if the Work, or portion thereof, contains or is derived from [\*\*\*\*\*], Contractor shall also clearly mark the Work as "Contains or Derives from [\*\*\*\*\*]." Company Confidential Information created by Contractor is subject to this Section 18.3 and the Cyber Requirements.

(j) Notwithstanding anything to the contrary in this Section 18.3, Contractor agrees that its confidentiality and non-disclosure obligations with respect to the Cyber Requirements shall continue according to the terms of that policy, if applicable.

#### 18.4 NOTICE.

Whenever a provision of the Contract Documents requires or permits any consent, approval, notice, request, or demand from one Party to another, the consent approval, notice, request, or demand must be in writing to be effective and shall be deemed to be delivered and received (a) if personally delivered or if delivered by telegram or courier service, when actually received by the Party to whom notice is sent, (b) if delivered by telex or facsimile, on the [\*\*\*\*\*] following the day transmitted (with confirmation of receipt), or (c) if delivered by mail (whether actually received or not), at the close of business on the [\*\*\*\*\*] following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate Party, at the address and/or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with this Section 18.4):

If to Contractor:

[\*\*\*\*\*], Chief Financial Officer  
111 Speen Street, Suite 410 Framingham, MA 01701  
[\*\*\*\*\*]

with a copy to:

[\*\*\*\*\*], Senior Vice President  
3200 Guasti Road, Suite 100 Ontario, CA 91761  
[\*\*\*\*\*]

If to Company:

Attn: Principal Manager, Direct Services  
Supply Management  
[\*\*\*\*\*]

With a copy to:

Attn: Director and Managing Attorney, Contracts and Intellectual Property Group  
Edison Law Department



[\*\*\*\*\*]

Any Party may change its address, facsimile number or e-mail address for the purposes of this Agreement by giving notice thereof to the other Party in the manner provided herein.

18.5 WAIVER.

No delay, failure or refusal on the part of any Party to exercise or enforce any right under the Contract Documents shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give notice to the other Parties of a breach of the Contract Documents shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of the Contract Documents that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

18.6 SEVERABILITY.

If any provision of the Contract Documents is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents; and the remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from the Contract Documents. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Contract Documents a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

18.7 GOVERNING LAW.

The Contract Documents, and the rights and obligations of the Parties under or pursuant to the Contract Documents, shall be interpreted and construed according to the substantive laws of the State of California (regardless of California's or any other jurisdiction's choice of law rules).

18.8 ENTIRE AGREEMENT; AMENDMENTS.

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, discussions and undertakings between the Parties (whether written or oral) with respect to the subject matter hereof. The Contract Documents may only be amended by written instrument signed by the Parties.

18.9 EXPENSES AND FURTHER ASSURANCES.

Each Party shall pay its own costs and expenses, without reimbursement hereunder, in relation to the negotiation, preparation, execution and carrying into effect of the Contract Documents. Each Party shall, from time to time on being requested to do so by, and at the cost and expense of, the other Party, do all such acts and/or execute and deliver all such instruments and assurances as are reasonably necessary for carrying out or giving full effect to the terms of the Contract Documents.

18.10 NO THIRD-PARTY BENEFICIARY.

Except with respect to the rights of the permitted successors and assigns and as provided above and the rights of indemnitees under Article XVI and Section 18.13(a), (a) nothing in the Contract Documents nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no person that is not a Party shall have any rights or interest, direct or indirect, in the Contract Documents or the services to be provided hereunder, and (c) the Contract Documents are intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to the Contract Documents or the services to be provided hereunder.

18.11 OFFSET.

Notwithstanding any other provision hereof, any and all amounts owing or to be paid by Company to Contractor hereunder or otherwise, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time by Contractor to Company.

18.12 COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

18.13 WAIVER FOR CONSEQUENTIAL DAMAGES.

Except for: (1) Liquidated Damages; (2) damages arising from, or in connection with (i) Contractor's gross negligence, fraud, willful misconduct or illegal or unlawful acts, or (ii) Contractor's indemnification obligations for third-party claims under the Contract Documents, [\*\*\*\*\*], or (iii) damages or losses arising from or in connection with Contractor's breach of its obligations under the [\*\*\*\*\*] or Section 18.3, neither Party, its respective officers, directors, employees, agents, representatives, successors, and assigns, shall be liable to the other Party for any special, [\*\*\*\*\*] or consequential damages [\*\*\*\*\*] arising out of, in connection with, or relating to the Agreement.

18.14 LIMITS OF LIABILITY.

In no event shall the aggregate damages payable by either Party hereunder exceed [\*\*\*\*\*]; provided, however, such limitation of liability shall not apply to: (1) Contractor's indemnification obligations for [\*\*\*\*\*] claims under the Contract Documents, [\*\*\*\*\*], or; (2) any loss or damage arising out of or connected with Contractor's gross negligence, fraud, willful misconduct or illegal or unlawful acts; or (3) damages or losses arising from or in connection with Contractor's breach of its obligations under the [\*\*\*\*\*] or Section 18.3; provided, however, that Contractor's aggregate liability out of or related to its breach of this [\*\*\*\*\*] shall be limited to (i) [\*\*\*\*\*], and (ii) [\*\*\*\*\*] thereafter.

18.15 AUDIT AND RECORDS RETENTION.

(a) Upon request by Company during the period in which this Agreement is in effect, and for a period of [\*\*\*\*\*] thereafter, Company, or a third-party designated by Company for this purpose, may examine, inspect, or copy any or all of Contractor's, and those of its parent and any Affiliate, books, records, and documents [\*\*\*\*\*] this Agreement, in whatever form maintained, including Project-related records, including correspondence, reports, estimates, estimating worksheets, change order files, memoranda, schedules, procurement files, Subcontractor or Vendor files, electronic files or any other documents relating to the design and construction of the Project and all services performed by Contractor, accounting or compliance records, and any supporting documentation (such as records of Contractor's business development and entertainment activities relating to Company) (collectively, "Contractor Records").



Contractor's Records shall not include any information the Company considers proprietary or confidential or internal work product of the Company which may include internal correspondence and draft reports. Contractor will keep proper financial and accounting records necessary to substantiate the costs of performance and all charges by Contractor, including Work related to any changes in the Work or Changes Orders, in accordance with generally accepted accounting practices consistently applied, and will maintain its other Contractor Records so as to capture and preserve relevant information about Contractor's performance of the Work and all other obligations under this Agreement. Contractor shall include these requirements in its agreements with its Subcontractors and shall require its Subcontractors to make their records available for inspection and copying by Company on the same terms as provided herein and ensure that this Section 18.15 flows down to Subcontractors of every tier. Upon [\*\*\*\*\*] prior notice from Company, Contractor will allow Company and its designated representative(s) access to Contractor Records during normal business hours so Company can audit the Contractor Records. In the event an audit discloses any material discrepancy in the amounts invoiced to Company from those due, Contractor shall promptly refund any overpayment and reimburse Company for all costs associated with the audit. Company may exercise its right to audit, inspect and copy records to confirm that Contractor has charged Company costs and submitted requests for payment in accordance with the Contract Documents, that Work has been performed in accordance with the Contract Documents or for any other legitimate business reason. The pendency of a claim or Dispute shall not limit Company's right to exercise its right to audit, inspect or copy Contractor's Records.

(1) Company has the right to conduct an audit of Contractor for adherence to the terms of the [\*\*\*\*\*] not more than [\*\*\*\*\*] per [\*\*\*\*\*]; or more often upon notification or reasonable belief by Company of any [\*\*\*\*\*] as described in the policy, or as required to comply with regulatory requirements. Company also has the right to audit any Contractor third-party contractor/service provider upon notification of any [\*\*\*\*\*] involving the third-party contractor/service provider. Contractor will cooperate with any audit and require the cooperation of any third-party contractor/service provider.

(b) Contractor shall also promptly notify Company of any Service Organization Control ("SOC") 2 Type II audit or Statement on Standards for Attestation Engagements ("SAES") audit conducted within [\*\*\*\*\*] prior to the date of the relevant Purchase Order through the completion or termination of the Purchase Order. Company encourages all contractors to share the results of industry standard third-party audit reports (e.g., SOC 2 Type II audits or SSAE 16 audits) in a timely manner.

#### 18.16 SECURITY TESTING.

Contractor consents to Company (and/or testing agents acting on Company's behalf) performing security penetration testing ("Security Testing"), in line with industry best practices, on the products and services provided under this agreement. Information exchanged during these engagements shall be deemed Confidential Information. Company shall provide the results of this Security Testing, without cost, to Contractor for Contractor's use. Contractor will use commercially reasonable efforts to remediate any critical, high, or moderate vulnerabilities identified because of the Security Testing that could potentially impact Company Data.

#### 18.17 FINANCIAL ASSURANCES.

If Company determines that Contractor's financial condition has deteriorated so as to create a risk of loss to Company, then Company may, in addition to exercising any of its other rights set forth in this Agreement, inform Contractor in writing of such insecurity, and as Company shall direct in its sole discretion, Contractor shall immediately: (a) provide written assurance within [\*\*\*\*\*] that the Contractor is capable of performing and completing the Work and its obligations under the Contract Documents;

(b) increase the forms and/or amounts of security; (c) require direct payment or co-payment to Subcontractors; (d) adjust the amount of Work to be performed by Contractor with corresponding adjustments to the Contract Price; and/or (e) assign to Company any agreement or purchase order with a Subcontractor or Vendor, provided that Contractor shall remain responsible for its obligations under such agreement or purchase order.

18.18 PUBLIC DISCLOSURES.

Contractor shall not use Company, or any Affiliate of Company, either in name or likeness, in any article, press release, promotional material or other published information in any media without the prior written consent of Company's Corporate Communications Department and subject to execution of a separate license agreement with additional terms and conditions.

18.19 SERVICE MARKS.

Neither Party shall, without the prior written consent of the other Party, use the name, service marks or trademarks of the other Party. Contractor shall not use Company's name, service marks or trademarks without the prior written consent from Company's Corporate Communications Department.

18.20 SURVIVABILITY.

All representations, warranties, covenants and agreements made herein shall be considered to have been relied upon by the parties and shall survive the execution and delivery of this Agreement. Notwithstanding anything in this Agreement or implied by law to the contrary, each provision of this Agreement which by its nature is intended to survive the termination, cancellation, completion or expiration of this Agreement, including any express limitations of or releases from liability, warranties, confidentiality obligations, indemnification, insurance, consequential damages, termination rights, and audit rights, shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion or expiration. Contractor's obligations under the [\*\*\*\*\*] will continue for so long as Contractor continues to have access to, is in possession of, or acquires Company Data or has access to Company's Computing Systems.

**IN WITNESS WHEREOF** the Parties have executed and delivered this Agreement as of the Effective Date first above written.

**AMERESCO, INC.,**  
a Delaware corporation

**SOUTHERN CALIFORNIA EDISON  
COMPANY,** a California corporation

By: /s/

By: /s/

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: October 20, 2021

Date Signed: October 21, 2021

LIST OF OMITTED EXHIBITS.

- (a) Exhibit A – Statement of Work (form of) – PARTIALLY OMITTED
- (b) Exhibit B – Certificate of Substantial Completion – OMITTED
- (c) Exhibit C – Certificate of Final Acceptance – OMITTED
- (d) Exhibit D – Performance Requirements- OMITTED
- (e) Exhibit E – Form of Contractor Certificate for Partial Waiver of Lien – OMITTED
- (f) Exhibit E-1 – Form of Subcontractor Certificate for Partial Waiver of Liens – OMITTED
- (g) Exhibit F – Not used
- (h) Exhibit G – Contractor Permits – OMITTED
- (i) Exhibit H – Company Permits – OMITTED
- (j) Exhibit I – Major Equipment – OMITTED
- (k) Exhibit J – Approved Substantial Subcontractors and Substantial Vendors – OMITTED
- (l) Exhibit K – Form of Contractor Certificate for Final Waiver of Liens – OMITTED
- (m) Exhibit K-1 – Form of Subcontractor Certificate for Final Waiver of Liens – OMITTED
- (n) Exhibit L – Form of Letter of Credit – OMITTED
- (o) Exhibit L-1 – Schedule to Letter of Credit – OMITTED
- (p) Exhibit M – Performance Guarantees and Performance Liquidated Damages – PARTIALLY OMITTED
- (e) Exhibit E – Form of Contractor Certificate for Partial Waiver of Lien – OMITTED
- (q) Exhibit N – Construction Maintenance Labor Agreement – OMITTED
- (r) Exhibit O – Information, Security, Cybersecurity, and Privacy Requirements for – OMITTED Suppliers
- (s) Exhibit P – Maintenance – OMITTED
- (t) Exhibit Q – Form of Bonds – OMITTED
- (u) Exhibit R – Schedule Liquidated Damages – PARTIALLY OMITTED



**EXHIBIT A**

**SCE's Reliability Utility Owned Energy Storage (RUOES)  
2021  
Turnkey Engineering, Procurement, Construction and  
Maintenance Agreement (EPCM)  
Exhibit A, Statement of Work**

---

DATE: September 2021

Developed by  
SCE RUOES Team



The SOW will detail the requirements for the Contractor to provide a [Capacity] MW, four (4)-hour duration energy storage system for installation adjacent to the [Substation Name] Substation in [City], CA with the goal of achieving a Commercial Operation Date by August 1, 2022.

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## Change Log

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Version	Date	Description of Change
1.0	202109	RUOES 2021 RFP Version
3.1	20211028	Updated Project Names in 4.1

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## Abbreviations

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- ac: alternating current
- AEA: Annual Equivalent Availability
- AHJ: Authority Having Jurisdiction
- ARIG: Advanced Remote Intelligent Gateway
- BMP: Best Management Practice



- C3: Command, Control, and Communications
- CAISO: California Independent System Operator
- CAL-OSHA: California Occupational Safety and Health Administration
- CARB: California Air Resources Board
- CASQA: California Stormwater Quality Association
- CBC: California Building Code
- CDRL: Contract Data Requirements List
- CFC: California Fire Code
- CPUC: California Public Utilities Commission
- dB(A): decibel (measure A)
- dc: direct current
- DNP3: Distributed Network Protocol 3
- DOT: Department of Transportation
- DO: Distribution Owner
- ECN: Energy Control Network
- EH&S: Environmental Health & Safety
- EMC: Electromagnetic Compatibility
- EPA: Environmental Protection Agency
- ES: Energy Storage
- ESCP: Erosion and Sediment Control Plan
- ESR: Electrical Service Requirements
- ESS: Energy Storage System
- GIA: Grid WDAT Agreement
- GMS: Generation Management System
- HMI: human machine interface
- HTTPS: Hypertext Transfer Protocol Secure
- HV: high voltage
- Hz: Hertz
- IEEE: Institute of Electrical and Electronics Engineers
- IOU: Investor Owned Utility
- kV: kilovolts
- LV: low voltage
- m: meter
- mG: milliGauss
- ms: milliseconds
- MV: medium voltage
- MV-90: see MV-90 in the Definitions section
- MW: megawatt
- MWh: megawatt-hour
- NERC-CIP: North American Electric Reliability Corporation - Critical Infrastructure Protection
- NESC: National Electric Safety Code
- NFPA: National Fire Protection Association
- NRI: New Resource Implementation
- NRTL: Nationally Recognized Test Laboratory
- NTP: Network Time Protocol – or – Notice to Proceed
- OEM: Original Equipment Manufacturer
- OO: Owner-Operator (or owned and operated)
- OSHA: Occupational Safety and Health Administration
- PCS: power conversion system
- PLC: Programmable Logic Controller
- PMB: Performance Measurement Baseline

- PO: purchase order
- POCO: Point of Change of Ownership
- PPE: Personal Protective Equipment
- PTO: Permission to Operate
- RFP: Request for Proposal
- RTU: remote terminal unit
- s: seconds
- SA: Supplement A (as in, UL 1741 SA)
- SCE: Southern California Edison
- SDS: Safety Data Sheets
- SL&P: Station Light and Power
- SME: subject matter expert
- SOC: state of charge
- SOW: Statement of Work/Scope of Work
- SSPWC: Standard Specifications for Public Works Construction (aka green book)
- SWPPP: Storm Water Pollution Prevention Plan
- TPA: Third Party Administrator
- Ts/Cs: Terms and Conditions
- UHWM: Uniform Hazardous Waste Manifest
- UL: Underwriters Laboratories
- UPS: Uninterruptible Power Supply
- V: volts
- VPN: virtual private network
- WQMP: Water Quality Management Plan

## Definitions

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[\*\*\*\*\*] PAGE 6 OMITTED

## 1 About This Document

Throughout this Statement of Work (SOW), "SCE," "Company," and "Edison" shall mean Southern California Edison Company, and "Vendor" and "Contractor" shall mean the party contractually obligated to provide materials and perform services as defined herein.

This Statement of Work defines the requirements for the [Project Name] Energy Storage System (ESS). These requirements address the work to be performed for a single project per the terms and conditions of the EPCM.

The Contractor shall provide a [Capacity] MW, four (4)-hour duration, energy storage system, make necessary site improvements, and install the system at [Address] in [City], CA with a Substantial Completion Date of August 1, 2022.

The SOW defines numbered Contract Data Requirements List (CDRL) deliverables required in the performance of the contract. The Contractor shall reference the defined CDRLs throughout the SOW and submit deliverables that meet the requirements. Deliverables that contain sufficient contents shall trigger the start of the joint review time. The Contractor shall submit CDRLs to the Company by saving files in the respective CDRL folders in the project dedicated SharePoint site.

## 2 Project Schedule

This Project shall achieve Substantial Completion and ESS readiness to begin operations on the SCE grid by August 1, 2022.

SCE will provide a primary power electric service from the grid per the date set forth in the approved Project Schedule, and thereafter maintain such electric services from the grid, as required for operation, start-up, commissioning and testing of the ESS, subject to the rules and agreements governing each electric service. Prior to receiving Permission To Operate (PTO), power and ramp rate limitations may be imposed by SCE (refer to Section 4.3.7.1 for the interconnection commissioning process).

SCE will complete construction of all necessary interconnection facilities, from the grid side, up to and including the last structure before the ESS as indicated in this Statement of Work, and provide interconnection to the grid in a timely manner in accordance with the approved Project Schedule. SCE shall be solely responsible for the costs of all grid upgrades required in order to interconnect the ESS with the grid and will cause such work to be completed no later than the date set forth in the approved Project Schedule.

## 3 Critical Milestones

[\*\*\*\*\*] PAGES 8–43 OMITTED

**EXHIBIT A STATEMENT OF WORK, APPENDIX 13 SERVICE PACKAGES.**

## **APPENDIX 13 SERVICE PACKAGES**

Reliability Utility Owned Energy Storage Procurement 2021

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### I. [Abbreviations](#)

- AEA – Annual Equivalent Availability
- AECC – Available Energy Capacity Contractual
- ANSI – American National Standards Institute
- APCC – Available Power Charge Contractual
- APDC – Available Power Discharge Contractual
- BET – Base Energy Throughput
- EPCM – Turnkey Engineering, Procurement, Construction and Maintenance Agreement
- ESS – Energy Storage System
- GEC – Guaranteed Energy Capacity
- GSU – generation step up
- IEEE – Institute of Electrical and Electronics Engineers
- kV - kilovolt
- kW – kilowatt
- kWh – kilowatt-hour
- MIN – minimum
- MWh – megawatt-hour
- NAP – Nameplate Active Power
- NETA – International Electrical Testing Association
- NFPA – National Fire Protection Association
- PCS – Power Conversion System
- PO – Purchase Order



- POCO – point of change of ownership
- SCE – Southern California Edison
- SOW – Statement of Work
- VARC – Variable Asset Replacement Cost
- XF – external factors

## II. Definitions

- Energy Storage Subsystem – The components comprising part of the overall ESS, usually from the cell/device level up to the main dc bus. Not to be confused with the overall ESS.
- Energy Storage System (ESS) – The overall ESS, comprising all systems, subsystems, components, and balance of plant, such as the Primary Power System, Station Light and Power System, PCS, Energy Storage Subsystem, Control System, fencing, and lighting. Not to be confused with Energy Storage Subsystem.
- Operating Year (Year) - Each twelve (12) month period commencing: 1) in the case of the first Operating Year, on the Substantial Completion Date, and 2) in the case of each subsequent Operating Year, at 00:00 on the anniversary of the Substantial Completion Date.

## III. Overview

This document establishes the Southern California Edison (SCE) Reliability Utility Owned Energy Storage (RUOES) Procurement 2021, Engineering, Procurement, Construction, and Maintenance (EPCM) Agreement, Exhibit A Statement of Work (SOW), Appendix 13 Service Packages.

In the event of a conflict between the Service Packages and the SOW, the SOW shall take precedence.

## IV. Service Packages

The service packages shall adhere to the following by Operating Years (Years):

1. The service packages shall be structured as described below and as shown in Table 1.

*Table 1. Service Packages*

Type	Included	Initial Year 1 thru 2	Extension A Year 3 thru 5	Extension B Year 6 thru 10	Extension C Year 11 thru 15
Fixed Energy Capacity	Warranty	Standard Service Package	Fixed Energy Capacity Service Package – Extension A	Fixed Energy Capacity Service Package – Extension B	Fixed Energy Capacity Service Package – Extension C
	Maintenance				
	Performance Guarantee with Fixed Energy Capacity				
Maintenance Only	Post-warranty Maintenance	Not applicable	Maintenance Only Service Package – Extension A	Maintenance Only Service Package – Extension B	Maintenance Only Service Package – Extension C

2. SCE may opt to not purchase any Service Package Extension (i.e., the Contractor would only provide the Standard Service Package).
3. The Service Packages (aside from the Standard Service Package, which is included in the price of the initial proposal) are paid on an annual basis and may be invoiced prior to the start of the Operating Year.
4. The Standard Service Package:
  - 4.1. Covers Years 1 through 2.
  - 4.2. Includes Warranty, Maintenance, and Performance Guarantee with Fixed Energy Capacity, and is included in the price of the initial proposal.
5. The Extension A period:
  - 5.1. Covers Years 3 through 5.
    - 5.1.1. The “Fixed Energy Capacity Service Package – Extension A” includes the Warranty, Maintenance, and Performance Guarantee with Fixed Energy Capacity, is priced separately as part of the initial proposal, **and if SCE elects to purchase this option, it would be identified prior to the expiration of the Standard Service Package.**
    - 5.1.2. The “Maintenance Only Service Package – Extension A” includes the Post-warranty Maintenance, is priced separately as part of the initial proposal, **and if SCE elects to purchase this option, it would be identified prior to the expiration of the Standard Service Package.**
6. The Extension B period:
  - 6.1. Covers Years 6 through 10.
    - 6.1.1. The “Fixed Energy Capacity Service Package – Extension B” includes the Warranty, Maintenance, and Performance Guarantee with Fixed Energy Capacity, is priced separately as part of the initial proposal, **requires the purchase of the “Fixed Energy Capacity Service Package – Extension A”, and if SCE elects to purchase this option, it would be identified prior to the expiration of the preceding service package.**
    - 6.1.2. The “Maintenance Only Service Package – Extension B” includes the Post-warranty Maintenance, is priced separately as part of the initial proposal, **requires the purchase of any Service Package under Extension A, and if SCE elects to purchase this option, it would be identified prior to the expiration of the preceding service package.**
7. The Extension C period:
  - 7.1. Covers Years 11 through 15.
    - 7.1.1. The “Fixed Energy Capacity Service Package – Extension C” includes the Warranty, Maintenance, and Performance Guarantee with Fixed Energy Capacity, is priced separately as part of the initial proposal, **requires the purchase of the “Fixed Energy Capacity Service Package – Extension B”, and if SCE elects to purchase this option, it would be identified prior to the expiration of the preceding service package.**
    - 7.1.2. The “Maintenance Only Service Package – Extension C” includes the Post-warranty Maintenance, is priced separately as part of the initial proposal, **requires the purchase of any Service Package under Extension B, and if SCE elects to purchase this option, it would be identified prior to the expiration of the preceding service package.**

## V. Warranty

The Warranty shall adhere to the following:

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## VI. Maintenance and Post-warranty Maintenance

The Maintenance and Post-warranty Maintenance shall adhere to the following:

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## VII. Performance Guarantee

The Performance Guarantee shall adhere to the following:

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### A. Availability Guarantee

The Availability Guarantee shall adhere to the following:

[\*\*\*\*\*]

Where:

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3. Liquidated Damages apply when AEA is below the AEA Requirement.

3.1. The AEA Requirement already provides for planned maintenance (i.e., when the ESS is not available due to planned maintenance, this down time will count against availability, the same as unexpected down time will count against availability).

3.2. The AEA Requirement is shown in Table 2.

3.3. Liquidated Damages are expressed in percent of the total EPC Price (as defined in the Contract), per each whole one (1) percent below the AEA Requirement, as shown in Table 2.

*Table 2. AEA Requirement and Liquidated Damages*

Item	Value
AEA Requirement (%)	97
Liquidated Damages (%)	0.2

### B. Energy Capacity Guarantee

The Energy Capacity Guarantee shall adhere to the following:

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**EXHIBIT M**

**PERFORMANCE GUARANTEES AND PERFORMANCE LIQUIDATED DAMAGES**

Reference Exhibit A Statement of Work, Appendix 13 Service Packages.



**EXHIBIT R**

**SCHEDULE LIQUIDATED DAMAGES**

The agreed schedule for Schedule Liquidated Damages is as follows (aggregates to 10% of the EPC Price LD Cap per individual project):

- 0.015% of the EPC Price per Day for delays of [\*\*\*\*\*]
- 0.4% of the EPC Price per Day for delays of [\*\*\*\*\*] to 60 Days from the Guaranteed Completion Date



## SUBSIDIARIES OF AMERESCO, INC.

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
112 Lake Street Solar LLC	Limited Liability Company	DE
117 Lake Street Solar LLC	Limited Liability Company	DE
1519 Crandall Road LLC	Limited Liability Company	DE
1724 64th Avenue Solar LLC	Limited Liability Company	DE
2598837 ONTARIO Inc.	Corporation	Canada
310 Main St. Solar LLC	Limited Liability Company	DE
3901 Suitland Road Solar LLC	Limited Liability Company	DE
399 Revolution Drive Solar LLC	Limited Liability Company	DE
515 Main Saugus LLC	Limited Liability Company	DE
5700 Canada Street Solar LLC	Limited Liability Company	DE
5715 Livingston Road Solar LLC	Limited Liability Company	DE
59 Morse Road Solar LLC	Limited Liability Company	DE
83 School Street Solar LLC	Limited Liability Company	DE
Aegean Drive Solar LLC	Limited Liability Company	Delaware
Alberta VA Solar LLC	Limited Liability Company	DE
AM Helios LLC	Name Reserved	DE
Ameresco & Elemental Options Inc.	Corporation	Canada
Ameresco 202 South Blair Solar Inc.	Corporation	Canada
Ameresco AD Holdings LLC	Limited Liability Company	DE
Ameresco Alternate Fuels LLC	Limited Liability Company	DE
Ameresco Aneval LLC	Limited Liability Company	DE
Ameresco ARS LLC	Limited Liability Company	DE
Ameresco Asset Holdings IV LLC	Limited Liability Company	DE
Ameresco Asset Sustainability Group LLC	Limited Liability Company	DE
Ameresco Benson Valley RNG LLC	Limited Liability Company	DE
Ameresco Brickyard RNG LLC	Limited Liability Company	DE
Ameresco Butte County LLC	Limited Liability Company	DE
Ameresco Canada Inc.	Corporation	Canada
Ameresco Candlewood HoldCo LLC	Limited Liability Company	DE
Ameresco CEPEO Solar Inc.	Corporation	Canada
Ameresco Cherokee RNG LLC	Limited Liability Company	DE
Ameresco Chicopee Energy LLC	Limited Liability Company	DE
Ameresco Chiquita Energy LLC	Limited Liability Company	DE
Ameresco Chiquita RGN LLC	Limited Liability Company	DE
Ameresco Clinton County RNG LLC	Limited Liability Company	DE
Ameresco Colchester 1 Inc.	Corporation	Canada
Ameresco Construction Holdings LLC	Limited Liability Company	DE
Ameresco CT LLC	Limited Liability Company	DE
Ameresco Dallas LLC	Limited Liability Company	DE
Ameresco Danville Solar LLC	Limited Liability Company	DE
Ameresco Delaware Energy LLC	Limited Liability Company	DE
Ameresco DR LLC	Limited Liability Company	DE
Ameresco Dufferin Solar Inc.	Corporation	Canada
Ameresco Energy Hellas S.A.	Corporation	Greece

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Ameresco Epperson RNG LLC	Limited Liability Company	DE
Ameresco Hellas – Greenesco – Res Invest Joint Venture	Joint Venture	Greece
Ameresco Enertech, Inc.	Corporation	KY
Ameresco Evansville LLC	Limited Liability Company	DE
Ameresco Federal Solutions, Inc.	Corporation	TN
Ameresco Finance Solar II Inc.	Corporation	Canada
Ameresco Finance Solar Inc.	Corporation	Canada
Ameresco Forward LLC	Limited Liability Company	DE
Ameresco Forward RNG LLC	Limited Liability Company	DE
Ameresco GEDSB Solar Inc.	Corporation	Canada
Ameresco Georgia LLC	Limited Liability Company	DE
Ameresco Geothermal Inc.	Corporation	Canada
Ameresco Greenridge LLC	Limited Liability Company	DE
Ameresco Greenridge RNG LLC	Limited Liability Company	DE
Ameresco Half Moon Bay LLC	Limited Liability Company	DE
Ameresco Hawaii LLC	Limited Liability Company	DE
Ameresco HCE Solar LLC	Limited Liability Company	DE
Ameresco HPEDSB Solar Inc.	Corporation	Canada
Ameresco Intelligent Systems, LLC	Limited Liability Company	DE
Ameresco International Holdings B.V.	Private Limited Liability Company	Netherlands
Ameresco JPII Carbon Reduction Inc.	Corporation	Canada
Ameresco Janesville LLC	Limited Liability Company	DE
Ameresco Jefferson City LLC	Limited Liability Company	DE
Ameresco Johnson Canyon LLC	Limited Liability Company	DE
Ameresco Keller Canyon LLC	Limited Liability Company	DE
Ameresco Keller Canyon RNG LLC	Limited Liability Company	DE
Ameresco Lake Havasu LLC	Limited Liability Company	DE
Ameresco Langstaff Solar Inc.	Corporation	Canada
Ameresco LDSCSB Solar Inc.	Corporation	Canada
Ameresco Lee County RNG LLC	Limited Liability Company	DE
Ameresco LFG - I, Inc. d/b/a Ameresco Goshen	Corporation	DE
Ameresco LFG Holdings II LLC	Limited Liability Company	DE
Ameresco LFG Holdings III LLC	Limited Liability Company	DE
Ameresco LFG Holdings LLC	Limited Liability Company	DE
Ameresco Little Dixie RNG LLC	Limited Liability Company	DE
Ameresco Limited	Private Limited Company	United Kingdom
Ameresco Manati LLC	Limited Liability Company	DE
Ameresco McCarty Energy LLC	Limited Liability Company	DE
Ameresco MT Wind, LLC	Limited Liability Company	DE
Ameresco Mt. Olive LLC	Limited Liability Company	DE
Ameresco Modern RNG LLC	Limited Liability Company	DE
Ameresco Myles Solar Inc.	Corporation	Canada
Ameresco Navy Yard Peaker LLC	Limited Liability Company	DE
Ameresco New Market Energy Storage Inc.	Corporation	Canada
Ameresco Niagara Solar Inc.	Corporation	Canada
Ameresco Northampton LLC	Limited Liability Company	DE
Ameresco Orbit Clinton LLC	Limited Liability Company	DE



<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Ameresco Orbit DesMoinesWA LLC	Limited Liability Company	DE
Ameresco Orbit Wadesboro LLC	Limited Liability Company	DE
Ameresco Otay RNG LLC	Limited Liability Company	DE
Ameresco Palmetto LLC	Limited Liability Company	DE
Ameresco Pine Bluff LLC	Limited Liability Company	DE
Ameresco Pine Grove RNG LLC	Limited Liability Company	DE
Ameresco Planergy Housing, Inc.	Corporation	DE
Ameresco Potter Road LLC	Limited Liability Company	DE
Ameresco Puerto Rico, Inc.	Corporation	Commonwealth of Puerto Rico
Ameresco PV Holdings II LLC	Limited Liability Company	DE
Ameresco PV Holdings III LLC	Limited Liability Company	DE
Ameresco PV Holdings IV LLC	Limited Liability Company	DE
Ameresco PV Holdings LLC	Limited Liability Company	DE
Ameresco PV Holdings V LLC	Limited Liability Company	DE
Ameresco PV Holdings VI LLC	Limited Liability Company	DE
Ameresco PV Holdings VII LLC	Limited Liability Company	DE
Ameresco PV Holdings VIII LLC	Limited Liability Company	DE
Ameresco PV Holdings Eleven LLC	Limited Liability Company	DE
Ameresco PV Holdings VII FinCo LLC	Limited Liability Company	DE
Ameresco PV Holdings IX LLC	Limited Liability Company	DE
Ameresco PV Holdings X LLC	Limited Liability Company	DE
Ameresco Quantum, Inc. – Merged into AMRC	Corporation	WA
Ameresco Quebec Inc.	Corporation	Quebec
Ameresco Ranchland LLC	Limited Liability Company	DE
Ameresco Renewable Energy LLC	Limited Liability Company	DE
Ameresco Renewable LLC	Limited Liability Company	DE
Ameresco RNG Holdings I LLC	Limited Liability Company	DE
Ameresco Roxana RNG LLC	Limited Liability Company	DE
Ameresco San Antonio LLC	Limited Liability Company	DE
Ameresco San Joaquin LLC	Limited Liability Company	DE
Ameresco San Joaquin Solar LLC	Limited Liability Company	DE
Ameresco Santa Clara LLC	Limited Liability Company	DE
Ameresco Santa Cruz Energy LLC	Limited Liability Company	DE
Ameresco Select, Inc.	Corporation	MA
Ameresco Servicios Energeticos S.L.	Corporation	Spain
Ameresco SFPUC LLC	Limited Liability Company	DE
Ameresco Skunk Creek LLC	Limited Liability Company	DE
Ameresco Solar - Products LLC	Limited Liability Company	DE
Ameresco Solar – Solutions LLC	Limited Liability Company	DE
Ameresco Solar - Technologies LLC	Limited Liability Company	DE
Ameresco Solar Bridgewater LLC	Limited Liability Company	DE
Ameresco Solar Canton LLC	Limited Liability Company	DE
Ameresco Solar Englewood LLC	Limited Liability Company	DE
Ameresco Solar Fall River LLC	Limited Liability Company	DE
Ameresco Solar Holdings I LLC	Limited Liability Company	DE
Ameresco Solar Holdings II LLC	Limited Liability Company	DE
Ameresco Solar Holdings III LLC	Limited Liability Company	DE

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Ameresco Solar Holdings II FinCo LLC	Limited Liability Company	DE
Ameresco Solar Land Holdings LLC	Limited Liability Company	DE
Ameresco Solar LLC	Limited Liability Company	DE
Ameresco Solar Logan LLC	Limited Liability Company	DE
Ameresco Solar Lowell LLC	Limited Liability Company	DE
Ameresco Solar Milton LLC	Limited Liability Company	DE
Ameresco Solar Natick II LLC	Limited Liability Company	DE
Ameresco Solar Natick LLC	Limited Liability Company	
Ameresco Solar New York LLC	Limited Liability Company	DE
Ameresco Solar Newburyport LLC	Limited Liability Company	DE
Ameresco Solar Power I LLC	Limited Liability Company	DE
Ameresco Solar Waltham LLC	Limited Liability Company	DE
Ameresco Solar Worcester LLC	Limited Liability Company	DE
Ameresco Southwest, Inc.	Corporation	DE
Ameresco Stafford LLC	Limited Liability Company	AZ
Ameresco TN Swine RNG LLC	Limited Liability Company	DE
Ameresco Upper Rock Island RNG LLC	Limited Liability Company	DE
Ameresco UW Solar Inc.	Corporation	DE
Ameresco Vasco Road LLC	Limited Liability Company	Canada
Ameresco Wind New York LLC	Limited Liability Company	DE
Ameresco Wind Power Canada Inc.	Corporation	DE
Ameresco Woodland Meadows LLC	Limited Liability Company	Canada
Ameresco Woodland Meadows Romulus LLC	Limited Liability Company	DE
Ameresco Wyandot RNG LLC	Limited Liability Company	DE
Ameresco/Pacific Energy JV	General Partnership	DE
AmerescoSolutions, Inc.	Corporation	HI
AMRC 53 Finco LLC	Limited Liability Company	NC
AMRC 53 Holdings LLC	Limited Liability Company	DE
AMRC Blackstone Holdings LLC	Limited Liability Company	DE
AMRC CECNY Holdings LLC	Limited Liability Company	DE
AMRC CS Holdings LLC	Limited Liability Company	DE
AMRC Frederick Holdings LLC	Limited Liability Company	DE
AMRC Hawaii LLC	Limited Liability Company	DE
AMRC LICSS Holdings LLC	Limited Liability Company	DE
AMRC Millis Holdings LLC	Limited Liability Company	DE
AMRC Panel Finance LLC	Limited Liability Company	DE
AMRC Panel Holdings LLC	Limited Liability Company	DE
AMRC PVH IX LLC	Limited Liability Company	DE
AMRC PV Holdings X LLC	Limited Liability Company	DE
Applied Energy Group, Inc.	Corporation	DE
Arlington Municipal Solar PV Projects 2015 LLC	Limited Liability Company	DE
Ashland High School Solar LLC	Limited Liability Company	DE
Ashland Howe St. Solar LLC	Limited Liability Company	DE
Ashland Middle School Solar LLC	Limited Liability Company	DE
Athol Leicester Solar LLC	Limited Liability Company	DE
Banner Solar Baywood	Limited Liability Company	DE
Banner Solar Gateway	Limited Liability Company	DE
Banner Solar Ironwood	Limited Liability Company	DE

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Belvidere Landfill Solar 1 LLC	Limited Liability Company	DE
Belvidere Landfill Solar 2 East LLC	Limited Liability Company	IL
Belvidere Landfill Solar 2 West LLC	Limited Liability Company	IL
Benigno Blvd Solar LLC	Limited Liability Company	IL
Bernardston Landfill Solar LLC	Limited Liability Company	DE
Bloomfield CT 1, LLC	Limited Liability Company	DE
Bomarc Road Solar LLC	Limited Liability Company	CO
Bound Line Road Solar LLC	Limited Liability Company	DE
BPDA Solar LLC	Limited Liability Company	DE
Braintree Schools Solar PV 2015 LLC	Limited Liability Company	DE
Bremo Bluff VA Solar LLC	Limited Liability Company	DE
Brentwood Rd Solar LLC	Limited Liability Company	DE
Brickyard Road Solar LLC	Limited Liability Company	DE
Brophy College Preparatory Solar LLC	Limited Liability Company	DE
Burnt Swamp Road Solar LLC fka Wrentham # 1 Solar LLC	Limited Liability Company	DE
BWC Gibbs Brook, LLC	Limited Liability Company	DE
BWC Harlow Brook, LLC	Limited Liability Company	DE
BWC Mystic River, LLC	Limited Liability Company	DE
BWC Origination 18, LLC	Limited Liability Company	DE
BWC Origination 19, LLC	Limited Liability Company	DE
BWC Origination 8, LLC	Limited Liability Company	DE
BWC Pocasset River, LLC	Limited Liability Company	DE
BWC Wading River, LLC	Limited Liability Company	DE
BWC Wareham Assemblage, LLC	Limited Liability Company	DE
BWC Wareham River, LLC	Limited Liability Company	DE
Camino De Cruz Blanca Solar LLC fka St. John's Solar LLC	Limited Liability Company	DE
Candlewood Clean Power LLC	Limited Liability Company	DE
Candlewood Solar LLC	Limited Liability Company	DE
Cedar Creek Solar LLC	Limited Liability Company	DE
Chesapeake Beach BESS LLC	Limited Liability Company	DE
Chicago Solar Alliance LLC	Limited Liability Company	DE
Church Street Solar LLC	Limited Liability Company	DE
City of Phoenix 22 Ave Solar LLC	Limited Liability Company	DE
Clarksville VA Solar LLC	Limited Liability Company	DE
Colonial Beach VA Solar LLC	Limited Liability Company	DE
Colonial Beach VA #2 Solar LLC	Limited Liability Company	DE
COV Smart City LP	General Partnership	DE
Danville Foundry Holdings, LLC	Limited Liability Company	Canada
DePue Holdings, LLC	Limited Liability Company	DE
Derry NH Landfill Solar LLC	Limited Liability Company	DE
Dinwiddie VA Solar LLC	Limited Liability Company	DE
Doswell VA Solar LLC	Limited Liability Company	DE
Downing Parkway Solar LLC	Limited Liability Company	DE
Dudley Landfill Solar LLC	Limited Liability Company	DE
e.three Custom Energy Solutions, LLC	Limited Liability Company	DE
East Bridgewater 1 Solar LLC	Limited Liability Company	NV
East Granby Solar LLC	Limited Liability Company	DE
East Victory Way Solar LLC	Limited Liability Company	DE

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Eastern Correctional Napanoch NY Solar LLC	Limited Liability Company	DE
Easton Schools Solar LLC	Limited Liability Company	DE
EI Fund One, Inc.	Corporation	DE
Ellsworth ME Solar LLC	Limited Liability Company	MA
Elm Grove Solar LLC	Limited Liability Company	DE
Energy Investment, Inc.	Corporation	DE
E Monroe Little Falls North LLC	Limited Liability Company	MA
E Monroe Little Falls South LLC	Limited Liability Company	DE
Energy Solutions & Security, LLC	Limited Liability Company	DE
ESCT-BJ318, LLC	Limited Liability Company	DE
ESMA-BJ113, LLC	Limited Liability Company	CT
ESMA-BJ175, LLC	Limited Liability Company	MA
ESMA-BJ209, LLC	Limited Liability Company	MA
ESMA-BJ353, LLC	Limited Liability Company	MA
ESNY-YORKTOWN, LLC fka ESNY-IBM-YORKTOWN, LLC	Limited Liability Company	MA
ESP Response Limited	Private Limited Company	NY
Fall River Solar Phase 2 LLC	Limited Liability Company	United Kingdom
Fiberloid St Solar LLC	Limited Liability Company	DE
Fishkill NY One Solar LLC	Limited Liability Company	DE
Franklin 1 Solar LLC	Limited Liability Company	DE
Freeport Solar North, LLC	Limited Liability Company	DE
Freeport Solar South, LLC	Limited Liability Company	DE
French King Solar LLC	Limited Liability Company	IL
Getty Avenue Solar LLC	Limited Liability Company	DE
Glenn Burnie Landfill Solar LLC	Limited Liability Company	DE
Glenn Burnie Landfill Solar ANEM LLC	Limited Liability Company	DE
Glenn Burnie Landfill Solar CSEGS-1 LLC	Limited Liability Company	DE
Glendale Road Solar PV LLC	Limited Liability Company	DE
Gloversville Community Solar LLC	Limited Liability Company	DE
Gray Road Solar Energy LLC	Limited Liability Company	DE
Gray Road Solar Energy 2 LLC	Limited Liability Company	DE
Gray Road Solar Energy 3 LLC	Limited Liability Company	DE
Green Wave LLC	Limited Liability Company	DE
Greene Correctional Cocksackie NY Solar LLC	Limited Liability Company	DE
Greenhaven Correctional Stormville NY Solar LLC	Limited Liability Company	DE
Groton Landfill Solar LLC	Limited Liability Company	DE
Grove Street Solar LLC	Limited Liability Company	DE
Hampden Landfill Solar LLC	Limited Liability Company	DE
Hancock MD #1 Solar LLC	Limited Liability Company	DE
Hanson Solar LLC	Limited Liability Company	DE
HEC/CJTS Energy Center LLC	Limited Liability Company	DE
HEC/Tobyhanna Energy Project, Inc.	Corporation	DE
Highland Bridge Solar LLC	Name Reserved	MA
Highland Street Natick Solar LLC	Limited Liability Company	DE
Historic Congressional Solar LLC	Limited Liability Company	DE
Hixbridge Solar LLC	Limited Liability Company	DE
HSGS-Ameresco, LLC	Limited Liability Company	DE
Hui O Aina, LLC	Limited Liability Company	SC



<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Illiopolis Solar North LLC	Limited Liability Company	HI
Illiopolis Solar South LLC	Limited Liability Company	IL
Indian Road Solar LLC	Limited Liability Company	IL
Ivory Street Solar LLC	Limited Liability Company	DE
Juice Technologies, Inc. dba Plug Smart	Corporation	DE
KBR EaaS LLC	Limited Liability Company	FL
Kerry Sustainable Energy Limited	Private Limited Company	DE
Kinsale VA Solar LLC	Limited Liability Company	Ireland
KP AACC Sacramento Solar LLC	Limited Liability Company	DE
KP Aliso Creek MOB Solar LLC	Limited Liability Company	DE
KP Baldwin Park Parking Solar LLC	Limited Liability Company	DE
KP Carson South Bay Solar LLC	Limited Liability Company	DE
KP Clairemont Mesa Solar LLC	Limited Liability Company	DE
KP Colton Medical Solar LLC	Limited Liability Company	DE
KP Columbia Gateway Solar LLC	Limited Liability Company	DE
KP Corona Medical Offices Solar LLC	Limited Liability Company	DE
KP Covina MOB Solar LLC	Limited Liability Company	DE
KP Culver Marina Solar LLC	Limited Liability Company	DE
KP Diamond Bar Solar LLC	Limited Liability Company	DE
KP Downey Medical Solar LLC	Limited Liability Company	DE
KP Fontana Medical Solar LLC	Limited Liability Company	DE
KP Gaithersberg Medical Solar LLC	Limited Liability Company	DE
KP Garden Grove Medical Solar LLC	Limited Liability Company	DE
KP Hawthorne MOB Solar LLC	Limited Liability Company	DE
KP Hesperia MOB Solar LLC	Limited Liability Company	DE
KP Honolulu Medical Solar LLC	Limited Liability Company	DE
KP Honolulu Solar LLC	Limited Liability Company	DE
KP Huntington Beach MOB Solar LLC	Limited Liability Company	DE
KP Inglewood Solar LLC	Limited Liability Company	DE
KP Kona Medical Solar LLC	Limited Liability Company	DE
KP Koolau Medical Solar LLC	Limited Liability Company	DE
KP Kula Solar LLC	Limited Liability Company	DE
KP Lanai Solar LLC	Limited Liability Company	DE
KP Leeward Solar LLC	Limited Liability Company	DE
KP Lincoln Medical Offices Solar LLC	Limited Liability Company	DE
KP Manteca Hospital Solar LLC	Limited Liability Company	DE
KP Mapunapuna Medical Solar LLC	Limited Liability Company	DE
KP Market Solar LLC	Limited Liability Company	DE
KP Maui Medical Solar LLC	Limited Liability Company	DE
KP Ming Medical Solar LLC	Limited Liability Company	DE
KP Moanalua Solar LLC	Limited Liability Company	DE
KP Modesto Medical Center Solar LLC	Limited Liability Company	DE
KP Moreno Iris Medical Solar LLC	Limited Liability Company	DE
KP Moreno Valley Hospital DNT Solar LLC	Limited Liability Company	DE
KP Moreno Valley Medical Offices Solar LLC	Limited Liability Company	DE
KP Murrieta Ambulatory Solar LLC	Limited Liability Company	DE
KP Nanaieola Medical Solar LLC	Limited Liability Company	DE

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
KP North Baltimore HUB Solar LLC	Limited Liability Company	DE
KP Ontario Vineyard O.P. Surgicenter B Solar LLC	Limited Liability Company	DE
KP Rancho San Diego Solar LLC	Limited Liability Company	DE
KP Redlands Medical Solar LLC	Limited Liability Company	DE
KP Riverside Medical Center Solar LLC	Limited Liability Company	DE
KP Riverside Solar LLC	Limited Liability Company	DE
KP San Marcos Medical Solar LLC	Limited Liability Company	DE
KP San Mateo Solar LLC	Limited Liability Company	DE
KP San Rafael Hospital Solar LLC	Limited Liability Company	DE
KP San Rafael Los Gamos MOB Parking Structure Solar LLC	Limited Liability Company	DE
KP South Sacramento Hospital Solar LLC	Limited Liability Company	DE
KP Springfield MOB Solar LLC	Limited Liability Company	DE
KP Stockton Central Utility Plant Solar LLC	Limited Liability Company	DE
KP Sylmar Medical Solar LLC	Limited Liability Company	DE
KP Temecula Solar LLC	Limited Liability Company	DE
KP Tracy Medical Offices Solar LLC	Limited Liability Company	DE
KP Victorville MOB Solar LLC	Limited Liability Company	DE
KP Wailuku Solar LLC	Limited Liability Company	DE
KP Waipio Solar LLC	Limited Liability Company	DE
KP Wildomar MOB Solar LLC	Limited Liability Company	DE
Kupono Solar Development Company, LLC	Limited Liability Company	DE
La Palma Ave Solar LLC	Limited Liability Company	DE
Lakeview Solar Farm Inc	Corporation	DE
Las Cruces Solar LLC	Limited Liability Company	Canada
Lenox Willow Creek Solar LLC	Limited Liability Company	DE
Lexington Bowman ES Solar LLC	Limited Liability Company	DE
Lexington Bridge ES Solar LLC	Limited Liability Company	DE
Lexington Children's Place Solar LLC	Limited Liability Company	DE
Lexington Clark MS Solar LLC	Limited Liability Company	DE
Lexington Diamond MS Solar LLC	Limited Liability Company	DE
Lexington Harrington ES Solar LLC	Limited Liability Company	DE
Lexington Municipal Solar LLC	Limited Liability Company	DE
Lexington New Hastings ES Solar LLC fka Lexington Solar Partners LLC	Limited Liability Company	DE
Lower Mine Road LLC	Limited Liability Company	DE
Ludlow 1 Solar LLC	Limited Liability Company	DE
MA Solar Highway LLC	Limited Liability Company	DE
MA Solar Highway Phase 1B LLC	Limited Liability Company	DE
MA Solar Highway Phase 2 LLC	Limited Liability Company	DE
MA Solar Highway Phase 3 LLC	Limited Liability Company	DE
McKenney VA Solar LLC	Limited Liability Company	DE
Main Street Exeter Solar LLC	Limited Liability Company	DE
Manteca Recycled Water Project LLC	Limited Liability Company	DE
Manville Hill Road Solar LLC	Limited Liability Company	DE
Marana Dove Mountain Solar LLC	Limited Liability Company	DE
Marana Maintenance and Transport Solar LLC	Limited Liability Company	DE
Marbury Point Solar LLC	Limited Liability Company	DE
Mariposa Solar Farm Inc	Corporation	DE
Marsh School Solar LLC	Limited Liability Company	Canada

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
McLean Landfill Solar LLC	Limited Liability Company	DE
Medusa NY 1, LLC	Limited Liability Company	IL
Memorial Field Football Field Solar LLC	Limited Liability Company	DE
Methuen HS Solar LLC	Limited Liability Company	DE
Middletown NY 1, LLC	Limited Liability Company	DE
Middletown NY 2, LLC	Limited Liability Company	DE
Midstate Correctional Marcy NY Solar LLC	Limited Liability Company	DE
Mill Glen Solar LLC	Limited Liability Company	DE
Millbury Landfill Solar LLC	Limited Liability Company	DE
Millbury MA 1, LLC	Limited Liability Company	DE
Millis MA 1, LLC	Limited Liability Company	DE
MN CSG 10 LLC	Limited Liability Company	CO
Montecito Schools Solar LLC	Limited Liability Company	DE
Montevue Lane Solar LLC	Limited Liability Company	DE
Mount Olive Community Development Fund LLC	Limited Liability Company	DE
Natick KMS Solar Canopy LLC	Limited Liability Company	DE
Natick KMS Solar Roof LLC	Limited Liability Company	DE
Natick Senior Center Solar LLC	Limited Liability Company	DE
Natick West Fire Station Solar LLC	Limited Liability Company	DE
Newton Municipal III LLC	Limited Liability Company	DE
Newton Municipal III Homer Street LLC	Limited Liability Company	DE
Newton Municipal III Walnut Street LLC	Limited Liability Company	DE
Newton Municipal Solar LLC	Limited Liability Company	DE
Ninety-First Avenue Renewable Biogas LLC	Limited Liability Company	DE
North Kingstown Solar LLC fka North Kingston Solar LLC dba Hamilton Allenton Solar LLC	Limited Liability Company	DE
North Parish Road Solar PV LLC	Limited Liability Company	DE
Oaks Landfill Solar ANEM LLC	Limited Liability Company	DE
Oaks Landfill Solar CS LLC	Limited Liability Company	DE
Oaks Landfill Solar CSEGS-1 LLC	Limited Liability Company	DE
Oaks Landfill Solar CSEGS-2 LLC	Limited Liability Company	DE
Optimum Operations LLC	Limited Liability Company	DE
Oral Oaks Road Solar LLC	Limited Liability	DE
Orange USD Solar LLC	Limited Liability Company	DE
Otter River Road Solar LLC	Limited Liability Company	DE
Owego Solar LLC	Limited Liability Company	DE
Peak Creek Solar LLC	Limited Liability Company	DE
Penobscot Narrows Solar LLC	Limited Liability Company	De
Peppertown Road Solar LLC	Limited Liability Company	DE
Phenix Avenue Solar LLC	Limited Liability Company	DE
Phillips Route 82 Solar LLC	Limited Liability Company	DE
Pima County Solar LLC	Limited Liability Company	DE
Plymouth South Solar LLC	Limited Liability Company	DE
Port Deposit MD Solar LLC	Limited Liability Company	DE
Preston MD #1 Solar LLC	Limited Liability Company	DE
Pulaski Community Solar LLC	Limited Liability Company	DE
Readington Solar PV LLC	Limited Liability Company	DE

<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Robinson Hill Solar LLC	Limited Liability Company	DE
Rochester MA 2, LLC	Limited Liability Company	DE
Rumford Avenue Solar LLC	Limited Liability Company	CO
Saluda VA Solar LLC	Limited Liability Company	DE
Saluda VA #2 Solar LLC	Limited Liability Company	DE
Saluda VA #3 Solar LLC	Limited Liability Company	DE
Saluda VA #4 Solar LLC	Limited Liability Company	DE
SB Granada Garage Solar LLC	Limited Liability Company	DE
SC Tire Processing LLC	Limited Liability Company	DE
Seldera LLC	Limited Liability Company	DE
Shawangunk Correctional Wallkill NY Solar LLC	Limited Liability Company	DE
Sierra Energy Company	Corporation	DE
Smithfield Municipal LLC	Limited Liability Company	NV
Smithfield RI NCA Solar LLC	Limited Liability Company	DE
Solar Revere Phase I LLC	Limited Liability Company	DE
Solutions Holdings, LLC	Limited Liability Company	DE
South Boston VA Solar	Limited Liability Company	DE
SR-85 Renewable Biogas LLC	Limited Liability Company	DE
St. Barnabas Road Solar LLC	Limited Liability Company	DE
Stafford Solar Power LLC	Limited Liability Company	DE
Stockbridge Landfill Solar PV LLC	Limited Liability Company	De
Suffolk VA Solar LLC	Limited Liability Company	DE
Sunnyvale Renewable Energy LLC	Limited Liability Company	DE
Sutter Auburn Faith Buyout LLC	Limited Liability Company	DE
Sutter Auburn Solar LLC	Limited Liability Company	DE
Sutter Davis Phase 2 Solar LLC	Limited Liability Company	DE
Sutter Davis Solar LLC	Limited Liability Company	DE
Sutter Elk Grove Solar LLC	Limited Liability Company	DE
Sutter Fairfield Solar LLC	Limited Liability Company	DE
Sutter Group SLMLS Solar LLC	Limited Liability Company	DE
Sutter Los Altos Clinic Solar LLC	Limited Liability Company	DE
Sutter Los Banos Solar LLC	Limited Liability Company	DE
Sutter Milvia Solar LLC	Limited Liability Company	DE
Sutter Novato Solar LLC	Limited Liability Company	DE
Sutter River Plaza Solar LLC	Limited Liability Company	DE
Sutter San Pablo Solar LLC	Limited Liability Company	DE
Sutter Santa Cruz Solar LLC	Limited Liability Company	DE
Sutter Santa Rosa Solar LLC	Limited Liability Company	DE
Sutter Schriever Solar LLC	Limited Liability Company	DE
Sutter Steiner Solar LLC	Limited Liability Company	DE
Sutter Stockton Solar LLC	Limited Liability Company	DE
Sutter Vallejo-Solano Solar LLC	Limited Liability Company	DE
Swanton MD #1 Solar LLC	Limited Liability Company	DE



<u>LEGAL NAME</u>	<u>ENTITY TYPE</u>	<u>JURISDICTION</u>
Sympaug Solar LLC	Limited Liability Company	DE
Taylor Hill Road Solar LLC	Limited Liability Company	DE
TerraNavigator, LLC	Limited Liability Company	DE
Waihee Well Solar LLC	Limited Liability Company	DE
Walden NY 1 LLC	Limited Liability Company	DE
Washington Correctional Comstock NY Solar LLC	Limited Liability Company	DE
Washington National And Cedar Hill Solar LLC fka 511 Venture Avenue Solar LLC	Limited Liability Company	DE
Wayland Municipal Solar LLC	Limited Liability Company	DE
Wende Correctional Alden NY Solar LLC	Limited Liability Company	DE
Wendell MA 1, LLC	Limited Liability Company	DE
West Coast MPPA LLC	Limited Liability Company	DE
West Newbury Main St. Solar LLC	Limited Liability Company	DE
Westerlo NY 1, LLC	Limited Liability Company	DE
Weston DPW Solar LLC	Limited Liability Company	DE
Westtown NY 2, LLC	Limited Liability Company	DE
Westwood Fires Station Solar LLC	Limited Liability Company	DE
Westwood Schools Solar 1 LLC	Limited Liability Company	DE
Westwood Solar Partners LLC	Limited Liability Company	DE
White Rock Road LLC	Limited Liability Company	DE
Windsor VA Solar LLC	Limited Liability Company	DE
Wood River Solar LLC	Limited Liability Company	DE
Woodbridge Avenue Solar LLC	Limited Liability Company	DE
Yarmouth Solar Partners LLC	Limited Liability Company	DE

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statements (Nos. 333-238792, 333-226698, 333-219864, 333-174507 and 333-169100) on Form S-8 and the Registration Statement (No. 333-253878) on Form S-3 of Ameresco, Inc. of our report dated March 1, 2022, relating to the consolidated financial statements and the effectiveness of internal control over financial reporting of Ameresco, Inc., appearing in this Annual Report on Form 10-K of Ameresco, Inc. for the year ended December 31, 2021.

/s/ RSM US LLP

Boston, Massachusetts  
March 1, 2022

**PRINCIPAL EXECUTIVE OFFICER CERTIFICATION**

I, George P. Sakellaris, certify that:

1. I have reviewed this Annual Report on Form 10-K of Ameresco, Inc. (the "Registrant");
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: March 1, 2022

/s/ George P. Sakellaris

**George P. Sakellaris**  
**President and Chief Executive Officer**  
**(principal executive officer)**

## PRINCIPAL FINANCIAL OFFICER CERTIFICATION

I, Spencer Doran Hole, certify that:

1. I have reviewed this Annual Report on Form 10-K of Ameresco, Inc. (the "Registrant");
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: March 1, 2022

/s/ Spencer Doran Hole

Spencer Doran Hole

Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)



**CERTIFICATION 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 Annual Report on Form 10-K of Ameresco, Inc. (the “Company”) to which this certification is attached and as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of the undersigned officers of the Company hereby certifies, pursuant to Rule 13a-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2022

/s/ George P. Sakellaris

George P. Sakellaris  
President and Chief Executive Officer  
(principal executive officer)

Date: March 1, 2022

/s/ Spencer Doran Hole

Spencer Doran Hole  
Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)