MASTER FUEL CELL POWER PURCHASE AGREEMENT

[PPA – USA]

This Master Fuel Cell Power Purchase Agreement (this "**Master Agreement**") is entered into as of the date of last signature hereto (the "**Effective Date**") by and between Customer and Supplier named below (each, a "**Party**," and collectively, the "**Parties**"), to set forth the terms and conditions of the installation, operation, and maintenance of solid oxide fuel cell energy systems pursuant to one or more System Orders issued in accordance herewith.

All of the capital costs of the System, including installation and commissioning (except as otherwise set forth in the relevant System Order) will be financed (a "**Financing**") by Supplier through one or more financing partners selected by Supplier (each, a "**Finance Company**") through financing structures determined by Supplier and that will require an assignment of the relevant System Order to a Finance Company in accordance with Section 16.7 (*Assignment*). Immediately after such assignment, the applicable Finance Company shall be the "Supplier" for all purposes under the applicable System Order.

	"**Customer**"	"**Supplier**"
Parties	The County of Fresno, a political subdivision of the State of California	BE Development, Inc. a Delaware corporation
Legal Notice Information	333 W. Pontiac Way Clovis, CA 93612 **Attn:** Director of General Services Email: gsdcontracts@fresnocountyca.gov Phone: (559) 600-6200	c/o Bloom Energy Corporation 4353 North First Street San Jose, California 95134 Attn: General Counsel Email: legal@bloomenergy.com Phone: (408) 543-1191

Exhibit A (*Principles of Contract Construction & Definitions*), Exhibit B (*Form of System Order*), Exhibit C (*Form of Adjustment Notice*), Exhibit D (*Required Insurance*), Exhibit E (*Self-Dealing Transaction Disclosure Form*), and Exhibit F (*Form of Landlord Consent*) are incorporated herein in their entirety and form part of this Master Agreement.

1. SYSTEM ORDERS

1.1 **Availability Period.** The Parties may enter into one or more System Orders under this Section 1 for a period of two (2) years from the Effective Date (the "**Availability Period**").

1.2 **System Orders**

(a) The Parties may, from time to time during the Availability Period, enter into one or more system orders, a form of which is attached as Exhibit B (each, a "**System Order**"), pursuant to which Customer will purchase the electricity generated by the System described in such System Order and, if applicable, the Customer Incentives allocated to Customer in such System Order, and Supplier will install, operate, and maintain the System in accordance with the terms and conditions of this Master Agreement and such System Order. Each System Order shall be governed by this Master Agreement, a copy of which shall be attached as Addendum A thereto. Each System Order, as governed by this Master Agreement, constitutes a separate and distinct agreement (each a "**System Agreement**").

(b) Capitalized terms used in this Master Agreement and not otherwise defined in this Master Agreement, have the respective meanings set forth in the applicable System Order.

(c) If Customer desires to extend the Term of a System Order, Customer shall deliver written notice to Supplier of Customer's intent to extend the Term of such System Order no later than one (1) year prior to the expiration of the Term of such System Order. Upon mutual agreement of the Parties to extend the Term of such System Order, the Parties will memorialize the extended Term, Services Fee, and any other material terms of the Term extension in an amendment executed by them in connection with such extension.

(d) Upon the expiration of the Term or a termination of a System Order due to a Supplier Default of a System Order under Section 12.3(a) (*Remedies*), Supplier will conduct a System Removal at its sole cost and expense.

1.3 **Conflicts**. In the event of a conflict between this Master Agreement (including any Exhibits hereto but excluding the applicable System Order), and the applicable System Order, the applicable System Order will govern as to such System Order.

2. PRICE AND PAYMENT

2.1 Customer Payments

(a) As consideration for Supplier's performance of the Work and for the electricity generated by the System, following COD, Customer will pay Supplier a monthly fee (the "**Services Fee**") as calculated in the System Order. The Services Fee does not include performance of any Service Exclusion.

(b) Customer shall be directly responsible for all taxes imposed on the purchase and sale of electricity and the Customer Incentives allocated to the Customer, if any, pursuant to a System Order and Supplier shall be directly responsible for any incremental real or personal property taxes resulting from the installation of the System on the Site.

(c) Subject to Section 2.1(d) below, the initial Base Rate, the Microgrid Adder Rate (if applicable), and corresponding Termination Value for each Contract Year are set forth in a System Order and are based on Supplier's good faith estimate of the costs of the Installation Work. Subject to Section 2.1(d) below, following Supplier's completion of due diligence, including of the Site, and after Supplier has provided Customer a site due diligence evaluation report detailing the explanation for any increases in the Services Fee or the Termination Amount pursuant to Section 2.1(d), Supplier is entitled to adjust the Base Rate, the Microgrid Adder Rate (if applicable), and the corresponding Termination Value for each Contract Year to reflect the actual conditions of the Installation Work relating to the applicable System Order.

(d) Without limitation of the foregoing, and subject to the terms and conditions of Section 14.1(e) (*Installation Cost Related Termination*), any increase in costs of performing the Work incurred by Supplier due to or as a result of any of the following will, after delivery of prior written notice to Customer containing a reasonably detailed explanation of such increase in costs of performing the Work, (i) be included in the Services Fee by adjustment of the Base Rate and the Microgrid Adder Rate (if applicable) for each Contract Year, and (ii) result in a corresponding increase in the Termination Value for each Contract Year: (1) Customer's failure to comply with any of its obligations in a System Agreement; (2) the failure of any of the Site Representations made by Customer in Section 8.2 of this Master Agreement to be true and accurate when made; (3) a Customer Delay; (4) the failure of a Critical Installation Assumption to be true on or remain true after the Order Date; (5) the failure of a Critical Service Assumption to be true on or remain true after the System's COD; (6) additional work requested by Customer or required to be performed by Supplier that is outside of the scope of the Installation Work; and/or (7) any changes in the availability of the Tax Benefits to the Supplier relating to the System.

(e) If a Customer Delay causes a delay in the achievement of COD and such Customer Delay (i) continues for more than twenty (20) days following Supplier's written notice to Customer of the Customer Delay, and (ii) results in increased financing costs to Supplier, Supplier will be entitled to recover such costs incurred as a result of such Customer Delay. Supplier will provide Customer with a written notice containing a reasonably detailed explanation and calculation of the increased financing costs. Customer may, at its sole discretion, elect to pay such amount as a one-time payment within forty-five (45) days of receiving such notice. If Customer does not make such payment in full within such forty-five (45) day period, Supplier will be entitled to adjust the Base Rate, the Microgrid Adder Rate, and the corresponding Termination Value for each Contract Year to recover such financing costs.

(f) Supplier will provide written notice to Customer of any adjustment of the Base Rate, the Microgrid Adder Rate, and the Termination Value for each Contract Year under Sections 2.1(c), 2.1(d) and/or 2.1(e) in the form of Exhibit C (an "**Adjustment Notice**"), after which, absent manifest error, the Base Rate, the Microgrid Adder Rate, and Termination Value for each Contract Year will automatically be deemed amended as set forth therein.

2.2 **Reimbursable Work**. To the extent Customer requests that Supplier perform work that would constitute a Service Exclusion ("**Reimbursable Work**"), as provided in Section 5.3(c) (*Exclusions from Maintenance Work*), Supplier will provide Customer a written estimate of the cost to perform such Reimbursable Work. If Customer wishes to proceed based on such estimate, the Parties will agree to a schedule for the completion of such Reimbursable Work. Supplier will, upon completion (or as otherwise agreed) of the Reimbursable Work, and based on such estimate, invoice Customer under Section 2.3 (*Invoices; Payment Terms*) for (i) any reasonable out-of-pocket costs and expenses incurred by Supplier for both goods and/or labor for such work (including reasonable travel and accommodation), and (ii) the number of hours performed by Supplier or any Supplier Person (including reasonable travel and accommodation) at Supplier's current standard hourly rates stated in such estimate for such work.

2.3 **Invoices; Payment Terms**

(a) Supplier will invoice Customer (i) for the Services Fee, beginning on COD, monthly in arrears; (ii) for the costs of Reimbursable Work, once completed (or as otherwise agreed in writing by the Parties); and (iii) if applicable, for any other amount owed by Customer under the applicable System Agreement, promptly after Supplier's determination of such amount. Customer will pay all undisputed amounts invoiced by Supplier in accordance with the Payment Terms set forth in the applicable System Agreement.

(b) If any properly invoiced amount is not paid within forty-five (45) days of the date when due, interest shall accrue at an annual rate of eight percent (8%) (or the maximum amount permitted by Applicable Law if less).

(c) If a *bona fide* dispute arises with respect to any invoice, Customer shall not be deemed in default under the applicable System Agreement, and the Parties shall not suspend the performance of their respective obligations hereunder, including Customer's payment of undisputed amounts owed hereunder. The Parties shall attempt to resolve any disputed amounts in accordance with the dispute resolution procedures set forth in this Section 16.3 (*Dispute Resolution*).

2.4 **Further Assurances**

(a) In connection with an assignment by Supplier of a System Order to a Finance Company, pursuant to Section 16.7(b), Customer agrees to execute and deliver to Supplier any direct agreements, consents, waivers, incumbency, estoppel, or similar certificates, recordable real

estate property rights, and any related documents as may be reasonably requested by such Finance Company, including a form of landlord consent if Customer leases the Site in a form substantially similar to of Exhibit (Form of Landlord Consent), provided the execution of any of these documents does not alter the terms of the System Agreement.

(b) Supplier may, from time to time, make requests for information, if not publicly available (except for any information covered by the attorney-client privilege or attorney work product privilege), regarding Customer's creditworthiness, including requests for financial statements. Upon receipt of any such request, Customer shall promptly deliver such information.

3. DELIVERY AND TITLE

3.1 **Shipment.** The System will be shipped to the Site in one or more shipments by a common carrier selected by Supplier. In the event Customer incurs costs due to the arrival of the shipment at the Site outside of Customer's normal hours of operation, Supplier shall be responsible for reimbursing the Customer for such costs.

3.2 **Delivery.** Supplier will use commercially reasonable efforts to deliver all components of the System to the Site on or before the Estimated Delivery Date.

3.3 **Ownership of the System**

(a) Supplier has title to, and is the legal and beneficial owner of all components of the System. Customer does not have any ownership rights or title in any components of the System. The System will at all times retain the legal status of personal property under the Uniform Commercial Code. Customer shall not take any action reasonably likely to result in any component of the System attaching to or being deemed a part of, or a fixture to, the Site, notwithstanding the manner in which such component of the System is or may be affixed to the Site. Supplier has the right to file a disclaimer of the System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction in which the Site is located. Customer consents to Supplier making such filing(s) and shall reasonably cooperate with Supplier to assist in such filing(s), including obtaining any necessary consent from the owner of the Site (if applicable).

(b) Customer shall not take a position on any tax return, if applicable, or in any other filings suggesting that it is anything other than a purchaser of Supplier's services with respect to the operation of the System.

3.4 **Return of Proceeds; Supplier Loss of Deposits**. If a Party receives any return of any deposit, performance assurance, rebate, credit, or other proceeds to which the other Party is entitled in connection with a System Attribute, Fuel Attribute, Tax Benefit, or the Work (collectively, the "**Returned Proceeds**"), the receiving Party shall promptly provide written notice to the other Party of such Returned Proceeds so received, and such other Party shall promptly provide written notice to the receiving Party that the other Party is entitled to such Returned Proceeds , and the specific reason therefor. Promptly following such written notice so provided by the other Party, the receiving Party shall remit the applicable Returned Proceeds to the other Party or its designee as directed by the other Party. In the event that Customer elects to terminate any System Order with respect to any Site prior to the expiration of the applicable Term (other than as a result of a Nonappropriation Event pursuant to Section 15 (Nonappropriation) or a Supplier Default) for which Supplier has paid a deposit or performance assurance amount, and such deposit or performance assurance amount is set forth in the applicable System Order expressly as such, and Supplier is unable to recover such amount using commercially reasonable efforts, Supplier shall provide written notice thereof, including Supplier's commercially reasonable efforts undertaken, and promptly following receipt of

Supplier's written notice, Customer shall reimburse Supplier for such amount promptly upon Supplier's request.

3.5 **Delivery of Electricity**. Title to, and risk of loss of, all electricity produced by the System shall transfer from Supplier to Customer at the revenue grade meter located in the System.

3.6 **System Attributes and Customer Incentives**

(a) Unless allocated to Customer in the System Order ("**Customer Incentive**"), Supplier is entitled to all System Attributes. Customer is entitled to any and all Fuel Attributes.

(b) Supplier is entitled to all Tax Benefits, and, shall have all obligations associated therewith and Customer will have no right or interest in, or any obligation with respect to, in any Tax Benefit. Customer shall not claim any Tax Benefits.

(c) Customer and Supplier shall use commercially reasonable efforts to assist one another in securing any applicable Customer Incentives, Fuel Attributes, System Attributes, or Tax Benefits at no cost to the other party.

4. INSTALLATION; INFRINGEMENT WARRANTY

4.1 **The Work**. Supplier will timely perform its obligations set forth in the Scope of Work (collectively, the "**Installation Work**"). Customer will timely perform all Customer Install Obligations set forth in the Scope of Work, which the Parties agree are necessary conditions to Supplier's completion of the Installation Work in accordance with the Project Schedule.

4.2 **Schedule**. Supplier will use commercially reasonable efforts to complete the Installation Work in accordance with the Project Schedule. The Project Schedule, including all applicable milestones set forth therein, will be extended on a day-for-day basis for any Customer Delay, Force Majeure Event, or delay caused by the applicable Utility Service Provider, Fuel Supplier, or Government Authority, provided that Supplier provides a written explanation of the cause of such extension due to any of the foregoing events within five (5) Business Days of Supplier obtaining knowledge of the occurrence of each such event.

4.3 **Notice of COD; COD Deadline**. Supplier will provide written notice to Customer that the System has achieved COD. If Supplier fails to achieve the Commencement of Operations Date for the System by the "**Guaranteed COD Date**" set forth in the System Order and (i) the applicable authorities having jurisdiction have granted all permits necessary to commence construction at least six (6) months prior to the Target Date (the "**Permitting Prerequisites**"), and (ii) the applicable local electric utility has completed all necessary upgrades reasonably required for the System to commence operations at least one (1) month prior to the Guaranteed COD Date (the "**Utility Prerequisites**"), and (iii) Customer has approved Supplier's electrical tie-in date at least one (1) month prior to the Guaranteed COD Date and there is no Customer Delay (collectively, the "**Customer Prerequisites**" and together with the Permitting Prerequisites and Utility Prerequisites, the "**Prerequisites**"), then Supplier shall pay to Customer, as liquidated damages (and not as a penalty), the sum of the "**COD Deadline Liquidated Damages**" amount set forth in the applicable System Order per day beginning on the day following the Guaranteed COD Date and ending on the Commencement of Operations Date with respect to such System up to the "**COD Deadline Liquidated Damages Cap"** set forth in the System Order. Notwithstanding the foregoing, in the event that the Prerequisites are not completed at least six (6) months or one (1) month prior to the Guaranteed COD Date, respectively, then Supplier shall not be required to pay to Customer the LD until six (6) months or thirty (30) days, respectively, after the date in which both Prerequisites are completed. The Guaranteed COD Date shall be extended on a day-for-day basis for any delays in installation caused by (1) Customer's material breach of the System Order until cured that causes a delay or a Customer Delay, (2) any delays in the issuance of any authorizations, permits or other

approvals required in connection with the installation and operation of the System that do not result from inaction or lack of timely action by Supplier, or (3) the discovery of unforeseen conditions at the Site that could not have been discovered by Supplier through reasonable diligence prior to the Effective Date.

4.4 **Infringement Warranty**

(a) Supplier warrants to Customer that neither the System nor any part thereof infringes on the Intellectual Property of any third-party in effect in the U.S. (the "**Infringement Warranty**").

(b) The Infringement Warranty does not cover Infringement Claims arising from (i) any combination made by Customer of the System with any other product or products unless the combination is in accordance with Supplier's specifications or made at the written request of Supplier; (ii) any changes made to the System or System design requested, on a custom basis, in each case, by Customer; or (iii) a counterclaim in a litigation instigated by Customer against the third-party of such Infringement Claim unless Supplier is granted exclusive authority to settle and/or defend such counterclaim.

(c) If Customer receives notice of an Infringement Claim with respect to the System, it will (i) make no admission of liability; (ii) deliver prompt notice of such Infringement Claim to Supplier; (iii) grant Supplier exclusive authority to settle or defend such Infringement Claim at Supplier's expense provided that there is no admission liability made by or on behalf of Customer as it relates to such Infringement; and (iv) upon request, assist Supplier (at Supplier's expense) in such settlement or defense.

(d) Should Supplier be enjoined from operating the System or any portion thereof as a result of an Infringement Claim, Supplier will, at its own expense, carry out, at its sole option and discretion, one (1) of the following remedies:

(i) procure or otherwise obtain for Customer the right to use the System or the infringing portion thereof;

(ii) modify the System so that it becomes non-infringing but still substantially meets its original functional specifications;

(iii) replace the System with a non-infringing solid oxide fuel cell system that substantially meets its original functional specifications; or

(iv) terminate the applicable System Order and complete a System Removal.

(e) Except for the indemnification set forth in Section 13.1(c), the remedies under Section 4.4(d) are Customer's sole remedy for any Claims arising out of Supplier's breach of the Infringement Warranty.

5. OPERATIONS AND MAINTENANCE

5.1 **Scope of Maintenance Work**. Subject to Section 5.2 (*Critical Service Assumptions*), Supplier will (i) perform scheduled and unscheduled maintenance for the System, as required; (ii) operate and maintain the System in compliance with the Performance Specifications; (iii) remotely monitor the System twenty-four (24) hours a day, seven (7) days a week; (iv) provide Customer with access to Bloomconnect; (v) maintain the broadband connection for the System, which is separate from Customer's broadband (the "*System Broadband Connection*") and the Utility Meter (if applicable); and (vi) provide any additional service work set forth in the System Order (collectively, the "**Maintenance Work**"). Supplier has no obligation to ensure the System delivers any specific amount of electricity except as may be provided in the Performance Specifications, if applicable.

5.2 **Critical Service Assumptions**. Subject to Section 5.3 (*Exclusions from the Maintenance Work*), Supplier's obligation to perform the Maintenance Work for the Services Fee is based upon the conditions below being true on and remaining true after COD (the "**Critical Service Assumptions**").

(a) Customer Obligations. Customer is in compliance with its obligations in the applicable System Order, including those set forth in Section 7 (*Customer Obligations*) of this Master Agreement.

(b) Site Location. The System remains installed at the original Site identified in the applicable System Order.

(c) Inputs and Outputs

(i) the type of fuel supplied by the local natural gas distribution system for the System pursuant to Section 7.2(a)(i)-(ii);

(ii) neither fuel, electric generation, nor water is curtailed by Customer, the Utility Service Provider, the Fuel Supplier, or any Government Authority or is otherwise unavailable;

(iii) the System Broadband Connection that is maintained by Supplier is not interrupted for any material period of time unless such interruption is caused by Supplier or a Supplier Person; and

(iv) Supplier has reasonable access to all other necessary third-party utility services such as data and telecommunications at the Site.

(d) Access

(i) the ability of Supplier and any Supplier Person to access the Site and the System is free of charge; and

(ii) no Person (excluding any Supplier Person) is preventing Supplier from performing the Work;

(e) the System is not being Misused or otherwise damaged by Customer or Customer Person (excluding any Supplier Person);

(f) solely as it relates to a System without a Microgrid, no Grid Event is occurring; and

(g) all of the Site Representations made by Customer in Section 8.2 of this Master Agreement remain true and accurate.

5.3 **Exclusions from the Maintenance Work**

(a) The Maintenance Work does not include ("**Service Exclusions**"):

(i) any of the obligations of Customer in the applicable System Order;

(ii) any maintenance, repair, restoration, or other service obligation with respect to any Customer Equipment;

(iii) any maintenance, repair, restoration, or other service obligation caused by a Customer Delay, System Impairment, or the failure of one or more Critical Service Assumptions to be true on and remain true after COD (unless any of the foregoing were directly caused by Supplier or a Supplier Person); or

(iv) any maintenance, repair, restoration, or other service obligation that is not set forth in Section 5.1 (*Maintenance Work*).

(b) To the extent that any of the following circumstance actually interferes with or increases the cost to Supplier of performing the Maintenance Work, Supplier will be relieved of its obligations and liabilities under the applicable System Order for the period during which such circumstance exists: (i) Customer is in breach of any of its obligations in the applicable System Order; (ii) any Site Representation made by Customer in Section 8.2 of this Master Agreement are not true and accurate; (iii) a Critical Service Assumption fails to be true on or remain true after COD, or (iv) a Customer Delay prevents Supplier from performing the Maintenance Work or prevents the System from performing in accordance with the Performance Specifications.

(c) Notwithstanding anything in this Section 5.3, only Supplier may perform maintenance, operations, repair, or replacement of any component of the System; to the extent Supplier must repair the System due to the existence or occurrence of a Service Exclusion, Supplier will make such repair as Reimbursable Work.

5.4 **Improvements; Replacements.** In connection with the Maintenance Work, Supplier may, subject to the Warranties but otherwise in its sole discretion, make improvements to or replace any component of the System at its own cost, provided that such improvements do not change Customer's rights or obligations under this Master Agreement.

6. SUPPLIER OBLIGATIONS

6.1 **Performance Standards**. Supplier shall perform the Work in accordance with Applicable Law and Prudent Industry Practices and take all necessary and reasonable safety precautions pertaining to the health and safety of natural persons and property. Notwithstanding the forgoing and unless otherwise specified in the System Order, Customer acknowledges that Supplier holds no professional licenses in the jurisdiction where the Site is located. Supplier shall be responsible for ensuring that all Work required to be performed by licensed architects, engineers, general contractors, plumbers, and electricians will be subcontracted to qualified and duly licensed professionals.

6.2 **Personnel**. Supplier is responsible for the services of its employees.

6.3 **Subcontractors**. Supplier may contract with Subcontractors to provide all or any part of the Work and such Subcontractors will be subject to any Site Access Conditions in the applicable System Order. Supplier is responsible for its Subcontractors' work as if it had been performed by Supplier. Supplier will use qualified, licensed, and insured Subcontractors in good standing under Applicable Law. Supplier will pay all amounts owed to its Subcontractors for the Work performed on a timely basis.

6.4 **No Liens**. Supplier acknowledges that Customer is a political subdivision of the State of California. Supplier will keep the Site free and clear of all mortgages, pledges, liens, charges, security interests, encumbrances, or claims of any nature ("**Liens**") arising out of the performance of the Work. If any Lien is filed against the Site by a Subcontractor, Supplier will, at its sole cost and expense, promptly take all actions necessary to have such Lien unconditionally released and discharged of record.

6.5 **Permits**. Supplier shall apply for and maintain at all times during the Term of the applicable System Agreement, those Permits necessary for the Work, except for any Permits expressly identified in the Scope of Work as Customer's responsibility. Customer will be named as the holder of any Permits that are required to be in Customer's name.

6.6 **Disclaimers**

(a) EXCEPT AS EXPRESSLY SET FORTH IN THE INFRINGEMENT WARRANTY AND THE PERFORMANCE SPECIFICATIONS, SUPPLIER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, OR OTHERWISE, OF THE SYSTEM, THE INSTALLATION WORK, THE MAINTENANCE WORK, OR ANY OTHER MATTER UNDER THE APPLICABLE SYSTEM ORDER. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE SYSTEM, THE INSTALLATION WORK, THE MAINTENANCE WORK, OR ANY OTHER MATTER UNDER THE APPLICABLE SYSTEM ORDER.

(b) IF CUSTOMER OR ANY CUSTOMER PERSON ENGAGES IN ANY PROHIBITED ACTIVITY, ALL OF THE WARRANTIES ARE VOIDED, AND SUPPLIER HAS NO FURTHER OBLIGATIONS THEREUNDER.

6.7 **Compliance with California Public Works Requirements**

(a) Applicability. To the extent any portion of the Installation Work is determined to be a "public work" within the meaning of California Labor Code § 1720 et seq., including by operation of § 1720.6 with respect to energy service contracts or power purchase agreements under Government Code § 4217 et seq. ("**Covered Work**"), Supplier will comply with the applicable provisions of Labor Code §§ 1720–1861 and Title 8, California Code of Regulations, § 16000 et seq. (collectively, "**Labor Law**") to the extent such provisions are applicable to Supplier in its capacity as contractor for the Work. Customer will comply with the Labor Law to the extent applicable to Customer in its capacity as the awarding body.

(b) Awarding Body Duties. Customer, as the awarding body, will: (i) file the Notice of Award (PWC100) and obtain the DIR project identification number pursuant to Labor Code § 1773.3; (ii) provide Supplier with the applicable general and, if any, special prevailing wage determinations and predetermined increases; and (iii) cooperate with DIR monitoring and enforcement to the extent required by law. cooperate with DIR monitoring and enforcement to the extent required by law and reasonably cooperate with Supplier, upon Supplier's request, in responding to any DIR or other governmental inquiries relating to the Work.

(c) Registration. Supplier and all required tiers of Subcontractors performing covered work will be currently registered with the DIR under Labor Code § 1725.5 for the duration of their performance.

(d) Prevailing Wage and Related Obligations. For covered work only, and as required by the Labor Law, Supplier will comply with any and all applicable Labor Law requirements, including, without limitation, requirements for payment of prevailing wage rates, inspection and submittal (electronically, as required) of payroll records, interview(s) of workers, et cetera, and specifically: (i) pay not less than the applicable prevailing wage rates and any predetermined increases (Labor Code §§ 1771, 1774); (ii) employ apprentices in accordance with Labor Code § 1777.5; (iii) require its Subcontractors to comply with the Labor Law requirements applicable to them; (iv) maintain and submit certified payroll records in the manner and form required by Labor Code § 1776 (including any required electronic submissions to DIR); (v) post required notices at the jobsite (Labor Code § 1773.2; 8 CCR § 16451); and (v) comply with work hour and overtime requirements (Labor Code §§ 1810–1815).

(e) Debarment. Supplier will not award covered work to any contractor or subcontractor debarred under Labor Code §§ 1777.1 or 1777.7.

(f) Changes in Law/Determinations. If a change in the Labor Law or a material DIR or other governmental determination after the Effective Date expands the scope of covered work or otherwise increases Supplier's cost or time to perform the Work (including increased wage determinations or new compliance requirements), the requirements of Section 16.4 (*Change in Law*) shall apply.

(g) Allocation of Responsibility. Supplier's responsibilities under this Section are limited to compliance with applicable Labor Law by Supplier and its Subcontractors. Supplier will not be responsible for penalties, withholdings, or costs resulting from Customer's failure to perform awarding body duties, to timely file the PWC-100, or to provide accurate prevailing wage determinations. Customer's responsibilities under this Section are limited to compliance with applicable Labor Law by Customer in its capacity as the awarding body, and Customer will not be responsible for penalties, withholdings, or costs resulting from Supplier's failure to comply with Labor Law applicable to Supplier and its Subcontractors.

(h) Cooperation and Flow-Down. Supplier will and Customer will each reasonably cooperate with DIR, each other, and other entities with competent jurisdiction regarding Labor Law compliance and Supplier will flow down to its subcontractors all terms necessary to ensure compliance with this Section.

7. CUSTOMER OBLIGATIONS

7.1 **License Grant; Site Access**. Subject to any Site Access Conditions, Customer hereby grants to Supplier a royalty-free, exclusive license containing all the rights necessary for (i) the System to occupy the Site; (ii) Supplier and Supplier Persons to locate the System or any component of the System on the Site (iii) Supplier and Supplier Persons to access the System at any time (twenty-four (24) hours per day, seven (7) days per week); (iii) Supplier and Supplier Persons to occupy the Site to perform the Work and System Removal, including ingress and egress rights to the Site (collectively, the "**Site License**"), which is irrevocable until the later of the completion of the Work and completion of System Removal following expiration or termination of the Term.

7.2 **Customer Obligations**. Customer will, at its own cost and expense:

(a) perform the following requirements for Supplier's performance of the Work in accordance with the applicable System Agreement:

(i) make available and maintain a connection of each gas meter to the local natural gas distribution grid (or other fuel supply source, if applicable);

(ii) contract for and arrange payment for a sufficient quantity, pressure, type, and quality of fuel for the continuous operation of the System up to its full Installed Capacity in compliance with Applicable Law;

(iii) except in the case of an Off-Grid Microgrid, make available and maintain full capacity connection of the System with the local electric grid;

(iv) contract for and arrange payment for a stable water supply at 35 psig (241 kPa) inlet minimum and 150 psig (1034 kPa) maximum;

(v) provide Supplier copies of notices and its bills received from the applicable Utility Service Provider and/or the Fuel Supplier as reasonably requested from time to time; and

(vi) not interfere with access to all other necessary third-party utility services such as data and telecommunications;

(b) accept all electricity generated by the System;

(c) provide Supplier access to the Utility Meter and all Utility Data, if applicable;

(d) subject to any Site Access Conditions, at all times (i) provide Supplier and Supplier Persons with access to the Site and the System as required to perform the Work in a timely and safe manner; and (ii) keep the System, service apron, service path and their surrounding environs

free and clear of trash, debris, snow, and other hazards and any other physical obstacles that would otherwise impede access to the System such as fencing or other barriers that cannot be easily removed;

(e) maintain the Customer Equipment in good repair, condition, and continuous operation;

(f) perform any upgrades to its electric infrastructure (not including the System) or the Customer Equipment to the extent required by Applicable Law, any Government Authority, any Utility Service Provider, or the Fuel Supplier;

(g) maintain at the Site any fire suppression equipment required by Applicable Law, any Government Authority, any Utility Service Provider, or the Fuel Supplier;

(h) manage its electrical load so as to remain within the Microgrid Specifications (if applicable) by, among other things, disconnecting Customer facility loads, modifying existing facility transfer switch control programs, and modifying existing building automation systems, in each case as may be necessary in order to limit the demands on the Microgrid to operate within the Microgrid Specifications;

(i) perform any power analysis studies and existing facility modifications of electrical infrastructure distribution or existing facility automation programs which may be necessary as determined in Supplier's sole discretion in order to limit the demands on the Microgrid (if applicable) to operate within the Microgrid Specifications;

(j) provide security for the System and any Customer Equipment to the same standard that Customer uses for its facilities at the Site;

(k) take reasonable safety precautions for the safety of natural persons and property at the Site;

(l) except as otherwise expressly set forth in the applicable System Order, execute and submit any interconnection applications and interconnection agreements necessary to obtain and maintain any applicable utility services, maintain and comply with any interconnection agreements with the Utility Service Providers and the Fuel Supplier, and be responsible for all costs associated with such compliance;

(m) cooperate with Supplier as necessary to minimize the disruption in the System operations in connection with any upgrades or maintenance to the Customer Equipment or any related electric infrastructure or in connection with Customer's operations;

(n) notify Supplier ("**Notice Events**") of:

(i) to the extent possible, at least forty-eight (48) hours in advance, the disruption or cessation of the flow of fuel or water to the System;

(ii) at least forty-eight (48) hours in advance, any modifications, upgrades, or repairs of the applicable fuel infrastructure;

(iii) at least forty-eight (48) hours in advance, any modifications, upgrades, or repairs of Customer Equipment or other electric infrastructure at the Site;

(iv) immediately upon Customer's Director of General Services acquiring knowledge, any damage to or loss of use of any portion of the Site that could reasonably be expected to adversely affect (1) Supplier's ability to perform the Work or (2) the System's ability to perform in accordance with the applicable System Order;

(v) immediately upon acquiring knowledge, any Site access restrictions, new badging or other security requirements, or planned shutdowns;

(vi) immediately upon acquiring knowledge, any physical obstacle impeding access of Supplier and/or Supplier Persons to the Site or the System, to the extent it cannot be removed expediently;

(vii) at least twenty-four (24) hours in advance of any other scheduled repair, installation, or modification at the Site that could affect Supplier's ability to perform the Work or the System's ability to perform in accordance with the Performance Specifications; and

(o) comply with Applicable Law and Prudent Industry Practices in the performance of its obligations under the applicable System Order and in its use of the Site and System thereunder.

7.3 **Cooperation.** Customer shall, at its own expense: (a) perform all of its obligations in the applicable System Agreement in accordance with any deadlines set forth therein and, in any event, in a timely manner; and (b) promptly (i) provide, or cause to be provided to Supplier, any other information, documentation, consents, and materials (provided the information, documentation, consents, and materials do not alter the terms of the System and Agreement), and services, pursuant to the System Agreement, reasonably requested by Supplier and necessary for it to perform its obligations under the applicable System Agreement and (ii) provide such other commercially reasonable cooperation as Supplier may reasonably request in the performance of the Work, in each case in a timely manner not reasonably likely to affect the schedule of or Supplier's ability to perform the Work. Customer will not condition or delay its cooperation in a way that could be reasonably expected to impair Supplier's ability to perform the Work.

7.4 **Customer Restrictions.** Customer will not, nor will Customer allow any Customer Person to:

(a) conduct activity at the Site that would be reasonably likely to result in damage to or impairment of the System or injury to any Person;

(b) subject to the Site Access Conditions, permit activities at the Site that materially impede Supplier's ability to perform the Work or that restrict or prevent Supplier's or any Supplier Person's access to the System or to the Site;

(c) Misuse, interfere or tamper with, handle, or modify the System, or any portion thereof, except through any actions taken by a Customer Person in good faith, by law enforcement, or by fire safety personnel, in each case, in response to an emergency imminently endangering the safety of any person or property, provided that (i) any action taken in an emergency will follow any emergency procedure protocols previously provided in writing by Supplier and (ii) Customer will notify Supplier of such actions as soon as reasonably possible;

(d) permit any disrepair or activities at the Site to materially affect Supplier's ability to perform the Work;

(e) interrupt or stop the System Broadband Connection that is maintained by Supplier;

(f) claim that Supplier is (i) an electric Utility Service Provider, (ii) subject to electric utility regulation, (iii) subject to regulated electric rates, or (iv) providing electric utility service to Customer; or

(g) sell, resell, assign, or otherwise transfer any portion of the electricity delivered by Supplier to Customer under the applicable System Order to any other Person, except as explicitly permitted pursuant to net metering or similar programs offered by Customer's Utility Service Provider.

7.5 **Site Alterations.** If Customer desires to engage one or more third-party suppliers (other than the applicable Utility Service Provider or Fuel Supplier) to provide repair, installation, or similar services at the Site, then Customer will (a) promptly notify Supplier of such intent; (b) ensure that all requirements imposed by any such service provider and, in connection therewith, any Utility Service Provider, Fuel Supplier, and/or Government Authority are met; and (c) to the extent the execution of such third-party services results in additional costs incurred by Supplier, Customer shall reimburse Supplier for any costs incurred by Supplier in connection with the execution of such third-party's services.

7.6 **Customer Damage**. Customer will not, and will not allow any Customer Person to, damage the System, any component thereof, or any of the related electric, fuel, or water infrastructure necessary to the installation, commissioning, or operation of the System, including the export of power (any such damage, "**Customer Damage**").

7.7 **Repairs**

(a) If the System requires repair outside of the scope of the Maintenance Work due to damage or any other reason caused by Customer or a Customer Person and, in any such case, such damage or other reason prevents Supplier from performing the Maintenance Work in accordance with the terms of the applicable System Order or impacts the operation of the System (a "**System Impairment**"), then subject to the remainder of this Section 7.7, Customer will promptly remedy or request Supplier remedy such System Impairment, in each case at Customer's cost.

(b) The first Party to receive knowledge of the occurrence or existence of a System Impairment will promptly notify the other Party thereof.

(c) If the System Impairment involves Customer Equipment or any other equipment affecting any component of the System, then Customer may directly engage Supplier, provided that Supplier provides a written quote of its proposed repair work for such System Impairment, or a third-party service provider to promptly repair such System Impairment at Customer's cost, as applicable.

(d) Notwithstanding the foregoing, if Supplier determines in its reasonable discretion, that the repair of a System Impairment is unreasonably delayed by Customer, and such delay is reasonably likely to result in an increase in Supplier's costs of performing the Maintenance Work, it may notify Customer of such determination and the specific reason(s) for the need for Supplier to perform the repair of the System Impairment. If Customer fails to commence the repair of the System Impairment within ten (10) Business Days of such notice, Supplier may elect to remedy the System Impairment itself as Reimbursable Work. Supplier will deliver written notice to Customer upon such determination, and the estimated cost of such Reimbursable Work, before it engages in repair of the System Impairment.

(e) If a System Impairment involves damage to any component of the System, Supplier will repair such damage itself at Customer's cost. Customer will not allow any Person other than Supplier to operate, maintain, repair, or replace any component of the System.

(f) After Supplier completes the repair of a System Impairment, Supplier will invoice the Customer under Section 2.3 *(Invoices; Payment Terms*) for the costs of such repair and any replacement parts as Reimbursable Work.

7.8 **System Outage**. A "**System Outage**" refers to any event of a suspension of operation of the System due to Customer for a period in excess of six (6) consecutive hours. Each calendar year, Customer is entitled to request one (1) System Outage with at least ninety-six (96) hours prior notice, with no liability to Customer. For each additional System Outage in any calendar year, Customer shall pay

$25/kW of the Installed Capacity upon receipt of an invoice from Supplier pursuant to Section 2.3 *(Invoices; Payment Terms*), to compensate Supplier for the increased costs of performing the Maintenance Work as a result of the additional System Outage.

7.9 **No Liens**. Customer shall not directly or indirectly cause, create, incur, assume, or suffer to exist any Lien on the System or amounts payable to Supplier under the applicable System Order. In the event of an impermissible Lien, Customer shall, within twenty (20) Business Days after becoming aware of such Lien, take such action at its sole cost and expense as may be required to cause such Lien to be discharged and released of record.

8. REPRESENTATIONS

8.1 **Mutual Representations**. Each Party represents to the other Party that, as of the Order Date, it is duly organized, validly existing, and in good standing; and that its execution, delivery, and performance of the applicable System Order: (i) has been duly authorized by all necessary corporate acts; (ii) constitutes its legal, valid, and binding obligation enforceable against such Party; and (iii) does not and will not violate or constitute a breach of any provision of such Party's organizational documents, Applicable Law, or any other agreement to which such Party is bound.

8.2 **Site Representations**

(a) Customer represents that, as of the Effective Date and as of each Order Date with respect to a System Order: (i) it has full power and authority and has obtained all required consents necessary to grant the Site License; (ii) except as disclosed in the System Order, it has no Knowledge of any Hazardous Materials at, on, or under the vicinity of the location of the System at the Site or any areas within the Site where Work will be performed; (iii) it has no Knowledge of any conditions at the Site that would be reasonably likely to result in an adverse effect on the Work or require a change to the Work; and (iv) all data provided and all representations made by Customer to Supplier regarding Customer's electricity consumption at the Site are true and correct. For purposes of this Section 8.2(a), "**Knowledge**" shall mean the actual knowledge of the directors, officers, or employees of Customer, and the knowledge that each such person would have reasonably obtained after making due and appropriate inquiry with respect to the particular matter in question.

(b) Customer further represents that, as of the Order Date, the ownership of the Site and Customer's leasehold or other interest therein are as set forth in the System Order.

9. INSURANCE

9.1 **Required Insurance**. Supplier and Customer will each maintain the insurance coverages set forth in Exhibit D in full force and effect throughout the Term.

9.2 **Unavailability of Insurance**. If any insurance required to be maintained by either Party hereunder ceases to be available on commercially reasonable terms in the commercial insurance market, such Party shall provide written notice to the other Party, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for fuel cell generating plants of similar type, geographic location, and design. Upon delivery of such notice, the Party whose insurance has become unavailable shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured, and the other Party shall not unreasonably withhold its consent to modify or waive such requirement.

10. INTELLECTUAL PROPERTY

10.1 **Intellectual Property Ownership**. Bloom Energy Corporation, a Delaware corporation, and its Affiliates ("**Bloom**") represents that it lawfully, and not in violation of any third party's rights, owns all right, title, and ownership in and to all Bloom IP. No license to or ownership of Bloom IP is granted to Customer under this Master Agreement or any System Order. Without limiting Section 10.3 (*Restrictions on Use*), to the extent any Intellectual Property constituting improvements or updates to, or derivative works of, Bloom IP, or otherwise relating to the System or the Work, is jointly developed by the Parties, Customer hereby assigns to Bloom all its right, title, and interest in any such jointly-developed Intellectual Property, and shall, at Bloom's request, execute and deliver any and all documentation necessary to effect or perfect such assignment. Supplier represents that Bloom's Trade Secrets include at least any technology, item, material, information, equipment, communications, data, or thing that would be considered to be a Trade Secret to the fullest extent of the law under either the Uniform Trade Secrets Act, the Defend Trade Secrets Act, or other Applicable Law (whichever provides the maximum protection for Bloom Trade Secrets).

10.2 **Licensing**

(a) Data License. All data collected by Supplier in connection with remote monitoring and maintenance of the System (the "**Data**") is the property of Bloom. Bloom grants to Customer during the Term a limited, non-exclusive, royalty-free license to access and use the Data to the extent made available by Bloomconnect, solely to the extent required for the use of the System (the "**Data License**").

(b) Disclaimers. Customer will not use the Data License for any purpose other than as expressly provided herein. Customer uses such Data License at its own risk. THE DATA LICENSE IS PROVIDED "AS IS"AND WITHOUT ANY WARRANTY OF ANY KIND, AND BLOOM EXPRESSLY DISCLAIMS ALL WARRANTIES IN CONNECTION WITH SUCH DATA LICENSE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF CUSTOMER OR ANY CUSTOMER PERSON ENGAGES IN ANY PROHIBITED ACTIVITY, SUCH DATA LICENSE IS AUTOMATICALLY VOID.

(c) Utility Data License. All data collected by Bloom from a Utility Service Provider or a Utility Meter ("**Utility Data**") is the property of the Customer. To the extent of its interest therein, Customer grants to Supplier and to Bloom a limited, non-exclusive, royalty-free license to use the Utility Data for Supplier's performance of its obligations under the applicable System Order or Supplier's or Bloom's internal business purposes (collectively, the "**Utility Data License**"). Supplier or Bloom may make such Utility Data available to third-parties subject to confidentiality obligations and/or disclose such Utility Data only on an aggregated, anonymized basis such that the data is not identifiable as Customer's.

10.3 **Restrictions on Use**. Customer shall not, nor allow any Customer Person to, do any of the following (each, a "**Prohibited Activity**"):

(a) Disassemble, translate, decompile or "unlock", translate, decode, or otherwise reverse engineer, or attempt in any manner to reconstruct or discover, any part of the Bloom IP;

(b) Modify, copy, adapt, enhance, or create a derivative work of, or use any Bloom IP to develop or manufacture a product similar to, any Bloom IP;

(c) Open the covering, access the interior, or allow others to open the covering or access the interior of any component of the System. Only Supplier and its authorized representatives may open or access such interior; or

(d) Use any Bloom IP.

11. CONFIDENTIAL INFORMATION

11.1 **Confidentiality**. Subject to the requirements of this Section 11, each Party shall treat all Confidential Information of the other Party as confidential and shall not use, distribute, disclose, reproduce, or otherwise communicate any Confidential Information of the disclosing Party to any Person for any purpose other than in accordance with this Master Agreement. For purposes of this Section, "**Confidential Information**" includes all information disclosed by Bloom, whether before or after any assignment of this Master Agreement or any System Agreement pursuant to Section 16.7, and such information shall remain subject to the confidentiality obligations herein notwithstanding any assignment. Customer agrees that any element of the System designed, engineered, or manufactured by Bloom contains valuable Trade Secrets and Customer agrees to maintain the secrecy of and not to disclose any such Trade Secrets. All Confidential Information furnished by one Party to the other Party shall remain solely the property of the disclosing Party. The confidentiality obligations under this Section 11 shall survive any assignment of this Agreement and shall continue to apply to Confidential Information disclosed by Bloom.

11.2 **Disclosure**. Except as specifically authorized by the other Party in writing or as required under Applicable Law, neither Party will disclose or make Confidential Information available to any Person other than its Affiliates, directors, officers, employees, and agents (each a "**Representative**"), financing parties, and Subcontractors, in each case solely to the extent such Person needs such information in connection with their performance under the applicable System Order.

11.3 **Use and Return**. Supplier and Customer agree that Confidential Information received under a System Order will be used solely for its internal business purposes and for the purposes of performing its obligations under such System Order. Neither Party will duplicate any Confidential Information of the other Party unless and to the extent that such duplication is necessary to perform its obligations under such System Order. On or after the expiration or early termination of the applicable System Order, either Party may request that the other Party destroy or return Confidential Information the other Party has received; *provided*, the other Party may retain one (1) copy of such Confidential Information and any electronic copies automatically saved on back-up servers. Any copies not destroyed or returned under this Section 11.3 shall remain subject to the confidentiality obligations of this Section 11, including Bloom's Confidential Information.

11.4 **Public Records; CPRA Process**

(a) Acknowledgment. Customer is a "local agency" subject to the California Public Records Act, CA Gov't Code § 7920.000 et seq. ("**CPRA**"). Nothing in this Master Agreement requires Customer to violate Applicable Law. However, the Parties intend to preserve all applicable exemptions from disclosure, including the trade secret exemption (CA Gov't Code § 7925.005 incorporating Evid. Code § 1060), the "official information" and "balancing test" exemptions (CA Gov't Code §§ 7922.000, 7922.000 et seq.), and the exemption for any records the disclosure of which would reveal security vulnerabilities or endanger public safety.

(b) CPRA Notice and Hold. If Customer receives a request for records that may include any Supplier or Bloom Confidential Information (a "**CPRA Request**"), Customer will: (i) promptly, and in any event within five (5) Business Days of receipt, provide written notice to Supplier or Bloom, as applicable, including a copy of the request and identification of potentially responsive records; (ii) refrain from producing the potentially responsive records for a reasonable period (not less than fifteen (15) Business Days after notice, unless a shorter period is required by law or court order) to allow Supplier or Bloom to assert applicable exemptions; and (iii) preserve the records pending resolution.

(c) Supplier Cooperation; Segregation and Redaction. Upon notice of a CPRA Request, Supplier or Bloom will promptly identify in writing any portions of the records it contends are exempt, with a factual and legal basis (e.g., trade secret, confidential commercial/financial information, security-sensitive technical data), and will provide proposed redactions and, where feasible, a redacted version suitable for disclosure. Customer will reasonably cooperate to segregate and redact exempt material and to produce any non-exempt portions.

(d) Exemption Support. At Supplier's or Bloom's request and expense, Customer will reasonably cooperate in good faith in defending the withholding or redaction of exempt Confidential Information, including by: (i) providing declarants to authenticate records and describe governmental interests; and (ii) allowing Supplier or Bloom to intervene or assert exemptions in any administrative or judicial proceeding. Supplier or Bloom will provide declarations or other competent evidence necessary to substantiate exemptions (including trade secret status).

(e) Disclosure Determination. Customer retains the final legal responsibility to determine whether to disclose records under CPRA. If, after following the process above and considering Supplier's or Bloom's submissions, Customer determines that disclosure is required, Customer will provide Supplier or Bloom with written notice of the determination and the specific records to be disclosed at least five (5) Business Days prior to disclosure (to the extent permitted by law), so that Supplier or Bloom may seek protective relief.

(f) Costs; Indemnification. As between the Parties, Supplier or Bloom will be responsible for its own costs to substantiate exemptions and, if Supplier or Bloom elects to pursue protective relief or to defend non-disclosure in response to a CPRA Request, Supplier or Bloom will do so at its own expense. If a third party brings a legal action against Customer arising out of Customer's withholding or redaction of records based on Supplier's or Bloom's request or assertion of an exemption, Supplier or Bloom will defend, indemnify, and hold Customer harmless from and against such action and pay all resulting damages, costs, and reasonable attorneys' fees awarded against Customer; provided, however, that: (i) Supplier or Bloom shall have sole control over the defense and settlement of such action (provided that Supplier or Bloom will not settle any such action in a manner that admits liability on behalf of Customer without Customer's prior written consent); (ii) Customer reasonably cooperates with Supplier or Bloom in such defense; and (iii) Supplier or Bloom shall have no obligation to indemnify Customer to the extent such action arises from Customer's negligence, willful misconduct, or failure to comply with statutory procedural requirements under the CPRA.

(g) No Waiver by Disclosure Under CPRA. Any disclosure of records by Customer in compliance with CPRA, after following the process in this Section, will not be deemed a breach of this Master Agreement. Disclosure of non-exempt portions will not waive confidentiality or trade secret protection for any other information or for the same information in a different record or context.

11.5 **Labeling; Record Handling**. Supplier or Bloom will use reasonable efforts to mark Confidential Information as "CONFIDENTIAL" or "TRADE SECRET" (or similar) at the time of disclosure, and for oral disclosures will confirm in writing within thirty (30) days. Failure to mark does not by itself waive protection if the information is reasonably understood to be confidential. Customer will store Confidential Information in a secure manner consistent with Customer's information security policies and any agreed security protocol, and will limit access to authorized personnel with a need to know.

11.6 **Compelled Disclosure Outside CPRA**. If Customer is legally compelled by subpoena, court order, audit, or other law to disclose Supplier's or Bloom's Confidential Information apart from CPRA, Customer will, to the extent legally permitted, provide Supplier or Bloom with prompt written notice to allow Supplier or Bloom to seek a protective order, and will disclose only that portion of the

Confidential Information that Customer is legally required to disclose, subject to any protective measures.

11.7 **Return or Destruction**. Upon the earlier of Supplier's or Bloom's written request or termination/expiration of this Master Agreement, Customer will promptly return or destroy Supplier's and Bloom's Confidential Information in its possession or control, except that: (a) Customer may retain copies as required by Applicable Law, regulation, records-retention policy, or audit requirements; and (b) any retained copies will remain subject to this Section for so long as retained.

11.8 **Remedies**. Supplier and Bloom shall each be entitled to seek injunctive and equitable relief to prevent or curtail any actual or threatened unauthorized use or disclosure of their respective Confidential Information, in addition to any other remedies available at law or in equity, recognizing that monetary damages may be inadequate. Nothing herein limits Customer's lawful compliance with CPRA after following the process in Section 11.4.

11.9 **Priority; Conflict**. In the event of a conflict between this Section and any other provision concerning disclosure of records, this Section governs as to Supplier's and Bloom's Confidential Information and CPRA compliance. Nothing in this Section limits disclosure of records to the State Auditor or other oversight bodies to the extent required by law, subject to applicable confidentiality protections.

11.10 **Security-Sensitive Information**. Without limiting the foregoing, information revealing system schematics, device configurations, cryptographic materials, operational technology details, or vulnerabilities of energy infrastructure provided by Supplier or Bloom constitutes Confidential Information and may qualify for exemption under CPRA's public-interest balancing and security exemptions. Customer will treat such information with heightened security and will consult with Supplier or Bloom before any contemplated disclosure.

11.11 **Unauthorized Disclosure**. If either Party becomes aware of any actual or reasonably suspected unauthorized use or, loss of, access to, or disclosure of Confidential Information, it will, unless legally prohibited from doing so, provide prompt and reasonable notice to the other Party within the shorter of five (5) Business Days, or the period required by Applicable Law.

11.12 **Use of Customer Name and Logo**

(a) Customer grants Supplier and Bloom permission to use Customer's name and logo solely in internal sales and marketing materials (including but not limited to presentations, RFP responses, and customer lists) which are shared on a confidential basis with customers, prospective customers, partners, or investors.

(b) Any public-facing use of Customer's name or logo (including but not limited to use on Bloom's website, in press releases, marketing collateral, case studies, public presentations, or social media) will require Customer's prior written approval. Such approval shall not be unreasonably withheld or delayed. Any such use will comply with Customer's brand guidelines as provided in writing and will not imply any endorsement by Customer beyond identification as a customer.

11.13 **Public Announcements**

(a) Except as required by Applicable Law (including, without limitation, the CPRA and the Ralph M. Brown Act), neither Party shall make any public disclosure (including press releases, public statements, and internet or social media postings) regarding the relationship of the Parties, the specific terms and conditions of this Master Agreement or any System Order, the applicable System, the Work provided, or the performance by the other Party of its obligations, without

the prior written consent of the other Party (which shall not be unreasonably withheld, conditioned, or delayed).

(b) Notwithstanding the foregoing:

(i) Either Party may disclose the existence of this Agreement and the general nature of the transactions contemplated herein, including in earnings calls, investor communications, or public meetings, provided that such disclosures do not include the other Party's Confidential Information or Trade Secrets.

(ii) Each Party may disclose this Agreement or any System Order to the extent required by Applicable Law, including in response to public records requests under CPRA or regulatory filings, provided that the disclosing Party shall (i) provide the other Party with prompt written notice of such request or requirement (to the extent legally permissible), and (ii) cooperate in good faith to seek confidential treatment or other appropriate protective measures for any Confidential Information, including the requirements of Section 11.4 (*Public Records; CPRA Process*) above.

(iii) Supplier and Bloom may identify Customer as a customer, and Customer may identify Bloom as a vendor, in each case without disclosing any Confidential Information.

12. FORCE MAJEURE EVENTS; EVENTS OF DEFAULT; REMEDIES

12.1 Force Majeure Events

(a) Neither Party shall be liable, nor be deemed to be in breach of a System Order, for any delay or failure in performance to the extent resulting from a Force Majeure Event.

(b) Upon the occurrence of a Force Majeure Event, the Party claiming relief will promptly (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts to minimize delay or damage caused by the Force Majeure Event or otherwise mitigate the effects thereof, (iii) notify the other Party in writing of the cessation of the Force Majeure Event, and (iv) resume performance of its obligations under the applicable System Order as soon as practicable thereafter. Neither Party may claim a Force Majeure Event based upon its financial inability to perform any of its obligations hereunder.

(c) In the case of a delay due to a Force Majeure Event affecting a Party, any period provided for performance by such Party of its obligations under the applicable System Order, other than the obligation of payment, will be extended on a day-for-day basis (but only for full days), commencing on the date that the Party claiming relief gave written notice of Force Majeure Event to the other Party, for the period of time such performance was so delayed.

12.2 **Defaults. "Event of Default"** means, with respect to a Party, (A) a representation of such Party made pursuant to Section 8.2 of the Master Agreement was inaccurate or untrue as of the date made, and, such Party is unable to rectify such inaccurate representation so that it is true or by indemnification within thirty (30) days following written notice from the other Party; (B) such Party fails to perform a material term or condition of the applicable System Agreement (excluding, in the case of Supplier, the System's failure to comply with the Warranties, which is specifically addressed below in (D) of this Section 12.2) and such Party fails, following receipt of written notice, to cure the same within (i) ten (10) days, in the case of a failure to pay or (ii) sixty (60) days, in the case of a failure to perform any other obligation, provided, that if the non-performing Party is diligently pursuing a cure for the failure to perform a non-payment obligation and such failure to perform can reasonably by cured with additional time, such Party shall have an additional thirty (30) days to effect such cure; (C) such Party breaches the terms of Section 11 (*Confidentiality*); (D) the System fails to comply with a Warranty and Supplier fails to perform the applicable remedy provided for in

such Warranty within the applicable period, and such failure continues for a period of ninety (90) days thereafter; (E) such Party breaches Section 16.8 (*Global Compliance*); (F) a Party fails to maintain the insurance coverage required by Section 9.1 (Required Insurance) and such Party fails, following receipt of written notice, to cure the same within ten (10) days; (G) Customer or any Customer Person engages in a Prohibited Activity; or (H) (i) Customer or Customer Guarantor (if applicable) experiences a Bankruptcy Event or (ii) Supplier experiences a Bankruptcy Event and, if applicable, the bankruptcy trustee rejects the applicable System Order.

12.3 **Remedies**

(a) Upon the occurrence and continuance of an Event of Default of Supplier, Customer may, in its discretion:

(i) for an Event of Default under Sections 12.2(A) through (E) that occurs before COD, (1) terminate the affected System Order without obligation to pay Termination Value or any other amount (excluding any amount due and owing under the affected System Order, (2) require Supplier complete the System Removal at Supplier's sole cost and expense, and/or (3) solely with respect to injuries to persons and/or damage to property, pursue any other remedy existing and available under Applicable Law;

(ii) for an Event of Default under Sections 12.2(A) through (E) that occurs on or after COD, (1) terminate the affected System Order without obligation to pay Termination Value or any other amount (excluding any amount due and owing under the affected System Order, (2) require Supplier complete the System Removal at Supplier's sole cost and expense, and/or (3) pursue any other remedy existing and available under Applicable Law.

(b) Upon the occurrence and continuance of an Event of Default of Customer, Supplier may, in its discretion:

(i) for an Event of Default under Sections 12.2(A) through (F) (excluding (D)) that occurs before COD, (1) terminate the affected System Order, (2) complete the System Removal at Customer's sole cost and expense, and/or (3) solely with respect to injuries to persons and/or damage to property (it being understood that the failure to pay is not an injury to persons and/or damage to property), pursue any other remedy existing and available under Applicable Law;

(ii) for an Event of Default under Sections 12.2(A) through (G) (excluding (D)) that occurs on or after COD, (1) suspend performance of the Maintenance Work, (2) terminate the affected System Order and require payment of the Termination Value in accordance with Section 14.1(b) (*Early Termination*); (2) complete the System Removal at Customer's sole cost and expense, (3) pursue any other remedy existing and available under Applicable Law; and/or (4) for an Event of Default under Section 12.2(F) (failure to provide credit enhancements), terminate all System Orders, and any other contracts with Customer without liability; or

(iii) for an Event of Default under Section 12.2(G) (*Prohibited Activity*), in addition to the other remedies set forth in this clause (b) of Section 12.3, (1) pursue injunctive relief as set forth in clause (g) of this Section 12.3; (2) turn off the affected System, and (3) void the Warranties under the affected System Order and any other System Order in effect with Customer.

(c) Upon the occurrence and continuance of an Event of Default of either Party, in addition to the other rights and remedies set forth in, and exercised under Sections 12.3(a) and (b), as applicable, the non-defaulting Party may, in its discretion:

(i) for an Event of Default under Section 12.2(C) (*Confidentiality*), pursue injunctive relief under clause (f) of this Section 12.3;

(ii) for an Event of Default under Section 12.2(E) (*Global Compliance*), terminate all System Orders, and any other contract with such defaulting Party, without liability for doing so; and

(iii) for an Event of Default under Section 12.2(H) (*Bankruptcy Event*), (1) terminate all System Orders, and any other contract with such defaulting Party, without liability for doing so, and/or (2) pursue any rights, remedies, or protections available to such non-defaulting Party through the bankruptcy court or a similar institution pursuant to 11 U.S.C. Title 11 or similar statutes.

(d) Customer has no remedies under this Section 12 for the System's failure to comply with any of the Warranties (unless and until such failure becomes an Event of Default under Section 12.2(D)), the exclusive remedies for which are limited to those terms expressly set forth in such Warranties.

(e) If Customer terminates a System Order as its exercise of a remedy in connection with an Event of Default of Supplier, Customer shall have no obligation to pay the Termination Value for such termination.

(f) If Supplier terminates a System Order pursuant to Section 4.4(d)(iv) as its exercise of a remedy in connection with an Infringement Claim arising out of Supplier's breach of the Infringement Warranty, Customer shall have no obligation to pay the Termination Value or any other amount for such termination (excluding any such other amount due and owing under the affected System Order that has accrued but has not been paid).

(g) Notwithstanding anything in the applicable System Order to the contrary, each Party may seek extraordinary, emergency relief, such as preliminary injunction or specific enforcement of the terms of the applicable System Order, from any court of competent jurisdiction in the United States of America without first submitting the subject Dispute to negotiation between Dispute Representatives. The Parties agree that aspects of the Bloom IP are unique, confidential, and valuable assets and Trade Secrets of Supplier and the unauthorized use or disclosure of a Party's Confidential Information may cause irreparable harm to such Party and emergency relief is proper for a Party's breach or threatened breach of Section 10.3 (*Restrictions on Use*) and Section 11 (*Confidential Information*).

13. INDEMNIFICATION; LIABILITY

13.1 Indemnification

(a) Each Party (such Party providing indemnification, the "**Indemnifying Party**") shall indemnify, defend, and hold harmless the other Party and its Representatives and Subcontractors (each an **"Indemnified Party,"** and collectively, the "**Indemnified Parties**"), from and against all third-party (not including (i) Affiliates or Persons with an equity or security interest in the Indemnified Party or its assets or, (ii) if Customer is the Indemnifying Party, any Supplier Person, or (ii) if Supplier is the Indemnifying Party, any Customer Person) claims, suits, penalties, obligations, damages, losses, liabilities, payments, and costs and expenses, including reasonable attorneys' fees and costs (each a **"Claim"** or collectively, "**Claims**") from (i) any injury to or death of any natural person or (ii) loss of or damage to property, in either case to the extent caused by (A) the Indemnifying Party's gross negligence or willful misconduct, (B) the Indemnifying Party's breach of its obligations under this Master Agreement, including the applicable System Order, respectively, or (C) the inaccuracy of any representation by the Indemnifying Party as of the date made.

(b) Supplier will indemnify, defend, and hold harmless Customer and its Representatives and Subcontractors from any Claims to the extent caused by Hazardous Materials introduced to the Site by Supplier or its contractors or Subcontractors. Customer will indemnify, defend, and hold harmless Supplier and its Representatives for any Claims arising as a result of the presence of Hazardous Materials at the Site (unless introduced by Supplier or its contractors or Subcontractors).

(c) Supplier will indemnify, defend, and hold harmless Customer and its Representatives from any Claim to the extent caused by a breach of the Infringement Warranty.

(d) In each case, the Indemnified Party shall (i) promptly notify the Indemnifying Party of any such Claim; (ii) authorize the Indemnifying Party to settle or defend such Claim provided that any such settlement does not include any agreement or acknowledgement that the Indemnified Party is at fault in whole or in part; (iii) provide the Indemnifying Party control of the defense of such Claim; and (iv) assist such defense (at the Indemnifying Party's reasonable expense) upon request of the Indemnifying Party.

(e) Notwithstanding the foregoing, an Indemnifying Party shall not be required to indemnify, defend, or hold harmless an Indemnified Party for any Claim to the extent arising out of (i) such Indemnified Party's breach of its obligations under this Master Agreement, including the applicable System Order, (ii) a representation of such Indemnified Party failing to be true when made, or (iii) the negligence or willful misconduct of such Indemnified Party.

13.2 **Insurance Recovery**. Each Party hereby waives, to the maximum extent permissible under Applicable Law, any claim under the foregoing Section 13.1 (*Indemnification)*, irrespective of the legal theory under which it is brought, to the extent such claim is covered by insurance proceeds paid to the Indemnified Party under insurance policies maintained by such Party (not including amounts necessary to meet the deductible of such insurance policy). Each Party covenants and agrees, with respect to the applicable System Order, to use commercially reasonable efforts to seek recovery under their respective insurance coverages to the maximum amount permitted under such Party's insurance policies.

13.3 **Limitations on Liability**.

(a) EXCEPT FOR (I) CLAIMS ARISING OUT OF BREACH OF SECTION 10 (*INTELLECTUAL PROPERTY*) AND SECTION 11 (*CONFIDENTIALITY*) AND (II) THIRD-PARTY CLAIMS SUBJECT TO INDEMNIFICATION AND DEFENSE UNDER SECTION 13.1, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT WILL:

(i) EITHER PARTY BE LIABLE TO THE OTHER PARTY, THE OTHER PARTY'S INDEMNIFIED PARTIES, OR, IN THE CASE OF SUPPLIER, ANY TENANT OF CUSTOMER, FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT OR SYSTEMS, INTERRUPTION OF BUSINESS, COST OF REPLACEMENT POWER, COST OF CAPITAL, DOWNTIME COSTS, INCREASED OPERATING COSTS, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, THAT THE OTHER PARTY OR ITS INDEMNIFIED PARTIES MAY SUFFER DIRECTLY OR INDIRECTLY AS A RESULT OF THE BREACH OR VIOLATION OF ANY WARRANTY, REPRESENTATION, COVENANT OR ANY OTHER PROVISION OF THIS AGREEMENT OR ANY SYSTEM ORDER; AND

(ii) EITHER PARTY'S AGGREGATE LIABILITY FOR ALL CLAIMS EXCEED THE AGGREGATE LIABILITY CAP AMOUNT SET FORTH IN THE APPLICABLE SYSTEM ORDER.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY LOSSES OR CLAIMS ARISING OUT OF OR RESULTING FROM MISUSE OF THE SYSTEM.

14. TERMINATION

14.1 Early Termination of a System Order; Material Impediment

(a) Either Party may, in connection with the proper exercise of its remedies under 12.3 (Remedies), terminate the affected System Order.

(b) In the event that Supplier terminates the affected System Agreement in connection with an Event of Default of Customer following COD then, without limiting Supplier's other remedies under this Master Agreement or Customer's other obligations under the affected System Agreement, Customer shall be liable (as liquidated damages and not as a penalty) for the Termination Value.

(c) **Termination for Convenience**. Customer may terminate this Master Agreement, or a System Order for convenience, other than for a Nonappropriation Event pursuant to Section 15.5, by written notice to Supplier specifying the final date of the affected System Order, which date shall be at least thirty (30) days following the date of such notice.

(i) If Customer terminates a System Order for convenience, other than a Nonappropriation Event pursuant to Section 15.5, on or after COD, Customer shall be liable for the Termination Value applicable as of the date of termination.

(ii) If Customer terminates a System Order for convenience, other than for a Nonappropriation Event pursuant to Section 15.5, before COD, Customer shall not be liable to Supplier for payment of the Termination Value but instead shall pay to Supplier, in addition to any other amounts then due and owing under the System Order, the following: (1) reasonable and documented costs incurred by Supplier (including but not limited to labor, design, and installation of the System as of the date of such termination and in connection with completing any System Removal) plus 20%, and (2) reasonable and documented financing costs plus 20%.

(iii) The date of termination shall be the later of (A) the date on which Customer has paid the applicable Termination Value, or (B) the date specified in the termination notice, and Customer shall remain liable for all Services Fees accrued but not yet paid as of such date.

(d) **Material Impediment**. Upon a good faith determination by Supplier, no later than thirty (30) days after the date that Supplier discovered that a Material Impediment exists or has occurred with respect to a System Order, Supplier shall: (i) provide written notice to Customer of cancellation of the System installation at the current Site set forth in the System Order as a result of such Material Impediment (the "**System Order Cancellation Notice**), and (ii) if the Material Impediment could not, upon the reasonable exercise of diligence applying Prudent Industry Practices, have been discovered as of the Order Date for a System Order, and providing a reasonably detailed explanation therefor, invoice Customer for fifty percent (50%) of: (1) the documented, non-recoverable costs incurred by Supplier as of the date of such notice (the "**System Order Cancellation Notice Date**") and in connection with completing any System Removal plus 20%, and (2) the documented, non-recoverable breakage, penalties, or fees incurred by Supplier as a result of such cancellation (collectively, the "**Non-Recoverable**

Costs"). Upon Supplier discovering that a Material Impediment exists or has occurred with respect to a System Order, Supplier shall take commercially reasonable steps to promptly suspend or discontinue the Work, or if that is not practicable, reduce activities relating to the Work in to minimize the types of incurred costs referenced in this Section 14.1(d). Customer shall, in its sole discretion, have two (2) years from the System Order Cancellation Notice Date to select one (1) of the following options: (A) choose to relocate the System to a mutually and reasonably agreeable alternative Site (a "**Pre-COD System Relocation**"); or (B) choose to terminate the affected System Order.

(i) If Customer selects a Pre-COD System Relocation pursuant to Section 14.1(d)(A) above, then (1) Supplier will remove the System from the original Site and relocate it at the substitute Site; (2) Supplier and Customer will, upon terms and conditions mutually agreeable to them, amend the applicable System Order to reflect the Pre-COD System Relocation, which update may include a revised Services Fee to the extent required; and (3) such revised System Order, once agreed to by the Parties, will otherwise remain in full force and effect. Customer will reimburse Supplier for all of Supplier's reasonable costs for Supplier's time and resources, and actual out-of-pocket third-party costs and expenses arising in connection with the Pre-COD System Relocation, including, without limitation, the costs of removal, remediation, installation, design, engineering, permitting, interconnection, loss of deposits, legal and consulting advice, financing costs, other redeployment activities, and any increase in costs of performing the Work under such System Order. The Parties agree that upon the transfer of the System to the substitute Site, Supplier may file an updated disclaimer of the System as a fixture of the Site in the County Recorder's Office

(ii) If Customer selects to terminate the affected System Order pursuant to Section 14.1(d)(B) above, then Supplier shall invoice Customer for the remaining fifty percent (50%) of the Non-Recoverable Costs set forth in Section 14.1(d).

(e) **Installation Cost Related Termination.** Customer may terminate the System Agreement by written notice to Supplier within ten (10) days of receiving the Updated Installation Cost (as such term is defined in the SOW), if the Updated Installation Cost will result in an increase in the Base Rate adjustment permitted pursuant to Section 2.1(c) of the Master Agreement by more than the Base Rate Adjustment Termination Amount set forth in the System Order. In such case of termination, Customer shall not be liable to Supplier for payment of the Termination Value, but shall pay to Supplier, in addition to any other amounts then due and owing under the System Agreement, reasonable and documented costs incurred by Supplier as of the date of termination.

14.2 **System Removal**. If required, Supplier will complete System Removal within one hundred eighty (180) days following termination of the affected System Order. Any System Removal required to be completed following Supplier's termination for a Customer Event of Default will be completed at Customer's sole cost and expense.

14.3 **Effect of Termination**. Upon a termination of a System Order, all rights and obligations of both Parties will be terminated and discharged in full; provided, however, such termination shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination, or which expressly under the terms of the applicable System Agreement, survive termination whether resulting from the event giving rise to termination or otherwise.

15. NONAPPROPRIATION

15.1 **Acknowledgment; No Debt Obligation**. The Parties acknowledge that Customer is a political subdivision subject to the Constitution and laws of the State of California, including limitations on

incurring indebtedness and the requirement that all payment obligations be subject to annual appropriation of sufficient funds. Nothing in this Master Agreement is intended to create an obligation of general fund indebtedness or a multi-year debt within the meaning of applicable California law. Customer's payment obligations hereunder are current expenses payable solely from legally available funds appropriated for the fiscal year in which payments are due.

15.2 **Nonappropriation Event**. A "**Nonappropriation Event**" occurs only if, for a subsequent fiscal year after the Effective Date: (a) Customer's governing body, acting in good faith and in the exercise of its budgetary discretion, fails to appropriate funds specifically designated and legally available to satisfy the payments due under the affected System Agreement for that fiscal year; and (b) Customer has exhausted all reasonable, lawful efforts to include and secure such appropriation during its budget process. A shortfall caused by misallocation, diversion, or reprogramming of appropriated funds, or by the availability of other funding sources, will not constitute a Nonappropriation Event.

15.3 **Notice; Evidence**. Customer will provide Supplier with written notice of a Nonappropriation Event promptly upon knowledge, and in any event no later than thirty (30) days after final budget adoption for the affected fiscal year, together with: (a) a certification of the governing body or the chief financial officer describing the appropriations process undertaken and affirming nonappropriation; (b) copies of relevant budget resolutions, minutes, or other public documents evidencing the Nonappropriation Event; and (c) a statement of the remaining funds, if any, available for close-out obligations.

15.4 **Opportunity to Cure or Mitigate**. Within thirty (30) days after receiving notice, the parties will confer in good faith to seek commercially reasonable alternatives that lawfully avoid termination, which may include: (a) adjusting payment schedules within the fiscal year; (b) reducing scope or service levels; (c) identifying alternate lawful funding sources; or (d) temporary suspension. Customer will reasonably cooperate with Supplier to implement any lawful mitigation proposed by Supplier that does not increase Customer's total cost for the then-current fiscal year. If the Parties agree on a mitigation plan, the affected System Agreement will continue as modified.

15.5 **Termination for a Nonappropriation Event**. If no mitigation is agreed within the thirty (30) day period, Customer may terminate the affected System Agreement effective at the end of the then-current fiscal year without liability for payments allocable to periods thereafter, subject to Sections 15.6 - 15.9. Customer will not terminate for Nonappropriation Event during a fiscal year for which funds have been appropriated and are legally available for the payments due under the applicable System Agreement.

15.6 **Payments Upon Nonappropriation**. Upon termination under Section 15.5, Customer will pay Supplier, from funds duly appropriated and legally available for the then-current fiscal year and any remaining project-restricted funds: (a) in addition to any other amounts then due and owing under the affected System Order, the following: (1) reasonable and documented costs incurred by Supplier (including but not limited to labor, design, and installation of the System as of the date of such termination and in connection with completing any System Removal) plus 20%, and (2) reasonable and documented financing costs plus 20%.

15.7 **System Removal**. Supplier will complete System Removal within one hundred eighty (180) days following termination of the affected System Order. Any System Removal required to be completed following Supplier's termination under Section 15.5 will be completed at Customer's sole cost and expense.

15.8 **No Default; No Early Termination Fee**. A termination properly effected under this Section will not constitute a breach or Event of Default by Customer for failure to pay amounts allocable to periods after the effective termination date. For clarity, this Section does not relieve Customer of liability for: (a) amounts accrued and payable through the termination date; (b) damage caused by

Customer's breach of the affected System Agreement; or (c) Misuse of or damage to the System by any Person (excluding any Supplier Person).

15.9 **Records; True-Up**. Within sixty (60) days after termination, Supplier will provide a close-out statement detailing all amounts due under Section 15.6 with reasonable supporting documentation. The Parties will cooperate in good faith to reconcile any disputed amounts within thirty (30) days thereafter. Any undisputed balance will be paid within thirty (30) days of receipt of the close-out statement or resolution of disputes, subject to availability of appropriated funds for the then-current fiscal year.

15.10 **Nonappropriation Not a Convenience Termination**. Termination under this Section is separate from and in addition to any termination for convenience rights. If Customer elects to terminate for convenience, the termination for convenience provisions and payments apply instead of this Section.

15.11 **No Waiver of Sovereign or Statutory Powers**. Nothing in this Section waives Customer's sovereign, statutory, or constitutional powers, including its budgetary authority, nor does it obligate Customer to make any appropriation. The Parties intend this Section to be construed to maximize enforceability under California law while respecting applicable limitations on public contracting and finance.

16. MISCELLANEOUS

16.1 **Notices**. Any notices required or permitted to be given hereunder must be in writing to a Party's Notice Address set forth on the first page of this Master Agreement and will be deemed delivered (1) upon hand delivery or transmission via email, where email receipt is promptly confirmed in writing by the notice recipient; or (2) upon arrival as set forth in return receipt requested certified mail (or an equivalent method under the Applicable Law) or notice from a reputable courier services (e.g., Federal Express).

16.2 **Governing Law; Forum**. The laws of the State of California govern all matters arising from or related to this Master Agreement. Any action arising in connection with a Dispute ("**Proceedings**") must be brought solely in the federal or state courts in Merced County, California; each of the Parties (a) irrevocably submits to the exclusive jurisdiction of such courts; (b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court; (c) waives any claim that such Proceedings have been brought in an inconvenient forum; and (d) further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such Party. Nothing herein shall affect either Party's right to serve process in any manner permitted by Applicable Law. To the maximum extent permitted under Applicable Law, each Party hereby knowingly waives its right to a jury trial in any Proceedings.

16.3 **Dispute Resolution**

(a) Except with respect to any remedy sought under Sections 12.3(f) or 12.3(g), any dispute, controversy, or claim arising out of or related to a System Order, or the subject matter thereof (a "**Dispute**") will be resolved in accordance with the dispute resolution procedures set forth in this Section 16.3.

(b) In the event of a Dispute, within ten (10) days following written request by either Party, (i) each Party shall appoint a representative with the authority to settle Disputes on behalf of such Party (a "**Dispute Representative**"), and (ii) the Dispute Representatives shall meet (electronically or in person) to negotiate and attempt in good faith to resolve the Dispute. The contents of such negotiations will be deemed settlement discussions, privileged from disclosure to third parties in the event of any litigation and will be treated as Confidential Information under California Evidence Code Sections 1152 and 1154. Any writings between the Parties reflecting such

negotiations shall be conspicuously marked as "Confidential-Privileged Settlement Negotiations under California Evidence Code Sections 1152 and 1154." If the Dispute Representatives cannot resolve the Dispute within thirty (30) days after commencement of negotiations, either or both Parties may terminate such negotiations, and, subject to Section 16.3(a), either Party may seek any and all remedies available to it at law or in equity in accordance terms and conditions of this Agreement.

16.4 **Change in Law**

(a) If a Change in Law affecting, related to, or governing the Site, the Customer, or the operation of the System at the Site materially increases the costs of, or time required to perform, the Work, or otherwise requires a material change in Supplier's operation or maintenance of the System, Supplier shall be entitled to (a) a corresponding increase in the Services Fees; (b) a corresponding extension of time to perform the Work; and/or (c) modification(s) to the Performance Specifications, or other applicable provisions of the affected System Order, as required to continue to perform at such increased costs or otherwise in compliance with the affected System Order (the "**Subsequent Changes**"), provided that (1) Supplier's determination shall attempt to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Master Agreement as of the Effective Date, and (2) in each case, any such increase, extension, and/or modification will be reasonable and determined in good faith.

(b) Supplier will provide Customer with reasonable documentation showing the basis for the Subsequent Changes as a result of the Change in Law, as well as a proposed amendment to the affected System Order to implement the Subsequent Changes. The Parties will cooperate in good faith to finalize, execute, and deliver such amendment to the affected System Order within thirty (30) days following Customer's receipt of such documentation and proposed amendment. If such amendment is not executed and delivered by both Parties in such thirty (30) day period, then a Dispute shall be deemed to have occurred that shall be subject to Section 16.3 (*Dispute Resolution*). If the Parties are negotiating in good faith at the end of such thirty (30) day period, the negotiation period will be automatically extended for one additional thirty (30) day period. From the expiration of the initial thirty (30) day period until the date such amendment is fully executed and delivered by both Parties, Supplier will be relieved of its obligations and liabilities under this Master Agreement and/or any applicable System Order. If such amendment has not been executed and delivered by both Parties prior to the applicable amendment execution and delivery deadline, then a Dispute shall be deemed to have occurred that shall be subject to Section 16.3 (*Dispute Resolution*).

16.5 **Relationship of Parties**. Supplier is acting in an independent capacity, and the Parties shall not be deemed to be joint venturers, partners, agents, employer/employee, or anything other than customer and independent contractor.

16.6 **Limited Third-Party Beneficiaries**. Bloom is a third-party beneficiary of Section 10 (*Intellectual Property*), Section 11 (*Confidentiality*), Section 12.3(g) (*Injunctive Relief*), and Section 13 (*Indemnification; Liability*); otherwise, no System Order imparts any rights enforceable by any third-party, other than a permitted successor or assignee bound to such System Order.

16.7 **Assignment**

(a) Customer shall not assign any System Order without Supplier's prior written consent, not to be unreasonably withheld, conditioned, or delayed; provided, however, that Customer may assign a System Order by written notice to Supplier, subject to: (A) Supplier's prior receipt from Customer of a written certification that such assignment either: (1) is to an Affiliate of Customer; (2) is a result of an internal reorganization or financing, or (3) is a result of merger,

consolidation, or sale of all or substantially all of Customer's assets, and (B) the applicable assignee: (i) satisfies the Creditworthiness Requirements; (ii) is an entity to which the Guaranty applies and is in effect (if applicable) and the necessary amendments are made to the Guaranty to keep it in effect; (iii) is an entity with which Supplier would not be precluded from doing business by operation of Applicable Law or internal policies; (iv) is an entity that is not a Bloom Competitor; and (v) agrees in writing to assume all of Customer's obligations and liabilities under such System Order. Any assignment in violation of Customer's certification shall be null and void.

(b) Supplier may not assign any System Order or any interest herein without the prior written consent of Customer; provided, however, that, Supplier may, assign a System Order by written notice to Customer: (i) to an Affiliate of Supplier; (ii) through merger, consolidation, or sale of all or substantially all of Supplier's stock or assets, to the successor entity; (iii) as collateral assignment or as a pledge of a security interest to Finance Company; or (iv) in connection with a Financing, to a Finance Company that has engaged Bloom or any of its Affiliates to perform all or part of the Work, in which case, as noted in the Preamble above, such Finance Company shall become "Supplier" under such System Order. Customer's consent to any other Assignment shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Supplier may assign any payment intangible or "account" (as such term is defined in Article 9 of the Uniform Commercial Code) arising under this Master Agreement without consent.

(c) Subject to and without limitation of the foregoing provisions of this Section 16.7, each System Order will be binding on and will inure to the benefit of the successors and permitted assigns of the Parties; provided, that any assignee must agree in writing to be bound by all terms and conditions of such System Order (including the intellectual property provisions of Section 10 (*Intellectual Property*)). An assignment of a System Order not in compliance with the foregoing is null and void. A System Order may only be assigned in whole and not in part.

(d) Customer may, with no less than one hundred eighty (180) days' prior written notice, request that Supplier relocate the System to a mutually and reasonably agreeable alternative Site for the remainder of the Term (a "**Post-COD System Relocation**"). If an alternate site is available and acceptable to Supplier, then (a) Supplier will remove the System from the original Site and relocate it at the substitute Site; (b) Supplier and Customer will amend the affected System Order to reflect the Post-COD System Relocation, which update may include a revised Services Fee to the extent required; and (c) such System Order will otherwise remain in full force and effect. Customer will reimburse Supplier for all of Supplier's reasonable costs for Supplier's time and resources, and actual out-of-pocket third-party costs and expenses arising in connection with the Post-COD System Relocation, including, without limitation, the costs of removal, remediation, installation, design, engineering, permitting, interconnection, loss of deposits, recapture of Tax Benefits suffered by Supplier, legal and consulting advice, other redeployment activities, and any increase in costs of performing the Work under such System Order. The Parties agree that upon the transfer of the System to the substitute Site, Supplier may file an updated disclaimer of the System as a fixture of the Site in the County Recorder's Office.

16.8 **Global Compliance**

(a) Both Parties shall comply with and shall ensure their respective Covered Representatives comply with the Anti-Corruption Laws, as defined herein (with respect to Customer, only to the extent the Anti-Corruption Laws are relevant to a United States local government entity), with respect to this Master Agreement, including any System Order. Neither Party nor its respective Covered Representatives will, with respect to this Master Agreement, including any System Order:

(i) bribe a Government Official or any other Person;

(ii) offer, pay, promise to pay, or authorize the payment of any money, gift, entertainment, or anything of value to, any Government Official or any other Person, for which Customer or one of its Covered Representatives knows or has reason to believe that some portion or all of the payment or thing of value will be offered, paid, promised or authorized, directly or indirectly, to such Government Official or Person, in either case for the purpose of (x) influencing any act or decision of such Government Official or such Person in each of their respective official capacities, including a decision to do or omit to do any act in violation of its lawful duties or proper performance of functions; or (y) inducing such Government Official or such Person to use its influence or position with any Government Authority, Government Official, or other Person to influence any act or decision; or

(iii) offer, pay, promise to pay, or authorize the payment of any money, gift, entertainment or anything of value to any existing or prospective customer (whether or not owned or controlled by a government) to influence a decision or assist Supplier or Customer to secure an advantage or to obtain or retain business or direct business to any other person or entity.

(b) Supplier represents that the components of the System are specifically subject to U.S. Export Administration Regulations. Supplier and Customer agree (as to Customer, only to the extent applicable to Customer as a government entity) to strictly comply with all export, re-export, and import restrictions and regulations of the Department of Commerce or other Governmental Authority of the United States or other applicable countries ("**Export Regulations**"), and not to transfer, or authorize the transfer of, directly or indirectly, any component of the System to a prohibited country or otherwise in violation of any such restrictions or regulations. Customer shall not export, re-export, resell, ship or divert, directly or indirectly, any component of the System or other Bloom IP in any form, including any technical data furnished hereunder, to any country except as the laws of the United States of America expressly permit, including where required obtaining in advance any export license or other approval of a Government Authority.

(c) Supplier and Customer (as to Customer, only to the extent applicable to Customer as a government entity) acknowledge that they are subject to the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) as well as other similar international, national, state, provincial and local laws imposing economic sanctions or trade embargoes ("**Sanctions Laws**"). Each Party warrants they have been, and will continue to be, in compliance with all Sanctions Laws and have not been an embargoed target or otherwise subject to any Sanctions Laws. Each Party will comply with all Sanctions Laws. Without limiting the generality of the foregoing, the Customer will not (i) directly or indirectly export, re-export, transship, transfer, or otherwise deliver any component of the System to an embargoed target; or (ii) broker, finance, or otherwise facilitate any transaction in violation of any Sanctions Law.

(d) Supplier and Customer (as to Customer, only to the extent applicable to Customer as a government entity) will comply with all U.S. antiboycott laws and regulations, including, but not limited to, the Anti-Boycott Act of 2018, as well as other similar international, national, state, provincial, and local antiboycott laws ("**Antiboycott Laws**"), and will not take any action that violates the Antiboycott Laws, including refusing, or agreeing to refuse, to do business with any nation or company subject to a boycott not endorsed by the United States.

(e) Customer shall not nominate a carrier or freight forwarder.

(f) Self-Dealing Transactions Disclosure. This Section 16.8(f) applies only if Supplier is operating as a California nonprofit public benefit corporation. If any member of Supplier's board of

directors is party to a self-dealing transaction as defined in and governed by California Corporations Code §5233, he or she shall disclose the transaction by completing and signing a "Self-Dealing Transaction Disclosure Form", which is attached hereto as Exhibit E to this Master Agreement, and submitting it to Customer before commencing the transaction or immediately after within a commercially reasonable time thereafter. "**Self-dealing transaction**" means a transaction to which Supplier is a party and in which one or more of its directors, as an individual, has a material financial interest, as such terms are interpreted under California Corporations Code § 5233.

16.9 **Entire Agreement; Modification; Waiver**. This Master Agreement until any System Order is signed, and thereafter, the applicable System Order, as to such System Order (a) constitutes the entire agreement between the Parties with respect to the subject matter contained therein and (b) supersedes all prior and contemporaneous oral or written agreements, representations, and understandings. If any component of the System or any Work hereunder is delivered or provided pursuant to an instrument other than a System Order or a mutually executed amendment hereto, the terms of such instrument are void. No supplement, modification, or amendment of this Master Agreement or any System Order will be binding unless and until executed in writing by the Parties. No waiver of any of the provisions of this Master Agreement or a System Order will be deemed a waiver of any other provision or any other System Order, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless and until executed in writing by the Party to be charged. Failure by Customer or Supplier to exercise any of its rights hereunder does not constitute a waiver or forfeiture of such rights. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS AGREEMENT OR ANY SYSTEM ORDER IN RELIANCE ON ANY WARRANTY OR REPRESENTATIONS BY ANY PERSON EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SPECIFICALLY SET FORTH HEREIN.

16.10 **State Audits**

(a) Statutory Requirement. As required by California Government Code §8546.7, Supplier acknowledges that its records directly related to each System Agreement may be subject to examination and audit by the California State Auditor. This right of audit will extend for three (3) years following final payment under the applicable System Agreement.

(b) Audit Procedures. Any such audit will be conducted upon reasonable prior written notice of not less than thirty (30) business days. The audit will be conducted during Supplier's normal business hours and in a manner that does not unreasonably interfere with Supplier's business operations. The scope of the audit will be limited to Supplier's books, records, and accounts that are reasonably necessary to verify the amounts invoiced and paid under the applicable System Agreement.

(c) Confidentiality. The California State Auditor will be required to maintain the confidentiality of all of Supplier's or Bloom's proprietary and Confidential Information, as applicable, reviewed during the audit, consistent with Applicable Law. The results of the audit will not be disclosed to any third party, except as required by Applicable Law. Customer will not have the right to review Supplier's confidential information provided to the State Auditor.

(d) Cost of Audit. The audit will be conducted at the sole expense of the State of California. Supplier will not be responsible for any costs incurred by the State in connection with the audit. Supplier may charge its reasonable and documented costs for time and materials spent cooperating with the audit if it exceeds twenty (20) person-hours.

(e) Records Retention. Supplier will preserve its records directly pertaining to a System Agreement for the three-year period required by Applicable Law.

16.11 **Agent for service of process.** If Supplier is domiciled outside of the State of California at any time during the Term, then the following provisions shall apply:

(a) Supplier shall promptly give Customer written notice of the Sponsor's agent for service of process in California, and the agent's address for receiving such service of process in California, which information Supplier shall maintain with the office of the California Secretary of State. Such written notice shall be given by Supplier to Customer within fifteen (15) days thereof;

(b) Supplier covenants, represents and warrants to Customer that if Supplier changes its agent for service of process in California, or if Supplier's agent for service of process in California changes its address for receiving such service of process in California, which changed information Supplier shall maintain with the office of the California Secretary of State, Supplier shall give Customer written notice thereof within fifteen (15) days thereof.

(c) If Supplier becomes domiciled within the State of California, after having given such notice pursuant to (a) or (b), Supplier shall give Customer written notice thereof within fifteen (15) days thereof.

16.12 **Severability**. If any portion of this Master Agreement or a System Order, is held invalid or unenforceable, the remainder will not be affected and will remain valid and in force to the fullest extent permitted by Applicable Law.

16.13 **Survival**. The following provisions survive termination of the Master Agreement: Section 1.3 (*Conflicts*), Section 2.1 (*Customer Payments*), Section 3.3 (*Ownership of the System*), Section 3.4 (*Return of Proceeds; Supplier Loss of Deposits*), Section 3.5 (*Delivery of Electricity*), Section 3.6 (*System Attributes and Customer Incentives*), Section 4.4 (*Infringement Warranty*); Section 6.4 (*No Liens*); Section 6.6 (*Disclaimers*), Section 7.1 (*License Grant; Site Access*), 7.9 (*No Liens*), Section 8 (*Representations*), Section 10 (*Intellectual Property*), Section 11 (*Confidential Information*), Section 13 (*Indemnification; Liability)*, Sections 14.2 (*System Removal*), Section 14.3 (*Effect of Termination*), Section 15 (*Nonappropriation*) and Section 16 (*Miscellaneous*).

16.14 Counterparts and Electronic Execution. This Master Agreement and each System Order may be executed in any number of separate counterparts and delivered by electronic means (including in Portable Document Format (.PDF) and digital signature formats such as DocuSign), each of which when so executed will be deemed an original, and all counterparts taken together will be deemed to

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned have executed and delivered this Master Agreement as of the Effective Date:

County of Fresno, California	**BE Development, Inc.**
By: Ernest Buddy Mendes	By: DocuSigned by: F7A786C194C240E...
Name: Ernest Buddy Mendes	Name: Kevin Passalacqua
Title: Chairman of the Board of Supervisors of the County of Fresno	Title: Vice President, Project Finance
Date: 12/9/25	Date: December 4, 2025

Attest:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: Alejandra Vivian, Deputy

FOR ACCOUNTING USE ONLY:

Org: 8935
Account: 7431
Fund: 1045
Subclass: 10000

Exhibit A
Principles of Contract Construction and Definitions

Principles of Contract Construction. The following principles apply to this Master Agreement, and each System Order, respectively.

(1) Each System Order has been drawn up only in the English language. No Party shall create any translation of a System Order for purposes of performing under this Master Agreement.

(2) All Schedules and Exhibits attached to this Master Agreement or to a System Order are incorporated respectively herein and therein by reference and made a part hereof and thereof for all purposes. References to Sections, Schedules, and Exhibits in this Master Agreement or in a System Order are, unless otherwise indicated, references to Sections in, and Schedules, and Exhibits to, respectively, this Master Agreement or the System Order. Any Schedule, or Exhibit defined or referred to in this Master Agreement (unless otherwise indicated) or in a System Order means such Schedule or Exhibit as from time to time amended, amended and restated, modified, or supplemented by the Parties.

(3) As used in this Master Agreement and each System Order, financial and accounting terms used but not defined herein or therein will have the respective meanings given to them under U.S. GAAP. To the extent that the definitions of financial and accounting terms herein or therein are inconsistent with the meanings of such terms under GAAP, the definitions contained herein or therein will control.

(4) All references to money shall only be in United States dollars.

(5) The words “hereof”, “herein”, “hereunder”, and words of similar import when used in this Master Agreement or a System Order refer, respectively, to this Master Agreement or such System Order as a whole and not to any particular provision of this Master Agreement or such System Order, respectively. The words “thereof”, “therein”, “thereunder”, and words of similar import when used in connection with a different agreement or contract refer to such different agreement or contract as a whole and not to any particular provision of such different agreement or contract.

(6) Any agreement or instrument defined or referred to herein means (unless otherwise indicated) that such agreement or instrument as from time to time amended, amended and restated, modified or supplemented by the Parties.

(7) In this Master Agreement and each System Order:

a. Headings are provided for the convenience of the Parties and shall not affect the interpretation of a provision.

b. The term “including” means “including without limitation” or “including but not limited to”.

c. Any references to a Person includes its successors and permitted assigns.

d. The definitions are applicable to the singular as well as the plural forms of such terms.

e. Reference to days shall mean calendar days unless the term “Business Day” is used.

f. The word “or” is not exclusive, unless otherwise expressly stated.

g. The singular includes the plural, and the plural includes the singular.

h. References to any statute, code, or statutory provision are to be construed as a reference to the same as it exists as of the Order Date, and include references to all instruments, orders, and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

i. In the computation of periods of time, from a specified date to a later specified date, the words "to" and "until" each mean excluding and the word "through" means to and including.

(8) The Parties to this Master Agreement and each System Order, by and through their respective counsel, have participated jointly in its negotiation and drafting. If any ambiguity or question of intent or interpretation arises, notwithstanding any provision of Applicable Law, this Master Agreement and each System Order will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Master Agreement and such System Order.

Definitions

"**Adjustment Notice**" is defined in Section 2.1(f) (*Customer Payments*).

"**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such specified Person.

"**Master Agreement**" is defined in the Preamble hereof.

"**Antiboycott Laws**" is defined in Section 16.8 (*Global Compliance*).

"**Anti-Corruption Laws**" means the U.S. Foreign Corrupt Practices Act and any other similar international, national, state, provincial, or local anti-corruption and anti-bribery laws, including those laws of the jurisdictions in which each Party is organized and in which business activities related to this Master Agreement take place.

"**Applicable Law**" means all laws, codes, ordinances, statutes, rules, regulations, orders, decrees, judgments, injunctions, notices, standards, and Permits promulgated by any Government Authority, including, but not limited to, Labor Law.

"**Availability Period**" is defined in Section 1.1 (*Availability Period*).

"**Bankruptcy Event**" means, with respect to a Person, (A) such Person commences a voluntary case under any bankruptcy law; (B) such Person fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (C) any involuntary bankruptcy proceeding commenced against such Person remains undismissed or undischarged for a period of one hundred and twenty (120) days; (D) a court of competent jurisdiction appoints, or such Person makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for such Person or all or substantially all of its assets; or (E) such Person fails to generally pay its debts as they become due, or acknowledges in writing its inability to do so, or otherwise ceases to do business (excluding mergers, acquisitions, consolidations, and reorganizations in which the successor Person is not then experiencing a Bankruptcy Event).

"**Base Rate**" means the monthly rate, expressed as dollars per kilowatt-hour, paid by Customer for the Work performed under a System Order, including delivery to Customer of the electricity generated by the System. The "**Base Rate**" for each Contract Year is set forth in the System Order.

"**Bloom**" is defined in Section 10.1 (*Intellectual Property*).

"**Bloom Competitor**" means a Person that (i) is, or by recent and refuted press release, credible news source, or securities filing, is known to be interested in becoming, a competitor of Bloom in the creation of intellectual property, manufacture, supply, operation, or maintenance of fuel cell electricity generation systems, or (ii) is owned, in whole or in part, directly or indirectly, by a government agency of China, Russia, or South Korea or is organized under the laws of, or headquartered in China, Russia, or South Korea.

"**Bloom IP**" means all (A) Intellectual Property embodied in (i) the System, (ii) the configuration of the System, (iii) any component of the System or other part engineered or manufactured by Bloom or its Affiliates, (iv) the Work, (v) Bloomconnect, and (vi) any and all design documents, drawings, reports, training materials, and other documentation created or delivered by Bloom in connection with a System Order and/or the Work, and (B) all Intellectual Property developed or acquired by Bloom or its Affiliates, and any improvements or updates thereto or derivative works thereof.

"**Bloomconnect**" means Supplier's internal proprietary customer portal software through which Customer's authorized users may access data regarding the System's performance.

"**Business Days**" means any day in which the national banks are open in San Francisco, California and New York, New York.

"**Change in Law**" means the occurrence, after the Order Date, of any of the following: (a) the adoption or taking effect of any Applicable Law; (b) any change in Applicable Law or in the administration, interpretation or application thereof by any Government Authority, Fuel Supplier, or Utility Service Provider; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Government Authority, Fuel Supplier, or Utility Service Provider.

"**Labor Law**" is defined in Section 6.7(a) (*Applicability*).

"**Claims**" is defined in Section 13.1(a) (*Indemnification*).

"**COD**" or "**Commencement of Operation Date**" means the date that (i) the System has reached Mechanical Completion, (ii) all approvals of Government Authorities necessary for the operation of the System have been obtained, (iii) except in the case of an Off-Grid Microgrid, permission to operate has been obtained from the applicable electric Utility Service Provider, (iv) the System has satisfactorily completed performance testing, (v) except in the case of an Off-Grid Microgrid, the System has been synchronized with the electric distribution and transmission system of the applicable electric Utility Service Provider, and (vi) the System has commenced regular, continuous, daily operation.

"Guaranteed COD Date" means the date by which Supplier shall achieve COD, which date shall be specified in the applicable System Order.

"**Confidential Information**" means all information and material to which each Party has access in connection with a System and a System Order and the negotiation thereof, including (A) all Bloom IP, (B) all software, documentation, financial, marketing and customer or vendor data and other business information, (C) all data related to the internal and external design, (D) except as expressly set forth in the

System Order, all Data and Utility Data and (E) any other material or information that is either marked as confidential or disclosed under circumstances that one would reasonably expect it to be confidential. Confidential Information does not include (1) information that has been independently developed by a Party, as established by documents in that Party's files, or by an employee or agent of that Party who did not have access to the information in question, (3) any information which a Party rightfully had in its possession prior to receipt from the other Party, (4) information received from a third-party under no obligation to the disclosing Party with respect thereto, (5) information generally known to the public through no wrongful act of the receiving Party ,or (6) information a Party is obligated to disclose under Applicable Law or by court order. The marking of any document, information, or material as "confidential" or similar terms, by itself, does not make the such document, information, or material Confidential Information.

"**Contract Year**" means each consecutive twelve-month period following the System's COD through the end of the Term of a System Order.

"**Covered Representative**" means with respect to a Person, its officials, officers, directors, shareholders, partners, members, representatives, employees, agents, and any other Person acting on such Person's behalf.

"Critical Installation Assumptions" is defined in the Scope of Work.

"**Critical Service Assumptions**" is defined in Section 5.2 (*Critical Service Assumptions*).

"**Customer**" is defined in the Preamble of this Master Agreement.

"**Customer Damage**" is defined in Section 7.6 (*Customer Damage*).

"**Customer Delay**" means any delay in Supplier's performance of the Work or its other obligations under a System Order resulting in whole or in part from (i) Customer's breach of or failure to timely perform any of its obligations under such System Order, or (ii) the failure of a Critical Installation Assumption to be and remain true during the period before COD or a Critical Service Assumption to be and remain true during the Term.

"**Customer Equipment**" means (i) any pre-existing equipment or infrastructure at the Site; (ii) any upgrades or additions required to be made thereto in connection with the Work; (iii) any equipment or infrastructure procured by Customer from anyone other than Supplier (a) that is interconnected with the System or used in connection with the System or the performance of the Work, or (b) the existence, operation, or maintenance of which (or failure to operate or maintain) has or could reasonably be expected to have an impact or effect on the System or the performance of the Work; and (iv) any equipment procured by Customer from Supplier that is (a) not manufactured by Supplier, and (b) not installed by Supplier pursuant to the applicable System Order.

"**Customer Exclusion**" means, as applicable: (i) any event within the reasonable control of Customer which prevents Supplier from performing the Maintenance Work or prevents the applicable System from producing or delivering electricity (including scheduled outages or any System Outage); (ii) Customer's failure to comply with any of its obligations under the applicable System Order (including failure to pay) or the failure of a Critical Service Assumption to be true on and remain true after COD; or (iii) Customer's failure to take all electricity generated by the applicable System up to its full Installed Capacity; or (iv) any ramp-up period required to resume full operation of the applicable System following a suspension due to any of the foregoing.

"**Customer Incentive**" is defined in Section 3.6(a) (*System Attributes and Customer Incentives*).

"**Customer Guarantor**" means any Person guaranteeing the payment and/or performance of all or any portion of Customer's obligations under a System Order.

"**Customer Person**" means any employee, officer, consultant, agent, contractor, subcontractor, vendor or other representative of Customer or any of its respective Affiliates, in each case while acting as such, while under Customer's supervision, control or direction, and, if applicable, any landlord of Customer.

"**Data**" is defined in Section 10.2(a) (*Data License*).

"**Data License**" is defined in Section 10.2(a) (*Data License*).

"**Deemed Delivered Energy**" means the amount of kilowatt-hours of electricity that the System would have delivered during a Measurement Period but for the occurrence of a Customer Exclusion.

"**Dispute**" is defined in Section 16.3(a) (*Dispute Resolution*).

"**Dispute Representative**" is defined in Section 16.3(b) (*Dispute Resolution*).

"**Energy Server**" (aka Bloom Energy Server™) means a solid oxide fuel cell power generating system manufactured by Supplier made up of number of interdependent Modules, that can collectively convert natural gas or other approved types of fuel into electricity without combustion as an independent unit. It consists of, at a minimum, a fuel processing Module, an inverter Module, and several fuel cell Modules. An Energy Server does not include External Modules or the Skid.

"**Estimated Delivery Date**" is determined as provided in the Scope of Work.

"**Event of Default**" is defined in Section 12.2 (*Defaults*).

"**External Module**" means certain ancillary items of equipment such as a water distribution module, power distribution system, rectifier, transformer, electric distribution system, a telemetry cabinet, other electrical equipment, or auxiliary skid, as applicable.

"**Finance Company**" is defined in the Recitals.

"**Financing**" is defined in the Recitals.

"**Force Majeure Event**" means an event or condition, whether or not foreseeable, that (1) delays or interferes with the affected Party's performance of its obligations under a System Order, (2) is beyond the control of the affected Party, (3) cannot be avoided by the affected Party, and (4) is not caused by the affected Party's breach, negligence or misconduct. "Force Majeure Event" includes, to the extent meeting the requirements of the foregoing sentence: (i) events of extreme weather, acts of nature, and environmental factors including fire, storms, floods, dust, lightning and earthquakes; (ii) acts of civil disturbance such as war, riot, shelter-in-place, martial law, strikes, walkouts, lockouts, or other labor actions; (iii) fire or explosions not caused by the System; (iv) pandemic or epidemic; (v) events of misconduct such as sabotage, vandalism, theft, accident or destruction caused by a third-party; (vi) labor or supply shortages, (vii) failures of common carriers, and (viii) failure or unavailability of internet, including fiber optic cable cuts, interruption, failure of digital transmission links, or hacker attacks. "Force Majeure Event" does not include a Party's financial inability to perform any payment or other obligations under a System Order.

"**Fuel Attributes**" means, with respect to a given System, any and all energy credits, including carbon trading credit, renewable energy credits or certificates, greenhouse gas emissions reduction credits,

emissions reduction credits, emissions allowances, green tags and tradable renewable credits, in each case to the extent associated with or resulting from the fuel purchased by the Customer and supplied to such System. Fuel Attributes does not include any Tax Benefits or any System Attributes.

"**Fuel Supplier**" means the supplier of fuel to the given System.

"**Government Authority**" means any federal, state, regional, local, or other governmental authority, independent system operator, or regional transmission authority having jurisdiction over the System, the Site, a Party, or a Party's obligations under the applicable System Order, including any organization, office or individual responsible for promulgating and/or enforcing the requirements of any Applicable Law.

"**Government Official**" includes:

(i) Covered Representatives of a business that is owned or controlled (whether in full or in part) by a Governmental Authority, including a government energy company, refinery, airline, university or newspaper;

(ii) Covered Representatives of public international organizations such as the World Bank, European Union, and the United Nations;

(iii) All officials, employees, agents, and representatives of any branch or level of a Government Authority (executive, legislative or judicial and whether national, state or local) or of any government department or agency (including advisers to such agencies and branches);

(iv) Any political party official, employee or agent of a political party, or candidate for political office (or political party position); or

(v) Any family member or representative of any of the above.

"**Grid Event**" means a curtailment, malfunction or other failure of the electric grid interconnected to the System, such as brownouts, blackouts, and imposed load shedding by the applicable electric Utility Service.

"**Hazardous Materials**" means those elements or compounds regulated as a hazardous substance, toxic pollutant, pesticide, air pollutant, or as defined in the federal Comprehensive Environmental Response, Compensation and Liability Act, the federal Superfund Amendment and Reauthorization Act, the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the federal Water Pollution Control Act, the federal Insecticide, Fungicide and Rodenticide Act, and the federal Clean Air Act, all as amended, or any other substance or material regulated by any other Applicable Law relating to the protection of human health, water, safety or the environment.

"**Indemnified Parties**" and **"Indemnified Party"** are defined in Section 13.1(a) (*Indemnification*).

"**Indemnifying Party**" is defined in Section 13.1(a) (*Indemnification*).

"Infringement Claim" means any third-party Claim arising out of the alleged infringement, misappropriation, breach, violation or misuse of such third-party's Intellectual Property.

"**Infringement Warranty**" is defined in Section 4.4 (*Infringement Warranty*).

"**Installation Work**" is defined in Section 4.1 (*The Work*).

"**Intellectual Property**" means any of the following and all rights therein arising under the laws of the United States: (i) all patents, utility models and patent applications (and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof), patent disclosures and inventions (whether patentable or not); (ii) all Trade Secrets, know-how and proprietary information; (iii) all copyrights and copyrightable works (including Software and computer programs) and registrations and applications therefor and any renewals, modifications and extensions thereof; (iv) all moral and economic rights of authors and inventors, however denominated; (v) unregistered and registered design rights and any registrations and applications for registration thereof; (vi) trademarks, service marks, trade names, service names, brand names, trade dress, logos, slogans, corporate names, trade styles, domain names and other source or business identifiers, whether registered or not, together with all applications therefor and all extensions and renewals thereof and all goodwill associated therewith; (vii) semiconductor chip "mask" works, and registrations and applications for registration thereof, (viii) database rights; (ix) all other forms of intellectual property, including waivable or assignable rights of publicity or moral rights; and (x) any similar, corresponding or equivalent rights to any of the foregoing.

"**Lien**" is defined in Section 6.4 (*No Liens*).

"**Maintenance Work**" is defined in Section 5.1 (*Scope of Maintenance Work*).

"Material Impediment" means any event, fact, or circumstance (including, without limitation, denial of a required Permit) outside of Supplier's reasonable control that materially impairs or adversely affects the development, installation, operation, or maintenance of the System, including without limitation Supplier's cost of performing its obligations under a System Order.

"**Mechanical Completion**" means the date the Installation Work is substantially complete such that the System is capable of commercial operation and delivery of electricity under normal operating conditions.

"**Microgrid**" means the specific Modules and balance of facility that are part of the System dedicated to serving the Guaranteed Critical Output provided to the Customer during a Grid Event.

"Microgrid Specifications" are set forth in Microgrid Warranty, if applicable.

"Microgrid Warranty" is set forth in the System Order, if applicable.

"Microgrid Adder Rate" is the rate, expressed as dollars per kilowatt-hour, applied for a given Microgrid. The "Microgrid Adder Rate" for the Microgrid, if any, is set forth in the System Order.

"**Misuse**" means, with respect to any component of the System or the System, use which was not intended, improper or insufficient maintenance, unauthorized access, tampering, modifications, or abuse.

"Module" means a standalone unit of System in the form of a gray cabinet. It does not include External Modules.

"Nonappropriation Event" is defined in Section 15.2 (*Nonappropriation Event*)

"Off-Grid Microgrid" means a Microgrid with no connection with the local electric grid.

"**Order Date**" is defined in the Preamble of the System Order.

"**Party**" is defined in the Preamble to this Master Agreement.

"**Payment Terms**" is defined in the System Order.

"**Performance Specifications**" means the System's performance specifications set forth in Schedule 3 to the System Order.

"**Permit**" means any permit, license, approval, certificate, consent, order, registration, franchise, entitlement, privilege, or other authorization issued by a Government Authority.

"**Person**" means any natural person, corporation, partnership, limited liability company, joint venture, trust, sole proprietorship, unincorporated organization, other business organization, trust, union, association or Government Authority.

"**Post-COD System Relocation**" is defined in Section 16.7(d) (*Post-COD System Relocation*).

"**Pre-COD System Relocation"** is defined in Section 14.1(d) (*Material Impediment*).

"**Proceedings**" is defined in Section 16.2 (*Governing Law; Forum*).

"**Prohibited Activity**" is defined in Section 10.3 (*Restrictions on Use*).

"**Project Schedule**" is defined in the Scope of Work.

"**Prudent Industry Practices**" means those practices, methods, acts, techniques and standards as may be employed at the time of performance, which are commonly used by a significant portion of the fuel cell electric generating industry operating in California in connection with fuel cell facilities of the same or similar size and type as a System, and such other practices, methods, acts, techniques and standards which, in the exercise of reasonable judgment by those reasonably experienced in the fuel cell electric generating industry operating in California in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Law, safety and expedition. Prudent Industry Practices are not intended to be limited to optimum practices, methods, acts, techniques and standards, or to minimum practices, methods, acts, techniques and standards, to the exclusion of all others, but rather are intended to be a range of acceptable practices, methods, acts, techniques or standards subject to the foregoing provisions of "Prudent Industry Practices."

"Installed Capacity" means the capacity for the System set forth in the System Order that represents the maximum amount of electricity that the System can produce under ideal conditions.

"**Reimbursable Work**" is defined in Section 2.2 (*Reimbursable Work*).

"**Representative**" is defined in Section 11.2 (*Disclosure*).

"**Sanctions Laws**" is defined in Section 16.8 (*Global Compliance*).

"**Scope of Work**" is the description of the scope of the Installation Work set forth in Schedule 2 to the System Order.

"**Service Exclusions**" is defined in Section 5.3(a) (*Exclusions from Maintenance Work*).

"**Services Fee**" is defined in Section 2.1(a) *(Customer Payments*).

"**Site**" means the real property location owned or controlled by Customer at which the System will be or is installed. The address of the Site is in the System Order.

"**Site Access Conditions**" are set forth in the System Order.

"**Site License**" is defined in Section 7.1 (*License Grant; Site Access*).

"**Skid**" means metal weldment on which an Energy Server is mounted; it includes all wiring, plumbing, and hardware necessary to connect the Modules of the Energy Server to the Skid.

"**Subcontractors**" means (i) any subcontractor, vendor, or supplier of materials or services to Supplier or any other Subcontractor; or (ii) any Person engaged or employed by any of the foregoing in connection with the performance of the Work.

"**Subsequent Changes**" is defined in Section 16.4(a).

"**Supplier**" is defined in the Preamble of this Master Agreement.

"**Supplier Person**" means any employee, officer, consultant, agent, contractor, Subcontractor, vendor or other representative of Supplier or any of its respective Affiliates, in each case while acting as such, while under Supplier's supervision, control or direction.

"**System**" means (A) one or more Energy Servers, (B) External Modules, and (C) a Skid, if applicable, collectively operated as a unified whole. The System does not include Customer Equipment.

"**System Order**" is a defined in Section 1.2(a) (*System Orders*).

"**System Attributes**" means, with respect to a given System (A) any local, state, or regional performance-based incentive arising in connection with the ownership and/or operation of a System and all reporting rights with respect thereto, and (B) any and all attributes, products, or economic benefits attributable to such System, or to the production and delivery of electricity, including capacity and ancillary services. System Attributes does not include any Tax Benefits, any Fuel Attributes, nor the actual electricity generated by the System.

"**System Impairment**" is defined in Section 7.7(a) (*Repairs*).

"**System Order**" is a defined in Section 1.2(a) (*System Orders*).

"**System Outage**" is defined in Section 7.8 (*System Outage*).

"**System Removal**" means removal of the System, closing of all utility connections in the manner required by Applicable Law, and return of the Site, as nearly as practicable, to the condition in which it existed immediately prior to the commencement of Installation Work. System Removal excludes repair of ordinary wear and tear and removal of concrete pads or other support structures; bollards and fences; underground conduits, piping and wires; and incidental hardware (all of which may remain at the Site).

"**Tax Benefits**" means, with respect to a given System, any and all state or federal tax benefits accruing to the owner (for tax purposes) of such System.

"**Term**" is the period from the System's COD until the earlier to occur of (i) early termination of the applicable System Order or (ii) the expiration of the number of years set forth in the System Order for the Term.

"Termination Value" means the applicable liquidated damages payment owed by Customer in case of termination of a System Order under circumstances set forth herein. The "Termination Value" for the System applicable as of any given date is set forth in the System Order.

"**Total Payment Rate**" is defined in the System Order.

"**Trade Secret**" shall mean any and all information, whether tangible or intangible and in whatever form or medium, including, without limitation, any formula, pattern, compilation, program, device, method, technique, or process (and any improvements, derivatives, combinations, and know-how related thereto), which: (i) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and not being readily ascertainable by proper means by such persons; (ii) would be considered to be a trade secret to the fullest extent of the law under the Uniform Trade Secrets Act, the Defend Trade Secrets Act, or other Applicable Law; and (iii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, all within the meaning of California Civil Code § 3426.1(d). For the avoidance of doubt, Trade Secrets shall be deemed Confidential Information hereunder, and no failure to mark, legend, or reduce to writing any information shall, by itself, negate its status as a Trade Secret if the foregoing elements are otherwise satisfied.

"**Utility Data**" is defined in Section 10.2(c) (*Utility Data Licensing*).

"**Utility Data License**" is defined in Section 10.2(c) (*Utility Data Licensing*).

"**Utility Meter**" means a power quality (PQ) meter that may be installed by Supplier outside of the System and used by Supplier to monitor and measure the full electric load of the Customer facility served by the System.

"**Utility Service Provider**" means a utility company (other than the Fuel Supplier) providing the supply of water, electricity, and/or other utilities, as applicable.

"**Warranties**" means collectively the Infringement Warranty and the Performance Specifications.

"**Work**" means the Installation Work and/or the Maintenance Work, as applicable.

Exhibit B
Form of System Order

System Order: [######]

Parties	"**Customer**" The County of Fresno, a California subdivision of the State of California	"**Supplier**" BE Development, Inc., a Delaware corporation
Bill-To Address	333 W. Pontiac Way Clovis, CA 93612 Attn: Business Office Email: GSDBusinessOffice@fresnocountyca.gov	4353 North 1st Street, 4th Floor San Jose, California 95134 Attn: Accounts Receivable Email: Accounts.Receivable@bloomenergy.com
"Site"	[Site Address]	
Owner of the Site	[Customer]/[Legal Name of Landlord]	
Customer's Interest in the Site	[Leasehold Interest][100% equity owner][other – describe]	

This "**System Order**", dated as of the date of last signature hereto (the "**Order Date**"), is governed by the Master Fuel Cell Power Purchase Agreement, dated as of ***[insert date]***, by and between Customer and Supplier, attached as Addendum A hereto (the "**Master Agreement**"). Addendum A and the Schedules listed below are incorporated in their entirety by reference and made part of this System Order.

Schedule 1 - Basis of Design
Schedule 2 - Scope of Work
Schedule 3 - Performance Specifications

Addendum A – Master Fuel Cell Power Purchase Agreement

Basic Terms	
Site ID	[######.#]
"Installed Capacity"	[####] kW
"Payment Terms"	45 days
"Term"	
Customer Solution ("System"), as described in Basis of Design (Schedule 1)	[Configuration: Primary Power, Standard Microgrid, Advanced Microgrid, or Off-Grid Microgrid]
"Guaranteed Critical Output" (if applicable)	[###] kW
Customer Incentives (if any)	[######]
"Aggregate Liability Cap"	[######]
"Base Rate Adjustment Termination Amount"	[######]
"Guaranteed COD Date"	[######]

COD Deadline Liquidated Damages" (per day)	[######]
"COD Deadline Liquidated Damages Cap"	[######]

Note: Pricing and Termination Values set forth in this System Order are subject to change until finalization of installation site diligence.

System Order Valid Until Date: The pricing in this System Order is valid only if executed by [***DATE***].

1. SERVICES FEE

1.1 **Calculation of Services Fee**: The Services Fee will be equal to the product of (x) the sum of all electricity delivered to Customer, as measured by the revenue grade meter in the System and all Deemed Delivered Energy, in each case during each billing period, multiplied by (y) the "**Total Payment Rate**" set forth below. The Total Payment Rate for a given Contract Year is set forth in the table below:

i. for the Maintenance Work, the Base Rate for such Contract Year; and

ii. if applicable, for the Microgrid, the Microgrid Adder Rate for such Contract Year.

Services Fee Table	
Term: [##]	**Rate**
Contract Year	"**Total Payment Rate**"
1	$[##.##] kWh

2. TERMINATION VALUES

Termination Values ($/100 kW)	
Month No.	**Termination Value**
0	
1	

3. LD RATE SCHEDULES

3.1 **Efficiency LDs**

Efficiency LD Rate Schedule	
Contract Year	Efficiency LD Rate ($/MMBtu)
Year Number	Efficiency Deficit Payment Rate

(A) OTHER SITE-SPECIFIC TERMS

3.2 **Site Access Conditions**

[***Insert access conditions, if any***]

3.3 **Hazardous Materials**

[***Insert Hazardous Materials present at Site, if any***]

(b) [**LICENSING REQUIREMENTS**. With reference to Section 6.1 (*Performance Standards*) of the Master Agreement, Supplier has the following licenses: [*Insert any; If none, then delete this Section 5*]. If Supplier obtains any additional license following COD, Supplier shall provide written notice to Customer of such license after which, this Section 5 shall automatically be deemed amended to include the license set forth in the notice.]

(c) [**AMENDMENTS TO THE MASTER AGREEMENT.**

3.4 Solely with respect to this System Order, … :]

IN WITNESS WHEREOF, the undersigned have executed and delivered this System Order as of the Order Date:

THE COUNTY OF FRESNO	**BE DEVELOPMENT, INC**.
By:_____	By:_____
Name:Ernest Buddy Mendes	Name: Kevin Passalacqua
Title: Chairman of the Board of Supervisors of the County of Fresno	Title: Vice President, Project Finance
Date:_____	Date:_____

Attest:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: _____

FOR ACCOUNTING USE ONLY:

Org: 8935
Account: 7431
Fund: 1045
Subclass: 10000

SCHEDULE 1 TO SYSTEM ORDER
BASIS OF DESIGN

[to come]

SCHEDULE 2 TO SYSTEM ORDER
SCOPE OF WORK

[to come]

SCHEDULE 3 TO SYSTEM ORDER
PERFORMANCE SPECIFICATIONS

[to come]

Exhibit C
Form of Adjustment Notice

Adjustment Date*: [Date]*

Parties	**"Customer"** [Customer Name], a [State] [Legal Structure Description]	**"Supplier"** BE Development, Inc., a Delaware corporation
Bill-To Address	[***Billing Address***] [***Billing City***], [***Billing State***] [***Billing Zip***] Attn: Accounts Payable Email: [***Billing Email***]	4353 North First Street San Jose, California Attn: Accounts Receivable Email: Accounts.Receivable@bloomenergy.com
"Site"	**[*Site Address*]**	

This Adjustment Notice (this "**Notice**"), dated as of the date set forth above, is delivered pursuant to Section 2.1(f) of the Master Fuel Cell Power Purchase Agreement, dated as of ***[insert date]***, by and between Customer and Supplier, governing System Order No. [#####], dated [***Order Date***], by and between Customer and Supplier (collectively, the "**System Order**"). Capitalized terms used in this Notice but undefined are defined in the System Order.

1. As the result of [*describe the basis for the adjustment as permitted pursuant to the System Order]*, the costs of the Work have increased by $[###.##], which results in an increase in the Base Rate and, if applicable, the Microgrid Adder Rate, for each Contract Year as set forth below.

2. The Services Fee table is hereby amended and restated in its entirety as follows:

Services Fee			
Term: [#] years	**Rate**		
Contract Year	**"Base Rate"**	**"Microgrid Adder Rate"**	**"Total Payment Rate"** *(sum of preceding columns)*
1			

3. *(If applicable)* The Termination Values table is hereby amended and restated in its entirety as follows:

Termination Values ($/100 kW)	
Month No.	**Termination Value**
0	
1	

4. The modifications made in this Notice: (i) are limited modifications and do not waive, alter or amend any term of the System Order other than as expressly set forth herein and (ii) are effective only with respect to the modifications described in this Notice and are not effective for any other purpose.

5. This Notice is incorporated by reference into the System Order and all terms of the System Order apply to this Notice. All references to the System Order shall hereafter refer to the System Order as modified by this Notice. This Notice, together with the System Order, represents the complete and entire agreement between the parties with respect to the Work.

6. Except as expressly amended by this Notice, all of the terms and conditions of the System Order remain in full force and effect, and none of such terms and conditions are, or shall be construed as, otherwise amended or modified.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned has executed and delivered this Adjustment Notice as of the date first set forth above:

BE Development, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Exhibit D
Required Insurance

1. Customer and Supplier shall each maintain the following insurance coverages in full force and effect from the Effective Date of a System Agreement, through insurance policies as described below:

   (a) **Workers' Compensation & Employers Liability Insurance**. Workers' Compensation Insurance shall be provided as required by law or regulation. Employers Liability Insurance with minimum limits of one million dollars ($1,000,000.00) per accident or disease shall be maintained in conjunction.

   (b) **General Liability Insurance.** Commercial General Liability (Occurrence) policy with minimum limits of two million dollars ($2,000,000.00) each occurrence and four million dollars ($4,000,000.00) General Aggregate; *provided, however*, that the foregoing limits may be satisfied by any combination of umbrella and excess liability policies.

   (c) **Automobile Liability Insurance.** Automobile Insurance with minimum limits of one million dollars ($1,000,000.00), for all owned, hired and non-owned autos.

   (d) **Excess Liability/Umbrella Liability Insurance.** Excess Liability/Umbrella Insurance through any combination of primary and excess liability insurance that equates to minimum limits of ten million dollars ($10,000,000).

   (e) **Property Insurance.** Property Insurance on a special form causes of loss basis covering full replacement cost of real and personal property.

   (f) **Professional Liability Insurance.** Professional Liability Insurance with limits of not less than one million dollars ($1,000,000) per occurrence and an annual aggregate of three million dollars ($3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under the applicable System Agreement; (2) the Supplier shall maintain the policy and provide to the Customer annual evidence of insurance for not less than five (5) years after completion of services under the applicable System Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under the applicable System Agreement, then the Supplier shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under the applicable System Agreement.

2. Customer and Supplier shall both additionally follow the additional provisions as outlined below:

   (a) **Verification of Coverage.** Within thirty (30) days after the Effective Date of a System Agreement, and at any time during the term of the System Agreement as reasonably requested by a Party, the other Party shall deliver, or cause its broker or producer to deliver, to the person identified to receive notices under this Master Agreement, certificates of insurance and endorsements for all of the coverages required under this Master Agreement.

      (i) The Commercial General Liability Insurance certificate must also state, and include an endorsement, that the Party, its officers, agents, and employees, individually and collectively, are additional insureds insofar as the operations under the applicable System Agreement is concerned. The Commercial General Liability Insurance certificate must also state that the coverage shall apply as primary insurance and any

other insurance, or self-insurance, maintained by the Customer shall be excess only and not contributing with insurance provided under the Supplier's policy.

(b) **Acceptability of Insurers.** All insurance policies required under this Master Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of the applicable System Agreement an A.M. Best, Inc. rating of no less than A-VII.

(c) **Notice of Cancellation or Change**. For each insurance policy required under this Master Agreement, each Party shall provide to the other Party, or ensure that the policy requires the insurer to provide to the other Party, written notice of any cancellation or change in the policy as required in this Section 2(c). For cancellation of the policy for nonpayment of premium, the Party shall, or shall cause the insurer to, provide written notice to the other Party not less than ten (10) days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Party shall, or shall cause the insurer to, provide written notice to the other Party not less than thirty (30) days in advance of cancellation or change.

(d) **Waiver of Subrogation**. The Supplier waives any right to recover from the Customer, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Master Agreement. The Supplier is solely responsible to obtain any policy endorsement that may be necessary to accomplish such waiver, but the Customer's waiver of subrogation under this paragraph is effective whether or not the Supplier obtains such an endorsement.

(e) No policy limits specified in a System Order shall limit a Party's liability for indemnification obligations set forth in such System Order.

(f) A Party may request increases to the limits of the coverages required to be carried by the other Party and such Party shall use commercially reasonable efforts to obtain such increased coverages so long as the requesting Party agrees to bear any additional premium attributable to such increases to the limits of such coverages.

(g) Each Party shall use commercially reasonable efforts to ensure that all insurance policies carried by such Party hereunder provide that the policy shall not be canceled or amended, and that the insurer shall not fail to renew such coverage, without at least thirty (30) days' notice to the other Party.

Exhibit E
Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a Supplier's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

> "A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

(1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

(2) Enter the board member's company/agency name and address.

(3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:

   a. The name of the agency/company with which the corporation has the transaction; and

   b. The nature of the material financial interest in the Corporation's transaction that the board member has.

(4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit E
Self-Dealing Transaction Disclosure Form

(1) Company Board Member Information:			
Name:		**Date:**	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Exhibit F
Form of Landlord Consent

Form of Landlord Consent

This **EQUIPMENT WAIVER AND CONSENT** (this "Agreement") is made and entered into for the benefit of [_____] ("Finance Company"), by the undersigned, [_____] ("Landlord"), with an address for delivery of notices at [_____].

RECITALS

A. Landlord owns the premises (the "Premises") described as the "Equipment Location" on Exhibit A attached hereto

B. The Premises are occupied in whole or in part by [_____] ("Lessee") pursuant to that [Lease Agreement] dated as of [_____] between Lessee and Landlord (the "Premises Agreement").

C. Landlord acknowledges that Lessee has entered into that certain Master Fuel Cell Power Purchase Agreement dated as of _____ and that certain System Order dated as of _____ with respect to the Site located at _____ (collectively, the "System Agreement"), with [_____], a [_____] ("Supplier"), and that Supplier has caused or will cause the financing with Finance Company of the Equipment set forth on the attached document labeled "Exhibit A" to this Agreement including all parts, accessories, additions, substitutions or replacements therefor, which may from time to time be located at the Premises (the "Equipment").

D. In order to induce Finance Company to enter into the Equipment financing transaction with Supplier's affiliate, Bloom Energy Corporation ("Bloom"), Landlord desires to give Finance Company certain assurances regarding the Equipment, Supplier's agreement with Lessee regarding the Equipment, and the interest of the Finance Company therein.

NOW, THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby agrees as follows:

1) Landlord hereby acknowledges that Lessee has no ownership, possession, or other rights in the Equipment.

2) Landlord represents that the Premises Agreement conveys to Landlord no rights to the Equipment or the System Agreement and hereby waives any and all claims or right, present or future, in the Equipment and the System Agreement, including, without limitation, all claims or rights to levy upon or attach, by foreclosure, exercise of lien rights or otherwise, the Equipment for any reason including the failure of Lessee to perform any obligation under the Premises Agreement.

3) Landlord hereby agrees that (a) the Equipment is personal property and is not a fixture, (b) the Equipment may be installed, maintained, and operated on the Premises, and (c) Finance Company is the owner of the Equipment for all purposes at law or equity.

4) Landlord hereby agrees that in the event of a default by Lessee under the provisions of the Premises Agreement or any termination thereof, Landlord shall, concurrently with any notice delivered to Lessee, forward a copy of said notice to Finance Company at the following address:

   [_____]

   [_____]

   Email to [_____].

   If such notice is of termination of the Premises Agreement, Landlord hereby agrees that Finance Company shall have a reasonable period after such termination for the removal of the Equipment.

5) Landlord agrees that Finance Company shall have the right, but no obligation, to cure any event of default by Lessee under the Premises Agreement.

6) Landlord acknowledges that, as owner of the Equipment, Finance Company, its successors and assigns, may remove the Equipment (or any part thereof) from the Premises in accordance with its rights under contract or applicable law, and Landlord hereby (a) consents to Finance Company's entry upon the Premises for the purpose of inspecting the Equipment or taking possession of the Equipment and exercising remedies against Lessee under contract or applicable law, (b) agrees not to hinder such exercise of remedies, and (c) agrees that Finance Company shall not be liable for the condition of the Premises after removal of the Equipment so long as reasonable care is used in effecting such removal.

7) As of the date hereof, the Premises Agreement expires on [DATE] and is subject to the exercise by Lessee of its renewal rights of [DESCRIBE APPLICABLE RENEWAL TERMS]. [Landlord will not agree to or require any amendment to the Premises Agreement that would shorten the term thereof.]

8) As of the date hereof, Landlord represents that it is the only contractual counterparty to Lessee under the Premises Agreement, that such agreement is in full force and effect and that Landlord is not aware of any event of default under the Premises Agreement or any event that, with the giving of notice or the passage of time, could result in the termination of the Premises Agreement.

9) This Agreement shall become effective when acknowledged by Finance Company in the manner provided below, and be binding upon, and inure to the benefit of, the successors and assigns of Finance Company and Landlord. If more than one counterparty to Finance Company executes this Agreement, the term "Landlord" shall mean all such parties; and each of them, jointly and severally.

10) To the extent that any of the terms and provisions of this Agreement conflict with any of the terms and provisions of any Premises Agreement, the terms and provisions of this Agreement shall prevail.

[Signature Page Follows].

Note: *This used to be an exhibit in our PPA form but has since been removed.*

IN WITNESS WHEREOF, Landlord has executed this Agreement as of _____, 20__.

LANDLORD:
[_____]

By: _____

Name: _____

Title: _____

Acknowledged and Agreed By:

FINANCE COMPANY:
[_____]

By: _____

Name: _____

Title: _____

Note: *This used to be an exhibit in our PPA form but has since been removed.*

Exhibit A

THE EQUIPMENT

QUANTITY	EQUIPMENT LOCATION	VENDOR	ASSET DESCRIPTION
One [] kW System	[]	Bloom Energy Corporation	[*[One [] kW and One [] kW Bloom Energy Servers (ES5 Energy Server Systems)]* *[] – Step Load 5 (SL5)* *[] – Microgrid Controller 5 (MI5)* *[] – Water Distribution Module (WDM)* *[] – Power Distribution System (PDS)* *[] – Telemetry Cabinet (TC)* *[] - AC-ECM* *[] - DC-ECM* *[] - BPS* *[] – Xformer*]