

CONFIDENTIAL AND PROPRIETARY

**GENERAL TERMS AND CONDITIONS OF
ENERGY SERVICES AGREEMENT**

These General Terms and Conditions of Energy Services Agreement are dated as of the ____ day of _____ 202__ and are witnessed and acknowledged by FFP BTM SOLAR, LLC, a Delaware limited liability company ("ForeFront Power") and City of Fresno, a California Municipal Corporation ("Purchaser"), as evidenced by their signature on the last page of this document. These General Terms and Conditions are intended to be incorporated by reference into Energy Services Agreements that may be entered into between ForeFront Power and Purchaser or between their respective Affiliates. These General Terms and Conditions shall have no binding effect upon ForeFront Power or Purchaser, respectively, except to the extent Purchaser or ForeFront Power (or an Affiliate thereof) becomes a party to an Energy Services Agreement that incorporates these General Terms and Conditions.

1. DEFINITIONS.

1.1 In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

"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.

"Agreement" means, the Energy Services Agreement.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

"Commercial Operation" has the meaning set forth in Section 3.3(b).

"Commercial Operation Date" has the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Covenants, Conditions and Restrictions" or "CCR" means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

"Delay Liquidated Damages" means the daily payment of (i) \$0.250/day/kW (DC) of the estimated nameplate capacity of the System (as set forth in Schedule 1 of the Special Conditions).

"Disruption Period" has the meaning set forth in Section 4.3.

"Early Termination Date" means any date on which this Agreement terminates other than by reason of expiration of the then applicable Term.

"Early Termination Fee" means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 2.3 or Section 11.2.

"Effective Date" has the meaning set forth in the preamble to the Special Conditions.

"Energy Services" has the meaning set forth in the Special Conditions.

"Energy Services Agreement" means each Energy Services Agreement (including the Schedules attached thereto) that may be entered into between ForeFront Power and Purchaser or between their respective Affiliates that incorporates these General Terms and Conditions by reference.

"Energy Services Payment" has the meaning set forth in the Special Conditions.

"Environmental Attributes" shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

"Environmental Documents" has the meaning set forth in Section 7.2(f).

"Environmental Law" means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or release to the environment of or exposure to Hazardous Materials, including any such requirements implemented through Governmental Approvals.

"Estimated Remaining Payments" means as of any date, the estimated remaining Energy Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

"Expiration Date" means the date on which this Agreement terminates by reason of expiration of the Term.

"Fair Market Value" means, with respect to any tangible asset or service, the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under

compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.3(i).

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, (ii) any Person (or its agent) who has made or will make a loan to or otherwise provides financing to Provider (or an Affiliate of Provider) with respect to the System, or (iii) any Person acquiring a direct or indirect interest in Provider or in Provider’s interest in this Agreement or the System as a tax credit investor.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“ForeFront Power” has the meaning set forth in the Preamble.

“General Terms and Conditions” means these General Terms and Conditions of the Energy Services Agreement, including all Exhibits hereto.

“Guaranteed Commercial Operation Date” has the meaning set forth in Section 5 of the Special Conditions, subject to extension as set forth in Section 2.2(b).

“Guaranteed Construction Start Date” has the meaning set forth in Section 5 of the Special Conditions, subject to extension as set forth in Section 2.2(b).

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority, including any such approval, consent, order or binding agreements with or involving a governmental authority under Environmental Laws.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Materials” means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

“Initial Term” has the meaning set forth in Section 2 of the Special Conditions.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“Liens” has the meaning set forth in Section 7.1(d).

“Local Electric Utility” means the local electric distribution and transmission owner and operator providing electric distribution, transmission, and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Option Price” has the meaning set forth in Section 2.3(i).

“Party” or “Parties” has the meaning set forth in the preamble to the Special Conditions.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Pre-existing Environmental Conditions” means any: (i) violation of, breach of or non-compliance with any Environmental Laws with respect to the Premises that first existed, arose or occurred on or prior to Provider’s commencement of construction at the Premises and (ii) the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to Provider’s commencement of construction at the Premises.

“Premises” means the premises described in Schedule 1 of the Special Conditions. The Premises includes the entirety of any structures and underlying real property located at the address in Schedule 1 of the Special Conditions.

“Provider” has the meaning set forth in the Special Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means the first Business Day that occurs after the applicable purchase date set forth in Schedule 3 of the Special Conditions.

“Purchaser” has the meaning set forth in the preamble to the Special Conditions.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Renewal Term” if applicable, has the meaning set forth in Section 2 of the Special Conditions.

“Representative” has the meaning set forth in Section 15.1.

“Security Interest” has the meaning set forth in Section 8.2(a).

“Site-Specific Requirements” means the site-specific information and requirements as may be set forth in Schedule 6 of the Special Conditions.

“Special Conditions” means each Energy Services Agreement, excluding these General Terms and Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) or (b) the maximum rate allowed by Applicable Law.

“System” has the meaning set forth in Schedule 1 of the Special Conditions.

“System-based Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of the Special Conditions and all other related subsidies and incentives.

“System Operations” means Provider’s operation, maintenance and repair of the System performed by Provider or for Provider (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) in accordance with the requirements herein.

“Term” means the Initial Term, and the subsequent Renewal Term(s), if any.

“Term Year” means a twelve (12) month period beginning on the first day of the Term and each successive twelve (12) month period thereafter.

“Termination Date” means the date on which this Agreement ceases to be effective, including on an Early Termination Date or the Expiration Date.

1.2 Interpretation. The captions or headings in these General Terms and Conditions are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates,

all references to "Articles" and "Sections" refer to Articles and Sections of these General Terms and Conditions.

2. TERM AND TERMINATION.

2.1 Term. The Initial Term is as specified in the Special Conditions.

2.2 Early Termination.

(a) Purchaser may terminate this Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice. If Purchaser terminates the Agreement prior to the Expiration Date of the Initial Term, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and Provider shall cause the System to be disconnected and removed from the Premises in accordance with Section 2.4. Upon Purchaser's payment to Provider of the Early Termination Fee, this Agreement shall terminate automatically.

(b) Purchaser may (i) if Provider fails to commence construction by the Guaranteed Construction Start Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$22.5/kW (DC) of the estimated nameplate capacity of the System (as set forth in Schedule 1 of the Special Conditions), (ii) terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee, if Provider fails to commence construction of the System by the date that is ninety (90) days after the Guaranteed Construction Start Date, or (iii) if Provider fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$15/kW (DC) of the estimated nameplate capacity of the System (as set forth in Schedule 1 of the Special Conditions), plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Purchaser to return its Premises to its condition prior to commencement of the Installation Work. Further, Purchaser may terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee, if Provider fails to commence Commercial Operation by the date that is sixty (60) days after the Guaranteed Commercial Operation Date. The Guaranteed Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if any of the following occurs: (x) notwithstanding Provider's commercially reasonable efforts, interconnection approval is not obtained within sixty (60) days after the Effective Date, provided that interconnection applications are submitted within 45 days of the later of (a) the Effective Date and (b) finalization of the System layout, (y) a Force Majeure Event occurs or for any delays by the Local Electric Utility or (z) an occurrence of any other unforeseeable event outside of Provider's reasonable control, provided that Provider makes reasonable efforts to mitigate the impact of such events on the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date (as applicable). Any such extension pursuant to subsection (z) shall be subject to the approval of Purchaser which shall not be unreasonably withheld, conditioned or delayed.

2.3 Purchase Option.

(i) On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the "Option Price") equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price, and provide all calculations and assumptions supporting said Option Price to Purchaser. Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.3(ii)), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear (at Provider's sole cost and expense) of any Liens and any Financing Party's and/or Provider's security interest in or ownership of the System, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under this Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, this Agreement shall terminate automatically. Payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of this Agreement shall be applicable as if Purchaser had not exercised any option to purchase the System.

(ii) Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3(i) is equal to the Fair Market Value (as determined and demonstrated by supporting documentation provided by Provider) and Purchaser disputes such stated Fair Market Value within sixty (60) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the Energy Services industry. Such appraiser shall have expertise and experience in valuing photovoltaic systems, resale markets for such systems and related environmental attributes, and shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error; however, if Purchaser in good faith disputes the valuation made by the appraiser, Purchaser shall

have the right to retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to Section 2.3(i); otherwise, the Parties shall equally share such cost.

2.4 Removal of System at Expiration. Subject to Purchaser's exercise of its purchase option under Section 2.3, upon the expiration or earlier termination of this Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than ninety (90) days after the Termination Date. The Premises shall be returned to its original condition, except for System mounting pads or other support structures on roof-mounted systems only, and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) at Provider's reasonable cost.

2.5 Conditions Prior to the Commercial Operation Date.

(a) In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) provide notice that it is terminating this Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, including but not limited to Provider's restoration of the Premises in accordance with Section 2.4:

(i) Provider determines that the Premises, as is, is insufficient to accommodate the System or unsuitable for construction or operation of the System.

(ii) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(iii) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors.

(iv) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it.

(v) Provider has not received: (1) a fully executed license in the form of Exhibit A of these General Conditions from the owner of the Premises (if the Purchaser is a tenant), (2) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (3) such other documentation as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term.

(vi) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(viii) Purchaser has determined that there are easements, CCRs or other land use restrictions, liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(ix) There has been a material adverse change in Purchaser's credit-worthiness.

(b) If any of the conditions set forth in Section 2.5(a) are partly or wholly unsatisfied, and Provider wishes to revise the information in the Special Conditions, then Provider may propose modifications to the Special Conditions for acceptance by Purchaser. If Purchaser does not accept such modified Special Conditions, Provider may terminate this Agreement as provided in Section 2.5(a) and shall restore the Premises in accordance with Section 2.4. If Purchaser accepts such revised Special Conditions, such revised Special Conditions shall be deemed an amendment of this Agreement, and this Agreement shall remain in force and effect upon execution by both Parties.

2.6 Co-Located Systems. With respect to any Systems that are co-located at the same Premises and connected to the same meter, the Parties acknowledge that the Systems are intended to be owned and operated as one integrated system, and that the Energy Services Payment (a) represents the added value of integrating the Systems to enable Provider's delivery of the Energy Services pursuant to the Agreements when needed by Purchaser, and (b) is a component part of the total consideration payable to Provider in exchange for Provider's comprehensive duties under this Agreement and the Agreement(s) related to the other co-located System(s). Accordingly, the Parties further agree (x) to treat the Systems as one integrated system for all purposes, and (y) that any right or option that is exercised with respect to the System or this Agreement, whether in respect of early termination, purchase option or otherwise, shall also be exercised with respect to the Agreement(s) related to the other co-located System(s).

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. At its request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System. Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical. Prior to commencement of the Installation Work, Purchaser shall have the right to approve or disapprove the final orientation of the System, to ensure that they do not create excessive or unsafe glare for nearby facilities or thoroughfares. To the extent that Provider materially changes the design of the System after commencement of the Installation Work, Purchaser shall have the right to approve or disapprove of any such changes. Purchaser's approval as set forth in this section shall not be unreasonably withheld, conditioned or delayed.

3.2 Approvals; Permits. Purchaser shall reasonably cooperate with Provider in obtaining all necessary consents, approvals and permits required to perform Purchaser's obligations under this Agreement, including but not limited to those related to the Local Electric Utility, any Governmental Approval, and any consents, waivers, approvals or releases required pursuant to any applicable contract entered into by Purchaser or CCR that has been recorded against the Premises. However, Provider acknowledges and agrees that the Purchaser may act as a Governmental Authority with respect to the subject matter of this Agreement, and any obligations or undertaking by Purchaser under this Agreement shall not bind or limit Purchaser as a Governmental Authority in enforcing any Applicable Laws, or granting or withholding any Governmental Approvals with respect to the subject matter of this Agreement.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by providers of Energy Services similar to those provided by the System in California. Provider shall provide Purchaser with at least ten (10) days' notice of such testing and shall permit Purchaser or Purchaser's representative to observe such testing. Purchaser's observation of such testing shall not be construed as or deemed an approval of such testing or test results.

(b) If the results of such testing indicate that the System is capable of providing the Energy Services, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility ("Commercial Operation"), then Provider shall promptly send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date".

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party, with prior advance written notice to Purchaser of the identity and contact information of the Financing Party, including whether such Financing Party is an owner of the System, and if the System is owned by the Financing Party, the Financing Party shall assume all of Provider's obligations under this Agreement in writing (except to the extent that the System is being leased back by Purchaser pursuant to a sale-leaseback transaction). The System shall be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; *provided*, any repair or maintenance costs incurred by Provider as a result of Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser, with prior advance written notice to Purchaser, so that Purchaser may dispute the claim, if necessary.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed at the Premises. Such meter(s) shall meet the general commercial standards of the solar photovoltaic industry or the required standards of the Local Electric Utility.

4.2.1 Meter Testing.

(a) Provider shall provide certificates of calibration for all meters prior to the time of their installation, no meter will be placed in service for which Provider has not provided certificates of calibration. Provider shall test or arrange for all meters to be tested in accordance with the meter manufacturer's recommendations. Provider shall bear all costs and expenses associated with each meter testing. Purchaser shall be notified at least ten (10) days in advance of such testing and shall have the right to be present during such tests. Provider shall provide Purchaser with detailed written results of all meter tests.

(b) Provider shall test or arrange for meter inspection and testing bi-annually when performing System operations and maintenance.

4.2.2 Cost of Meter Repair.

(a) If meter testing, as described above demonstrates that a meter was operating outside of its allowable calibrations (+/- 2%), then Provider will pay for the cost of repairs or replacement necessary to restore a meter to proper working order.

(b) If a meter is found to be inaccurate by more than two percent (2%), invoices for the prior six (6) months or from the last date such meter was registering accurately, whichever period is less, shall be adjusted to reconcile the discrepancy and payment for the amount of the adjustment issued by the appropriate party within 45

days, except that Purchaser shall not be obligated to pay interest on any amount found to be due because a meter was operating outside of its allowable calibration (+/- 2%).

4.2.3 Meter Data. Provider shall gather and maintain the data from all meters, including but not limited to, interval data registered at least once every fifteen (15) minutes ("Meter Data"), and shall make such Meter Data promptly available to Purchaser at Purchaser's request.

4.3 System Disruptions. In the event that (a) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (b) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Energy Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Attributes and any reduced System-based Incentives, if applicable, during the Disruption Period upon proof by Provider of such actual lost revenue due to such Purchaser Act. For the purpose of calculating Energy Services Payments and lost revenue for such Disruption Period, Energy Services for each month of said months shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation). Notwithstanding the foregoing, Purchaser shall be entitled to exercise its rights under Section 9 (Allowed Disruption Time) of the Special Conditions.

5. TITLE TO SYSTEM.

5.1 Throughout the duration of this Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. Provider shall notify Purchaser in writing of any change in ownership within thirty (30) days of such change, including any transfer of such ownership to Provider's Financing Party. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of

Purchaser, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.2 Environmental Attributes And System-Based Incentives. Purchaser's purchase of Energy Services includes Environmental Attributes, but does not include System-based incentives. System-based Incentives shall be owned by Provider or Provider's financing party for the duration of the System's operating life. Purchaser disclaims any right to System-based Incentives based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.2.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly Energy Services Payment for the Energy Services provided during each calendar month of the Term as set forth in the Special Conditions.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Energy Services Payment in respect of the immediately preceding month. The last invoice shall include Energy Services provided only through the Termination Date of this Agreement. Invoices shall state, at a minimum, (i) the amount of actual electricity produced by the System and delivered to the delivery point during the invoice period (if applicable), (ii) the rates applicable to, and any charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within thirty (30) days after Purchaser's receipt of an invoice from Provider.

6.4 Method of Payment. Purchaser shall make all payments under this Agreement either (a) by electronic funds transfer in immediately available funds to the account designated by Provider from time to time or (b) by check timely delivered to the location designated by Provider from time to time. All payments that are not paid within fifteen (15) days of their due date ("Past Due Date") shall bear a penalty equal to the Stated Rate multiplied by the number of days following the Past Due Date for which payment remains outstanding.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest

shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Purchaser if it becomes aware of any event or circumstance relating to the System or the Premises that poses a significant risk to human health, the environment, the System or the Premises. In the event of damage to the Premises caused by, or as the result of, the System, Provider shall, at its sole cost, repair said Premises to the condition existing prior to such damage.

(b) Governmental Approvals. While providing the Installation Work, Energy Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals and all approvals from the Local Electric Utility required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(c) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by a majority of System integrators in California. Provider shall promptly give Purchaser any notice issued by any Governmental Authority or any Local Electric Utility relating to an actual or alleged violation of any Applicable Law that relates to the System or the Premises, or this Agreement. Provider shall be required to keep the Premises in a clean and orderly condition at all times, free from waste, debris, and weeds.

(d) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien; *provided*, Provider shall have the right to contest any such Lien, so long as it

provides a statutory bond or other reasonable assurances of payment that either remove such Lien from title to the Premises or that assure that any adverse judgment with respect to such Lien will be paid without affecting title to the Premises.

(e) System Condition. Provider shall take all actions reasonably necessary, including but not limited to repair and maintenance, to ensure that the System is capable of operating at a commercially reasonable continuous rate throughout the Term.

(f) Environmental Indemnification by Provider. Provider shall indemnify, hold harmless and defend Purchaser Indemnified Parties from and against all claims, pay costs and expenses, and conduct all actions required under Environmental Laws in connection with the deposit, release, or spill of any Hazardous Materials at, on, above, below or near the Premises by Provider. In no event shall Provider be responsible for the existence of any Hazardous Materials at the Premises prior to the Effective Date. Provider shall promptly notify Purchaser if it becomes aware of any Hazardous Materials, or any deposit, spill, or release of any Hazardous Materials at, on, above, below or near the Premises.

(g) Production Data. Provider shall provide Purchaser with access to System production data in electronic format, such as tabular Excel or csv with each production unit in a separate cell. Production data could be delivered monthly or by granting Purchaser access to a web portal.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises. In the event of damage to Purchaser's premises caused by, or as the result of, the System, Provider shall, at its sole cost, repair said premises to the condition existing prior to such damage.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the

name of Provider. Purchaser shall provide to Provider copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by Provider or to which Provider is a party.

(d) Access to Premises, Grant of License.

(i) Purchaser hereby grants to Provider a revocable non-exclusive license coterminous with the Term containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance and removal of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring. If Provider's financing structure requires that Purchaser enter into a license agreement directly with Financing Party, Provider shall enter into such an agreement which shall be in a form set forth by Provider and which contain substantially the same rights as set forth in this Section 7.2(d).

(ii) Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (x) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (y) neither Purchaser nor Purchaser's landlord will interfere or handle any Provider equipment or the System without written authorization from Provider; *provided*, Purchaser and Purchaser's landlord shall at all times have access to and the right to observe the Installation Work or System removal.

(iii) If Purchaser is a lessee of the Premises, Purchaser further covenants that it shall deliver to Provider, a license from Purchaser's landlord in substantially the form attached hereto as Exhibit A of these General Conditions.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to provide for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling. Subject to Purchaser's indemnity obligations set forth herein, Purchaser shall have no liability whatsoever in connection with personal property or equipment of Provider or Provider's employees, consultants, contractors, subcontractors, and vendors. Provider shall be solely responsible for the safety and security of Provider's employees, consultants, contractors, subcontractors, and vendors, as well as any personal property, including but not limited to, any tools, materials, and equipment of such parties used or stored on the Premises.

(f) Environmental Documents. On or before the Effective Date of each Special Conditions Purchaser shall identify and set forth in each Special Conditions and unless previously delivered, Purchaser shall, to the extent the same are known and in the possession or control of Purchaser, deliver to Provider copies of all reports, agreements, plans, inspections, tests, studies or other materials concerning the presence of Hazardous Materials at, from or on the Premises including, but not limited to, soil reports, design drawings, environmental reports, sampling results or other documents relating to Hazardous Materials that have been identified or may be present on, in or under the Premises (collectively, the "Environmental Documents"). Thereafter, Purchaser agrees to provide copies of any new Environmental Documents within ten (10) days of receipt of same. Purchaser hereby agrees to furnish such other documents in Purchaser's possession or control with respect to Governmental Approvals compliance with Environmental Law or Hazardous Materials with respect to the Premises as may be reasonably requested by Provider from time to time.

(g) Compliance with Environmental Laws. Notwithstanding anything to the contrary in this Agreement, Purchaser shall operate and maintain the Premises to comply with the requirements of all applicable Environmental Laws that limit or govern the conditions or uses of the Premises, without impairing or interfering with Provider's construction, operation and ownership of the System or occupancy of the Premises. In no event shall Provider have any liability or obligation with respect to any Pre-existing Environmental Condition on, in or under the Premises, or operations or maintenance of the Premises required to comply with Environmental Laws with respect to Pre-Existing Environmental Conditions.

(h) Environmental Indemnification by Purchaser. Purchaser shall indemnify, hold harmless and defend Provider from and against all claims, pay costs and expenses, and conduct all actions required under Environmental Laws in connection with (i) the existence at, on, above, below or near the Premises of any Pre-existing Environmental Conditions, and (ii) any Hazardous Materials released, spilled or deposited at, on above or below the Premises by the Purchaser. Purchaser shall promptly notify Provider if it becomes aware of any Hazardous Materials, or any deposit, spill, or release of any Hazardous Materials at, on, above, below or near the Premises.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy and other similar laws now or hereafter in effect;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;

(f) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and

(g) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not require any consent from a third party, including any Governmental Approvals from any Governmental Authority, that are not identified in the Special Conditions.

8.2 Representations of Purchaser. Purchaser represents and warrants to Provider as of the Effective Date that:

(a) Purchaser acknowledges that it has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party;

(b) To the best of Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;

(c) To the best of Purchaser's knowledge, Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein;

(d) To the best of Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement;

(e) To the best of Purchaser's knowledge, Purchaser has identified and disclosed to Provider in the Special Conditions (i) all Environmental Documents in

Purchaser's possession or control, (ii) all CCRs, Governmental Approvals or other restrictions imposed under Applicable Laws with respect to the use of the Premises that could affect the construction and operation of the System within Purchaser's possession or control, and (iii) all environmental reports, studies, data or other information relating to the use of the Premises by Provider within the Purchaser's possession or control;

(f) To the best of Purchaser's knowledge, the Premises is in compliance with Environmental Laws, and that Purchaser holds and is in compliance with all Governmental Approvals required for the ownership and any current operations or activities conducted at the Premises; and

(g) To the best of Purchaser's knowledge, Purchaser has identified in the Special Conditions and delivered to Provider all material reports and information concerning the presence or release of Hazardous Materials on, in or under the Premises in Purchaser's possession or control.

(h) Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 EXCLUSION OF WARRANTIES. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH HEREIN, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND ENERGY SERVICES PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE ENERGY SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser Obligations. Purchaser shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Energy Services to Purchaser (other than income taxes imposed upon Provider). Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Energy Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real

property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

9.3 **Provider's Tax Obligations.** accordance with Revenue and Taxation Code § 107.6, in the event it is ever determined that Provider, and/or Provider's Financing Party, has a taxable possessory interest as a result of the Agreement, Provider agrees to pay any property tax which may be levied. In this respect, Provider understands that Provider's, and/or Provider's Financing Party's activities are on property owned by a tax-exempt public agency, that Provider, and/or Provider's Financing Party may be subject to property taxation, and that Provider, and/or Provider's Financing Party (the entity in whom any potential possessory interest may vest) may be subject to the payment of property taxes levied on any such interest. Provider agrees to provide written notice of this Section 9.3 to Provider's Financing Party prior to Provider entering into any agreement with Provider's Financing Party in connection with the Agreement.

10. FORCE MAJEURE.

10.1 **Definition.** "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Provider or as a result of such party's failure to comply with a collective bargaining agreement); and (v) action or inaction by a Governmental Authority (unless Purchaser is a Governmental Authority and Purchaser is the Party whose performance is affected by such action nor inaction). A Force Majeure Event shall not be based on the economic hardship of either Party, or upon the expiration of any lease of the Premises by the Purchaser from the owner of the Premises.

10.2 **Excused Performance.** Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; *provided*, the Party claiming relief under this Article 10 shall as soon as practicable after becoming aware of the circumstances constituting Force Majeure (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the

cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; *provided*, Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Energy Services delivered to Purchaser prior to the Force Majeure Event performance interruption. Subject to Section 10.3 below, the Parties agree that to the extent permitted by Applicable Law, the Term of this Agreement shall extend on a day for day basis for every day in which the occurrence of a Force Majeure Event has affected either Party's performance of its obligations hereunder.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate this Agreement upon ninety (90) days' prior written notice to the other Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination, including but not limited to Provider's obligations to remove the System and restore the Premises as set forth herein), and Purchaser shall have no obligation to pay the Early Termination Fee.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and
- (iii) Provider breaches any material representation, covenant or other term of this Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Purchaser may terminate this Agreement with no penalty or liability whatsoever, including but not limited to the Early Termination Fee, and exercise any other remedy it may have at law or equity or under this Agreement.

11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, such longer cure period not to exceed ninety (90) days; and

(iii) Purchaser fails to pay Provider any undisputed amount due Provider under this Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Section 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and (B) Provider may exercise any other remedy it may have at law or equity or under this Agreement.

11.3 Cross Default. With respect to any Systems that are co-located at the same Premises, if a Party defaults under this Agreement, it shall also be a default of such Party under the Agreement(s) related to the other co-located System(s); *provided*, a cure of the original default shall be a cure of any such cross default. In the event of a cross default, the non-defaulting Party shall be entitled to exercise its rights with respect to this Agreement and all such other Agreements, including terminating all such Agreements and, if Provider terminates one or more Agreements due to a Purchaser Default, Purchaser shall pay the Early Termination Fees for all such terminated Agreements.

11.4 Removal of System. Upon any termination of this Agreement pursuant to this Article 11 and payment of the Early Termination Fee (if applicable), Provider will remove the System pursuant to Section 2.4 hereof, absent any purchase of the System by Purchaser pursuant to Section 2.3. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) at Provider's reasonable cost.

12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

12.2 A Party's maximum liability to the other Party under this Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, *provided*, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury or environmental claims or worker's comp and property damage and (ii) any obligation of Purchaser to pay Energy Service Payments, the Early Termination Fee or the Option Price, (iii) any obligation of Provider to pay for Lost Savings in accordance with the Special Conditions and (iv) if applicable, any obligation of Provider to remove the System and restore the Premises in accordance with Section 2.4.

13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; *provided*, Purchaser agrees that Provider may assign this Agreement without the consent of the Purchaser to an Affiliate of Provider or any party providing financing for the System. In the event that Provider identifies a secured Financing Party in the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions and agrees to provide such estoppels, acknowledgments and opinions of counsel as Provider may reasonably request from time to time. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any Assignment by Provider without obtaining the prior written consent and release of Purchaser, when such consent is required by this Section 13.1, shall not release Provider of its obligations hereunder.

13.2 Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser hereby acknowledges:

(a) The collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under this Agreement, as consented to under Section 13.1 of this Agreement.

(b) That the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider's interests in this Agreement.

(c) That it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third- party beneficiary of this Section 13.2.

13.3 Assignment by Purchaser. Purchaser shall not assign this Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any Assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under this Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party

shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors, consultants, Affiliates, lenders (existing or potential), investors (existing or potential) and potential third-party assignees of this Agreement or third-party acquirers of Provider or its Affiliates (provided and on condition that such potential third-party assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 15.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) Becomes publicly available other than through the receiving Party;
- (b) Is required to be disclosed by a Governmental Authority, under Applicable Law, including but not limited to the California Public Records Act, or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) Is independently developed by the receiving Party; or
- (d) Becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; *provided*, no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be

made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state. Notwithstanding anything to the contrary in this Article 15, this Agreement, including its contents, shall be subject to public disclosure by Purchaser pursuant to the Ralph M. Brown Act (Government Code Section 6250 et. seq.) and all other applicable laws pertaining to disclosure by public entities, and purchaser shall not be limited in any manner whatsoever with respect to its public disclosure of this Agreement including the contents of this Agreement.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article 15 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article 15. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article 15, but shall be in addition to all other remedies available at law or in equity.

16. INDEMNITY.

16.1 General. To the furthest extent allowed by law, each Party ("Indemnifying Party") shall indemnify, hold harmless and defend the other Party and the officers, officials, employees, agents and volunteers of the other Party from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) resulting from any and all third party claims, demands and actions in law or equity (including attorney's fees and litigation expenses) (collectively "Third Party Claims"), arising or alleged to have arisen directly or indirectly out of the Indemnifying Party's gross negligence or willful misconduct in the performance of this Agreement. In addition, to the furthest extent allowed by law, Provider shall indemnify, hold harmless and defend Purchaser and each of its officers, officials, employees, agents and volunteers from Third Party Claims arising or alleged to have arisen directly or indirectly out of Provider's negligence in its performance of this Agreement. Provider's obligations shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages to the extent caused by the negligence, or caused by the willful misconduct, of Purchaser or any of its officers, officials, employees, agents or volunteers. This Section,

16.1, shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 16.3.

16.2 Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 16.2 for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

16.3 Environmental Indemnification. Provider shall indemnify, defend, and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance (as defined in Section 16.3.1) to the extent deposited, spilled or otherwise caused by Provider or any of its contractors or agents. Purchaser shall indemnify, defend, and hold harmless all of Provider's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance, except to the extent deposited, spilled, or otherwise caused by Provider or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Facility generally or any deposit, spill or release of any Hazardous Substance.

16.3.1 "Hazardous Substance" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any Environmental Laws, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted

or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

16.3.2 "Environmental Law" means any applicable federal, state, municipal, or local law, statute, rule, regulation, ordinance, code, judgment, decree or decision implementing any of the foregoing by any Governmental Authority relating to (A) the protection of the air, water, land or natural resources or (8) the generation, use, handling, treatment, storage, disposal and transportation of Hazardous Substances.

17. INSURANCE.

17.1 Provider's Insurance Requirements.

17.1.1 COVERAGE.

(a) Throughout the life of this Agreement, Provider shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by Purchaser's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to Purchaser, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Provider or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Provider shall be withheld until notice is received by Purchaser that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Purchaser. Any failure to maintain the required insurance shall be sufficient cause for Purchaser to claim and Event of Default in accordance with Section 11.1 of this Agreement. No action taken by Purchaser pursuant to this section shall in any way relieve Provider of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Purchaser that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Provider shall not be deemed to release or diminish the liability of Provider, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Purchaser shall apply to all claims and liability regardless of whether any insurance

policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Provider, vendors, suppliers, invitees, contractor, sub-contractor, consultant, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

17.1.2. MINIMUM LIMITS OF INSURANCE. Provider shall procure and maintain for the duration of this Agreement, insurance with limits of liability not less than those set forth below. However, insurance limits available to Purchaser, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**
 - (i) \$2,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$2,000,000 per occurrence for personal and advertising injury;
 - (iii) \$4,000,000 aggregate for products and completed operations; and,
 - (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$2,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.

4. PROPERTY ALL RISK INSURANCE: Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the System, except the perils of flood, earthquake and windstorms (as defined in Provider's insurance policy).

5. CONTRACTOR'S POLLUTION LEGAL LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:
 - (i) \$1,000,000 per occurrence or claim; and,
 - (ii) \$2,000,000 general aggregate per annual policy period.

In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by Provider pursuant to the Agreement.

17.1.3 UMBRELLA OR EXCESS INSURANCE. In the event Provider purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the Purchaser, its officers, officials, employees, agents and volunteers.

17.1.4 DEDUCTIBLES AND SELF-INSURED RETENTIONS.

Provider shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Provider shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the Purchaser's Risk Manager or his/her designee. At the option of the Purchaser's Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as

respects Purchaser, its officers, officials, employees, agents and volunteers; or

- (ii) Provider shall provide a financial guarantee, satisfactory to Purchaser's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall Purchaser be responsible for the payment of any deductibles or self-insured retentions.

17.1.5 OTHER INSURANCE PROVISIONS/ENDORSEMENTS.

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days' written notice has been given to Purchaser, except ten (10) days for nonpayment of premium. Provider is also responsible for providing written notice to the Purchaser under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Provider shall furnish Purchaser with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for Purchaser, Provider shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name Purchaser, its officers, officials, agents, employees and volunteers as an additional insured. Provider shall establish additional insured status for the Purchaser and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the Provider's insurance shall be primary to and require no contribution from the Purchaser. The Commercial General and Pollution Liability policies are required to include primary and non-contributory coverage in favor of the Purchaser for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to

Purchaser, its officers, officials, employees, agents and volunteers. If Provider maintains higher limits of liability than the minimums shown above, Purchaser requires and shall be entitled to coverage for the higher limits of liability maintained by Provider.

- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, Provider's insurance coverage shall be primary insurance with respect to the Purchaser, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Purchaser, its officers, officials, agents, employees and volunteers shall be excess of the Provider's insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to Purchaser, its officers, officials, agents, employees and volunteers.
- (viii) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to Purchaser, its officers, officials, agents, employees and volunteers.

17.1.6. PROVIDING OF DOCUMENTS. Provider shall furnish Purchaser with all certificate(s) and applicable endorsements effecting coverage required herein, with information redacted as reasonably determined by Provider. All certificates and applicable endorsements are to be received and approved by the Purchaser's Risk Manager or his/her designee prior to Purchaser's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of Purchaser, Provider shall immediately furnish Purchaser with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy, subject to Provider redacting sensitive or non-applicable information. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Provider shall also be required to provide all documents noted herein.

Claims-Made Policies - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Provider.

- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination or expiration of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Provider must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination or expiration of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to Purchaser for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

17.2 Subcontractors - If Provider subcontracts any or all of the services to be performed under this Agreement, Provider shall require, at the discretion of the Purchaser Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the Purchaser to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by Purchaser Risk Manager or designee. If no Side Agreement is required, Provider will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

17.3 Purchaser's Insurance. Purchaser shall maintain (A) commercial general liability insurance for the Premises with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (B) property insurance on the Premises covering "All Risks" perils in an amount equal to the full replacement cost of the Facility; (C) business interruption insurance covering Purchaser's operations at the Premises; and (D) workers' compensation insurance covering all employees of Purchaser, as required by the laws of the State in which the Premises is located, and employers' liability coverage subject to a limit of no less than \$500,000 for bodily injury by accident per accident/\$500,000 for bodily injury by disease per employee/\$1,000,000 for bodily injury by disease policy limit.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto or incorporated by reference, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof which are of no further force or effect. The Exhibits and Schedules attached to this Agreement, including these General Terms and Conditions as

incorporated by reference, are integral parts of this Agreement and are an express part of this Agreement. In the event of a conflict between the provisions of these General Terms and Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the Energy Services industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 [Reserved].

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Section 2.4 (Removal of System), Section 7.1 (Provider Covenants), Sections 7.2(d), (e), (f), (g) and (h) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 18 (Miscellaneous), all payment or indemnification obligations accrued prior to termination of this Agreement, or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

18.9 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be

modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.12 Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties and intended third party beneficiaries identified in this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties not otherwise identified.

18.13 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

18.14 Electronic Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.15 Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider's actual damages.

[Signatures follow on the next page.]

These General Terms and Conditions are witnessed and acknowledged by ForeFront Power and Purchaser below. Neither ForeFront Power nor Purchaser shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

PROVIDER:
FFP BTM SOLAR, LLC., a Delaware limited liability company

By: 

Name: Go Mizoguchi

Title: President
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

Date: 6/16/2020

By: 

Name: Kristin Frooshani

Title: Secretary
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

Date: 6/17/2020

PURCHASER:
CITY OF FRESNO, a municipal corporation

By: _____

Michael Carbajal, Director
Department of Public Utilities

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  4/17/2020
Jennifer M. Quintanilla Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____ Date

Deputy

Exhibit A
of General Terms and Conditions

[PURCHASER'S LETTERHEAD]

[Landlord's Address]

Attn: Authorized Representative

Re: Proposed Energy System Installation at [Address of Premises]. Lease dated []
between [PURCHASER] and [LANDLORD] (the "Lease")

Dear Authorized Representative:

As has been discussed with you, [PURCHASER] ("Purchaser") and [FFP Entity], LLC ("Provider") have entered into an Energy Services Agreement, pursuant to which Provider will install, finance, operate, and maintain a [solar photovoltaic] [battery storage] system at the above-referenced premises which [PURCHASER] leases from you pursuant to the Lease. By signing below and returning this letter to us, you confirm that:

1. The [solar photovoltaic] [battery storage] system and the renewable energy (including environmental credits and related attributes) produced by the system are personal property, and shall not be considered the property (personal or otherwise) of [LANDLORD] upon installation of the system at the premises. Landlord consents to the filing by Provider of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises.
2. Provider or its designee (including finance providers) shall have the right without cost to access the premises in order to install, operate, inspect, maintain, and remove the [solar photovoltaic] [battery storage] system. [LANDLORD] will not charge Purchaser or Provider any rent for such right to access the premises.
3. [LANDLORD] has been advised that the finance providers for the [solar photovoltaic] [battery storage] system have a first priority perfected security interest in the system. Provider and the finance providers for the [solar photovoltaic] [battery storage] system (including any system lessor or other lender) are intended beneficiaries of [LANDLORD]'s agreements in this letter.
4. [LANDLORD] will not take any action inconsistent with the foregoing.

We thank you for your consideration of this opportunity and we look forward to working with you in our environmental campaign to increase the utilization of clean, renewal energy resources.

Very truly yours,

CITY OF FRESNO

By: _____

Name:

Title:

Acknowledged and agreed by:

[LANDLORD]

By: _____

Name:

Title:

Exhibit B
of General Terms and Conditions

Certain Agreements for the Benefit of the Financing Parties

Purchaser acknowledges that Provider will be receiving financing accommodations from one or more Financing Parties and that Provider may sell or assign the System or this Agreement and/or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such Financing Party, Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the assignment, sale or conveyance to a Financing Party or the collateral assignment by Provider to a Financing Party, of Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under this Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to cancel, modify or terminate this Agreement without the written consent of the Financing Party, however, this provision shall not be interpreted to limit any termination rights of either Party as set forth in the Agreement.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Purchaser's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of this

Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

iv. Upon any default not reasonably susceptible to cure by a Finance Party, including, without limitation, rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such default, Purchaser shall enter into a new agreement with the Financing Party or its designee having the same terms and conditions as this Agreement.

(d) Right to Cure.

i. Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties agree that the cure rights described herein are in addition to and apply and commence following the expiration of any notice and cure period applicable to Provider. The Parties respective obligations will otherwise remain in effect during any cure period; *provided*, if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i). above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

Exhibit C
of General Conditions

Requirements Applicable to the Installation Work

Section B.1 Prohibition Against Use of Tobacco. All properties and facilities owned, leased or operated by the Purchaser are tobacco-free work places. No person on, at or in any Purchaser-controlled property or facility, including, without limitation, the Premises, may smoke, chew or otherwise use tobacco products. Provider shall be responsible for: (i) informing any and all persons present on or at the Premises on account of the Installation Work about the Purchaser's tobacco-free policy; and (ii) strictly enforcing such policy with respect to the Premises. The Purchaser, Provider, and each Subcontractor shall require that any person present on or at the Premises on account of the Installation Work who violates such policy must permanently leave the Premises, and shall prohibit such person from thereafter being present or performing any of the Installation Work on or at the Premises.

Section B.2 Prohibition Against Use of Drugs.

(a) Purchaser Drug-Free Policy. All properties and facilities owned, leased or operated by the Purchaser are drug-free work places. No person on, at or in any Purchaser-controlled property or facility, including, without limitation, the Premises, may: (i) engage in the unlawful manufacture, dispensation, possession or use, including being under the influence, of any controlled substance, (ii) possess or use any alcoholic beverage, or (iii) use any substance which may cause significant impairment of normal abilities. Provider shall be responsible for: (i) informing any and all persons present on or at the Premises on account of the Installation Work about the Purchaser's drug-free policy; and (ii) strictly enforcing such policy with respect to the Premises. The Purchaser, Provider, and each Subcontractor shall require that any person present on or at the Premises on account of the Installation Work who violates such policy must permanently leave the Premises, and shall prohibit such person from thereafter being present or performing any of the Installation Work on or at the Premises.

(b) Drug-Free Workplace Certification. Provider is hereby made subject to the requirements of Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990.

Section B.3 Compliance with Labor Requirements. The Installation Work is a "public works" project as defined in Section 1720 of the California Labor Code ("Labor Code") and made applicable pursuant to Section 1720.6 of the Labor Code. Therefore, the Installation Work is subject to applicable provisions of Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, Section 16000 et seq. (collectively, "Labor Law"). Provider acknowledges that, as provided by Senate Bill 854 (Stats. 2014, Ch. 28), the Project is subject to labor compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR").

Section B.4 Compliance with Labor Code Requirements. Provider must be, and shall be deemed and construed to be, aware of and understand the requirements of the Labor Law that require the payment of prevailing wage rates and the performance of other requirements on public works projects. Provider, at no additional cost to the Purchaser, must: (i) 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; (ii) ensure that its Subcontractors are aware of and comply with the Labor Law requirements; (iii) in connection with Labor Law compliance matters, cooperate with the DIR, the Purchaser and other entities with competent jurisdiction; and (iv) post all job-site notices required by law in connection with the Installation Work, including, without limitation, postings required by DIR regulations. A Subcontractor that has been debarred in accordance with the Labor Code, including, without limitation, pursuant to Sections 1777.1 or 1777.7, is not eligible to bid on, perform, or contract to perform any portion of the Installation Work. Wage rates for the Installation Work shall be in accordance with the general prevailing rates of per-diem wages determined by the Director of Industrial Relations pursuant to Labor Code Section 1770. The following Labor Code sections are by this reference incorporated into and are a fully operative part of the Contract, and Provider shall be responsible for compliance therewith:

- (a) Section 1735: Anti-Discrimination Requirements;
- (b) Section 1775: Penalty for Prevailing Wage Rate Violations;
- (c) Section 1776: Payroll Records;
- (d) Sections 1777.5, 1777.6 and 1777.7: Apprenticeship Requirements;
- (e) Sections 1810 through 1812: Working Hour Restrictions;
- (f) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and
- (g) Section 1815: Overtime Pay.

Section B.5 Requirements for Payroll Records. Provider must comply with all applicable provisions of Labor Code Sections 1776 and 1812, which relate to preparing and maintaining accurate payroll records, and making such payroll records available for review and copying by the Purchaser, the DIR Division of Labor Standards Enforcement, and the DIR Division of Apprenticeship Standards. The payroll records must be certified and made available as required by Labor Code Section 1776.

Section B.6 Contractor Registration. On and after March 1, 2015, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. On and after April 1, 2015, no contractor or subcontractor may be

awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1725.5 for an unregistered contractor to submit a bid authorized by Business and Professions Code Section 7029.1 or Public Contract Code Section 20103.5, if the contractor is registered at the time the contract is awarded.

Section B.7 Permits and Licenses. Without limiting anything set forth in Section B.7 of this Exhibit C, Provider, its Subcontractors, and all of their respective employees and agents: (i) shall secure and maintain in force at all times during the performance of the Installation Work such licenses and permits as are required by law; and (ii) shall comply with all federal and State, and local laws and regulations, and other governmental requirements applicable to the System or the Installation Work. Provider or its subcontractors shall obtain and pay for all permits and licenses required for the performance of, or necessary in connection with, the Installation Work, and shall give all necessary notices and deliver all necessary certificates to the Purchaser, and shall pay all royalties and license fees arising from the use of any material, machine, method or process used in performing the Installation Work. Provider shall be solely responsible for all charges, assessments and fees payable in connection with any such licenses, permits, materials, machines, methods, and processes.

Section B.8 Local Hire. Provider acknowledges that the installation work is subject to Fresno Municipal Code Section 4-117. The City of Fresno's local hiring goals requires targeted hiring for journeymen and apprentices residing in economically disadvantaged areas. Accordingly, Provider agrees to make a good faith effort, as defined in Section 4-117, that at least 30% of all hours for construction of the System to be of targeted workers from the City of Fresno and the Greater Fresno Area.