

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

*These General Terms and Conditions (“General Conditions”) are dated as of the 4th day of February, 2020, and are witnessed and acknowledged by FFP BTM SOLAR, LLC, a Delaware limited liability company (“ForeFront Power”), and the County of Fresno, a political subdivision of the State of California (“Purchaser”), as evidenced by their signatures on the last page of this document. These General Conditions are intended to be incorporated by reference into all Energy Services Agreements that may be entered into between ForeFront Power and Purchaser or between ForeFront Power’s and Purchaser’s respective affiliates. These General Conditions shall have no binding effect upon ForeFront Power or Purchaser, respectively, except to the extent ForeFront Power and Purchaser, or ForeFront Power’s and Purchaser’s respective affiliates, become parties to an Energy Services Agreement that incorporates these General Conditions.*

**1. DEFINITIONS.**

1.1 In addition to other terms specifically defined elsewhere in the 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” or “Energy Services Agreement” means each Special Conditions (including the Schedules attached thereto) that may be entered into between ForeFront Power and Purchaser or between ForeFront Power’s and Purchaser’s respective affiliates that incorporates these General Conditions by reference.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, court order, decree, judgment, or decision, holding, injunction, authorization, guideline that operates with the force of law, 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).

“Construction Start Date” has the meaning set forth in Section 5 of the Special Conditions.

“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 if ForeFront Power fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Disruption Period” has the meaning set forth in Section 4.3.

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

“Early Termination Fee” means the fee payable by Purchaser to ForeFront Power under the circumstances described in Section 11.2 and subject to the terms of 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 Payment” has the meaning set forth in Schedule 2 of 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(h).

“Environmental Law” means any and all federal, state, local, 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.

“Expiration Date” means the date on which the 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.

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

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

“General 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, which date shall be extended day-for-day for Force Majeure Events and for other events outside of ForeFront Power’s reasonable control.

“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, or any department, agency, bureau, or other administrative, regulatory, taxing (including assessing) body, board, or officer of any such government, or any 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.

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

“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 ForeFront Power at the Premises.

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

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

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution 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.

“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 ForeFront Power’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 ForeFront Power’s commencement of construction at the Premises.

“Premises” means the premises described in the Special Conditions, which includes the entirety of any structures and underlying real property located therein.

“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).

“Renewal Term” has the meaning set forth in Section 2.1.

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

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

“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 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 each 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 ForeFront Power’s operation, maintenance and repair of the System, which shall be performed in accordance with the requirements herein.

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

“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 the Agreement ceases to be effective, including an Early Termination Date or the Expiration Date.

“Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the 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 the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

### 2.1 Term; Early Termination; Milestone Dates.

(a) Term. The term of the Agreement shall commence on the Effective Date, and shall continue for the number of years after the Commercial Operation Date that are specified in the Special Conditions (the “Initial Term”), unless and until extended or terminated earlier pursuant to the provisions of the Agreement.

(b) Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason, other than for a Non-Appropriation Event pursuant to Article 19, herein, upon sixty (60) days’ prior written notice. If Purchaser terminates the Agreement prior to the Expiration Date of the Initial Term under this Section 2.1(b), Purchaser shall pay the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and ForeFront Power shall cause the System to be disconnected and removed from the Premises at ForeFront Power’s sole expense. Upon Purchaser’s payment to ForeFront Power of the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, under this Section 2.1(b), the Agreement shall terminate automatically.

(c) Purchaser may (i) if ForeFront Power fails to commence construction of the System by the Construction Start Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed \$22.5/kW, (ii) terminate this Agreement with no liability whatsoever if ForeFront Power fails to commence construction of the System by the date that is ninety (90) days after the Construction Start Date, or (iii) if ForeFront Power 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, 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 if ForeFront Power fails to commence Commercial Operation by the date that is sixty (60) days after the Guaranteed Commercial Operation Date. The Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if, notwithstanding ForeFront Power’s commercially-reasonable efforts, interconnection approval is not obtained by ForeFront Power from the Local Electric Utility within sixty (60) days after the Effective Date, provided that interconnection applications are submitted within forty five (45) days of the later of (a) the Effective Date and (b) finalization of the System layout.

2.2 Purchase Option. 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 (“Purchase Option”) 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 ForeFront Power of Purchaser’s intent to exercise its Purchase Option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser’s notice, ForeFront Power shall specify the Option Price, and Purchaser shall then have a period of sixty (60) days after notification to confirm or retract its decision to exercise the Purchase Option or, 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 ForeFront Power (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.3), (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 ForeFront Power’s sole cost and expense) of any Liens and any Financing Party’s and/or ForeFront Power’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 ForeFront Power on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by ForeFront Power or ForeFront Power’s Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically. Payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.1(b), herein. In the event Purchaser retracts its exercise of, or does not timely confirm, the Purchase Option, the provisions of the Agreement shall be applicable as if Purchaser had not exercised any option to purchase the System.

2.3 Determination of Fair Market Value. If the Option Price indicated by ForeFront Power in accordance with Section 2.2 is equal to the Fair Market Value (as determined by ForeFront Power) and Purchaser disputes such stated Fair Market Value within sixty (60) days of receipt of such notice from ForeFront Power, then the Parties shall mutually select an independent appraiser with experience and expertise in the Energy Services industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value as soon as practicable 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. 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 ForeFront Power pursuant to Section 2.2; if the appraisal results in a value less than the value provided by ForeFront Power pursuant to Section 2.2, then ForeFront Power shall bear the costs of the appraisal.

2.4 Removal of System at Expiration. Subject to Purchaser's exercise of its Purchase Option, as defined under Section 2.2, upon the expiration or earlier termination of the Agreement, ForeFront Power shall, at ForeFront Power'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 as of the Effective Date, except (i) only for roof-mounted Systems, System mounting pads or other support structures on roof-mounted systems, and (ii) ordinary wear and tear. If the System is to be located on a roof, then in no case shall ForeFront Power'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 ForeFront Power'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. ForeFront Power shall leave the Premises in neat and clean order. If ForeFront Power 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 ForeFront Power's reasonable cost.

2.5 Conditions of the Agreement 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, ForeFront Power may (at its sole discretion) provide notice that it is terminating the 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:

(i) ForeFront Power 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, after reasonable investigation and testing that was or should have been conducted, known as of the Effective Date and that (1) could reasonably be expected to materially increase the cost of Installation Work, or (2) would adversely affect the electricity production from the System as designed.

(iii) There is, following the Effective Date, 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 ForeFront Power.

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

(v) ForeFront Power has not received: (1) a release or acknowledgement from any mortgagee of the Premise holding a mortgage against the Premises, if required by ForeFront Power's Financing Party, to establish the priority of its security interest in the System, and (2) such other documentation as may be reasonably requested by ForeFront Power to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii), herein, to ensure that ForeFront Power will have access to the Premises throughout the Term.

(vi) There has been following the Effective Date, a material adverse change in the rights of Purchaser to occupy the Premises or ForeFront Power, due to the unreasonable failure of Purchaser to grant such rights, to construct the System on the Premises.

(vii) Following the Effective Date, 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.

(viii) There has been, following the Effective Date, a material adverse change in Purchaser's credit-worthiness.

(b) If any of the conditions set forth in Section 2.5(a), herein, are unsatisfied, and ForeFront Power wishes to revise the information in the Special Conditions, then ForeFront Power may propose modifications, which shall relate only to the unsatisfied condition, to the Special Conditions for requested acceptance by Purchaser. If Purchaser does not accept such modified Special Conditions, ForeFront Power may terminate this Agreement as provided in Section 2.5(a), herein. If Purchaser accepts such revised Special Conditions, upon approval by the Board of Supervisors, such revised Special Conditions shall be deemed an amendment to the Agreement, and the Agreement shall remain in force and effect upon execution by both Parties.

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. ForeFront Power shall cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. ForeFront Power shall, not later than the Construction Start Date, provide to Purchaser all drawings, construction plans, specifications, and designs, including engineering evaluations of the environmental, and power impact of the System for Purchaser's requested approval. ForeFront Power shall perform the Installation Work at the Premises only 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. 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. 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 ForeFront Power in ForeFront Power 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, ForeFront Power 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) ForeFront Power 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.

(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 ForeFront Power 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 ForeFront Power as Owner and Operator. The System shall be owned by ForeFront Power or ForeFront Power'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 Forefront Power's obligations under the Agreement in writing (except to the extent that the System is being leased back by ForeFront Power pursuant to a sale-leaseback transaction). The System shall be operated and maintained and, as necessary, repaired by ForeFront Power at ForeFront Power's sole cost and expense. However, any repair or maintenance costs incurred by ForeFront

Power as a result of Purchaser's negligence or breach of its obligations as described under Section 7.2, herein, shall be reimbursed to ForeFront Power by Purchaser, with prior advance written notice to Purchaser, so that Purchaser may dispute the claim, if necessary.

4.2 Metering. ForeFront Power 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. ForeFront Power shall timely and periodically provide copies of reports detailing the energy delivered, produced by the System, and consumed at the Premises to Purchaser or shall grant Purchaser access to a program that provides such information.

4.3 System Disruptions. In the event that (a) Purchaser 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 negligent 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, following written notice by ForeFront Power, Purchaser shall (i) pay ForeFront Power for all work reasonably required by ForeFront Power 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 ForeFront Power for any other lost revenue during the Disruption Period during the Disruption Period upon proof by ForeFront Power 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).

## 5. TITLE TO SYSTEM.

5.1 Throughout the duration of the Agreement, ForeFront Power or, subject to Section 4.1, herein, ForeFront Power's Financing Party, shall be the legal and beneficial owner of the System at all times. ForeFront Power shall notify Purchaser in writing of any change in ownership within thirty (30) days of such change, including any transfer of such ownership to ForeFront Power's Financing Party. The System shall remain the personal property of ForeFront Power or, subject to Section 4.1, herein, ForeFront Power's Financing Party, and shall not be deemed a part of, or fixture to, the Premises, and solely for purposes of Article 9 of the Uniform Commercial Code or for purposes of ForeFront Power or Financing Party's retaining System-Based Incentives. 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 for purposes of Article 9 of the Uniform Commercial Code or for purposes of ForeFront Power or Financing Party's retaining System-Based Incentives. 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 ForeFront Power's reasonable request, a disclaimer or release from such lien holder. Subject to the provisions of this Agreement, Purchaser shall file a disclaimer of the System as a fixture of the Premises in the office of County Recorder.

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 ForeFront Power or ForeFront Power'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 ForeFront Power, 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 ForeFront Power 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. ForeFront Power shall send each invoice to Purchaser at 333 W. Pontiac Way, Clovis, CA. 93612 on or about the first day of each month (each, the date that the invoice is postmarked shall be 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.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within forty-five (45) days after the date of mailing of the Invoice.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement either, at the option of the Purchaser, (a) by electronic funds transfer in immediately available funds to the account designated by ForeFront Power from time to time or (b) by check timely delivered to the location designated by ForeFront Power from time to time. All payments that are not paid within fifteen (15) days of their due date (“Past Due Date”) shall bear interest accruing from the Past Due Date, until paid in full at a rate equal to the Stated Rate.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the 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 Past Due Date under such invoice until the date paid.

## 7. GENERAL COVENANTS.

7.1 ForeFront Power’s Covenants. ForeFront Power covenants and agrees to the following:

(a) Notice of Damage or Emergency. ForeFront Power 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.

(b) Governmental Approvals. While providing the Installation Work, Energy Services, and System Operations, ForeFront Power 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 ForeFront Power, and to enable ForeFront Power to perform such obligations.

(c) Health and Safety. ForeFront Power shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy Services, and System Operations, which 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. ForeFront Power 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. ForeFront Power 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, subject to Section 4.1, herein, ownership of the System, ForeFront Power 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 ForeFront Power’s performance or non-performance of its obligations hereunder. If ForeFront Power 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*, ForeFront Power 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.

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

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify ForeFront Power if Purchaser's Director of Internal Services/Chief Information Officer and/or Facilities Services Manager 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 ForeFront Power if Purchaser's Director of Internal Services/Chief Information Officer and/or Facilities Services Manager 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, ForeFront Power shall, at its sole cost, repair the 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 ForeFront Power in writing, shall promptly cause such Lien to be discharged and released of record without cost to ForeFront Power, and shall indemnify ForeFront Power 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 or obtain any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall cooperate with ForeFront Power to obtain such approvals, Governmental Approvals, rebates or other financial incentives in the name of ForeFront Power. Purchaser shall provide to ForeFront Power copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by ForeFront Power or to which ForeFront Power is a party.

(d) Access to Premises, Grant of License.

(i) Purchaser hereby grants to ForeFront Power a commercial license coterminous with the Term containing all the rights necessary for ForeFront Power 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 ForeFront Power and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring; *provided*, with respect to ForeFront Power's access to the Site, such license shall be subject to conditions or limitations for the protection of minor students that are imposed generally on commercial contractors by Purchaser or by Applicable Law, including, but not limited to Purchaser's representative shall be present on any connect/disconnect, and upon approval of such representative. If ForeFront Power's financing structure requires that Purchaser enter into a license agreement directly with Financing Party, ForeFront Power shall enter into such an agreement, which shall be in a form agreed upon by both parties, and which contains substantially the same rights as set forth in this Section 7.2(d).

(ii) Purchaser hereby covenants that (a) ForeFront Power shall have access to the Premises and System during the Term of this Agreement and after termination to remove the System pursuant to the applicable provisions herein, and (b) so long as there is no Event of Default by ForeFront Power that is continuing, and which gives Purchaser the right to exercise its remedies under this Agreement that authorizes Purchaser to do so, Purchaser shall not interfere or handle any ForeFront Power equipment or the System without written authorization from ForeFront Power; *provided*, Purchaser shall at all times have access to and the right to observe the Installation Work or System removal.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain sufficient space at the Premises, at such location determined by Purchaser, 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.

(f) On or before the Effective Date of each Special Conditions, with the exception of the Phase 1 environmental assessment which shall be conducted and delivered by ForeFront Power, Purchaser shall identify and set forth in Section VI of the Special Conditions and unless previously delivered, Purchaser shall, to the extent the same are known to the Director of Internal Services/Chief Information Officer or his/her designee and available, deliver to ForeFront Power 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, starting as of the Effective Date, 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 ForeFront Power from time to time. ForeFront Power agrees to provide copies of any new Environmental Documents within ten (10) days of receipt of same. ForeFront Power hereby agrees to furnish such other documents in ForeFront Power’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 Purchaser from time to time.

(g) Notwithstanding anything to the contrary in the Agreement, Purchaser shall not unreasonably impair or interfere with ForeFront Power’s construction, operation and ownership of the System or occupancy of the Premises. In no event shall ForeFront Power 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.

(j) Purchaser shall indemnify, hold harmless and defend ForeFront Power 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.

(k) ForeFront Power shall indemnify, hold harmless and defend Purchaser 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 Environmental Conditions that occur after the Effective Date which are caused by ForeFront Power, and (ii) any Hazardous Materials released, spilled or deposited at, on above or below the Premises by ForeFront Power.

## 8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in the 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 the Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the 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 the 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 the 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, but expressly excluding the County Board of Supervisors, which are not identified in the Special Conditions.

8.2 Representations of Purchaser. Purchaser represents and warrants to ForeFront Power 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 ForeFront Power’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 Director of ISD/CIO’s knowledge, ISD has identified and disclosed to ForeFront Power in the Special Conditions (i) all Environmental Documents referenced in Section 7.2(f) herein, (ii) all CCRs that could affect the construction and operation of the System, and (iii) all environmental reports, studies, data or other information relating to the use of the Premises by ForeFront Power within the Purchaser’s possession or control, as referenced in Section 7.2(f), herein;

(f) To the best of Purchaser’s knowledge, the Premises is in compliance with Environmental Laws, and Purchaser holds and is in compliance with all Governmental Approvals required for any of Purchaser’s 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 ForeFront Power all material reports and information, as referenced in Section 7.2(f) herein, concerning the presence or release of Hazardous Materials on, in or under the Premises.

(h) Any Financing Party identified in advance and in writing by ForeFront Power to Purchaser shall be an intended third-party beneficiary of this Section 8.2.

8.3 Representations of ForeFront Power. ForeFront Power represents and warrants to Purchaser as of the Effective Date that:

(a) Forefront Power has conducted all due diligence investigations, testing and inquiry with respect to the Premises that it deems necessary or appropriate for entering into this Agreement, and perform its obligations hereunder, and that it is satisfied with the information which Purchaser has identified and disclosed to Forefront Power, as referenced in Section 7.2(f), herein; and

(b) To Forefront Power’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.

8.4 EXCLUSION OF WARRANTIES. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH HEREIN, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND ENERGY SERVICES PROVIDED BY FOREFRONT POWER 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 FOREFRONT POWER.

## 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 ForeFront Power due to ForeFront Power's sale of the Energy Services to Purchaser (other than income taxes imposed upon ForeFront Power). ForeFront Power shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by ForeFront Power 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 ForeFront Power Obligations. Subject to Section 9.1 above, ForeFront Power 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, or any Financing Party, due to its ownership of the System or use of the Premises.

9.3 ForeFront Power Tax Obligations. In accordance with Revenue and Taxation Code § 107.6, in the event it is ever determined that ForeFront Power, and/or ForeFront Power's Financing Party, has a taxable possessory interest as a result of the Agreement, ForeFront Power agrees to pay any property tax which may be levied. In this respect, ForeFront Power understands that ForeFront Power's, and/or ForeFront Power's Financing Party's activities are on property owned by a tax-exempt public agency, that ForeFront Power, and/or ForeFront Power's Financing Party may be subject to property taxation, and that ForeFront Power, and/or ForeFront Power'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. Forefront Power agrees to provide written notice of this Section 9.3 to ForeFront Power's Financing Party prior to ForeFront Power entering into any agreement with ForeFront Power'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 the 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, the following would be considered a "Force Majeure Event" for purposes of this Agreement: (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 (including a Financing 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 ForeFront Power or a Financing Party or as a result of either such party's failure to comply with a collective bargaining agreement); (v) contamination of the Premises unless caused by the acts or omissions of a Party, and (vi) 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 or inaction). A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the 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*, Forefront Power shall not be excused from performing its obligations to deliver Energy Services to Purchaser, and 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.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected ForeFront Power'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 the 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, the 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). Upon any termination of the Agreement pursuant to this Section 10.3, ForeFront Power shall remove the System pursuant to Section 2.4 hereof, absent any purchase of the System by Purchaser pursuant to Section 2.2 hereof.

## 11. DEFAULT.

### 11.1 ForeFront Power Defaults and Purchaser Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to ForeFront Power;
- (ii) ForeFront Power fails to timely 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) ForeFront Power breaches any material representation, covenant or other term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and ForeFront Power fails to so cure, or (B) ForeFront Power fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed, provided that such cure shall in any event be completed within a total of sixty (60) days from the date of Purchaser's written notice of such breach.

(b) Purchaser's Remedies. If a ForeFront Power 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 and further subject to the Exhibit A, Purchaser may upon giving written notice to Forefront Power immediately terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

### 11.2 Purchaser Defaults and ForeFront Power'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 the Agreement if (A) such breach can be cured within thirty (30) days after ForeFront Power'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, provided that such cure shall in any event be completed within a total of sixty (60) days from the date of Provider's written notice of such breach; and

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

(b) ForeFront Power's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, herein, (A) ForeFront Power may, upon giving written notice to Purchaser, immediately terminate the Agreement, or (B) ForeFront Power, upon giving written notice to Purchaser, without terminating the Agreement, (i) shall be entitled to receive from Purchaser any Energy Services Payment due and payable hereunder in Purchaser's then-current fiscal year, and the portion of the Early Termination Fee (as set forth in Column 1 of Schedule 3) allocable only to Purchaser's then-current fiscal year, and (ii) may exercise any other remedy it may have at law or equity or under the Agreement, provided however, (1) any of Forefront Power's rights (including but not limited to any right to enforce any of Purchaser's obligations) and/or remedies to recover from Purchaser any Energy Services Payment, the Early Termination Fee (as set forth in Column 1 of Schedule 3) or any portion thereof, and/or any other amount hereunder shall be without acceleration of any future payment of any Energy Services Payment, the Early Termination Fee (as set forth in Column 1 of Schedule 3) or any portion thereof, and/or of any other amount, by Purchaser before any such payment is due and payable hereunder, and (2) Forefront Power hereby expressly waives any right (including but not limited to any right to enforce any of Purchaser's obligations) and/or remedy at law or in equity to accelerate any payment of any Energy Services Payment, the Early Termination Fee (as set forth in Column 1 of Schedule 3) or any portion thereof, and/or of any other amount, by Purchaser before any such payment is due and payable hereunder in the event of a Purchaser Default, and/or a termination of the Agreement. The Parties agree that "any other amounts" referenced in this Section 11.2(b) do not include the Option Price that Purchaser may pay Forefront Power to purchase the System under Sections 2.2 and 2.3, herein.

11.3 Cross Default. With respect to any Systems that are co-located at the same Premises, if a Party defaults under the Agreement related one such System, 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 all such Agreements, including terminating all such Agreements (but not less than all such Agreements) and, if ForeFront Power terminates the Agreements due to a Purchaser Default, Purchaser shall pay the portion of the Early Termination Fee (as set forth in Column 1 of Schedule 3) allocable only to Purchaser's then-current fiscal year for all such terminated Agreements.

11.4 Purchaser's Constitutional Debt Limitation. Forefront Power's rights (including, but not limited to, the right to enforce any of Purchaser's obligations) and remedies, and Purchaser's obligations under the Agreement, shall not be construed, or applied in any manner that violates Purchaser's debt limitation under California Constitution Article XVI, section 18.

11.5 Removal of System. Upon any termination of the Agreement pursuant to this Article 11, ForeFront Power shall remove the System pursuant to Section 2.4 hereof, absent any purchase of the System by Purchaser pursuant to Section 2.2 hereof. If ForeFront Power 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 ForeFront Power's sole 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 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 the Agreement.

12.2 A Party's maximum liability to the other Party under the 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 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, property loss or damage, or environmental claims, (ii) any obligation of Purchaser to pay Energy Service Payments, the Early Termination Fee or the Option Price, and (iii) any obligation of ForeFront Power to pay for Lost Savings in accordance with the Special Conditions, if applicable.

### 13. ASSIGNMENT.

13.1 Assignment by ForeFront Power. ForeFront Power shall not sell, transfer or assign (collectively, an “Assignment”) the Agreement or any interest therein or obligation thereunder, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; *provided*, Purchaser agrees that ForeFront Power may assign this Agreement without the consent of, but upon prior written notice under Section 13.2, herein, to, the Purchaser to an affiliate of ForeFront Power or any party providing financing for the System. In the event that ForeFront Power 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 and acknowledgments as ForeFront Power may reasonably request from time to time. Any Financing Party identified to Purchaser, upon such prior written notice required under Section 13.2, herein, shall be an intended third-party beneficiary of this Section 13.1. Any Assignment by ForeFront Power without obtaining the prior written consent and release of Purchaser, when such consent is required by this Section 13.1, shall not release ForeFront Power of its obligations hereunder.

13.2 Acknowledgment of Collateral Assignment. In the event that ForeFront Power identifies a secured Financing Party in the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser will acknowledge:

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

(b) That the Financing Party as such collateral assignee shall be entitled to exercise any and all rights set forth herein and in Exhibit A, with respect to ForeFront Power’s interests in this Agreement.

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

Any Financing Party identified to Purchaser under this Section 13.2 before any assignment of the Agreement is made by ForeFront Power under this Section 13.2 shall be an intended third-party beneficiary of this Section 13.2.

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

### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the 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. All notices between Purchaser and ForeFront Power provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three Purchaser business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one Purchaser business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. For all claims arising out of or related to the Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).



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

15. 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 SYSTEM PRIOR TO ITS COMMERCIAL OPERATION DATE, AND EACH PARTY SHALL HAVE THE RIGHT TO PROMPTLY REVIEW, COMMENT UPON, AND APPROVE ANY PUBLICITY MATERIALS OR PRESS RELEASES BY THE OTHER PARTY REGARDING THE SYSTEM PRIOR TO ITS COMMERCIAL OPERATION DATE; *PROVIDED*, NO SUCH PUBLICITY RELEASES (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 FOREFRONT POWER MAY, AT ITS SOLE DISCRETION, TAKE PHOTOGRAPHS OF THE INSTALLATION PROCESS OF THE SYSTEM AND/OR THE COMPLETED SYSTEM, AND FOREFRONT POWER SHALL BE PERMITTED TO USE SUCH IMAGES (REGARDLESS OF MEDIA) IN ITS MARKETING EFFORTS, PROVIDED SUCH IMAGES ARE DE-IDENTIFIED, INCLUDING BUT NOT LIMITED TO USE IN BROCHURES, ADVERTISEMENTS, WEBSITES AND NEWS OUTLET OR PRESS RELEASE ARTICLES. 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 SECTIONS 54950 ET SEQ.), THE CALIFORNIA PUBLIC RECORDS ACT (GOVERNMENT CODE SECTIONS 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.

16. INDEMNITY.

16.1 Indemnity. Subject to Article 12, each Party agrees that it shall indemnify and hold harmless the other Party, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the “Indemnified Parties”) from and against any and all Losses incurred by such Indemnified Parties to the extent arising from or out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the indemnifying Party’s negligence or willful misconduct; *provided*, neither Party shall be required to reimburse or indemnify any Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Indemnified Party. The provisions of this Section 16.1 shall survive termination of this Agreement.

17. INSURANCE.

17.1 Generally. ForeFront Power shall maintain the following insurance coverages in full force and effect throughout the Term through insurance policies: (a) Workers’ Compensation Insurance as may be from time to time required under applicable federal and state law. ForeFront Power hereby waives its rights to recover from Purchaser, its officers, agents, and employees any amounts paid by the policy of worker’s compensation insurance required by this Agreement. ForeFront Power is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but ForeFront Power’s waiver of subrogation under this paragraph is effective whether or not ForeFront Power obtains such an endorsement; (b) Commercial General Liability Insurance with limits of not less than \$4,000,000 general aggregate, \$2,000,000 per occurrence, and annually renewing, occurrence based, and listed as primary coverage to all other collectible insurance; and (c) automobile insurance may be included in the CGL limit, but no less than 1,000,000 per occurrence . Additionally, ForeFront Power shall carry adequate replacement cost property insurance on the System which need not be covered by Purchaser’s property coverage until transfer complete.

17.2 Certificates of Insurance. Each Party shall furnish current certificates evidencing that the insurance required under Section 16.1 is being maintained to include complete coverage documents. Each Party's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

## 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 ForeFront Power 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 the Agreement, including these General Conditions as incorporated by reference, are integral parts of the Agreement and are an express part of the Agreement. In the event of a conflict between the provisions of these General 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 ForeFront Power and Purchaser, and approved by Purchaser's Board of Supervisors.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the Energy Services industry in California 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 ForeFront Power or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 Limited Effect of Waiver. The failure of ForeFront Power or Purchaser to enforce any of the provisions of the 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.

18.6 Survival. The obligations under Section 2.4 (Removal of System), Section 7.1 (ForeFront Power Covenants), Sections 7.2(d), (e), (f), (g) and (j) (Purchaser Covenants), Section 8.4 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Goodwill and Publicity), Article 16 (Indemnity), Article 18 (Miscellaneous), Article 19 (Non-Appropriation), 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.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that the courts of the State of California and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. Venue for any related court actions shall be in Fresno County.

18.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the 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.

18.9 Relation of the Parties. The relationship between ForeFront Power and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. ForeFront Power 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.

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

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

18.12 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.

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

## 19. NON-APPROPRIATION

19.1. General. All payment obligations of Purchaser under the Agreement are subject to appropriation by the Fresno County Board of Supervisors (the "Board") in each Purchaser fiscal year of the Term, pursuant to this Article 19.

19.2. Non-Appropriation Event. It is the present intention and expectation of Purchaser, as of the Effective Date, that the Board, within the limits of Purchaser's available funds and revenues, will make an appropriation of a sufficient amount to fund Purchaser's obligations hereunder during each Purchaser fiscal year of the Term. Purchaser represents and covenants that it will use reasonable good faith efforts to ensure that the Fresno County's Administrative Officer (the "CAO") will take such action as may be necessary to include, or cause to be included, in its annual operating budget funds sufficient to purchase the Energy Services hereunder including requesting the Board to properly budget, appropriate, or otherwise make available funds for the Agreement (including the CAO seeking legislative and other authorizations for use of such funds), and the CAO shall satisfy such conditions in a timely manner, provided however, if the CAO proposes, as part of such annual budget to be presented to the Board, that the Board not budget, appropriate, or otherwise make available funds for the Agreement, for any Purchaser fiscal year of the Term, Purchaser will give Provider thirty (30) days' notice thereof prior to the Board's annual budget hearing. Notwithstanding anything to the contrary in this Agreement, to the extent that the Board, in its discretion, does not budget, appropriate, or otherwise make available funds for the Agreement for any Purchaser fiscal year of the Term (a "Non-Appropriation Event"), Purchaser shall, within thirty (30) days' of any such Non-Appropriation Event, give notice to Provider of any such Non-Appropriation Event (the "Non-Appropriation Notice"). Notwithstanding the occurrence of a Non-Appropriation Event or the delivery of a Non-Appropriation Notice, but subject to Section 19.3, herein, Purchaser will not interrupt or impair the delivery of the Energy Services or jeopardize Provider's sale, transfer or other monetization of Environmental Attributes or System-Based Incentives.

19.3. Provider's Options. Following receipt by Provider of a Non-Appropriation Notice, Provider, in its sole discretion, may (a) continue to operate the System and deliver Energy Services to Purchaser without payment or other obligation by Purchaser therefor with respect to the applicable Purchaser fiscal year, (b) continue to operate the System and deliver Energy Services to a third party or the Local Electric Utility without payment or other obligation

by Purchaser therefor with respect to the applicable Purchaser fiscal year, or (c) upon sixty (60) days' notice to Purchaser, terminate the Agreement and remove the System pursuant to Section 2.4. Under the circumstances of (a) or (b), herein, other than Purchaser not having any payment or other obligation for Energy Services as provided therein, all other obligations of Purchaser and Provider under this Agreement shall remain in full force and effect. For any Purchaser fiscal year of the Term following a Non-Appropriation Event, (i) Provider may not recover any amounts from Purchaser that would have been due hereunder if not for such Non-Appropriation Event and (ii) the provisions of Section 19.2, herein, shall apply. Upon termination of the Agreement under option (c) of this Section 19.3, neither Party shall have any further liability to the other Party, except for liabilities that arose prior to such termination, and except for any liability of Purchaser for any failure to comply with the requirements of this Article 19. Section 2.1(b) of the Agreement related to payment of the Early Termination Fee shall not apply in the event that Provider elects to terminate the Agreement under option (c) of this Section 19.3.

19.4. Provider's Notice to Purchaser. Within thirty (30) days of Provider's receipt of the Non-Appropriation Notice, Provider shall give notice to Purchaser of Provider's election among options (a), (b) and (c) under Section 19.3, herein. If Provider does not provide notice to Purchaser of Provider's election under this Section 19.4 within such period, Provider shall be deemed to have elected option (a) under Section 19.3, herein, provided that, if Purchaser elects or is deemed to have elected option (a) and if a Non-Appropriation Event is continuing, Provider may subsequently change its election at any time upon at least thirty (30) days' prior written notice to Purchaser.

19.5 Removal. If Provider elects option (c) under Section 19.3, herein, Provider shall cause the System to be disconnected and removed from the Premises pursuant to Section 2.4, herein.

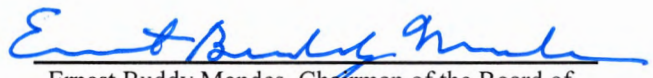
*[Remainder of page intentionally left blank.]*

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.

**FFP BTM SOLAR, LLC**

**COUNTY OF FRESNO**

By: \_\_\_\_\_  
Name: Paul Walker  
Title: Vice President  
Date: January 15, 2020

  
Ernest Buddy Mendes, Chairman of the Board of  
Supervisors of the County of Fresno

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

FOR ACCOUNTING USE ONLY:

By:  \_\_\_\_\_  
Deputy

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

**Exhibit A**  
**of General Conditions**  
**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that ForeFront Power will be receiving financing accommodations from one or more Financing Parties and that ForeFront Power may sell or assign the System or this Agreement and/or may secure ForeFront Power'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 ForeFront Power to a Financing Party, as identified in Section 13.2, herein, of ForeFront Power'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 ForeFront Power, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of ForeFront Power default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with ForeFront Power to cancel, modify or terminate the Agreement without the written consent of the Financing Party.

(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 ForeFront Power, any and all rights and remedies of ForeFront Power under this Agreement in accordance with the terms of this Agreement and only in the event of ForeFront Power'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 ForeFront Power thereunder or cause to be cured any default of ForeFront Power thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of ForeFront Power under this Agreement or (unless the Financing Party has succeeded to ForeFront Power's interests under this Agreement) to perform any act, duty or obligation of ForeFront Power under this Agreement, but Purchaser hereby gives it the option to do so.

iii. Prior to 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 ForeFront Power to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give prompt 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 ForeFront Power 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 due to Forefront Power's default unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by ForeFront Power) 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 ForeFront Power. The Parties respective obligations will otherwise remain in effect during any cure period; *provided*, if such ForeFront Power 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 ForeFront Power'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

(e) ForeFront Power's Duty to Defend Purchaser.

Any dispute between ForeFront Power and any Financing Party as to the existence of a breach of, or default in the performance of, any obligation by ForeFront Power or Financing Party, respectively, under any agreement between them, the extent or nature of such breach or default, or Financing Party's exercise of any right or remedy against ForeFront Power, shall be dealt with and adjusted solely between ForeFront Power and Financing Party; and the Purchaser, including its officers, agents, and employees, shall not be named or joined in any such dispute, or other proceedings to enforce any note or other agreements. Furthermore, ForeFront Power and any Financing Party agree to indemnify, save, hold harmless, and at Purchaser's request, defend Purchaser, its officers, agents, and employees from any and all costs and expenses (including attorneys' fees and costs), damages, liabilities, claims, and losses occurring or resulting to Purchaser in connection with any agreement or breach of any agreement between ForeFront Power and any Financing Party.

**Exhibit B**  
**of General Conditions**  
**Requirements Applicable To The Installation Work**

Section B.1      **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. ForeFront Power 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, ForeFront Power, 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.** ForeFront Power is hereby made subject to the requirements of Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990.

Section B.2      **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"). ForeFront Power 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.3      **Compliance with Labor Code Requirements.** ForeFront Power 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. ForeFront Power, 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 ForeFront Power 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.4 Requirements for Payroll Records. ForeFront Power 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.5 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.6 Permits and Licenses. Without limiting anything set forth in Section B.7 of this Exhibit C, ForeFront Power, 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 County laws and regulations, and other governmental requirements applicable to the System or the Installation Work. ForeFront Power 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. ForeFront Power 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.7 Protection of Minor-Aged Students. ForeFront Power, in conformance with Education Code Section 45125.1, shall require and be responsible for ensuring compliance by each and every person who will be on or at the Premises in connection with the construction, maintenance, operation or other purposes related to the System with all California Department of Justice guidelines and requirements relating to fingerprinting and criminal-history background checks, regardless of whether Section 45125.1 otherwise by its terms would apply to any such activities. In the event Education Code Section 45125.1 is repealed or superseded, ForeFront Power, following receipt of written notice from the Purchaser, shall comply with such successor or other requirements as determined by the Purchaser in its reasonable discretion. The Purchaser, in its discretion, may exempt in writing any person(s) from the foregoing requirements if ForeFront Power makes alternative arrangements for supervision of such person(s) that are acceptable to the Purchaser in its sole discretion.