



**BOARD OF EDUCATION
REVISED REGULAR MEETING AGENDA**

August 8, 2023
6:30 P.M.

*Board of Education Board Room
1300 17th Street, City CENTRE - Bakersfield, CA 93301*

Any materials required by law to be made available to the public prior to a meeting of the Kern County Board of Education can be inspected during normal business hours at the Kern County Superintendent of Schools Office, 1300 17th Street, Seventh Floor, Bakersfield, CA 93301.

An individual who requires disability related accommodations or modifications, including auxiliary aids and service, in order to participate in the board meeting should contact the superintendent's office at (661) 636-4624 (Government Code 54954.2).

This meeting is being held in an in-person format. Members of the public wishing to provide comment to the Board can attend the meeting in person. Correspondence sent by mail or email to kcboe@kern.org before noon on the date of the board meeting on subjects within the Board's jurisdiction will be provided to the Board at the meeting and made available for public inspection. Members of the public may also observe the meeting via livestream at the following link: [\(1\) Kern County Board of Education - YouTube](#).

1.0 General Functions

1.1 Call to order time _____ p.m.

1.2 Pledge of Allegiance to the Flag

1.3 Roll Call	Present	Absent
Ronald G. Froehlich, <i>Area 1</i>	_____	_____
Joe Marcano, <i>Area 2</i>	_____	_____
Mary M. Little, <i>Area 3</i>	_____	_____
Jose Gonzalez, <i>Area 4</i>	_____	_____
Paula Bray, <i>Area 5</i>	_____	_____
Daniel R. Giordano, <i>Area 6</i>	_____	_____
Lori Cisneros, <i>Area 7</i>	_____	_____
 Dr. John G. Mendiburu, <i>Superintendent</i>	 _____	 _____

1.4 Agenda Issues

1.5 Approval of the Minutes from July 11, 2023

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

2.0 Public Comments

The Board of Education appreciates comments from members of the public who have the opportunity to address the Board on agenda items (before the Board's consideration of the item) and on other matters within the Board's jurisdiction.

To move the meeting business along efficiently, individual speakers are allotted up to three minutes each, and the total time for comment on each agenda or other topic within the Board's jurisdiction will be limited to 20 minutes. In exceptional circumstances, the Board President may, with Board consent, reduce or increase the amount of time allowed or public input and/or the time allotted for each speaker, when such adjustment is necessary to ensure full opportunity for public input within the time allotted. Any such adjustment shall be done in an equitable manner, so as to allow a diversity of viewpoints. The President may also ask members of the public with the same viewpoint to select a few individuals to address the Board regarding that viewpoint.

To allow the Board to organize the public comments, persons wishing to speak will need to fill out a form before the board meeting begins, providing a name and the agenda item or other topic within the Board's jurisdiction on which they wish to speak. Items not appearing on the agenda cannot, by law, be the subject of board action.

3.0 Closed Session

3.1 Interdistrict Attendance Appeal Hearing: Case No. 23/24-01 and 23/24-02

Pursuant to the federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, it may be necessary for the Board to adjourn to closed session in order to prevent the disclosure of student records or personally identifiable information unless the student or representative consents to public session.

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

3.2 Conference with Legal Counsel-Existing Litigation

(Subdivision (a) of Government Code section 54956.9) Kern County Court Case number BCV-23-100890.

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

3.3 Conference with Legal Counsel-Anticipated Litigation

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9:1 potential case. A copy of the July 25, 2023 written communication threatening litigation is available for public inspection at the office of the Kern County Superintendent of Schools, 1300 17th Street, Bakersfield, CA 93301, Attn: Gaye Edwards, 661-636-4624.

4.0 Informational Items – No Action Taken

4.1 No Information items

5.0 Action Items

All consent agenda items for the Kern County Board of Education are considered to be routine and will be enacted by one motion unless a board member requests separate action on a specific item. Approval is recommended on all items listed.

5.1 Consent Agenda

5.1.1 Graduation Diplomas

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

5.2 General Business

5.2.1 Presentation, Public Hearing, and Approval of Energy Services Agreement for Solar Panels

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

5.2.2 Adoption of Resolution designating September as School Attendance Awareness Month

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

5.2.3 Discussion and Possible Action Regarding Duration of Website Posting for Minutes

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

5.2.4 Discussion and Possible Action Regarding Process for Filling Board Vacancies

Motion _____ Second _____ Ayes _____ Nays _____ Abstain _____

6.0 Report of County Board of Trustee Members

6.1 Members of the Board will report out on various topics.

7.0 Report of County Superintendent

7.1 The County Superintendent will report out on various topics.

8.0 Agenda Items for the Next Meeting

8.1 Items to be considered for the next agenda.

9.0 Adjournment

9.1 Unless otherwise posted, the next regularly scheduled meeting will be held on September 12, 2023 at 6:30p.m.

9.2 Time of adjournment: _____ p.m.



BOARD OF EDUCATION REGULAR MEETING MINUTES

July 11, 2023
6:30 P.M.

*Board of Education Board Room
1300 17th Street, City CENTRE - Bakersfield, CA 93301*

1.0 General Functions

1.1 Call to order time 6:32 p.m.

1.2 Pledge of Allegiance to the Flag

1.3 Roll Call

Board Members Present: Paula E. Bray, Lori J. Cisneros, Ronald G. Froehlich, Daniel R. Giordano, Jose Gonzalez, Jr., Mary M. Little

Absent: Joseph L. Marcano

Also Present: Dr. John G. Mendiburu, Superintendent, Mr. Christian Shannon, Assistant Superintendent, Mr. Steve Sanders, Chief of Staff

1.4 Agenda Issues

The expulsion appeal hearing for Student B for expulsion from the Southern Kern Unified School District is withdrawn from this board meeting (Exhibit 23-24-01).

1.5 Approval of the Minutes from June 13, 2023

Motion by Ms. Little, seconded by Mr. Giordano, to approve the minutes of June 13, 2023.
Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little.
No vote: None. Abstain: None. Absent: Mr. Marcano.

2.0 Closed Session

2.1 The expulsion appeal was withdrawn from this meeting.

3.0 Public Comments

Ms. Tara Carter requested invoices, bids, for projects funded by the CARES Act and ESSER including estimates for projects, bids, invoices paid, companies paid, anticipated projects. Ms. Carter asked where she can gather information regarding 504 and IEP plans. She stated her concerns that teachers are not following the plans.

Mr. Dennis McLean spoke in support of AB 1314 for parent notification within 72 hours if a student identifies as transgender and stated that schools should concentrate on fundamental learning and not cater to left wing politics.

Mr. Wayne Wong reported we are fortunate to live in this country and we owe a lot to our forefathers. We are seeing the destruction of America and people turning against the Constitution. Mr. Wong stated that he is proud of his children and credits his wife of 35 years for raising

4.0 Informational Items – No Action Taken

4.1 No informational items

5.0 Action Items

5.1 Consent Agenda

Motion by Ms. Bray, seconded by Mr. Gonzalez, to approve the Temporary Teaching Certificates, Substitute Teachers List, and Graduation Diplomas (Exhibit 23-24-02).
Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little.
No vote: None. Abstain: None. Absent: Mr. Marcano.

5.2 General Business

5.2.1 Adoption of Resolution to Purchase Property

A resolution to purchase properties located at 901 and 1001 Tower Way and 1200 Truxtun Ave. was included in the board packet (Exhibit 23-24-03). Motion by Mr. Giordano, seconded by Ms. Bray, to adopt the resolution to authorize the Superintendent to purchase the properties. A roll call vote was taken. Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little. No vote: None. Abstain: None. Absent: Mr. Marcano.

5.2.2 Public Hearing and Adoption of Resolution for Sufficiency of Textbooks and Instructional Materials

This is an annual resolution to confirm sufficient state adopted curriculum and materials in programs operated by KCSOS (Exhibit 23-24-04). Mr. Froehlich opened the hearing at 6:54 p.m. to receive comments from the public regarding this and Dr. Mendiburu answered board member questions at this time. The hearing concluded at 6:56 p.m. Motion by Ms. Bray, seconded by Mr. Giordano, to adopt the resolution. A roll call vote was taken.
Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little.
No vote: None. Abstain: None. Absent: Mr. Marcano.

5.2.3 Approval of accepting surplus items from California Department of Juvenile Justice to our Alternative Education program-*Items include complete set of library books and inoperable golf carts to be used for mechanic education. No cost for programs*

Dr. Mendiburu reported that Board approval is required in order for the items to be accepted and a resolution giving approval is included in the board packet (Exhibit 23-24-05). Ms. Cisneros requested a list of the library books that are included. Motion by Mr. Giordano, seconded by Ms. Bray, to adopt the resolution to accept the items. A roll call vote was taken.
Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little. No vote: None. Abstain: None. Absent: Mr. Marcano.

5.2.4 Approval of Williams Act Uniform Complaint Quarterly Reports

No complaints were filed for the period April 1, 2023 to June 30, 2023 for the Division of Special Education and the Division of Alternative Education (Exhibit 23-24-06). Motion by Mr. Gonzalez, seconded by Ms. Cisneros, to accept and file the reports. Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little. No vote: None. Abstain: None. Absent: Mr. Marcano.

5.2.5 Approval of Kern County School Boards Association Dues

Kern County School Board Association's dues are \$100 annually. Motion by Ms. Bray, seconded by Mr. Gonzalez, to approve payment of the dues. Yes vote: Ms. Bray, Ms. Cisneros, Mr. Froehlich, Mr. Giordano, Mr. Gonzalez, Ms. Little. No vote: None. Abstain: None. Absent: Mr. Marcano.

5.2.6 Discussion and Possible Action of Assembly Bill 1314

Ms. Cisneros reported that she is requesting the Board adopt a policy similar to the Chino Valley School District's policy in support of parental rights. The policy aligns with AB 1314. Ms. Bray reported that she would rather individuals write to their legislatures. Board discussion was held regarding this issue.

6.0 Report of County Board of Trustee Members

Ms. Cisneros reported she will continue to push for parental rights. She observed Panama School District's process to appoint a new trustee and said it was well done as everyone has the chance to present, ask questions, and the board had the opportunity to think about it. Ms. Cisneros also requested that a year's worth of minutes be posted to the web page rather than just one month. She would also like a year's worth of videos as well. Ms. Bray requested that this be added to the August meeting agenda.

Ms. Bray distributed a handout giving information about the American flag stating that it is important to remember that when we pledge allegiance that our county is a living, growing thing that is always changing. She reported that she had the opportunity to meet with students in the community and one of the concerns she heard was about the food served in school. The students collected feedback regarding the desire to improve the food and are working with the administration to make some changes. It was a wonderful conversation.

Ms. Little thanked Becky William from the Teachers Association for attending board meetings and congratulated her on her retirement. Ms. Little attended Mary Barlow's retirement party and it was well done. Ms. Little said her granddaughter has been hired at CALM and she is very excited about it. Ms. Little also viewed Panama School District's process for appointing a new trustee and agreed that it was well done. Ms. Little stated that she does not feel that our Board has a good policy for choosing a new member and she requested that it be put on the next agenda to develop a policy for this. Ms. Little distributed handouts regarding the dangers of AI and growing concerns about it taking over the teacher's role in the classroom.

7.0 Report of County Superintendent

Dr. Mendiburu congratulated Becky Williams on her retirement. Dr. Mendiburu reported that name badges were distributed to board members. He also reported that he will continue to adjust the board agenda to make it easier for board members to read. He also plans to have students from the KCSOS programs give presentations so that board members may see what is being done at sites.

8.0 Agenda Items for the Next Meeting

8.1 Items to be considered for the next agenda

9.0 Adjournment

9.1 The next regularly scheduled meeting will be held on August 8, 2023 at 6:30p.m.

9.2 The meeting adjourned at 7:57 p.m.

**RESOLUTION OF THE
KERN COUNTY BOARD OF EDUCATION
KERN COUNTY, CALIFORNIA**

In the Matter of Energy Savings and
Determining Other Matters in
Connection with Energy Services
Agreement

RESOLUTION NO. _____

RECITALS

WHEREAS, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, the Kern County Superintendent of Schools (“KCSOS”) desires to reduce the rising costs of meeting the energy needs at its facilities; and

WHEREAS, KCSOS proposes to enter into an Energy Services Agreement and General Terms and Condition of Energy Services Agreement (together, the “Energy Services Agreement”) and related contract documents with FFP BTM Solar, LLC (“Provider”) for facilities at KCSOS’s real property sites, pursuant to which Energy Services Agreement Provider will design, construct, and install on Kern County Board of Education (“Board”) property solar photovoltaic facilities and arrange with the local utility for interconnection of the facilities, which will generate energy for the sites on which such facilities are located; and

WHEREAS, Provider has provided KCSOS with analysis showing the financial and other benefits of entering into the Energy Services Agreement, which analysis is attached hereto as Exhibit “A” and made part hereof by this reference; and

WHEREAS, Exhibit A includes data showing that the anticipated cost to KCSOS for the electrical energy provided by the solar photovoltaic facilities will be less than the anticipated cost to KCSOS of electrical energy that would have been consumed by KCSOS in the absence of such measures; and

WHEREAS, Provider was the selected vendor for School Project for Utility Rate Reduction’s (“SPURR”) Renewable Energy Aggregated Procurement (“REAP”) Program, a competitive statewide solar request for proposals (“RFP”) process, and KCSOS adopts the REAP Program’s competitive process as its own; and

WHEREAS, KCSOS proposes to enter into the Energy Services Agreement and related contract documents, each in substantially the form presented at this meeting,

subject to such changes, insertions or omissions as the Superintendent reasonably deems necessary following the Board's adoption of this Resolution; and

WHEREAS, pursuant to Government Code section 4217.12, this Board held a public hearing, public notice of which was given two weeks in advance, to receive public comment; and

WHEREAS, the Energy Services Agreement is in the best interests of KCSOS; and

WHEREAS, KCSOS's proposed approval of the Energy Services Agreement is a "Project" for purposes of the California Environmental Quality Act ("CEQA"); and

WHEREAS, the Guidelines for CEQA, California Code of Regulations Title 14, Chapter 13 ("State CEQA Guidelines"), exempt certain projects from further CEQA evaluation, including the following: (1) projects consisting of the new construction or conversion of small structures ("Class 3 Exemption"; Cal. Code Regs., tit. 14, § 15303); (2) projects consisting of the construction or placement of minor accessory structures to existing facilities ("Class 11 Exemption"; Cal. Code Regs., tit. 14, § 15311); and (3) projects consisting of minor additions to existing schools ("Class 14 Exemption"; Cal. Code Regs., tit. 14, § 15314), and the Project is categorically exempt under one or more of such exemptions; and

WHEREAS, the Project does not involve any of the following and so is eligible for a categorical exemption as described above under State CEQA Guidelines section 15300.2:

- (a) The cumulative impact of successive projects of the same type in the same place, which over time are significant;
- (b) An activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
- (c) A project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway;
- (d) A hazardous waste site which is included on any list compiled pursuant to section 65962.5 of the Government Code; and
- (e) A project which may cause a substantial adverse change in the significance of a historical resource; and

WHEREAS, Public Resources Code, section 21080.35 (added by Stats.2011, c. 469 (S.B.226), § 3), statutorily exempts from CEQA evaluation the installation of a solar energy system, including associated equipment, on the roof of an existing building or at an existing parking lot.

NOW, THEREFORE, based upon the above-referenced recitals, the Board hereby finds, determines and orders as follows:

1. The terms of the Energy Services Agreement and related agreements are in the best interests of KCSOS.
2. In accordance with Government Code section 4217.12, and based on data provided by Exhibit A, the Board finds that the anticipated cost to KCSOS for electrical energy provided by the Energy Services Agreement will be less than the anticipated cost to KCSOS of electrical energy that would have been consumed by KCSOS in the absence of the Energy Services Agreement.
3. The Board hereby approves the Energy Services Agreement in accordance with Government Code section 4217.12.
4. KCSOS's Superintendent or his/her designee is hereby authorized and directed to negotiate any further changes, insertions and omissions to the Energy Services Agreement as reasonably deemed necessary, and thereafter to execute and deliver the Energy Services Agreement following the Board's adoption of this Resolution. KCSOS's Superintendent or his/her designee is further authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and said agreement.
5. The Project hereby found to be exempt from the requirements of CEQA pursuant to the Class 3, Class 11 and Class 14 Exemptions, as described above.
6. The Project is hereby found to be exempt from the requirements of CEQA pursuant to Public Resources Code, section 21080.35 (added by Stats.2011, c. 469 (S.B.226), § 3), as described above.
7. District staff are hereby authorized to file and process a Notice of CEQA Exemption for the Project in accordance with CEQA and the State CEQA Guidelines, and the findings set forth in this resolution.

THE FOREGOING RESOLUTION was adopted at a regular meeting of the Kern County Board of Education held on August 8, 2023, by the following vote:

AYES:
NOES:
ABSENT:

DATED: _____

President, Ronald G. Froehlich
Kern County Board of Education

CERTIFICATION

I, _____, Clerk to the Board of Trustees of the Kern County Board of Education, certify that the foregoing Resolution was regularly introduced, passed, and adopted by the Board of Trustees at its meeting held on August 8, 2023

DATED: _____

Clerk, Board of Trustees
Kern County Board of Education

ENERGY SERVICES AGREEMENT – SOLAR

Kern County Superintendent of Schools

This Energy Services Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2023 (or, if later, the latest date of a Party’s execution and delivery to the other Party of this Agreement, the “Effective Date”), between FFP BTM SOLAR, LLC, a Delaware limited liability company (“Provider”), and the Kern County Superintendent of Schools, a California Superintendent of Schools (“Purchaser”; and, together with Provider, each, a “Party” and together, the “Parties”).

RECITALS

- A. Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Energy Services (as hereafter defined), and Provider is willing to have the Installation Work performed by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed.
- B. Provider is in the business of designing, constructing, owning, financing and operating solar photovoltaic systems for the purpose of selling power generated by the systems to its purchasers.
- C. California Government Code sections 4217.10 et seq. authorizes a public entity to enter into energy service contracts, facility financing contracts, and related agreements to implement the State’s conservation and alternative energy supply source policy.
- D. Purchaser’s governing body has made those findings required by Government Code section 4217.12 that the anticipated cost to the Purchaser for Energy Services provided by the System under this Agreement is expected to be less than the anticipated marginal cost to the Purchaser of electrical energy that would have been consumed by Purchaser in the absence of its purchase of the Energy Services.
- E. Provider and Purchaser acknowledged those certain General Terms and Conditions of Energy Services Agreement between FFP BTM Solar, LLC and Purchaser dated as of _____, 2023 (“General Terms and Conditions”), which are incorporated by reference as set forth herein; and
- F. The terms and conditions of this Energy Services Agreement, excluding the General Terms and Conditions incorporated herein, constitute the “Special Conditions” referred to in the General Terms and Conditions.

In consideration of the mutual promises set forth below, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. Incorporation of General Terms and Conditions. The General Terms and Conditions are incorporated herein as if set forth in their entirety.
- 2. Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for Twenty (20) years from the Commercial Operation Date (as defined in the General Terms and Conditions), unless and until extended or terminated earlier pursuant to the provisions of this Agreement (the “Initial Term”). After the Initial Term, this Agreement may be renewed for an additional five (5) year term (a “Renewal Term”). At least one hundred and eighty (180) days, but no more than three hundred and sixty-five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term. Purchaser shall have sixty (60) days to agree to the continuation of this Agreement for the Renewal Term. Absent agreement to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the “Term”.
- 3. Schedules. The following Schedules hereto are hereby incorporated into this Agreement:

Schedule 1	Description of the Premises, System, and Subsidy
Schedule 2	Energy Services Payment
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information
Schedule 6	Reserved
Schedule 7	Specific Items for Scope of Work
Schedule 8	Acknowledgment of Upgrades, Schedule, or Scope Change
Schedule 9	Site Description

4. Privacy. Purchaser acknowledges that the System may collect certain information about Purchaser's electricity usage and the System performance. Such information may be stored and processed in the United States or any other country in which Provider or its third-party service providers, or its or their respective affiliates, subsidiaries, or service providers, maintain facilities. Purchaser consents to any such transfer of information outside of Purchaser's country.

5. Milestone Dates.

5.1 The Guaranteed Construction Start Date is 365 days from the Effective Date.

5.2 The Guaranteed Commercial Operation Date is 180 days from Guaranteed Construction Start Date.

6. Purchase Requirement: Energy Services Payment. "Energy Services" means the supply of electrical energy output from the System and any associated reductions in the Purchaser's peak demand from its Local Electric Utility. Purchaser agrees to purchase one hundred percent (100%) of the Energy Services generated by the System and made available by Provider to Purchaser during each relevant month of the Term, up to a maximum of one hundred and ten percent (110%) of Estimated Annual Production, as defined in Schedule 4. While the Energy Services are calculated and billed on a per kWh basis as set forth in Schedule 2 of these Special Conditions, they represent a package of services and benefits.

7. Net Energy Metering.

7.1 The Parties acknowledge that the pricing assumes Net Energy Metering (NEM) 2.0 for the Initial Term. If, prior to the Commercial Operation Date, Provider fails to keep such interconnection applications in good standing such that the System would not be eligible for NEM 2.0, Purchaser may terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee. The foregoing shall not apply to the extent Provider's failure is caused by an act or omission by Purchaser in connection with Provider's submittal of interconnection applications.

Provided, however, that in the event of a change in Applicable Law that occurs after the Commercial Operation Date and results in a loss of NEM 2.0 grandfathering, Purchaser shall have no such termination right. Provided further that Purchaser shall ensure any correspondence with the Local Electric Utility regarding the tariff and changes to the interconnection agreement are promptly shared with Provider.

8. Estimated Annual Production. The annual estimate of electricity generated by the system for each year of the initial term is set as forth in Schedule 4 of the Special Conditions ("Estimated Annual Production"). Within sixty (60) days of each annual anniversary of the Commercial Operation Date, Provider will provide a statement to Purchaser that shows the actual annual kWh production from the System for the Term Year, the Estimated Annual Production, and the Minimum Guaranteed Output (defined below).

9. Minimum Guaranteed Output. If the System fails to generate at least ninety-five percent (95%) of the Estimated Annual Production for a full Term Year (such amount, the "Minimum Guaranteed Output"), other than as a result of the acts or omissions of Purchaser or the Local Electric Utility (including a Disruption Period), or an Event of Force Majeure, Provider shall credit Purchaser an amount equal to Purchaser's Lost

Savings on the next invoice or invoices during the following Term Year. The formula for calculating Lost Savings for the applicable Term Year is as follows:

$$\text{Lost Savings} = (\text{MGO} * \text{WPR} - \text{AE}) \times \text{RV}$$

MGO = Minimum Guaranteed Output, as measured in total kWh, for the System for the applicable Term Year.

WPR = Weather Performance Ratio, measured as the ratio of the actual insolation over typical (Pro-forma) insolation. Such a Weather Performance Ratio shall only apply if the ratio is less than 1.00.

AE = Actual Electricity, as measured in total kWh, delivered by the System for the Term Year plus the estimated lost energy production during a Disruption Period.

$$\text{RV} = (\text{ATP} - \text{kWh Rate})$$

ATP = Average tariff price, measured in \$/kWh, for the Term Year paid by Purchaser with respect to the Premises. This price is determined by dividing the total cost for delivered electricity, including all charges associated with such electricity howsoever named, including, without limitation, charges for distribution, transmission, demand, and systems benefits, paid to the Local Electric Utility during the applicable Term Year by the total amount of delivered electricity by the electric utility during such Term Year.

kWh Rate = the kWh Rate in effect for the applicable Term Year(s), measured in \$/kWh.

If the RV is zero or less, then no Lost Savings payment is due to Purchaser. Any Lost Savings payment shall occur no later than sixty (60) days after the end of the Term Year during which such Lost Savings occurred.

10. Allowed Disruption Time. Notwithstanding the provisions in Section 4.3 of the General Terms and Conditions to the contrary, during years 4 through 20 (but not years 1 through 3) of the Term, Purchaser shall be afforded a one-time allocation of fifteen (15) days which may be used consecutively or in separate periods of at least twenty-four (24) hours each ("Allowed Disruption Time") during which the System shall be rendered non-operational. Purchaser shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Purchaser be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes, and Provider shall be credited for the estimated lost production the System would have produced during such Allowed Disruption Time toward satisfaction of its Minimum Guaranteed Output, as set forth in Section 8 of the Special Conditions, such estimated lost production to be calculated in the same manner as set forth in Section 4.3 of the General Conditions.

11. Distribution Upgrades, Scope, and Schedule Changes.

- 11.1 For any distribution upgrades required or changes to the scope of Installation Work made pursuant to Schedule 2 of the Special Conditions, the Parties may execute an acknowledgment in the form attached hereto as Schedule 8 detailing (i) the description of the distribution upgrades or change in scope of the Installation Work (ii) the amount of the adjustment in the kWh Rate and Early Termination Fee that corresponds to such costs, if any (iii) changes to the Estimated Annual Production in Schedule IV if any, and (iv) any change to the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date resulting from such upgrades or scope changes;

- 11.2 For any day-for-day extensions made pursuant to Section 2.2(b) of the General Conditions, the Parties may execute an acknowledgment in the form attached hereto as Schedule 8 detailing (i) the circumstances that warrant such day-for-day extension and (ii) the updated Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date.

11.3 For any extensions that are not made pursuant to Section 2.2(b) of the General Conditions, Provider may request extensions to the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date to the extent that Provider can demonstrate to Purchaser that Provider is seeking a such extension for good cause. Purchaser in its sole discretion may approve any such extension(s) by executing an acknowledgment in the form attached hereto as Schedule 8 on which Provider details (i) the circumstances for which Provider deems good cause for such extension(s), (ii) the actions that Provider is taking to complete the System on a schedule agreeable to the Purchaser and (iii) the updated Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date.

For the avoidance of doubt, Purchaser designates Jonathan Medina or the acting Assistant Superintendent of Fiscal Services as authorized to execute the acknowledgment form attached hereto as Schedule 8 provided the terms of such acknowledgment comply with this Section 11.

- 12. Sunlight Access. Purchaser will take all reasonable actions as necessary to prevent other buildings, structures, or flora from overshadowing or otherwise blocking access of sunlight to the System.
- 13. Use of System. Purchaser will not use electrical energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

PROVIDER:
FFP BTM SOLAR, LLC

PURCHASER:
Kern County Superintendent of Schools

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

SCHEDULES

V. Schedule 1 – Description of the Premises, System and Subsidy

V. <u>Premises</u>	705 S Union Ave, Bakersfield, CA 93307
Site diagram attached:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
B. <u>Description of Solar System</u>	Behind-the-Meter
Solar System Size:	939.6 kW (DC) (this is an estimate (and not a guarantee) of the System size; the Provider may update the System Size prior to the Commercial Operation Date, provided that Purchaser’s consent will be required in the event that System Size changes more than five percent (5%) of the size specified herein.)
C. <u>Anticipated Subsidy or Rebate</u>	N/A

II. Schedule 2 – Energy Services Payment

Purchaser shall pay to Provider a monthly payment (the “Energy Services Payment”) for the Energy Services provided by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate.

The “Actual Monthly Production” means the amount of energy recorded by the Provider’s metering equipment during each calendar month of the Term.

The kWh Rate with respect to the System under this Agreement shall be in accordance with the following schedule:

PPA Rate Table

Term Year	kWh Rate (\$/kWh)	Term Year	\$/kWh Rate (\$/kWh)
1	\$0.1800	11	\$0.1800
2	\$0.1800	12	\$0.1800
3	\$0.1800	13	\$0.1800
4	\$0.1800	14	\$0.1800
5	\$0.1800	15	\$0.1800
6	\$0.1800	16	\$0.1800
7	\$0.1800	17	\$0.1800
8	\$0.1800	18	\$0.1800
9	\$0.1800	19	\$0.1800
10	\$0.1800	20	\$0.1800

The kWh Rate was priced based upon a base Federal Investment Tax Credit of thirty (30%) of eligible costs of the System. In the event that Purchaser is able to secure additional Federal Investment Tax Credits for the System beyond the thirty (30%) credit, the kWh Rate under this Agreement shall be adjusted in accordance with following:

- a. Additional 10% Federal Investment Tax Credit: \$0.1525/kWh for Years 1-20
- b. Additional 20% Federal Investment Tax Credit: \$0.1250/kWh for Years 1-20

The values in Schedule 3 will be similarly adjusted in association any with adjustment to the kWh rate in this Schedule 2.A

Scope Changes (ITC Eligible). If changes in project scope occur that are eligible for the Federal Investment Tax Credit (including but not limited to adverse geotechnical conditions or the inclusion of spare conduit) and the costs directly related to such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within thirty (30) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all the reasonably documented scope change costs, and the kWh rate as stated in Table 1 will remain unchanged.
- b. For every \$0.01 per watt DC of such costs, the kWh rate in Table 1 will increase by \$0.00045 per kWh.

Scope Changes (Non-ITC Eligible). If changes in project scope occur that are not eligible for the Federal Investment Tax Credit (including but not limited to ADA compliance costs not related to System configuration or construction) and the costs directly related to such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within thirty (30) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will pay the entire amount of such associated costs, and the kWh rate as stated in the PPA Rate Table will remain unchanged.
- b. For every \$0.01 per watt DC of such associated costs, the kWh rate in the PPA Rate Table will increase by \$0.00060 per kWh.

The following shall apply to any of the scenarios of Sections 1 through 3, above. The kWh rate shall not exceed the maximum total increase of \$0.0474. If the aggregate of costs set forth above for which Purchaser has elected to pay via increased kWh Rate exceeds the maximum total kWh Rate increase of \$0.0474, the Provider has the option to absorb such costs with no increases above the maximum kWh Rate increase or to terminate this Agreement and to remove the System pursuant to Section 2.4 of the General Conditions.

The values in Schedule 3 will be similarly adjusted in association any with adjustment to the kWh rate in this Schedule 2.

III. Schedule 3 – Early Termination Fee

The Early Termination Fee with respect to the System under this Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91st day following: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)
1*	\$5.53		--
2	\$4.27		--
3	\$4.01		--
4	\$3.85		--
5	\$3.71		--
6	\$3.60		
7	\$3.53	5 th Anniversary	\$3.10
8	\$3.49	6 th Anniversary	\$3.03
9	\$3.45	7 th Anniversary	\$2.99
10	\$3.41	8 th Anniversary	\$2.95
11	\$3.37	9 th Anniversary	\$2.91
12	\$3.33	10 th Anniversary	\$2.87
13	\$3.29	11 th Anniversary	\$2.83
14	\$3.25	12 th Anniversary	\$2.79
15	\$3.21	13 th Anniversary	\$2.75
16	\$3.17	14 th Anniversary	\$2.71
17	\$3.12	15 th Anniversary	\$2.67
18	\$3.08	16 th Anniversary	\$2.62
19	\$3.03	17 th Anniversary	\$2.58
20	\$2.98	18 th Anniversary	\$2.53
		19 th Anniversary	\$2.48

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

*Includes Early Termination prior to the Commercial Operation Date.

IV. Schedule 4 – Estimated Annual Production

Estimated Annual Production commencing on the Commercial Operation Date with respect to the System under this Agreement shall be as follows:

Term Year	Estimated Production (kWh)	Term Year	Estimated Production (kWh)
1	1,403,514	11	1,334,896
2	1,396,496	12	1,328,222
3	1,389,514	13	1,321,581
4	1,382,566	14	1,314,973
5	1,375,654	15	1,308,398
6	1,368,775	16	1,301,856
7	1,361,931	17	1,295,347
8	1,355,122	18	1,288,870
9	1,348,346	19	1,282,426
10	1,341,604	20	1,276,014

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System assuming the System size indicated in Schedule 1 and based on initial System designs. The provider may deliver to Purchaser an updated table on or about the Commercial Operation Date based on the actual System size and design.

V. **Schedule 5 – Notice Information**

Purchaser:

Assistant Superintendent of Fiscal Services
Kern County Superintendent of Schools
1300 17th St
Bakersfield, CA 93301

With a copy to

Attn: Business and Construction Department
Schools Legal Service
P.O. Box 2445
Bakersfield, 93303

Provider:

FFP BTM Solar, LLC
c/o Forefront Power, LLC
Attn: Director, Energy Services
100 Montgomery St., Suite 725
San Francisco, CA 94104

With a copy to

FFP BTM Solar, LLC
c/o Forefront Power, LLC
Attn: Legal Department
100 Montgomery St., Suite 725
San Francisco, CA 94104
Email: FPLegal@forefrontpower.com

Financing Party:

[To be provided by Provider when known]

VI. **Schedule 6 – Reserved**

VII. **Schedule 7 – Specific Items for Scope of Work**

1. Provider Responsibilities:

- 1.1. All System structures shall be permitted through the AHJ as carports or shade structures, as applicable. Provider shall cause the AHJ permits to be issued on behalf of the project.
- 1.2. Solar canopy arrays will have a minimum overhead clearance height of 15'-0".
- 1.3. Provider shall be responsible for all tree trimming and tree removal to facilitate the installation of the Systems. Purchaser shall acknowledge and approve the removal of trees identified by Provider, to install the system and such approval shall not be unreasonably withheld. Irrigation re-routing shall not be the responsibility of the Provider.
- 1.4. Provider assumes that the Premise is not subject to ADA requirements. If ADA upgrades are required, the Provider will work with Purchaser in good faith to determine a mutually acceptable solution for Purchaser to pay the costs associated with such upgrades, including potentially an increase in the kWh rate in Schedule 2. Provider intends to interconnect the System to Purchaser-owned 480 V service conductors at a mutually agreeable location. Provider assumes that the existing conductors and service equipment are sufficiently capable of accepting the additional electrical load of the System. Provider shall not bear responsibility for any required upgrades to the existing electrical system.

- 1.5. Provider shall be responsible for all fees associated with the interconnection application, except that Provider shall not be responsible for transmission, distribution, or telemetry upgrades determined necessary by the Local Electric Utility.
 - 1.6. Provider assumes free, unobstructed native soil, capable of providing structural support to the PV system. Provider shall not be responsible for such additional expenses related to underground conditions that are rocky, sandy, contaminated, contain groundwater, result in caving, or otherwise have problematic construction limitations. Additional expenses related to these conditions include but are not limited to, hard rock drilling, de-watering, installation of casings, spread footings, importing of backfill, or other abnormal installation methods. Provider shall work with Purchaser in good faith to determine a mutually acceptable solution for Purchaser to pay such additional costs, including potentially an increase in the kWh rate in Schedule 2.
 - 1.7. Provider agrees to construct the System in no more than 1 construction phase.
 - 1.8. Provider shall be responsible for verifying and understanding what equipment is required by code and local AHJ, related to the installation of electrical equipment above and in the vicinity of existing Compressed Natural Gas (CNG) refueling stations. Provider currently assumes this is limited to segregating electrical equipment via sealed metal canopy decking and penetrations, as well as “explosion-proof” conduit connectors. Should additional measures be required, Provider shall work with Purchaser in good faith to determine a mutually acceptable solution for Purchaser to pay such additional costs, including potentially an increase in the kWh rate in Schedule 2.
2. Purchaser Responsibilities:
- 2.1. Purchaser shall be responsible for any irrigation rerouting.
 - 2.2. Purchaser shall be responsible for upgrades to existing CNG refueling equipment as required by the AHJ.

VIII. Schedule 8 – Acknowledgment of Upgrades, Schedule or Scope Change

Upgrades, Scope, and/or Schedule Change Acknowledgment

This Acknowledgment is made in accordance with Section 10 of the Special Conditions, as defined in that Energy Service Agreement – Solar, between the Kern County Superintendent of Schools (“Purchaser”) and FFP BTM Solar, LLC (“Provider”), dated [_____, 2023 (the “Agreement”). Upon execution by both Purchaser and Provider, this Acknowledgment shall be effective as of [INSERT DATE] (the “Acknowledgment Effective Date”).

1. Type of Change:

- Distribution Upgrades
- Scope Changes (ITC Eligible)
- Scope Changes (Non-ITC Eligible)
- Day-for-Day Extension
- Extension for Good Cause

2. Description of Change

[INSERT DESCRIPTION AND IF PROVIDER SEEKING EXTENSION FOR GOOD CAUSE, PROVIDER TO DETAIL CIRCUMSTANCES AND ACTIONS PROVIDER IS TAKING TO COMPLETE SYSTEM ON AGREED UPON SCHEDULE]

3. kWh Rate and Early Termination Fee [IF NO IMPACT TO RATE OR ETF THEN DELETE]

[INSERT UPDATED KWH RATE AND EARLY TERMINATION FEE TABLE]

4. Estimated Annual Production [IF NO IMPACT TO ESTIMATED ANNUAL PRODUCTION, THEN DELETE]

[INSERT UPDATED SCHEDULE 4 ESTIMATED ANNUAL PRODUCTION TABLE]

5. Updated Guaranteed Construction Start Date and Guaranteed Commercial Operation Date [IF NO IMPACT TO CLIFF DATES, THEN DELETE]

The Parties hereby agree that the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date as defined in the Agreement are updated as follows:

Guaranteed Construction Start Date: [_____]

Guaranteed Commercial Operation Date: [_____]

The Parties hereby acknowledge and confirm the terms set forth herein as of the Acknowledgment Effective Date.

Kern County Superintendent of Schools

FFP BTM Solar, LLC

By: _____

By: _____

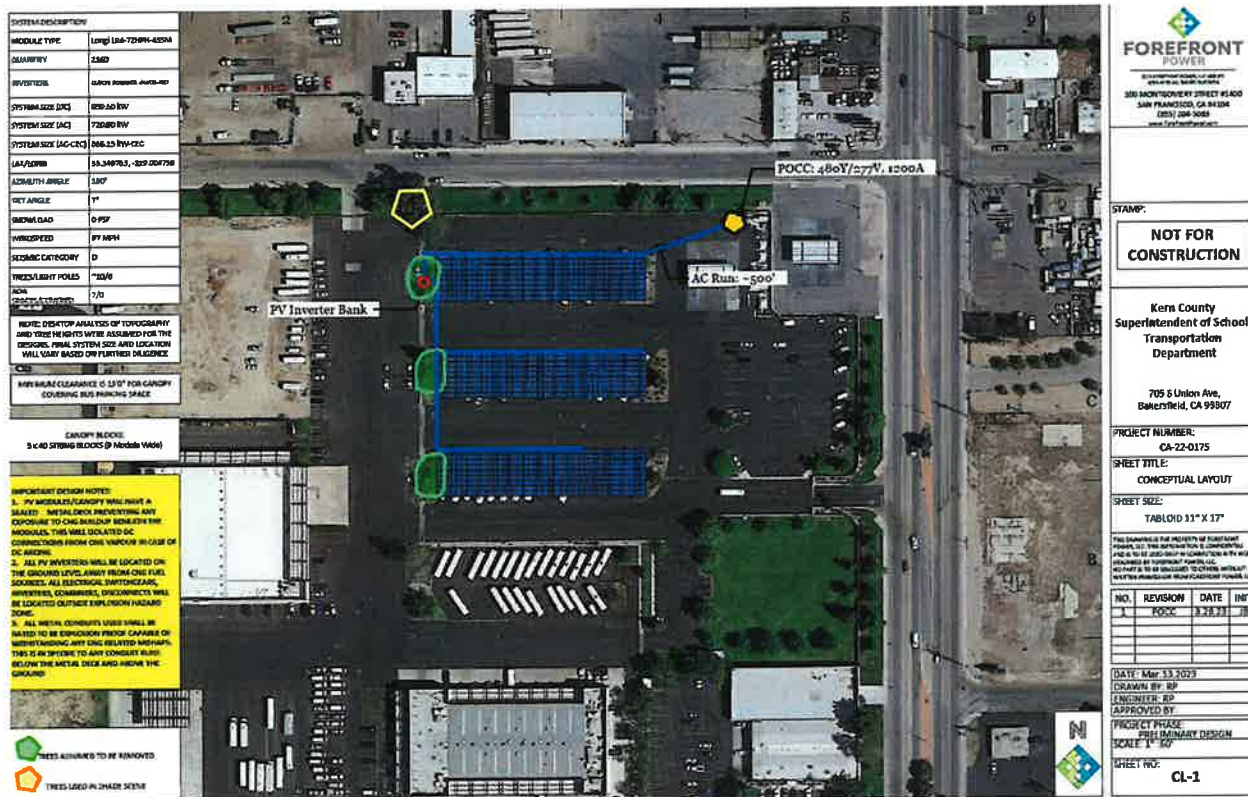
Name: _____

Name: _____

Title: _____

Title: _____

IX. Schedule 9 – Site Description



CONFIDENTIAL AND PROPRIETARY

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

These General Terms and Conditions of Energy Services Agreement are dated as of the ____ day of _____, 2023, and are witnessed and acknowledged by FFP BTM SOLAR, LLC, a Delaware limited liability company ("ForeFront Power") and the Kern County Superintendent of Schools, a California Superintendent of Schools ("Purchaser"), as evidenced by their signature on the last page of this document. These General Terms and Conditions are intended to be incorporated by reference into Energy Services Agreements that may be entered into between ForeFront Power and Purchaser or between their respective Affiliates. These General Terms and Conditions shall have no binding effect upon ForeFront Power or Purchaser, respectively, except to the extent Purchaser or ForeFront Power (or an Affiliate thereof) becomes a party to an Energy Services Agreement that incorporates these General Terms and Conditions.

1. DEFINITIONS.

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

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

"Agreement" means the Energy Services Agreement.

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

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

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

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

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

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

“Confidential Information” has the meaning set forth in Section 15.1.

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

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

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

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

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

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

“Energy Services” has the meaning set forth in the Special Conditions.

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

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

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

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

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

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

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

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Local Electric Utility” means the local electric distribution 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(i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“WREGIS” means the Western Renewable Energy Generation Information System.

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

2. TERM AND TERMINATION.

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

2.2 Early Termination.

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

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

(c) Either Party may terminate this Agreement as described in Section 11 of this Agreement.

2.3 Purchase Option.

(i) On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the “Option Price”) equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to

Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price, and provide all calculations and assumptions supporting said Option Price to Purchaser. Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.3(ii)), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previously written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under this Agreement. Upon execution of the documents and payment of the Option Price, in each case, as described in the preceding sentence, this Agreement shall terminate automatically. Payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of or does not timely confirm the purchase option, the provisions of this Agreement shall be applicable as if Purchaser had not exercised any option to purchase the System.

(ii) Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3(i) is equal to the Fair Market Value (as determined and demonstrated by supporting documentation provided by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the Energy Services industry. Such appraiser shall have expertise and experience in valuing photovoltaic systems, resale markets for such systems, and related environmental attributes, and shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error; however, if the Purchaser in good faith disputes the valuation made by the appraiser, Purchaser shall have the right to retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal to or greater than the value provided by Provider pursuant to Section 2.3(i); otherwise, the Parties shall equally share the such cost.

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

2.5 Conditions Prior to the Commercial Operation Date.

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

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

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

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

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

(v) Provider has not received: (1) a release or acknowledgment from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (3) such other documentation as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term.(vi) There has been a material adverse change in the rights of the Purchaser to occupy the Premises or Provider to construct the System on the Premises.

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

(ix) There has been a material adverse change in Purchaser's creditworthiness.

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

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

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

3.1 Installation Work. The provider will cause the System (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) to be designed, engineered, installed, and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. At its request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System. Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

3.2 Approvals; Permits. Purchaser shall assist Provider in obtaining all necessary consents, approvals, and permits required to perform Purchaser's obligations under this Agreement, including but not limited to those related to the Local Electric Utility, any Governmental Approval, and any consents, waivers, approvals, or releases required pursuant to any applicable contract or CCR.

3.3 System Acceptance Testing.

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

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

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; *provided*, any repair or maintenance costs incurred by Provider as a result of Purchaser negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

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

4.2.1 Meter Testing.

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

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

4.2.2 Cost of Meter Repair.

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

(b) If a meter is found to be inaccurate by more than two percent (2%), invoices for the prior six (6) months or from the last date such meter was registering accurately, whichever period is less, shall be adjusted to reconcile the discrepancy and payment for the amount of the adjustment issued by the appropriate party within 45 days, except that Purchaser shall not be obligated to pay interest on any amount found to be due because a meter was operating outside of its allowable calibration (+/- 2%).

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

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

5. TITLE TO SYSTEM.

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

5.2 Environmental Attributes And System-Based Incentives. Purchaser's purchase of Energy Services includes Environmental Attributes but does not include System-based incentives. System-based Incentives shall be owned by Provider or Provider's financing party for the duration of the System's operating life. Purchaser disclaims any right to System-based Incentives based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.2. During the Term, the Provider shall establish and maintain a WREGIS sub-account to register and track renewable energy certificates (RECs) associated with generation produced by the System. Unless Purchaser prefers a different sub-account designation, RECs transferred into the WREGIS sub-account will be tagged by Provider as retired on behalf of the Purchaser. The provider will provide Purchaser read-only access to the WREGIS sub-account and provide an annual report to Purchaser on the status of the RECs. Purchaser understands that if RECs are retired they cannot be used for any other purpose or 'un-retired'

6. PRICE AND PAYMENT.

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

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

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

6.4 Method of Payment. Purchaser shall make all payments under this Agreement either (a) by electronic funds transfer in immediately available funds to the account designated by Provider from time to time or (b) by check timely delivered to the location designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due 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 this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

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

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

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

(c) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards, and criteria reasonably accepted or followed by a majority of System integrators in the United States.

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

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

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

any Hazardous Materials, or any deposit, spill, or release of any Hazardous Materials at, on, above, below or near the Premises.

(g) Payment and Performance Bond. Before Construction Start Date, Provider shall provide to Purchaser a payment bond and performance bond in substantially the form attached hereto as Exhibits D and E. The principal amount shall be based on the expected total construction cost of the System. Such bonds shall remain in place until at least three (3) months following the Commercial Operation Date. The form and content of the Performance Bond and the Payment Bond shall be as set forth in Exhibits D and E to these General Terms and Conditions. The Performance Bond and Payment Bond shall be issued by a California Admitted Surety Insurer that is AM Best rated A/VII or higher.

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

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

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

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

(c) Consents and Approvals. To the extent that only Purchaser is authorized to request, obtain, or issue any necessary approvals, Governmental Approvals, rebates, or other financial incentives, Purchaser shall cooperate with Provider to obtain or issue such approvals, Governmental Approvals, rebates, or other financial incentives in the name of Provider. Purchaser shall provide to Provider copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by Provider or to which Provider is a party.

(d) Access to Premises. Grant of License.

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

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

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

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

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

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

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

8. REPRESENTATIONS & WARRANTIES.

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

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

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

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

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

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

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

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

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

(d) To 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 Purchaser's knowledge, Purchaser has identified and disclosed to Provider in the Special Conditions (i) all Environmental Documents in Purchaser's possession or control, (ii) all CCRs, Governmental Approvals, or other restrictions imposed under Applicable Laws with respect to the use of the Premises that could affect the construction and operation of the System within Purchaser's possession or control, and (iii) all environmental reports, studies, data or other information relating to the use of the Premises by Provider within the Purchaser's possession or control;

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

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

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

8.3 EXCLUSION OF WARRANTIES. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH HEREIN, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND ENERGY SERVICES PROVIDED BY THE PROVIDER TO THE PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-

IS WHERE-IS.” NO OTHER WARRANTY TO THE PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED, OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE ENERGY SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

9. TAXES AND GOVERNMENTAL FEES.

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

9.2 Provider Obligations. Subject to Section 9.1 above, the Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property, or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

10. FORCE MAJEURE.

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

10.2 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; *provided*, the Party claiming relief under this Article 10 shall as soon as practicable after becoming aware of the circumstances constituting Force Majeure (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; *provided*, Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Energy Services delivered to Purchaser prior to the Force Majeure Event performance interruption. Subject to Section 10.3 below, the Parties agree that to the extent permitted by Applicable Law, the Term of this Agreement shall extend on a day-for-day basis for every day in which the occurrence of a Force Majeure Event has affected either Party’s performance of its obligations hereunder.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider’s performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate this Agreement upon ninety (90) days prior written notice to the other Party. If at the end of such ninety (90) day period, such Force Majeure Event shall

still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination, including but not limited to Provider's obligations to remove the System and restore the Premises as set forth herein), and Purchaser shall have no obligation to pay the Early Termination Fee.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

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

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

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

11.2 Purchaser Defaults and Provider's Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material representation, covenant, or other terms of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, such longer cure period not to exceed ninety (90) days; and
- (iii) Purchaser fails to pay Provider any undisputed amount due Provider under this Agreement within thirty (30) days from receipt of notice from Provider of the such past due amount.

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

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

11.4 Removal of System. Upon any termination of this Agreement pursuant to this Article 11 and payment of the Early Termination Fee (if applicable), Provider will remove the System pursuant to Section 2.4 hereof.

12. LIMITATIONS OF LIABILITY.

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

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

13. ASSIGNMENT.

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

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

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

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

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

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

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

14. NOTICES.

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

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

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

15. CONFIDENTIALITY.

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

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

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

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; *provided*, no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites, and news outlet or press release articles. The images shall not include any identifying information without Purchaser's permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city, and state.

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

16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Article 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its governing board, and its permitted successors and assigns, and their respective directors, officers, members, shareholders, and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by Purchaser Indemnified Parties to the extent arising from or out of the following: any claim for or arising 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 Provider's negligence or willful misconduct. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser's Indemnity. Subject to Article 12 and to the extent permitted by Applicable Law, Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns, and their respective directors, officers, members, shareholders, and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by Provider Indemnified Parties to the extent arising from or out of any claim for or arising 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 Purchaser's negligence or willful misconduct. Purchaser shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

17. INSURANCE.

17.1 Generally. Purchaser and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) automobile insurance with commercially reasonable coverages and limits. Additionally, the Provider shall carry adequate property loss insurance on the System which need not be covered by Purchaser's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. 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 canceled 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 maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto or incorporated by reference, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof which are of no further force or effect. The Exhibits and Schedules attached to this Agreement, including these General Terms and Conditions as incorporated by reference, are integral parts of this Agreement and are an express part of this Agreement. In the event of a conflict between the provisions of these General Terms and Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

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

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

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

18.5 [Reserved].

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

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

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to any choice of law principles. 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 this Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of the venue of any action or proceeding under this Agreement any courts described in this Section 18.8.

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

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

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

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

18.13 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.

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

[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.

“FOREFRONT POWER”: FFP BTM SOLAR, LLC

By: _____

Name: _____

Title: _____

Date: _____

“PURCHASER”: Kern County Superintendent of Schools

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
of General Terms and Conditions

[PURCHASER'S LETTERHEAD]

[Landlord's Address]

Attn: Authorized Representative

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

Dear Authorized Representative:

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

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

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

Very truly yours,
[PURCHASER]

By: _____
Name:
Title:

Acknowledged and agreed by:

[LANDLORD]

By: _____
Name:
Title:

Exhibit B
of General Terms and Conditions

Certain Agreements for the Benefit of the Financing Parties

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

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

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

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

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

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

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

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

(d) **Right to Cure.**

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

Party commences and continuously pursues cure of such default within such period, such period for a cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

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

Exhibit C
of General Conditions

Requirements Applicable to the Installation Work

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

Section B.2 **Prohibition Against Use of Drugs.**

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

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

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

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

- (a) Section 1735: Anti-Discrimination Requirements;
- (b) Section 1775: Penalty for Prevailing Wage Rate Violations;

- (c) Section 1776: Payroll Records;
- (d) Sections 1777.5, 1777.6 and 1777.7: Apprenticeship Requirements;
- (e) Sections 1810 through 1812: Working Hour Restrictions;
- (f) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and
- (g) Section 1815: Overtime Pay.

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

Section B.6 Contractor Registration. On and after March 1, 2015, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. On and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project or may perform any work on a public works project unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1725.5 for an unregistered contractor to submit a bid authorized by Business and Professions Code Section 7029.1 or Public Contract Code Section 20103.5 if the contractor is registered at the time the contract is awarded.

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

Section B.8 Protection of Minor-Aged Students. Provider, 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, the Provider, 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 the Provider makes alternative arrangements for supervision of such person(s) that are acceptable to the Purchaser in its sole discretion.

Exhibit D
of General Terms and Conditions
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Kern County Superintendent of Schools (referred to as "Owner"), has awarded to FFP BTM Solar, LLC. (referred to as "Contractor/Principal") a contract for the work described as follows: Solar Project.

NOW, THEREFORE, we, the Contractor/Principal and _____, as Surety, are held firmly bound unto Owner in the penal sum of \$ _____ Dollars (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH THAT, if the
hereby bonded

Contractor/Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said contract and any alteration thereof, made as therein provided, including but not limited to the provisions regarding contract duration, indemnification, and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the contract, the above obligation shall hold good for a period of _____ year(s) after the acceptance of the work by the Owner, during which time if Contractor/Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Owner from loss or damage made evident during the period of _____ year(s) from the date of completion of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligation of Surety under this bond shall continue so long as any obligation of Contractor/Principal remains.

Whenever Contractor/Principal shall be, and is declared by the Owner to be, in default under the contract, the Owner having performed the Owner's obligations under the contract, the Surety shall promptly remedy the default, or shall promptly:

1. Complete the contract in accordance with its terms and conditions; or

2. Obtain a bid or bids for completing the contract in accordance with its terms and conditions, an upon determination by Surety of the lowest responsive and responsible bidder, arrange for a contract between such bidder and the Owner, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which Surety may be liable under this Performance Bond, the amount set forth above. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor/Principal by the Owner under the contract and any modifications to it, less the amount previously paid by the Owner to the Contractor/Principal.

Surety expressly agrees that the Owner may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor/Principal.

Surety shall not utilize Contractor/Principal in completing the contract nor shall Surety accept a bid from Contractor/Principal for completion of the work if the Owner, when declaring the Contractor/Principal in default, notifies Surety of the Owner's objection to Contractor/Principal's further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the successors or assigns of the Owner. Any suit under this bond must be instituted within the applicable statute of limitations period.

FURTHER, for value received, the Surety hereby stipulates and agrees that no change, extension of time, alternation, or modification of the Contract Documents, or of the work to be performed under them, shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, extension of time, alteration, or modification of the Contract Documents or of work to be performed under them.

Contractor/Principal and Surety agree that if the Owner is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay Owner's reasonable attorney's fees incurred, with or without suit, in addition to the above amount.

Any claims under this bond may be addressed to:

Name and address of Surety:

Name and address of agent or representative in California, if different than above:

Telephone number of Surety, or agent or representative in California:

IN WITNESS WHEREOF, we have hereto set our hands and seals on this
day of
, 20 .

[SEAL]

CONTRACTOR/PRINCIPAL

By _____
Signature

Type or Print Name Above

Type of Print Title Above

SURETY

By _____
Signature

Type or Print Name Above

Type of Print Title Above [*SEAL*

AND NOTARIAL ACKNOWLEDGMENT OF SURETY]

Exhibit E
of General Terms and Conditions
PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Kern County Superintendent of Schools, (referred to as "Owner"), has awarded FFP BTM Solar, LLC (referred to as the "Contractor/ Principal") a contract for the work described as follows:

WHEREAS, Contractor/Principal is required by Division 4, Part 6, Title 3, Chapter 5 (commencing at Section 9550) of the California Civil Code to furnish a bond in connection with the contract;

NOW, THEREFORE, we, the Contractor/Principal and _____ as Surety, are held firmly bound unto Owner in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor/Principal, his/her or its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100 or fail to pay for any materials or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department any amounts required to be deducted, withheld, and paid over by Section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, then said Surety will pay for the same, in or to an amount not exceeding the amount set forth above, and in case suit is brought upon this bond Surety will also pay such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 4, Part 6, Title 3, Chapter 5 (commencing at Section 9550) of the California Civil Code.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the California Civil Code so as to give a right of action to such person or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration, or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond, and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be

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released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Owner and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400 and 8402 of the California Civil Code and has not been paid the full amount of his/her or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, or modification.

Any claims under this bond may be addressed to:

Name & address of Surety

Name & address of agent or representative in California, if different than above

Telephone # of Surety, or agent or representative in California

IN WITNESS WHEREOF, we have hereto set our hands and seals on this day of _____, 20 .

[SEAL]

Contractor/Principal

By: _____
Signature

Print Name Above

Print Title Above

Surety:

By: _____
Signature

Print Name

Above Print Title Above

[SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY]

**RESOLUTION
OF THE
KERN COUNTY BOARD OF EDUCATION**

This Proclamation designates September 2023 as School Attendance Awareness Month, and would encourage public officials, educators, and community members throughout Kern County to observe the month with appropriate activities and programs.

WHEREAS, good school attendance is essential to pupil achievement and graduation, and systemic approaches are needed to reduce chronic absenteeism rates in Kern County, with a focus starting as early as pre-kindergarten; and

WHEREAS, chronic absence, missing 10 percent or more of school, which can be just two or three days a month, for any reason, including both excused and unexcused absences, is a proven predictor of academic difficulty; and

WHEREAS, a pupil's chronic absence is a predictor of below-grade-level reading proficiency by the third grade and course failure and eventual dropout later in that pupil's career, and chronic absence thereby weakens our communities and our local economies; and

WHEREAS, the impact of chronic absence affects low-income pupils and children of color particularly hard if they do not have the resources to make up for lost time in the classroom. Low-income pupils and children of color are more likely to face systemic barriers to getting to school, such as unreliable transportation, lack of access to health care, unstable or unaffordable housing, and even unfair disciplinary policies; and

WHEREAS, chronic absence exacerbates the achievement gap that separates low-income pupils from their peers, since pupils from low-income families are both more likely to be chronically absent and more likely to be affected academically by missing school. Absenteeism also undermines efforts to improve struggling schools, since it is hard to measure improvement in classroom instruction if pupils are not in class to benefit from the improvement efforts; and

WHEREAS, improving school attendance and reducing chronic absence take commitment, collaboration, and tailored approaches to address particular challenges and strengths in each community; and

WHEREAS, all pupils, even those who show up regularly, are affected by chronic absence because teachers must spend time reviewing for pupils who missed lessons; and

WHEREAS, school attendance can be improved, and chronic absence significantly reduced, when schools, parents, and communities work together to monitor and promote good attendance and address hurdles that keep children from getting to school; now, therefore, be it

RESOLVED by the Kern County Board of Education thereof concurring, that the Board designate September 2023 as School Attendance Awareness Month in Kern County, and encourage public officials, educators, and community members to observe the month with appropriate activities and programs.

BY ORDER OF THE KERN COUNTY BOARD OF EDUCATION

Dated: August 8, 2023

*John G. Mendiburu, Ed.D.
Ex Officio Secretary
Kern County Superintendent of Schools*