

# ATTACHMENT 2 DRAFT PPA GENERAL CONDITIONS

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## GENERAL TERMS AND CONDITIONS OF ENERGY SERVICES AGREEMENT

*These General Terms and Conditions of Energy Services Agreement are dated as of the \_\_\_\_ day of \_\_\_\_\_, 2022 and are witnessed and acknowledged by FFP BTM SOLAR, LLC, a Delaware limited liability company (“Provider”) and Las Gallinas Valley Sanitary District (“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 Provider and Purchaser or between their respective Affiliates. These General Terms and Conditions shall have no binding effect upon Provider or Purchaser, respectively, except to the extent Purchaser or Provider (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 Company, any other Company directly or indirectly controlling, controlled by or under common control with such specified Company.

“Agreement” means, the Energy Services Agreement.

“Applicable Law” means, with respect to any Company, 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 Company 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 Las Gallinas Valley Sanitary District area 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).

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









determination (the “Final Determination”) to Provider and Purchaser, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be considered the Fair Market Value of the System as of the Purchase Date.

(e) Calculation of Purchase Price. The purchase price (the “Option Price”) payable by Purchaser for the System shall be 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.

(f) Costs and Expenses of Independent Appraiser. The Parties shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

(g) Exercise of Purchase Option.

(i) Purchaser shall have twenty (20) Business Days from the date of the Final Determination (such period, the “Exercise Period”), to exercise the Purchase Option, at the Option Price. Purchaser must exercise its Purchase Option during the Exercise Period by providing a notice (an “Exercise Notice”) to Provider. Once Purchaser delivers its Exercise Notice to Provider, such exercise shall be irrevocable.

(ii) As soon as practicable following receipt of Purchaser’s notice pursuant to Section 2.3(b), Provider shall make the System, including records relating to the operations, maintenance, and warranty repairs, available to Purchaser for its inspection during normal business hours.

(h) Terms of System Purchase. On the Purchase Date (a) Provider shall surrender and transfer to Purchaser on an as-is, where-is basis all of Provider’s right, title and interest in and to the System and shall retain all liabilities arising from or related to the System prior to the Purchase Date, (b) Purchaser shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System from and after the Purchase Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Purchaser, including but not limited to any applicable System warranty documents, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System to the Purchaser.

(i) Transfer Date. The Purchase Date pursuant to this Section 2.3 will occur no later than thirty (30) Business Days following the date on which the Independent Appraiser issues the Final Determination.

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 (including any racking) from the Premises on a mutually convenient date but in no case later than ninety (90) days after the Termination Date. The Premises shall be returned to its original condition, except for ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider’s removal of the System affect the integrity of Purchaser’s roof, which shall be as leak proof as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider’s removal of the System, Purchaser’s covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear), to be reimbursed by Provider at Purchaser’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:

(i) Provider determines that the Premises, as is, is insufficient to accommodate the System or unsuitable for construction or operation of the System due to conditions not known or cost of such conditions unknown as of the Effective Date.

(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 commercially reasonable financing for the System on terms and conditions satisfactory to it.

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

(vi) There has been a material adverse change in the rights of Purchaser to occupy the Premises or material adverse change, through no fault of Provider, in the right of Provider to construct the System on the Premises.

(vii) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.

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

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

(b) If any of the conditions set forth in Section 2.5(a) are partly or wholly unsatisfied, and Provider wishes to revise the information in the Special Conditions, then Provider may propose modifications to the Special Conditions for acceptance by Purchaser. If Purchaser does not accept such modified Special Conditions, Provider may terminate this Agreement as provided in Section 2.5(a). 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.

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

3.1 Installation Work. Provider will cause the System (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) to be designed, engineered, installed and constructed substantially in accordance with all Schedules included in 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.

3.2 Approvals; Permits. Purchaser, (in its proprietary capacity as Premises owner only, and separate from its governmental capacity) 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.

(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's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering Device and Metering.

(a) Metering Equipment. The Parties acknowledge and agree that the Provider will engage a Third Party Production Monitoring and Reporting Service, and that the Metering Device used will, at a minimum, be certified by the California Energy Commission and be accurate to within +/- 1%.

(b) Measurements. Readings of the Metering Device shall be conclusive as to the amount of System production. If the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 4.2(b), or registers inaccurately, measurements of System production shall be determined by Provider in a commercially reasonable manner by reference to quantities of System production measured during periods of similar conditions when the Metering Device was registering accurately. If no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed that the period of such inaccuracy was equal to one-half of the period from the date of the last previous test of such Metering Device (or if no such test had been conducted, from the Commercial Operation Date) through the date the inaccuracy of the Metering Device has been discovered; *provided, however*, that the period covered by the correction under Section 4.2(b) shall not exceed six months. If, for calculation purposes, no time period of similar conditions, during which the Metering Device registered accurately, can be determined, measurements of System Production shall be calculated in good faith by Provider with reference to applicable solar production modeling and solar insolation data generally accepted in the solar industry.

(c) Testing and Correction.

(i) Right to Conduct Tests. Provider shall test the accuracy of the Metering Device at least once every other year following the Commercial Operation Date. In addition, each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of the Third Party Monitoring and Reporting Service Provider, or the Metering Device's manufacturer or other certified testing authority to verify the accuracy of the measurements and recordings of the Metering Device. Either Party shall provide at least ten (10) Business Days prior written notice to the other Party of the date upon which any such test is to occur. The Party requesting the test shall prepare a written report setting forth the results of each such test, and shall provide the other Party with copies of such written report not later than twenty (20) Business Days after completion of such test. The Party requesting the test shall bear the cost of the testing of the Metering Device and the preparation of the Metering Device test reports.



(ii) Provider shall maintain the Metering Device in accordance with the Metering Device manufacturer's specifications and requirements, and those of the California Energy Commission.

(iii) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

- (A) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing, stating in reasonable detail the basis for such dispute.
- (B) The non-disputing Party shall, within fifteen (15) days of receiving such notice from the disputing Party, advise the disputing Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.
- (C) If the Parties are unable to agree to the accuracy or condition of the Metering Device, either Party may request additional testing of the Metering Device by the Third Party Monitoring and Reporting Service Provider, or the Metering Device's manufacturer or other certified testing authority.
- (D) If the Metering Device is found to be inaccurate by 2% or less, any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 4.2(c)(iii)(A) shall bear the cost of inspection and testing of the Metering Device.
- (E) If the Metering Device is found to be inaccurate by more than 2% or if such Metering Device is for any reason out of service or fails to register, then (i) Provider shall promptly cause any Metering Device found to be inaccurate to be replaced or adjusted to correct, to the extent practicable, such inaccuracy, (ii) the Parties shall estimate the correct amounts of System production delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 4.2(b) and (iii) Provider shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of System Production for any period is decreased (such quantity, the "**Energy Deficiency Quantity**"), in addition to remedies which may be applicable under Section 7 of the Special Conditions (Minimum Guaranteed Output), Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Energy Deficiency Quantity by crediting such amount against Purchaser's payment obligations under this Agreement. If as a result of such adjustment the quantity of System Production for any period is increased (such quantity, the "**Energy Surplus Quantity**"), Provider shall separately invoice for, and Purchaser shall pay for the Energy Surplus Quantity at the kWh Rate applicable during the applicable Term Year in accordance with Article 6 below.

4.3 System Disruptions. In the event that (a) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (b) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider, at reasonable cost, for all work required by Provider to disassemble, move the System and re-assemble the System, (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 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, adjusted by a 0.5% annual degradation factor as applicable, (or, if the disruption occurs within the first twelve (12) months of operation, the estimated annual production identified in Schedule 4 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.

## 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 be from the beginning to the end of each preceding month.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Purchaser shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account 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 legitimate 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 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, and immediately notify Purchaser if it becomes aware of any event or circumstance relating to the System or the Premises that poses a significant risk to human health, the environment, the System or the Premises.

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

(c) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(d) 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. Provider shall provide system maintenance and cleaning at least annually. Provider shall maintain a brush management and fire prevention program, such that the vegetation under and around the System shall be cut down or mowed at the beginning of each calendar year and again during the summer months from June through August such that said vegetation shall pose a risk of fire or damage to the System. Provider shall also repair and maintain the security fencing situated around the System and has a duty to inspect the fencing while onsite, as is necessary, and shall notify the Purchaser of any security or damage issues that may arise concerning the System or the security fencing. Provider shall coordinate with Purchaser on scheduling on-site system maintenance, and provide at least three (3) working days' notice of any scheduled repairs or maintenance unless emergency maintenance is required or the event (a) results in a material or total loss of energy production due to a System component fault or communications of System data where production cannot be verified ("Material Event"), or (b) that causes or is reasonably likely to cause a loss of power or communications that are necessary for the safe and reliable generation of electricity by the System. Provider shall provide Purchaser with an annual summary report of system repairs, maintenance, and any actual or potential security or damage issues that might impact the System to be delivered within 60 days after each COD anniversary.

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

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, and (ii) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(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 (in its proprietary capacity as Premises owner only, and separate from its governmental capacity) is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser (in its proprietary capacity as Premises owner only, and separate from its governmental capacity) 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) The Provider shall provide a minimum of seven (7) working days notice prior to any onsite work related to the operation and maintenance of the System, and a minimum of 30 days notice for the removal of the System. The Purchaser shall have the right to refuse access, however permission to access Premises will not be unreasonably withheld.

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

(iii) Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (i) Provider shall have access to the Premises and System during the Term of this Agreement and for 120 days after termination to remove the System pursuant to the applicable provisions herein, and (ii) 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.

(iv) 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 Terms and Conditions.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) On or before the Effective Date of each Special Conditions Purchaser shall identify and set forth in each Special Conditions and unless previously delivered, Purchaser shall, to the extent the same are known and available, and without representation or warranty as to content or sufficiency of such, 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) 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) 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.

## 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 this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy and other similar laws now or hereafter in effect;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and
- (g) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not require any consent from a third party, including any Governmental Approvals from any Governmental Authority, that are not identified in the Special Conditions.

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

- (a) Purchaser acknowledges that it has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party;
- (b) To 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, (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, 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 that Purchaser holds and is in compliance with all Governmental Approvals required for the ownership and any current operations or activities conducted at the Premises; and

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

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 OR IN THE SPECIAL CONDITIONS, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND ENERGY SERVICES PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER COMPANY, 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 or any use interest taxes imposed upon Provider). Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Energy Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership or maintenance 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 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 or flooding caused by or resulting from a storm surge event, 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 or pandemic, 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); (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 or 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).

## 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 this Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and
- (iii) Provider breaches any material representation, or covenant or other term of this Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed, not to exceed sixty (60) days.

(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 without triggering the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions and exercise any other remedy it may have at law or equity or under this Agreement.

### 11.2 Purchaser Defaults and Provider's Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, such longer cure period not to exceed sixty (60) days; and

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

(b) Provider's Remedies. If a Purchaser Default described in Section 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and, to the extent not satisfied by the Early Termination Fee, (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 of Provider 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, which shall include any liability or duty owed directly to Purchaser as well as to third parties for any loss or damage covered by the terms of Section 16.1, and (ii) any obligation of Purchaser to pay Energy Service Payments, the Early Termination Fee or the Option Price.

## 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein to any third party (except as permitted below), without first presenting Purchaser with the opportunity being presented to others. Provider shall not assign this 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 any required prior written consent and release of Purchaser shall not release Provider of its obligations hereunder. In no event shall Provider be released from its obligations under this Agreement unless and until the assignee has assumed the rights and obligations of Provider under this Agreement in writing.

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



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

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

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

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

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

#### 14. NOTICES.

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

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

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

#### 15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides and (with proper basis) clearly labels any material as 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. 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 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 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, including making commercially-reasonable efforts to obtain prior review and approval of the other Party, when making public announcements or other public disclosures related to or describing any aspect of this Agreement, unless any such statement is a permitted disclosure pursuant to Section 15.2. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Company 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. 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, but shall be in addition to all other remedies available at law or in equity.

15.4 Public Records Requests. Notwithstanding anything to the contrary herein, Provider understands that, as a public agency, Purchaser is subject to the California Public Records Act and, as such, this Agreement and some or all of the records related to this Agreement may be discloseable public records. If records are created or maintained by Purchaser and/or Provider pursuant to this Agreement and discloseable under that Act, Provider shall provide timely access to such records to the Purchaser for reproduction, upon request. Should Provider refuse to provide access to any documents requested by the Purchaser pursuant to a request under the Act and which must be disclosed under the Act, Provider shall bear all legal costs in responding to request and shall indemnify Purchaser, its governing body, every member of the governing body, employees, representatives and assigns against any and all claims related to the request.

## 16. INDEMNITY.

16.1 Provider agrees to accept responsibility for loss or damage to any person or entity, including Purchaser and Purchaser's property (and if the System is roof-mounted, including any damage to the roof, associated structure, or voiding of any applicable roof warranty), and to defend, indemnify, hold harmless, and release Purchaser, its officers, agents, and employees (collectively, the "Purchaser Indemnified Parties"), from and against any actions,

claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Provider, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Provider or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on Purchaser's part, but, to the extent required by law, excluding liability due to Purchaser's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Provider or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

16.2 Purchaser's Indemnity. 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 injury to or death of any Company or loss or damage to property of any Company to the extent arising out of Purchaser's sole 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. With respect to performance under this Agreement and as to all activities on Purchaser's Premises, Provider shall maintain and require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C attached hereto and incorporated herein by this reference. Purchaser shall maintain its standard insurance and self-insurance sufficient to cover County's Premises obligations under this Agreement.. Provider acknowledges that Purchaser is self-insured and agrees that such self-insurance shall suffice so long as all coverages, amounts, and additional insured terms stated herein are otherwise provided for.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates (or equivalent by Purchase, for self-insurance) 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 cancelled or materially altered.

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

17.4 Insurer Qualifications. All insurance maintained hereunder shall be 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. **DISPUTE RESOLUTION**

18.1 The Parties, through their respective authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

18.2 If, after such negotiation in accordance with Section 18.1 above, the Dispute remains unresolved, the Parties may mutually agree to submit the dispute to non-binding mediation. In such mediation, the authorized representative of each Party shall meet for at least three (3) hours with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then the Parties may mutually agree to submit the dispute to formal mediation through the American Arbitration Association or any other mediation services provider.

18.3 In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 18.1 or 18.2, both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

18.4 All mediations pursuant to Section 18.2 shall be held in Marin County, California. Any legal action or proceeding brought by either of the Parties against the other Party with respect to this Agreement or the transactions in connection with or relating hereto, may be brought in the Superior Courts of the State of California in the County of Marin and, by execution and delivery of this Agreement, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

19. MISCELLANEOUS.

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

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

19.3 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 Provider's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

19.4 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.

19.5 Sovereign Immunity. To the extent permitted by Applicable Law, Purchaser hereby waives any defense of sovereign immunity that Purchaser might otherwise have in connection with any action taken by Provider to enforce its rights against Purchaser under this Agreement.

19.6 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.

19.7 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 (Dispute Resolution), Article 19 (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.

19.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that the courts of the State of California and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under this Agreement to the fullest extent permitted by Applicable Law and that venue shall be under the jurisdiction of the Superior Court of Marin County.

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

and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

19.10 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.

19.11 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.

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

19.13 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.

19.14 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.

[signature page follows]

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

“PROVIDER”: FFP BTM Solar, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

“PURCHASER”: *Las Gallinas Valley Sanitary District*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

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

Very truly yours,

[PURCHASER]

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

Name:

Title: Authorized Representative

Acknowledged and agreed by:

[LANDLORD]

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

Name:

Title: Authorized Representative

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**Exhibit B**  
**of General 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. Provider will inform Purchaser in writing of any relevant Financing Party and its role in financing 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.

(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. Except for in the event of any Early Termination pursuant to Article 2.2 of the Agreement, Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties agree that the cure rights described herein are in addition to and apply and commence following the expiration of any notice and cure period applicable to Provider. The Parties respective obligations will otherwise remain in effect during any cure period; *provided*, if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (d)(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 Company or entity, then such Company 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**  
**Insurance**

**I. Contractor - Required Insurance**

At or before the Effective Date, Provider shall furnish to Purchaser satisfactory proof that Provider has obtained the following insurance as specified below.

In the event of a claim for which Provider has liability, Purchaser reserves the right to review any and all of the required insurance policies and/or endorsements (subject to redaction for confidentiality reasons), but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Provider from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the Agreement.

**1. Workers Compensation Insurance & Employers Liability Insurance**

- a.** Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- b.** Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- c.** The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Purchaser.
- d.** Required Evidence of Insurance:
  - i.** Subrogation waiver endorsement, and
  - ii.** Certificate of Insurance.

If injury occurs to any employee of Provider, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Purchaser under provisions of the Workers Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from Purchaser, Purchaser may retain out of sums due Provider under the Agreement, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Purchaser is compelled to pay compensation, Purchaser may, in its discretion, either deduct and retain from amounts due Provider the amount so paid, or require Provider to reimburse Purchaser.

**2. General Liability Insurance**

- a.** Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b.** Minimum Limits: \$5,000,000 per Occurrence; \$10,000,000 General Aggregate; \$10,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Provider maintains higher limits than the specified minimum limits, Purchaser requires and shall be entitled to coverage for the higher limits maintained by Provider.
- c.** Provider may meet the per Occurrence limit with a combination of primary and excess coverages. Provider's excess umbrella insurance at \$10,000,000 in the aggregate satisfies Purchaser's requirement that the general aggregate be double the single loss limit.
- d.** Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Purchaser. Provider is responsible for any deductible or self-insured retention and shall fund it upon Purchaser's written request, regardless of whether Provider has a claim against the insurance or is named as a party in any action involving the Purchaser.
- e.** Insurance shall be maintained for the entire Term, including any warranty period. Completed operations insurance shall be maintained after the end of the warranty period for two (2) years after the end of the

warranty period.

- e. Las Gallinas Valley Sanitary District, its Board of Directors, and their employees, representatives, consultants, and agents, shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Provider in the performance of the Agreement. Additional insured status shall continue for the periods specified in Section 2.d. above.
- f. The additional insured endorsement for completed operations shall not be restricted to work performed during the current policy period.
- g. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- h. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- i. The policy shall not exclude injury or damage caused by, or resulting from, explosion, collapse and/or underground hazards.
- j. The policy shall not contain a Providers' Warranty or other similar language which eliminates or restricts insurance because of a subcontractor's failure to carry specific insurance or to supply evidence of such insurance.
- k. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against all persons or entities that are, or are required to be, additional insureds.
- l. The policy shall cover inter-insured suits between Provider and the additional insureds and shall include a “separation of insureds” or “severability” clause which treats each insured separately.
- m. Required Evidence of Insurance:
  - i. Additional insured endorsements or policy language granting additional insured status;
  - ii. Endorsement or policy language indicating that insurance is primary and non-contributory; and
  - iii. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$2,000,000 combined single limit per accident.
- b. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Umbrella Liability Insurance.
- c. Insurance shall cover all owned, hired and non-owned vehicles.
- d. Las Gallinas Valley Sanitary District, its Board of Directors, and their employees, representatives, consultants, and agents shall be defined as insureds under the policy or shall be endorsed as additional insureds.
- e. Insurance shall be maintained for the entire Term including any warranty period.
- f. Required Evidence of Insurance:
  - i. Endorsement or policy language indicating that Purchaser, its Board of Directors, and their employees, representatives, consultants, and agents, are insureds; and
  - ii. Certificate of Insurance.

### 4. Professional Liability/Errors & Omissions Insurance *(Required if the Provider or its employees engage in Agreement-related design or professional activities (architecture, engineering or surveying) which are not subcontracted out).*

- a. Minimum Limit: \$2,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Purchaser.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the construction.
- d. Insurance shall be continued for at least two (2) years after completion of the subject construction. Continuation insurance may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the subject construction.

- e. If Provider hires a third party to provide design or professional services, the requirements set forth in this Section 4 shall be considered met upon such third party evidencing the required coverage.
- f. Required Evidence of Insurance: Certificate of Insurance.

#### **A. Increase of Minimum Limits**

Required minimum amounts of insurance may be increased should conditions, in opinion of Purchaser, warrant such increase. Provider shall increase required insurance amounts upon direction by Purchaser. Notwithstanding the foregoing, such increase in minimum amounts may only be required if the size and scope of the System materially change to such a point as to warrant additional coverage for such increased risk.

#### **B. Standards for Insurance Companies**

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

#### **C. Documentation**

- a. The Certificate of Insurance shall include the following reference: Photovoltaic Energy and Battery Storage System for Las Gallinas Valley Sanitary District.
- b. Provider agrees to maintain current Evidence of Coverage on file with the Purchaser for the entire Term and any periods specified in Sections 1-4 above.
- c. Required Evidence of Insurance shall be submitted to: General Manager, Las Gallinas Valley Sanitary District, 101 Lucas Valley Rd., Suite 300, San Rafael, CA 94903
- d. For any renewal or replacement of a policy that already exists, Provider shall attempt to provide renewal evidence of insurance to Purchaser once available.
- e. Provider shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. In the event of a claim where Provider holds liability, then Purchaser may written request certified copies of required insurance policies, which Provider shall provide within thirty (30) days of request, provided that Provider may redact such policies for confidentiality reasons.

#### **D. Material Breach**

If Provider fails to maintain Insurance which is required hereby, it shall be deemed a material breach. Purchaser, at its sole option, may terminate the Contract for default and obtain damages from Provider resulting from said breach. Alternatively, Purchaser may purchase the required Insurance, and without further notice to Provider, Purchaser may deduct from sums due to Provider any premium costs advanced by Purchaser for such insurance. These remedies shall be in addition to any other remedies available to Purchaser under the Agreement or in law or equity.

## **II. Subcontractors - Required Insurance**

With respect to their portion of the work, subcontractors of all tiers shall maintain the same insurance required to be maintained by Provider with minimum limits as follows:

1. Minimum General Liability Limits: \$2,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate.
2. Minimum Automobile Liability Limits: \$2,000,000 combined single limit per accident.
3. Subcontractors shall ensure that Purchaser is an additional insured with a form at least as broad as CG 20 38 04 13.
4. Professional Liability/Errors & Omissions Insurance (*Required for any architect, engineer, surveyor or other licensed professional engaged by Provider to perform any construction under the Agreement*)
  - a. Minimum Limit: \$2,000,000 per claim or per occurrence.

- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Purchaser.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the subject construction.
- d. Coverage applicable to the work performed under the Contract shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the subject construction.
- e. **Required Evidence of Insurance**: Certificate of Insurance.

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