

Amendment 1 to Council Bill No. 10-2020

**BY: The Chairperson at the request
of the County Executive**

**Legislative Day 4
Date: April 6, 2020**

Amendment No. 1

(This amendment adds the Renewable Energy Power Purchase Agreement to the Bill and clarifies the County goal.)

- 1 On page 1, in line 1, after “**WHEREAS,**” insert “the County set a goal”.
- 2
- 3 On page 1, in line 30, strike “Exhibit” and substitute “Attachment”.
- 4
- 5 Add the Renewable Energy Power Purchase Agreement as Attachment 1 to Council Bill No.10-
- 6 2020.

RENEWABLE ENERGY POWER PURCHASE AGREEMENT

between

HOWARD COUNTY, MARYLAND

and

KDC SOLAR MARYLAND LLC

Dated as of _____, 20____

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EXHIBIT ACOUNTY SITES

EXHIBIT B POWER PROVIDER SITES

EXHIBIT CAVERAGE SOLAR IRRADIANCE AND EXPECTED MONTHLY ENERGY
.....PRODUCTION FOR TYPICAL WEATHER CONDITIONS

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EXHIBIT EOUTAGE NOTIFICATION PROCEDURE

EXHIBIT FELECTRIC VEHICLE CHARGING REQUIREMENTS (AS APPLICABLE)

EXHIBIT GCOMMERCIAL OPERATION – COMPLETION NOTICE

EXHIBIT HFORM OF PILOT AGREEMENT

EXHIBIT IFORM OF PERFORMANCE BOND

EXHIBIT J FORM OF INTERCONNECTION AGREEMENT

EXHIBIT KETHICS AFFIDAVIT

EXHIBIT L FORM OF RENEWABLE ENERGY INVOICE

RENEWABLE ENERGY POWER PURCHASE AGREEMENT

This Renewable Energy Power Purchase Agreement is made and entered into as of this _____ day of _____, 2020 (the “**Effective Date**”) (the “**PPA**” or “**Agreement**”), between KDC SOLAR MARYLAND LLC, a New Jersey limited liability company (“**Power Provider**”) whose address is 1420 US Highway 206, Suite 120, Bedminster, New Jersey 07921 and HOWARD COUNTY, MARYLAND, a body corporate and politic whose address is 3430 Court House Drive, Ellicott City, Maryland 21043 (“**Purchaser**” or the “**County**”) and, together with Power Provider, each, a “**Party**” and together, the “**Parties**”.

RECITALS:

A. Purchaser issued RFP No. 16-2019 (“**RFP**”) on June 7, 2019 for solar Renewable Energy to be provided to various buildings and locations in Howard County generated by Solar Facilities (as defined herein) built, owned and operated by an energy provider with 100% of the capital, operations, maintenance, and decommissioning costs for such Solar Facilities to be provided by such energy provider. KDC Solar, LLC responded to the RFP on July 24, 2019. On September 26, 2019, Purchaser notified KDC Solar LLC that it was awarded the contract for the RFP (“**RFP Award**”). KDC Solar LLC, with the consent of Purchaser has determined that its affiliate, KDC Solar Maryland LLC, shall enter into this PPA on its behalf as the Power Provider.

B. Pursuant to the RFP Award, Power Provider intends to finance, construct, own, operate, and decommission Solar Facilities in Howard County that will supply Renewable Energy (as defined herein) to the Purchaser.

C. This Agreement sets forth the terms and conditions under which Power Provider shall deliver Renewable Energy in an amount up to 50,000,000 kWh per year (but not to exceed the

County's actual electric needs) at certain land and buildings identified on Exhibit A and Exhibit B hereto, as may be amended from time to time (each, a "**Solar Facility, Site**" or "**Premises**").

D. Purchaser has proposed various sites in Howard County on which the Power Provider would build and operate a Solar Facility ("**County Sites**") to sell Renewable Energy to the Purchaser at the Premises as identified on Exhibit A hereto. Subject to the terms of this Agreement, Power Provider shall have the right to accept a County Site, except for the three Mandatory County Sites identified on Exhibit A of this Agreement, which are deemed accepted.

E. Power Provider will be granted a license from the Purchaser for each County Site for the purposes of this Agreement granting Power Provider the exclusive right to locate, build and operate certain Solar Facilities on the certain County Sites accepted by the Power Provider. The Parties also acknowledge that a Solar Facility may be located on a site not owned or controlled by the Purchaser ("**Power Provider Site**"). Following acceptance of a site by the Power Provider, the site will be added to Exhibit B hereto (each a "**Facility Site**").

F. Power Provider desires to sell to Purchaser, and Purchaser desires to purchase from Power Provider, all of the Renewable Energy generated by the Solar Facilities on a first priority basis, up to an amount not to exceed 50,000,000 kWh per year, in accordance with the terms of this Agreement.

G. The Purchaser has established a policy to obtain 20% of the electricity for local government operations with distributed, Renewable Energy generation by 2024 and desires to purchase the Renewable Energy generated by the Solar Facility at the Facility Sites to supply government operations at the respective Premises via Interconnection Agreements with the Local Electric

Utility using net metering and virtual net metering as provided in Code of Maryland Administrative Regulations Title 20, Subtitle 50, Chapter 10;

H. The County selected Option No. 3 from the Power Provider’s Response to the County’s Best and Final Offer instructions pursuant to the County TORFP, which includes this 25-year Agreement, and a Power Provider Site with a capacity of approximately 18 MW-DC, and a minimum of eight (8) accepted County Sites with a total capacity of approximately 6 MW-DC. Three of the County Sites will include parking canopy structures, which will account for approximately 1.8 MW-DC of the total 6 MW of capacity at the County Sites;

I. Power Provider desires to develop, build, operate, and decommission approximately 24 MW-DC of Solar Facilities, with no capital investment by the County, and the County desires to purchase from the Power Provider, all the Renewable Energy generated from the Solar Facilities, over a 25-year term pursuant to the terms and conditions set forth herein.

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

1. DEFINITIONS

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

“Actual Annual Solar Insolation” means the actual amount of global horizontal irradiance at the Solar Facility site for each year of this Agreement (“**Contract Year**”), as reflected in the Solar Irradiance Data obtained from the National Renewable Energy Laboratory’s

(“**NREL**”) National Solar Radiation Database (“**NSRDB**”) or other mutually agreeable third party, or as derived using another mutually agreeable mechanism.

“Actual Monthly Production” means the amount of Renewable Energy recorded by the Metering Device at a Solar Facility during each calendar month of the Term, pursuant to Section 6.1.

“Adjusted AEP” (“**AAEP**”) means the Annual Energy Production adjusted for energy that was not delivered to County due to Force Majeure, or County’s failure to perform in a manner that directly affects the generation of Energy by the Solar Facility:

Adjusted Annual Energy Production (AAEP) =
AEP + Deemed Energy Production

“Adjusted EAEP” means the Expected Annual Energy Production adjusted for Actual Annual Solar Insolation according to the following formula:

Adjusted Expected Annual Energy Production = EAEP x (Actual
Annual Solar Insolation/Typical Annual Solar Insolation)

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than fifty percent (50%) of the beneficial equity interest in another Person.

“Annual Energy Production” (AEP) means, for any particular Contract Year, the total Energy generated by a Solar Facility and delivered to County via the Delivery Points, as recorded by Metering Device.

“Applicable Laws” 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. Applicable Laws also means the Howard County Risk Management Program as detailed in Howard County Policy Number 200.1.

“Assignment” has the meaning set forth in Section 13.

“Business Day” means each workday Monday through Friday that is not a federal, State of Maryland, or County holiday.

“Capacity” refers to the instantaneous ability of Power Provider to produce Renewable Energy (real power) at a specified output. Capacity is measured in megawatts (“MW”) DC or kilowatts (“kW”) DC.

“Change in Law” means, after the Effective Date, the enactment, adoption or modification of an Imposition, as described in Section 4.11.

“Completion Notice” has the meaning set forth in Section 11.5 (the form of which is attached as Exhibit G).

“Commercial Operations” means the period of operation for each Solar Facility at each of the County Sites and Power Provider Sites (collectively, the “**Sites**”), once the Commercial Operation Date has occurred at such Solar Facility.

“Commercial Operation Date(s)” means the date, as specified in the Completion Notice, on which the Power Provider conforms to the requirements for Commercial Operation in Section 4 for each Solar Facility.

“Contract Capacity” means the total energy to be delivered to the County from each Solar Facility individually and the sum of the energy to be delivered from all Solar Facilities

“Contract Price” means \$.07391 kWh, the price paid by County to Power Provider for Energy generated by all Solar Facilities.

“Contract Year” means the period beginning on the Effective Date and ending one year later, and every subsequent one-year period until the Agreement terminates.

“County TORFP” means the Howard County Task Order Request for Proposals No. 16-2019, issued on June 7, 2019.

“Court House Site” means the Mandatory County Site located at 9250 Judicial Way, Ellicott City, where Solar Facilities will be located on the ground and on the roof at the Howard County Circuit Court House.

“Data Acquisition System” or “DAS” means a system that provides continuous real-time energy generation data for each Solar Facility and includes a data interface and internet connections that allow County to access real-time energy generation information online and is suitable for display on County websites or LCD monitors in County buildings.

“Deemed Energy Production” means, for the relevant period of time, the amount of Energy that could have been generated by the Solar Facility and delivered to County but for each of (i) Force Majeure and (ii) County’s failure to perform.

“Delay Damages” has the meaning set forth in Section 11.5

“Delivery Point” means the physical location where each Solar Facility delivers its generated Renewable Energy to the Metering Device installed by the Power Provider at a County Site or at a Provider Site.

“Effective Date” has the meaning set forth in the preamble hereof.

“Emergency” means a life endangering event, fire, flood, hurricane or similar event that requires immediate response.

“Energy” means three-phase, 60-cycle alternating current Renewable Energy to be generated by the Solar Facilities.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Environmental Attributes include but are not limited to Renewable Energy Credits (RECs), as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Environmental

Attribute Reporting Rights. Environmental Attribute Reporting Rights are the right of an Environmental Attribute purchaser to report the ownership of accumulated Environmental Attributes in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Environmental Attribute Purchaser's discretion, and include without limitation those Environmental Attribute Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes are accumulated on a MWh basis and one Environmental Attribute represents the Environmental Attributes associated with one (1) MWh of Renewable Energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Power Provider to accept certain fuels, or local subsidies received by the Power Provider for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits

"Event of Default" shall have the meaning ascribed to it in Section 11.

"Expected Annual Energy Production" (EAEP) means the Renewable Energy that each Solar Facility individually, and all Solar Facilities in total can be expected to produce during a typical year of operation, at its final designed and constructed direct current (DC) rating, array type, tilt angle and azimuth angle and assuming a 70% DC- to- AC derate factor, factoring in typical

weather patterns which amount for each Contract Year is approximated and set forth in Exhibit C. EAEP also includes an annual degradation rate of 1%.

“Fair Market Value” shall mean the amount that would be received in an arms-length transaction between an informed and willing buyer and an informed and willing seller, under no compulsion, respectively, to buy or sell such interest(s),

“Feasibility Study” means a mechanical, structural, and electrical analysis performed by the Power Provider to determine whether a Solar Facility can be constructed, maintained and operated at a proposed County Site for a term of at least twenty-five years, or a lesser term for a rooftop installation, as may be agreed, in accordance with the terms and conditions of this Agreement. To ensure the accuracy of the Feasibility Study, the County shall provide necessary information concerning the existing communications, including radio, internet, and telephone, at the relevant County Site.

“FERC” means the Federal Energy Regulatory Commission. “Force Majeure Event” has the meaning set forth in Section 10.

“Generator Attribute Tracking Solar Facility” or “GATS” means the system operated by PJM Environmental Information Services, Inc. (“**PJM**”) in accordance with the GATS Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers, or any successor system adapted by PJM.

“Governmental Approval” means all applications, approvals, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development,

siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Solar Facility, the production and delivery of Energy and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“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.

“Guaranteed Governmental Approval Application Date” means the date by which Power Provider must apply for Governmental Approvals in order to proceed with its obligations under this Agreement and is: (a) with respect to the Court House Site, 120 days from the date of the execution of this Agreement, based upon the Court House design as of the date of this Agreement; provided however, if the License changes the design of the rooftop Solar Facility, the County shall reimburse the Power Provider for all third party costs to redesign the rooftop Solar Facility and re-apply for new Governmental Approvals and the 120 day time period shall commence on the execution date of the License, (b) with respect to other County Sites, 120 calendar days from the date on which the County has approved the Power Provider’s feasibility study of a proposed County Site and the execution of the applicable License if the Site does not require Planning Board approval in order to commence Installation Work, and if Planning Board approval is required, 120 calendar days from the date of the Planning Board approval, or (c) with respect to a Power Provider Site, 365 days from the execution of this Agreement if the Site does not require Planning

Board approval in order to commence Installation Work, and if Planning Board approval is required, 365 days from the date of the Planning Board approval.

“Guaranteed Government Approval Deadline” means 180 days from the Guaranteed Governmental Approval Application Date for all County Sites except for the Carrs Mill Landfill Site, for which the Guaranteed Government Approval Deadline is 365 days from the Guaranteed Governmental Approval Application Date and, for Power Provider Sites, two years from the Guaranteed Governmental Approval Application Date; provided however that if the Power Provider is diligently pursuing the applicable Governmental Approval, such additional time may be granted by the County not to be unreasonably withheld.

“Guaranteed Initial Delivery Date” means the date by which Commercial Operations shall be achieved by Power Provider. That date shall be: (a) for the Court House rooftop Solar Facility 180 days from written notice from the County and the contractor for the Court House to the Power Provider to begin installation work, which shall be at least 180 days prior to the expected occupancy date for the Court House and, in the event of construction delays that prevent Power Provider from completing the work within 180 days, shall be extended on a day for day basis for the amount of such delay; (b) for other County Sites, 365 calendar days after receipt of all final, non-appealable Governmental Approvals and (c) for a Power Provider Site, 540 calendar days after receipt of all final, non-appealable Governmental Approvals.

“Hazardous Substances and Materials” shall include, without limitation, those biologically or chemically active or hazardous wastes, hazardous substances, hazardous materials, toxic waste, toxic materials or toxic substances described in the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA) of 1980, as amended; the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, the Oil Pollution Act of 1990, as amended; any similar and applicable federal, state or local laws relating to environmental requirements imposing standards of conduct regarding, or imposing liability for biologically or chemically active or other hazardous substances, materials, or waste, whether federal, state or local; and the regulations adopted under these acts.

“Imposition” shall have the meaning set forth in Section 4.10.

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

“Installation Work” means the construction and installation of each Solar Facility and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Power Provider, at Power Provider expense, at the County Sites and Power Provider Sites.

“Interconnection Agreement” means each agreement between the County and the Local Electric Utility regarding the metering of each Solar Facility at each County or Power Provider Site.

“Interconnection Equipment” means the equipment and upgrades to the Local Electric Utility equipment necessary to establish the Interconnection Point as detailed in each Interconnection Agreement.

“Interconnection Point” means the physical location where each Solar Facility delivers its generated Renewable Energy to the Local Electric Utility’s electric distribution system at each County or Power Provider Site.

“Lender” means, if applicable, any Person providing construction or term debt for the Solar Facilities or any part thereof and any tax equity or equity investor for any of the Solar Facilities.

“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 the County.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, including delay 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).

“Mandatory Site” means a County Site listed on Part I of Exhibit A, upon which Power Provider is required to install Solar Facilities, pursuant to the terms of this Agreement.

“Maryland PSC” means the Maryland Public Service Commission.

“Metering Device” means all meters owned and installed by the Power Provider at or immediately before a Delivery Point that are part of a Solar Facility and that are needed for the registration, recording, and transmission of information regarding the Energy generated by the Solar Facility and delivered to the Delivery Point.

“Minimum Annual Energy Production” (MAEP) means the annual minimum Energy output required for each Solar Facility, which, for purposes hereof, shall be equal to ninety percent (90%) of the EAEP of such Solar Facility.

“NTP” means Notice to Proceed given by the Power Provider to a contractor to commence the Installation Work at a specific County Site or Power Provider Site.

“Option Price” has the meaning set forth in Section 6.10.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“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.

“PPA” means this Master Renewable Energy Power Purchase Agreement, including the preamble and the exhibits attached hereto, which are integral parts hereof and incorporated herein by reference.

“Premises” has the meaning ascribed in the recitals to this Agreement.

“Project Plan” means a site-specific layout for each Solar Facility located at a County Site, which shows the placement of solar panels, racking, and inverters. For Solar Facilities to be installed on rooftops, the Project Plan must include an analysis of roof condition, roof structural integrity, and electrical capacity of the building. For parking canopy Solar Facilities, the Project Plan also will include the placement of canopy structures in the parking lot and the placement of any EV charging stations. For ground-mount Solar Facilities at County Sites, the Project Plan also will include the fence line, planting plan, and layout or description of sheep grazing enhancements.

“Project Plan Date” means the date by which Power Provider must submit a Project Plan to the County for each County Site.

“Power Provider” means KDC Solar Maryland LLC, its affiliates and subsidiaries and all contractors, subcontractors and agents performing work pursuant to this PPA.

“Proposed County Site” means any County Site proposed by the County for the installation of a Solar Facility other than the Mandatory Sites.

“Power Provider Event of Default” has the meaning set forth in Section 11.2.

“Qualified Assignee” has the meaning set forth in Section 13.1.

“Renewable Energy” means electricity generation resources meeting the definition of a Tier 1 Resource under the Maryland Renewable Portfolio Standard including solar energy as defined in Public Utilities Article, §7-701, Annotated Code of Maryland, as amended from time to time.

“Renewable Energy Charge” means the Contract Price of \$ 0.07391 per kWh to be paid by County to Power Provider for Renewable Energy generated by the Solar Facilities, and further described in Section 6.1.

“Renewable Energy Credit” or “REC” means a credit equal to the generation attributes of one (1) megawatt-hour of electricity that is derived from a Tier 1 renewable source (Public Utilities Article, §7-701, Annotated Code of Maryland), as amended from time to time.

“Renewable Energy Portfolio Standard” or “RPS” has the meaning set forth in Public Utility Companies Article Section 7-701(j) of the Annotated Code of Maryland, as amended from time to time.

“Requirements” has the meaning set forth in Section 8.3.

“RFP” means Request for Proposal.

“Site” means a property where one or more Solar Facilities may be located.

“Site Electrical System” means County’s existing building electrical systems that are owned, leased, operated, maintained or controlled by the County.

“Solar Facilities” means more than one Solar Facility.

“Solar Facility” means each photovoltaic, solar power Solar Facility, owned and operated by the Power Provider to deliver Energy to the Delivery Point and meet the specifications

and requirements set forth in this Agreement upon Commercial Operations, including but not limited to all solar energy panels, mounting systems, carports, EV charging stations, lighting fixtures (but not replacement lights), tracking devices, inverters, switches, Metering Devices, ballasts, disconnects, conduits, wires, controls, integrators, Data Acquisition System, and other related equipment and components installed on each Facility Site and electric lines and conduits required to connect such equipment to the Delivery Point protective and associated security equipment, improvements, and other tangible and intangible assets, contracts, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Solar Facility. The Solar Facility does not include Purchaser's electrical system located at a Premises or improvements needed to Purchaser's electric system at a Premises in order to meet code requirements or accept the Energy from the Solar Facility. The Solar Facility includes Interconnection Equipment required by an Interconnection Agreement to establish an Interconnection Point in order to connect and operate the Solar Facility. Although Power Provider may not own such Interconnection Equipment, it is responsible at County Sites for any costs of obtaining and installing, such Equipment as required of the County by the Local Electric Utility under the Interconnection Agreement, until such time as the relevant Solar Facility has achieved Commercial Operations. At Power Provider Sites, Power Provider is solely responsible for all costs of obtaining, installing, maintaining, and operating the Interconnection Equipment for the Term of this Agreement.

“Solar Irradiance Data” means data used for measuring solar insolation comprising global horizontal irradiance (GHI, W/m^2), diffuse horizontal irradiance (DHI, W/m^2), and direct normal irradiance (DNI, W/m^2), and as otherwise agreed upon by the Parties.

“State” means the State of Maryland.

“Solar Facility Acceptance Testing” has the meaning set forth in Section 4.3(a).

“Solar Facility Operations” means all actions, including monitoring and maintaining each Solar Facility, necessary for Power Provider to fulfill its covenants under Section 7.1.

“Termination for Convenience” shall have the meaning described in Section 2.3

“Termination for Convenience Payment” shall mean an amount equal to the Fair Market Value of any Solar Facility for which the County has exercised its rights pursuant to Section 2.3, including the costs of decommissioning if the County does not take title to the Solar Facility..

“Typical Annual Solar Insolation” means the typical annual global horizontal irradiance at each Solar Facility set forth in Exhibit C.

“Utility Meter” means a meter required by a Local Electric Utility that registers, records, and transmits information regarding Energy delivered to a customer and registers, records, and transmits information regarding Energy generated by the customer, under an Interconnection Agreement.

- 1.2 Interpretation. The recitals and the attached Exhibits are incorporated herein by reference and made a part of this Agreement. The captions or headings in this Agreement 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. All references made in this Agreement in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders. The words “include”, “includes”, and “including” mean include, includes, and

including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Exhibits,” “Articles” and “Sections” refer to Exhibits, Articles and Sections of this Agreement.

1.3 Contract Documents.

The following include the Contract Documents as amended, under this PPA and any inconsistencies shall be resolved in the following order of priority:

- A. PPA
- B. COUNTY TORFP
- C. RFP # MDOT-OOE RED 2018 issued June 20, 2017
- D. Power Provider’s TORFP Technical and Financial Proposals submitted on July 24, 2019, including the Power Provider’s BAFO, submitted on or about September 16, 2019 (“**Power Provider’s Proposal**”)
- E. Power Provider’s 2018 MDOT RED RFP Technical and Financial Proposals

The obligations, representations, terms and conditions set forth in the Contract Documents are provisions of this Agreement. The official copy of the Contract Documents, which shall govern for all purposes related to this PPA and in the event of any dispute arising under this Agreement, shall be housed at the Howard County Office of Purchasing located at:

6751 Columbia Gateway Drive
Suite 2
Columbia, Maryland 21046

1.4 License Grant. As a condition to the Power Provider’s obligations under this Agreement with respect to any specific Solar Facility to be located at a County Site, the County shall grant to Power Provider a non-exclusive license to access the applicable County Site to install, construct, maintain, operate and remove such Solar Facility, in accordance with the terms of this Agreement, and for no other purpose (the “**License**” or “**Use Agreement**”). The terms of the License shall be satisfactory in all respects to both Parties. This Agreement and the License shall not and does not convey any title or interest of any kind with respect to the County Sites.

2. TERM AND TERMINATION.

2.1 Term. The initial term of this Agreement (the “**Initial Term**”) shall commence on the date of execution of this Agreement and continue until the last day of the month which is twenty-five (25) years following the Commercial Operations Date of the final non-roof mounted Solar Facility installed pursuant to this Agreement. The Term of any roof mounted Solar Facility will commence on the date of the execution of this Agreement and continue until the lesser of 25-years, or the lifetime of the existing roof-warranty for the applicable premises unless otherwise agreed in writing by the Parties. After the conclusion of the Initial Term, the Purchaser has the option to extend the term of this Agreement on a per Facility basis for the shorter of (a) the Remaining Useful Life of the Solar Facility or (b) an additional term (an “**Extension Term**”) of five (5) years.

2.2 Cancellation Due to Non-Availability of Funds. If the Howard County Council fails to appropriate funds for this Agreement for any fiscal period succeeding the first fiscal period, this Agreement shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available. The effect of termination

of the Agreement hereunder shall be to discharge both the Power Provider and the County from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The County shall notify the Power Provider as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

2.3 Termination for Convenience. The County may terminate this Agreement for convenience prior to the Commercial Operations Date of any proposed Solar Facility to be located at a County Site if the Power Provider fails to achieve the Guaranteed Governmental Approval Application Date, Guaranteed Governmental Approval Deadline, or Guaranteed Initial Delivery Date for such Solar Facility, whenever County shall determine that such termination is in the best interest of the County, and subject to the payment of the Termination for Convenience Payment by the County to the Power Provider.

2.4 Delays and Extensions of Time. The Power Provider agrees to do the work required under this Agreement continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever not arising out of or a result of any action or inaction on the part of the County. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Power Provider, including but not restricted to, acts of God, acts of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of another provider in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and

without the fault or negligence of either the Power Provider or the subcontractors or suppliers.

3. CONDITIONS PRECEDENT.

3.1 Conditions Precedent to Solar Facility Acceptance Testing. As to each Solar Facility at each of the Sites, the following conditions precedent shall occur prior to Power Provider's commencement of a Solar Facility Acceptance Testing:

- a. Power Provider shall have obtained (and demonstrated possession of) all Governmental Approvals required for the lawful operation of the applicable Solar Facility and for Power Provider to perform its obligations under the Agreement, including but not limited to Governmental Approvals related to environmental matters and Certificate of Public Convenience and Necessity, as necessary;
- b. no Power Provider Event of Default shall be occurring;
- c. the Power Provider shall have shall have filed for qualification and certification of the respective Solar Facility with the Maryland PSC as a Renewable Energy Facility pursuant to the Maryland RPS;
- d. Power Provider shall have made all filings and applications required for accreditation of the Solar Facility in GATS and for the registration, origination and transfer of Environmental Attributes from the Solar Facility that are eligible for origination, registration and transfer under GATS;
- e. Power Provider shall have obtained all necessary authorizations for the Solar Facility from FERC to sell Energy at market-based rates as contemplated by this Agreement and shall be in compliance with such authorization;

- f. Power Provider shall be in compliance with the bonding requirements of Section 14 for the applicable Solar Facility;
- g. Power Provider shall have provided the County with written evidence that all the preceding conditions have been satisfied.

4. SOLAR FACILITY INSTALLATION, TESTING AND OPERATIONS.

SCOPE OF SERVICES

Power Provider will be responsible for evaluating, designing, financing, constructing, commissioning, owning, operating, maintaining, and decommissioning turn-key each Solar Facility, including Delivery Points and Interconnection Points, on County Sites and Power Provider Sites. This includes, but is not limited to, all necessary design, permitting, operational and other functions necessary to operate the Solar Facilities to produce the Expected Annual Energy Production on an annual basis over the term of this Agreement, as well as decommissioning each Solar Facility located at a County Site at termination or expiration of this Agreement, pursuant to the relevant terms and conditions herein.

A. Pre- Construction

For the Mandatory County Sites, Power Provider shall provide a Project Plan within 120 days of the execution of this Agreement. For all other County Sites, County shall present Power Provider a proposed site and Power Provider shall have 60 days to analyze such site and deliver a Feasibility Study to the County. The County shall have 30 days to accept the Feasibility Study. If the Feasibility Study is accepted by the County the site shall automatically become a Mandatory Site under this Agreement and the Power Provider shall have 120 days from the date such County Site is accepted by the County to apply for Governmental Approvals.

As detailed herein, for each Solar Facility, Power Provider shall provide a Project Plan, following the Guaranteed Governmental Approval Application Date which shall include a schedule for the execution of the following, and Power Provider must execute the Plan in accordance with its terms and the terms of this Agreement.

1. Meet with internal and external stakeholders to address specific concerns regarding solar integration into a County Site.
2. Outline the logistics for installing the Project at a County Site, specifically addressing County concerns.
3. For any County Site, Power Provider, at its sole expense, will provide County with architectural renderings sufficient to visualize the ground level view, footprint, and general aesthetics of the Site (“Drawings”), and use reasonable commercial efforts to ensure the right of the County to use such Drawings in connection with the County’s operation of the Site, including providing the Drawings to third parties.
4. A detailed site plan must be provided prior to any demolition of any County Site elements necessary for construction of all canopies or other ground-mount Solar Facilities to ensure that, upon decommissioning, the County Site is properly restored to its condition at the time of demolition, subject to ordinary wear and tear.
5. The preparation of Pre and Post informational signage to be located at each County Site to 1) inform tenants and citizens of the size, scope and timing of the Solar Facility, and 2) upon completion of the Solar Facility, provide signage including the start-date and environmental attributes of the Solar Facility.

6. For all Solar Facilities participate and cooperate in any interconnection studies required by the regional grid operator, Local Electric Utility or others as necessary to install and operate the Solar Facility.
7. For all County Sites, include description of the design and equipment necessary to be installed by the Power Provider to establish an Interconnection Point.
8. Interconnection agreements to be signed by the County with the Local Electric Utility or PJM, as applicable.
9. For all Solar Facilities obtain all Governmental Approvals necessary to construct and operate the Solar Facility. Power Provider will be responsible for payment of all fees for all Governmental Approvals.
10. For all Solar Facilities obtain all necessary zoning and land use approvals, including Environmental Impact Studies where needed. Complete all National Environmental Policy Act (NEPA) and Maryland Environmental Policy Act (MEPA) analyses and documentation as necessary. Coordinate with the Maryland Historical Trust as appropriate.
11. For all ground-mounted Solar Facilities provide stormwater management for each site according to Maryland Department of the Environment standards as described in the Maryland Stormwater Design Manual.
12. For all Solar Facilities provide a construction schedule outlining dates for the design, planning, permitting, execution and commissioning of the Solar Facility
13. Provide all initial and final engineering drawings and plans to the County for any Solar Facility to be installed at any County Site. All plans for each Solar Facility located at a County Site must be approved in writing by the Contract Administrator

and Bureau of Facilities Chief before commencement of installation of such Solar Facility, provided that County shall respond in writing to any submission of drawings or plans by Power Provider within thirty (30) days of County's receipt thereof by either accepting such drawings or plans or describing to Power Provider in detail the County's reasons for rejecting such drawings or plans. If the plans are not responded to within such thirty-day period, the Guaranteed Initial Delivery Date shall be extended on a day to day basis for any delay beyond such 30-day period.

14. At County's request, provide information and certifications of design build professionals involved in any Solar Facility to be located at a County Site.
15. Power Provider must deliver to the County any and all executed contracts for the use of County Sites.

Following the delivery of a Project Plan, the Parties will meet on a bi-weekly basis to discuss the project development schedule for Solar Facilities to be located at a County Site. Power Provider will provide written updates every 60 days after the execution of this Agreement on the progress of any Power Provider Site.

B. Construction and Implementation

Power Provider shall comply with the following:

1. Provide all of the financing and capital needed to perform its obligations under this Agreement and perform the Installation Work and all other obligations in accordance with Section 4.2 of this Agreement and the Project Plan for each Solar Facility.
2. Build each Solar Facility in accordance with the plans and drawings approved by the applicable Governmental Approvals and with respect to any Solar Facility to be

built on a County Site, in accordance with the County approval pursuant to Section A. 13 above.

3. Provide all Site preparation necessary to install, operate, maintain, and decommission any Solar Facility, including Delivery Points and Interconnection Points.
4. For each Solar Facility to be built on a County Site, coordinate, at County's direction, with tenants and others to minimize impacts to County Site Facility operations. In cases where multiple initiatives are underway at a specific County Site, Power Provider will be required to coordinate with County staff and any County contractors involved. In the case of conflicts or coordination issues between contracts, County's decisions are final, provided that the County will use commercially reasonable efforts to limit the disruption the Installation Work. Following the issuance of the Notice to Proceed any action by the County pursuant to this section which results in the cessation of the Installation Work of 5 days or longer shall require the reimbursement to the Power Provider of any actual direct costs incurred from such delay, pursuant to a written agreement with a subcontractor, and the Guaranteed Initial Delivery Date shall be extended on a day for day basis for the amount of such delay.
5. Maintain a safe working environment consistent with Applicable Laws. In addition, Power Provider shall ensure that employees: (i) have knowledge of and comply with safety rules and procedures; (ii) be aware of potential hazards in the work area; (iii) participate in all required safety training programs; (iv) alert other employees to potential hazards; (v) inform supervisors of unsafe equipment or procedures; (vi)

immediately report all work-related injuries to their supervisor. Power Provider shall ensure that supervisors: (i) have knowledge of safety rules and procedures and ensure they are appropriately implemented within their work area; (ii) inform employees of potential safety or health hazards; (iii) receive required training in hazard recognition and safe work procedures; (iv) make sure that all necessary personal protective equipment (PPE) is available and training is provided in use, care and maintenance of PPE. –

6. Install the Solar Facilities at the County Facilities to the satisfaction of the County in accordance with this Agreement, including all equipment necessary for operation, and the establishment of Delivery and Interconnection Points as applicable.
7. Ensure that the construction and operation of each Solar Facility does not adversely impact existing County infrastructure including roofing, parking, or other areas where a Solar Facility is to be located at County Sites, including negotiating with roof warranty providers where applicable. Any roof penetration, must be specifically approved by County.
8. No work done on any County Site shall void an existing roof warranty or designer stipulated roof loading limitation. If commercially possible, the roofing firm holding the existing warranty will be involved in the Project sufficiently to maintain validity of warranty. Post-Warranty Alteration provisions must be complied with. With respect to any County Site and upon County's request, Power Provider shall provide copies of any structural analysis prior to commencement of installation of any Solar Facility. The Power Provider shall remediate moisture, infiltration,

and/or damage that may be caused to a Premises by the construction, operation, maintenance, and decommissioning of the Solar Facility.

9. Any temporary interruption of Renewable Energy at County Sites, either in part or in whole, must be performed in coordination with the operational schedules of the Premises so as not to materially impede operations, and must be coordinated with County staff.
10. Special attention shall be paid to minimizing the risk of exposed fasteners, sharp edges, and potential future damage to the modules or support structure. Corrosion resistance and durability of the mechanical hardware shall be provided through the use of appropriate fasteners and support structure in accordance with solar industry standards for commercial solar installation in the PJM region. Power Provider shall promptly notify the County of any change in racking equipment prior to commencement of Installation Work on a roof mounted Solar Facility on a Premises.
11. At any Solar Facility located at a County Site, upon completion, provide County a hard-copy and electronic version of a commissioning manual outlining the Solar Facility design, components, cutsheets of components, operating characteristics, electrical diagrams, and other relevant data.
12. Provide any information needed to obtain LEED credits for the County for any Solar Facility located at a County Site, if applicable.
13. Install the Solar Facilities at the Power Provider Sites in accord with Applicable Laws and the provisions of this Agreement, including all equipment necessary for operation, and the establishment of Delivery and an Interconnection Points.

14. The following, without limitation, are each a material term of this Agreement. Power Provider must achieve the Guaranteed Initial Delivery Dates by commencing Commercial Operations for: (i) approximately 18MW-DC of Renewable Energy at Power Provider Sites within 540 days of the date of the receipt of all Governmental Approvals for such applicable Solar Facilities; (ii) approximately 6MW-DC of Renewable Energy, in total, at a minimum of eight (8) accepted County Sites within 365 days of the receipt of all Governmental Approvals for those Solar Facilities, but in no event later than June 30, 2024, including at least three (3) County Sites with parking canopies and electric vehicle charging stations; and (iii) the rooftop Solar Facility at the Court House Site within 180 days of written notice from the County and the contractor for the Court House to the Power Provider to begin installation work, which shall be at least 180 days prior to the expected occupancy date for the Court House and, in the event of construction delays that prevent Power Provider from completing the work within 180 days, shall be extended on a day for day basis for the amount of such delay.
15. At the Court House Site and Provider Sites, Power Provider will install and maintain at its own expense pollinator-friendly native vegetation around the perimeter of ground mount solar installations. To the extent there are governmental grants available to defray the costs of pollinator-friendly native vegetation, the County will assist the Power Provider in accessing such grants.
16. Power Provider will install and maintain at its own expense certain infrastructure for sheep grazing, including transportation costs for sheep utilization, under the Solar Facility at Power Provider Sites. This infrastructure includes security fencing

and shelter areas for the sheep. To the extent there are governmental grants available to defray the costs of sheep grazing installations, the County will assist the Power Provider in accessing such grants. The Parties will work together to identify farmer(s) interested in participating in the program. This provision is subject to the leases for the Power Provider Sites and receipt of applicable permits for sheep grazing.

C. Maintenance and Ongoing Operations

Power Provider shall, at its sole expense:

1. Maintain and operate each Solar Facility during the Term of this Agreement, including monitoring the Solar Facility to detect maintenance needs and any washing, upgrades, and/or repairs necessary to ensure the commercially reasonable continuous delivery of Renewable Energy.
2. Accept responsibility a for repairs, moisture, infiltration, and/or damage caused by a Solar Facility at a County Site and any ancillary equipment in accordance with a warranty that is provided for such Solar Facility.
3. Install Metering Devices at all Sites in accordance with this Agreement that measure and establish the amount of Renewable Energy delivered to County at each Delivery Point and pay all costs of obtaining and installing, Interconnection Equipment at County Sites required of the County by the Local Electric Utility under the relevant Interconnection Agreement, until such time as the relevant Solar Facility has achieved Commercial Operations, and for Power Provider Sites pay all costs of obtaining, installing, maintaining, and operating the Interconnection Equipment for the Term of this Agreement.

4. Provide Data Acquisition System.
5. Supply all necessary internet connections for monitoring of any Solar Facility located at a County Site.
6. Use commercially reasonable efforts to ensure all warranties for any Solar Facility located at a County Site are transferrable to County or purchaser, if ownership is transferred.
7. Maintain ground cover under any ground mount solar installations at County Sites, following standards and specifications provided by the County. Manage security surrounding ground mount Solar Facilities.
8. Make commercially reasonable efforts to assist the County in applying the Renewable Energy generation to other County facilities via Maryland's virtual net metering law (Code of Maryland Regulations 20.50.10) and the Interconnection Agreements.

4.1 Differing Site Conditions. Power Provider shall promptly, and before such conditions are disturbed at a County Site, notify County in writing of: (1) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement. Power Provider acknowledges that prior to proceeding to obtain Governmental Approvals and as part of the Feasibility Study for a particular Solar Facility at a County Site it will investigate and satisfy itself as to the conditions affecting the work to be done or services to be provided under this Agreement including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical

conditions at specific County Site , the conformation and conditions of the County Sites, the character of equipment and facilities needed preliminary to and during prosecution of the work and provision of the services. Power Provider further acknowledges that as part of the Feasibility Study and prior to proceeding to obtain Governmental Approvals for a particular Solar Facility at a County Site, it will satisfy itself as to the character, quality and quantity of obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the County Sites or from information, if any, presented by the drawings and specification made a part of the Agreement. Any failure by Power Provider to acquaint itself with the available information may not relieve it from responsibility for any conclusions or interpretations made by Power Provider on the basis of the information made available by County.

4.2 Installation Work. At Power Provider's sole cost and expense, Power Provider will cause each Solar Facility to be designed, engineered, constructed, operated, maintained and decommissioned in accordance with the terms of this Agreement and with Applicable Laws (including without limitation building, electrical, health and fire codes, background check policies) of any applicable Governmental Authority, and with a specific targeted generating capacity more specifically described in Exhibits A and B, which is subject to final design and engineering in accordance with this Agreement. Power Provider shall undertake to develop and install each Solar Facility on the Mandatory County Sites as described in Exhibit A. Any architects and engineers employed by Power Provider must be currently licensed and in good standing with the State of Maryland. Power Provider, at its sole expense, will procure and install 12 EV car charging stations to be located with the parking

canopy Solar Facilities to be located at County Sites. The location of the EV car charging stations will be on or under the parking canopies.

For any Solar Facility to be located at a County Site, the County shall review and approve in writing proposed access points for ingress and egress, and all construction plans, permits, supporting materials, temporary storage plans, proposed locations of generators, a construction schedule for the Installation Work (“**Construction Schedule**”) and other requested documentation, including any impacts on parking during construction, operations and maintenance and any engineering evaluations of the impact of the Solar Facility on (i) the County Sites and (ii) the then current Local Electric Utility’s equipment and service (collectively, “**Plans**”). County shall respond in writing to any submission of drawings or plans by Power Provider within thirty (30) days of County’s receipt thereof by either accepting such drawings or plans or describing to Power Provider in detail the County’s reasons for rejecting such drawings or plans. The failure of the County to respond to any Plans within thirty (30) days of submittal shall, extend the Guaranteed Initial Delivery Date, on a day for day basis for the amount of such delay beyond the 30-day period. County’s approval of the Plans shall not be deemed as making County responsible, and County shall not be responsible, for the design or construction of the Solar Facility and will not relieve Power Provider from any of its maintenance or decommissioning responsibilities or of Power Provider’s responsibilities to ensure that the Solar Facility is installed and working properly.

If any material alteration to the approved Plans for a Solar Facility at a County Site is made, Power Provider shall submit such altered plans, Governmental Approvals, supporting materials, and other requested documentation to County for its review and written

approval. County shall not unreasonably withhold or delay any such approval. Following the Commercial Operations Date of any Solar Facility at a County Site, if the Power Provider desires to make alterations, additions or improvements to the Solar Facility Power Provider shall comply with the terms of the relevant License Agreement, or otherwise obtain the written approval of the County, not to be unreasonably withheld, the intent being that no alteration, additions or improvement may be made on the County Sites without first obtaining the County's written approval thereto. Notwithstanding anything herein to the contrary, County's approval of the Plans shall not relieve Power Provider of obligations to comply with all Applicable Laws relating to the Installation Work of a Solar Facility.

County shall not be responsible for the preparation of any Facility Site for Power Provider's use under this Agreement. Power Provider shall furnish, at its sole expense, all labor, machinery, systems, facilities, and other equipment and materials of any type required for Power Provider's use of the County Sites in accordance with the License.

County shall not be responsible for the safe keeping or theft of any machinery, tools, equipment, vehicles, or supplies of Power Provider or Power Provider's subcontractors, suppliers, or agents. County shall not be responsible for the security and safety of the construction site. County shall have the right to issue warnings and bar from the County Sites violators of construction, operation, environment, safety, health, and security performance standards.

Power Provider shall provide County reasonable notice of the progress of the construction of each Solar Facility and shall provide reasonable prior written notice to County regarding any delays of the Guaranteed Initial Delivery Date.

Power Provider, at its own cost and expense, shall commence and undertake, the following activities relating to the installation of the Solar Facilities:

- A. obtaining financing for installation of the System;
- B. application for Maryland's Clean Energy Incentive Tax Credit for operation of the System;
- C. obtaining all Permits and contracts and agreements required for installation and operation of the System and the sale and delivery of Renewable Energy to the County;
- D. providing assistance as needed to facilitate the execution of all agreements required for interconnection of the System with applicable Local Electric Utility.
- E. Power Provider shall provide a detailed site plan which is subject to the County's approval, showing how existing site conditions will be preserved or restored during and following any construction or demolition relating to canopies.

All Installation Work and related activities must be inspected and approved by appropriate County Officials at a time mutually agreeable to the Provider and County. Inspections of rough-in and final completion are required as deemed appropriate by the County. Third-party inspections, if required, will be scheduled and paid for by Power Provider. Documentation of detailed inspection results must be submitted to County for Solar Facilities at County Sites. If the inspector finds deficient work products or items that do not meet applicable legal requirements, products or items must be documented in the inspection report. Items must be corrected at the sole cost and expense of Power Provider,

to comply with Applicable Laws and re-inspection performed prior to acceptance by the applicable County inspector. In addition to the foregoing, County has the right to review the Installation Work for all Solar Facilities at County Sites during normal business hours.

4.3 Solar Facility Acceptance Testing.

(a) Power Provider shall conduct testing of each Solar Facility at its sole cost. Power Provider shall coordinate with and give notice to the County on the startup and commissioning of any Solar Facility on a County Site. County shall have the right to witness and observe the start-up and testing of each Solar Facility located at a County Site. County shall have the right to confirm testing. - Required commissioning and acceptance test services include start up and operation of the Solar Facility until - it generates and delivers Renewable Energy safely to the Delivery Point in accordance with (i) the requirements of the Local Electric Utility including but not limited to the Interconnection Agreement, the IEEE Standard 1547, the National Electric Safety Code and the National Electric Code (ii) the Interconnection Agreement (iii) all Governmental Approvals and (iv) the manufacturers' specifications, including PV string testing, inverter testing and DAS testing.

The calculated performance shall be compared to actual measured performance using DC and AC output/production meters, with data-logging for the term of the testing periods. There will be no partial acceptance of a Solar Facility. Payment will only commence upon written acceptance by County of each Solar Facility upon the Commercial Operations Date ("Acceptance of a Solar Facility").

(b) The Commercial Operations Date will be achieved upon completion and verification of the following:

A. Final approval of interconnection by Local Electric Utility

B. The Solar Facility field testing procedures at County Sites have been performed in accordance with manufacturers' recommendations, including PV string testing, inverter testing, DAS testing, etc. Power Provider shall provide written notice to County of the results of such testing.

C. The Solar Facility passed all start-up and commissioning procedures per Section 4.3.

D. The Solar Facility is fully operational and has received permission to operate ("PTO") from the Local Electric Utility. Power Provider will provide a copy of the PTO to the County upon receipt.

E. For a Solar Facility at a County Site, Data Acquisition System reporting and data logging complete and fully operational to County's satisfaction.

F. For a Solar Facility at a County Site, car canopy parking lot lighting and control systems (if applicable) are fully installed and functional to County's satisfaction.

(c) If the results of such Solar Facility Acceptance Testing indicate that the Solar Facility meets the requirements of Section 4.3(a) above and the conditions set forth in Section 3.1 have been satisfied or waived in writing by County, then Power Provider shall deliver to County a certification, executed by the Power Provider including certifications by a licensed professional engineer that that the Solar Facility and improvements have been

built in compliance with the plans and Applicable Laws. The certification of the Commercial Operations Date will not relieve Power Provider from any of their responsibilities to ensure that the Solar Facility is installed and working properly.

4.4 Suspension of Work

Due to a County operational requirement at a County Site the County unilaterally may order the Provider in writing to suspend, delay, or interrupt all or any part of the Installation Work at a County Site for such period of time as it may determine to be appropriate. Any suspension of Installation Work longer than 5 days shall require the County to reimburse the Power Provider for actual direct costs incurred, as mandated by Power Provider's written agreement with a subcontractor, as a result of such suspension. In addition, any suspension of the Installation Work shall automatically extend on a day for day basis the Guaranteed Initial Delivery Date for such Solar Facility.

4.5 Punchlist Items.

Within 120 days of the Acceptance of a Solar Facility at a County Site in accordance with Section 4.3 and subject to Governmental Approvals and seasonal restrictions, in accordance with this Agreement the following punch list items shall be completed:

- a. EV charging equipment (if applicable) is fully installed and functional in accordance with manufacturer's requirements;
- b. As-built drawings, revenue grade meter certification reports, inverter certification reports, provided and complete to County's satisfaction;
- c. Complete operations manuals and emergency procedures provided and complete to County's satisfaction;

d. Training of Solar Facility shutdown and emergency procedures provided to all appropriate County staff;

e. Completion of all landscaping to County's satisfaction.

4.6 Malfunctions and Emergencies.

- a. Malfunctions. County and Power Provider each shall promptly notify the other following their discovery of any material malfunction in the operation of the Solar Facility or of their discovery of an interruption in the supply of Renewable Energy. Power Provider shall diligently pursue restoration of the supply of Renewable Energy as soon as reasonably possible after notice or upon its discovery of a material malfunction in the operation of the Solar Facility or of an interruption in the supply of Renewable Energy.
- b. Emergencies. Power Provider and County each shall notify the other Party upon the discovery of an emergency condition in the Solar Facility. If an emergency condition exists, Power Provider shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner to ensure operations continue or are resumed as soon as possible.
- c. Personnel. For routine and emergency repairs, County shall contact Power Provider with contacts listed in the Emergency Contact Information Section of the Power Provider's Proposal. Power Provider and County shall each designate personnel and establish procedures such that each Party may provide notice of emergency conditions, as contemplated in Section 4.5(b), requiring Power Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

- 4.7 Metering. Power Provider shall install, operate, maintain, and decommission at its sole cost and expense a revenue-grade meter for the measurement of Renewable Energy provided to each Delivery Point and each Interconnection Point in the Solar Facility in accordance with Section 7(i). The County shall be only responsible for payment of Renewable Energy from the Solar Facility as defined by the relevant meter.
- 4.8 Solar Irradiance Data. Solar Irradiance Data with respect to the Solar Facility must be available to County upon request. For the purpose of forecasting solar energy production, Power Provider shall be responsible for collecting and providing Solar Irradiance Data to the County. On an annual basis, within thirty (30) calendar days of the end of each Contract Year, Power Provider shall be responsible for submission of an annual report of Actual Annual Solar Insolation data for County's review and use in calculating adjustments to the Expected Annual Energy Production and Minimum Annual Energy Production for the Solar Facility.
- 4.9 Interference. Power Provider shall not interfere or permit any third parties under Power Provider's control to interfere with the operation or use of the County Sites by County and County's invitees and tenants, including the mechanical or electrical systems on the County Sites and/or infrastructure, or the operation of any pre-existing radio or telecommunications systems operated on or from the County Sites. Similarly, Purchaser shall not interfere, or permit any third parties under Purchaser's control to interfere with the operation or use of the Solar Facilities at the County Sites or the Power Provider Sites, including the mechanical or electrical operation of the Solar Facilities. Power Provider shall ensure any Solar Facility design and operation reduces nuisance to the lowest level achievable within safety and security considerations. Any temporary lighting installed will

be properly directed. Power Provider shall cause its subcontractors, agents and employees to conform to the provisions of this Agreement. If the operation of a Solar Facility causes a material interference with the County's use of the Premises in violation of this section, the Power Provider shall voluntarily curtail the Energy delivery to the County, except for intermittent testing, until the violation is remedied and the Power Provider shall not be entitled to any recovery of costs from the County as a result of such curtailment. If the Power Provider is unable to remedy the violation within 60 days after notice of a material interference from the County, and upon the County's written request, the Power Provider shall take all reasonable efforts and expenses to remedy the violation, the costs of which shall be borne equally by the Power Provider and the County. . If the operation of the Solar Facility, or the actions of either Party violates any of the foregoing terms or conditions of this section, then, after notice to the other Party of such violation, the applicable Party will take all commercially reasonable steps necessary to correct and eliminate the violation. To the extent a Party is unable to cure any violation, then the Party shall be responsible to the other Party for any actual loss or damages caused.

- 4.10 Notices of Violation or Alleged Violations, Fines, and Penalties. Power Provider shall immediately notify County of any notice it may receive regarding notice of violations (NOV) or notice of alleged violations (NOAV) issued by federal, state, or local Governmental Authorities associated with Power Provider's installation, operation, and maintenance of the Solar Facility. Power Provider shall at its own expense immediately correct the conditions that resulted in the NOV/NOAV consistent with the issuing authority's regulations and to the reasonable satisfaction of County. Power Provider shall accept all responsibility, including payment, for valid fines and penalties issued by federal,

state, or local Governmental Authorities resulting from the actions of Power Provider, its agents, representatives, or invitees for acts or failures to act after the effective date of this Agreement.

4.11 Charges

The Purchaser shall reimburse the Power Provider for any Change in Law that results in a tax or other charge imposed on Power Provider, in connection with any Solar Facility, subject to this Agreement, by reason of Power Provider's status as an owner of electric generation facilities or the supplier of electricity in the State of Maryland, where that tax or charge is passed along to the consumers of electricity by a utility or third party provider pursuant to Maryland law ("**Imposition**"). This does not include any income taxes imposed on Power Provider based on the sale of electricity. Power Provider is responsible for local, state and federal income taxes attributable to Power Provider for income received under this Agreement. This Agreement is not intended to waive any tax immunity that may apply to either Party.

In the event of an Imposition that occurs after the Commercial Operations Date for a Solar Facility, the Power Provider shall, after notifying the County in writing of the new Imposition, have the right to add such Imposition to the Renewable Energy Charge pursuant to Section 6.1

4.12 Utility Charges. Electrical power to the Solar Facility and all improvements located thereon for Power Provider's operations in support of its obligations under this Agreement shall be provided by Power Provider. The Power Provider shall pay all charges for the supply, connection and usage of electricity, gas, heat, water and telephone or other communication services used, and other services rendered or supplied relating to the Solar

Facility and all other charges and expenses assessed on Power Provider's use thereof, except as otherwise expressly provided in this Agreement, and shall indemnify and hold harmless the County against and from all liability for such charges and expenses. The Power Provider, at its sole expense, shall incur all g costs related to establishing interconnection of each Solar Facility with the Local Utility pursuant to the Interconnection Agreement including the Interconnection Equipment. Power Provider's responsibility for the interconnection costs at County Sites are limited to those costs incurred prior to the Commercial Operations Date for such Solar Facility. Provided the County is not in violation of Section 7.5 the County shall not be liable for any interruptions or failures of utility services to or from the Sites.

- 4.13 Environmental Matters. Power Provider, its employees, subcontractors and agents shall not cause or permit any Hazardous Substances and Materials to be used, generated, or stored on, about, from or adjacent to the County Sites without prior approval from County. Power Provider must maintain Safety Data Sheets (SDS) onsite and electronically of all Hazardous Substances and Materials brought onto County Sites. Power Provider shall maintain spill response materials that are compatible with the types of Hazardous Substances and Materials within twenty (20) feet of the Hazardous Substances and Materials. Power Provider shall give County copies of all waste characterization and disposal documentation. Power Provider shall comply with all applicable laws, and nothing in this Agreement prevents or excuses Power Provider from complying with such applicable law, Governmental Approvals or the requirements of any Governmental Authority.

Power Provider shall give notice to County within one (1) hour of any known discovery or release of any Hazardous Substances and Materials, and, except in cases of emergency, such notice shall occur prior to any disturbance, collection, removal, storage, transportation or disposal of such Hazardous Substances and Materials. If there is a sudden release of Hazardous Substances and Materials, the Power Provider may take the minimum action necessary to stabilize and contain the relevant release of Hazardous Substances and Materials without providing County with prior notice. In these circumstances, Power Provider shall promptly (and in any event within one (1) hour) notify County of the release of Hazardous Substances and Materials and its location.

- 4.14 Decommissioning - Removal of Solar Facility at Expiration or Termination. The Parties hereby agree that each Solar Facility shall remain the personal property of Power Provider notwithstanding the method or mode of installation or attachment to the Premises. Power Provider shall, within six (6) months after the expiration or termination of this Agreement in whole or with respect to a Solar Facility located on a County Site, or as soon thereafter as County and Power Provider otherwise agree to in writing, remove the equipment and personal property constituting the Solar Facility(s) at a County Site (unless purchased by the County in accordance with Section 6.10), restore the County Site, to the extent it was impacted by the installation, operation and/or removal of the Solar Facility, to its respective condition at the commencement of construction of the Solar Facility, or if improved during the Term, to the condition when such improvement was made, normal wear and tear excepted. This includes the restoration of features that may be removed for the installation of a canopy or ground-mount Solar Facility located at a County Site. The County needs to approve drawings/plans for restorative site work.

Subject to the terms of the Licenses, County hereby grants to Power Provider such rights of use and access to each applicable County Site as may be reasonably necessary to complete such removal and restoration. Excluding ordinary wear and tear, Power Provider shall return all County Sites to their original condition including the removal of Solar Facility mounting pads or other support structures and equipment. In no case shall Power Provider's removal of the Solar Facility at a County Site affect the integrity of County's roof, which shall be as leak proof as it was prior to removal of the Solar Facility and shall be flashed and/or patched to existing roof specifications. Power Provider shall leave the Facility in neat and clean order.

If the Power Provider fails to remove and restore the County Site as provided herein within the allotted time, the County may do so at Power Provider's expense, including exercising its rights under the bond or it may achieve compliance at Power Provider's expense. If Solar Power Provider fails to remove or commence substantial efforts to remove the Solar Facility by such agreed upon date, the County shall have the right, at its option, to remove the Solar Facility to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Solar Power Provider's cost.

The County shall provide sufficient space 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 Solar Facility removal. Any damage resulting from removal of the Solar Facility shall be repaired or replaced by Power Provider, immediately, at Power Provider's expense, to the reasonable satisfaction of County. In no case shall Power Provider's removal of the Solar Facility affect the integrity, safety, design, installation, operation, maintenance or stability of the Premises. Power

Provider shall be responsible for, and indemnify, defend and hold harmless County for the cost of any damages incurred as a result of Power Provider's removal of the Solar Facility. For purposes of Power Provider's removal of the Solar Facility, County's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the Solar Facility.

5. SALE OF ENERGY.

Purchase Requirement. Commencing on the Commercial Operations Date of each Solar Facility and continuing throughout the remainder of the Term, the County agrees to purchase one hundred percent (100%) of the Renewable Energy generated by each Solar Facility and delivered to the County at the Delivery Point during each relevant month of the Term. If Power Provider commences delivery of Energy to the Purchaser, in accordance with Applicable Law, prior to the Commercial Operations Date of a Solar Facility, in conjunction with the start up or testing of a Solar Facility or otherwise, Purchaser shall purchase and take delivery of such Energy up to the level that Purchaser is then capable of accepting at the Purchase Price, in accordance with the terms of this Agreement and to the extent that the Local Electric Utility would credit the Energy under a net metering agreement or Interconnection Agreement.

Title to, risk of loss of, and custody and control of, the Renewable Energy will pass from Power Provider to County at the Delivery Point. Each Party agrees that, during the Term, it will not seek to change any of the rates or terms of this Agreement by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms unless agreed by the Parties in writing. Neither Party may claim that by this Agreement, Power

Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates.

- 5.1 Expected Annual Energy Production. During each year of the Term, Power Provider shall provide to County Renewable Energy from each Solar Facility in an amount that exceeds the Minimum Annual Energy Production for such Solar Facility. If the Power Provider fails to provide to County the Minimum Annual Energy Production at any Solar Facility, the Power Provider shall issue a credit to the County for the next billing period(s) in the amount equal to the County “**Reduced Savings**” measured as the difference between the amount paid by the County to the Local Electric Utility for delivery and to the supplier of electricity otherwise used by the County, for such shortfall, and the amount the County would have paid to Power Provider, had the applicable Solar Facility satisfied the Minimum Annual Energy Production requirement.

The Expected Annual Energy Production for each year of the Initial Term commencing on the Commercial Operation Date for the Solar Facility shall be as set forth in Exhibit D. Exhibit D shall be amended in accordance with the final design and engineering of each respective Solar Facility at NTP.

- 5.2 Title to Solar Facility. Throughout the duration of this Agreement, unless County purchases the Solar Facility under Section 6.10 for the Option Price, Power Provider shall be the legal owner of the Solar Facility at all times. The Solar Facility shall not be deemed a part of, or fixture to, the County Sites, and the Solar Facility shall be operated by Power Provider at its sole cost and expense. Both the Power Provider and County agree that the Power Provider is the tax owner of the Solar Facility and all tax filings and reports shall be filed in a manner consistent with this Agreement. The Solar Facility shall at all times retain

the legal status of Power Provider's personal property as defined under Article 9 of the Uniform Commercial Code. County covenants that upon request, it will use reasonable commercial efforts to place all parties having an interest in or lien upon the County Sites on notice of the ownership of the Solar Facility and the legal status or classification of the Solar Facility as personal property. If there is any mortgage or fixture filing against the County Sites which could reasonably be construed as attaching to the Solar Facility as a fixture of the County Sites, County shall provide a disclaimer or release from such lien holder. County consents to the filing at Power Provider's expense of a disclaimer of the Solar Facility as a fixture of the County Sites in the office where real estate records are customarily filed in the jurisdiction of the County Sites.

6. PRICE AND PAYMENT.

6.1 Consideration. County shall pay to Power Provider a monthly payment for the Renewable Energy produced by the Solar Facility during each calendar month of the Term (the "**Renewable Energy Charge**") equal to the product of (x) Actual Monthly Production for the Solar Facility for the relevant month as measured by the Meter multiplied by (y) the Contract Price. The amount of any Imposition shall be added to the monthly Renewable Energy Charge. No other fees or charges shall be due from County to Power Provider, except as otherwise expressly provided for in this Agreement.

6.2 Payment. Power Provider shall invoice County for each Solar Facility on or about the fifteenth day of each month, commencing in the first month after the month of the Commercial Operation Date of each Solar Facility, stating the Actual Monthly Production delivered to County during the preceding calendar month as measured by the Metering Devices and calculating the Renewable Energy Charge. The final invoice shall include

production only through the expiration or termination of this Agreement. Each invoice shall identify this Agreement and set forth Power Provider's federal employer identification number. Each invoice shall show the daily actual solar energy generation at each meter at a Delivery Point or Interconnection Point. Each invoice will be accompanied by an Excel or .csv file that includes the actual solar energy generation each day at all meters. Invoices will be reviewed by County to determine (a) the indicated costs are allowable hereunder and (b) that the invoiced payment is accurate. Failure to meet these conditions, including Provider's failure to satisfy any obligation or liability arising pursuant to this Agreement, will result in withheld costs that will be deducted from any authorized appropriated amount. Attached as Exhibit K is a form of invoice which the Parties have agreed to use for billing.

6.3 Time of Payment. Payments to the Power Provider pursuant to this Agreement shall be made no later than sixty (60) days after the County's receipt of a proper invoice in accordance with Section 6.2 from the Power Provider.

6.4 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Agreement at any time following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment on the applicable payment due date, exclusive of the amount in dispute, and such Party will be required to give prompt notice of the objection to the other Party. Any required payment will be made within thirty (30) days after resolution of the applicable dispute.

- 6.5 Netting and Setoff. Neither Party shall have the right to set off any undisputed amount due from and owing to such Party from the other Party under this Agreement against any undisputed amount due to and owing from such Party to the other Party under this Agreement.
- 6.6 Records and Audits. Each Party will keep, for a period not less than three (3) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such Transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to Transactions during such other Party's normal business hours.
- 6.7 Method of Payment. County shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated in writing by Power Provider.
- 6.8 Title to Environmental Attributes and Tax Incentives. All Environmental Attributes relating to the Solar Facility or the Energy including, without limitation SRECs, RECs or any comparable instruments and all Tax Incentives, including but not limited to all tax benefits, will be and shall remain property of Power Provider. Power Provider shall have all right, title, and interest in and to any and all Environmental Attributes and Tax Incentives and tax benefits, ITC Credits, deductions or reimbursements attributable to the Solar Facility or the Renewable Energy sold under this Agreement and Purchaser shall have no right, title or interest in or to any such Environmental Attributes or Tax Incentives, rebates, tax credits, deductions, or reimbursements. Purchaser shall not report to a Person

that any Environmental Attributes or Tax Incentives, tax benefits, rebates, credits, or reimbursements belong to any Person other than Power Provider.

6.9 Renewable Energy Credits and Payment to County. Power Provider shall pay to County \$15,000.00 each year this Agreement remains in effect, beginning within 60 days of the Commercial Operations Date of the first Solar Facility subject to this Agreement for the purchase by the County of RECs at the County's sole discretion.

6.10 Purchase Option.

At the end of the Initial Term after a Solar Facility located on a County Site has achieved Commercial Operations Date, Purchaser shall have the right and option, in accordance with the terms of this section, to purchase all of Power Provider's right, title and interest in such Solar Facility located on County Sites, at Fair Market Value, as defined herein (the "*Purchase Option*").

(a) Notice of Interest. County shall give Power Provider written notice of its interest ("**Notice of Interest**") in exercising the Purchase Option not less than six months (6) months prior to the proposed purchase date, as applicable. Promptly following receipt of the Notice of Interest, Power Provider shall make the Solar Facility, including records relating to the operations, maintenance, and warranty repairs, reasonably available to County.

(b) Fair Market Value. The Fair Market Value of the Solar Facilities located on County Sites shall be determined by the mutual agreement of County and Power Provider within forty-five (45) days of the County's Notice of Interest. If the Parties cannot agree upon the Fair Market Value within such forty-five day period, then the Parties shall select by mutual agreement, a nationally recognized Independent Appraiser,

with experience and expertise in the commercial and industrial solar photovoltaic industry, to value the Solar Facilities located on County Sites. Such Independent Appraiser shall determine the Fair Market Value and shall set forth such determination in a written opinion delivered to County and Power Provider. The valuation made by the Independent Appraiser shall be binding on County and Power Provider in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Parties cannot agree upon an appraiser, they shall request the American Arbitration Association to select an Independent Appraiser. The fees, if any, of the American Arbitration Association, shall be shared equally by the Parties.

- (c) Terms of Solar Facility Transfer. Upon exercise by County of the Purchase Option, on the Transfer Date: (a) Power Provider shall surrender and transfer to County all of Power Provider's right, title, and interest in and to the Solar Facilities located on County Sites and Power Provider shall retain all liabilities arising from or related to the Solar Facility prior to the Transfer Date; (b) title to the Solar Facilities located on County Sites shall pass to County free and clear of any liens and encumbrances; (c) any remaining periods on third party warranties for the Solar Facilities located on County Sites shall be transferred to County; (d) Power Provider shall convey to County all rights and interests in SRECs or other Environmental Attribute benefits that are generated by the Solar Facilities located on County Sites after the Transfer Date, if any; (e) County shall pay to Power Provider the agreed – upon Fair Market Value price (the “**Option Price**”) by bank draft or wire transfer and shall assume all liabilities arising from or related to the Solar Facility from and after the Transfer

Date; and (f) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the Solar Facilities, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Solar Facilities located on the County Sites in County, and (ii) deliver ancillary documents, including releases, rights to leasehold, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale by Power Provider to County of the Solar Facilities located on County Sites. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, COUNTY AND POWER PROVIDER UNDERSTAND AND AGREE THAT THE SALE BY POWER PROVIDER TO COUNTY OF THE SOLAR FACILITY PURSUANT TO THIS ARTICLE ___ SHALL BE ON AN AS IS, WHERE IS BASIS, SUBJECT TO ALL DEFECTS, KNOWN AND UNKNOWN. EXCEPT AS SET FORTH IN THIS ARTICLE. Upon execution of the applicable documents and payment of the Option Price, in each case as described in the preceding sentence, this Agreement shall terminate automatically as it applies to the Solar Facility acquired by the County.

7. GENERAL COVENANTS.

7.1 Power Provider's Covenants. As a material inducement to County's execution and delivery of this Agreement, Power Provider covenants and agrees to the following:

- a. Solar Facility and Premises Condition. Power Provider shall take all actions reasonably necessary to ensure that the Solar Facilities are capable of generating

and delivering Renewable Energy at the anticipated amounts as reflected in Exhibits A and B. Notwithstanding the generality of the foregoing, Power Provider shall cause the Solar Facilities to be operated and maintained at Power Provider's sole expense throughout the Term of this Agreement. Power Provider warrants that all of its operating and maintenance personnel will be adequately qualified and trained throughout the Term of this Agreement. Power Provider shall also be responsible for any maintenance and repairs to the County Sites if such repairs are necessary as a result of Power Provider's use of the County Sites. Power Provider shall not do or permit to be done anything which will invalidate any insurance policy covering the County Sites.

If a Solar Facility is located on a rooftop at a County Site, Power Provider shall, at its sole cost and expense, examine and repair the rooftop to the reasonable satisfaction of County to ensure that the warranty for the roof is not invalidated and to ensure that the roof remains watertight throughout the Term of this Agreement.

If Solar Facility is located on an exposed structure at a County Site, i.e. Parking Garage, the Power Provider shall, at its sole cost and expense, and pursuant to any Use Agreement entered into with the County, repair the structure to the reasonable satisfaction of the County to ensure the integrity of the structure throughout the Term of this Agreement.

During the course of any construction, maintenance, repair, or removal work, Power Provider shall, at its sole expense, (a) cause the County Sites to be kept reasonably clean and free of trash and building debris; (b) immediately upon the completion of such activity, cause all such trash and debris, and machinery and

equipment, to be removed from the County Sites; and (c) refrain from discarding or depositing any dirt, trash or other debris upon the County Sites. After each instance of construction, maintenance, repair or removal, Power Provider shall leave the County Sites in a safe condition, and at its sole cost and expense, restore all areas of the County Sites impacted by the construction, maintenance, repair or removal to its original condition, except for ordinary wear and tear.

Power Provider shall be responsible for, and indemnify, defend and hold harmless County for the cost of any damages or injuries incurred as a result of Power Provider's installation, maintenance, repair or removal of a Solar Facility.

Any repair or maintenance of a Solar Facility located at a County Site will be commenced and completed in a reasonably prompt manner by or for Power Provider, at its sole cost and expense. If Power Provider shall fail to comply with its maintenance and repair obligations at a County Site, County shall give Power Provider notice in writing to do such maintenance and repair as required in County's sole discretion under this Agreement. If, within ten (10) calendar days thereafter, Power Provider fails to commence and diligently attempt to complete the maintenance and repair, then in addition to its other remedies under this Agreement, County shall have the right to have such work performed and expend such funds at the expense of Power Provider as are required to perform such work. Power Provider shall reimburse any amount so expended by County within 30 days of County's submittal of the work invoices to Power Provider.

Power Provider will conduct routine inspections of the Power Provider's installation, operation, and maintenance activities to ensure construction, operation,

environment, safety, and health performance standards are met and risks to employees, the public, and the environment are minimized. Power Provider shall promptly provide to County all inspection reports and any findings and corrective actions for each of the Solar Facilities located at County Sites. For routine maintenance and repair work and inspections at a County Site, Power Provider shall provide reasonable written notice to County at least two (2) days prior to entering the County Sites to perform routine maintenance, repairs or periodic inspections.

- b. Governmental Approvals. While providing the Installation Work, Renewable Energy, and Solar Facility Operations, Power Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Power Provider and to enable Power Provider to perform such obligations. Power Provider shall deliver copies of all Governmental Approvals obtained pursuant to this section to County. Power Provider acknowledges that the County Sites may be subject to certain notice or approval requirements by the appropriate state or federal agency. Power Provider agrees to provide County information if needed by County to provide the necessary notice or request the necessary approval from the applicable state or federal agency.
- c. Health and Safety. Power Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Renewable Energy, and Solar Facility Operations that shall comply with all Applicable Law pertaining to the health and safety of persons and real and personal property. Power Provider shall immediately report to County any death, lost time injury, or property damage

to County's property that occurs on the County Sites or as part of Power Provider's operation of any Solar Facility on the County Sites.

- d. Liens. Other than Lender's security interest in or ownership of the Solar Facility, Power 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 County Sites or any interest therein. Power Provider also shall pay promptly before a fine or penalty may attach to the County Sites any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Power Provider or its agents and subcontractors on the County Sites. If Power Provider breaches its obligations under this Section, it shall (i) immediately notify County in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to County, and (iii) defend, hold harmless and indemnify County against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
- e. No Infringement. The Solar Facility and Power Provider's services hereunder, including the Installation Work, Renewable Energy and Solar Facility Operations, shall not infringe any third party's intellectual property or other proprietary rights.
- f. Security. Power Provider shall provide and take reasonable measures for security of each Solar Facility located on a County Site as necessary to prevent injury to persons in the vicinity of the Solar Facility.

- g. Interconnection. Power Provider shall be responsible for facilitating the execution of an Interconnection Agreement between County and the Local Electric Utility pursuant to the Utility's requirements. At County Sites, the Power Provider shall be responsible for all costs related to interconnection between the Local Electric Utility and the Solar Facilities, including Interconnection Equipment and compliance with all applicable metering requirements, but not including interconnection costs required after the Commercial Operations Date of a Solar Facility. Notwithstanding this limitation, Power Provider is responsible for any interconnection costs incurred after the Commercial Operations Date that relate to the failure of Power Provider to operate the Solar Facility in accordance with the Interconnection Agreement. The installation and operation of the Solar Facility shall not adversely affect the current loads on existing transformers at County Sites other than the expected capacity requirement of the applicable Solar Facility. The Interconnection Agreement between County and Local Electric Utility shall be substantially in the form attached hereto as Exhibit J attached hereto and made a part hereof.

At Power Provider Sites, the Power Provider shall be responsible for all costs related to interconnection between the Local Electric Utility and the Solar Facilities, including Interconnection Equipment and compliance with all applicable metering requirements, for the Term of this Agreement.

- h. Maintenance of Records. Power Provider shall maintain energy production and other records and documents relating to this Agreement as reasonably necessary to

demonstrate its compliance with its obligations under this Agreement. Power Provider shall retain and maintain all records and documents relating to this Agreement for three (3) years after final payment by County hereunder or any applicable statute of limitations, whichever is longer and shall make them available for inspection and audit by authorized representatives of the County, at reasonable times and locations. Upon five (5) business days' notice, the County shall be provided reasonable access to Power Provider's records to perform any such audits. The right to audit shall include any of Power Provider's subcontractors including but not limited to any lower tier subcontractor(s). Power Provider and/or subcontractor(s) shall ensure the County has the right to audit such subcontractor(s).

(i) Metering Devices. The Parties acknowledge and agree that Power Provider shall provide, install, own, operate and maintain Metering Devices at each Solar Facility.

(a) Standards. Metering Devices shall be revenue-grade, tested annually and maintained and calibrated in accordance with manufacturer's standards and Applicable Law. Calibration and maintenance records shall be maintained in accordance with this Agreement and provided to the County upon request

(b) Measurements. Readings of the Metering Devices at each Facility Site shall be conclusive as to the amount of Renewable Energy output; provided, however, that if the Metering Device is out of service, is discovered to be inaccurate or registers inaccurately, measurement of Renewable Energy to the Delivery Point shall be determined by using the Data Acquisition System's recorded inverter level electric production quantities during that time period. If no reliable information exists as to the period of time during which such

Metering Device was registering inaccurately, the time period will be based on the last annual testing and calibration of the meter.

7.2 County's Covenants. As a material inducement to Power Provider's execution and delivery of the Agreement, County covenants and agrees as follows:

- a. Health and Safety. Other than Power Provider's obligations hereunder related to the County Sites, County shall at all times maintain the Premises consistent with all Applicable Laws pertaining to the health and safety of persons and property, except that Power Provider shall repair any damage to the Premises as provided in Section 7.1(a).
- b. Notice of Damage. County shall promptly notify Power Provider of any matters it is aware of pertaining to any damage to or loss of the use of the Solar Facility or that could reasonably be expected to adversely affect the Solar Facility. County shall not be responsible for any loss of, or damage to, any portion of any Solar Facility or any of Power Provider's personal property, except to the extent caused by County's gross negligence or willful misconduct.
- c. Liens. County shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the Solar Facility or any interest therein. If County breaches its obligations under this Section, it shall immediately notify Power Provider in writing and shall promptly cause such Lien to be discharged and released of record without cost to Power Provider.
- d. Consents and Approvals. At Power Provider's sole cost and expense, County shall reasonably assist Power Provider in obtaining, maintaining, and securing any necessary approvals, Governmental Approvals, and authorizations related to the

installation of the Solar Facility, including, but not limited to, providing any authorizations needed for the above and signing applications for Governmental Approvals, local utility grid interconnection applications and rebate applications and processing. County shall ensure that any authorizations required of County are provided in a reasonably timely manner. To the extent that only County is authorized to obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, County shall deliver to Power Provider copies of said consents, approvals, Governmental Approvals, and authorizations relating to the performance of County's obligations and the rights granted by County hereunder and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which County is a party or by which County is bound.

- e. Temporary storage space during installation or removal. County shall use reasonable efforts to provide sufficient temporary space for the 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 or Solar Facility removal, and access for rigging and material handling. County shall provide Power Provider a feasible area for construction laydown with regard to proximity the work area and existing ground conditions.

7.3 Certain Responsibilities of Purchaser.

Notwithstanding the existence of any agreement or future agreement with any third party or the self-generation of electricity by the Purchaser, the Purchaser agrees that it shall

purchase 100% of all Energy generated by the Solar Facilities and delivered to the Delivery Points during the term of this Agreement on a first priority basis.

To the extent applicable to the County Sites, Purchaser 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 on or with respect to the Solar Facility or License or any interest therein or proceeds thereof ("**Lien**").

If a Lien is imposed due to the actions of Purchaser, Purchaser shall immediately provide notice to the Power Provider and promptly cause such Lien to be discharged and released of record without any cost to Power Provider. Purchaser shall indemnify Power Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any Lien.

Purchaser's indemnification obligations under this Agreement are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Annotated Code of Maryland. and subject to the appropriations of funds. The foregoing indemnification is not to be deemed as a waiver of any immunity that may exist in any action against Howard County, Maryland or its officers, agents, volunteers and employees.

- 7.4 Maintenance of the Premises. Purchaser shall use commercially reasonable efforts to maintain the County Sites and Premises in good condition and repair, so as to be able to receive and utilize the Renewable Energy generated by the applicable Solar Facility. Except as otherwise provided for in this Agreement, Purchaser shall maintain the County Sites and Premises and shall not take any actions that would materially interfere with the

operation of the applicable Solar Facility, reduce the production of Energy from the Solar Facility or damage or otherwise increase the cost of maintenance of the Solar Facility.

- 7.5 Maintaining the Utility Service and Meter. At County Sites Purchaser shall maintain the Utility Meter in good condition and repair and will maintain its connection and service contract(s) with the Local Electric Utility, or any successors thereto, (including, but not limited to, the Interconnection Agreement) so that Purchaser can, upon any suspension or interruption of delivery of Renewable Energy generated from the Solar Facility, obtain its full requirements of electricity for the Premises from the Utility. In the event of abandonment of a Premises by the County, Purchaser shall assign the Interconnection Agreement, as provided by law, to the successor owner of the Premises for the use of the Solar Facility as intended herein, or to the Power Provider in order to insure that the Interconnection Point is maintained.

If required, the Purchaser acknowledges and agrees that it may be required to sign the Interconnection Agreement. At County Sites, Power Provider shall be responsible for any and all payments, including materials and construction costs, related to the Interconnection Equipment required by the Utility under the Interconnection Agreement related to a specific Solar Facility prior to the Commercial Operations Date. Notwithstanding this limitation, Power Provider is responsible for any interconnection costs incurred after the Commercial Operations Date that relate to the failure of Power Provider to operate the Solar Facility in accordance with the Interconnection Agreement. The Purchaser is not responsible for any costs of Interconnection at Provider Sites for the Term of this Agreement. Purchaser shall use commercially reasonable efforts other than cost contribution to assist Power Provider and cooperate with Power Provider, as necessary, to

acquire and maintain approvals, permits, and authorizations related to the construction, operation, maintenance, repair, and decommissioning of each Solar Facility, including providing any building owner or occupant authorizations and signing any applications for permits, any related Local Electric Utility documents in addition to the Interconnection Agreement, SREC, REC or other Environmental Attribute creation and verification and rebate applications as are required to be signed by a person in the position of Purchaser. Purchaser shall also deliver to the Power Provider copies of any necessary approvals or permits that are in the name or physical control of Purchaser.

7.6 Performance of Solar Facility. The Purchaser understands and agrees that the generation of Renewable Energy from a Solar Facility is dependent upon direct sunlight from the sun and therefore the actual output of Energy from a Solar Facility may vary from time to time from design capacity depending upon season and weather.

8. WARRANTIES.

8.1 Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, Power Provider represents and warrants to County 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, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- e. there is no litigation, action or proceeding, 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 would affect its ability to carry out the transactions contemplated herein; and
- f. its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement 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.

8.2 PUHCA. Power Provider represents and warrants as of the Commercial Operations Date of each Solar Facility that (a) it will take all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended and (b) it is not subject to rate regulation by any Governmental Authority.

8.3 Requisite Standards. Power Provider represents and warrants that it shall qualify and certify the respective Solar Facilities with the Maryland PSC as a Renewable Energy Facility pursuant to the Maryland RPS and that th Solar Facilities shall be installed with due care by qualified employees, representatives, agents or contractors of Power Provider and shall conform to applicable industry standards and practices and Applicable Law (“**Requirements**”). If Power Provider fails to meet any of the foregoing Requirements,

Power Provider shall perform at its own cost, and without additional charge to County, the professional services necessary to correct errors and omissions, including any necessary replacement of the applicable Solar Facility, that are caused by Power Provider's failure to comply with the above Requirements so that such Solar Facility is capable of generating and delivering Renewable Energy at the expected levels in accordance with this Agreement.

8.4 Anti-Bribery. Power Provider warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government

8.5 Compliance Issues. Power Provider hereby represents and warrants that:

- A. It is qualified to do business and is in good standing in the State of Maryland and that it will take such actions as, from time to time hereafter, may be necessary to remain so qualified and in good standing.
- B. It is not in arrears with respect to the payment of any moneys due and owing to the County, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term of this Agreement;
- C. It shall comply with all Applicable Law applicable to its activities and obligations under this Agreement; and

- D. It shall obtain, at its expense, all licenses, Governmental Approvals, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.
- 8.6 Conflict of Interest. Power Provider represents that no State or County officer, employee, or agent who has participated personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in respect of this Agreement nor any spouse, parent, minor child, brother, or sister of such State officer, employee or agent, has a financial interest in the transactions contemplated by this Agreement or in Power Provider. Power Provider shall execute the affidavit of compliance with the County's ethics law, attached hereto as Exhibit K.
- 8.7 Contingent Fee Prohibition. Power Provider warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Power Provider, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.
- 8.8 Drug and Alcohol-Free Workplace. Power Provider warrants that Power Provider shall, throughout the Term of this Agreement, comply with Howard County Policy and Procedure Number 200.3, Title: CDL Alcohol and Drug Testing with regard to Power Provider's employees, agents, and contractors.
9. TAXES AND GOVERNMENTAL FEES.
- 9.1 Power Provider Obligations. Power Provider shall be responsible for all income, gross receipts, ad valorem, personal property or other similar taxes and any and all franchise fees

or similar fees assessed against it by any Governmental Authority, due to its ownership of the Solar Facilities. (For the avoidance of doubt, the Power Provider shall pay all filing fees and fee for permits that may imposed by the County.) If Power Provider is assessed any taxes or fees related to the Solar Facilities, the Power Provider shall immediately notify the County. County and Power Provider shall cooperate in contesting such assessments if they are incorrect; provided, however, that Power Provider shall pay such taxes to avoid any penalties on such assessments. Nothing contained in this Agreement shall be deemed to constitute a waiver of any exemption to which Power Provider may be entitled under the laws of the State. Notwithstanding the foregoing, County and Power Provider will enter into a payment in lieu of taxes (“**PILOT**”) agreement pursuant to MD CODE ANN., TAX PROPERTY § 7-514, regarding personal property taxes for Solar Facilities that are located in Howard County and real property taxes for County Sites and Power Provider Sites located in Howard County. The personal property PILOT agreement shall be in substantially the form as provided in Exhibit H attached hereto and made a part hereof. The real property PILOT agreements will be executed prior to the date each Solar Facility reaches its Commercial Operations ate. If the County Council does not approve a PILOT agreement for real property taxes assessed against Solar Facilities located in Howard County or if such PILOT agreement is cancelled or suspended not as a result of a default by the beneficiaries, Power Provider shall be entitled to add such taxes to the Renewable Energy Charge on an actual, annual *pro rata* basis.

10. FORCE MAJEURE.

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: (a) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (b) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (c) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (d) strikes or labor disputes; (e) action or inaction by a Governmental Authority or any public utility, including a moratorium on any activities material to this Agreement; and (f) the impossibility for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Permit.

- 10.1 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 the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said

Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter. If Power Provider claims relief pursuant to a “Force Majeure Event,” the obligation of County to make a Renewable Energy Charge to Power Provider on any payment date shall be suspended until Power Provider resumes performance of its obligations under this Agreement at which time such Renewable Energy Charge shall become immediately due and payable; provided, however, that County shall not be excused from making any payments and paying any unpaid amounts due in respect of Renewable Energy delivered to County prior to the Force Majeure Event performance interruption.

- 10.2 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Power Provider’s performance of its obligations hereunder with respect to a Solar Facility and that has continued for a period of one hundred eighty (180) consecutive days or three hundred and sixty five (365) days in the aggregate, then County shall be entitled to terminate this Agreement with respect to such Solar Facility upon ninety (90) calendar days’ prior written notice to Power Provider. If at the end of such ninety (90) day period such Force Majeure Event shall continue, this Agreement with respect to such Solar Facility shall automatically terminate. By mutual agreement of the Parties, any Solar Facility damaged or destroyed by a Force Majeure Event may be replaced by Power Provider within the time frames set forth above and, subsequent to replacement and upon commencement of operation of the replacement Solar Facility, all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement.

11. EVENTS OF DEFAULT; REMEDIES.

- 11.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (“**Defaulting Party**”), the occurrence of any of the following:

- a. the failure to perform any material term, covenant, or obligation set forth in this Agreement (i) with respect to a Solar Facility, including but not limited to meeting the Guaranteed Initial Delivery Date or (ii) with respect to a material covenant or obligation not specifically related to an identified Solar Facility (A) if such failure is not remedied within ten (10) calendar days after written notice thereof is received and such failure can be cured within thirty (30) calendar days after receipt of written notice of such failure (the “**Initial Cure Period**”), or (B) if such failure is not reasonably capable of being cured within such Initial Cure Period, such failure is not remedied within the Supplemental Cure Period, as set forth herein. If such a failure to perform is not reasonably capable of being cured within the Initial Cure Period, the Defaulting Party shall (i) commence and diligently pursue a cure within such Initial Cure Period, and (ii) if the Defaulting Party is Power Provider, submit to County for review and consideration for approval no later than the last day of the Initial Cure Period a plan to complete the cure within an additional reasonable period of time, not to exceed ninety (90) calendar days after the end of the Initial Cure Period (“**Supplemental Cure Period**”).
- b. a Party becomes Bankrupt; and
- c. such Party assigns (other than an assignment by County to its Affiliates or a collateral assignment to a Lender as allowed under Section 13.1(a)) this Agreement or any rights, interests or obligations hereunder without the prior written consent of the other Party when such consent is required.

11.2 Power Provider Events of Default. Any of the following events shall constitute a Power Provider Event of Default:

- a. the failure by Power Provider to maintain the required bonds during the Term as required under Section 14 this Agreement;
- b. the transfer by Power Provider of all or substantially all of its assets to another Person or entity without the prior written consent of County;
- c. the failure of Power Provider to meet the Guaranteed Government Approval Application Date, the Guaranteed Government Approval Deadline Date, or Guaranteed Initial Delivery Date, with respect to a Solar Facility.
- d. any Governmental Approval necessary for the Power Provider to be able to perform as contemplated by the Agreement with respect to a Solar Facility expires or is revoked or suspended with respect to such Solar Facility and is not renewed or reinstated within thirty (30) calendar days following the expiration, revocation or suspension thereof, by reason of the action or inaction of Power Provider; and
- e. with respect to any Solar Facility, and providing the County is not in default with respect to the Solar Facility and there has been no relevant Force Majeure, if for any two consecutive Contract Years following the Commercial Operations Date of the Facility the Adjusted AEP is less than seventy percent (70%) of the Adjusted EAEP beginning on the first day of the second full year, and annually thereafter, in addition to the Reduced Savings charge in section 5.1,
 - (i) Notice of termination with respect to the Solar Facility shall be given in writing a minimum of sixty (60) calendar days prior to the effectiveness of such termination and within one hundred twenty (120) calendar days following the end of the second of the applicable two Contract Years. County's ability to exercise such termination right in respect of any two consecutive Contract Years

shall be deferred for up to one year if Provider has demonstrated to County, and is actively implementing in good faith, a Cure Plan for any such failure as described below.

(ii) A Cure Plan may include, but is not limited to, the addition of solar modules to the system at Power Provider's sole expense. A Cure Plan that reasonably shows the Solar Facility's ability to achieve 90% of the Adjusted EAEP in that current two consecutive Contract Year period (i.e. the Cure Plan Year and the preceding Contract Year) must be submitted to County in writing within thirty (30) calendar days of Power Provider's receipt of County's Notice of Termination. County shall then have fifteen (15) calendar days after receipt of the Cure Plan to inform Power Provider in writing of any reasonable objections to the Cure Plan. County's non-objection to, or requested modifications to, Power Provider's Cure Plan does not waive County's termination rights in the event that the Cure Plan is not ultimately effective to cause the Adjusted EAEP for the two consecutive Contract Year period of which it is a part to equal or exceed 90%. Any disagreements regarding the Cure Plan will be resolved in accordance with the dispute resolution provisions provided herein.

(iii) For avoidance of doubt, County's termination rights under this Section, relating to performance during the two consecutive Contract Year period, are not waived during the Cure Plan Year and are in addition to any rights under this Agreement. If Provider does not meet 90% or more of the Adjusted EAEP in the rolling two consecutive Contract Year period that includes the Cure Plan Year, County may terminate with no further Cure Plan period and no further

deferment of time of termination.

- 11.3 General Remedies for Events of Default. If an Event of Default has occurred and has not been reasonably cured within thirty (30) calendar days, the other Party (the “**Non-Defaulting Party**”) shall have the right to: (a) suspend performance under the Agreement with respect to an identified Solar Facility; (b) terminate the Agreement with respect to an identified Solar Facility and utilize the bonds to complete the work; (c) terminate the Agreement if the Event of Default is a breach of a material covenant not related to a specific Solar Facility; and/or (d) exercise any remedies under this Agreement and available at law. Without limiting the generality of the foregoing, upon a Power Provider Event of Default, County shall have the right to exercise its remedies under any performance bond. Without limitation on any of the rights of County, if Power Provider fails to perform any duty that it is required to perform under this Agreement with respect to any Solar Facility, County shall have the right, upon written notice to Power Provider, to perform such duty or cause it to be performed, and Power Provider shall promptly and fully reimburse County for all costs incurred in performing such duty of Power Provider.
- 11.4 Actions to Prevent Injury. If any County Default creates an imminent risk of damage or injury to any Person or any Person’s property, then in any such case, in addition to any other right or remedy that Power Provider may have, Power Provider may (but shall not be obligated to) take such action as Power Provider deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the Solar Facility, in compliance with the conditions of Section 4.5 herein, or suspending the supply of Renewable Energy to County.
- 11.5 Commercial Operation and Delay Damages. After the successful testing and verification

of Commercial Operation pursuant to Section 4, Power Provider shall execute, and then provide to County the certificate of completion and notice of the Commercial Operation Date in substantially the form attached as Exhibit G to this Agreement (“**Completion Notice**”), as to each Solar Facility.

If the Power Provider fails to achieve Commercial Operations by the Guaranteed Initial Delivery Date for a Solar Facility, then Power Provider shall pay County the difference between the Renewable Energy Charge for the amount of Energy per kWh that is less than the applicable County Site Contract Capacity and the actual cost, on a day for day basis per kWh by for an equivalent amount of Energy supplied by the Local Electric Utility (“**Delay Damages**”). Power Provider shall not owe County Delay Damages if the delay was caused by Force Majeure, the Purchaser or its agents, or a delay in completion of interconnection facilities by a third party (not affiliated to Power Provider, including its subcontractors) required for such Solar Facility.

If Power Provider fails to achieve the Guaranteed Initial Delivery Date at the Court House Site, Power Provider shall pay an additional charge equal to any actual direct costs incurred by the County as a result of any delay caused by Power Provider. Power Provider shall not owe County Delay Damages if the delay was caused by Force Majeure, the Purchaser or its agents, a delay in completion of the Court House, or the interconnection facilities by a third party (not affiliated to Power Provider, including its subcontractors) required for such Solar Facility.

11.6 Damages on Termination.

- a. (i) Upon a termination of this Agreement by the County due to an Event of Default caused by the Power Provider (y) with respect to an identified Solar Facility or (z)

the Agreement due to the breach of a material term, covenant, or obligation , County shall be entitled to recover: (i) the present value (using a discount rate of 5.0%) of the excess, if any, of the reasonably expected cost of Renewable Energy, as determined by County on a commercially reasonable basis (County shall furnish Power Provider with a detailed calculation of such cost if such a claim is made) over the Renewable Energy Charge for the Expected Annual Energy Production from the date of termination until the twenty-fifth anniversary of the Effective Date; (ii) all costs reasonably incurred by County in re-converting its electric supply to service to the Local Electric Utility or otherwise replacing the Renewable Energy with Solar Energy at market rates; (iii) any costs incurred by County to remove the applicable Solar Facility from a County Site, and (iv) any and all Delay Damages and other amounts previously accrued under this Agreement and then owed by Power Provider to County.

- (b) Upon termination of this Agreement based upon a County Event of Default, the Power Provider shall be entitled to recover from the County: (i) the present value (using a discount rate of 5.0%) of the Renewable Energy Charge for the Expected Annual Energy Production of the applicable Solar Facility from the date of termination until the twentieth anniversary of the Effective Date less the amount received by the Power Provider from the sale of such Energy to any third party; (ii) all costs reasonably incurred by Power Provider in converting its established generation to deliver directly to the Local Electric Utility; and (iii) any and all and other amounts previously accrued.

11.7 Cumulative Remedies. The remedies provided for in this Article 11 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

11.8 Lender's Right to Cure. County may accept a cure of any Power Provider Event of Default by the Lender, so long as the cure is accomplished within the applicable cure periods set forth in the Agreement.

11.9 EXCLUSION OF CONSEQUENTIAL DAMAGES. EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST REVENUE OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, IN CONTRACT OR OTHERWISE, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12. DISPUTE RESOLUTION.

The Parties hereby consent to the exclusive personal and subject matter jurisdiction of the federal and state courts of the State of Maryland in any dispute arising under this Agreement. The Parties waive trial by jury in any action or proceeding between them or to which they are parties arising out of or in any way pertaining to this Agreement. This waiver is knowingly, willingly and voluntarily made by the Parties, who hereby represent and warrant that no representations of fact or opinion have been made to induce this waiver of trial by jury or to in any way modify or nullify its effect.

13. ASSIGNMENT.

13.1 Except for the provisions in this Article 13, Power Provider shall not sell, transfer or assign (collectively, an “**Assignment**”) this Agreement or any interest therein, without the prior written consent of County.

Following the Commercial Operations Date of any Solar Facility, Power Provider may, with the prior written consent of Purchaser, which shall not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under this Agreement and the applicable Solar Facility (Permitted Transfer) (i) to any Affiliate of Power Provider or (ii) to a Qualified Assignee which assumes the obligations of Power Provider hereunder. Power Provider shall deliver notice of any Permitted Transfer to Purchaser in writing as soon as reasonably practicable. A “Qualified Assignee” must be a business organization with: (i) experience comparable with Provider’s in the operation and management of commercial renewable energy generating systems, (ii) the financial capability equal to or greater than Power Provider at the time of the assignment (iii) the ability to maintain the System and provide the Renewable Energy Services in the manner required by this Agreement.

13.1 Lender Accommodations.

The Parties acknowledge that the Power Provider will finance the acquisition and installation of the Solar Facilities pursuant to Financing Documents which may include a leveraged lease, loans and/or a tax equity investment with financing parties including the Lender. A Lender will require such financing to be secured by a first lien on the Power Provider’s assets, including a collateral assignment of this Agreement and all of the Power Provider’s rights and obligations hereunder. Accordingly, any interest in this Agreement and/or Power Provider’s rights to receive payments hereunder, may be assigned by the

Power Provider in connection with the financing or any refinancing of the Solar Facility, alone or aggregated with other comparable systems, without further consent of the Purchaser. Purchaser further agrees (i) to execute such consents or similar documents with respect to a collateral assignment of this Agreement and the Solar Facility as the financing parties may reasonably request in connection with the financing or refinancing of the Solar Facility and (ii) acknowledges that such consents or similar documents, among other things, the validity and existence of this Agreement, the acknowledgment of no defaults under this Agreement and require the Purchaser to give the financing parties notice of, and an opportunity to cure, any breach by the Power Provider hereunder. The Purchaser agrees to cooperate with the Power Provider in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the financing parties that does not have a material adverse effect upon the Purchaser hereunder.

13.2 In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, County agrees as follows:

- a. Consent to Collateral Assignment. County consents to the collateral assignment to the Lender of the Power Provider's right, title and interest in and to this Agreement. Written notice shall be provided to County of such sale and collateral assignment, together with the appropriate contact information for the Lender.
- b. Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:
 - i. Lender, as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Power Provider, all rights and remedies of Power Provider under this Agreement in accordance with the terms of

this Agreement. Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Solar Facility.

- ii. Lender shall have the right, but not the obligation (unless the Lender has succeeded to Power Provider's interests under this Agreement), to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Power Provider thereunder or cause to be cured any default of Power Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Power Provider under this Agreement or (unless the Lender has succeeded to Power Provider's interests under this Agreement) to perform any act, duty or obligation of Power Provider under this Agreement, but County hereby gives it the option to do so.
- iii. Upon the exercise of remedies under its security interest in the Solar Facility, including any sale thereof by the Lender with the written approval of County (not to be unreasonably withheld), whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Power Provider to the Lender (or any Qualified Assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to County of the transferee or assignee of this Agreement. Such transferee or assignee shall assume in writing, in form and content reasonably satisfactory to County, the due performance of all Power Provider's obligations under this Agreement and including the provision of all representations and warranties

under this Agreement, including, but not limited to the representations and warranties contained in Sections 8.4, 8.5, 8.6 and 8.7. Any such exercise of remedies shall not constitute a default under this Agreement. Power Provider shall provide written notice to County in the event that Power Provider receives written notice from its Lender that Power Provider is in default under its financing agreements with respect to the Solar Facility or that Power Provider's Lender intends to exercise the remedies under its security interest in the Solar Facility.

iv. For purposes of this section, a "Qualified Assignee" must be a business organization with experience comparable with Power Provider's in the operation and management of commercial Renewable Energy generating Solar Facilities and with the financial capability to maintain the Solar Facility and provide the Renewable Energy in the manner required by this Agreement.

c. Right to Cure.

i. If the Lender or a Qualified Assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Power Provider's assets and shall, within the time periods described in this Agreement, 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.

- d. County acknowledges and agrees that Power Provider may change Lender at any time, in Power Provider's sole discretion, and County shall abide by such new contact information and payment directions as instructed by Power Provider.

14. BONDING.

14.1 Performance Bonds.

- a. The Power Provider shall deliver a performance bond(s) to County to cover the construction of each Solar Facility on a County Site and return the County Site to the condition required under this Agreement. Copies of the bonds shall be provided to the County before the Notice to Proceed is delivered to the contractor commence the Installation Work of such Solar Facility.
- (b) With respect to Power Provider Sites, Power Provider shall require an agreement with a land-owner hosting such a Site that fully indemnifies the County against any liability connected with the Solar Facility located thereon, and which includes provisions for either the restoration of the Site upon termination of this Agreement or the purchase of the Solar Facility upon termination of the land-owner agreement. The applicable provisions of such agreements between the land-owner and the Power Provider shall be provided to the County.
- (c) The Power Provider shall provide individual performance bonds for: (i) the construction of each Solar Facility on a County Site that covers 25% of the Power Provider's estimated costs of construction, which shall be released upon notice by County thirty (30) days after the applicable Commercial Operations Date; (ii) decommissioning of each Solar Facility located at a County Site in

the amount that covers 100% of the Power Provider's estimated costs to remove the Solar Facility from the County Site and return the County Site to the same or better condition as existed prior to the Agreement, ordinary wear and tear excepted, either at the end of the Term or when the Solar Facility is abandoned.

- b. The performance bond(s) shall be in the form provided in Exhibit I and underwritten by a surety company authorized to do business in the State of Maryland and shall be subject to approval by County.
- c. The Power Provider shall provide a decommissioning plan and cost estimate for such decommissioning. The actual amount of the bond shall be based on the cost estimate increased annually during the Term by the CPI for industrial and commercial companies in Maryland. Furthermore, the decommissioning plan shall address, but not be limited to, (i) defined conditions upon which decommissioning may occur; (ii) define the Solar Facility removal; (iii) document the conditions of the County Site prior to construction to illustrate how the County Site will be restored; (iv) the timeframe for decommissioning; (v) identify any subcontractor hired by Power Provider for decommissioning; and (vi) provide any updates to the decommissioning plan as necessary or requested by County. The decommissioning plan must be submitted and approved by County thirty (30) days prior to the Commercial Operation Date for each Solar Facility.
- d. The decommissioning bond(s) shall be maintained throughout the term of this Agreement, and renewal option period, if exercised. Evidence of annual renewal of the decommissioning bond(s) and payment of the required premium shall be provided to County. The County shall have the right to use the performance bond(s)

to secure the costs incurred for the failure to construct the Solar Facilities or pay the decommissioning costs.

- e. The Power Provider shall provide notice to the County, thirty (30) calendar days before the annual expiration of the applicable bond, confirmation from the surety that the bond has been renewed for the following year if applicable. Failure to timely provide this notice shall constitute an event of default under the Agreement. Such a default may be remedied if the Power Provider obtains a replacement bond that conforms to the requirements of the Agreement and provides that replacement bond to County prior to the expiration of the existing performance bond(s).
- f. The cost of any bond is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

15. NOTICES.

15.1 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 as follows:

If to Power Provider:

Walter Serafyn, Vice President
KDC Solar Maryland LLC
1420 US Route 206 – Suite 120
Bedminster, New Jersey 07921
Telephone: 908 955-4360
Email: walter.serafyn@kdcsolar.com

If to County:

Leah Miller
Energy Manager
Howard County Office of Community Sustainability
3430 Court House Drive
Ellicott City, MD 21043

Telephone: (410) 313-6172
Email: lemiller@howardcountymd.gov

With a copies to:

County Solicitor
Howard County Office of Law
3450 Court House Drive
Ellicott City, MD 21043
Tel: 410-313-2100 ____
Email: _____

Chief, Bureau of Facilities
Howard County Department of Public Works
9200 Berger Road
Columbia, MD 21046
Telephone: 410-313-2700
Email: build@howardcountymd.gov

or at such other address as may be designated in writing to the
other Party.

- 15.2 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, 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.
- 15.3 Notices of Default. County will deliver to the Lender, concurrently with delivery thereof to Power Provider, a copy of each notice of default given by County under this Agreement, inclusive of a reasonable description of Power Provider default.

15.4 Address for Invoices. All invoices under this Agreement shall be submitted electronically to the email address provided by County and sent to the mailing address provided by County by regular first-class mail postage prepaid.

16. 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, and comment upon, any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement and that is not otherwise a matter of public record. 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.

17. INDEMNITY.

To the extent permitted by Applicable Law, each Party (the “*Indemnifying Party*”) shall defend, indemnify and hold harmless the other Party and its affiliates and their respective officers, directors, employees, contractors, subcontractors, and agents from and against any and all claims or actions, and the resulting losses, liabilities, damages, expenses, attorney’s fees and court costs, whether incurred by settlement or otherwise (“*Claims*”) of third parties to the extent arising out of, or by reason of, the negligence, gross negligence, or willful misconduct of the Indemnifying Party, its affiliates or their respective officers, directors, employees, contractors, subcontractors, or agents. In addition, Purchaser agrees

to indemnify Power Provider against Claims relating to environmental matters at County Sites where such claim is not caused by the action of Power Provider.

If a Person entitled to indemnification under this section (an “*Indemnified Party*”) receives notice or has knowledge of any Claim that may result in a claim for indemnification hereunder, it shall promptly give written notice of such Claim to the Indemnifying Party, which notice must include a reasonably detailed description of the facts and circumstances relating to such Claim. Failure promptly (but in no less than five (5) business days) to give such written notice or to provide such information and documents will not relieve an Indemnifying Party of any obligation of indemnification it may have hereunder unless such failure materially diminishes the Indemnifying Party’s ability to respond to such Claim. The Parties shall consult and cooperate with respect to the response and the defense of any such Claim and the Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party, will be entitled to assume and control the defense or to represent the interests of Indemnified Party, which will include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the Indemnified Party and to propose, accept or reject offers of settlement; provided, however, that the Indemnified Party will have the right to retain separate counsel with respect to such Claim at its own expense..

Purchaser’s indemnification obligations under this Agreement are subject to the limitations of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Annotated Code of Maryland. and subject to the appropriations of funds. The foregoing indemnification is not to be deemed as a waiver of

any immunity that may exist in any action against Howard County, Maryland or its officers, agents, volunteers and employees.

18. INSURANCE.

18.1 The Power Provider shall maintain at its expense, throughout the Term, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring on the Premises or arising out of the use thereof by Power Provider or its agents, employees, officers, contractors or subcontractors, under one or more policies of Commercial General Liability (“CGL”) insurance having such limits as to each as are reasonably required by County, but in any event of not less than a minimum coverage of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and shall contain broad form CGL Endorsement or its equivalent. Power Provider shall also maintain, at its own expense throughout the Term, all risk or fire and extended coverage insurance covering all improvements to the Premises constructed and owned by Power Provider under the terms of this Agreement, including structures, fixtures, equipment and personal property at full replacement value. The County must be a named or additional insured on all insurance.

18.2 Power Provider shall require any contractor or subcontractor it engages for construction, repair, maintenance, or improvements to the Premises to maintain, in force and in effect, prior to the beginning of the construction, repair, maintenance or improvement, and must remain in effect until completion of the construction, repair, maintenance or improvement has been completed, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the Premises or arising out of the use thereof by Power Provider or its agents, employees, officers, contractors and

subcontractors, under one or more policies of CGL insurance having such limits as to each as reasonably required by County but, in any event, of not less than a minimum coverage of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and shall contain broad form CGL Endorsement. County reserves the right at the end of each five (5) years throughout the Term to adjust the aforementioned minimum insurance requirements specified in this Agreement based upon the percentage change in the Consumer Price Index (CPI) for All Urban Consumers (COI-U): Selected Areas, All Items Index for the Washington-Baltimore consolidated area, for such five (5) year period. In the event the CPI is replaced or otherwise ceases to exist, the County shall designate a comparable economic indicator to replace the CPI for purposes thereof. The County must be a named or additional insured on all insurance.

- 18.3 Power Provider shall, at its sole cost and expense, require any construction contractor or subcontractor it engages for the construction, repair, maintenance, improvement or decommissioning of the Premises, to maintain, in force and in effect, prior to the beginning and remaining in effect until completion of, said construction, repair, maintenance, improvement or decommissioning in accordance with all legal requirements, as certified by an independent inspection at Power Provider's cost, and in accordance with the approved design and construction plans and with the terms and conditions of this Agreement, a Builder's Risk policy or policies of insurance, with an insurance company authorized to conduct business in the State of Maryland against loss or damage to all improvements (including but not limited to all alterations, additions and replacements thereto) along with business interruption and extra expense coverage, that may occur by reason of fire, wind, storm, smoke, vandalism, malicious mischief, civil riot, commotion,

and other traditionally insured risks and hazards and also including an extended coverage endorsement. The insurance shall be in an amount equal to the estimated full value of the improvements at the County Sites on completion. The insurance shall be in a form and content as is reasonably acceptable to the County and, additionally, shall include a Loss Payable Clause on behalf of the Power Provider and the County as their respective interest may appear.

- 18.4 Power Provider shall, at its sole cost and expense, maintain, and shall require any construction contractor or subcontractor it engages for construction, repair, maintenance or improvement to the Premises to maintain, throughout the Term, Worker's Compensation and Employer's Liability insurance, with an insurance company authorized to conduct business in the State of Maryland, in compliance with the Maryland Workers' Compensation Act.
- 18.5 Power Provider shall, at its sole cost and expense, maintain, and shall require any contractor it engages for the construction, repair, maintenance or improvement to the Premises to maintain, throughout the Term, comprehensive automobile insurance, with an insurance company authorized to conduct business in the State of Maryland, with a combined single limit and umbrella coverage of One Million Dollars (\$1,000,000).
- 18.6 Power Provider acknowledges that if the Premises are located within the flood plain Power Provider shall, at its sole cost and expense, maintain in force and in effect, prior to the Effective Date and throughout the Term, commercial flood insurance against loss or liability in connection with a physical loss of improvements or contents, real or personal, caused by a flood occurring within or on the Premises or arising out of the use thereof by Power Provider or its agents, employees, officers, subtenants, invitees, visitors and guests,

under one or more policies of Commercial/Renter Flood Insurance and/or the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program, or its successor, and having such limits as to each as required by State or Federal law, but in no event less than the value of the facility and improvements or contents on the Premises. Power Provider shall increase the required coverage under such policies promptly upon written request from County.

- 18.7 In the event that Power Provider, or any of its officers, agents, employees, successors and assigns, or contractors, perform activities within fifty (50) feet vertically or horizontally of railroad tracks, Power Provider shall provide Railroad Protective Liability Insurance (ISO/RIMA Form G 00 35 or equivalent), in the name of the State of Maryland, County, and the Maryland Department of Transportation. Such insurance shall be procured prior to the initiation of any such activity. The policy shall have limits of liability of not less than Fifteen Million Dollars (\$15,000,000.00) per occurrence, combined single limits, for coverage A & B, for losses arising out of injury to or death of any person, and for physical loss or damage to or destruction of property, including the loss of use thereof. A Ten Million Dollar (\$10,000,000.00) annual aggregate may apply. If equivalent, or better, wording is not contained in the policy form, the following endorsement shall be included:

“It is agreed that in this policy of insurance ‘Physical Damage to Property’ means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, signals, bridges or buildings.”

- 18.8 Each such policy set forth in Section 18 shall (1) name “Howard County, Maryland” as additional insured thereunder, (2) by its terms be considered primary and non-contributory

with respect to any other insurance (if any) carried by the County or its successors and assigns, (3) by its terms, provide County with thirty (30) calendar days prior written notice before cancellation, non-renewal, or material change to a policy, and (4) be issued by an insurer authorized to do business in the State of Maryland and reasonably satisfactory to the County with: (i) Claims paying ability of not less than “A” (or the equivalent) by S&P and one other Rating Agency satisfactory to the State of Maryland; and (ii) An “A” rating or better and have a financial size category of IX or better in the most recent Best’s Key Rating Guide. Power Provider shall obtain from its insurer and deliver to County an endorsement to Power Provider’s policy to evidence that County is named as an additional insured and will be given thirty (30) calendar days’ notice prior to cancellation, non-renewal, or material change to the policy.

18.9 At least five (5) calendar days before the Effective Date of this Agreement, the Power Provider shall deliver to the County a certificate of insurance, listing County as an additional insured, for each such policy in a form reasonably acceptable to County, and at least thirty (30) calendar days before any such policy expires, the Power Provider shall deliver to the County a certificate of insurance for each replacement policy therefore. In the event the Power Provider fails to pay any insurance premium when due, the County shall have the option but not the obligation of paying such insurance premiums on behalf of the Power Provider and, the Power Provider shall immediately, upon demand, repay such sum to County. Notwithstanding the foregoing, certificates of insurance required from contractors and subcontractors shall be provided to County prior to beginning any work for which that contractor or subcontractor has been engaged.

18.10 All required insurance shall include a clause or endorsement denying the insurer any rights of subrogation or recovery against the County to the extent such rights have been waived by the insured before the occurrence of injury or loss. Power Provider waives any rights of subrogation or recovery against County for injury or loss due to hazards covered or which should be covered by policies of insurance obtained or which should have been obtained pursuant to this Agreement, to the extent of the injury or loss covered or to have been covered thereby and, further, any deductible or retention shall be deemed to be insurance coverage.

19. MISCELLANEOUS.

19.1 EPA Compliance. Materials, supplies, equipment, or services provided under this Agreement shall comply in all respects with the Federal Noise Control Act of 1972, where applicable, as well as all other federal or state environmental laws and regulations.

19.2 O.S.H.A. All materials, supplies, equipment or services supplied as a result of this Agreement shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

19.3 Political Contributions Disclosure. The Power Provider shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount

of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

- 19.4 Registration. Pursuant to 7-201 *et seq.* of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the Maryland Department of Assessments and Taxation, 301 West Preston St., Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Maryland Department of Assessments and Taxation.
- 19.5 Subcontracting. Provider may subcontract any portion of the services provided under this Agreement without obtaining the prior written approval of the County. Any such subcontract shall be subject to the terms and conditions of this Agreement and include the County an additional insured on all insurance. Notwithstanding any subcontracting, the Power Provider shall not be relieved of and shall remain liable and responsible for all of its obligations under this Agreement. The County shall not be responsible for the fulfillment of Provider's obligations to the subcontractors.

- 19.6 Nondiscrimination in Employment. The Power Provider agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- 19.7 Integration; Attachments. This Agreement including the Contract Documents constitutes the entire agreement and understanding between Power Provider and County 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.
- 19.8 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the renewable energy power generation 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.
- 19.9 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Power Provider or County shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

- 19.10 Limited Effect of Waiver. The failure of Power Provider or County 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.
- 19.11 Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.
- 19.12 Governing Law Maryland Law Prevails. The Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.
- 19.13 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 Agreement.
- 19.14 Relation of the Parties. The relationship between Power Provider and County 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. Power Provider and County, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

- 19.15 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Power Provider and County and their respective permitted successors and assigns.
- 19.16 PDFs and Counterparts. In order to expedite the full execution of this Agreement, the parties have agreed to accept Portable Document Format (“PDF”) copies of this Agreement and PDF copies of the signatures thereon as if they were executed originals of this Agreement bearing original signatures. This Agreement may be executed in one or more counterparts and shall be effective and binding on the parties.
- 19.17 Use Agreements. – License? The Parties shall enter into appropriate Use Agreements at each of County Sites in order to accommodate the Solar Facility and Power Provider’s obligations under the terms of and in a manner consistent with, this Agreement. Such Use Agreements may be in the form of a license lease, or other use agreement as reasonably agreed to by the Parties.

Treatment of SRECs. Power Provider shall retain ownership of all RECs or SRECs and may sell such RECs or SRECs on the open market throughout the Term. Power Provider shall be responsible for compliance with the provisions of the Maryland Clean Energy Jobs Act and all other applicable laws to ensure that the RECs or SRECs are properly credited to the applicable Solar Facility. [SIGNATURE PAGES ATTACHED]

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, Power Provider and County have executed this Agreement as of the Effective Date.

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

Calvin Ball
County Executive

APPROVED:

Joshua Feldmark, Administrator
Office of Community Sustainability

APPROVED:

James M. Irvin, Director
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Janet R. Irvin, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY:
this ____ day of _____, 2020

Gary W. Kuc
County Solicitor

Reviewing Attorneys:
Lewis Taylor
Norman E. Parker, Jr.
Constance A. Tucker
Senior Assistant County Solicitors

POWER PROVIDER: KDC SOLAR MARYLAND LLC

Alan M. Epstein, President and CEO
KDC Solar Maryland LLC

EXHIBIT A

Part I – Mandatory Sites

Site Name	Address	Type	Capacity (MW DC)	Year One Expected Generation kWh
1. Circuit Court House	9250 Judicial Way, Ellicott City, MD 21043	Rooftop	0.328	430,000
		Ground Mount	0.452	598,000
2. Carrs Mill Landfill	15900 Carrs Mill Road, Woodbine, MD 21797	Ground Mount	2.060	2,840,000
3. East Columbia 50+ Center and Library	6600 Cradlerock Way, Columbia, MD 21045	Rooftop	0.0576	75,780
		Canopy	1.01	1,257,000

Part II – Non-Mandatory Sites

Power Provider will install Solar Facilities on a minimum of eight (8) County Sites, including the Mandatory Sites above, with a capacity of 6 MW DC, including at least three (3) sites with canopies over parking not to exceed 1.8 MW DC of the 6 MW DC. Below are sites identified as options based on an initial solar feasibility study.

Site Name	Address	Type	Capacity (MW DC)	Year One Expected Generation kWh
North Laurel Community Center Pool	9411 Whiskey Bottom Road, Laurel, MD 20723	Rooftop	TBD	TBD
		Canopy	TBD	TBD
Scaggsville Public Safety Complex	11226 Scaggsville Road, Laurel, MD 20723	Rooftop	0.046	63,000
Detention Center	7301 Waterloo Rd., Jessup, MD 20794	Rooftop	TBD	TBD
Elkridge Branch Library	6540 Washington Blvd., Elkridge, MD 21075	Rooftop	TBD	TBD

Site Name	Address	Type	Capacity (MW DC)	Year One Expected Generation kWh
Ascend One	8930 Stanford Blvd, Columbia, MD 21045	Rooftop	0.496	685,000
		Canopy	TBD	TBD
Fire Station 1	5700 Rowanberry Drive, Elkridge, MD 21075	Rooftop	TBD	TBD
Fire Station 13	14620 Carrs Mill Rd, Woodbine, MD 21797	Rooftop	TBD	TBD
Long Reach Village Center	8775 Cloudleap Ct., Columbia, MD 21045	Rooftop	0.302	396,000
		Canopy	TBD	TBD
George Howard Building	3430 Court House Drive, Ellicott City, MD 21043	Canopy	TBD	TBD
Gary Arthur Community Center	2400 Route 97, Cooksville, MD 21723	Canopy	TBD	TBD

EXHIBIT B

Power Provider Sites

Site Name	Address	Type	Capacity (MW DC)	Year One Expected Generation kWh
Howard Road	13825 Howard Road Dayton, MD 21036	Ground Mount	18	26,500,000
TBD	Other addresses that may be selected by Power Provider			

**EXHIBIT C: AVERAGE SOLAR IRRADIANCE AND EXPECTED MONTHLY
ENERGY PRODUCTION FOR TYPICAL WEATHER CONDITIONS**

[NOTE: to be provided to County for each site upon final engineering and construction.]

MONTH	SOLAR IRRADIANCE (W/M²)	SOLAR ENERGY PRODUCTION (KWH)
JANUARY		
FEBRUARY		
MARCH		
APRIL		
MAY		
JUNE		
JULY		
AUGUST		
SEPTEMBER		
OCTOBER		
NOVEMBER		
DECEMBER		
ANNUAL AVERAGE		

**DATA SOURCE: TYPICAL GHI YEAR FOR THE SOLAR FACILITY SITE
(LATITUDE: _____°N, LONGITUDE: _____°W)**

EXHIBIT D: ENERGY PERFORMANCE BENCHMARKS

[NOTE: to be provided to County for each site upon final engineering and construction.]

Year of Term	Expected Annual Energy Production (EAEP) MWh	Minimum Annual Energy Production (MAEP) MWh (MAEP is defined as 90% of the EAEP for each contract year)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

Year of Term	Expected Annual Energy Production (EAEP) MWh	Minimum Annual Energy Production (MAEP) MWh (MAEP is defined as 90% of the EAEP for each contract year)
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

The Expected Annual Energy Production (EAEP) includes an annual degradation rate of 1%.

EXHIBIT E: OUTAGE NOTIFICATION PROCEDURE

- E.1 Additional Definitions for the Outage Notification Procedure:
- E.2 Forced Outage: The shutdown of a generating unit, transmission line, or other facility for emergency reasons, or a condition in which the equipment is unavailable as a result of an unanticipated breakdown.
- E.3 Planned Outage Notifications. Power Provider shall notify County at least ten (10) business days in advance of Planned Outages that result in a reduction in the effective output of the Solar Facility during period over which the Planned Outage is scheduled. Notification should be by email to the Contract Manager.
- E.4 Notification of PV Array Cleaning. If Power Provider has scheduled cleaning for PV arrays, Power Provider shall notify County at least ten (10) business days in advance of scheduled cleaning, and should include details of the cleaning plan. Power Provider shall also follow-up with County after cleaning of the Solar Facility to verify the actual cleaning dates and times. Notification should be made by email to the addresses shown in the Outages section of the Notices.
- E.5 Forced Outage Notifications. Within 24 hours of a Forced Outage of the Solar Facility that impacts the ability of the Solar Facility to produce Energy, Power Provider shall notify County of the Forced Outage, including the Capacity of the Solar Facility that is impacted, and the expected duration of the Forced Outage. Within 24 hours of the return of the Solar Facility to service following the Forced Outage, Power Provider shall notify County of the return to service details. Notification shall be made by email to the addresses shown in the Outages section of the Notices.
- E.6 Outage Communication to Local Utility: Power Provider will be responsible for the communication to the Local Utility and meeting all requirements and timelines for generation outage scheduling and reporting, per the Local Utility's Tariff and relevant instructions or business practices.

EXHIBIT F: ELECTRIC VEHICLE CHARGING REQUIREMENTS (AS APPLICABLE)

Provider shall provide, install, operate, and maintain a total of 12 level 2 (7.2 kilowatt (“kW”), 30 Amp at 240 Volt AC) electric vehicle (“EV”) charging stations.

If there are governmental grants available for charging stations the County will assist the Power Provider in applying for and obtaining such grants.

EXHIBIT G: COMMERCIAL OPERATION – COMPLETION NOTICE

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“**Agreement**”) by and between _____ (“**County**”) and _____ (“**Power Provider**”), this letter serves to document the Parties further agreement that Commercial Operations Date for the Solar Facility located at _____ has been achieved in accordance with Section 4.3 of the Agreement, and (ii) County has received the Renewable Energy, as specified in the Agreement, as of this day of _____ .

This letter shall confirm the Commercial Operation Date for the Solar Facility located at _____, as defined in the Agreement, as the date referenced in the preceding sentence.

[COUNTY]	[POWER PROVIDER]
By: _____	By: _____
Name:	Name:
Title:	Title:
Date: _____	Date: _____

EXHIBIT H: FORM OF PILOT AGREEMENT

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “PILOT Agreement”) is made this ___ day of _____, 2020, by and between **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the “County”) and **KDC SOLAR MARYLAND LLC**, a New Jersey Limited Liability Company, with offices at _____, the “Owner”).

RECITALS

A. The County has established a policy to obtain 20% of the electricity for local government operations with distributed, renewable energy generation by 2024.

B. On June 7, 2019 the County issued a Request for Proposals No. 16-2019 for Solar Equipment and Energy Services (“RFP”). The Owner submitted a response to the RFP on July 24, 2019, and was awarded the contract (Agreement PA-18-2020) to provide renewable energy (“Renewable Energy”) to the County over a terms of years concurrent with this Agreement.

C. The Owner, is or will be the owner of certain personal property located in Howard County, Maryland, that will be used to generate and deliver Renewable Energy to the County (“Renewable Energy Equipment”), as detailed in that certain Master Solar Power Purchase Agreement (“PPA”), entered into pursuant to Agreement PA-18-2020, and concurrently with this Agreement, and which is incorporated herein by reference.

D. The Owner, is developing and constructing solar photovoltaic Renewable Energy facilities in Howard County to deliver Renewable Energy to the County on County property and private properties (the “Project” or “Projects”). The Projects, at full buildout, are expected to generate a total of 24± MW DC and shall include a minimum of 18± MW DC ground-mounted facilities at non-County owned sites and 6± MW DC at a minimum of eight (8) County-owned sites including at least three (3) car canopies over parking.). All electricity generated from the Projects will be sold to the County pursuant to the PPA which has been approved by the County Council of Howard County.

E. In its response to the RFP, the Owner requested that the County permit the Owner to make payments in lieu of any County personal property taxes (“Personal Property Taxes”) pursuant to Section 7-514 of the Tax-Property Article of the *Annotated Code of Maryland* (the “Act”). The Act authorizes the County to agree to such payment in lieu of Property Taxes:

- (a) *Agreement with owner of facility for generation of electricity.*

(1) The governing body of a county or municipal corporation may enter into an agreement with the owner of a facility for the generation of electricity that is located or locates in the county or municipal corporation for a negotiated payment by the owner in lieu of taxes on the facility.

(2) An agreement for a negotiated payment in lieu of taxes under this section shall provide that, for the term specified in the agreement:

- (i) The owner shall pay to the county or municipal corporation a specified amount each year in lieu of the payment of county or municipal corporation real and personal property tax; and
- (ii) all or a specified part of the real and personal property at the facility shall be exempt from county or municipal corporation property tax for the term of the agreement.

F. In order to support the full development of the Renewable Energy Projects, the County agreed to exempt the Owner from the payment of Personal Property Taxes related to such Projects, subject to the terms and conditions of this PILOT Agreement.

G. The County Council of Howard County, Maryland approved this PILOT Agreement by Resolution (CR__-2020), dated _____, 2020, a copy of which is attached hereto as Exhibit "C".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Owner agree as follows:

1. Abatement of County Personal Property Taxes for Renewable Energy Equipment.

- (a) From the effective date and continuing for the term of this PILOT Agreement, any Personal Property Taxes imposed on the Owner, pursuant to State and County law, based on an assessment of the Renewable Energy Equipment, shall be abated or waived as they become due pursuant to terms of this PILOT Agreement.
- (b) The Owner shall file its personal property tax return related to the Renewable Energy Equipment with Maryland State Department of Assessments and Taxation annually by April 15, or as lawfully extended by an approved extension. Thereafter, upon certification from the County as provided herein, the County shall abate the personal property taxes and in lieu of payment of the Renewable Energy Equipment Personal Property Taxes, the Owner shall pay to the County \$1 each year for the term of this PILOT Agreement.

The Owner shall continue to pay to the County the full amount of any fees or charges on the

Project (the "County Assessments") as they become due on the Property.

2. Conditions Precedent. This Agreement shall not take effect unless and until the Owner installs the Renewable Energy Equipment on the first Site pursuant to the PPA.

3. Representations and Warranties.
 - (a) The County represents and warrants to the Owner that it has the authority to abate the Renewable Energy Equipment Personal Property Taxes for personal property located in Howard County.
 - (b) The Owner represents and warrants to the County that it is eligible in all respects to enter into this PILOT Agreement to make payments in lieu of taxes under the Act.
 - (c) The Owner, will develop, construct, and provide for the operation of the Projects. The Projects, at full buildout, will include a total of 24± MW DC and shall include 18± MW DC ground-mounted facilities at privately-owned sites and 6± MW DC at a minimum of eight (8) County-owned sites with at least three (3) car canopies over parking. The County-owned sites will generate a minimum of 8,579,000± kWh annually, as provided for in the PPA, and include ground-mounted, roof-top, and car canopy solar installations.
 - (d) The Owner agrees that this PILOT terminates on the termination of the PPA and otherwise requires compliance with the terms of the PPA.
 - (e) On April 30, 2020, and every year thereafter the PILOT Agreement is in effect, the Owner shall provide the County with a report regarding the status of the Projects and the electricity being produced by the Projects and detailing the Renewable Energy Equipment Personal Property Tax, including the Owner's State personal property tax return.
 - (f) By May 30, 2020, and every year thereafter the PILOT Agreement is in effect, the County Office of Community Sustainability will certify to the Department of Finance that the Owner is complying with the PPA and is providing the County with Renewable Energy and that the Owner's Renewable Energy Equipment Personal Property Tax may be abated pursuant to this PILOT Agreement.
 - (g) The Owner Agrees that the terms of this PILOT will terminate if the Project fails to deliver at least 5MW AC of electricity by December 30, 2022, or has not installed at least 20MW DC of electricity by December 30, 2024.
 - (h) The Owner covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

3. Term of Agreement. This Agreement shall remain in effect with respect to each Project until the date on which the Owner ceases operation of the Project pursuant to the terms of the PPA, and including any default by the Owner under this PILOT Agreement with respect to the Project, which shall include, but is not limited to, the failure of the Owner to pay the County for any amounts due under this PILOT Agreement or remain in good standing with the State.

4. State Taxes. The Owner acknowledges and agrees that it shall pay all State real property taxes due with respect to the properties where the Projects are located.

5. Successors and Assigns. This PILOT Agreement shall be binding upon, and shall inure to the benefit of, the Owner and all successors and assigns of the Owner, pursuant to the obligations of the PPA.

6. Entire Agreement. This PILOT Agreement represents the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the County and the Owner, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

[OWNER INFO]

By: _____

(SEAL)

Name: _____

Name: _____

Title: _____

Title: _____

[COUNTY SIGNATURES ON FOLLOWING PAGE]

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Name: Lonnie Robbins
Title: Chief Administrative Officer

By: _____(SEAL)
Name: Calvin Ball
Title: County Executive

APPROVED for Form and Legal
Sufficiency this _____ day of
_____, 20__.

APPROVED by Department of Finance

Gary Kuc
County Solicitor

Janet R. Irvin
Director of Finance

Reviewing Attorney:

Kristen Bowen Perry

Exhibit A: Council Resolution No. _____

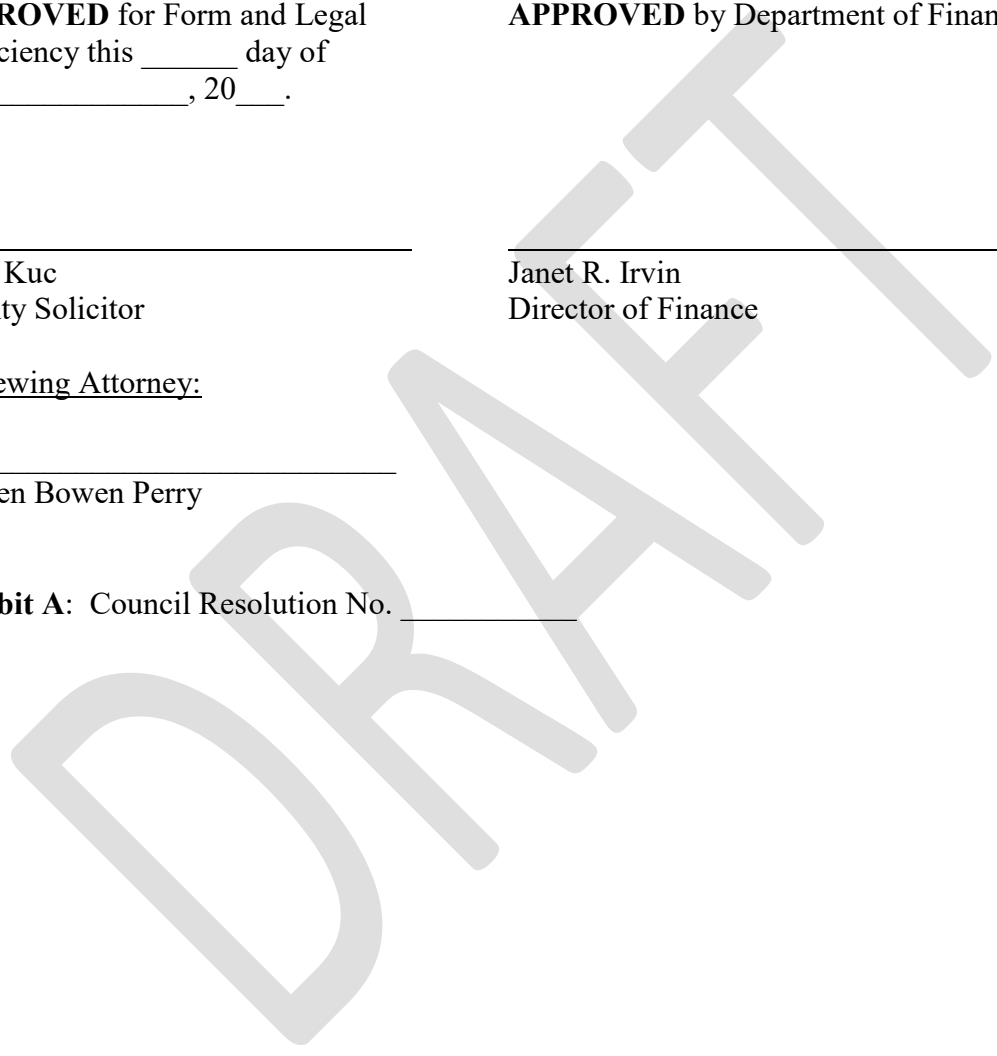


EXHIBIT I: FORM OF PERFORMANCE BOND

The Form of Performance Bond shall be substantially in the form of the Howard County, Maryland Performance Bond attached here.



HOWARD COUNTY, MARYLAND
PERFORMANCE BOND

Bond No. _____

Principal

Business Address of Principal

Surety

Obligee

HOWARD COUNTY, MARYLAND

a corporation of the State of _____
and authorized to do business in the State of
Maryland

Penal Sum of Bond (express in words and figures)

Date Bond Executed

Description of Contract

Contract Number:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond (“or Bond”) stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where a surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liabilities is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with Howard County, Maryland (“County”), which contract is described and dated as shown above. The contract and all items incorporated into the Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the plans, specifications, general provisions, special provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the “Contract,” which is specifically incorporated herein by reference as if fully set forth herein, including but not limited to the choice of law and forum provisions of the Contract.

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed and delivered to the County.

NOW, THEREFORE, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

- 1. The Principal shall well and truly perform the Contract, including all warranty or guarantee obligations, and shall discharge any and all liability for latent defects, for which the Surety shall also be liable;**
- 2. The Principal and Surety shall comply with the terms and conditions of this Performance Bond;**
- 3. If the Obligee notifies both the Contractor and the Surety at their addresses described in this Performance Bond that the Obligee is considering declaring the Contractor in default of the Contractor's obligations under the Contract, then, the Surety, at the Obligee's request, shall arrange a conference with the Principal and the Obligee to discuss methods of performing the Contract. If the Obligee, Principal and the Surety agree, the Principal shall be allowed a reasonable time, as determined by the rights to declare the Principal in default under the contract and terminate the Principal's right to proceed or to avail itself of any other right or remedy under the Contract;**
- 4. If the Obligee declares the Contractor in default and terminates the Principal's right to proceed prior to final acceptance by the Obligee of the services (as defined in the Contract), then the Surety shall:**
 - a. Undertake to perform and complete the Contract itself through its agents or through independent contractors; or**
 - b. Obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Obligee with a contractor selected with the Obligee's concurrence and acceptable to the Obligee to be secured with performance and payment bonds executed by a qualified Surety in a form acceptable to the Obligee, and pay to the Obligee the cost of completion of the Contract in excess of the Balance of the Contract price; or**
 - c. If the cost to complete the Contract is in excess of the balance of the Contract price plus the Penal Sum of the Performance Bond, then either obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the contract, arrange for a contract to be prepared for execution by the Obligee with the contractor selected with the Obligee's concurrence and acceptable to the Obligee, to be secured with performance and payment bonds executed by a qualified Surety in a form acceptable to the Obligee and pay to the Obligee the excess cost of completion up to the Penal Sum of the Performance Bond as the excess costs are incurred by the Obligee; or pay to the Obligee the Penal Sum of the Performance Bond within thirty (30) days of the date when the Surety determines the cost to complete the Contract is in excess of the sum of the Penal Sum of the Performance Bond and the balance of the Contract price.**
- 5. If the Surety complies with the obligations contained in paragraph 4 of this Bond, then, the Surety's liability shall be limited to the Penal sum of the Bond.**
- 6. If the Surety contests the propriety of the default and termination of the Principal's right to proceed, the Surety shall, nevertheless, comply with the obligations contained in paragraph 4 of this Bond but, in that event, the Surety shall be entitled to exercise all of the Principal's remedies under the Contract, including but not limited to asserting any and all claims which the Principal may have.**

7. **The balance of the Contract price shall be the total amount payable by the Oblige to the Principal under the Contract after adjustments for any approved change orders, including allowance to the Principal of any amounts received or to be received by the Oblige in settlement of insurance or other claims for damage to which the Contractor is entitled, reduced by all payments properly made to and on behalf of the Principal under the Contract and less any deductions made by the Oblige under the Contract for any damages for which the Principal may be liable to the Oblige under the Contract.**

8. **If, after notice of default under the Contract and termination of the Principal's right to proceed, the Surety does not comply with the obligations contained in paragraph 4 of this Bond, then the Oblige, within fifteen (15) days after notice to the Surety, may have the remaining Contract work completed and the Surety shall be liable for all completion costs and other costs and damages that the Oblige may incur as a result of the Surety's failure to comply with the terms of this Bond.**

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations under the Bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications. Any increase in the Contract amount shall automatically result in a corresponding increase in the Penal Sum, without notice to or consent from the Surety, such notice and consent being hereby waived. Decreases in the Contract amount shall not, however, reduce the penal amount of the Bond unless specifically provided for in the change order.

The Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland exclusive of its choice of law rules and any reference herein to the Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, the Principal and the Surety have set their hands and seals to the Performance Bond. It is specifically understood and agreed that this Bond shall be a sealed instrument for all purposes. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the date of the Bond shown above.

In Presence of:
Witness
..... as to

Individual Principal
.....(SEAL)

Presence of:
Witness

..... as to
..... as to
..... as to

Co-Partnership Principal
.....(SEAL)
(Name of Co-Partnership)

By:.....(SEAL)
.....(SEAL)
.....(SEAL)

Corporate Principal

Attest:

.....
Corporate Secretary

.....
(Name of Corporation)

By:..... **AFFIX**
President **CORPORATE**
SEAL

Attest: (SEAL)

.....
Signature

.....
(Surety)

By:..... **AFFIX**
CORPORATE
SEAL
Title:.....

Bonding Agent's Name:.....

.....
(Business Address of Surety)

Agent's Address:.....

EXHIBIT J: FORM OF INTERCONNECTION AGREEMENT

Interconnection agreement shall be substantially in the form provided by BG&E with the title: Maryland Standard Agreement For Interconnection Of Small Generator Facilities With A Capacity Greater Than 10 Kw But Less Than Or Equal To 10 MW for Maryland State and Local Government Entities, as amended from time to time by the Maryland Public Service Commission, example attached.

**MARYLAND STANDARD AGREEMENT FOR INTERCONNECTION OF SMALL
GENERATOR FACILITIES WITH A CAPACITY GREATER THAN 10 kW BUT LESS THAN
OR EQUAL TO 10 MW
FOR
MARYLAND STATE AND LOCAL GOVERNMENT ENTITIES**

This Agreement is made and entered into this ___ day of _____, by and between _____, a _____ organized and existing under the laws of the State of Maryland, (“Interconnection Customer,”) and _____, a _____, existing under the laws of the State of _____, (“EDC”). Interconnection Customer and EDC each may be referred to as a “Party, ” or collectively as the “Parties.”

Recitals:

Whereas, Interconnection Customer is the State of Maryland (“State”) or a local governmental entity of the State of Maryland;

Whereas, the Interconnection Customer is proposing to, install or direct the installation of a Small Generator Facility, or is proposing a generating capacity addition to an existing Small Generator Facility, consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, the Interconnection Customer will operate and maintain, or cause the operation and maintenance of the Small Generator Facility; and

Whereas, Interconnection Customer desires to interconnect the Small Generator Facility with EDC’s Electric Distribution System.

Now, therefore, in consideration of the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Scope.

This Agreement shall be used for all approved Level 2, Level 3 and Level 4 Interconnection Requests according to the procedures set forth in the Maryland Standard Small Generator Interconnection Rule. (COMAR reference)

1.2 Interconnection.

This Agreement governs the terms and conditions under which the Small Generator Facility will interconnect to, and operate in Parallel with, the EDC’s Electric Distribution System.

1.3 **Not a Purchase Agreement.**

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power.

1.4 **Tariff.**

Nothing in this Agreement is intended to affect any other agreement between the EDC and the Interconnection Customer. However, in the event that the provisions of this Agreement are in conflict with the provisions of the EDC's tariff, the EDC tariff shall control.

1.5 **Responsibilities of the Parties**

- 1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations.
- 1.5.2 The EDC shall construct, own, operate, and maintain its Interconnection Facilities in accordance with this Agreement, IEEE Standard 1547, the National Electrical Safety Code and applicable standards promulgated by the Maryland Public Service Commission.
- 1.5.3 The Interconnection Customer shall construct, own, operate, and maintain its Small Generator Facility in accordance with this Agreement, IEEE Standard 1547, the National Electrical Safety Code, the National Electrical Code and applicable standards promulgated by the Maryland Public Service Commission.
- 1.5.4 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the Point of Interconnection.
- 1.5.5 The Interconnection Customer agrees to design, install, maintain and operate its Small Generator Facility so as to minimize the likelihood of causing an Adverse System Impact on an electric system that is not owned or operated by the EDC.

1.6 **Parallel Operation Obligations**

Once the Small Generator Facility has been authorized to commence Parallel Operation, the Interconnection Customer shall abide by all written rules and procedures developed by the EDC which pertain to the Parallel Operation of the Small Generator Facility, which are clearly specified in Attachment 4 of this Agreement.

1.7 **Metering**

The Interconnection Customer shall be responsible for the cost of the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 5 and 6 of this Agreement.

1.8 **Reactive Power**

The Interconnection Customer shall design its Small Generator Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the power factor range required by the EDC's applicable tariff for a comparable load customer. EDC may also require the Interconnection Customer to follow a voltage or VAR schedule if such schedules are applicable to similarly situated generators in the control area on a comparable basis and have been approved by the Commission. The specific requirements for meeting a voltage or VAR schedule shall be clearly specified in Attachment 4. Under no circumstance shall these additional requirements for reactive power or voltage support exceed the normal operating capabilities of the Small Generator Facility.

1.9 **Capitalized Terms**

Capitalized terms used herein shall have the meanings specified in the Definitions in Attachment 1 or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 **Equipment Testing and Inspection**

The Interconnection Customer shall test and inspect its Small Generator Facility including the Interconnection Equipment prior to interconnection in accordance with IEEE Standard 1547 and IEEE Standard 1547.1. The Interconnection Customer shall not operate its Small Generator Facility in Parallel with EDC's Electric Distribution System without prior written authorization by the EDC as provided for in 2.1.1 – 2.1.4.

2.1.1 The EDC shall have the option of performing a Witness Test after construction of the small generator facility is completed. The Interconnection Customer shall provide the EDC at least 20 days' notice of the planned Commissioning Test for the small generator facility. If the EDC elects to perform a Witness Test, it shall contact the Interconnection Customer to schedule the Witness Test at a mutually agreeable time within 5 business days of the scheduled commissioning test. If the EDC does not perform the Witness Test within 5 business days of the commissioning test, the Witness Test is deemed waived unless the parties mutually agree to extend the date for scheduling the Witness Test. If the Witness Test is not acceptable to the EDC, the Interconnection Customer will be granted a period of 30 calendar days to address and resolve any deficiencies. The time period for addressing and resolving any deficiencies may be extended upon the mutual agreement of the EDC and the Interconnection Customer. If the Interconnection Customer fails to address and resolve the deficiencies to the satisfaction of the EDC, the applicable cure provisions of 6.5 shall apply. If a Witness Test is not performed by the EDC or an entity approved by the EDC, the Interconnection Customer must still satisfy the interconnection test specifications and requirements set forth in IEEE Standard 1547 Section 5. The Interconnection Customer shall, if requested by the EDC, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1.

- 2.1.2 To the extent that the Interconnection Customer decides to conduct interim testing of the Small Generator Facility prior to the Witness Test, it may request that the EDC observe these tests and that these tests be deleted from the final Witness Test. The EDC may, at its own expense, send qualified personnel to the Small Generator Facility to observe such interim testing. Nothing in this Section 2.1.2 shall require the EDC to observe such interim testing or preclude the EDC from performing these tests at the final Witness Test. Regardless of whether the EDC observes the interim testing, the Interconnection Customer shall obtain permission in advance of each occurrence of operating the Small Generator Facility in parallel with the EDC's system.
- 2.1.3 Upon successful completion of the Witness Test, the EDC shall affix an authorized signature to the Certificate of Completion and return it to the Interconnection Customer approving the interconnection and authorizing Parallel Operation. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.2 **Commercial Operation**

The Interconnection Customer shall not operate the Small Generator Facility, except for interim testing as provided in 2.1, until such time as the Certificate of Completion is signed by all Parties.

2.3 **Right of Access**

The EDC shall have access to the disconnect switch and metering equipment of the Small Generator Facility at all times. The EDC shall provide reasonable notice to the customer when possible prior to using its right of access.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become final on the date both of the following conditions are met: (a) the execution of the Agreement by the Parties, and (b) satisfaction of any applicable conditions specified in COMAR 20.50.09.10 through COMAR 20.50.09.12.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect from year to year unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

- 3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the EDC 30 calendar days' prior written notice.

- 3.3.2 Either Party may terminate this Agreement after default pursuant to Article 6.5.
- 3.3.3 The EDC may terminate upon 60 calendar days' prior written notice for failure of the Interconnection Customer to complete construction of the Small Generator Facility within 12 months of the in-service date as specified by the Parties in Attachment 2, which may be extended by mutual agreement of the Parties which shall not be unreasonably withheld.
- 3.3.4 The EDC may terminate this Agreement upon 60 calendar days' prior written notice if the Interconnection Customer fails to operate the Small Generator Facility in parallel with EDC's electric system for three consecutive years.
- 3.3.5 Upon termination of this Agreement, the Small Generator Facility will be disconnected from the EDC's Electric Distribution System. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.
- 3.3.6 The provisions of this Article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

A Party may temporarily disconnect the Small Generator Facility from the Electric Distribution System in the event of an Emergency Condition for so long as the Party determines it is reasonably necessary in the event one or more of the following conditions or events occurs:

- 3.4.1 Emergency Conditions shall mean any condition or situation: (1) that in the judgment of the Party making the claim is reasonably likely to endanger life or property; or (2) that, in the case of the EDC, is reasonably likely to cause an Adverse System Impact; or (3) that, in the case of the Interconnection Customer, is reasonably likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generator Facility or the Interconnection Equipment. Under Emergency Conditions, the EDC or the Interconnection Customer may immediately suspend interconnection service and temporarily disconnect the Small Generator Facility. The EDC shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generator Facility. The Interconnection Customer shall notify the EDC promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the EDC's Electric Distribution System. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.
- 3.4.2 The EDC may interrupt interconnection service or curtail the output of the Small Generator Facility and temporarily disconnect the Small Generator Facility from the EDC's Electric Distribution System when necessary for scheduled maintenance, construction, or repairs on EDC's Electric Distribution System. The

EDC shall provide the Interconnection Customer with five business days' notice prior to such interruption. The EDC shall use reasonable efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

- 3.4.3 During any forced outage, the EDC may suspend interconnection service to effect immediate repairs on the EDC's Electric Distribution System. The EDC shall use reasonable efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the EDC shall, upon written request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.
- 3.4.4 The EDC shall provide the Interconnection Customer with a written notice of its intention to disconnect the Small Generator Facility if, based on the operating procedures specified in Attachment 4, the EDC determines that operation of the Small Generator Facility will likely cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Small Generator Facility could cause damage to the EDC's Electric Distribution System. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon written request. The EDC may disconnect the Small Generator Facility if, after receipt of the notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time unless Emergency Conditions exist in which case the provisions of 3.4.1 apply.
- 3.4.5 The Interconnection Customer must receive written authorization from the EDC prior to making any change to the Small Generator Facility, other than a Minor Equipment Modification, that could cause an Adverse System Impact. If the Interconnection Customer makes such modification without the EDC's prior written authorization, the EDC shall have the right to temporarily disconnect the Small Generator Facility until such time as the EDC reasonably concludes the modification poses no threat to the safety or reliability of its Electric Distribution System.
- 3.4.6 The Parties shall cooperate with each other to restore the Small Generator Facility, Interconnection Facilities, and EDC's Electric Distribution System to their normal operating state as soon as reasonably practicable following any disconnection pursuant to this section; provided, however, if such disconnection is done pursuant to Section 3.4.5 due to the Interconnection Customer's failure to obtain prior written authorization from the EDC for Minor Equipment Modifications, the EDC shall reconnect the Interconnection Customer only after determining the modifications do not impact the safety or reliability of its Electric Distribution System.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

- 4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Attachment 3 of this Agreement if required under the

additional review procedures of Level a 2 review or under a Level 4 review. If a Facilities Study was performed, the EDC shall identify the Interconnection Facilities necessary to safely interconnect the Small Generator Facility with the EDC's Electric Distribution System, the cost of those facilities, and the time required to build and install those facilities.

- 4.1.2 The Interconnection Customer shall be responsible for its expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its Interconnection Equipment, and (2) its reasonable share of operating, maintaining, repairing, and replacing any Interconnection Facilities owned by the EDC as set forth in Attachment 3 and Attachment 4.

4.2 Distribution Upgrades

The EDC shall design, procure, construct, install, and own any Distribution Upgrades. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer. The Interconnection Customer may be entitled to financial contribution from any other EDC customers who may in the future utilize the upgrades paid for by the Interconnection Customer. Such contributions shall be governed by the rules, regulations and decisions of the Maryland Public Service Commission.

4.3. Payments by State or Local Government Entities Subject to Appropriations

Generally, costs and expenses payable under this Agreement shall be paid in a single payment or in a number of installments made within a single year. If costs or expenses are to be paid over multiple years, then such costs shall be subject to appropriations approval by the governing legislative body of the Interconnection Customer, and, if applicable, the Charter provisions of the Interconnection Customer. If funds are not appropriated or otherwise made available to support continuation in any fiscal year of this Agreement after the first fiscal year, this Agreement shall terminate automatically as of the beginning of the fiscal year for which funds are not available; provided, however, that such termination shall not affect either the Interconnection Customer's rights or the EDC's rights under any termination clause in this Agreement. The effect of termination of this Agreement under this Section shall be to discharge both the Interconnection Customer and the EDC from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The Interconnection Customer shall reimburse the EDC for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The EDC shall not be reimbursed for anticipatory profits, incidental, special, consequential or indirect damages, or costs incurred after termination. The Interconnection Customer shall notify the EDC in writing as soon as it has knowledge that funds will not be available for the continuation of this Agreement for each fiscal period after the first.

Nothing in this Agreement shall be construed to create an unfunded liability of the Interconnection Customer. All obligations of the Interconnection Customer hereunder are subject to available appropriations.

Article 5. Billing, Payment, Milestones, and Financial Security

5.1 Billing and Payment Procedures and Final Accounting (Applies to additional reviews conducted under a Level 2 review and Level 4 reviews)

- 5.1.1 The EDC shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of EDC provided Interconnection Facilities and Distribution Upgrades contemplated by this Agreement as set forth in Attachment 3, on a monthly basis, or as otherwise agreed by the Parties. The Interconnection Customer shall pay each bill within thirty (30) calendar days of receipt, or as otherwise agreed to by the Parties.
- 5.1.2 Within ninety (90) calendar days of completing the construction and installation of the EDC's Interconnection Facilities and Distribution Upgrades described in the Attachments 2 and 3 to this Agreement, the EDC shall provide the Interconnection Customer with a final accounting report of any difference between (1) the actual cost incurred to complete the construction and installation and the budget estimate provided to the Interconnection Customer and a written explanation for any significant variation; and (2) the Interconnection Customer's previous deposit and aggregate payments to the EDC for such Interconnection Facilities and Distribution Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous deposit and aggregate payments, the EDC shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the EDC within thirty (30) calendar days. If the Interconnection Customer's previous deposit and aggregate payments exceed its cost responsibility under this Agreement, the EDC shall refund to the Interconnection Customer an amount equal to the difference within thirty (30) calendar days of the final accounting report.
- 5.1.3 If a Party in good faith disputes any portion of its payment obligation pursuant to this Article 5, such Party shall pay in a timely manner all non-disputed portions of its invoice, and such disputed amount shall be resolved pursuant to the dispute resolution provisions contained in Article 8. Provided such Party's dispute is in good faith, the disputing Party shall not be considered to be in default of its obligations pursuant to this Article.
- 5.1.4 The parties acknowledge that Interconnection Customers who are State of Maryland entities will have to comply with applicable procurement laws and regulations, including, but not limited to Section 15-101 *et seq.* of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended ("State Procurement Regulations"). Notwithstanding the foregoing, this Agreement is not intended to be a procurement, but may relate to the procurement of an energy project by the State and/or compliance herewith may be deemed a cost of an energy project to be procured.

5.2 Interconnection Customer Deposit

At least twenty (20) business days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the EDC's Interconnection Facilities

and Distribution Upgrades, the Interconnection Customer shall provide the EDC with a deposit equal to 50% of the estimated costs prior to its beginning design of such facilities, provided the total cost is in excess of \$1,000.

Article 6. Assignment, Limitation on Damages, Indemnity, Force Majeure, and Default

6.1 Assignment

This Agreement may be assigned by either Party upon fifteen (15) Business Days prior written notice, and with the opportunity to object by the other Party. Should the Interconnection Customer assign this Agreement to another State of Maryland or local government entity, the EDC has the right to request the assignee to agree to the assignment and the terms of this Agreement in writing. When required, consent to this assignment shall not be unreasonably withheld; provided that:

- 6.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate (which shall include a merger of the Party with another entity), of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;
- 6.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the EDC, for collateral security purposes to aid in providing financing for the Small Generator Facility. For Small Generator systems that are integrated into a building facility, the sale of the building or property will result in an automatic transfer of this agreement to the new owner who shall be responsible for complying with the terms and conditions of this Agreement.
- 6.1.3 Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same obligations as the Interconnection Customer.
- 6.1.4 Notwithstanding the foregoing, if the assignee of the Interconnection Customer is not a State of Maryland or local government entity, then such assignee shall execute the Maryland Standard Agreement for Interconnection of Small Generator Facilities with a Capacity Greater than 10kW but less than or Equal to 10MW, as approved by the Maryland Public Service Commission for non-governmental entities, which would supersede this Agreement.

6.2 Limitation on Damages

Except for cases of gross negligence or willful misconduct, the liability of any Party to this Agreement shall be limited to direct actual damages, and all other damages at law are waived, subject to applicable law. Under no circumstances, except for cases of gross negligence or willful misconduct, shall any Party or its directors, officers, employees and agents, or any of them, be liable to another Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits, lost revenues, replacement power, cost of capital or replacement

equipment. This limitation on damages shall not affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement. The provisions of this Section 6.2 shall survive the termination or expiration of the Agreement.

6.3 Indemnity

- 6.3.1 This Section 6.3 provides each Party with indemnification from liability incurred to third parties as a result of carrying out the provisions of this Agreement, subject to applicable government immunities and defenses at law, including but not limited to common law public official immunity. Liability under this provision is exempt from the general limitations on liability found in Article 6.2.
- 6.3.2 Subject to the terms and provisions of Section 6.3.6, the Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, reasonable attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.
- 6.3.3 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.
- 6.3.4 Subject to the terms and provisions of Section 6.3.6, if an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- 6.3.5 Subject to the terms and provisions of Section 6.3.6, if an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified person shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.
- 6.3.6. Notwithstanding anything to the contrary contained in Sections 6.3.2, 6.3.4 and 6.3.5, indemnification by the Interconnection Customer shall be contingent upon and subject to (i) an appropriation by the governing legislative body of the Interconnection Customer specifically for the purposes contemplated in this Section 6 at the time an event which may give rise to the Interconnection Customer's obligation to indemnify or save harmless occurs, (ii) the applicable liability limits provided under the Maryland Tort Claims Act, as further defined in Section 7.1, or the Local Government Tort Claims Act, as applicable, (collectively the "Act"), as

may be amended, and (iii) applicable law. The Interconnection Customer's agreement of indemnification is not to be deemed a waiver of immunity or defense that may exist in any action against the Interconnection Customer.

- 6.3.7. For the installation of a generator in excess of 1MW that requires an Interconnection Agreement, and where the Interconnection Customer utilizes a contractor or subcontractor for such installation, the Interconnection Customer shall include language in its contracts with the Third-Party Contractors (as defined in Section 7.3 herein) that the EDC shall be a third-party beneficiary of the indemnification obligations of the Third-Party Contractors to the Interconnection Customer for the claims, loss and/or damages relating to or arising from the interconnection contemplated under this Agreement and the EDC shall have the right to enforce such indemnification provisions. EDC shall have no right to claim indemnification or reimbursement for anticipatory profits or for incidental, special, consequential or indirect damages. The indemnification obligations of the Third-Party Contractors provided for under this subsection are separate and independent from Interconnection Customer's indemnification obligations set forth in Subsections 6.3.1 -6.3.6 and do not provide EDC with any additional indemnification rights against Interconnection Customer or any rights to claim more than damages or loss actually incurred and covered under the terms of this Agreement.

6.4 Force Majeure

- 6.4.1 As used in this Article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of gross negligence or intentional wrongdoing.
- 6.4.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking and will take to mitigate the effects of the event on its performance, and if the initial notification was verbal, it should be promptly followed up with a written notification. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party shall be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be reasonably mitigated. The Affected Party shall use reasonable efforts to resume its performance as soon as possible in accordance with all applicable PSC standards.

6.5 Default

- 6.5.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement, or the result of an act or omission of the other Party.
- 6.5.2 Upon a default of this Agreement, the non-defaulting Party shall give written notice of such default to the defaulting Party. Except as provided in Article 6.5.3 the defaulting Party shall have 60 calendar days from receipt of the default notice within which to cure such default; provided however, if such default is not capable of cure within 60 calendar days, the defaulting Party shall commence such cure within 20 calendar days after notice and continuously and diligently complete such cure within six months from receipt of the default notice; and, if cured within such time, the default specified in such notice shall cease to exist.
- 6.5.3 If a Party has made an assignment of this Agreement not specifically authorized by Article 6.1, fails to provide reasonable access pursuant to Article 2.3, is in default of its obligations pursuant to Article 7, or if a Party is in default of its payment obligations pursuant to Article 5 of this Agreement, the defaulting Party shall have 30 days from receipt of the default notice within which to cure such default.
- 6.5.4 If a default is not cured as provided for in this Article, or if a default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

Article 7. Insurance

7.1 Insurance Requirements for the State of Maryland or its Units and Liability of the State or its Units under this Agreement.

The Interconnection Customer shall provide EDC with evidence of self-insurance under a State of Maryland self-insurance program administered by the Maryland State Treasurer's Office pursuant to the Maryland Annotated Code, State Finance and Procurement Article, Title 9, Maryland Annotated Code, State Government Article, Sections 12-101 through 12-110 ("Maryland Tort Claims Act") and Title 25, Subtitle 2 of the Code of Maryland Regulations. Such self-insurance does not exclude coverage for the Interconnection Customer's liabilities undertaken pursuant to this Agreement. In the event that the Interconnection Customer has or obtains third-party comprehensive/general liability insurance in addition to its self-insurance coverage described herein at any time during the term of this Agreement, it shall add the EDC, its officers, employees and agents as additional insureds on this policy on the same basis as provided generally to other parties as of the effective date of such coverage and ending as of the date of termination thereof.

The Interconnection Customer's liability for any tort related claims, damages, losses or costs arising out of this Agreement shall be governed by Maryland Annotated Code, State

Government Article, Title 12, Subtitle 1; and the Interconnection Customer's liability for any contract related claims, damages, losses or costs arising out of this Agreement shall be governed by Maryland Annotated Code, State Government Article, Title 12, Subtitle 2.

7.2 Insurance Requirements for Maryland Local Governmental Entities

- 7.2.1. In the event the Interconnection Customer is solely self-insured, it shall carry adequate insurance coverage as set forth below; provided, that the maximum comprehensive/general liability coverage that shall be continuously maintained by the Interconnection Customer of a 1 MW or above facility during the term shall be not less than \$250,000 for each occurrence, and an aggregate, if any, of at least \$500,000. Such self-insurance shall not exclude coverage for the Interconnection Customer's liabilities undertaken pursuant to this Agreement as a specific carve-out or exclusion to such self-insurance fund, subject to the limitations set forth herein. In no event shall a solely self-insured Interconnection Customer be required by the EDC to obtain additional insurance coverage in excess of the above amounts or to maintain insurance coverage in excess of its appropriations for its self-insurance fund. Further, the establishment of said self-insurance fund does not constitute a waiver of the immunities, liability caps, and defenses available to the Interconnection Customer. The Interconnection Customer shall provide EDC with evidence of such self-insurance.
- 7.2.2. In the event that the Interconnection Customer has or obtains third-party comprehensive/general liability insurance in addition to its self-insurance coverage described in 7.2.1 above on an entity wide basis at any time during the term of this Agreement, it shall add the EDC, its officers, employees and agents as additional insureds on this policy on the same basis as provided generally to other parties as of the effective date of such coverage.
- 7.2.3. The deductibles/self-insured retentions of the Interconnection Customer, where applicable, shall be disclosed to the EDC and subject to the minimum requirements set forth in 7.2.1, they may be reduced at the sole option of the Interconnection Customer.

7.3 Insurance Requirements – Contractors and Subcontractors

For the installation of a generator in excess of 1MW that requires an Interconnection Agreement, and where the Interconnection Customer utilizes a contractor or subcontractor for such installation, and to the extent consistent with applicable procurement laws, regulations, and policies, the Interconnection Customer shall require such contractors and subcontractors (collectively, "Third-Party Contractors") to carry, third-party commercial general liability insurance, including contractual liability coverage, to protect the EDC from and against claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of any loss, injury or damage related to the interconnection during the term of the Third-Party Contractor's contract relating to the Interconnection Customer's generator installation. The amounts of such commercial general liability insurance shall be at least \$1,000,000 as to any occurrence during the term of such contract. The Interconnection Customer shall require

that the Third-Party Contractors add the EDC, its officers, employees and agents and the Interconnection Customer as additional insureds on their commercial general liability insurance.

Such commercial general liability policy shall stipulate that the insurance afforded to the EDC and the Interconnection Customer as additional insureds shall apply as primary insurance. Any other insurance carried by the EDC and the Interconnection Customer will be excess only and shall not contribute with any insurance from the Third-Party Contractors. In the event of a conflict between any certificate issued or exclusions or carve-outs placed into a policy by either party, this Agreement shall control.

Article 8. Dispute Resolution

8.1 Good Faith.

A party shall attempt to resolve all disputes regarding interconnection as provided in this section promptly, equitably, and in a good faith manner.

8.2 Complaint Procedures.

When a dispute arises, a party may seek immediate resolution through complaint procedures available through the Maryland Public Service Commission, or an alternative dispute resolution process approved by the Maryland Public Service Commission, by providing written notice to the Maryland Public Service Commission and the other party stating the issues in dispute. Dispute resolution will be conducted in an informal, expeditious manner to reach resolution with minimal costs and delay. When available, dispute resolution may be conducted by phone.

8.3 Technical Master.

When disputes relate to the technical application of this section, the Maryland Public Service Commission may designate a technical master to resolve the dispute. The Maryland Public Service Commission may designate a Department of Energy National Laboratory, PJM Interconnection L.L.C., or a college or university with distribution system engineering expertise as the technical master. When the Federal Energy Regulatory Commission identifies a National technical dispute resolution team, the Maryland Public Service Commission may designate the team as its technical master. Upon designation by the Maryland Public Service Commission, the parties shall use the technical master to resolve disputes related to interconnection. Costs for a dispute resolution conducted by the technical master shall be established by the technical master, subject to review by the Maryland Public Service Commission.

8.4 Queue Position.

Pursuit of dispute resolution may not affect an Interconnection Customer with regard to consideration of an Interconnection Request or an Interconnection Customer's queue position.

8.5 Preservation of Rights.

If the Parties fail to resolve their dispute under the dispute resolution provisions of this Article, nothing in this Article shall affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement.

Article 9. Miscellaneous

9.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations.

9.2 Amendment

Modification of this Agreement shall be only by a written instrument duly executed by both Parties.

9.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

9.4 Waiver

9.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

9.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from EDC. Any waiver of this Agreement shall, if requested, be provided in writing.

9.5 Entire Agreement

This Agreement, including all attachments, constitutes the entire Agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

9.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

9.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

9.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

9.9 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generator Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

9.10 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

9.10.1 Except as provided in Article 7, the creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

9.10.2 The obligations under this Article will not be limited in any way by any limitation of subcontractor's insurance.

9.11 Sovereign Immunity/Governmental Immunity

Nothing contained in this Agreement shall be deemed to constitute a waiver of any immunity to which the Interconnection Customer may be entitled under the laws of the State or to which the officials or employees of the Interconnection Customer may be entitled under the laws of the State. Where the Interconnection Customer is a State entity, the Parties hereby acknowledge that the Interconnection Customer's sovereign immunity is waived only by virtue of, and to the extent set forth in, Title 12 of the State Government Article of the Annotated Code of Maryland.

Article 10. Notices

10.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (“Notice”) shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ E-mail _____

If to EDC:

EDC _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ E-mail _____

10.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

If to Interconnection Customer

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____

If to EDC

EDC: _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____

10.3 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party’s facilities.

Interconnection Customer’s Operating representative: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-Mail _____

EDC’s Operating Representative: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

10.4 Changes to the Notice Information

Either Party may change this notice information by giving five business days written notice prior to the effective date of the change.

Signatures follow on the next page.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Interconnection Customer:

Name: _____

Title: _____

Date: _____

For EDC:

Name: _____

Title: _____

Date: _____

Attachment 1

Definitions

Adverse System Impact - A negative effect, due to technical or operational limits on conductors or equipment being exceeded, that compromises the safety or reliability of the Electric Distribution System.

Applicable Laws and Regulations – All duly promulgated applicable federal, State and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Commissioning Test – Tests applied to a small generator facility by the applicant after construction is completed to verify that the facility does not create adverse system impacts. At a minimum, the scope of the commissioning tests performed shall include the commissioning test specified IEEE standard 1547 section 5.4 “Commissioning tests”.

Distribution Upgrades –A required addition or modification to the EDC's Electric Distribution System at or beyond the Point of Interconnection to accommodate the interconnection of a Small Generator Facility. Distribution upgrades do not include Interconnection Facilities.

Electric Distribution Company or EDC - Any electric utility entity subject to the jurisdiction of the Maryland Public Service Commission.

Electric Distribution System –The facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which Electric Distribution Systems operate differ among areas but generally carry less than 69 kilovolts of electricity. Electric Distribution System has the same meaning as the term Area EPS, as defined in 3.1.6.1 of IEEE Standard 1547.

Facilities Study – An engineering study conducted by the EDC to determine the required modifications to the EDC’s Electric Distribution System, including the cost and the time required to build and install such modifications, as necessary to accommodate an Interconnection Request.

Governmental Authority – Any federal, State, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, EDC or any affiliate thereof.

IEEE Standard 1547 - The Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 1547 (2003) "Standard for Interconnecting Distributed Resources with Electric Power Systems", as amended and supplemented, at the time the Interconnection Request is submitted.

IEEE Standard 1547.1 - The IEEE Standard 1547.1 (2005) "Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems", as amended and supplemented, at the time the Interconnection Request is submitted.

Interconnection Agreement or Agreement – This agreement between the Interconnection Customer and the EDC, which governs the connection of the Small Generator Facility to the EDC’s Electric Distribution

System, as well as the ongoing operation of the Small Generator Facility after it is connected to the EDC's Electric Distribution System.

Interconnection Customer – The entity proposing to interconnect a Small Generator Facility to the EDC's Electric Distribution System.

Interconnection Equipment – A group of components or integrated system connecting an electric generator with a local electric power system or an Electric Distribution System that includes all interface equipment including switchgear, protective devices, inverters or other interface devices. Interconnection Equipment may be installed as part of an integrated equipment package that includes a generator or other electric source.

Interconnection Facilities – Facilities and equipment required by the EDC to accommodate the interconnection of a Small Generator Facility. Collectively, Interconnection Facilities include all facilities, and equipment between the Small Generator Facility and the Point of Interconnection, including modification, additions, or upgrades that are necessary to physically and electrically interconnect the Small Generator Facility to the Electric Distribution System. Interconnection Facilities are sole use facilities and do not include Distribution Upgrades.

Interconnection Request – An Interconnection Customer's request, in a form approved by the Maryland Public Service Commission, requesting the interconnection of a new Small Generator Facility, or to increase the capacity or operating characteristics of an existing Small Generator Facility that is interconnected with the EDC's Electric Distribution System.

Maryland Standard Small Generator Interconnection Rules – The most current version of the procedures for interconnecting Small Generator Facilities adopted by the Maryland Public Service Commission.

Parallel Operation or Parallel - The state of operation which occurs when a Small Generator Facility is connected electrically to the Electric Distribution System and the potential exists for electricity to flow from the Small Generator Facility to the Electric Distribution System.

Point of Interconnection - The point where the Small Generator Facility is electrically connected to the Electric Distribution System. Point of Interconnection has the same meaning as the term point of common coupling defined in 3.1.13 of IEEE Standard 1547.

Small Generator Facility - The equipment used by an interconnection customer to generate, or store electricity that operates in parallel with the Electric Distribution System with a nameplate capacity equal to or less than 10 MW. A Small Generator Facility includes an electric generator, prime mover, and the Interconnection Equipment required to safely interconnect with the Electric Distribution System or a local electric power system.

Witness Test— For lab certified or field approved equipment, verification (either by an on-site observation or review of documents) by the EDC that the interconnection installation evaluation required by IEEE Standard 1547 Section 5.3 and the commissioning test required by IEEE Standard 1547 Section 5.4 have been adequately performed. For interconnection equipment that has not been lab certified or field approved, the witness test shall also include the verification by the EDC of the on-site design tests as required by IEEE Standard 1547 Section 5.1 and verification by the EDC of production tests required by IEEE Standard 1547 Section 5.2. All tests verified by the EDC are to be performed in accordance with the test procedures specified by IEEE Standard 1547.1.

Attachment 2

Construction Schedule, Proposed Equipment & Settings

This attachment shall include the following:

1. The construction schedule for the Small Generator Facility
2. A one-line diagram indicating the Small Generator Facility, Interconnection Equipment, Interconnection Facilities, Metering Equipment, and Distribution Upgrades
3. Component specifications for equipment identified in the one-line diagram
4. Component settings
5. Proposed sequence of operations

Attachment 3

Description, Costs and Time Required to Build and Install EDC's Interconnection Facilities

EDC's Interconnection Facilities including any required metering shall be itemized and a best estimate of itemized costs, including overheads, shall be provided based on the Facilities Study.

Also, a best estimate for the time required to build and install EDC's Interconnection Facilities will be provided based on the Facilities Study.

Attachment 4

Operating Requirements for Small Generator Facilities Operating in Parallel

Applicable sections of EDC's operating manuals applying to the small generator interconnection shall be listed and Internet links shall be provided. Any special operating requirements not contained in EDC's existing operating manuals shall be clearly identified.

Attachment 5

Monitoring and Control Requirements

EDC monitoring and control requirements shall be clearly specified and a reference shall be provided to the EDC's written requirements documents from which these documents are derived along with an internet link to the requirements documents.

Attachment 6

Metering Requirements

Metering requirements for the Small Generator Facility shall be clearly indicated along with an identification of the appropriate tariffs that establish these requirements and an internet link to these tariffs containing accurate and timely updates.

Attachment 7

As Built Documents

After completion of the Small Generator Facility, the Interconnection Customer shall provide the EDC with documentation indicating the as built status of the following when it returns the Certificate of Completion to the EDC:

1. A one-line diagram indicating the Small Generator Facility, Interconnection Equipment, Interconnection Facilities, Metering Equipment, and Distribution Upgrades
2. Component specifications for equipment identified in the one-line diagram
3. Component settings
4. Proposed sequence of operations
5. Accurate as-built drawings for project operation and maintenance and future modifications.

EXHIBIT K – ETHICS AFFIDAVIT



**HOWARD COUNTY, MARYLAND
Office of Purchasing**

AFFIDAVIT

Must be completed, signed by an officer of the company (President, CEO, Vice President, etc.)

Contractor _____

Address _____

I, _____, the undersigned, _____ of the above named
(Print Signer's Name) (Title)

Contractor does declare and affirm this _____ day of _____, _____, that I hold the aforementioned office
(Month) (Year)
in the above named Contractor and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended.

AFFIDAVIT V

The Contractor:

- i. Is not currently identified on the list created by the Maryland State Board of Public Works as a person engaging in investment activities in Iran as described in Section 17-702 of the *Maryland State Finance and Procurement Article* ; or
- ii. Is not currently engaging in investment activities in Iran as described in Section 17-702 of the *Maryland State Finance and Procurement Article*.

If the person is unable to make the certification, it will provide the County, a detailed description of the Contractor's investment activities in Iran.

AFFIDAVIT VI

If applicable, the Contractor has complied with Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into, during any 24 month period, one or more contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, involving a cumulative consideration of at least \$200,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions to a candidate, or a series of such contributions, in a cumulative amount in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

Signature

Printed Name

Title

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "Human Rights" of Title 12 of the Howard County Code, Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the County Purchasing agent.

(4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Code Section 22.204. - Prohibited Conduct and Interests.

(a) **Participation Prohibitions.**

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;

d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

f. A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

- (i) The disqualification leaves a body with less than a quorum capable of acting;
- (ii) The disqualified official or employee is required by law to act; or
- (iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) **Employment and Financial Interest Restrictions.**

(1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

- (i) Be employed by or have a financial interest in any entity:
- a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or
- b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or
- (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

- (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
- (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
- (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or
- (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) **Post-Employment Limitations and Restrictions.**

(1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) **Contingent Compensation.** Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

(e) **Use of Prestige of Office.**

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) **Solicitation and Acceptance of Gifts.**

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

- (i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;
- (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
- (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
- (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) (i) Subsection (4)(ii) does not apply to a gift:
a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:
a. Meals and beverages consumed in the presence of the donor or sponsoring entity;

b. Ceremonial gifts or awards that have insignificant monetary value;

c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;

d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.

(g) **Disclosure of Confidential Information.** Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) **Participation in Procurement.**

(1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

EXHIBIT L: FORM OF RENEWABLE ENERGY INVOICE



INVOICE

Invoice Number:
 Invoice Date:
 Customer ID:
 Page:

Bill To:

Customer PO	Payment Terms	Due Date	Energy Year

Quantity	Item	Description	Price per kWh	Amount

PAYMENT INSTRUCTIONS:

Wire To:

For Credit To:

Make Checks Payable to:

Subtotal	
Sales Tax	
Total Invoice Amount	
Payment/Credit Applied	
TOTAL	\$

Daily Energy Balance

Start Date	
End Date	
Site Name	
Site ID	

Date Timestamp	Grid Import (kWh)	Grid Export (kWh)	Grid Net (kWh)	Measured AC Energy (kWh)	Peak Demand (kW)	Facility Consumption (kWh)	Renewable Contribution (%) - Solar/Facility
1/1/2020							
1/2/2020							
1/3/2020							
1/4/2020							
1/5/2020							
1/6/2020							
1/7/2020							
1/8/2020							
1/9/2020							
1/10/2020							
1/11/2020							
1/12/2020							
1/13/2020							
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1/23/2020							
1/24/2020							
1/25/2020							
1/26/2020							
1/27/2020							
1/28/2020							
1/29/2020							
1/30/2020							
1/31/2020							
Total:							
High:							
Low:							
Average:							