

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council Of Howard County, Maryland

2014 Legislative Session

Legislative Day No. 11

**Bill No. 53 -2014**

Introduced by: The Chairman at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a multi-year Solar Power & Services Agreement between Howard County, Maryland and Bith Energy, Inc., for the construction of a canopy mounted solar photovoltaic array, with two electric vehicle charging stations powered by the solar canopy, and for the provision of electrical energy output from the canopy; and authorizing the County Executive to take certain actions in connection with the Agreement.

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Introduced and read first time \_\_\_\_\_, 2014. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Sheila M. Tolliver, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 2014.

By order \_\_\_\_\_  
Sheila M. Tolliver, Administrator

This Bill was read the third time on \_\_\_\_\_, 2014 and Passed \_\_\_\_, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order \_\_\_\_\_  
Sheila M. Tolliver, Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_\_ day of \_\_\_\_\_, 2014 at \_\_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Sheila M. Tolliver, Administrator

Approved by the County Executive \_\_\_\_\_, 2014

\_\_\_\_\_  
Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, Howard County, Maryland (the “County”) is the owner of certain property  
2 located at 3430 Courthouse Drive, Ellicott City, Maryland (the “County Property”); and

3  
4           **WHEREAS**, the Maryland Energy Administration (“MEA”) sought to award grants to build  
5 solar canopies under MEA’s Strategic Energy Investment Program; and

6  
7           **WHEREAS**, the County applied for and received a grant award from MEA, documented by  
8 an agreement dated as of June 14, 2014 between MEA and Howard County, to offset the costs  
9 associated with constructing a 452 kW PV canopy mounted solar photovoltaic array on the County  
10 Property, with two electric vehicle charging stations powered by the solar canopy; and

11  
12           **WHEREAS**, Bith Energy, Inc., a Delaware limited liability company (“Bith”) was named in  
13 the grant application and award as the installing contractor; and

14  
15           **WHEREAS**, the County desires that Bith install, operate and maintain the above-referred  
16 solar canopy and two electric vehicle charging stations at the County Property for the purpose of  
17 supplying electrical energy output from the solar canopy; and

18  
19           **WHEREAS**, pursuant to Section 4.110 of the Howard County Code, the Contract  
20 Review Committee has approved the proposed agreement with Bith as a sole source procurement  
21 because of unique circumstances that make competitive bidding commercially impractical; and

22  
23           **WHEREAS**, the County wishes to enter into a Solar Power & Services Agreement (the  
24 “Agreement”) with Bith, in substantially the form attached as Exhibit A; and

25  
26           **WHEREAS**, the term of the Agreement is 20 years, with two 5-year renewal options; and

27  
28           **WHEREAS**, the Agreement requires the payment by the County of funds from an  
29 appropriation in a later fiscal year and therefore requires County Council approval as a multi-year

1 agreement pursuant to Section 612 of the Howard County Charter.

2

3 **NOW, THEREFORE,**

4

5 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in*  
6 *accordance with Section 612 of the Howard County Charter, it approves the terms of the Solar*  
7 *Power & Services Agreement between Howard County and Bith Energy, Inc., which shall be in*  
8 *substantially the same form as Exhibit A attached to this Act.*

9

10 *Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that*  
11 *the County Executive is hereby authorized to execute and deliver the Agreement for such term in*  
12 *the name of and on behalf of the County.*

13

14 *Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland that*  
15 *this Act shall be effective immediately upon its enactment.*

**CONFIDENTIAL AND PROPRIETARY**

**SOLAR POWER & SERVICES AGREEMENT**

between

**BITH ENERGY, INC.**

and

**HOWARD COUNTY**

dated as of

\_\_\_\_\_

## SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”), between BITH ENERGY, INC., a Delaware limited liability company (“Provider”), and Howard County, Maryland, a body corporate and politic (“Host” or “Purchaser”; and, together with Provider, each, a “Party” and together, the “Parties”).

### WITNESSETH:

WHEREAS, Host owns, directly or indirectly the Premises (as hereafter defined) and the Premises are not needed for other public purposes as of the date of this Agreement;

WHEREAS, Host applied for and received a grant award (“Grant Award”) under the Strategic Energy Investment Program from the Maryland Energy Administration (the “MEA”) pursuant to an agreement dated as of June 14, 2014 between MEA and Howard County Office of Sustainability (“Grant Agreement”) to offset the costs associated with constructing on the Premises a 452 kW PV canopy mounted solar photovoltaic array, with two electric vehicle charging stations powered by the solar canopy. The terms and conditions of the Grant Agreement are incorporated herein and the Grant Agreement attached hereto as \_\_\_\_\_. The total amount of the Grant Award is up to Eight Hundred Dollars and 00/100 (\$800\_ per kW, and the maximum amount of the Grant Award shall be Three Hundred Sixty One Thousand, Six Hundred Dollars and 00/100 (\$361,600.00).

WHEREAS, Host desires that Provider install and operate the above-referred solar canopy and two electric vehicle charging stations at the Premises for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to undertake to do the same;

WHEREAS, Provider desires to sell, and Host desires to purchase, such Solar Services at the Premises, pursuant to the terms and conditions set forth herein; and

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 Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

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

“Agreement” or “SPSA” means this Solar Power & Services Agreement, including the recitals and the Schedules and Exhibits attached hereto and incorporated herein by reference.

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

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday, a Federal or State holiday recognized by Howard County, Maryland, or any other day on which banking institutions in Maryland are required or authorized by Applicable Law to be closed for business.

“Commercial Operation Date” has the meaning set forth in Section 3.4(c).

“Completion Notice” has the meaning set forth in Section 3.4(b).

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

“Construction Start Date” means the date that construction of the System is to commence as set forth in the Construction Schedule attached hereto as Schedule I.

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

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

“Due Diligence Period” has the meaning set forth in Section 3.1.

“Early Termination Date” has the meaning set forth in Section 2.1.

“Early Termination Fee” means the fee payable by Host to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2. The Early Termination Fee shall be the sum of the following amounts actually incurred, which sum may be lesser than but shall not exceed the Early Termination Fee set forth in \_\_\_\_\_: (1) the amount Provider must pay to the Financing Party at the time of Early Termination, plus (2) verified removal costs, plus (3) reasonable, documented administrative fees incurred to complete work relating to the Early Termination; plus (4) actual, demonstrable damages, if any, Provider or its affiliates incur, as a party to a Solar REC or other contract for the System, as a result of an Early Termination.

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

“Emergency” means a sudden, unforeseen event that requires immediate action to protect lives and/or property and/or public health and safety.

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

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

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” has the meaning set forth in Section 2.1.

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

“Financing Party” means, as applicable, (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or

will make a loan to or otherwise provided financing to Provider (or an Affiliate of Provider) with respect to the System.

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

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“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.

“Grant Agreement” has the meaning set forth in the recitals.

“Grant Award” has the meaning set forth in the recitals.

“Host” has the meaning set forth in the recitals hereof.

“Host Act” has the meaning set forth in Section 4.4(b).

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

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

“Indemnified Persons” means the Host Indemnified Parties.

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

“Installation Work” means the construction and installation of the System and the start-up, performance testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

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

“kWh Rate” has the meaning set forth in Section 6.1.

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

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

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

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



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

“Premises” means the premises described in Schedule 1 of Exhibit A. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 of Exhibit A, regardless of the nature of Host’s ownership interest therein.

“Provider” means BITH ENERGY, INC.

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

“Purchase Date” means such Business Day that occurs on the date that is ninety one (91) days after each successive annual anniversary of the Commercial Operation Date, provided, however, that no Purchase Date shall occur prior to such date that is five (5) years and ninety one (91) days after the Commercial Operation Date.

“Renewable Energy Credit” or “REC” shall have the meaning set forth in Public Utility Companies Article 7-701 *et seq*, Annotated Code of Maryland.

“Renewal Rate” means, as of the beginning of any Renewal Term, the Fair Market Value for the provision of Solar Services at the Premises during such Renewal Term, as agreed between the Parties prior to the beginning of such Renewal Term. Upon the establishment of any Renewal Rate(s), Exhibit A, Schedule 4 shall be amended to reflect such Renewal Rate(s).

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

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

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

“Solar Insolation” or “Insolation” means the amount of solar kWhs per square meter falling on a particular location, as specified by Provider.

“Solar Services” means the supply of electrical energy output from the System and any associated reductions in the Host’s peak demand from its Local Electric Utility.

“Solar Services Payment” has the meaning set forth in Section 6.1.

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

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 2 of Exhibit A and interconnected with the Local Electric Utility, owned or leased by Provider and installed at the Premises.

“System Acceptance Testing” has the meaning set forth in Section 3.4(a).

“System Operations” means all actions, including operating, monitoring, maintaining and repairing the System, performed by or for Provider during the Term in accordance with the requirements in this Agreement and necessary for Provider to fulfill its covenants under Section 7.1.

“System Test Requirements” has the meaning set forth in Section 3.4(b).

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

“Transfer Time” has the meaning set forth in Section 2.2.

1.2 Interpretation. 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.

## TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, as long as the Purchaser is not in default under the Agreement, the Purchaser may renew the Agreement for two additional five (5) year terms (each a “Renewal Term”), by delivering a written notice of renewal to Provider at least one hundred and eighty (180) days prior to the expiration of the Initial Term or then applicable Renewal Term. The Initial Term and the subsequent Renewal Term or Renewal Terms, if any, are referred to collectively as the “Term.” During any Renewal Term, either Party may terminate this Agreement upon one hundred and eighty (180) days’ prior written notice to the other Party. The date on which this Agreement terminates by reason of expiration of the then applicable Term is hereafter referred to as the “Expiration Date.” Any other date on which this Agreement terminates in accordance with the terms hereof is hereafter referred to as the “Early Termination Date.”

2.2 Early Termination. Host may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice (the "Early Termination"). In such event of Early Termination, which shall not include a termination due to a default of Provider under the Agreement, a termination in a Renewal Term, or a termination in the event of an Emergency or Force Majeure Event as provided in Section 4.3(a), Host shall pay, as liquidated damages, the Early Termination Fee. To effect an Early Termination hereunder, Host shall fund an escrow account in the amount of the Early Termination Fee for the benefit of Provider. Following the funding of such escrow account, Provider shall cause the System to be disconnected and removed from the Premises. Upon such removal and the restoration of the Premises to the County's reasonable satisfaction, the Early Termination Fee shall be promptly released to Provider and the Agreement shall terminate automatically.

2.3 Purchase Option. On any Purchase Date or the Early Termination Date, Host has the option to purchase the System, which purchase shall include all Environmental Attributes (the "Purchase Option") for a purchase price (the "Option Price") equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date. To exercise its Purchase Option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System and the Environmental Attributes on such Purchase Date. To complete the purchase and the transfer of title to the System and the Environmental Attributes, within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price, and Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the Purchase Option or, if the Option Price is equal to the Fair Market Value of the System and the Environmental Attributes, to dispute the determination of said Fair Market Value. In the event Purchaser confirms its exercise of the Purchase Option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System and the Environmental Attributes to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically and all claims to the System and the Environmental Attributes by, through or under the Provider are hereby waived and shall cease to exist. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of the Purchase Option, the provisions of the Agreement shall be applicable as if the Purchaser had not exercised any option to purchase the System and the Environmental Attributes and Purchaser may not exercise the continuing Purchase Option until the next Purchase Date or the Early Termination Date, if applicable.

2.4 Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3 is equal to the Fair Market Value (as determined by Provider) and Host disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The

valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal to or greater than the value provided by Provider pursuant to Section 2.3; otherwise, the Parties shall equally share such cost.

2.5 Removal of System at Expiration. Subject to Host's exercise of its Purchase Option under Section 2.3, upon the expiration or earlier termination of this Agreement according to its terms, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition and grading, except for ordinary wear and tear. For purposes of Provider's removal of the System, Host's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. In addition to the requirements above, Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host shall have the right, at its option, to remove the System to a public warehouse or other storage location and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost.

In the event that, at any time, the Provider defaults under this Section 2.5 and fails to cure such default in accordance with Section 11.1 and/or abandons the Premises and fails to remove the System, then the Host shall provide written notice to the Provider's Financing Party within twenty (20) days from the date of the apparent abandonment, so that the Financing Party can notify Host within thirty (30) days from the receipt of such notice whether the Financing Party (i) will assume the License, and all obligations and liabilities thereunder, and continue performance under the Agreement, or (ii) reclaim the System and remove the System in accordance with the terms and conditions of the License and the Agreement. If the Financing Party fails to respond within said thirty (30) day period or responds then fails to timely act as set forth in its notice and in accordance with the License and the Agreement, then the System and all Environmental Attributes shall become the property of Host, with all claims of ownership waived by the Provider, its Financing Party and their respective successors and assigns, and Host shall have the right to use or dispose of the System as it determines.

2.6 Conditions of Provider's Obligations Prior to Installation. In the event that any of the following events or circumstances occur or are discovered within the Due Diligence Period, as defined below, and Purchaser provides written notice that it cannot or elects not to cure such event or circumstance, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

- (a) The Provider determines that the Premises, **AS IS**, are insufficient to accommodate the System.
- (b) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected materially to increase the cost of Installation Work or would adversely affect the electricity production from the System as designed or

would create a hazardous situation if the Installation Work were commenced or completed.

- (c) Prior to the Commercial Operation Date, Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.
- (d) Provider or Purchaser has determined that there are recorded easements, CCRs or other similarly recorded documents that would materially impair or prevent the installation, operation, maintenance or removal of the System.
- (e) There has been a material adverse change in the regulatory environment, subsidy program or federal tax code that would adversely affect the economics of the installation for Provider and its investors.
- (f) There has been a material adverse change in the rights of Host to occupy the Premises OR Provider to construct the System on the Premises.

2.7 Conditions of Host's Obligations Prior to Installation. In the event that any of the following events or circumstances occurs, Host may terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, and except as provided pursuant to Section 11.1(b):

- (a) Provider has not commenced Installation Work at the Premises by Mar 15, 2015.
- (b) Prior to the Commercial Operation Date, Purchaser's credit rating is downgraded to less than investment grade.
- (c) Prior to the Construction Start Date, it is determined that the System cannot be completed and commissioned for operation in accordance with the terms and conditions of the Grant Award or the related terms of said grant set forth in Schedule II of this Agreement.
- (d) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected materially to increase the cost of Installation Work or would adversely affect the electricity production from the System as designed or would create a hazardous situation if the Installation Work were commenced or completed.
- (e) Prior to the Commercial Operation Date, there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the System on the Premises.
- (f) Provider or Purchaser has determined that there are recorded easements, CCRs or other similarly recorded documents that would materially impair or prevent the installation, operation, maintenance or removal of the System.

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

#### 3.1 License to Conduct Due Diligence; Use Premises.

Host hereby grants to Provider a commercial non-exclusive license coterminous with the Term of this Agreement containing all the rights necessary for Provider to enter upon, use and occupy portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement. Provider shall use the Premises in accordance with Applicable Law and solely for the foregoing purpose.

Notwithstanding the generality of the foregoing, beginning on the Effective Date and continuing until the Construction Start Date (the “Due Diligence Period”), Provider is only permitted to enter the Premises for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively the “Investigations and Tests”) that Provider may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises for the intended use. Notwithstanding anything to the contrary contained herein, Provider shall not do any digging or soil borings on the Premises without the prior written consent of Host, which consent may be withheld in the sole and absolute subjective discretion of Host.

During the Due Diligence Period, Provider shall provide notice to Host at least forty-eight (48) hours prior to any planned entry and Host shall have the right to be present during all entries. Provider’s entry upon the Premises during the Due Diligence Period shall be limited to the hours between 8:00 a.m. – 5:00 p.m., Monday through Friday.

All entries and inspections shall be at Provider’s sole cost and risk. Provider shall indemnify, defend and hold harmless Host from and against all claims, actions, losses, damages, or expenses, of whatever kind or nature, including without limitation reasonable attorney’s fees, arising out of such entries and inspections. Provider shall restore the Premises to the existing condition prior to Provider’s first entry upon the Premises, subject to normal wear and tear. All obligations and liabilities arising under this Section shall survive any termination or breach of this Agreement. Provider shall use all reasonable efforts not to cause damage to the Premises.

3.2 Installation Work. At its sole cost and expense, Provider will cause the System to be designed, engineered, installed and constructed in accordance with the terms of this Agreement. Host shall inform Provider of any CCRs or other restrictions, limitations or guidelines affecting the Premises of which it is aware that may reasonably affect the installation, operation, and maintenance of the System but shall make no warranties regarding the suitability of the Premises for Provider’s purposes pursuant to this Agreement. Provider shall deliver the construction plans and designs (“Construction Plans”) to Host for its review and approval, such approval not to be unreasonably conditioned, delayed or withheld, including engineering evaluations of the impact of the System on (i) the Premises and (ii) the then current Local Electric Utility’s equipment and service. Host’s approval shall not be deemed as making Host responsible, and Host shall not be responsible, for the design or construction of the System. Provider shall perform the Installation Work at the Premises between the hours of 7:30 a.m. and 5:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical. Provider, in coordination with and with the approval of Host, may work outside the stated hours on activities that are not unreasonably disruptive. Host may have a

representative on the Premises to observe the Installation Work and check the work against the Construction Plans.

3.3 Approvals; Permits. At Provider's sole cost and expense, Host shall reasonably assist Provider in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR.

#### 3.4 System Acceptance Testing

- (a) Provider shall conduct testing of the System ("System Acceptance Testing") in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Upon providing advance written notice to Provider, Purchaser also may, at its sole cost and expense, hire a qualified, fully insured third-party independent engineer approved in writing by Provider, to conduct its own performance testing of the System no later than twenty-four (24) hours following Provider's testing, and based on such testing either provide a punch list of items for Provider to correct or proceed to preparing for the acceptance of the Solar Services on the Commercial Operation Date.
- (b) If the results of such System Acceptance Testing indicate that the System has been installed in accordance with the Construction Plans and is capable of generating electric energy for eight (8) continuous hours (the "System Test Requirements"), using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, and all Grant Completion Paperwork, as defined by the Grant Agreement, has been completed and submitted to MEA in accordance with Section III(d) of the Grant Agreement, then Provider shall send a written notice to that effect to Host (a "Completion Notice").
- (c) The "Commercial Operation Date" shall be the date on the Completion Notice and shall be no later than June 15, 2015, as such date may be extended pursuant to this Agreement.

#### 4. SYSTEM OPERATIONS.

- 4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired and/or replaced by Provider at its sole cost and expense; provided, that any repair, replacement or maintenance costs incurred by Provider as a result of Host's negligence or breach of its obligations hereunder shall be reimbursed by Host, subject to appropriations. Any repair or maintenance of the System will be commenced and completed in a reasonably prompt manner by or for Provider, at its sole cost and expense.
- 4.2 Metering. Provider shall install and maintain, at the Premises, a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may, at its election and upon the approval of the Host, install a utility grade kilowatt-hour

(kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

#### 4.3 System Disruptions.

(a) Intentionally omitted.

(b) System Disruptions. In the event that any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors, that is not an act taken in the event of (x) Force Majeure, (y) an Emergency not caused by or due to the Purchaser or any of its employees, designees, agents, or assigns, or (z) a Provider Default (defined below), (collectively a "Host Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work reasonably required by Provider to disassemble or move the System, and (ii) continue to make all payments for the Solar Services and (iii) reimburse Provider for any actual lost revenue associated with reduced sales of Environmental Attributes and any actual reduction in Solar Incentives Provider suffers during such period of System disruption (the "Disruption Period"). For the purpose of calculating Solar Services Payments for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation).

### 5. DELIVERY OF SOLAR SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100%) of the Solar Services generated by the System up to one hundred ten percent (110%) of the Estimated Annual Production over the associated 12-month period. In the event that Purchaser decides that additional Solar Services are required for the Premises above the Estimated Annual Production and the Solar Services can be provided by the System, then Purchaser may elect to purchase whatever additional Solar Services that are generated and may be required by Purchaser. The Parties shall cooperate in estimating the electricity needs of the Premises and the potential System generation for the remaining days in the 12-month period. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 3 of Exhibit A, they represent a package of services and benefits, including reduction in the Host's peak demand from the Local Electric Utility.

5.2 Estimated Annual Production. The annual estimate of Solar Services with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set as forth in Schedule 5 of Exhibit A.

5.3 Environmental Attributes, Etc. Purchaser's purchase of Solar Services does not include Environmental Attributes or Solar Incentives or any other attributes of ownership of the System. Environmental Attributes shall be retained by Provider. Solely for purposes of this Section 5.3, Environmental Attributes shall not include renewable energy credits as defined by MD Code Pub. Util. Cos. § 7-701(i) ("RECs"), which such RECs belong to Purchaser pursuant to MD Code Pub. Util. § 7-306(h)(5); provided, however, that subject to Sections 2.3 and 7.1(f) of this Agreement, Purchaser



hereby transfers to Provider all right, title, and interest in one hundred percent (100%) of the RECs associated with the System's production for the System's operating life. Purchaser shall take all reasonable actions necessary to assist Provider in demonstrating Provider's rights to the RECs, provided that Provider shall promptly reimburse Purchaser for any out-of-pocket costs Purchaser incurs in taking such actions. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Provider for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Provider. Approval shall not be unreasonably withheld, conditioned or delayed and Provider's review and approval shall be made in a timely manner to permit Purchaser's timely publication. Purchaser and Provider may by mutual written agreement set forth specific statements that may be used by Purchaser in any press releases that address Purchaser's use of solar or renewable energy.

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

## 6. PRICE AND PAYMENT.

6.1 Consideration. Subject to the terms of Section 5.1 of this Agreement, Purchaser shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. The Purchaser and the Provider shall cooperate in estimating the needs of the Premises versus the estimated production of the System. If sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser may terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee. Notwithstanding anything to the contrary contained herein, the total Solar Services Payment to be paid by Purchaser for a period of 12 -months shall not exceed the amount which equals one hundred ten percent 110% of the Estimated Annual Production multiplied by the kWh Rate, subject to the additional purchase right provided for in Section 5.1.

6.2 Invoice. Provider shall invoice Host, at the address set forth in \_\_\_\_\_, on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

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

6.4 Method of Payment. Host shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

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

6.6 kWh Rate “Buy Down”. Purchaser may, at any time during the Term, make a lump-sum payment to Provider for the purpose of reducing the kWh Rate for the remainder of the Term. If Purchaser exercises its right under this Section 6.6, the Parties shall determine the revised kWh Rate and amend the Agreement accordingly.

## 7. GENERAL COVENANTS.

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

- (a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to the Premises or any damage to or loss of the use of or malfunction in the operation of the System or that could reasonably be expected to adversely affect the System, or an interruption in the supply of Solar Services; and (y) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises. In accordance with Section 4.1. hereof, Provider shall promptly repair any damage or malfunction or restore the operation of the System or the supply of Solar Services. In the case of an emergency, Provider shall dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner.
- (b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate, including but not limited to the actions required to be taken by Provider pursuant to Section 4.1 and 7.1(a) hereof.
- (c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to

enable Provider to perform such obligations and shall comply with all Applicable Laws, including without limitation all employment laws and regulations and all laws and regulations affecting government and applicable to Provider as a result of Provider's performance under the Agreement Provider shall deliver copies of all Governmental Approvals obtained pursuant to this section to Host.

- (d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. Provider shall immediately report to Host any death, lost time injury, or property damage to Host's property that occurs on the Premises or as part of Provider's operation of the System on the Premises.
- (e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein. Provider also shall pay promptly before a fine or penalty may attach to the Premises any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Provider or its agents and subcontractors on the Premises. If Provider breaches its obligations under this Section, it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend, hold harmless and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
- (f) Renewable Energy Credits. Provider shall obtain and maintain all Governmental Approvals required of Provider with regard to the purchase and sale of RECs.
- (g) Cap on Early Termination Fee. In no event shall the Early Termination Fee or the Option Price be greater than the sum of (1) the amount Provider must pay to the Financing Party at the time of Early Termination, plus (2) verified removal costs, plus (3) reasonable, documented administrative fees incurred to complete work relating to the Early Termination; plus (4) actual, demonstrable damages, if any, Provider or its affiliates incur, as a party to a Solar REC or other contract for the System, as a result of an Early Termination. Notwithstanding the forgoing, in no case shall the Early Termination Fee or the Option Price exceed the applicable amount set forth in \_\_\_\_\_.
- (h) No Infringement. The System and Provider's services hereunder, including the Installation Work, Solar Services and System Operations, shall not infringe any third party's intellectual property or other proprietary rights.
- (i) Security. Provider shall provide and take reasonable measures for security of the System and to prevent injury to persons in the vicinity of the System. Host shall not be responsible for any loss of, or damage to, any portion of the System or any of

Provider's personal property, except to the extent caused by Host's gross negligence or willful misconduct.

- (j) 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. Provider shall retain and maintain all such records and documents for three years after final payment by Host hereunder or any applicable statute of limitations, whichever is longer. Provider will make such records available for inspection and audit by authorized representatives of Host or its designee, at reasonable times and locations.
- (k) Provider agrees to comply with the terms and conditions of the Grant Agreement, as more particularly detailed in \_\_\_\_\_.

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

- (a) Notice of Damage or Emergency. Host shall (x) promptly notify Provider if it becomes aware of any damage to the Premises or any damage to or loss of the use of or malfunction in the operation of the System or that could reasonably be expected to adversely affect the System, or an interruption in the supply of Solar Services; and (y) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.
- (b) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Host breaches its obligations under this Section, it shall immediately notify Provider in writing and shall promptly cause such Lien to be discharged and released of record without cost to Provider.
- (c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in due course. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser, at Provider's sole cost and expense, shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.
- (d) Access to Premises, Grant of License. In accordance with Host's grant of a commercial license pursuant to Section 3.1, during the performance of the Installation Work, System Operations or removal of the System pursuant to Section 2.6, Section 10 or Section 11.2(b), Host shall provide Provider with access to the Premises as reasonably necessary to allow Provider to perform the Installation Work, System Operations and System removal, including reasonable ingress and egress rights as provided in Section 3.1. to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels

and conduits to interconnect or disconnect the System with the Premises' electrical wiring. Host hereby covenants that Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein. Host and its authorized representatives shall at all times have access to and the right to observe the Installation Work or System removal but shall not interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, in the event of a material malfunction or emergency as specified in Section 7.2, Host shall be permitted to take those actions necessary to prevent injury as specified in Section 11.1(c).

- (e) Temporary storage space during installation or removal. Host shall use commercially reasonable efforts to 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 the Installation Work, System Operations or System removal, and access for rigging and material handling. Host shall provide Provider a reasonable area for construction laydown.

## 8. REPRESENTATIONS & WARRANTIES.

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

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, governance or government, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that 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 Representations Regarding Security Interest. Host has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the “Security Interest”) in the System to a Financing Party. In connection therewith, Host represents and warrants as follows:

- (a) To Host’s knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
- (b) Host is aware of no existing lease, license, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Host’s Financing Party’s Security Interest therein.
- (c) To Host’s knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

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

8.3 PUHCA. Provider represents and warrants as of the Effective Date that (a) it has taken 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.

8.4 Requisite Standards. Provider warrants that the System shall be installed with due care by qualified employees, representatives, agents or contractors of Provider and shall conform to applicable industry standards and practices and Applicable Law. If Provider fails to meet any of the foregoing standards, Provider shall perform at its own cost, and without additional charge to Host, the professional services necessary to correct errors and omissions, including any necessary replacement of the System, that are caused by Provider’s failure to comply with the above standard so that the System is capable of providing Solar Services at a reasonably continuous rate.

8.4 Anti-Bribery. Provider represents and 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. Provider hereby represents and warrants that:

- (a) It is qualified or registered to do business 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 or registered;

- (b) It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement.

8.6 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. Provider shall comply with the foregoing provisions.

8.7 Subcontracting. Provider may not subcontract any portion of the services provided under this Agreement, other than to those subcontractors listed on Exhibit [ ] attached hereto, without obtaining the prior written approval of Host, which approval shall not be unreasonably withheld. Any such subcontract shall be subject to any terms and conditions that Host reasonably deems necessary to protect its interests. Host shall not be responsible for the fulfillment of Provider's obligations to the subcontractors.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser Obligations. Host warrants that it is a tax-exempt entity and as such Host has no liability for any taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Solar Services to Purchaser.

9.2 Provider Obligations. Provider shall be responsible for the payment of all taxes, fees or charges imposed or authorized by any Governmental Authority, including all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. If Host is assessed any taxes or fees related to the existence of the System on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting such assessment; provided, however, that Host shall pay such taxes to avoid any penalties on such assessments subject to reimbursement by Provider. If, after resolution of the matter, a tax is imposed upon Host related to the improvement of real property by the existence of the System on the Premises, Provider shall reimburse Host for such tax. Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host's overall income or revenues. Nothing contained in this Agreement shall be deemed to constitute a waiver of any immunity to which Host may be entitled under Applicable Law.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) a deleterious environmental or subsurface condition

that precludes the safe occupation of the Premises or construction thereupon; (iii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iv) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (v) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); (vi) action by a Governmental Authority, including a moratorium on any activities related to the Agreement; and (vii) the inability 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 the 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. A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in 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 (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If Provider claims relief pursuant to a "Force Majeure Event," the obligation of Host to make a Solar Services Payment to Provider on any payment date shall be suspended until Provider resumes performance of its obligations under this Agreement at which time such Solar Services Payment shall become immediately due and payable; provided, however, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued or reasonably can be deemed to continue for a continuous period of one hundred twenty (120) consecutive days, then Host shall be entitled to terminate this Agreement upon ninety (90) days' prior written notice to Provider. If before the end of such ninety (90) day notice period such Force Majeure Event has ceased, the System has recommenced operation and the Provider has resumed performance of its obligations under this Agreement, the notice shall be nullified and all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other than any such liabilities that have accrued prior to such termination, subject to Section 18.6 (Survival), nor shall Purchaser have any liability for Early Termination under Section 2.2 or any other section; provided, however, that Host shall have the right but not the obligation to exercise the Purchase Option pursuant to Section 2.4 (Purchase Option). By mutual agreement of the Parties, any System damaged or destroyed by a Force Majeure Event may be replaced by Provider at its sole cost and expense within the time frames set forth above and subsequent to replacement and upon commencement of operation of the replacement System all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement.

## 11. DEFAULT.



11.1 Provider Defaults and Host Remedies.

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

- (i) Subject in each case to Force Majeure Event(s), Provider fails to commence Installation Work in accordance with Section 3 of this Agreement by the Construction Start Date, fails to complete the Installation Work within six (6) months from the date of commencing the Installation Work, or the "Commercial Operation Date" is later than June 15, 2015;
- (ii) Purchaser's third-party independent engineer determines before the Commercial Operation Date that the Installation Work is completed with substandard materials;
- (iii) The System fails to provide at least eighty percent (80%) of the Estimated Annual Production for two consecutive years, provided that such failure is not due to a Host Act, or the acts or omissions of the Host; or an Event of Force Majeure;
- (iv) A Bankruptcy Event shall have occurred with respect to Provider;
- (v) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; or
- (vi) Provider breaches any material term of this Agreement, not otherwise specified above, and (A) if such breach can be cured within thirty (30) days after Host's written notice of such breach and Provider fails to so cure, or (B) Provider fails promptly to commence and diligently pursue said cure within such thirty (30) day period if a longer cure period is needed.

(b) Host's Remedies.

If a Provider Default described in Section 11.1(a) has occurred and is continuing, Host may terminate this Agreement (upon the expiration of any applicable grace period) upon thirty (30) days' prior written notice without penalty and without any obligation or liability of payment of any fees, charges or liquidated damages provided under this Agreement, such as the Early Termination Fee; or exercise any other remedy it may have at law or equity or under this Agreement, including but not limited to procuring substitute performance upon terms and in whatever manner Host may deem appropriate. Without limiting the generality of the foregoing, if a Provider Default described in Section 11.1(a)(i) or (ii) has occurred, Host shall be entitled to the payment by Provider of a sum in the amount of seventy-five percent (75%) of the Grant Award as liquidated damages and not as a penalty

- (c) Actions to Prevent Injury. If any Provider Default creates an imminent risk of damage or injury to any Person or any Person's property, then, in addition to any other right or remedy that Host may have, Host may (but shall not be obligated to) take such action as Host deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System.

## 11.2 Host Defaults and Provider's Remedies.

- (a) Host Default. The following events shall be defaults with respect to Host (each, a "Host Default"):
- (i) A Bankruptcy Event shall have occurred with respect to Purchaser, which is not dismissed in sixty (60) days;
  - (ii) Host breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Host fails to so cure, or (B) Host fails promptly to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; or
  - (iii) Host fails to pay Provider any undisputed amount due Provider under this Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.
- (b) Provider's Remedies. If a Host Default described in Section 11.2(a) has occurred and is continuing, Provider may terminate this Agreement immediately upon the expiration of any applicable grace period. In addition to any other remedy hereunder, Provider may (i) cease the provision of all Solar Services, and (ii) remove the System from the Premises in compliance with the conditions of Section 2.5 herein, absent any purchase of the System by Host pursuant to Section 2.3 hereof.

## 12. LIMITATIONS OF LIABILITY.

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

12.2 Unless otherwise provided for herein, a Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder with respect to personal injury or intellectual property infringement claims, or (ii) the Early Termination Fee, if applicable, or (iii) the repayment of the Grant Award, if applicable.

## 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an “Assignment”) the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate of Provider (provided that such Assignment, unless made prior to the date that is ninety (90) days after the Commercial Operation Date, shall not release Provider from its obligations hereunder without the consent of Host); and (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

Host’s consent to any other Assignment shall not be unreasonably withheld if Host has been provided with reasonable proof that the proposed assignee: (a) has proven experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to the Solar Services; and (b) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement.

An assignee from Provider of this Agreement shall assume in writing, in form and content reasonably satisfactory to Host, the due performance of all Provider’s obligations under this Agreement, including any accrued obligations at the time of the Assignment and including the provision of all representations and warranties under this Agreement, including, but not limited to the representations and warranties contained in Section 8.4 and 8.5. A copy of the Assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such Assignment agreement shall be sent to Host not less than ten (10) days before the effective date of such Assignment.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in [exhibit dealing with notice addresses], or in a subsequent notice to Purchaser, then Purchaser hereby:

- (a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.
- (b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider’s interests in this Agreement.
- (c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

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

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

#### 14. NOTICES.

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

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

#### 15. CONFIDENTIALITY.

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

15.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

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

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

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

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

## 16. INDEMNITY.

16.1. Provider's Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns, and their respective officials, directors, officers, members, shareholders, as applicable, and employees (collectively, the "Host Indemnified Parties") from and against any and all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: all claims, losses, damages, costs and expenses, including reasonable attorney fees and professional fees and court cost, arising out of or relating to any injury to or death of any Person or loss or damage to property of any Person, including without limitation damage to sensitive electrical equipment, or to the Premises to the extent arising out of or relating to (a) Provider's acts, omissions, negligence or willful misconduct, or (b) the Installation Work, or (c) the System or System Operations, or (d) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations or Solar Services and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Host Indemnified Party.

16.2 Intentionally Omitted.

## 17. INSURANCE.

Provider shall maintain the insurance coverages in full force and effect throughout the Term as set forth in Exhibit C.

## 18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of this Agreement and the Exhibits and Schedules, the provisions of the Exhibits and Schedules shall prevail.

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

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic 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.

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

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

18.6 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System at Expiration), 3.2 (License to Conduct Due Diligence; Use Premises), 7.1 (Provider's Covenants), and 7.2(d) and (e), (Host's Covenants); Articles 9 (Taxes and Governmental Fees), 12 (Limitations of Liability), 14 (Notices), 15 (Confidentiality), 16 (Indemnity), and 18 (Miscellaneous); and Exhibit C (Provider's Insurance Requirements); or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Maryland without reference to any conflict of law principles. The Parties agree that the courts of the State of Maryland shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement in any courts described in this Section 18.7.

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

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

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

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

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

18.13 Attorneys' Fees. If any legal action, arbitration, or other proceeding is brought for the enforcement of the Agreement or because of an alleged dispute, default, misrepresentation, or breach in

connection with any of the provisions of the Agreement, except as expressly excluded in the Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

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

Provider acknowledges that the payment to Host of a sum in the amount of the Grant Award constitutes liquidated damages, and not penalties, in lieu of Host's actual damages resulting from Provider's breach of Section 11.1(a)(i) and (ii) of this Agreement. Provider further acknowledges that in accordance with Purchaser's rights and obligations under the Agreement, the payment of a sum in the amount of the Grant Award constitutes fair and reasonable damages to be borne by Provider.

18.15 Limit on Purchaser's Obligations. Notwithstanding anything herein to the contrary, all obligations to be undertaken by the Purchaser pursuant to this Agreement shall not constitute general obligations of the Purchaser and shall not pledge the full faith and credit of the Purchaser, but shall be limited obligations of the Purchaser only, subject to appropriation.

*[Remainder of page intentionally left blank.]*



**PROVIDER:**

BITH ENERGY, INC.

**HOST:**

**ATTEST:**

**HOWARD COUNTY, MARYLAND**

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrative Officer

BY: \_\_\_\_\_ (SEAL)  
Ken Ulman  
County Executive

**APPROVED:**

\_\_\_\_\_  
James M. Irvin, Director  
Department of Public Works

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Stanley J. Milesky, Director  
Department of Finance

**APPROVED FOR FORM AND LEGAL SUFFICIENCY**  
this \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Margaret Ann Nolan  
County Solicitor

\_\_\_\_\_  
Reviewing Attorney:

Morenike Euba Oyenusi, Sr. Assistant County Solicitor

**Exhibit B**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

- (a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.
- (b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party.
- (c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:
  - i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Host's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.
  - ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.
  - iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any Qualified Assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Such transferee or assignee shall assume in writing, in form and content reasonably satisfactory to Host, the due performance of all Provider's obligations under this Agreement and including the provision of all

representations and warranties under this Agreement (other than Sections 8.2 and 8.3), including, but not limited to the representations and warranties contained in Section 8.4 and 8.5. Any such exercise of remedies shall not constitute a default under this Agreement. Provider shall provide written notice to Host in the event that Provider receives written notice from the Financing Party that Provider is in default under its financing agreements with respect to the System or that the Financing Party intends to exercise the remedies under its security interest in the System.

iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with the Financing Party or its Qualified Assignee having substantially the same terms and conditions as 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 Section 8.4 and 8.5.

v. For purposes of this section, a “Qualified Assignee” must be a business organization with experience comparable with Provider’s in the operation and management of commercial solar generating systems and with the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement.

(c) Acknowledgement and Confirmation. Host shall provide an Acknowledgement and Confirmation in the form of Exhibit C, attached hereto, and executed by Host.

(d) Right to Cure.

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

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

(e) Right to Change Financing Party. Host acknowledges and agrees that Provider may change the Financing Party at any time, in Provider's sole discretion, and Host shall abide by such new contact information and payment directions as instructed by Provider.

**Exhibit C**  
**of General Conditions**

**Provider Insurance Requirements**

1. Provider shall carry the following required insurance coverage, in addition to the insurance required under Section X of the Grant Agreement. Losses valued at or below policy deductibles shall be considered covered losses and Provider, and its contractors and subcontractors (collectively “Contractors” herein), shall be responsible for payment of all insurance policy deductibles with no contribution by the Purchaser.

a. **“Builder’s Risk”/All-Risk” Property Insurance** covering the work and materials used in developing the System with a limit of coverage at least equal to the full replacement value of the System. Such property insurance shall be written on a replacement cost basis, subject to standard exclusions, property limitations and conditions. Such insurance shall include the Purchaser, as an Additional Named Insured, and shall insure against fire, extended coverage and all risk perils (including resultant loss or damage from or as a consequence of faulty materials, workmanship or design). Provider expressly waives all right of recovery against the Purchaser for damage to its tools and equipment and shall assure that the Builder’s Risk insurer agrees to waiver of subrogation against the Purchaser.

b. **Worker’s Compensation Insurance** with limits of coverage as follows:

(i) Coverage A: Coverage for all applicable states with statutory Maryland jurisdiction coverage mandatory.

(ii) Coverage B: \$100,000

c. **Automobile Liability Insurance** with limits of liability of at least \$1,000,000 combined single limit per occurrence, naming the Purchaser as an additional insured. Coverage for non-owned and hired vehicles shall be included. If hazardous materials are transported, insurance shall comply with Applicable Law relating to such transportation.

d. **Commercial General Liability Insurance** with combined single limits of \$1,000,000 per occurrence, naming the Purchaser as an additional insured. Unless deemed unnecessary by the Purchaser, the policy shall contain, but not be limited to, the following coverage endorsements:

(i) Contractual Liability, including Contractors

(ii) Personal and Advertising Injury

(iii) Products and Completed Operations

(iv) Explosion, Collapse, and Underground Hazards (XCU) - required if such exposure exists due to the nature of the work to be performed.

This insurance may be provided by a combination of a primary policy and excess coverage.

e. **Provider’s Pollution Liability Insurance** with combined single limits of \$1,000,000 per claim naming the Purchaser as an additional insured. Such coverage may be included under the Commercial

General Liability Insurance policy by endorsement if there is no exclusion for sudden and accidental pollution or claims arising out of environmental work or laboratory analysis.

f. **Professional Liability/Errors and Omissions Insurance** to the Provider's profession with policy limits of at least \$3,000,000 per claim. Provider shall continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after substantial completion of the System.

2. If any of the insurance policies required to fulfill the requirements of the Installation Work are written on a claims-made basis, Provider shall continue to maintain such insurance, covering incidents occurring or claims made, for a period of three years after substantial completion of the Installation Work.

3. All policies of insurance shall be underwritten by companies licensed to do business in the State of Maryland.

4. The Provider shall assure that all Contractors performing services in accordance with the SPSA carry identical insurance coverage required of the Provider, either individually or as an additional insured on the policies of the Provider or coverage limits in accordance with local industry practice at the discretion of the design builder. Subject to a limitation of \$1,000,000 per occurrence per Contractor, Provider shall indemnify the Purchaser for any underinsured or uninsured losses relating to the contractual services involving Contractors, except for workers' compensation claims for which Purchaser shall be indemnified up to the statutory limits.

Provider shall be responsible for maintaining a list of all Contractors and their respective insurance companies and policies and coverage and shall provide the list to Purchaser.

5. The Provider shall not commence Installation Work under the SPSA until evidence of all required coverage is received by the Purchaser. Further, the Provider shall continue to provide the Purchaser with evidence of policy renewals until the Expiration Date or Early Termination Date and shall not reduce or cancel or change any of the required coverage without 60 days' notice of such change to the Purchaser.

6. The Provider will indemnify, defend and hold harmless the Purchaser from liability for any injuries to the employees, servants, agents, Contractors or assignees of the Provider arising out of or during the course of services relating to the SPSA. Provider shall indemnify the Purchaser for any underinsured or uninsured losses arising from Provider's breach of its insurance obligations contained in this Agreement.

7. The providing of any insurance required herein does not relieve the Provider of any of the responsibilities or obligations assumed by the Provider in the SPSA for which the Provider may be liable by law or otherwise.

8. Failure to provide and continue in force such insurance as required above shall be deemed as a material breach of the SPSA and at the Purchaser's election shall operate as an immediate termination of the SPSA, without penalty or payment of the Early Termination Fee. The Purchaser may, but is not obligated to, obtain any insurance not being maintained by Provider and required under this SPSA. In

the event the Purchaser does obtain such insurance, then Provider shall immediately pay the full premium to Purchaser, plus an administrative fee of ten percent (10%) of the insurance premium. In the event Provider fails to pay the premium, the amount of the premium will be deducted from payments due to Provider. If Purchaser purchases any insurance as provided for herein, such purchase shall be deemed to be a waiver by Purchaser of the right to declare a breach based on Provider's said default, as long as Purchaser does not incur any unpaid expense related thereto.

9. Provider shall provide Purchaser with copies of the policies, certificates of insurance or other evidence, reasonably satisfactory to Purchaser, of the above-required insurance, and all new and renewal certificates replacing any such policies that expire shall be delivered to Purchaser on or before the date of expiration. Such evidence of insurance shall name Purchaser as an additional insured as required above. Provider will ensure that Purchaser shall receive thirty (30) days prior written notice of non-renewal, cancellation of or significant modification to any of the above policies and indicate that the Commercial General Liability Insurance and Builder's Risk"/All-Risk" Property Insurance have been endorsed as described above. All insurance shall be placed and maintained with insurers authorized to do business in the State of Maryland and who have an A.M. Best rating of A/XI or better unless otherwise approved by Purchaser in writing. Notwithstanding the forgoing or anything to the contrary in the Agreement, a downgrade in Provider's insurer's A.M. Best rating shall not constitute a default under the Agreement and shall not give rise to any right by Purchaser to terminate the Agreement, provided that Provider uses commercially reasonable efforts to obtain replacement coverage from an insurer meeting the rating requirements herein as soon as reasonably possible.



**Schedule I**  
**of General Conditions**

**System Construction Schedule**

NTP (Notice to Proceed): To be determined

Review and Permitting: \_\_\_\_\_

Construction: \_\_\_\_\_ Weeks

Commissioning: \_\_\_\_\_ Weeks

Total: \_\_\_\_\_ weeks

Last Date for Start of Construction: \_\_\_\_\_

Last Date for Commercial Operation Date: June 15, 2014

**Schedule II**  
**of General Conditions**

**Grant Special Conditions**

The Provider acknowledges and confirms that the Purchaser has applied for and has been awarded the Grant Award, and that the terms and conditions of the Grant Agreement have been incorporated into the Agreement. The Provider further acknowledges that the Grant Award is material to the overall success of the Agreement and, therefore, the Provider covenants to meet the deadlines and abide by the terms and conditions of the Grant Agreement applicable to the Provider as the contractor thereunder and will take all actions to enable the Purchaser to meet the Purchaser's obligations and deadlines.

**EXHIBIT A**  
**to**  
**Solar Power & Services Agreement**

This Exhibit consists of six (6) schedules and relates to the Solar Power & Services Agreement, dated \_\_\_\_\_, 2014 (as amended, supplemented or otherwise modified from time to time, the “Agreement”), between \_\_\_\_\_ (“Provider”). Capitalized terms used and not otherwise defined herein have the meanings ascribed thereto in the Agreement.

1. Schedule 1 Description of the Premises. The Premises for the installation of the System provided pursuant to this Agreement are described in Schedule 1 to this Exhibit A.
2. Schedule 2 Description of System. The System to be installed in the Premises subject to this Agreement shall be as described in Schedule 2 to this Exhibit A.
3. Schedule 2.1 Location of System. The location of the System to be installed in the Premises shall be as shown in Schedule 2.1 to this Exhibit A.
3. Schedule 3 kWh Rate. The kWh Rates with respect to the System to be installed pursuant to this Agreement shall be as specified in Schedule 3 to this Exhibit A.
4. Schedule 4 Renewal Energy Credit Rates. The Renewal Energy Credit rates shall be as stated in Schedule 4.
5. Schedule 5 Estimated Annual Production. The Estimated Annual Production for the commercial operation of the System contemplated under this Agreement shall be as specified in Schedule 5 to this Exhibit A.
6. Schedule 6 Emergency Contact Information. Emergency Contact Information for each Party shall be as specified in Schedule 6 to this Exhibit A.

**Exhibit A -- SCHEDULE 1**  
**DESCRIPTION OF PREMISES**

**Exhibit A -- SCHEDULE 2**

**DESCRIPTION OF SYSTEM**

Solar System Location:

**Solar System Size:**

**Scope:**

**Module:**

**Inverter:**

**Includes:**

**Exclusions:**

Changes to the System or Premises as may be required  
by the Local Electric Utility

**Exhibit A -- SCHEDULE 2.1**

**DESCRIPTION OF SYSTEM**

**Exhibit A -- SCHEDULE 3**

**kWh RATE**

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

<b>Year of System Term</b>	<b>\$/kWh Rate*</b>
1	.089
2	.092
3	.094
4	.097
5	.100
6	.103
7	.106
8	.109
9	.113
10	.116
11	.119
12	.123
13	.127
14	.131
15	.134
16	.138
17	.143
18	.147
19	.151
20	.156

**Exhibit A -- SCHEDULE 4**

**RENEWAL ENERGY CREDIT RATES**

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

<b>Year of System Term</b>	<b>\$/MWh Rate</b>
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	



**ESTIMATED ANNUAL PRODUCTION**

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

<b>Year of System Term</b>	<b>kWhs</b>
1	589,600
2	586,652
3	583,719
4	580,800
5	577,896
6	575,007
7	572,132
8	569,271
9	566,425
10	563,592
11	560,775
12	557,971
13	555,181
14	552,405
15	549,643
16	546,895
17	544,160
18	541,439
19	538,732
20	536,039

\*subject to update per final design

**Exhibit A- SCHEDULE 6**

**EMERGENCY CONTACT INFORMATION**

<p><b><u>Host:</u></b></p>  <p><i>Or:</i></p>	<p><b><u>Provider:</u></b></p>
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Following this introduction page, the following exhibits are attached for use, as appropriate.

1. **Exhibit B: Host Acknowledgement and Confirmation.** The Host acknowledges that Provider may assign rights to its Financing Party.
2. **Exhibit C Owner/Lessor Acknowledgement and Confirmation, where Host is Owner/Lessor.** The Host is the owner or landlord of the Premises and acknowledges that the System will be installed on the Premises.

**EXHIBIT B**

**HOST ACKNOWLEDGEMENT AND CONFIRMATION**

**EXHIBIT C  
OWNER/LESSOR ACKNOWLEDGEMENT AND CONFIRMATION, WHERE HOST IS  
OWNER/LESSOR**