

University System of Maryland



and



the State of Maryland

In Cooperation with

Maryland Department of General Services

REVISED JUNE 9, 2009

Request for Proposals (RFP)

No. 83468-A

Generating Clean Horizons

Maryland's Request for Proposals of Clean Energy

REVISED Issue Date:	<u>June 9, 2009</u>
Questions Deadline:	<u>June 15, 2009 1:00 p.m.</u>
REVISED Proposal Due Date:	<u>July 7, 2009 3:00 p.m.</u>

WARNING: Contractors who have received this document from a source other than eMaryland Marketplace should visit the State's eMaryland Marketplace (eMM) web site and register as a Vendor. The University uses this web site to post solicitations and all solicitation amendments. The University does not maintain a Proposers/Bidders list.

Contractors who fail to register with and obtain solicitation information from eMM assume complete responsibility in the event that they do not receive all solicitation information prior to the closing date.

Contractors are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render a Contractor's proposal unacceptable and subject to rejection. Questions and comments may be addressed to the point of contact identified in Section A-1, Item 9 of this document.

Table of Contents

PART I - THE SCHEDULE

Section A-1 - Solicitation / Contract Form..... 1

Section A-2 - Instructions, Conditions and Notices to Contractors..... 2

A - Issuing Office..... 2

B - Pre-Proposal Conference 2

C - Questions..... 2

D - Submission of Proposals..... 2

E - Closing Date..... 3

F - Late Proposals 3

G - Duration of Proposal Offer 3

H - Amendments to the RFP 3

I - Alternate Proposals 4

J - Economy of Preparation..... 4

K - Unable to Propose..... 4

L - Public Information Act Notice 4

M - Two Volume Proposal 4

N - Cancellation of the RFP..... 7

O - Oral Presentations 7

P - Solicitation, Proposal, Acceptance, Award and Discussions 7

Q - Evidence of Responsibility 7

R - Electronic Funds Transfer (EFT) 8

S - Formation of Agreement/Contract with Successful Contractor 8

T - Debriefing of Unsuccessful Proposors..... 8

Section B - Pricing 9

Section C - Description/Specifications/Statement of Work..... 10

1.0 - Background..... 10

2.0 - Objectives 10

3.0 - Contractor’s Solicitation Requirements 11

4.0 - Definitions 12

Section D - Packaging & Marking 16

Section E - Inspection and Acceptance 16

Section F - Deliveries or Performance 16

Section G - Contract Administration Data	17
1. - Roles of the University of Maryland Program Manager and Procurement Officer	17
2. - Invoicing	17
3. - Schedule of Payments.....	17
4. - Assignment	17
5. - Notices	18
Section H - Special Contract Requirements	19
1. - Insurance Requirements	19
2. - Minority Business Enterprise (MBE) Notice	19
3. - Order of Precedence (within the Contract).....	19

PART II - CONTRACT CLAUSES

Section I - Contract Clauses.....	20
1. Scope of Work	20
2. Compensation and Method of Payment.....	20
3. Contract Term	20
4. University Work Rules	20
5. Harmony	20
6. Clean Up	20
7. Independent Contractor.....	20
8. Truth-in-Negotiation Certification.....	20
9. Multi-Year Contracts Contingent Upon Appropriations	20
10. Variations in Estimated Quantities	21
11. Liquidated Damages	21
12. Specifications.....	21
13. Cost and Price Certification	21
14. Delays and Extensions of Time	21
15. Suspension of Work.....	21
16. Payment of University Obligations.....	21
17. Delivery and Acceptance	21
18. Non-Hiring of Officials and Employees	21
19. Nondiscrimination in Employment.....	22
20. Financial Disclosure.....	22
21. Political Contribution Disclosure.....	22
22. Disputes.....	22
23. Termination for Convenience	22
24. Termination for Default	23
25. Arrearages	23
26. Compliance with Laws	23
27. Retention of Records.....	23
28. Tax Exemption.....	23

29. Registration	23
30. EPA Compliance.....	24
31. Occupational Safety and Health Act.....	24
32. Maryland Law Prevails.....	24
33. Software Licensing	24
34. MUCITA.....	24
35. Applicability of Federal Laws	24
36. Protests and Claims.....	24
37. Intellectual Property.....	24
38. E-Maryland Marketplace	25
39. Eligibility to Purchase.....	25
40. Use of Agreement by Third Parties	25

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

Section J - List of Attachments	26
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PART IV - REPRESENTATIONS AND INSTRUCTIONS

Section K – Representations, Certifications and other Statements of Contractors	27
University of Maryland Proposal Affidavit	27
Conflict of Interest Information	33
Conflict of Interest Affidavit and Disclosure	34
Section L - Evaluation Factors for Award	35
A - Evaluation Committees.....	35
B - Acceptability of Proposals	35
C - Technical Evaluation	35
D - Financial Evaluation	36
E – Basis of Award	36
F - Negotiation	37

**PART I – THE SCHEDULE
SECTION A-1 – SOLICITATION / CONTRACT FORM**

1. CONTRACT NUMBER	2. SOLICITATION NUMBER 83468-A <i>Revised JUNE 9, 2009</i>	3. TYPE OF SOLICITATION NEGOTIATED (RFP)	4. DATE ISSUED February 11, 2009	5. REQUISITION NUMBER
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6. ISSUED BY UNIVERSITY OF MARYLAND DEPARTMENT OF PROCUREMENT AND SUPPLY 0410A SERVICE BUILDING COLLEGE PARK, MARYLAND 20742	7. ADDRESS PROPOSAL TO University of Maryland Department of Procurement & Supply Attn.: RFP Number 83468-A 0410A Service Building College Park, Maryland 20742
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SOLICITATION

8. Sealed proposals in original plus number of copies specified in Section A-2, Subsection D for furnishing the supplies or services in the Schedule will be received at the location specified in Item 7 (if no location is specified in Item 7, then the location specified in Item 6) until the date and time specified in Section A-2, Subsection E.

CAUTION – LATE Submissions, Modifications, and Withdrawals; see Section A-2, Subsection F entitled "Late Proposals". All offers are subject to all terms and conditions contained in this solicitation.

9. FOR INFORMATION CALL	A. NAME Joseph F. Vogel	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS jfvogel@umd.edu	D. FAX NUMBER 301-405-3011
		AREA CODE 301	NUMBER 405-2898		

OFFER (Must be fully completed by Contractor)

10. In compliance with the above, the undersigned agrees, if this offer is accepted within the time period specified in Section A-2, Subsection G, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

11. ACKNOWLEDGEMENT OF AMENDMENTS
The Contractor acknowledges receipt of all amendments to the SOLICITATION.

The Contract shall incorporate the Solicitation/Request for Proposal and any amendments thereto, as well as Contractor's proposal and amendments thereto. In the event of a discrepancy between the terms of the Contract, including amendments and modifications made thereto, and Contractor's proposal and amendments thereto, the discrepancy shall be resolved by giving precedence in the order found in RFP, Section H.

12. NAME, ADDRESS AND FEI NUMBER OF CONTRACTOR	13. CONTRACTOR REMIT-TO ADDRESS	14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Print or Type)
15. TELEPHONE NUMBER AREA CODE NUMBER EXT.	16. SIGNATURE	17. OFFER DATE

AWARD (To be completed by University)

18. ACCEPTED AS TO ITEMS LABELED	19. AMOUNT	20. FRS ACCOUNT NUMBER
21. ADMINISTERED BY (If other than Item 6)		
22. NAME OF PROCUREMENT OFFICER (Type or Print)	23. UNIVERSITY OF MARYLAND (Signature of Procurement Officer)	24. AWARD DATE

IMPORTANT – Award will be made on this Form or by other authorized official written notice.

Section A-2 -- Instructions, Conditions and Notices to Contractors

A. ISSUING OFFICE

The sole point of contact at the University of Maryland, College Park (hereinafter “University” or “University of Maryland”) for purposes of this Request for Proposals (RFP) is the Issuing Office. The location of the Issuing Office is contained in Part I, Section A-1, Item 6 of this document. Point of contact information is listed in Part I, Section A-1, Items 9(a) through 9(d) of this document. Unless a term is defined when it is first used, definitions of terms used in this RFP are contained in Section C, Item 4 and in Attachment 1, Additional Special Contract Requirements.

B. PRE-PROPOSAL CONFERENCE

Not Applicable.

C. QUESTIONS

Each Contractor is responsible for reading carefully and understanding fully the terms and conditions of this RFP. All contact between Contractors and the University will be formally made at scheduled meetings or in writing through the Issuing Office. Requests for clarification or additional information must be made in writing to the Procurement Officer and received at the Issuing Office no later than **June 15, 2009 1:00 p.m.** Such requests should contain the following: **“QUESTIONS: RFP #83468-A”**. Only written communications relative to the procurement shall be considered. Hard copy, facsimile and electronic mail are acceptable methods for submission of questions. It is incumbent upon the Contractor to verify University receipt of their questions.

All questions will be answered in writing. Both questions and answers will be distributed, without identification of the inquirer(s), to all Contractors who are on record with the Procurement Officer as having received this RFP. No oral communications can be relied upon for proposal purposes.

To the extent that a question causes a change to any part of this RFP, an amendment shall be issued addressing such.

D. SUBMISSION OF PROPOSALS

Proposals must be:

- (1) submitted in the format set forth herein,
- (2) made in the official name of the firm or individual under which Contractor's business is conducted (including the official business address),
- (3) signed by a person duly authorized to commit Contractor to the proposal,
- (4) submitted in envelopes clearly marked with the assigned RFP number,
- (5) separated into Technical and Financial volumes, and

- (6) addressed to the Procurement Officer identified in Section A-1, Item 9 and sent to the address shown in Section A-1, Item 7.

The Contractor must submit one original (marked "original") and four (4) copies of the Technical volume plus one original and two (2) copies of the Financial volume sealed under separate cover. Commingling of technical and financial information or failure to submit the two volumes **separately** and sealed may result in the proposal being deemed **NON-ACCEPTABLE** and thereby rejected. The volumes, which contain original documents, should be clearly identified as the **ORIGINAL Technical or the ORIGINAL Financial Volume**.

E. CLOSING DATE

Proposals must arrive at the location identified in Section A, Item 7 of this document on or before **July 7, 2009, 3:00 p.m. EST/EDT** as applicable, in the format set forth herein.

Contractors mailing proposals should allow sufficient mail delivery time to insure timely receipt by the Issuing Office. Proposals, amendments to proposals or requests for withdrawal of proposals arriving after the closing time and date shall not be considered. There shall be no public opening of the proposals. The names of Contractors will not be released until after award.

F. LATE PROPOSALS

Any proposal, request for withdrawal, or modification of a proposal including a Best and Final Offer (BAFO) that is not received at the designated location, time and date set forth herein will be considered late and shall not be considered. Delivery of the proposal to the specified location by the prescribed time and date is the sole responsibility of the Contractor. Exceptions may be authorized, at the sole discretion of the Procurement Officer, when the reason for the late proposal, late request for withdrawal, late modification of a proposal or BAFO is due to the action or inaction of the University. A record of the late proposal, request for withdrawal, modification of a proposal or BAFO shall be made in the appropriate procurement file.

G. DURATION OF PROPOSAL OFFER

Proposals shall be valid for a minimum of 90 days following the closing date of this RFP. If an award is not made during that period, the proposal shall automatically extend for another 30 days, unless the Contractor gives specific written notice to the Procurement Officer at least 15 days before the expiration of the then current 90 day period by submission of a proposal, Contractor guarantees that its offer shall be firm for the period specified above.

H. AMENDMENTS TO THE RFP

If it becomes necessary to revise any part of this RFP, notice of the revision will be in the form of an amendment and posted on eMarylandmarketplace.com. All amendments shall become a part of this RFP. **Each Contractor must acknowledge receipt of amendments, and the failure of a Contractor to acknowledge any amendment shall not relieve the Contractor of the responsibility for complying with the terms thereof.**

I. ALTERNATE PROPOSALS

Alternate proposals shall not be allowed or accepted, nor will they be considered, for this solicitation.

J. ECONOMY OF PREPARATION

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Contractor's offer and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

K. UNABLE TO PROPOSE

If Contractor is unable or unwilling to submit a proposal in response to the requirements, Contractor must indicate such in writing to the Procurement Officer on or before the proposal due date. Hard copy, facsimile and electronic mail are acceptable. Please include a brief explanation of the rationale for non-submission of a proposal.

L. PUBLIC INFORMATION ACT NOTICE

Contractors shall specifically identify those portions of their proposals that they deem to contain confidential, proprietary information or trade secrets and shall provide specific justification, with respect to each separate portion identified, why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

In order for such claims of confidentiality to be considered, Contractors must clearly identify and provide individual justification for each and every section that is claimed to contain confidential, proprietary information or trade secrets. It is **NOT** sufficient to preface your proposal with a proprietary statement, or to use a page header or footer that arbitrarily marks some or all pages as confidential. General claims of confidentiality or similar blanket designations shall not be effective.

M. TWO VOLUME PROPOSAL

The selection procedure for this procurement requires an independent evaluation of the technical and financial proposals. This separation allows for evaluation of technical proposals on their technical merit only. Consequently, Contractor shall submit its proposal in two separately sealed volumes as indicated below. No pricing information is to be included in the technical proposal.

See Part IV, Section L for additional details pertaining to the evaluation process.

1. VOLUME I - TECHNICAL

This volume should be prepared in a clear and concise manner with pages numbered. The technical volume shall not contain any price information. If such is included in the technical

volume, the price information may not be evaluated by the financial evaluation committee.
Volume I must contain the following sections:

a. EXECUTIVE / MANAGEMENT SUMMARY

The Executive/Management Summary should contain a brief synopsis of how the Contractor's proposal meets the needs of the University. Also provide a company/corporation organization chart and staffing profile, including years of tenure for staff.

b. THE TECHNICAL PROPOSAL

The information/items specified herein must be addressed in the technical proposal. The proposal must expressly indicate that it satisfies each point of the RFP requirements and specifications, reference Section C. Simple YES or NO responses to stated requirements are insufficient. Rather, the Contractor must describe in detail how the proposed products and/or services meet or exceed the stated requirements. Additionally, the Contractor must explain any exception or deviation from the requirements. For further information on exceptions or deviations from the requirements, please review paragraph I above.

c. SUBMITTALS TO BE INCLUDED WITH THE TECHNICAL PROPOSAL

(1) TECHNICAL PROPOSAL RESPONSE

- i. Facility Description
- ii. Attachment 2, Facility Information
- iii. Attachment 3, Facility Expected Energy Production
- iv. Diagram indicating physical location of the Facility and specifically where the Facility Meter is situated at the Facility.
- v. Project Status with regards to permitting, financing and construction.
- vi. Documentation of Prior Relevant Development Experience

(2) PROPOSAL AFFIDAVIT

Contractors must complete and sign the Proposal Affidavit. A copy of this Proposal Affidavit is included in Part IV, Section K.

(3) CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Contractors must complete and sign this affidavit. A copy of this affidavit is included in Part IV, Section K.

(4) FINANCIAL RESPONSIBILITY INFORMATION

The Contractor or credit support provider must be rated by at least one of the following rating agencies: Standard & Poor's Rating Services ("S&P") or Moody's Investors Service, Inc. ("Moody's") and must have a minimum senior unsecured debt rating of at least "BBB-" from S&P, and

Baa3 from Moody's. Contractor shall provide its current credit rating and define the financial relationship between the rated entity and the Contractor, if the rated entity is not the Contractor. A Parent Guarantee or standby irrevocable letter of credit as outlined in Attachment 1, Additional Special Contract Requirements, Article 14 is required if the Contractor does not meet the credit requirements outlined above. The proposed form of Parent Guarantee or letter of credit should be provided.

The Contractor shall provide certain financial information in order to establish creditworthiness with the Buyer.

- 1) Most current Annual Report or company brochure, if available. An electronic copy or web address is acceptable.
- 2) Audited financial statements for the three (3) preceding years that include a balance Sheet, income Statement and cash flow statement and notes to the financial statements.
- 3) Bank name, address, phone number, and officer contact.

(5) LICENSES/QUALIFICATIONS

The Contractor shall have a FERC power marketing license as well as PJM membership as a Generation Owner.

Contractors are urged to read the specifications very carefully and to submit their questions, in writing, by the due date for questions. Misinterpretation of specifications by the Contractor shall not relieve the Contractor of responsibility to accurately address the requirements of this RFP or to perform the Contract, if awarded.

2. VOLUME II - FINANCIAL

This volume consists of and must contain the following items. Contractors shall not include any technical information or specifications in the financial volume. If such are included in the financial volume, they may not be evaluated by the technical evaluation committee.

a. SIGNED ORIGINALS OF SECTION A-1

Contractors must complete Items 11, 12, 13, 14, 15, 16 and 17 of the Solicitation / Contract Form (Section A-1) of this document and include TWO signed originals as part of Contractor's financial proposal, in the original Financial Volume. Failure to submit these signed documents may cause the Contractor's proposal to be rejected, at the sole discretion of the University.

b. PRICING SECTION

This volume shall be in accordance with Section B – Pricing. Attachment 4, Price Proposal Form, shall be submitted in Volume II.

c. NOTICES INFORMATION

Contractors must complete Section G.5 and submit this information as part of their financial proposal.

N. CANCELLATION OF THE RFP

The University may cancel this RFP, in whole or in part, or reject all proposals submitted in response to the RFP when such action is determined to be fiscally advantageous to the Buyer or otherwise in the best interest of the Buyer.

O. ORAL PRESENTATIONS

Contractors may be required to make individual presentations to the University Evaluation Committee, or its designated representatives, in order to clarify their proposals. If the University determines that such presentation is needed, the Issuing Office will schedule a time and place for oral presentations. Contractor is required to make the oral presentation within five (5) workdays after request by the University. Each Contractor should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as its qualifications to furnish the specified products and services. Notwithstanding the possibility of a request for an oral presentation, Contractors shall not rely on the possibility of such a request and shall submit a complete and comprehensive written response to this solicitation.

P. SOLICITATION, PROPOSAL ACCEPTANCE, AWARD AND DISCUSSIONS

This RFP creates no obligation on the part of the University to award a Contract or to compensate Contractors for proposal preparation expenses. The University reserves the unilateral right to cancel this solicitation at any time and to accept or reject any and all proposals, in whole or in part, received in response to this RFP; the unilateral right to award a Contract in whole or in part; to award a Contract to one Contractor; to waive or permit cure of minor irregularities; and to conduct discussions with Contractors in any manner necessary to serve the best interest of the University.

Discussions may be conducted with those Contractors who submit proposals initially judged by the Procurement Officer to be reasonably susceptible of being selected for award. However, the University reserves the right to award a Contract based upon the proposals received without further discussions.

Q. EVIDENCE OF RESPONSIBILITY

Prior to the award of a Contract pursuant to this RFP, the Procurement Officer may require Contractor to submit such additional information bearing upon Contractor's ability to perform the Contract as the Procurement Officer deems appropriate. The Procurement Officer may also

consider any information otherwise available concerning the financial, technical, and other qualifications or abilities of the Contractor.

R. ELECTRONIC FUNDS TRANSFER (EFT) –(Applies to Contracts expected to exceed \$200,000)

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds Registration Request Form, which may be found on the following website:

<http://compnet.comp.state.md.us/gad/vendoinfo/eft/default.asp>

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

See Payment of Buyer Obligations clause in PART II, Contract Clauses, Section I for additional information.

S. FORMATION OF AGREEMENT/CONTRACT WITH SUCCESSFUL CONTRACTOR

This RFP and the resulting PPA shall be governed by the University System of Maryland Procurement Policies and Procedures, and University of Maryland Procurement Policies and Procedures. These policies and procedures may be viewed at the following web site: www.purchase.umd.edu From the main menu, select the category "Policies and Procedures". Resulting PPAs with Third Parties, if any, shall be governed by the procurement policies and procedures applicable to the respective Third Party.

T. DEBRIEFING OF UNSUCCESSFUL PROPOSORS

A debriefing of an unsuccessful proposer shall be conducted upon written request submitted to the Procurement Officer within ten (10) days of the date on which the proposer knew, or should have known, its proposal was unsuccessful. The debriefing shall be limited to a discussion of the proposer's unsuccessful proposal. The debriefing will be oral and shall provide information on areas in which the proposal was deemed weak or insufficient. The debriefing may NOT include discussion of a competing offeror's proposal or discussion, thoughts, notes or ranking from an individual evaluation committee member. A summarization of the procurement officer's rationale for the selection may be given. Debriefings shall be conducted at the earliest feasible time.

Section B – Pricing

Firms must submit a printed copy of their price proposal. Blanks on the price proposal form will be interpreted as zero (0) and no price will be allowed for that item.

The Price Proposal Form in Attachment 4 allows the Seller to specify tiered pricing based on Contract Quantity. It is not required that the Seller offer tiered pricing or more than one capacity amount. Because there may be one or more Riding Entities, the final pricing under the awarded Contract will not be determined until ninety (90) days after award when all Riding Entities and quantities have been identified.

Seller shall also indicate the escalation factor it is proposing for the annual energy rate. The Energy Rate indicated on Attachment 4, Price Proposal Form is the rate for the first 12 month term of the Contract starting at the Initial Delivery Date. Service terms shall not exceed twenty (20) years.

The value of the energy delivered by the Facility due to location, capacity factor, availability, and other factors will be evaluated in the technical evaluation section.

The Statement of Work is described in Section C of this document.

Section C – Description/Specifications/Statement of Work

1. Background

In support of the State of Maryland's and the University System of Maryland's sustainability efforts, the University of Maryland is issuing this RFP to solicit firm proposals for renewable and low carbon energy ("clean energy") to supply the Institutions comprising the University System of Maryland (USM) and the Maryland state agencies serviced by the Department of General Services (DGS). USM and DGS are herein defined individually and/or collectively as the "Buyer." The Buyer seeks to procure renewable and low carbon energy as a voluntary initiative to promote clean energy development in Maryland and the greater mid-Atlantic region while meeting its long-term energy needs.

Currently Buyer's electric accounts are served by a Load Serving Entity or LSE. It is contemplated that Buyer may become their own LSE in the future. This RFP is constructed under the premise that Buyer is a LSE at the time of the Initial Delivery Date. If Buyer is still a retail load at the time of the Initial Delivery Date, the Buyer's LSE at that time will act as Designated Agent for Buyer under the PPA. This will allow Contractor to continue to meet its Exempt Wholesale Generator status.

It is anticipated at this time that the Buyer will execute Contracts to meet 20% of its 1.5 billion kWh annual electricity needs. However, because there are no mandated requirements for the Buyer to exceed Renewal Portfolio Standards (RPS) or any other renewable or clean energy thresholds, actual quantities may be less than or greater than this quantity and Contract(s) will be executed on an as needed basis commensurate with the characteristics of proposals received. Maryland seeks to procure clean energy from a diverse portfolio of resources to ensure reliability and support various clean energy technologies that are capable of meeting Maryland's energy requirements.

Additionally, since it is anticipated that a number of Riding Entities or REs may elect to contract additional capacity under this RFP, potential suppliers are encouraged to submit proposals up to their maximum capacity levels. Because a number of these REs may be under full requirements contracts, an agency agreement with their LSE may need to be arranged. Each RE will need to address this aspect prior to execution of their PPA.

2. Objectives

The Buyer is seeking firm proposals for clean energy including all associated unforced capacity, ancillary services, renewable energy credits (RECs) and other environmental attributes associated with the Facility. Proposals shall be for unit contingent energy, with the availability of the facility identified on Attachment 2, Facility Information. Specifically, the Buyer is soliciting proposals from the following generation project categories:

2.1 Intermittent Renewable Energy – defined as resource dependant generation projects that are eligible energy resources as defined under the Maryland state RPS including generation from; wind, solar thermal, solar photovoltaic, hydroelectric, geothermal, or ocean / tidal.

2.2 Base loaded Renewable Energy – defined as all generation projects that are not intermittent renewable energy resources and that are eligible energy resources as defined under the Maryland state RPS including generation from; biomass, landfill gas, methane from waste water treatment facilities, fuel cells producing electricity from a renewable source, waste to energy, and poultry litter to energy.

2.3 Low Carbon Energy – defined as natural gas-fired combined cycle generating projects and combined heat and power (CHP) projects using natural gas.

The Buyer intends to draft a PPA for execution based on this solicitation and selected proposals for energy and associated attributes directly with a variety of projects included in the defined eligible generation project categories defined above. Upon execution, the PPA will be incorporated in the Contract documents. The Buyer will not accept proposals for brokered supply from vendors and/or “bundled” renewable energy credits (RECs) with pooled wholesale power supply, or for on-site projects. All proposals received will be accepted as firm. Negotiations are not anticipated between the Buyer and the Contractor prior to Contract execution; however the provisions in Section A-2, P will apply. Proposals of varying terms and start dates, of no sooner than January 2010 and no later than December 2014, will be accepted from both operating projects and new developments. It is Buyer’s desire to procure energy from clean energy projects with low or no carbon emissions and at a reasonable cost but Buyer retains the right to execute PPAs based on the best value to Buyer based on its needs.

3. Contractor’s Solicitation Requirements

3.1 The Contractor shall submit proposals for unit-contingent delivery of clean energy and all associated attributes as defined by this RFP by completing all proposal forms in the specified format, including:

3.1.1 All-in pricing including energy, capacity, ancillary services (if any), RECs and all environmental attributes for the specified ownership share quantities on Attachment 4, Price Proposal Form

3.1.2 Identification of the delivery point to which the energy will be delivered for all proposals

3.1.3 Supplemental information about the project and the project development team’s experience and qualifications

3.2 The Contractor may submit multiple proposals for one project, but shall submit separate Project Proposal Specification forms for any variances in proposals (i.e.

quantity, pricing, delivery point). Separate proposals shall be submitted for each project site.

3.3 The Contractor shall be responsible for independently verifying project information in proposals, including:

- 3.3.1 Project conformance to Maryland RPS for renewable sources
- 3.3.2 Project permit requirements and status
- 3.3.3 Project operational parameters
- 3.3.4 Project impacts to Maryland economy
- 3.3.5 Project development status

4. Definitions

Throughout these RFP documents, the following terms will have the meaning indicated (additional specific definitions are in Attachment 1, Additional Special Contract Requirements):

- 4.1 “Ancillary Services” means the services qualifying for synchronized reserves and/or regulation as defined by PJM Interconnection, LLC
- 4.2 “Buyer” means individually or collectively, the University System of Maryland (USM) and the Department of General Services (DGS).
- 4.3 “Buyer’s Procurement Policies” means USM Procurement Policies and Procedures, and University of Maryland Procurement Policies and Procedures, and the State of Maryland mandatory clauses where DGS is the Buyer that are in effect on the day of the Contract.
- 4.4 “Business Day” means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall begin at 8:00 am and end at 5:00 pm EPT.
- 4.5 “Contract” means the contract or contracts resulting from this RFP, if any. A Power Purchase Agreement will be executed at time of Contract award and will be incorporated in the Contract documents.
- 4.6 “Contractor” means the seller of the clean energy with whom the Buyer and/or Riding Entities enter into PPA(s) to supply clean energy.
- 4.7 “Contract Quantity” means the monthly fixed quantity of clean energy and associated environmental attributes corresponding to Buyer’s or RE’s Percentage times the Guaranteed Monthly Facility Capacity.
- 4.8 “Contract Term” The term of the Agreement will commence on the Initial Delivery Date and terminate on the Delivery End Date.

- 4.9 "Credit Rating" means, with respect to any Person, the rating then assigned to such Person's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by a Rating Agency or, if such Person does not have a rating for its senior unsecured long-term debt, then the "Issuer Credit Rating" for such Person established by S&P.
- 4.10 "Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.
- 4.11 "Effective Date" means the date upon which the Seller and the Buyer or RE execute the Contract.
- 4.12 "Eligible Renewable Energy Resource" means the renewable resources listed in Maryland Renewable Portfolio Standard, Public Utility Companies Article §§ 7-701 et seq. Maryland Code Annotated.
- 4.13 "Energy" means three-phase, 60-cycle alternating current electric energy.
- 4.14 "Energy Payment Rate". The price per MWh of Energy delivered by Seller to the Delivery Point for Buyer's account, inclusive of the corresponding quantity of RECs, Environmental Attributes, and capacity (for non-intermittent sources) transferred by Seller to Buyer pursuant to the terms of the Agreement corresponding to Attachment 4, Price Proposal Form.
- 4.15 "Environmental Attributes" means Renewable Energy Credits and any and all other federal, regional, state and other credits, certificates, transferable instruments, benefits, emission reductions, offsets and allowances that are attributable, now or in the future, to the Facility or the Energy produced by the Facility, including, but not limited to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's renewable feedstocks or its displacement of fossil-fuel derived or other conventional energy generation; (b) any environmental certificates issued by PJM under the GATS in connection with Energy delivered to Buyer; and (c) any voluntary emission reduction credits or renewable energy credits or any transferable indicia of environment improvement obtained or obtainable by Seller in the future in connection with the generation of Energy delivered to Buyer from the Facility; *provided however*, that Environmental Attributes shall not include: (i) PTCs or any state production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any non-environmental market related state, federal or private cash payments or grants relating in any way to the construction or ownership of the Facility or its operations.
- 4.16 "Facility" The clean energy generating facility contracted to provide energy and associated environmental attributes to the Buyer.
- 4.17 "Facility Meter" means the revenue quality, electricity generation meter to be located at the Metering Point (the proposed location of which is identified in the technical proposal), which Facility Meter shall register all Energy produced by the Facility and delivered to the Interconnection Point.

- 4.18 "Force Majeure Event" means an event or circumstance that: (a) prevents a Party from performing its obligations under the Agreement; (b) was not foreseeable by such Party; (c) was not within the reasonable control of, or the result of the negligence of such Party; and (d) such Party is unable to mitigate or avoid or cause to be avoided with the exercise of due diligence. Notwithstanding the foregoing, under no circumstance shall a Force Majeure Event be based on: (i) Seller's ability to sell a Product at a price greater than that received under the terms of the Agreement; or (ii) Buyer's ability to purchase a Product at a price lower than that paid under the terms of the Agreement.
- 4.19 "Invoice" means an invoice fulfilling the requirements of §15-102 of Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland.
- 4.20 "kW" means kilowatt.
- 4.21 "Load Serving Entity" any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer that (a) serves end-users within the PJM Control Area, and (b) is granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area .
- 4.22 "Metering Point" means the physical location at the Facility where the Facility Meter is situated, as shown on the diagram submitted in the technical proposal..
- 4.23 "MW" means megawatt.
- 4.24 "MWh" means megawatt-hour.
- 4.25 "Party" means a party to the Agreement
- 4.26 "Power Purchase Agreement (PPA)" or "Agreement" refers to the final agreement that will be executed upon Contract award by Buyer, Riding Entity or Third Party. The PPA will incorporate all terms and conditions of the RFP and amendments thereto as well as additional terms and conditions accepted by Buyer, Riding Entity or Third Party from Contractor's technical and price proposals.
- 4.27 "Renewal Energy Credit" or "REC" shall have the meaning set forth in Public Utility Companies ("PUC") Article, Subtitle 7, Annotated Code of Maryland.
- 4.28 "Renewal Energy Portfolio Standard" (RPS) shall have the meaning set forth in PUC Article, Subtitle 7.
- 4.29 "Renewable Resources" means a resource that meets the Tier 1 or Tier 2 renewable source definitions contained in the PUC Article, Subtitle 7 currently defined as: solar; wind; qualifying biomass; methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

geothermal; ocean, including energy from waves, tides, currents, and thermal differences; a fuel cell that produces electricity from a renewable source; hydroelectric other than pump storage generation; incineration of poultry litter; and waste-to-energy.

- 4.30 “Riding Entity” or “RE” means any Maryland municipality, city, county or local government, or higher education institution, other than Buyer that has equal or better credit than Buyer at time of Contract Award and that will separately and individually execute a PPA with Seller as a result of this solicitation.
- 4.31 “State” means the State of Maryland.
- 4.32 “Third Parties” shall mean any entity that does not meet the credit standard of Buyer or RE.

Section D - Packaging and Marking

NOT USED

Section E - Inspection and Acceptance

NOT USED

Section F – Scheduling and Delivery of Products

See Attachment 1, Additional Special Contract Requirements, Article 5

Section G - Contract Administration Data

1. Roles of the University of Maryland Program Manager and Procurement Officer

The Procurement Officer is Buyer's authorized representative for all pre-Contract matters related to the Contract. Additionally, throughout the duration of the Contract, the Procurement Officer shall be the only individual with authority to modify any provisions of the Buyer's Contract including, without limitation, the statement of work, pricing or any other sections.

The Buyer's Program Manager (Joan Kowal at 301-405-5004) and designated staff shall be the principal interface on behalf of the University System of Maryland and DGS for post-award technical matters, and shall have the authority to explain and provide further details regarding the Buyer's expectations concerning the work to be performed hereunder and/or the items to be provided herein. The Program Manager and designated staff shall have no authority to modify any provisions of the Contract.

2. Invoicing

The Contractor shall provide the following invoicing services. Invoices shall reflect the price structure spelled out in Section B.

Throughout the duration of any resultant Contract, the Contractor shall provide one paper copy of each invoice. The paper invoice must contain the following minimum information:

- a. Invoice Number
- b. Invoice Date
- c. The word ORIGINAL printed on the original copy of the document.
- d. The full company or corporate name and address; payment address if it differs from corporate address.
- e. The full nine (9) digit Federal Tax Identification number (for U.S. Contractors only) or Social Security Number.
- f. Purchase order number and/or Contract number.

Direct invoices as outlined on Buyer's and RE's purchase orders.

Any invoice that is unclear, illegible or does not conform to these specific requirements shall be returned to the Contractor for re-issuance.

3. Billing and Payment

See Attachment 1, Additional Special Contract Requirements, Article 8

4. Assignment

No part of the work specified herein may be assigned or transferred to another Contractor without the prior written authorization of the Procurement Officer. See Attachment 1,

Additional Special Contract Requirements, Article 17 for additional assignment provisions.

5. Notices

Notices under the Contract shall be in writing and shall be considered effective upon personal delivery to the individual listed below or five calendar days after deposit in any U.S. mailbox, first class and addressed to the other party as follows:

For the Buyer:

Joseph F. Vogel, C.P.M.
Procurement & Supply
University of Maryland
0410 Service Building
College Park, MD 20742
Telephone: 301-405-2898
Facsimile: 301-314-3011
Email: **jfvogel@umd.edu**

For Contractor: (please complete the following)

Telephone: _____
Facsimile: _____
Email: _____

Section H - Special Contract Requirements

See Attachment 1, Additional Special Contract Requirements

1. Insurance Requirements

The Contractor shall defend, indemnify and save harmless the , Buyer, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the errors, omissions and performance or non-performance by the Contractor, employees or agents, of the work covered by the Contract. Buyer shall not assume any obligation to indemnify, hold harmless or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of the Agreement.

2. Minority and Disadvantaged Business Enterprise (MBE) Notice

MBE firms are encouraged to respond to this solicitation.

3. Order of Precedence (within the Contract)

In the event of a discrepancy within the Contract, such discrepancy shall be resolved by giving precedence in the following order:

- a) Executed Power Purchase Agreement
- b) RFP Section H – Special Contract Requirements including Attachment 1, Additional Special Contract Requirements.
- b) Section C – Description/Specifications/Statement of Work
- c) Remaining Sections of Part I (Sections A, B, D, E, F and G)
- d) Part II – Contract Clauses (Section I)
- e) Part III – List of Documents, Exhibits and Other Attachments (Section J)
- f) Part IV – Representations and Instructions (Section K and Section L)

PART II - CONTRACT CLAUSES

Section I - Contract Clauses

1. Scope of Work

The Scope of Work is defined in Section C of this document.

2. Compensation and Method of Payment

Total compensation is shown in Section A, Item 20 of this document. Method of payment is defined in Section G, Subsections 2 and 3 of this document.

3. Contract Term

The Contract term is defined in Attachment 1, Additional Special Contract Requirements, Article 2 of this document.

4. University Work Rules

Not Applicable.

5. Harmony

Not Applicable.

6. Clean Up

Not Applicable.

7. Independent Contractor

It is understood and agreed that the Contractor is an independent Contractor of the Buyer or RE and not an employee. The Buyer shall not withhold income taxes, social security, or any other sums from the payments made to the Contractor hereafter. If the Contractor employs additional persons in the performance of the Contract, those persons shall in no way be considered employees of the Buyer, but rather they shall be employees or contractors of the Contractor, and the Contractor bears full responsibility for compensating those persons.

8. Truth-In-Negotiation Certification

Not applicable.

9. Multi-Year Contracts Contingent Upon Appropriations

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Buyer's rights or the Contractor's rights under any termination section in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the Buyer from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The Buyer shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

10. Variations in Estimated Quantities

NOT USED.

11. Liquidated Damages

See Attachment 1, Additional Special Contract Requirements, Article 12.

12. Specifications

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations, and to the specifications contained herein.

13. Cost and Price Certification

By submitting cost or price information the Contractor certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- a. A negotiated Contract, if the total Contract price is expected to exceed \$100,000 or a smaller amount set by the Procurement Officer; or
- b. A change order or Contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

14. Delays and Extensions of Time

See Attachment 1, Additional Special Contract Requirements, Article 12.

15. Suspension of Work

NOT USED

16. Payment of Buyer's Obligations

Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the Buyer's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer (EFT) will be used by the State to pay Contractor(s) for Contracts with a value over \$200,000 and any other State payments due Contractor(s) unless the State Comptroller's Office grants Contractor(s) an exemption.

17. Delivery and Acceptance

See Attachment 1, Additional Special Contract Requirements, Article 5.

18. Non-Hiring of Officials and Employees

No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

19. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation (added effective October 1, 2001) or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw material; and (c) to post in conspicuous places accessible to employees and applicants for employment, notices setting forth the substance of this section.

20. Financial Disclosure

The Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

NOTE: The financial disclosure form is available under "Public Disclosures" on the following web site:

www.sos.state.md.us

21. Political Contribution Disclosure

The Contractor shall comply with the provisions of Sections 14-101 through 14-108, Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State, a county, a municipal corporation or other political subdivision of the State, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:

- (1) prior to purchase, completion or execution of any sale or any lease or contract by the Buyer, and shall cover the preceding two calendar years; and
- (2) if the contribution is made after the completion of a sale or purchase, or execution of a lease or contract, then, twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6 month period ending July 31.

NOTE: The political contribution disclosure form is available as "Title 14" under "Campaign Finance and Campaign Fund Reporting" under the "Forms" heading of the following web site:

www.elections.state.md.us

22. Disputes

See Attachment 1, Additional Special Contract Requirements, Article 12.

23. Termination for Convenience

The performance of work under this contract may be terminated by the Buyer in accordance with this clause in whole, or from time to time in part, whenever the Buyer shall determine that such termination is in the best interest of the Buyer. The Buyer will pay all reasonable costs associated with this contract that the contractor has incurred up to the date of termination and all reasonable costs associated with the termination of the Contract. However, the Contractor shall

not be reimbursed for any anticipatory profits. The Contractor may be provided a profit on costs incurred in the performance of the work terminated in a sum determined by the procurement officer to be fair and reasonable. Termination hereunder, including the determination of the rights and obligations of the parties shall be governed by the provisions of the Buyer's Procurement Policies and Procedures.

24. Termination for Default

See Attachment 1, Additional Special Contract Requirements, Article 12.

25. Arrearages

By submitting a response to this solicitation, the proposer represents that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the Contract Term if selected for Contract award.

The proposer is also informed that the Comptroller (per State Finance and Procurement Article §7-222) may not, except under the conditions specified therein, issue a warrant for payment to a person if the person owes \$50 or more to the State, a unit of the State government, or any governmental entity under the control of the State. Therefore, applications for payment submitted by a Contractor and approved by the Buyer for payment may not be processed by the Comptroller for payment to the Contractor if an arrearage in excess of \$50 exists.

26. Compliance with Laws

The Contractor hereby represents and warrants that: **A.** It is qualified 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; **B.** It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and **C.** it shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Retention of Records

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the Buyer hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Buyer, including the Procurement Officer or his designee, at all reasonable times.

28. Tax Exemption

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a Contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

29. Registration

Pursuant to §7-201 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, 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 register with the Department of Assessments and Taxation.

NOTE: The registration form is available as "Combined Registration Application" under the "Businesses" heading of the following web site:

www.marylandtaxes.com

Questions about this requirement may be sent to the Department of Assessment and Taxation at Charterhelp@dat.state.md.us and a response should be forthcoming within 24 hours.

30. EPA Compliance

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

31. Occupational Safety and Health Act

Not Applicable.

32. Maryland Law Prevails

The provisions of this Contract shall be governed by the laws of Maryland

33. Software Licensing

Not Applicable.

34. MUCITA

Not Applicable.

35. Applicability of Federal Laws

If Federal Contract and/or grant funds are utilized in any manner in the performance of this Contract, then the Buyer reserves the right to bind Contractor to all applicable clauses of the Federal Acquisition Regulation (FAR) and other FAR supplements, as well as all applicable provisions of the Office of Management and Budget (OMB) Circular A-110. Contractor agrees to promptly complete and return to the Buyer any related forms and/or affidavits as may be required.

36. Protests and Claims

Any protest regarding the award of this Contract or claim arising out of this Contract shall be administered in accordance with Buyer's Procurement Policies (Section X - Protests and Claims. Detail is available by accessing the following web site: www.purchase.umd.edu Click on this web site, then select the category "Policies and Procedures", followed by "USM Procurement Policies and Procedures".) or RE's Procurement Policies as applicable.

37. Intellectual Property

Contractor further agrees to indemnify and hold harmless the University, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this Contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third

Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, University shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

38. E-Maryland Marketplace

All vendors interested in conducting business with the Buyer must register at: <http://www.emarylandmarketplace.com/>. Registration is free. eMarylandMarketplace™ is the State of Maryland's Internet-based procurement system. Registered vendors can access solicitations and receive email notification when new solicitations are posted.

39. Eligibility to Purchase

By submitting a proposal, Contractor agrees to extend the proposed price structure and discounts to all eligible REs unless specifically indicated as an exception in the technical proposal.

40. Use of Agreement by Third Parties

It is the intent of this RFP to allow for Third Party procurement upon mutual agreement. Accordingly, any Third Party may separately and individually contract with Seller on the terms, including the rates, of the Contract awarded by Buyer.

If authorized by the Contractor, a separate PPA will be extended to the entities above to purchase at rates in accordance with the terms of the PPA. The Third Parties will fully and independently administer their Contracts to include contractual disputes, invoicing and payments without any administration from the Buyer. The Buyer will not be liable for any costs or damages incurred by any Third Party as a result of its entering into a PPA pursuant to this solicitation, nor for the acts or omissions of any Third Party no matter the circumstances.

Use of this Agreement does not preclude any Third Party from entering into other agreements or competitive procurement processes as the need may be.

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

Section J - List of Attachments

The below requirements are incorporated herein.

- Attachment 1 - Additional Special Contract Requirements
- Attachment 2 - Facility Information
- Attachment 3 - Facility Expected Energy Production
- Attachment 4 - Price Proposal Form
- Exhibit 1 - Mechanical Availability Percentage

PART IV - REPRESENTATIONS AND INSTRUCTIONS

Section K - Representations, Certifications, and Other Statements of Contractors

UNIVERSITY OF MARYLAND PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing Contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows:

(indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing Contracts with public bodies, has:

- (a) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private Contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (b) Been convicted of any criminal violation of a state or federal antitrust statute;

(c) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, et seq., or the Mail Fraud Act, 18 U.S.C. § 1341, et seq., for acts arising out of the submission of bids or proposals for a public or private Contract;

(d) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(e) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c), or (d) above;

(f) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private Contract;

(g) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows:

(indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing Contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows:

(list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows:

(you must indicate the reasons why the affirmations cannot be given without qualification):

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a Contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the Contractor or Contractor or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the Contract for which the accompanying bid or offer is submitted.

H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into Contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the Contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and represent that, the above business will comply with the provisions of Article 33, Sections 14-101 through 14-104 of the Annotated Code of Maryland, which require that every person that enters into Contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$100,000 or more shall file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of \$500 to a candidate for elective office in any primary or general election.

J. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all Contracts unless the Contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a Contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the Contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the Contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business' policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the Contract with a copy of the statement required by J(2)(b), above;

(h) Notify its employees in the statement required by J(2)(b), above, that as a condition of continued employment on the Contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction:
 - (i) Notify the procurement officer within 10 days after receiving notice under J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction:
 - (j) Within 30 days after receiving notice under J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of J(2)(a)--(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in J(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the Contract.
- (4) I acknowledge and agree that:
 - (a) The award of the Contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the Contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the Contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.06.

K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic) (foreign) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

L. CONTINGENT FEES

I FURTHER AFFIRM THAT:

Contractor has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the Contract.

M. Repealed

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any Contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the Contract, and (3) other Affidavits comprising part of the Contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

Contractor's Federal Employer Identification Number (FEIN): _____

CONFLICT OF INTEREST INFORMATION

A. Each solicitation that will result in the selection of a Contractor who will assist a unit in the formation, evaluation, selection, award, or execution of a State Contract shall provide notice of the requirement of this regulation.

B. "Conflict of interest" means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the Contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

C. "Person" has the meaning stated in COMAR 21.01.02.01B (64) and includes a bidder, offeror, Contractor, consultant or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

D. If the Procurement Officer makes a determination prior to award that facts or circumstances exist giving rise or which could in the future give rise to a conflict in interest, the procurement officer may reject a bid or offer under COMAR 21.06.02.03B.

E. After award the State may terminate the Contract, in whole or in part, if it deems such termination necessary to avoid an actual or potential conflict of interest. If the Contractor knew or reasonably could have been expected to know of an actual or potential conflict of interest prior to or after award and did not disclose it or misrepresented relevant information to the Procurement Officer, the State may terminate the Contract for default, institute proceedings to debar the Contractor from further State Contracts, or pursue such other remedies as may be permitted by law or the Contract.

F. A conflict of interest may be waived if the Procurement Officer, with approval of the agency head or designee, determines that waiver is in the best interest of the State. The determination shall state the reasons for the waiver and any controls that avoid, mitigate, or neutralize the conflict of interest.

G. Each bidder or offeror responding to a solicitation that will result in the selection of a Contractor who will assist a unit in the formation, evaluation, selection, award, or execution of another State Contract shall provide the affidavit and disclosures set forth in Subsection H of this regulation to the Procurement Officer with the bid or offer and such other times as may be required by the Procurement Officer.

H. The affidavits and disclosures required by Subsection G of this regulation shall be in substantially the same form as follows:

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the Contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, Contractor, consultant, or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The bidder or offeror warrants that, except as disclosed in D below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explains in detail--attach sheets if necessary):

E. The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or offeror will immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the Contract has been awarded and performance of the Contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

Section L - Evaluation Factors for Award

A. EVALUATION COMMITTEES

The Procurement Officer shall establish separate technical and financial evaluation committees to review and rate the proposals. The financial evaluation committee may be composed of the Procurement Officer and any other individuals appointed by the Procurement Officer. The technical evaluation committee shall be composed of other individuals appointed by the Procurement Officer.

B. ACCEPTABILITY OF PROPOSALS:

The Procurement Officer shall determine which Contractors have met the basic requirements of the RFP. Failure to comply with any mandatory requirement will normally disqualify a Contractor's proposal. The Procurement Officer shall have the sole authority to determine whether any deviation from the requirements of this RFP is substantial in nature. The Procurement Officer may waive or permit to be cured minor irregularities or minor informalities in proposals that are immaterial or inconsequential in nature, whenever it is determined to be in the Buyer's best interest. In addition, the Procurement Officer may reject in whole or in part any and all proposals if such is in the Buyer's interest, and may reject proposals that are outside the competitive range financially, without performing a technical evaluation. The Buyer may accept other than the lowest priced offer. The Procurement Officer may conduct discussions with Contractors in any manner deemed necessary to best serve the interests of the Buyer. The Procurement Officer may limit the competitive range to firms highly rated technically by the Buyer for purposes of efficiency. The Buyer reserves the right to make an award to more than one Contractor or to split an award among Contractors.

C. TECHNICAL EVALUATION:

The technical evaluation committee shall conduct its evaluation of the technical merit of the proposals in accordance with the requirements and specifications of the solicitation. The Contractor must satisfy and explicitly respond to ALL the requirements and specifications, including a detailed explanation of how each item listed in the requirements and specifications is to be met. The last phase of this technical evaluation will be the ranking by the Committee of each qualified proposal on technical merit.

The technical evaluation process will take into account multiple factors that serve to meet Maryland's needs for clean energy at this time. At a minimum, Maryland requires that all proposals (1) can physically deliver into the State of Maryland, (2) meet the requirements of the definition of one of the clean energy categories described in the Objectives section above, and (3) meet other general criteria set forth by this RFP. It is Buyer's desire to execute Contracts with projects that are (1) low and reasonable cost, (2) have minimum emissions and environmental impacts, and (3) present a low risk of underperforming in the timely delivery of Contracted quantities.

The criteria that will be used by the committee for the technical evaluation of proposals for this procurement are listed below in decreasing order of importance.

1. Deliverability aspects of energy - on and off peak capacity factors; transmission constraints due to Delivery Point; and any other factors that would increase or decrease the value of the energy relative to market.
2. Environmental Impacts – quantified in terms of the renewable attributes of a project (i.e. does the project conform to the requirements of the Maryland RPS) and the emissions intensity of the project represented in terms of greenhouse gas emissions expressed in pounds of carbon dioxide equivalency per megawatt hour of generation (lbCO₂e/MWh). Preference will be given to renewable projects and projects with low emissions intensity.
3. Contribution to the Maryland Economy – quantified in terms of revenue and employment contribution to the State of Maryland.
4. Project Risk – qualitatively assessed and rated based on the project development risk of the project and based on the technological risk of project operations. Preference will be given to those projects determined to be likely to meet specified development and commercial operation milestones and to projects deemed to have little operational risk based on technology.

The terms "must" or "shall" are used throughout this document to indicate mandatory requirements. The Contractor's proposal is to state clearly that it meets all requirements and specifications; that is, that the Contractor is fully capable of delivering the items and providing the services as specified in this RFP. Each Contractor must provide a written detailed response to each requirement and specification.

Misinterpretation of requirements and specifications by the Contractor shall not relieve the Contractor of responsibility to accurately address the requirements of the RFP or to perform the Contract, if awarded.

The Committee may request site visits for the purpose of evaluating proposals and/or Contractor's responsibility. The Committee may request additional technical assistance from any source. Industry standard references may be used during the evaluation process.

D. FINANCIAL EVALUATION:

The separate financial volume will be distributed to the financial evaluation committee. This information will then be used to establish a financial ranking. Information from the Price Proposal Form contained in Attachment 4 will be used to compute the total price.

E. BASIS OF AWARD:

Financial rankings of proposals will be combined with the corresponding technical ranking to determine a final ranking for each proposal. **Technical merit will have greater weight than**

price. The Procurement Officer will recommend Contract award to the responsible Contractor or Contractors whose proposal is (are) determined to provide overall best value to the Buyer, considering the evaluation factors in this RFP, and price.

Recommended Contract awards, if any, resulting from this RFP, are subject to appropriate State approvals.

F. NEGOTIATION:

The Buyer has the right to accept the best proposal as submitted, without discussion or negotiation. Contractors should therefore not rely on having a chance to discuss, negotiate and adjust their proposals.

Contractors who submit proposals initially judged by the Procurement Officer to be reasonably susceptible of being selected for award may be asked to discuss their proposals with the Buyer to facilitate arrival at a Contract most advantageous to the Buyer. If the Procurement Officer determines that discussion is in the best interest of the Buyer, the Procurement Officer will advise Contractors in the competitive range to submit a best and final offer for consideration after discussions are held.

However, discussions may not be conducted if the Procurement Officer determines either that discussions are not in the best interests of the Buyer or that discussions need not be conducted: (a) with respect to prices that are fixed by law or regulation, although consideration shall be given to competitive terms and conditions; (b) because the time of delivery or performance does not permit discussions; or (c) because it can be demonstrated clearly from the existence of adequate competition or accurate prior price experience with the particular item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

Additional Special Contract Requirements

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1.1 Definitions. The following capitalized terms, when used in the PPA, shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Bankrupt" means, with respect to any entity, such entity: (a) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) days of the filing or commencement; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes insolvent, however evidenced; (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

"Board of Regents Approval" means the approval of the proposed PPA presented by Buyer's representatives to the University System Board of Regents.

"Buyer's Percentage" will be determined at time of Contract award; provided however, that if, after the Effective Date, the Facility Nameplate Rating is modified (including by a modification of the rated output of any Unit(s) or a change in the number of Units in the Facility), Buyer's Percentage shall be adjusted so that, as a percentage of the modified Facility Nameplate Rating, it represents the same quantity as Buyer's Percentage of the original Facility Nameplate Rating.

"Confidential Information" means any information in any form designated by a Party as Confidential pursuant to Article 16.2 [Designation of Confidential Information], whether such information was disclosed prior to or after the Effective Date; provided however, that Confidential Information shall not include Unrestricted Information.

"Defaulting Party" has the meaning set forth in Article 12.1 [Events of Default].

"Delay Damages" has the meaning set forth in Article 12.4 [Delay Damages].

"Delivery Point" means the single point on the PJM Transmission System with a Pnode Identification in the PJM Bus Model, and in addition is assigned a Locational Marginal Price

(LMP) defined as the hourly integrated market clearing price for energy at the location the energy is delivered or received.

“Designated Agent” means any entity that performs actions or functions on behalf of the Transmission provider, Buyer, Riding Entity, or the "Third Party" required under the tariff.

"Disclosing Party" has the meaning set forth in Article 16.1 [Non-Disclosure of Confidential Information].

"Electrical Interconnection Facilities" means the equipment and facilities required to safely and reliably interconnect the Facility to the PJM Transmission System or the transmission system of another Transmitting Utility in whose territory the Facility is located, as applicable, including the collection system between each Unit, transformers and all switching, metering, communications, control and safety equipment, including the facilities described in Exhibit A under the heading "Electrical Interconnection Facilities."

"Emergency" means: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency or voltage or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (b) system recovery from an abnormal condition that resulted in loss of firm load or equipment damage; or (c) a condition that requires implementation of "emergency procedures" (as defined by PJM or any Transmitting Utility).

"Event of Default" has the meaning set forth in Articles 12.1 [Events of Default], 12.2 [Additional Seller Events of Default], and 12.3 [Failure to Maintain Mechanical Availability Percentage].

“Exempt Wholesale Generator” shall have the meaning ascribed to it in the PJM Agreements.

"Facility Commercial Operation" means the condition of the Facility once it has achieved the following:

- (a) Buyer's Percentage of the Units comprising the Facility shall have been fully commissioned and shall be operational;
- (b) all performance testing of the Electrical Interconnection Facilities shall have been successfully completed in accordance with PJM Manuals (or any other applicable RTO rules);
- (c) the Facility shall be operating and able to produce and deliver Energy to the Interconnection Point: (i) pursuant to the terms of the PPA and the Interconnection Agreement; and (ii) in accordance with Good Utility Practice; and
- (d) the computer monitoring system (CMS) for the Facility shall have been installed and tested and shall be fully operational.

"Facility Commercial Operation Date" means the first date as of which: (a) Facility Commercial Operation has occurred; and (b) Seller shall have delivered to Buyer written certification of an authorized officer of Seller certifying that the Facility has achieved Facility Commercial Operation.

"Facility Lender" means any Person(s), other than Affiliates of Seller, that provide construction, working capital or term debt financing for the Facility (including any agent(s) thereof).

"Facility Nameplate Rating" capacity quantity of Facility as submitted on Attachment 2, Facility Information.

"FERC" means the Federal Energy Regulatory Commission.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"GATS Operating Rules" means the operating rules for the GATS (see below), as published by PJM Environmental Information Services, Inc. and posted on the PJM Internet site (www.pjm-eis.com/documents/downloads/gats-operating-rules.pdf).

"Generator Attribute Tracking System" or "GATS" means the system operated by PJM Environmental Information Services, Inc. in accordance with the GATS Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers.

"Generator Forced/Unplanned Outage" means an immediate reduction in output or capacity or removal from service of a generating unit by reason of an Emergency or threatened emergency, unanticipated failure, or other cause beyond control of the owner or operator of the facility, as specified in the relevant portions of the PJM manuals. A reduction in output or removal from service of a generating unit in response to changes in market conditions does not constitute a Generator Forced Outage. Seller and/or Designated Scheduling Agent shall notify buyer and/or Designated Scheduling Agent immediately upon submission to PJM of Generator Forced/Unplanned Outage.

"Good Utility Practice" means the practices, methods and acts engaged in or approved by a significant portion of the state entity (in the case of Buyer) or renewable resource provider (in the case of Seller) during the relevant time period, and any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the region.

"Governmental Authority" means any federal, state, local, municipal or other governmental or quasi-governmental authority, agency, department, board, court, tribunal,

regulatory commission or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party, the Facility, the Products to be delivered hereunder or the PPA.

"Guaranteed Initial Delivery Date" means the Initial Delivery Date as included in Attachment 2, Facility Information; provided however, that the Guaranteed Initial Delivery Date shall be extended on a day-for day basis for up to six (6) months to the extent that the seller compensates the Buyer Delay Damages.

"Guarantor" means any Person that: (a) guarantees Seller's financial obligations under the PPA pursuant to a Guaranty; (b) is an Affiliate of Seller; (c) has a Credit Rating from at least two (2) of the Rating Agencies; (d) has no Credit Rating from any Rating Agency less than the Minimum Acceptable Credit Rating; and (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.

"Guaranty" means a Guaranty Agreement: (a) in favor of Buyer; (b) executed and delivered by a Guarantor to Buyer; and (c) in the form that is acceptable to the Buyer.

"Indemnified Person" has the meaning set forth in Section 103(a) [Defense of Indemnified Claims).

"Indemnifying Party" has the meaning set forth in Section 103(a) [Defense of Indemnified Claims).

"Initial Delivery Date" means the date, which shall be no earlier than January 1, 2010, on which the conditions set forth in Article 3.3 [Initial Delivery Date] have been satisfied or waived in writing by Buyer.

"Instructed Operation" means a mandatory direction by a Transmitting Utility to meet an Emergency or transmission system reliability need, including voltage support.

"Interconnection Point" means the physical point of interconnection between the Electrical Interconnection Facilities and the electrical transmission system of the Transmitting Utility.

"Interconnection Agreement" means an agreement between Seller and the Transmitting Utility (which may be Buyer or an Affiliate of Buyer) in whose territory the Facility is located regarding interconnection of the Facility to the transmission system of the Transmitting Utility.

"Interest Rate" means, as of any date, the lesser of: (a) the per annum rate of interest equal to the prime lending rate published in The Wall Street Journal under "Money Rates" on such day (or, if such rate is not published on such date, the rate published on the most recent preceding date on which such rate is published), plus two percent (2%); and (b) the maximum rate permitted by applicable Law, including but not

limited to Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland.

"Law" means any statute, law, treaty, convention, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction issued, adopted, administered or implemented by a court or Governmental Authority, including any of the foregoing that are enacted, amended or issued after the Effective Date, and any binding interpretations of any of the foregoing.

"Letter of Credit" means an irrevocable, standby letter of credit in favor of Buyer issued by a Qualified Institution, in the form of Article 14.1 or such other form as may be acceptable to Buyer.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, conditional sale or other title retention agreement and any financing lease having substantially the same effect as any of the foregoing.

"Load Serving Entity" or "LSE" means any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer that (a) serves end-users within the PJM Control Area, and (b) is granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area.

"Locational Marginal Price" means, as of any point in time, the cost of serving the next increment of load at the Delivery Point as determined and posted by PJM in accordance with the PJM Agreements.

"Maintenance Outages" Seller and/or Designated Scheduling Agent shall notify buyer and/or Designated Scheduling Agent and PJM of its proposed maintenance outages for he unit, unit group, or project but submitting to Buyer and PJM a completed Outage/availability notification form with no les than the advance required under the PJM agreements (or if not specified in the PJM agreements, no less than 48 hours in advance of the requested start of the Maintenance outage.

"Market Participant" has the meaning set forth in the PJM Operating Agreement.

"Maryland PSC" means the Maryland Public Service Commission.

"Mechanical Availability Percentage" means the On Peak mechanical availability of the Facility, expressed as a percentage, calculated pursuant to Article 6.13. See Exhibit 1 for further explanation.

"Minimum Acceptable Credit Rating" means a Credit Rating equal to or better than: (a) "BBB-" by S&P; and (b) "Baa3" by Moody's.

"Monthly Settlement Date" has the meaning set forth in Article 8.2 [Billing].

"Moody's" means Moody's Investor Services, Inc.

"NERC" means the North American Electric Reliability Council or any other Person designated by FERC to perform its functions.

"Non-Defaulting Party" has the meaning set forth in Article 12.3 [General Remedies].

"On Peak" for PJM Interconnection, LLC., peak hours are from 7:00 AM to 11:00 PM (the hour ending 0800 to the hour ending 2300) prevailing local time. Peak days are Mondays through Fridays, excluding North American Electric Reliability Council (NERC) holidays.

"Party" or "Parties" has the meaning set forth in the preamble hereto.

"Permit" means any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Authority required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association, unincorporated organization or Governmental Authority.

"PJM" means PJM Interconnection, LLC.

"PJM Agreements" means the PJM Tariff, the PJM Operating Agreement, the PJM RAA, the PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents.

"PJM Control Area" shall have the meaning ascribed to it in the PJM Agreements.

"PJM E-Account" means an account obtainable through PJM which provides access to web-based PJM settlement, accounting, marketing and other informational and economic systems.

"PJM Interchange Energy Market" has the meaning set forth in the PJM Tariff.

"PJM Manual" or "PJM Manuals" means the instructions, rules, procedures and guidelines established by PJM for the operation, planning and accounting requirements of the PJM Control Area and PJM Interchange Energy Market.

"PJM Member" means any entity satisfying the requirements of PJM to conduct business with PJM, including Market Participants, transmission owners, generating entities and Load Serving Entities.

"PJM Operating Agreement" means the Operating Agreement of PJM.

"PJM RAA" means the PJM Reliability Assurance Agreement.

"PJM Tariff" means the Open Access Transmission Tariff of PJM.

"PJM Transmission System" means the system of transmission lines and associated facilities that have been placed under PJM's operational control.

"Planned Outage" means the scheduled removal of service, in whole or in part, of a generating unit for inspection, maintenance or repair with approval of PJM.

"Products" means energy and environmental attributes as well as capacity from non-intermittent energy sources.

"Production Tax Credit" or "PTC" means the tax credit provided by Section 45 of the Internal Revenue Code of 1986, as amended, for electricity produced from certain qualified energy resources, including wind.

"Qualified Institution" means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least \$10 billion and a Credit Rating equal to or better than "A-" by S&P and an equivalent Credit Rating by Moody's or Fitch.

"Qualified Seller" means a Seller that, as of a specified date, has a Credit Rating equal to or better than the Minimum Acceptable Credit Rating.

"Rating Agency" or "Rating Agencies" shall mean, individually or collectively, S&P, Moody's and Fitch.

"Receiving Party" has the meaning set forth in Article 16.1 [Non-Disclosure of Confidential Information].

"Regional Reliability Entity" means the organization designated by NERC responsible for establishing and implementing reliability criteria and protocols for the Facility.

"Regional Transmission Organization" or "RTO" means any Person certified by FERC to provide open access transmission service over the transmission facilities of its members under a tariff filed with FERC.

"Regulatory Charges" has the meaning set forth in Article 9.2 [Regulatory Charges].

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc.

"Scheduling Agent" means an entity authorized by the Buyer to schedule the delivery of energy from the delivery point to the Buyer

"Seller" shall have the meaning set forth in the PPA.

"Seller's Indemnities" has the meaning set forth in Article 10.2 [Buyer's Indemnification].

"Services Term" means the period of time commencing on the Guaranteed Initial Delivery Date and ending at the Delivery End Date as included in Attachment 2, Facility Information.

"Services Term Letter of Credit" shall have the meaning set forth in Article 14.2 [Letters of Credit].

"Summer" means the months of June through August of the calendar year.

"Test Output" means any and all Products produced by a Facility prior to the Initial Delivery Date.

"Transmitting Utility" means any utility (including its control area operators) or RTO (including PJM) that transmits Energy from the Interconnection Point to the Delivery Point.

"Unforced Capacity" the amount of installed capacity rated at summer conditions that is actually available at any given time, equal to the percentage of installed capacity available after a unit's forced outage rate is calculated.

"Unrestricted Information" means any information disclosed by one Party to the other Party that: (a) is or becomes part of the public domain without fault of the receiving Party; (b) was received by the receiving Party from a Person under no obligation to the disclosing Party with respect to maintaining the confidentiality thereof; or (c) was already in the receiving Party's possession and not subject to confidentiality restrictions at the time the information was made available by the disclosing Party.

"Winter" means the months of December through February of the calendar year.

1.2 Interpretation. Unless otherwise required by the context in which any term appears:

- (a) the singular shall include the plural and vice versa;
- (b) references to Articles, Sections, Schedules or Exhibits shall be to Articles, Sections, Schedules or Exhibits of the PPA, unless otherwise specified;
- (c) all references to a particular Person in any capacity shall be deemed to refer also to such Person's successors and permitted assigns in such capacity;
- (d) the words "herein," "hereof" and "hereunder" shall refer to the PPA as a whole and not to any particular section or subsection thereof;

ATTACHMENT 1 - REVISED JUNE 9, 2009

- (e) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
- (f) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;
- (g) references to the PPA shall include a reference to all schedules and exhibits hereto, each of which shall be incorporated by reference into the PPA;
- (h) references to any agreement, document or instrument, including the PJM Agreements, shall be construed to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (i) the masculine shall include the feminine and neuter and vice versa;
- (j) references to a Law shall be construed to refer to such Law as the same may be amended, modified, supplemented or restated from time to time;
- (k) the term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a 24-hour period beginning at 12:00:01 am and ending at 12:00:00 midnight; provided however, that a "day" may be 23 or 25 hours on those days on which daylight savings time begins or ends;
- (l) unless expressly provided otherwise in the PPA, where the PPA requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion;
- (m) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Good Utility Practice or the PJM Agreements, shall have such meaning in the PPA, or (ii) do not have well known and generally accepted meaning in Good Utility Practice or the PJM Agreements but have well known technical or trade meanings shall have such recognized meanings; and
- (n) all references to dollars are to U.S. dollars.

**ARTICLE 2
TERM**

2.1 **Term.** The term of the PPA (the "Contract Term") will commence upon the Effective Date and, unless earlier terminated pursuant to the express provisions of the PPA, will continue until the end of the Services Term; provided however, that all provisions of the PPA which must, in order to give full force and effect to the rights and obligations of the Parties, survive

termination or expiration of the PPA, shall so survive, including Articles 10 [Indemnification], 12 [Events of Default; Remedies], 13 [Dispute Resolution] and 16 [Confidentiality].

**ARTICLE 3
CONDITIONS PRECEDENT**

- 3.1 Initial Delivery Date. The Initial Delivery Date shall occur upon the satisfaction or waiver in writing by Buyer of the following conditions precedent:
- (a) the Facility Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date;
 - (b) Seller or one of its Affiliate shall have obtained (and demonstrated possession of) all Permits required for the lawful operation of the Facility and for Seller to perform its obligations under the PPA, including but not limited to Permits related to environmental matters and Certificate of Public Convenience and Necessity, as necessary;
 - (c) no Seller default or Event of Default shall be occurring;
 - (d) Seller shall be a PJM Member and shall have entered into all required PJM Agreements required for the performance of Seller's obligations in connection with the Facility and the PPA, which agreements shall be in full force and effect or Seller shall have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and the PPA;
 - (e) the Facility shall have been qualified and certified by the Maryland PSC as an Eligible Energy Resource pursuant to the Maryland RPS;
 - (f) Seller shall have made all filings and applications required for accreditation of the Facility in GATS and for the registration, origination and transfer of Environmental Attributes from the Facility that are eligible for origination, registration and transfer under GATS;
 - (g) Seller shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy associated with Buyer's Percentage of the Facility from the Facility to the Delivery Point;
 - (h) Seller shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by the PPA and shall be in compliance with such authorization;
 - (i) Seller shall be in compliance with the Article 14, Security Requirements;

- (j) Seller shall notify buyer of Pnode Identification Number assigned by PJM for the Delivery Point;
- (k) Seller shall have provided Buyer with written evidence that all of the preceding conditions have been satisfied.

ARTICLE 4 PURCHASE AND SALE OF PRODUCTS

4.1 Purchase and Sale Obligation. Subject to Seller's rights pursuant to Article 4.3 [Limitations on Seller's Obligation to Sell], during the Services Term Seller shall: (a) deliver and sell Buyer's Percentage of all Products produced by, or associated with, the Facility to Buyer; and (b) not offer, deliver, sell or make available to any Person other than Buyer, Buyer's Percentage of all Products produced by, or associated with, the Facility. Subject to the rights of the Parties pursuant to Article 4.3 [Limitations on Seller's Obligation to Sell] and 4.4 [Limitations on Buyer's Obligation to Purchase], during the Services Term Buyer shall: (i) have the exclusive right to purchase and receive Buyer's Percentage of all Products produced by, or associated with, the Facility; and (ii) accept and purchase Buyer's Percentage of all Products produced by, or associated with, the Facility and delivered to Buyer in accordance with the terms and conditions of the PPA.

4.2 Quantity. The quantity of Energy required to be delivered by Seller to Buyer at the Delivery Point shall be equal to the Contract Quantity of the Energy produced by the Facility and metered at the Metering Point (adjusted for any transmission line and transformer losses, as determined in accordance with applicable tariffs and Good Utility Practice, to the Interconnection Point). The quantity of RECs required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility.

4.3 Limitations on Buyer's Obligation to Purchase. Notwithstanding anything to the contrary set forth in the PPA: (a) Buyer shall not be obligated to accept delivery of any Energy from Seller under the PPA to the extent it is unable to do so due to a Force Majeure Event or an Instructed Operation; (b) Buyer shall not be obligated to accept delivery of or purchase Test Output; and (c) Buyer's obligation to make purchases of Energy pursuant to the PPA is expressly conditioned on the delivery and sale by Seller, in accordance with the terms of the PPA, of RECs in an amount equal to Buyer's Percentage of the Energy produced by the Facility.

4.4 Origination of Products. Products provided by Seller to Buyer hereunder shall be required to originate from Energy produced by the Facility.

ARTICLE 5 SCHEDULING AND DELIVERY OF PRODUCTS

5. 1 Delivery of Energy. If applicable, Seller shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering Energy to be delivered

hereunder to the Delivery Point. As between the Parties, Seller shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing) and the cost of firm transmission rights. Buyer shall be responsible for any costs incurred beyond the Delivery Point.

5.2 Delivery of Environmental Attributes. Seller shall: (a) take all actions necessary to register, certify and transfer Environmental Attributes from Seller to Buyer in accordance with GATS and applicable Law; and (b) bear all costs associated therewith, including program fees and registration fees. Seller shall comply with the RPS in connection with Seller's transfer of RECs to Buyer hereunder.

5.3 Title and Risk of Loss.

- (a) Title to, and risk of loss (including risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point) related to, Energy sold by Seller to Buyer pursuant to the PPA shall pass and transfer from Seller to Buyer upon delivery thereof for Buyer's account at the Delivery Point. Seller covenants that it shall have good and marketable title to all Energy delivered to Buyer at the Delivery Point and that it has the right to, and will, sell and deliver such Energy to Buyer free and clear of all Liens. Ownership of Energy will be transferred from Seller to Buyer using the PJM eSchedule application.
- (b) Title to, and risk of loss related to, Environmental Attributes sold by Seller to Buyer pursuant to the PPA shall pass and transfer from Seller to Buyer upon the completion of the recordation of transfer and physical or electronic delivery of such Environmental Attributes to Buyer in definitive form in accordance with GATS Operating Rules or other applicable Law. Seller shall transfer certificates into Buyer's GATS account(s) as necessary to transfer Environmental Attributes to Buyer under GATS. Seller covenants that it shall have good and marketable title to all Environmental Attributes delivered to Buyer and that it has the right to, and will, sell and deliver such Environmental Attributes to Buyer free and clear of all Liens.

5.4 PJM E-Accounts. Each of Buyer and Seller or Buyer and Sellers Designated Agent shall establish and maintain for the duration of the Services Term, PJM E-Accounts for Seller to provide and Buyer to receive Products. To the extent that Buyer or Seller changes designated scheduling agent's or become a member of PJM directly, Seller and Buyer will reasonably accommodate.

ARTICLE 6
SELLER COVENANTS

6.1 Progress Reports for New Construction. Seller shall prepare and submit to Buyer a time table of Project development milestones documenting key development steps and the anticipated date. The Buyer shall, in a form reasonably satisfactory to Buyer, submit a report within 30 days of the submitted Project development milestones describing the status of development and construction of the Facility, and indicating whether or not there has been deviation from the original Project development milestones time table and including the status of each of the conditions precedent to the Initial Delivery Date set forth in Article 3.3

6.2 Compliance With Law and Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (a) Good Utility Practice; (b) all applicable requirements of Law; and (c) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by the Maryland PSC, any other Governmental Authority, any Transmitting Utility, NERC and/or any Regional Reliability Entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under the PPA (including obligations related to the generation, scheduling and transmission of Energy), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Operator" of the Facility with NERC and any applicable Regional Reliability Entities.

6.3 Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under the PPA, including all Permits necessary to operate and maintain the Facility.

6.4 Maintenance of Facility. To the extent required to achieve the Initial Delivery Date, and at all times during the Services Term, Seller shall maintain the Facility in accordance with Good Utility Practice.

6.5 Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

6.6 Planned Outages. Unless agreed to in advance by Buyer, Seller shall not schedule a planned outage of the Facility or any portion thereof between June 1 and September 30 during any year of the Services Term. No later than thirty (30) days prior to Seller's anticipated Initial Delivery Date, Seller and/or Designated Scheduling Agent shall deliver to Buyer and/or Designated Scheduling Agent a schedule of planned maintenance for the Facility for the following twelve (12) month period, which schedule shall: (a) be updated by Seller and/or Designated Scheduling Agent by each March 31 and September 30 to cover the twelve (12) month period following such update; (b) be consistent with the requirements of Good Utility Practice and the Interconnection Agreement; (c) indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portions) of the Facility; and (d) be in form and substance reasonably acceptable to Buyer. To the extent Seller is required by any Transmitting Utility to provide information regarding maintenance, outages or availability of the Facility, Seller shall, simultaneous with the submission thereof to such Transmitting Utility, deliver a copy thereof to Buyer

6.7 PJM Membership. Seller shall, at all times during the Services Term, either: (a) be a member in good standing of PJM and be qualified as a PJM "Market Seller" pursuant to the PJM Agreements; or (b) have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and the PPA.

6.8 Market-Based Rate Authority. Seller shall, at all times during the Services Term, maintain all necessary authorization from FERC to sell Energy at market-based rates as contemplated by the PPA.

6.9 Forecasts. Commencing thirty (30) days prior to the anticipated Initial Delivery Date, and throughout the Services Term, Seller and/or Designated Scheduling Agent shall update the Attachment 3, Facility Expected Energy Production table, and deliver to Buyer and/or Designated Scheduling Agent on a monthly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and explanation provided. Buyer reserves the right to use 12 months of historical energy deliveries as basis for calculation of damages in Article 12.6.

6.10 Eligible Renewable Energy Resource. Seller shall be solely responsible for certifying the Facility and each of the Units as an Eligible Energy Resource under the Maryland RPS and maintaining such certification during the Services Term if the Project initially claims to be an Eligible Renewable Energy Resource.

6.11 Compliance Reporting. To the extent Buyer is subject to any certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) reasonably necessary to permit Buyer to comply with any such reporting requirement.

6.12 Initial Delivery Date. Seller shall achieve the Initial Delivery Date no later than the Guaranteed Initial Delivery Date. Seller shall provide Buyer with notice of: (i) the expected occurrence of the Initial Delivery Date no later than (30) thirty days prior thereto; and (ii) the actual Initial Delivery Date no later than (5) five Business Days prior thereto.

6.13 Mechanical Availability Percentage (MAP). During the Services Term, Seller shall maintain a Mechanical Availability Percentage of no less than the MAP indicated on Attachment 2, Facility Information Form for On Peak hours on a rolling twelve month basis; *provided however*, that the first determination of the Mechanical Availability Percentage of the Facility shall be calculated twenty four (24) months after the Initial Delivery Date for the preceding twelve (12) month period. On or before the tenth (10th) Business Day following the end of each calendar month during the Services Term, Seller shall provide Buyer with the Mechanical Availability Percentage calculated for the preceding Period, consistent with Schedule 6.13, along with any supporting documentation reasonably required for Buyer to independently confirm Seller's Mechanical Availability Percentage calculation.

**ARTICLE 7
METERING**

7.1 Metering. All electric metering associated with the Facility, including the Facility Meter and any other real-time meters, billing meters and back-up meters, shall be installed, operated, maintained and tested in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located and any applicable Regional Reliability Entity. The Facility Meter shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. As between the Parties, Seller shall be responsible for the operation, maintenance and calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility in accordance with the Interconnection Agreement, Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located and any applicable Regional Reliability Entity. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility promptly following receipt thereof by Seller.

7.2 Measurements. Readings of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility by the Transmitting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, at the direction of Buyer and at Buyer's expense, shall cause the Facility Meter to be tested by the Transmitting Utility in whose territory the Facility is located, and if the Facility Meter is out of service or is determined to be registering inaccurately by more than two percent (2%): (a) measurement of Energy produced by the Facility shall be adjusted in accordance with the filed tariff of such Transmitting Utility; and (b) Seller shall reimburse Buyer for the cost of such test of the Facility Meter. In the event the meter is located at the low voltage side of the Facility transformer, readings shall be adjusted to take into account the transformation loss to deliver the energy to the Delivery Point.

7.3 Testing and Calibration. Buyer shall have the right to have a representative(s) present during any testing or calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility.

7.4 Audit of Facility Meter. Buyer shall have access to the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility and the right to audit all information and test data related to such meters.

7.5 Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Facility Meter or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility.

7.6 Telemetry. The Facility Meter shall be capable of sending meter telemetry into the PJM eMeter system and Seller shall provide Buyer with access to such eMeter data. Seller shall transmit to Buyer, via a dedicated data line reasonably acceptable to Buyer and paid for by Seller, all telemetry data measured by the Facility Meter, including MW, MYAR, MWh, MYARh, isolation breaker open/closed status, interconnection bus voltage and amp flow. Without limiting the foregoing, all such telemetry equipment shall comply with PJM requirements for PJM transmission owners as set forth in PJM Transmission Owner Standards (<http://www.pjm.com/planning/trans-standard.html>).

ARTICLE 8 BILLING AND PAYMENT

8.1 Price for Products. Buyer shall pay for all Energy delivered to the Delivery Point for Buyer's account in accordance with Article 5.1 [Delivery of Energy] and for all RECs and other Environmental Attributes transferred to Buyer in accordance with Article 5.2 [Delivery of Environmental Attributes] based on the Energy Payment Rate

8.2 Billing. Unless otherwise agreed to by the Parties, on or before the fifteenth (15th) day of each month (or the first Business Day thereafter), Seller shall deliver to Buyer, via electronic transmission or other means agreed to by the Parties, an Invoice that sets forth: (a) the net amount due from one Party to the other for all Products delivered by Seller to Buyer pursuant to the terms of the PPA as of the end of the immediately preceding calendar month; and (b) any other credits, charges and liabilities due pursuant to the terms of the PPA, including any adjustments and outstanding amounts due pursuant to prior Invoices. Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the total amount due pursuant to such Invoice no later than thirty (30) days after receipt of an Invoice

8.3 Payment. All payments shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to a bank designated in writing by the Party to which payment is owed, by 11:59:59 pm EPT on the Monthly Settlement Date. Payment of an Invoice shall not be deemed an admission or waiver with respect to any matter related to such Invoice or the charges reflected therein.

8.4 Interest. Subject to Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall be calculated at the Interest Rate: (a) from the original due date or the day Buyer received an Invoice for the amount, whichever is later, to the date of payment; or (b) in the case of reimbursement obligations, from the date an overpayment was received until the date of reimbursement Charges for late payment of Invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited

8.5 Set-Off. Each of Buyer and Seller shall have the right to set-off any undisputed amounts owed by the other Party pursuant to the PPA against any undisputed amounts that it owes to such Party pursuant to the PPA.

8.6 Billing Disputes. Either Party may, in good faith, dispute any amount charged or paid pursuant to an Invoice within twelve (12) months of the date of such Invoice by providing a written statement setting forth the basis of such dispute. Each Party shall remain obligated to pay any undisputed amounts pending resolution of a billing dispute. Failure by a Party to deliver notice of a billing dispute within the time period set forth herein shall be deemed a waiver of such Party's right to dispute such Invoice. The Parties shall continue to perform under the PPA during the period of any billing dispute but shall not be precluded from exercising any other remedy available under the PPA. A billing dispute shall be subject to the provisions of Article 13 [Dispute Resolution]. Any amount determined to be owed as a result of the resolution of a billing dispute shall be paid within fifteen (15) days of such resolution, along with accrued interest in accordance with Article 8.4 [Interest].

8.7 PJM Accounting Procedures. Each of Buyer and Seller shall comply with all applicable PJM accounting procedures in connection with invoicing and settlement for amounts due under the PPA.

ARTICLE 9 TAXES

9.1 Regulatory Charges. Seller shall pay or cause to be paid all taxes, fees and other charges imposed by any Governmental Authority ("Regulatory Charges") on or with respect to the Products arising before and at delivery thereof in accordance with the PPA, including ad valorem taxes, taxes related to the operation or maintenance of the Facility, and other taxes attributable to the Facility or interests in land associated with the Facility. Buyer shall pay or cause to be paid all Regulatory Charges on or with respect to the Products being delivered to Buyer hereunder after delivery thereof in accordance with the PPA (other than ad valorem, franchise or income taxes related to the sale of the Products, which shall be the responsibility of Seller). In the event a Party is required by Law to pay Regulatory Charges which are the other Party's responsibility hereunder: (a) the Party that is assessed such Regulatory Charges shall notify the Party responsible for payment (which notice shall include supporting documentation) of such assessment; (b) the assessed Party shall timely pay such Regulatory Charges; and (c) the responsible Party shall reimburse the assessed Party in full no later than the next Monthly Settlement Date, with interest at the "Interest Rate" from and including the date on which the assessed Party paid such Regulatory Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Regulatory Charges from which it is exempt under the Law; *provided however*, that an exempt Party shall bear the responsibility of proving upon request its exemption as necessary to avoid the unjust imposition of Regulatory Charges on the other Party

**ARTICLE 10
INDEMNIFICATION**

10.1 Seller's Indemnification. Seller shall indemnify, hold harmless and defend Buyer and the State of Maryland and their respective officials, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnities") from and against any and all claims, liabilities, costs, losses, damages and expenses, including reasonable attorney and expert fees and disbursements, actually incurred for: (a) damage to property of or injury to, or death of, any person; and (b) any penalties or fines imposed by Governmental Authorities, in any such case to the extent directly caused by the negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees, and arising out of, or connected with, Seller's performance under the PPA, Seller's exercise of rights under the PPA or Seller's breach of the PPA.

10.2 Defense of Indemnified Claims.

- (a) Within a reasonable time after receipt by a Person (the "Indemnified Person") of any claim as to which the indemnification provided for in Article 10.1 [Seller's Indemnification] may apply, the Indemnified Person shall notify the indemnifying Party (the "Indemnifying Party") in writing of such fact; provided however, that delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its indemnification obligations except to the extent that it is materially prejudiced by such delay.
- (b) The Indemnifying Party shall diligently, competently and in good faith control and conduct the defense, with counsel reasonably satisfactory to the Indemnified Person, of any claim as to which the indemnification provided for in Article 10.1 [Seller's Indemnification] applies; provided however, that the Indemnifying Party may not settle or compromise any such claim without the Indemnified Person's consent unless the terms of such settlement or compromise unconditionally release the Indemnified Person(s) from any and all liability with respect thereto and do not impose any obligations on any Indemnified Person.
- (c) An Indemnified Person shall have the right, at its option (but not the obligation), to be represented by advisory counsel of its own selection and at its own expense and to monitor the progress and handling of an indemnified claim. An Indemnified Person shall also have the right, at its option (but not the obligation), to assume the defense of any such claim with counsel of its own choosing at its sole cost and expense; provided however, that an Indemnified Person shall have the right to assume the defense of, and to settle or compromise, any such indemnified claim at the

Indemnifying Party's expense if: (i) the Indemnifying Party fails to acknowledge, in writing, its responsibility to assume the defense of such claim; (ii) the Indemnifying Party fails to diligently, competently and in good faith control and conduct the defense of such claim with counsel reasonably satisfactory to the Indemnified Person; (iii) there is an apparent conflict of interest between the Indemnifying Party and the Indemnified Person with respect to such claim; or (iv) such Indemnified Person shall have reasonably concluded that there are legal defenses available to it which are different from, additional to, or inconsistent with, those available to the Indemnifying Party.

- (d) The Indemnifying Party's obligations to indemnify, defend and hold each Indemnified Person harmless shall not be reduced or limited by reason of any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or any of its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11 FORCE MAJEURE EVENTS

11.1 Excused Performance. Notwithstanding anything in the PPA to the contrary, a Party shall be excused from performing its obligations under the PPA (other than the obligation to make payments when due) and shall not be liable for damages due to its failure to perform such obligations during any period that such Party is unable to perform due to a Force Majeure Event; provided however, that the Party claiming a Force Majeure Event shall: (a) have the burden of proving the existence and consequences of such Force Majeure Event; and (b) act expeditiously to resume performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by the Force Majeure Event.

11.2 Notification. A Party unable to perform under the PPA due to a Force Majeure Event shall: (a) provide prompt written notice of such Force Majeure Event to the other Party (in no event later than five (5) days after the occurrence of the Force Majeure Event), which notice shall include a description of the Force Majeure Event and its effect on performance under the PPA, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure Event; and (b) provide prompt notice to the other Party when performance resumes.

11.3 No Extension of Term. In no event will any delay or failure of performance caused by any Force Majeure Event extend the PPA beyond the Services Term.

11.4 Right to Terminate. In the event that any delay or failure of performance caused by one or more Force Majeure Events continues for an uninterrupted period of 150 days, the

Party not claiming the Force Majeure Event may, upon not less than thirty (30) days advance written notice, terminate the PPA without liability.

ARTICLE 12
EVENTS OF DEFAULT; REMEDIES

- 12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- (a) the failure to make, when due, any undisputed payment required to be made pursuant to the PPA if such failure is not remedied within five (5) Business Days after written notice thereof is received;
 - b) any representation or warranty made by such Party herein shall be false in any material respect and shall remain uncured for a period of thirty (30) days after written notice thereof is received;
 - (c) the failure to perform any material covenant or obligation set forth in the PPA (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after written notice thereof is received if such failure can be cured within thirty (30) days after receipt of written notice of such failure, or (B) if Defaulting Party fails to commence and diligently pursue said cure within such thirty (30) day period;
 - (d) such Party becomes Bankrupt
 - e) such Party assigns the PPA or any rights, interests or obligations hereunder without the prior written consent of the other Party when such consent is required; and
 - (f) any Permit necessary for a Party to be able to perform as contemplated by the PPA is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.
- 12.2 Additional Seller Events of Default. Any of the following events shall constitute an Event of Default of Seller:
- (a) the failure by Seller and/or Designated Scheduling Agent to deliver to Buyer and/or Designated Scheduling Agent in accordance with the PPA any Products required to be delivered hereunder or the delivery or sale of

ATTACHMENT 1 - REVISED JUNE 9, 2009

any such Products to any Person other than Buyer if not expressly permitted under the PPA;

- (b) PJM or any other RTO shall have declared such Party to be in default of any provision of such RTO's agreements or procedures;
- (c) the failure by Seller to provide a Letter of Credit or Guaranty as required by Article 14 [Security];
- (d) the failure by Seller to comply with Article 6.7 [PJM Membership] or 6.8 [Market-Based Rate Authority];
- e) the transfer by Seller of all or substantially all of its assets to another Person without the prior written consent of Buyer; and

12.3 Failure to Maintain Mechanical Availability Percentage (MAP). Should Seller fail to satisfy the MAP requirements committed in the Attachment 2, Facility Information Form, Seller shall be entitled to a six (6) month period ("MAP Remedy Period") where Seller shall diligently work to remedy its failure to comply with Article 6.13 [Mechanical Availability Percentage], with such MAP Remedy Period commencing on the date notice under this Article 12.3 was given by Buyer to Seller in accordance with the provisions of the PPA. Seller shall be required to pay Buyer damages during the MAP Remedy Period per the Damages Matrix in Article 12.5 below. Should Seller not be able to demonstrate compliance with the requirements of Article 6.13 [Mechanical Availability Percentage] to Buyer by the end of the MAP Remedy Period, Buyer shall have the right to exercise any additional remedy available to Buyer under the provisions of the PPA, including but not limited to the right to terminate the PPA pursuant to Article 12.4 [General Remedies].

12.4 General Remedies. If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the "Non-Defaulting Party") shall have the right to: (a) suspend performance under the PPA; and/or (b) exercise any remedies available at law or in equity, including termination of the PPA. Without limiting the generality of the foregoing, upon a Seller Event of Default, Buyer shall have the right to exercise its remedies under any Letter of Credit or the Guaranty.

12.5 Delay Damages. In the event the Initial Delivery Date does not occur on or prior to the Guaranteed Initial Delivery Date and such delay is not directly attributable to a Force Majeure Event (as reasonably determined by Buyer), for each day beginning with the day after the Guaranteed Initial Delivery Date indicated on Attachment 2, Facility Information Form, through and including the date on which the Initial Delivery Date actually occurs, Buyer's exclusive remedy shall be payment by Seller of liquidated damages in the amount defined in the damages matrix based on Buyer's Percentage of the Facility Expected Energy Production per day (as identified on Seller's Attachment 3 submittal) defined as \$/kWh ("Delay Damages"). In the event the Initial Delivery Date does not occur within 6 months of the Guaranteed Initial Delivery Date, Buyer shall have

ATTACHMENT 1 - REVISED JUNE 9, 2009

the right to terminate the PPA without liability. Buyer would also be entitled to the amount of the security required per Section 14.2 (a) whether Seller was required to post or not. The Parties acknowledge and agree that: (a) calculation of actual damages that Buyer would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. The rights set forth pursuant to this Article 12.5 shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date as well as Section 14.2 (a) if Buyer chooses to terminate after a 6 month delay. If Seller desires to terminate after a six (6) month delay, damages are limited to the amount required in Section 14.2 (b).

Damages Matrix	
Month 1 and 2	\$0.01 /kWh/Day
Month 3 and 4	\$0.02 /kWh/Day
Month 5 and 6 (or the months of Jul and Aug) until Initial Delivery Date is achieved or Termination is declared.	\$0.03 / kWh/Day

12.6 Damages on Termination.

(a) Upon a termination of the PPA by Buyer based on a Seller Event of Default, Buyer shall be entitled to recover the net present value of the replacement cost of Energy, capacity (as applicable), RECs and Environmental Attributes supplied from a similar facility less the cost of the Energy, RECs and Environmental Attributes that Buyer would have incurred at the Energy Payment Rate, assuming the Facility produced Energy at the current Facility Expected Energy Production quantities for the lesser of the remaining Services Term or five (5) years; *provided however*, that for any termination of the PPA prior to the Initial Delivery Date based on a Seller Event of Default after which Seller permanently ceases development or operation of the Facility, Seller's liability shall be limited to the amount of security pursuant to Article 14.2 (b) whether Seller was required to post or not.

(b) Upon a termination of the PPA by Seller based on a Buyer Event of Default, Seller shall be entitled to recover the net present value of the price of Energy, Capacity, RECs and Environmental Attributes at the Energy Payment Rate less the market price of Energy, Capacity, RECs and Environmental Attributes supplied from a

similar facility, assuming the Facility produced Energy at the current Facility Expected Energy Production quantities for the lesser of the remaining Services Term or five (5) years

(c) The Parties acknowledge and agree that: (i) energy generating resource has an inherent value greater than the value of other forms of Energy; (ii) the inherent value of Energy supplied from a renewable energy resource is a primary reason Buyer is entering into the PPA; (iii) in the event of termination of the PPA based on a Seller Event of Default, Buyer will likely be required to replace the Energy that would have been provided hereunder with Energy supplied from another renewable energy generating resource; (iv) in the event of termination of the PPA by Seller based on a Buyer Event of Default, Seller will likely sell the Energy that would have been sold hereunder to a Party seeking Energy supplied from an renewable energy generating resource; and (v) the formulations of damages described in this Article 12.6 are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

12.7 Cumulative Remedies. The remedies provided for in this Article 12 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other right to which any Party is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

12.8 Facility Lender's Right to Cure. In the event Seller notifies Buyer of the contact information for a Facility Lender: (i) Buyer shall provide notice of any Seller Event of Default to such Facility Lender; and (ii) Buyer shall accept a cure of any Seller Event of Default by the Facility Lender, so long as the cure is accomplished within the applicable cure periods set forth in the PPA.

12.9 Exclusion of Consequential Damages.

Buyer shall not be liable to the Seller for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort, in contract or otherwise.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Informal Dispute Resolution. Before initiating legal action pursuant to Article 13.2 [Formal Dispute Resolution], a Party aggrieved by a dispute hereunder shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts determined to be owed as a result of

informal dispute resolution pursuant to this Article 13.1 shall be paid within three (3) Business Days of such resolution.

13.2 Formal Dispute Resolution. After the requirements of Article 13.1 [Informal Dispute Resolution] have been satisfied, either Party may initiate legal action in accordance with Articles 17.11 [Governing Law] and 17.12 [Jurisdiction and Venue].

ARTICLE 14 SECURITY REQUIREMENTS

14.1 Seller Credit.

- (a) If Seller is not a Qualified Seller at time of Effective Date, the Seller will provide a Letter of Credit, cash or Guaranty per Articles 14.2 or 14.3 below. For any period after the Effective Date during which Seller can demonstrate that it has been a Qualified Seller for a period of no less than consecutive three months, Seller may request that the Buyer reduce or release the Letter of Credit, cash or Guaranty.
- (b) In the event of a downgrade from Qualified Seller status at any time during the Term of the PPA, Seller shall have three (3) Business Days to deliver a Letter of Credit or Guaranty pursuant to Articles 14.2 or 14.3 below. Any such Letter of Credit or Guaranty issued due to such a downgrade shall not be eligible for reduction or an early release pursuant to this Article 14.1.

14.2 Letters of Credit.

- (a) No later than three (3) Business Days after the Effective Date, Seller shall deliver to Buyer a Letter of Credit in the amount of \$5.00 per MWh of the annual energy from Attachment 3 (Facility Expected Energy Production), which Letter of Credit in such required amount shall remain in full force and effect until: (i) Seller provides to Buyer a Letter of Credit pursuant to Article 14.2 (b); or (ii) termination of the PPA and satisfaction of all of Seller's obligations and liabilities hereunder.
- (b) Prior to the Initial Delivery Date, but not less than three business days before Initial Delivery Date, Seller shall deliver to Buyer a Letter of Credit (the "Services Term Replenishable Letter of Credit") which, shall be maintained, in the amount of \$10.00 per MWh of the annual energy from Attachment 3 (Facility Expected Energy Production). The Services Term Letter of Credit shall remain in full force and effect for the duration of the Services

Term, unless modified or removed at Buyer's discretion pursuant to Article 14.1.

- (c) Each Letter of Credit shall be in a form acceptable to Buyer and shall be free and clear of all Liens, security interests (except security interests in favor of Buyer), claims and encumbrances.
- (d) Seller shall renew or replace each Letter of Credit required pursuant to this Article 14.2: (i) no later than thirty (30) days prior to the stated expiration date of such Letter of Credit; (ii) within five (5) Business Days of the issuer of such Letter of Credit ceasing to be a Qualified Institution; and (iii) within three (3) Business Days of the issuer of such Letter of Credit failing to honor Buyer's request to draw on such Letter of Credit. If Buyer does not receive a replacement Letter of Credit within the time specified in the preceding sentence, it may: (A) draw on the full available amount of such Letter of Credit; (B) hold the proceeds thereof in an interest bearing account; and (C) apply all or any portion of such proceeds to satisfy any obligation or liability of Seller under the PPA (whether or not the PPA has been terminated).
- (e) All costs and expenses of establishing, renewing, substituting, canceling, increasing, modifying, reducing or otherwise administering any Letter of Credit shall be borne by Seller.
- (f) Buyer shall be entitled to draw on any Letter of Credit to satisfy any obligation or liability of Seller arising pursuant to the PPA (whether or not the PPA has been terminated) that is not paid when due.
- (g) In the event Buyer draws on any Letter of Credit to fulfill any of Seller's obligations under the PPA, Seller shall promptly, and in any event within three (3) Business Days of such draw, replenish the amount of such Letter of Credit to the level required pursuant to this Article 14.2.

14.3 Guaranty. For any period of the Services Term during which Seller provides a Guaranty, the amount of the Services Term Letter of Credit shall be reduced by amount of the Guaranty.

14.4 Supporting Information. For any period of the Services Term for which the amount of the Letter of Credit has been reduced pursuant to Article 14.1 [Seller Credit] or 14.3 [Guaranty]: (a) Seller shall notify Buyer of any change to the Credit Rating of Seller or Guarantor, as applicable, no later than two (2) Business Days after the date of such change; (b) Seller shall provide Buyer with written financial information regarding Seller or Guarantor, as applicable, including audited annual reports, balance sheets, financial

statements and quarterly balance sheets (each prepared in accordance with GAAP) and schedules of long term debt (including maturity dates).

14.5 Release of Security. Buyer shall return all Letters of Credit and Guaranties promptly after the first to occur of the following: (a) the Services Term shall have expired; (b) the PPA shall have terminated and all obligations and liabilities of Seller arising pursuant to the PPA, including payments due at, or as a result of, such termination shall have been paid in full; or (c) Buyer's discretion, pursuant to the Article 14.1.

14.6 No Limit of Liability. Except to the extent expressly stated in the PPA, the required amounts of any Letters of Credit shall not be deemed to be a limitation of Seller's liability.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the Effective Date that:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in each jurisdiction in which its operations or the ownership of its properties require it to be qualified;
- (b) it has all Permits necessary for it to legally perform its obligations under the PPA except: (i) in the case of Buyer, PSC Approval; and (ii) in the case of Seller, those Permits identified on Schedule 15.1, each of which Seller anticipates will be obtained by Seller in the ordinary course of its development and construction of the Facility;
- (c) the execution, delivery and performance of the PPA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation or order applicable to it, the violation of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the PPA;
- (d) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under, the PPA;
- (e) the execution and delivery of the PPA and performance or compliance with any provision here of will not result in the creation or imposition of any Lien upon its properties (except as

expressly contemplated in favor of Buyer pursuant to the PPA), the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the PPA;

- (f) the PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors' rights generally and general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity;
- (g) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (h) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates before any court or Governmental Authority that could reasonably be expected to materially adversely affect its ability to perform its obligations under the PPA;
- (i) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under the PPA; and
- (j) it is not relying upon the advice or recommendations of the other Party in entering into the PPA, it is capable of understanding, understands and accepts the terms, conditions and risks of the PPA and its rights and obligations hereunder, and the other Party is not acting as a fiduciary for or advisor to it in respect of the PPA.

15.2 Disclaimer of Implied Warranties. Except for the express warranties set forth in the PPA, there are no warranties of any kind, including warranties of merchantability or fitness for a particular purpose any and all implied warranties are disclaimed.

ARTICLE 16 CONFIDENTIALITY

16.1 Non-Disclosure of Confidential Information. Subject to Maryland Public Information Act (Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland)(the "Public Information Act"), neither Party (a "Receiving Party") shall disclose any Confidential Information of the other Party (the "Disclosing Party") obtained pursuant to, or in connection with, the execution or performance of the PPA to any Person other

than an officer, director, employee, agent, representative or consultant of the Receiving Party without the express prior written consent of the Disclosing Party.

16.2 Designation of Confidential Information. A Party seeking to classify any material as Confidential Information must specifically designate such material as confidential prior to disclosing it to the Receiving Party. A Disclosing Party may not seek confidential treatment of any material unless such material was designated as confidential at the time of disclosure to the Receiving Party.

16.3 Other Permitted Disclosures. Notwithstanding Article 16.1 [Non-Disclosure of Confidential Information], either Party may:

- (a) produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a Governmental Authority upon reasonable prior notice to the Disclosing Party; provided however, that prior to such disclosure, the Receiving Party must use reasonable efforts in cooperation with the Disclosing Party to seek confidential treatment of such Confidential Information;
- (b) disclose whatever information FERC requires it to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to the Disclosing Party; and/or
- (c) disclose Confidential Information to its Affiliates and their officers, directors, employees, agents, representatives and consultants; provided however, that such Affiliates, officers, directors, employees, agents, representatives and consultants must be bound by the confidentiality obligations set forth in this Article 16; and provided further, that in no event shall a document or information be disclosed in violation of the FERC Code of Conduct or Standards of Conduct requirements.

16.4 Audits. Any independent auditor performing an audit on behalf of a Party pursuant to Article 17.7 [Audit] shall be required to execute a confidentiality agreement with the Party being audited requiring that any Confidential Information disclosed in connection with such audit be treated as confidential pursuant to this Article 16.

16.5 Equitable Relief. The Parties agree that monetary damages may be inadequate to compensate a Disclosing Party for a Receiving Party's breach of its obligations under this Article 16. Each Receiving Party accordingly agrees that a Disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Receiving Party breaches or threatens to breach its obligations under this Article 16, which equitable relief shall be granted without bond or proof of damages, and the Receiving Party shall not plead in defense that there would be an adequate remedy at law.

16.6 Survival. The confidentiality provisions of this Article 16 shall survive any termination of the PPA for a period of three (3) years.

ARTICLE 17 MISCELLANEOUS

17.1 Notices. Whenever the PPA requires or permits delivery of a notice or requires a Party to notify the other Party, all notices, requests, statements or payments shall be made to the Parties using the contact information set out in Section G, Item 5, Notices, as updated from time by each Party by providing written notice to the other Party. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is sent by facsimile (and confirmed) or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt

17.2 Joint Preparation. The PPA shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, negotiation or drafting hereof.

17.3 No Third Party Beneficiaries. Nothing in the PPA shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to the PPA. The PPA shall not impart any rights enforceable by any Person other than a Party or a permitted successor or assignee thereof.

17.4 Severability. If any provision in the PPA is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of the PPA and the Parties shall use their best efforts to modify the PPA to give effect to the original intention of the Parties.

17.5 Headings. The headings used in the PPA are for convenience and reference purposes only and shall have no bearing on the interpretation hereof.

17.6 Records. Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to the PPA or in verifying such Party's performance hereunder, including operating logs, Facility output data, meter readings and financial records, all in accordance with Good Utility Practice. Each Party shall provide such books and records to the other Party within fifteen (15) days of a written request for such information. All records shall be retained by each Party for at least three (3) years following the year in which such records were created.

17.7 Audit. Each Party shall have the right, on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to the PPA, including records necessary to verify that Buyer has

received and is receiving Buyer's Percentage of Products produced by the Facility. If any such examination reveals any inaccuracy in any Invoice, the necessary adjustments in such Invoice and the payments thereof will be made in accordance with Articles 8.1 [Price for Products] and 8.6 [Billing Disputes].

17.8 Successors. The PPA and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

17.9 No Dedication. No undertaking by one Party to the other under any provision of the PPA shall constitute the dedication of that Party's property or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent Person.

17.10 Assignment

(a) Neither Party shall assign the PPA or delegate its rights or obligations hereunder without the prior written consent of the other Party; *provided however*, that without the consent of the other Party. Designated agent(s) or changes in Designated agent(s) acting on the buyer or sellers behalf will not constitute Assignment:

(i) a Party may transfer, sell, pledge, encumber or assign the PPA or the Facility, or any accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements of the Facility; or

(ii) a Party may transfer or assign the PPA to any Person whose creditworthiness is equal to or higher than that of the transferring Party; *provided however*, that in the case of an assignment by Seller the assignee must also own the Facility.

(b) Any consent required by Article 17.10 shall not be unreasonably withheld, conditioned or delayed; *provided however*, that neither Party shall be required to consent to any assignment or transfer that would require it to accept any limitation of its rights under the PPA or expansion of the liability, risks or obligations imposed on it under the PPA.

(c) It shall be a condition of any assignment, transfer, delegation or other disposition of the PPA that: (a) all Letters of Credit and Guaranties required pursuant to Article 14 [Security] shall remain in place in favor of Buyer notwithstanding such assignment, transfer, delegation or disposition; or (b) replacement Letters of Credit and Guaranties in form and substance acceptable to Buyer shall have been provided prior to such assignment, transfer, delegation or disposition.

17.11 Jurisdiction and Venue. Except for matters subject to the exclusive or primary jurisdiction of FERC, the Maryland PSC or the courts having jurisdiction over the Maryland PSC or FERC matters, all disputes hereunder shall be resolved in the federal or state courts of the State of Maryland. Each Party hereby irrevocably submits to the *in personam* jurisdiction of such

courts for such purpose. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with the PPA.

17.12 Amendments. The PPA shall not be amended, modified, or supplemented, nor shall any provision hereof be waived, unless mutually agreed, in writing, by the Parties.

17.13 Modification of PJM Agreements. Notwithstanding Article 1.2(h) [Interpretation]: (a) if the PJM Agreements are amended or modified so that any Schedule or Article reference herein to such agreement is changed, such Schedule or Article reference shall be deemed to automatically (and without any action by the Parties) refer to the new or successive schedule or Section in such PJM Agreement that replaces the provision originally referred to in the PPA; and (b) if any provision of any of the PJM Agreements referenced herein, or any other PJM rule relating to the implementation of the PPA, is changed materially from that in effect on the Effective Date, both Parties shall cooperate to make conforming changes to the PPA to fulfill the purposes of the PPA; *provided however*, that neither Party shall be obligated to agree to any change that diminishes the benefits of the PPA to such Party.

17.14 Bankruptcy Considerations. The Parties acknowledge and agree that the standard of review for any proposed avoidance, breach, rejection, termination or other cessation of performance or changes to any portion of the PPA over which the United States District Court or the United States Bankruptcy Court for the district in which a proceeding is pending, whether proposed by Seller, Buyer, or a non-Party, shall be the standard of review set forth in *In re Mirant Corp.*, 318 B.R. 100 (N.D. Tex. 2004). Nothing in this Article 17.14 shall adversely affect, in any way, the protections afforded to a non-debtor counterparty under the United States Bankruptcy Code. The Parties acknowledge and agree that the PPA constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that each of Seller and Buyer is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

17.15 Delay and Waiver. Except as otherwise provided in the PPA, no delay or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by the other Party shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under the PPA, and any waiver of any provision or condition of the PPA, must be in writing and shall be effective only to the extent specifically set forth in such writing.

17.16 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding of the Parties in respect of the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated by this Agreement.

17.17 Counterparts. The PPA may be executed in two or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

17.18 Obligation of Good Faith. In carrying out its rights, obligations and duties under the PPA, each Party shall act reasonably and in accordance with the principles of good faith and fair dealing.

Attachment 2 – REVISED JUNE 9, 2009
Request for Proposal No. 83468-A
Facility Information

1. General Information

1.1) Facility Name: _____

1.2) Proposal Company Name: _____

1.3) Resource Classification Proposed:
(as defined in Section C of the RFP)

a) Base Loaded Renewable Energy:	<input type="text"/>
b) Intermittent Renewable Energy:	<input type="text"/>
c) Low Carbon Energy:	<input type="text"/>

1.4) Proposer Classification:

a) Utility (retail serving):	<input type="text"/>
b) Independent Power Producer:	<input type="text"/>
c) Project Developer:	<input type="text"/>
d) Cogenerator:	<input type="text"/>
f) Other (explain):	<input type="text"/>

1.5) Fuel Source (if applicable): Primary: _____

Secondary/Backup: _____

1.7) Facility Nameplate Rating (kW): _____

1.8) Unforced Facility Capacity- if available (kW):

Summer: _____

Winter: _____

1.9) Mechanical Availability (annual %): _____

1.10) Delivery Point: _____

1.11) Annual Energy Output degradation (if applicable): _____

1.12) Guaranteed Initial Delivery Date (not later than Dec 2014): _____

1.13) Current Project Development Status:

- a) Pre-Feasibility:
- b) Site Selection:
- c) Permitting:
- d) Construction:
- e) Operational:

Completed (Yes/No)

2. Project Site Information

2.1) Site Address or Legal Description

2.2) Site Ownership Status

- a) Documented Ownership:
- b) Documented Lease:
- c) Ownership / Lease Pending:
- d) Site Partially Acquired:
- e) Site Selection Pending:

(select one or more)

2.3) Project's expected tax revenue to Maryland (\$/year)

2.4) Project's expected job creation in Maryland

3. Equipment Information

3.1) Equipment Acquisition Status

- a) Equipment Received:
- b) Equipment Purchased:
- c) Equipment Not Selected:

(select one)

3.2) Technology Selected / Consideration

3.3) Warranty Duration (years)

3.4) Warranty Terms

3.5) Average GHG emission rate (lbs CO₂e/MWh)

4. Project Developer Information

4.1) Project Development Team

- a) Developer:

- b) Engineering,
Procurement,
Construction
Contractor:

- c) Financier:

- d) Other Affiliate(s):

4.2) Prior Projects by Developer (Same Technology)

5. Project Development Time Table

Project Milestone	Scheduled Completion Date (month-year or days from award if dependent on award)	Current Status
Site Acquisition		
PJM Que		
Interconnect Agreement		
EPC Contract Executed		
Financing Secured		
Construction Start		
Operating Permit Obtained		
All Permits Obtained		
Commence Commercial Operation		

Facility Expected Energy Production

Please provide generation forecast for the facility by month and hour in terms of MW.

MW/Hr	0100	0200	0300	0400	0500	0600	0700	0800
Jan								
Feb								
Mar								
Apr								
May								
Jun								
Jul								
Aug								
Sep								
Oct								
Nov								
Dec								

MW/Hr	0900	1000	1100	1200	1300	1400	1500	1600
Jan								
Feb								
Mar								
Apr								
May								
Jun								
Jul								
Aug								
Sep								
Oct								
Nov								
Dec								

MW/Hr	1700	1800	1900	2000	2100	2200	2300	2400
Jan								
Feb								
Mar								
Apr								
May								
Jun								
Jul								
Aug								
Sep								
Oct								
Nov								
Dec								

Attachment 4
Request for Proposal 83468-A
REVISED JUNE 9, 2009
Price Proposal Form

Facility Name - _____

Facility Nameplate Rating (kW) - _____

Percent of Nameplate Rating (%)	Energy Payment Rate (\$/MWh)	Initial Delivery Date*	Services Term (Years)	Annual Escalation (Fixed % or Index)**
10***				
25				
50				
75				
100				

* Initial Delivery Date must be on or before December 31, 2014 and can be expressed as a calendar date or days after Effective Date.

** Proposer shall indicate proposed escalation for annual Energy Payment Rate.

*** 10% Proposal option only applies to facilities with nameplate capacities greater than 100MW

Proposer may propose various pricing for different term lengths and Buyer Percentage.

Exhibit 1
MECHANICAL AVAILABILITY PERCENTAGE
June 9, 2009

The Mechanical Availability Percentage of the Facility shall be calculated as follows:

$$\text{MAP} = 100 * \sum_{(\text{of all Units})} [(\text{AH} - \text{TOH}) / \text{AH}] * \text{UWP}$$

Where:

AH = Available On-peak Hours
MAP = Mechanical Availability Percentage
TOH = Total On-Peak Outage Hours
UWP = Unit Weighted Percentage

1. Definitions:

For purposes of this Exhibit 1, the following capitalized terms shall be defined as follows. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

"Available Hours" means the result of the Total On-Peak Period Hours less the Force Majeure Event Hours in a rolling twelve (12) month period.

"Derated" refers to the decreased output of a unit due to mechanical issues or loss of fuel supply such as biomass, refuse or gas, but is not related to a decrease of power source such as solar or wind. Additionally, any degradation identified in Attachment 2 of the Technical Proposal will not constitute a Derate.

"Equivalent Forced Outage Hours" (EFO) means the total number of equivalent on-peak hours in a Period that represents an immediate reduction in output or capacity or removal from service, in whole or in part, of a Unit by reason of an emergency or threatened emergency, unanticipated failure or other cause beyond the control of Seller including an operational order from PJM; *provided however*, that any Force Majeure Event Hours shall not be counted as Equivalent Forced Outage Hours. A reduction in output or removal from service of a Unit or the Facility in response to changes in market conditions shall also constitute Equivalent Forced Outage Hours unless Buyer agrees to waive.

"Equivalent Planned Outage Hours" (EPO) means the total number of equivalent on-peak hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit for inspection, maintenance or repair with the approval of PJM's Office of Interconnection.

"Force Majeure Event Hours" means the total number of on-peak hours in a Period during which either Seller or Buyer has declared a Force Majeure Event for one or more Units.

"Period" means the immediately preceding period of twelve (12) consecutive months for which the Mechanical Availability Percentage is being calculated. The initial Period shall commence on the first day of the thirteenth (13th) calendar month following the Initial Delivery Date.

"Total Period Hours" means the total number of on-peak hours in a Period.

"Total On-peak Outage Hours" means the sum of Equivalent Forced Outage Hours and Equivalent Planned Outage Hours for a Period.

"Unit Weighted Percentage" means, for each Unit, the portion of the Facility

Nameplate Rating represented by the nameplate rating of such Unit, expressed as a percentage.

2. Sample Calculations:

SAMPLE CALCULATION A:

Assumptions:

- 1) Facility consists of 20 Units, each with an identical nameplate rating of 2 MW;
 $UWP = 2MW/40MW = .05$
- 2) There are 12 months in the relevant Period ; AH = 4,080 hrs
- 3) There was no Force Majeure Event for the Period
- 4) Each Unit of the Facility each experienced 100 Total On-peak Outage Hours (TOH) during the Period
- 5) One Unit had 500 additional Total On-peak Outage Hours (TOH) during the Period

For the 19 Units that each experienced 100 Total Outage Hours:

$$\text{MAP} [(4,080 - 100) / 4,080] * 0.05 = 0.048775 \text{ for each Unit;} \\ 0.048775 * 19 = 0.9267 \text{ for all 19 Units}$$

For the one (1) Unit that experienced 700 Total Outage Hours:

$$\text{MAP} = [(4,080 - 500) / 4,080] * 0.05 = 0.0439 \text{ for the 1 Unit}$$

The Mechanical Availability Percentage equals:

$$\text{MAP} = (0.9267 + 0.0439) * 100 = \mathbf{97.1\%}$$

SAMPLE CALCULATION B:

Assumptions:

- 1) The Facility consists of 1 Unit; UWP = 1
- 2) There are 12 months in the relevant Period; AH = 4,080 hrs
- 3) There was no Force Majeure Event for the Period.
- 4) The Unit operated Derated at 50% for 100 hours; EFO = 50 hrs
- 5) The Unit was down for planned maintenance for 100 hours; EPO = 100hrs
- 6) TOH = 50 + 100 = 150 hrs

$$\text{MAP} = [(4,080 - 150) / 4,080] * 1 = .963$$

The Mechanical Availability Percentage equals:

$$\text{MAP} = 0.963 * 100 = \mathbf{96.3\%}$$