

Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement ("Agreement"), dated March 1, 2019 for identification purposes, but effective the last date executed below, is entered into by and between Secure Futures, LLC ("SFLLC"), a Virginia limited liability company, with its principal place of business at 11 E. Beverley Street, Suite 19, Staunton, VA 24401 and the School Board of the City of Harrisonburg, Virginia, ("Counterparty") with its principal place of business at 1 Court Square, Harrisonburg, VA 22801.

Each of SFLLC and Counterparty are hereinafter sometimes referred to individually as a "party" or collectively as the "Parties".

WHEREAS, the Parties desire to evaluate and engage in discussions concerning one or more potential or existing business relationships between the Parties hereto ("Purpose"), and in connection with such discussions, each party may disclose to the other party certain technical or business information which the Parties desire to treat as confidential on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, BE IT RESOLVED, that in consideration of the above recitals and the mutual covenants made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

- 1.1 "Representatives" include a party's Affiliates, as well as a party's and its Affiliates' directors, officers, employees, agents and advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors or lending institutions).
- 1.2 "Affiliate" when used with reference to a party hereto, means another person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party.
- 1.3 "Confidential Information" means any information disclosed on the Effective Date or after the Effective Date by either party and/or its Representatives to the other party and/or its Representatives, either directly or indirectly, in writing, orally or by drawings or observation of tangible objects such as documents, prototypes, samples, products and facilities, and which is clearly marked or designated "Confidential Information," including, but not limited to, trade secrets, know-how and other intellectual property or information relating to the disclosing party's business, operations, products, technology, together with any and all analyses or other documents prepared

by either party or any of their Representatives that contain or otherwise reflect any of the foregoing information. Confidential Information shall not, however, include any information that the receiving party can demonstrate by documents, records or other evidence that (i) was made generally available in the public domain prior to the time of disclosure by the disclosing party or its Representatives or after the time of disclosure by the disclosing party or its Representatives through no action or inaction of the receiving party or its Representatives, (ii) is already in the possession of the receiving party or its Representatives at the time of disclosure by the disclosing party or its Representatives, (iii) is obtained by the receiving party or its Representatives from a third party without a breach of such third party's or the receiving party's obligations of confidentiality, (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, (v) was not clearly marked or designated "Confidential Information" at the time it was first disclosed to the receiving party, or (vi) is required to be disclosed to any third-party pursuant to applicable law.

- 1.4 Counterparty acknowledges that SFLLC asserts that the SFLLC Solar Self

Generation Agreement (Solar SGA*) (if applicable) includes SFLLC trade secret information and is included within the definition of Confidential Information to the extent marked by SFLLC as "Confidential." All confidential information will be marked as required under the Virginia Freedom of Information Act and as excepted under VA Code § 2.2-3705.6.29 for solar services agreements, (FOIA)

2. Non-disclosure. Except as required under the Virginia Freedom of Information Act and as excepted under VA Code § 2.2-3705.6.29 for solar services agreements, (FOIA), the receiving party shall not, and shall cause its Representatives not to, disclose the Confidential Information of the other party to third Parties or to the receiving party's Representatives, except to those Representatives of the receiving party who reasonably require such information for the Purpose of this Agreement.

3. Maintenance of Confidentiality; Competitive Activity.

Except as required under FOIA:

- 3.1 Each party and its Representatives shall use at least the same degree of care, but no less than a reasonable level of care, and shall take at least those measures that it takes to protect its own confidential information to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information.
- 3.2 Each party and its Representatives receiving Confidential Information of the other party hereby unconditionally and irrevocably covenants, represents, warrants, promises and agrees that (i) it will not take any action, either alone or in concert with any person, or engage in any activity that could or would enable it or such other person to compete with the disclosing party using any of the Confidential Information; (ii) it will not nor attempt to develop any such competitive products or services using any of the Confidential Information; (iii)

it will not nor attempt to reverse engineer, disassemble or otherwise duplicate, modify or enhance any of the disclosing party's Confidential Information or intellectual property; and (iv) it will provide the disclosing party with written notice if it learns about any of the foregoing provisions (i) through (iii) no longer being in full force and effect. Notwithstanding the foregoing language, nothing contained herein shall affect, limit or restrict either party's right to engage in any business activity, in any place and at any time, provided it does not use the disclosing party's Confidential Information in violation hereof.

4. No Obligation. Nothing herein shall obligate either party hereto to proceed with any transaction or relationship between them, and each party reserves the right, in its sole discretion, to terminate any discussions contemplated by this Agreement.

5. Limited Warranty. THE CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS SUFFICIENCY, ACCURACY, OR COMPLETENESS FOR ANY PURPOSE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6. Limited Representations and Warranties. Each party represents and warrants that it has full authority to enter into this Agreement, and that this Agreement is a valid, legally binding and enforceable agreement. Each party further represents, warrants and covenants that it shall comply with all applicable laws, rules and regulations in performing its obligations under this Agreement.

7. Return of Materials. All documents and other tangible objects containing or representing the Confidential Information, and all copies thereof, that contain or otherwise reflect any of the foregoing information, shall be and remain the sole property of the disclosing party and, upon the disclosing party's written request, shall be returned to the disclosing party or destroyed within 30 days of such written request, unless the receiving party is required by law to retain

the information.

8. No License. Nothing in this Agreement is intended to grant any rights to either party under any patent, copyright, mask work right, trade secrets, or other intellectual property of the other party, nor shall this Agreement grant either party any rights in or to the Confidential Information of the other party except as expressly set forth herein.
9. Term. This Agreement and the obligations with respect to Confidential Information set forth herein shall continue for a period of two (2) years from the effective date of this Agreement, provided that such termination does not change any continuing obligation hereunder for Confidential Information previously disclosed under this Agreement, which shall continue for a period of two (2) years following any such termination or expiration of this Agreement; provided that receiving party acknowledges that its obligations under this Agreement with respect to trade secrets of disclosing party shall remain in effect for as long as such information shall remain a trade secret under applicable Virginia law.
10. Survival. Each party's rights and obligations hereunder with respect to any Confidential Information of the other party does not change any continuing obligation hereunder for Confidential Information previously disclosed under this Agreement.
11. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles thereto. For the avoidance of doubt, the foregoing shall not be construed as prohibiting a party from seeking injunctive or other equitable relief in a court of competent jurisdiction in the City of Harrisonburg.
12. Publicity. Neither party shall, without the prior written consent of the other party, disclose to any third party that discussions are taking place or any other terms or facts concerning the potential or existing business relationship, including the status thereof; provided, however, that either party may make any disclosure it believes in good faith that it is required by applicable law or any listing or trading agreement concerning its securities. SFLLC acknowledges that it responded to a Request for

Proposal issued by Counterparty and that Counterparty is required under applicable law to provide public notice that contract negotiations are taking place. All confidential information will be marked as required under the Virginia Freedom of Information Act (FOIA) and as excepted under VA Code § 2.2-3705.6.29 for solar services agreements.

13. Integration. This Agreement contains the complete and entire agreement among the Parties as to the subject matter hereof and replaces and supersedes any prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter of this Agreement.
14. Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts and delivered by facsimile and/or by electronic scanning and email, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.
15. Severability. If one or more of the provisions of this Agreement shall be found, by a court with proper jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of this Agreement. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives of the illegal, invalid or unenforceable provision.
16. Amendments. This Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not made a part of the Agreement by its express terms. Terms on either party's standard forms will not modify or override the terms of this Agreement unless acknowledged as an addition or amendment to this Agreement in writing and signed by both Parties. The failure to refer to this Agreement in related purchase order, invoices, and quotations exchanged by the Parties will not per se affect the governance of this Agreement.
17. Waiver. Either party's failure to exercise a right

or remedy, or such party's acceptance of a partial or delinquent payment, shall not operate as a waiver of any of such party's rights or the other party's obligations under this Agreement and shall not constitute a waiver of such party's right to declare an immediate or a subsequent breach.

18. Assignment; Successors. Except as provided herein, neither party shall assign this Agreement. Neither party shall act as an agent of the other, nor shall it be entitled to enter into any agreements or incur any obligations on behalf of the other party. No form of joint employer, joint venture, partnership, or similar relationship between the Parties is intended to be created by this Agreement.
19. No Third-party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third-party beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.
20. Relationship. The Parties are, and intend to be, independent contractors with respect to the services described in this Agreement. Neither party shall act as an agent of the other, nor shall it be entitled to enter into any agreements or incur any obligations on behalf of the other party. No form of joint employer, joint venture, partnership, or similar relationship between the Parties is intended to be created by this Agreement.
22. Notices. All notices, requests and demands which either party is required or may desire to give to the other party under this Agreement must be in writing and delivered to such party at the applicable address. Either party may designate by written notice to the other Party any other address during the Term of this Agreement. Each notice, request and demand sent under this Section shall be deemed delivered or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by certified mail, return receipt requested, or delivery service, upon the date of receipt confirming delivery; or (c) if sent by email, the date the email is sent if during regular business hours, otherwise the next business day.

If to SFLLC:

Secure Futures, LLC
Attn: Maggie Davison
11 E. Beverley St., Suite 19
Staunton, VA 24401
maggie@securefutures.solar

with a copy to:

Eric W. Hurlocker
GreeneHurlocker PLC
1807 Libbie Avenue, Suite 102
Richmond, Virginia 23226
EHurlocker@GreeneHurlocker.com

If to Counterparty:

Craig Mackail
Harrisonburg City Public Schools
1 Court Square
Harrisonburg, Virginia 22801
cmackail@harrisonburg.k12.va.us

with a copy to:

Kevin M. Rose
BotkinRose PLC
3190 Peoples Drive
Harrisonburg, VA 22801
krose@botkinrose.com

IN WITNESS WHEREOF, by signing below, the Parties hereby agree to the above terms and conditions of this Agreement and intend to be legally bound thereby.

Secure Futures, LLC

By: 

Print name: Anthony E. Smith, PhD.

Title: Chief Executive Officer

School Board of the City of Harrisonburg, Virginia

By: 

Deb Fitzgerald

Its: Chair