



AllEarth Solar Operations & Maintenance

Professional service for your tracker system, from those who know it best.

Annual Inspection



Keep following the sun: During the course of your agreement, AllEarth's trained professionals will complete ongoing preventative maintenance to keep your system performing to its highest potential.

Customer Support



We're here to help: During regular business hours, our technical support team is available to answer your questions. If you need onsite assistance, a trained professional will arrive at your site to fix the problem.

Warranty Service



Protect your solar investment: Our dedicated and experienced renewable energy team will handle routine service and trouble-shooting for your system and its components to ensure that your tracker(s) will always be following the sun.

System Monitoring



Innovative system monitoring: Gain access to our innovative, exclusive system monitoring software, powered by Bright™. Track your energy production and monitor system performance from your own computer.

The Benefits of Tech Support

- ✔ **30+ years of renewable energy experience:** We've seen it all, and know how to fix any technical issue.
- ✔ **Customer support (M-F, 8am - 5:30pm):** Ask a question or report a problem to our responsive team.
- ✔ **Access to AllEarth Solar monitoring:** Track energy production and get real-time alerts for technical problems and weather modes.
- ✔ **Timely diagnosis of any issues:** Our team will work with you to figure out the solution to your problem as quickly as possible.
- ✔ **Annual inspection and maintenance work:** We'll keep your tracker running smoothly for years to come.
- ✔ **A Vermont team:** We're local, meaning we can get to your site more quickly.
- ✔ **One stop service for all system components:** We're fully stocked with everything and anything your tracker might need.
- ✔ **Warranty support and service:** One call for all the components of your solar system. Labor is covered for all repairs.

Contact us at support@allearthrenewables.com or 802.872.9600 ext. 125 to get started.



**OPERATIONS AND MAINTENANCE (“O&M”) AGREEMENT
SUMMARY OF O&M PROVISIONS**

- | | |
|-------------------------------|---|
| 1. OPERATOR: | AllEarth Renewables, Inc.
(“Operator”) |
| 2. OPERATOR’S ADDRESS: | 94 Harvest Lane, Williston, VT |
| 3. CUSTOMER: | Town of Hinesburg (“Customer”) |
| 4. CUSTOMER’S ADDRESS: | 10632 VT Route 116, PO Box 133,
Hinesburg, VT 05461 |
| 5. EFFECTIVE DATE: | _____, 2016 |
| 6. COMMERCIAL OR RESIDENTIAL: | Commercial |
| 7. PV SYSTEM ADDRESS: | 299 Lagoon Road, Hinesburg, VT
05461 |
| 8. SERVICE TERM: | Five (5) years, unless sooner
terminated by provisions within this
Agreement. |
| 9. SERVICE PRICE: | See <u>Appendix A</u> . |

Note – the information above is meant as an information summary only. In the event of any conflict between this Summary of O&M Provisions above and the body of the O&M herein below, the provisions contained in the body of the O&M shall govern and control.

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Operations & Maintenance Agreement

This Operation, Maintenance and Warranty Agreement (“Agreement”) is made effective as of _____, 2016 (the “Effective Date”), between AllEarth Renewables, Inc., a Vermont corporation (“Operator”), and Town of Hinesburg (“Customer”).

BACKGROUND

A. Customer owns or controls a solar photovoltaic generating facility and related assets constructed or to be constructed on certain real property within the State of Vermont (the “PV System”) and desires to contract for operation and maintenance of the PV System,

B. Operator provides operation and maintenance services for solar electric generation facilities and has agreed to provide those services for the PV System on the terms and conditions set forth in this Agreement, and

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. AGREEMENT

Section 1.1 *Effective Date and Term.* Unless terminated earlier pursuant to the terms of this Agreement, this Agreement shall be effective from the Effective Date for an initial term of five (5) years (the “Initial Term”). After the Initial Term, this Agreement shall automatically renew for successive one (1) year terms (each a “Renewal Term”), unless written notice of non-renewal is given by either party to the other party at least ninety (90) days prior to the expiration of the Initial Term or then applicable Renewal Term.

Section 1.2 *Relationship of the Parties.* Operator has been retained by Customer as an independent contractor to operate and maintain the PV System on behalf of Customer consistent with the requirements of any agreements relating to the PV System, including any net metering or power purchase agreements, interconnection agreement, insurance policies, and this Agreement (the “Project Agreements”). Customer has delegated to Operator overall responsibility for operating and maintaining the PV System. Neither Operator nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that Operator is the agent of Customer to the limited extent that this Agreement expressly grants Operator the authority to act on behalf of Customer.

2. SERVICES

Section 2.1 *Scope of Services.* Operator shall operate and maintain the PV System on behalf of Customer (“Services”), including the performance of the specific duties set forth in this Agreement.

Section 2.2 *Standards for Performance of the Services.* Operator shall perform the Services required under this Agreement, including those set forth in **Appendix B**, in a prudent, reasonable, and efficient manner and in accordance with (i) the operating data, design drawings, specifications, vendors' manuals, warranty requirements, maintenance and safety procedures, and similar materials with respect to the PV System (“Operating Manuals”), (ii) all applicable laws, statutes, regulations, ordinances, , orders, decrees, judgments, rules, standards, and rulings of any governmental authority (“Laws”), (iii) the Project Agreements, (iv) the requirements of the utility serving the PV System, and (v) all insurance policies specified in this Agreement.

Section 2.3 *Operator's Personnel Standards.* Operator shall provide as reasonably necessary all labor as is required to perform the Services as set forth in **Appendix B**. All individuals retained by Operator to perform the Services shall be employees or subcontractors of Operator.

Section 2.4 *Operating Records and Reports.* Operator shall maintain PV System operating logs, records, and reports that document the operation and maintenance of the PV System. Operator shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the PV System provided to Operator by Customer and vendors. Operator shall provide Customer reasonably necessary assistance in connection with Customer's compliance with reporting requirements under the Project Agreements, applicable Laws or any other agreement to which Customer is a party relating to the PV System.

Section 2.5 *Emergency Action.* If an emergency endangering the safety or protection of persons, the PV System, or property located near the PV System occurs, Operator shall promptly notify Customer and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss

3. REPRESENTATIONS AND WARRANTIES

Section 3.1 *Mutual Warranties.* Each party represents and warrants to the other party that:

- A. it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- B. it has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;
- C. it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;

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D. to the best of its knowledge, the execution, delivery and performance of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

E. there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

Section 3.2 *Equipment Warranties.* Operator shall maintain a working knowledge of the length and status of each equipment warranty as listed in **Appendix A** associated with the PV System. Operator shall coordinate with manufacturer of each equipment when dealing with a warranty issue on behalf of Customer as listed in **Appendix B.**

Section 3.3 *Exclusion of Warranties.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND EQUIPMENT PROVIDED TO CUSTOMER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO CUSTOMER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PV SYSTEM, THE SERVICES PROVIDED HEREUNDER, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY OPERATOR.

4. CUSTOMER RESPONSIBILITIES

Section 4.1 *Information.* In order for Operator to adhere to any Project Agreements on behalf of Customer, Customer will be requested to provide Operator with all vendor manuals, spare parts lists, PV System data books and drawings which are provided to Customer pursuant to any Project Agreement or by any contractor responsible for construction, installation, repair or maintenance of the PV System or a part thereof. Subject to the standards of performance set forth in Section 2.2, Operator shall be entitled to rely upon such information in performance of the Services. Customer shall also provide Operator with copies of all Project Agreements and any amendments thereto and any other documents that define the PV System's operating requirements.

Section 4.2 *Notice of Damage; Overhaul of Major Equipment and Capital Improvements.* Customer shall promptly notify Operator if Customer becomes aware of any damage to or loss of the use of the PV System. The cost of all major equipment teardowns and overhauls and all capital improvements to the PV System shall be the responsibility of Customer. Operator shall promptly notify Customer in writing of any damage to the PV System or of any such teardowns and overhauls of major equipment or capital improvements that Operator believes are necessary or advisable.

Section 4.3 *Available Space.* Customer shall provide Operator adequate access and staging on the property in which the PV System is located for which the Operator to perform its obligations under this Agreement.

Section 4.4 *Communications Upkeep.* Customer shall be responsible for the minimum upkeep associated with maintaining the communication device between the PV System and the Performance Monitoring Website offered by Operator. Operator will provide service and labor associated with repairing any defects found in the communication device, however all (i) internet service fees, or (ii) cellular data provider fees will come at the sole cost to Customer, unless otherwise noted. If a separate defect occurs within the PV System while the communication device is not functioning due to Customer's failure to maintain its obligations pursuant to Section 4.4, all response time and obligations expected of Operator will be hereby waived. Notwithstanding the foregoing, for such PV Systems which do not have a communication device, or those in which the Customer has elected to not use their communication device, Operator will respond to remedy any defects as specified in **Appendix B** made apparent by Customer via phone call, email notification, or USPS mail service.

5. COMPENSATION AND PAYMENT

Section 5.1 *Payments.* As compensation to Operator for performance of the Services hereunder, Customer shall pay Operator the Annual Operating Fee (or a pro rata portion thereof in the case of a Contract Year of less than 12 months) paid in four equal quarterly increments payable within 15 days of the beginning of each calendar quarter. A "Contract Year" means: (i) for the first Contract Year, that period from the date of this Agreement to and including December 31 of such year; and (ii) for each Contract Year thereafter, the calendar year. In addition, Customer shall (at Customer's Option) either (i) reimburse Operator, in the manner and at the times specified in this Article 5, as modified from time to time, for all Reimbursable Costs (as defined below) or (ii) pay such Reimbursable Costs directly to the applicable third parties.

Section 5.2 *Annual Operating Fee.* Customer shall pay the Operator as specified below:

Customer initial one of the following forms of payment:

X Commercial System: Customer shall pay the Operator the sum of **\$19.82** per DC watt per year paid to Operator on a quarterly basis, increasing at a rate equal to the Consumer Price Index ("CPI") each year. Within thirty (30) days following the end of each fiscal quarter, Operator shall issue an invoice to Customer for the quarterly fee and Customer shall pay Operator the sum specified in such invoice and with respect to any disputed portion of such invoice, provide Operator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 13.

Customer Initial Here: _____

- **Residential System:** Customer shall pay the Operator the sum of \$98 per tracker per year paid to Operator for the full five (5) years upon execution of this agreement. Within thirty (30) days following the Effective Date of this Agreement, Operator shall issue an invoice to Customer for the Residential System fee and Customer shall pay Operation the sum specified in such invoice and with respect to any disputed portion of such invoice, provide Operation with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 13.

Customer Initial Here: __N/A_____

Section 5.3 *Interest.* Any amount owed to either party under this Agreement by the other party which remains unpaid more than thirty (30) days after the date such amount is due and payable shall begin to accrue interest at the rate of 1.5% commencing on the thirty-first (31st) day after such due date.

6. PROCEDURES, PLANS AND REPORTING

Section 6.1 *Reports and Operating Data.* Operator shall maintain records and reports documenting the provisions of the Services in such a manner and by such means as Operator, in its sole discretion, deems appropriate. Operator shall provide Customer with copies of such records and reports no later than thirty (30) days following receipt of Customer's written request.

7. LIMITATIONS ON AUTHORITY

Section 7.1 *General Limitations.* Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Customer in writing, Operator and any employee, representative, contractor or other agent of Operator are prohibited from entering into any contract or agreement on behalf of, in the name of, or purporting to bind Customer. Any agreement, contract, notice or other document that is expressly permitted under this Agreement (or under written approval of Customer) to be executed by Operator shall be executed by an authorized representative of Operator.

8. TERMINATION

Section 8.1 *Immediate Termination.* Subject to the terms of any Project Agreements, either party may terminate this Agreement immediately (i) upon the bankruptcy of the other party, or (ii) upon the occurrence of a Force Majeure Event that is not remedied within 120 days of its initial occurrence. If the Agreement is terminated pursuant to Section 8.1(i) or 8.1(ii), Operator shall be compensated for all Reimbursable Costs incurred by Operator to and including the date of termination. In addition, if the Agreement is terminated by Customer pursuant to Section 8.1(ii), Operator shall be paid all unpaid Annual Operating Fees to and including the date of termination.

Section 8.2 *Termination Upon Default.* If a party has materially breached any material obligation under this Agreement and such breach remains uncured for thirty (30)

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days (or, if not curable within thirty (30) days, within such period of time as is reasonably necessary, but in no event more than ninety (90) days, provided the breaching party diligently commences and pursues such cure and indemnifies the non-breaching party for all related costs) following receipt of notice of such breach, the non-breaching party may terminate this Agreement and pursue remedies available in this Agreement. If this Agreement is terminated by Customer pursuant to this Section 8.2, Operator shall be compensated for all Reimbursable Costs incurred by Operator and all unpaid Annual Operating Fees to and including the date of termination.

Section 8.3 *Termination for Convenience.* Customer shall have the right to terminate this Agreement at any time upon fifteen (15) days prior written notice to Operator. Operator shall refund a *pro rata* portion of Customer's payment for the quarter in which termination occurs, based on the number of remaining days in such quarter. Except as provided in Section 14.5, all obligations of the parties hereunder shall cease as of date of termination by Customer including but not limited to any production guarantee provided by Operator.

9. INSURANCE

Section 9.1 *Coverage.*

(a) **Commercial System:** For Commercial PV Systems, **Customer and Operator** shall each maintain the following insurance coverage in full force and effect throughout the Term either through insurance policies or through acceptable self-insured retentions: (a) Workers' compensation insurance as may be from time to time required under applicable state or federal law; (b) Commercial general liability insurance on an occurrence bases against claims for personal injury (including bodily injury and death) with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence; and (c) Automobile insurance against claims for personal injury (including bodily injury and death) or property damage, with commercially reasonable coverage and limits.

All policies of insurance required to be maintained pursuant to Section 9.1 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of the other party, without sixty (60) days prior written notice, except for termination for non-payment of premium which shall require ten (10) days prior written notice, to the other party.

(b) **Residential System:** For Residential PV Systems, **Operator** shall maintain the following insurance coverage in full force and effect throughout the Term either through insurance policies or through acceptable self-insured retentions: (a) Workers' compensation insurance as may be from time to time required under applicable state or federal law; (b) Commercial general liability insurance on an occurrence bases against claims for personal injury (including bodily injury or death) with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence; and (c) Automobile insurance claims for personal injury (including bodily injury and death) or property damage, with commercially reasonable coverage and limits. **Customer** shall maintain, at the minimum, the following insurance coverage in full force and effect throughout the

Term either through insurance policies or through acceptable self-insured retentions: (a) the minimum homeowner's, or other applicable General Liability Policy, required by the State of Vermont for all property, assets, or equipment owned by Customer.

All policies of insurance required to be maintained pursuant to Section 9.1 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of the other party, without sixty (60) days prior written notice, except for termination for non-payment of premium which shall require ten (10) days prior written notice, to the other party.

Section 9.2 *Certificates*. If requested, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

10. INDEMNIFICATION AND LIABILITIES

Section 10.1 Indemnification.

A. Indemnification by Operator. Operator shall indemnify, defend and hold harmless Customer, and its officers, directors, employees, agents, Affiliates and representatives (the "Customer Indemnified Parties"), from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any negligence, fraud or willful misconduct of Operator or anyone acting on Operator's behalf or under its instructions in connection with this Agreement and Operator's obligations thereunder.

B. Indemnification by Customer. Customer shall indemnify, defend and hold harmless Operator, and its officers, directors, employees, agents, Affiliates and representatives (the "Operator Indemnified Parties") from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any negligence, fraud or willful misconduct of Customer or anyone acting on Customer's behalf or under its instructions (other than Operator Indemnified Parties), in connection with this Agreement and Customer's obligations thereunder.

Section 10.2 *Environmental Liability*. Operator shall not be responsible for claims directly or indirectly related to hazardous materials present at the PV System before the date of this Agreement, except to the extent such materials were introduced onto the site by Operator or an affiliate of Operator. Customer shall defend, indemnify and hold Operator harmless against such claims, except to the extent such claims arise from Operator's grossly negligent or intentional acts. If action is required at the PV System to comply with any applicable environmental laws during the term of this Agreement, Customer shall be responsible for the costs of compliance.

11. LIMITATIONS OF LIABILITY

Section 11.1 Limitations of Liability.

A. Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, Operator and Customer each agree not to assert against the other any claim, demand or suit for consequential (including lost profits), incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.

B. Maximum Liability. Operator's maximum liability to Customer, or any other person or entity under this Agreement, with respect to the PV System shall be limited to the amount of the most recent Annual Operating Fee. However, the limits of liability under this Section 11.1 shall not apply with respect to claims for or arising out of any injury to or death of any person or loss or damage to property of any person or entity to the extent caused by Operator's gross negligence or willful misconduct.

C. Personal Liability Limited. Operator and Customer each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of Customer or Operator for the payment of any amounts due hereunder, or performance of any obligations hereunder. Operator shall look solely to the assets of Customer for the satisfaction of each and every remedy of Operator in the event of any breach by Customer. Customer shall look solely to the assets of Operator for the satisfaction of each and every remedy of Customer in the event of any breach by Operator.

D. Survival. The parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.

E. Exclusivity. The provisions of this Agreement constitute Operator's and Customer's exclusive liability, respectively, to each other, and Operator's and Customer's exclusive remedy, respectively, with respect to the Services to be performed hereunder and Customer hereby releases Operator performing Services hereunder, and Operator hereby releases Customer performing its obligations hereunder, from any further liability.

12. CONFIDENTIALITY

For purposes of this Agreement, “Confidential Information” means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving party before receipt from the disclosing party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving party; (iii) is received by the receiving party from a third party not known by the receiving party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving party without reference to information provided by the disclosing party.

Section 12.1 *Operator*. Operator agrees to hold in confidence, any Confidential Information supplied to Operator by Customer or others acting on its behalf. Operator further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

Section 12.2 *Customer*. Customer agrees to hold in confidence any Confidential Information supplied to Customer by Operator or others acting on its behalf, provided that Customer may disclose such information as is required by Lenders (including their agents and advisors), provided Lenders enter into appropriate nondisclosure agreements. Customer further agrees, to the extent requested by the supplier of such information, to require its members and contractors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof. In this Agreement, “Lender” means: (i) any person or entity that has made loans to Customer, its successors or permitted assigns for the financing or refinancing of the PV System (or any part thereof) or which loans are secured by the PV System (or any part thereof); (ii) the holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders; (iii) any person or entity that purchases the PV System in connection with a sale-leaseback or other lease arrangement in which Customer is the lessee of the PV System pursuant to a net lease.

Section 12.3 *Required Disclosure*. If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Article 12, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

Section 12.4 *Goodwill and Publicity*. Neither party shall use the name, trade name, service mark, or trademark of the other party in any promotional or advertising materials without the prior written consent of such other party. The parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement. No public announcements regarding the existence of this Agreement shall be made by either party without the prior consent of the other party.

Section 12.5 *Enforcement*. Each party agrees that the disclosing party would be irreparably injured by a breach of this Article 12 by the receiving party and that the disclosing party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. Such equitable relief shall not be deemed to be the exclusive remedy for a breach of this Article.

13. RESOLUTION OF DISPUTES

Section 13.1 *Resolution Through Discussions*. If any dispute or difference of any kind (a "Dispute") arises between Customer and Operator in connection with, or arising out of, this Agreement, the Customer and Operator within thirty (30) days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Customer and Operator shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within fifteen (15) Business Days, the Dispute shall be referred within five (5) Business Days of the lapse of the fifteen (15) Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Customer and Operator have had at least fifteen (15) Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may pursue any remedy available at law. In the event of any litigation arising out of this Agreement, the costs of litigation, including reasonable attorney's fees of the prevailing party shall be paid by the losing party.

14. MISCELLANEOUS PROVISIONS

Section 14.1 *Assignment*. Neither Customer nor Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned or delayed. No such consent shall be required, however, to assign, delegate, or otherwise dispose of any rights or obligations under this Agreement if made to a wholly-owned subsidiary of Operator. For purposes of this Agreement, the subcontracting of any portion of the obligations to be performed hereunder shall not be considered an assignment prohibited by this provision.

Section 14.2 *Access to PV System; Grant of License*. Customer hereby grants to Operator a free commercial license coterminous with the Term, containing all the rights

necessary for Operator to use and occupy portions of the PV System for any installation, operation and maintenance of the PV System pursuant to the terms of this Agreement, including staging areas, restrooms, parking, ingress and egress rights for Operator and its employees, contractors and subcontractors and access to perform their obligations under this Agreement. Customer covenants that Operator shall have access to the PV System during the Term.

Section 14.3 *Force Majeure*. A "Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of this Section. Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the PV System, which events were not pending on the date of this Agreement. If either Customer or Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 14.4 *Amendments*. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 14.5 *Survival*. Notwithstanding any provisions herein to the contrary, the obligations set forth in Articles 7, 10, 12 and 13, and the limitations of liabilities set forth in Article 11, shall survive in full force despite the expiration or termination of this Agreement.

Section 14.6 *No Waiver*. It is understood and agreed that any delay, waiver or omission by Customer or Operator with respect to enforcement of required performance

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by the other under this Agreement shall not be construed to be a waiver by Customer or Operator of any subsequent breach or default of the same or other required performance on the part of Customer or Operator.

Section 14.7 *Notices*. All legal and official notices (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address set forth in this **Appendix A**. All Notices shall be (i) delivered personally or (ii) sent by registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to be given upon receipt.

Section 14.8 *Counterparts*. The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

Section 14.9 *Governing Law; Jurisdiction*. This Agreement is executed and intended to be performed in Vermont and the laws of Vermont shall govern its construction, interpretation and effect. Any legal suit, action or proceeding arising out of this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Vermont located in Chittenden County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 14.10 *Partial Invalidity*. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the party which would have been benefited by the provision does not waive its unenforceability, then the parties shall negotiate in good faith to amend the Agreement to restore to the party that was the beneficiary of such unenforceable provision the benefits of such provision. If the parties are unable to agree upon an amendment that restores the party's benefits, the matter shall be resolved pursuant to the dispute resolution procedures otherwise applicable to this Agreement and a court or arbitration panel (whichever is appropriate) may grant any remedy or relief, including reformation of the Agreement, that it deems just and equitable to restore to the party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

Section 14.11 *Captions*. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

Section 14.12 *Further Assurances*. Each party agrees to execute and deliver all documents and instruments consistent herewith as the other may from time to time reasonably require for the purpose of confirming, evidencing, maintaining, protecting, enforcing, or defending such party's title to the rights granted or intended to be granted hereunder or are reasonably necessary and desirable to carry out the terms and intent of this Agreement.

Section 14.13 *Entire Agreement*. This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations (“Articles”) and its Appendices, which is incorporated and made part of this Agreement by this reference. If the terms and conditions of the Articles vary or are inconsistent with any portion of the Appendices, the terms of the Articles shall control. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties or commitments with respect to the subject matter of this Agreement that are not contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Town of Hinesburg

By:

Name: _____

Title: _____

AllEarth Renewables, Inc.

By:

Name: _____

Title: President/CEO

APPENDIX A

CUSTOMER SPECIFIC INFORMATION

1. Customer Name	Town of Hinesburg
2. Customer's Address	10632 VT Route 116, PO Box 133, Hinesburg, VT 05461
3. Effective Date	_____, 2016
4. Commercial or Residential	Commercial
5. PV System Size DC (For Commercial)	148.8kW DC
6. Number of Trackers (For Residential)	
7. Service Price-Commercial	\$19.82 per kW DC per year
8. Service Price-Residential	\$98 per tracker per year
9. Service Price Owed by Customer	\$2,949.22
10. Site ID	280
11. Device IDs	338, 344, 415, 416 , 418, 420, 433, 434, 435, 436, 437, 438, 439,440,441,442,443,444,445,446,447,448,449,450,452,453,454,455,456,457,484

12. Customer Email Address	hinesburgpw@gmavt.net
13. Customer Phone Number	802-482-2281 ext. 229
14. PV Warranty Expiration Date	November 2035
15. Tracker Warranty Expiration Date	November 2020
16. Inverter Warranty Expiration Date	November 2020

APPENDIX B

SCOPE OF SERVICES

Preventative Maintenance

Item Number	Service Description	Frequency/Response Time
1.	Remotely monitor all PV system data and communications including GPS, anemometer, production and any system errors.	Continuously
2.	Visual inspection of tracker mast, frame, and overall structure for damage or fatigue. Also confirm that base is stable to manufacturer's recommended standard.	1x per year
3.	Visual inspection of PV panels, load center and electrical systems including ensuring that PV wiring is secure, ground connections are intact, control box is sealed and dry, and conduit is undamaged.	1x per year
4.	Visual inspection of hydraulic systems including tilt cylinder, yaw motor, hoses and fittings. Check for leaks and top off hydraulic fluid.	1x per year
5.	Calibrate tracker alignment	1x per year
6.	Visual inspection of non-utility owned transformers and electrical panels.	1x per year

7.	Visual inspection of general site conditions. Document vegetation or environmental conditions impeding tracker movement or site access. Note any erosion or shading concerns.	1 x per year
8.	Record meter readings when applicable.	1 x per year
9.	Perform inverter preventive maintenance per manufacturer's operating guidelines such as cleaning cooling fins and screens.	1 x per year
10.	Perform upgrades to solar tracker per manufacturer recommendations	As needed
11.	Document annual inspection, copy of inspection available upon request	1 x per year

Issue Resolution

Item Number	Service Description	Frequency/Response Time
12.	Issue Resolution: After Operator arrives on site in response to a request received from Customer or an issue detected by PV System sensors, meters, or monitoring; Operator will::	Upon Occurrence
12 a	First perform troubleshooting on the issue. Following identification of the issue, if the defective component is under manufacturer's warranty; shall coordinate with component's manufacturer receive a replacement component. Operator shall install the new component to manufacturer's specifications with no extra cost to Customer.	Upon Occurrence

12 b	First perform troubleshooting on the issue. Following identification of the issue, if the defective component is not under any manufacturer’s warranty, a quote will be issued for necessary replacement or repair by Operator to Customer for a component of similar performance and standard deemed satisfactory by Operator or requested by Customer. Work will commence after quote approval from Customer. Notwithstanding the forgoing, Operator will, if reasonable, swap out the malfunctioning or defective component or spare with interim replacement components as soon as possible, such that the PV System is not disable while any permanent replacement component is sought.	Upon Occurrence
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Service Support and Monitoring

Item Number	Service Description	Frequency/Response Time
14.	Operator will make available telephone and web access support personnel (“ <u>Customer Service & Warranty Support Line</u> ”) at least 8 hours per weekday during normal business hours.	Ongoing
15.	As specified in Section 4.4, if communications device is properly functioning, Operator will make available to Customer access to Operator’s Performance Monitoring Website for use at Customer’s own leisure.	Ongoing

APPENDIX C
CLAIM FILING PROCESS

Customer Service & Warranty Support Line:

- A. Telephone Number: 1-802-872-9600 ext 127
- B. Email Contact: support@allearthrenewables.com

Claim Filing Process:

- a) For email claims, please:
 - 1. Include in subject line of email: [Site Name or ID] O&M Request
 - 2. Include in the body of the email:
 - i. A brief description of the problem.
 - ii. If known, the Device ID or Grid Number of the tracker(s) experiencing the problem.
 - iii. The individual(s) who should be notified of the repair once remedied.

For email claims, Operator shall:

- 1. Send email confirmation upon receipt of email validating claim has been logged.

2. Notify customer within one (1) business day upon validation of the defect being under warranty.
3. Engage with Customer to remedy the defect, and schedule the accommodating work associated with fixing the defect.
4. Schedule completion of all work, subject to (a) the availability of equipment, materials, or parts and (b) accessibility to the location of the PV System.

b) For phone claims, please:

1. Call within the hours of 8:30 to 5:30 Monday through Friday.
2. Have your site ID, site address, or Customer name readily available.

Operator shall assist in trouble shooting the problem upon receipt of call and if necessary schedule a convenient time for a repair to take place.