

## **POWER PURCHASE AGREEMENT**

By this **POWER PURCHASE AGREEMENT** (this “Agreement”) between **EARTH NRG SERVICES, LLC**, a Vermont limited liability company with its principal place of business at 94 Harvest Lane, Williston, Vermont 05495 (“Company”), and **\_\_TOWN OF WAITSFIELD,\_\_\_\_**, with an address of \_\_9 Bridge Street, Waitsfield, VT 05673\_\_ (“Customer”), the parties agree as follows:

1. Purchase of Electric Energy; Equipment. The Company shall be permitted to install and maintain a solar tracker, more specifically identified on Exhibit A attached hereto (the “Equipment”), at a mutually agreed upon location at the Customer’s premises. The Customer agrees to purchase all electric energy generated by the Equipment at the price specified in this Agreement. Customer agrees that it will cooperate with the Company and municipal and regulatory authorities in obtaining any and all necessary permits in connection with the installation of the Equipment. Any expenses associated with the procurement of such permits shall be the responsibility solely of the Company.

2. Term; Possession. This Agreement is for an initial term of five (5) years, commencing when the equipment is in operation, on \_\_\_\_\_, 20\_\_ (the “Initial Term”), unless it shall sooner terminate or be extended or renewed as provided herein. Thereafter, the term may be extended for up to two (2) additional five (5) year terms (the “Renewal Terms”) by Customer giving notice of its election to renew at least sixty (60) days prior to the expiration of the Initial Term or the first Renewal Term, as appropriate.

3. Ownership of Equipment. This Agreement creates an obligation to purchase electric energy, and shall not be deemed to effect an agreement for the sale of the Equipment. Company shall remain at all times the sole owner of the Equipment and, unless Customer exercises its option to purchase the Equipment at the conclusion of the Initial Term or thereafter pursuant to Section 7 hereof, nothing contained in this Agreement, or the payment of charges or other amounts pursuant to this Agreement, shall enable Customer to acquire any right, title, or other interest in the Equipment.

4. Charges; Credits. The charges for the electric energy shall be \$0.18/kWh based upon the actual amount of energy produced by the Equipment which the Customer uses. To simplify billing, the Customer will be charged, on a monthly basis, an estimate of how much power the Equipment will produce in a twelve (12) month period. For the electric energy generated by the Equipment listed on Exhibit A, the estimated annual kilowatt-hour energy production is 101,520 and the charges shall be Eighteen Thousand Two Hundred Seventy Three Dollars and Sixty Cents (\$18,273.60) per year, to be paid by Customer to Company in consecutive monthly installments of One Thousand Five Hundred Twenty Two Dollars and Eighty Cents (\$ 1,522.80), plus any applicable taxes, for each and every month of the Initial Term, due and payable on the first (1<sup>st</sup>) day of each month of the Initial Term (prorated for the first and any other partial month during the Term in the event the Agreement commences on a day other than the first (1<sup>st</sup>) day of the month). In the event the 1<sup>st</sup> day of the month is a weekend or holiday, the payment will be due on the next business day. Each year, on the anniversary date of this Agreement, Company will compare the estimated kilowatt-hour production to the actual production. If, under normal operating conditions, the estimated kilowatt-hours produced for that year differs from the actual by 10% or more, the Company will adjust the estimate up or down, as appropriate, and increase or decrease the monthly charges, as appropriate, to more closely reflect the actual production. If, at the end of the Initial Term, the Equipment produced less power over the Initial Term than estimated, the Company will issue a credit to the Customer’s

account (or, in the event the Company is taking back the Equipment, a refund to Customer) for the difference between the estimated production and actual production at the rate of \$0.18/kWh. If the Equipment produced more power over the Initial Term than estimated, the Customer will be charged the differential between the estimated production and actual production at the rate of \$0.18/kWh. In the event the Customer exercises its option to renew pursuant to Section 2, the charges during each and every month of either Renewal Term will be calculated in the same manner, with a new rate derived at the commencement of such Renewal Term consistent with the then current residential rates charged by the Customer's utility plus \$0.04/kWh.

5. Payment. Customer will have the option of having payment of charges automatically be withdrawn monthly by the Company through Automatic Cash Handling (ACH) or through Credit Card. If ACH option is selected, payment shall be made consistent with the instructions indicated on the Automatic Payment Authorization in the form of Exhibit C attached hereto. If Credit Card is selected, payment shall be made consistent with the instructions indicated on the Credit Card Payment Authorization in the form of Exhibit D attached hereto.

Select Option (initial in space): \_\_\_\_\_ACH, \_\_\_\_\_Credit Card

6. Up-Front Payment. Upon execution of this Agreement, the Customer shall pay Company the sum of One Thousand and 00/100 Dollars (\$1,000.00) (the "Up-Front Payment"). In the event the Customer exercises its option to purchase the Equipment as specified in Section 7, the Up-Front Payment may be applied to the purchase price. **THE UP-FRONT PAYMENT MAY NOT BE USED BY CUSTOMER FOR PAYMENT OF ANY CHARGES, SUMS, OR OTHER OBLIGATIONS UNDER THIS AGREEMENT.**

7. Option to Purchase Equipment. If the Customer is not then in default and has performed all of the terms and conditions of this Agreement, the Customer shall have the option to purchase the Equipment at the end of the Initial Term or, if this Agreement is renewed, on any anniversary date of this Agreement thereafter during such Renewal Term. This option may be exercised by delivery of written notice to Company at least sixty (60) days prior to the expiration of either the Initial Term or the anniversary date of the Agreement during the Renewal Term, as applicable. The Customer may purchase the Equipment for the estimated fair market value as set forth on Exhibit B. Such estimate of fair market value shall be based on the Company's analysis of what it reasonably believes will be the replacement value of such Equipment at the end of the Initial Term and the Company's expense to remove the equipment. If there is evidence that the amount in Exhibit B does not represent the fair market value at the time of purchase, the parties will negotiate a fair market value price. Company shall apply the Up-Front Payment provided by the Customer pursuant to Section 6 towards the purchase price if Customer exercises the option to purchase immediately upon the conclusion of the Initial Term. If this agreement terminates and Customer has not exercised its option to purchase Equipment as provided for hereunder, the Company will remove the Equipment as provided in Section 15.

8. Use and Care of Equipment. Customer shall take reasonable measures to ensure that the Equipment will not be affected or damaged such that it cannot properly function. In the event Customer has actual knowledge or reasonably suspects that the Equipment is not functioning properly or has been damaged, Customer must immediately notify the Company. Customer shall assure that any trees, shrubs, or other objects that might shade the tracker will be trimmed and maintained to appear in the same manner as when the tracker was initially installed. If Company

determines that shading on the tracker has increased from when the tracker was installed, Company has the right to reduce any credit the Customer may be entitled to pursuant to Section 4, such reduction to account for the decreased electrical production.

9. Inspection; Maintenance and Repair. Company shall have the right, upon reasonable notice to Customer, and at the Company's sole cost, to enter the premises where the Equipment is located for the purpose of inspecting it, observing its use, maintenance, operation, or for removing or replacing it, and to perform any act related to the safety, protection or preservation of the Equipment.

10. Insurance. Company shall procure and maintain, at Company's sole cost and expense, insurance that covers all damage to the Equipment. Customer shall procure and maintain, at Customer's sole cost and expense, insurance that covers all damage to Customer's premises during the term of this Agreement, provided such damage was not caused by the gross negligence of the Company. Customer's insurance shall also provide for appropriate liability coverage.

11. Default. In the event Customer fails to perform any of the terms, obligations, conditions and covenants contained in this Agreement required of Customer, or if any proceeding in bankruptcy or insolvency is instituted by or against Customer, or if Customer makes an attempt to sell, secure, or convert or remove the Equipment, or if any execution or attachment is levied on the Equipment, or the Equipment is encumbered in any way, or, subject to the terms of Section 14, the Customer sells the premises upon which the Equipment is located, or if at any time in Company's judgment its rights in the Equipment shall be threatened or rendered insecure, Customer shall be deemed to be in default under this Agreement, and Company shall have the right to exercise any and all remedies allowed by law, including, without limitation, the following:

(a) Company may remove and retain the Equipment without demand or legal process, free of all rights of Customer; however Company will notify Customer in writing thirty (30) days prior to removing the Equipment in which case Customer authorizes Company or its agents to enter upon the premises where the Equipment is located for the sole purpose of repossessing the same. Company will advise Customer of the date and time it will repossess the Equipment, whereupon all rights of Customer in the Equipment shall terminate immediately.

(b) Company may institute any legal or equitable action deemed necessary by Company seeking any remedy available to Company, in law or in equity, including, but not limited to, any or all of the relief outlined in (a) above; provided, however, that Company's damages for Customer's default as provided herein shall be limited to the charges due from Customer pursuant to Section 4 for the balance of the Initial Term or Renewal Term, as applicable.

(c) Company may disable the Equipment such that it shall not provide electric energy to the Customer until such time as the default has been cured; however Company will notify Customer in writing thirty (30) days prior to disabling the Equipment.

12. Waiver. Forbearance on the part of Company in exercising any right or remedy available under this Agreement upon Customer's breach of the terms, covenants and conditions of this Agreement, or Company's failure to demand the punctual performance thereof shall not be deemed a waiver: (a) of such right or remedy; (b) of the requirement of punctual performance, or (c) of any subsequent breach or default on the part of Customer.

13. Failure to Provide Service. In the event Company becomes aware that the Equipment is not supplying the electric energy as provided for in this Agreement, it shall have the opportunity to make any necessary repairs to the Equipment as set forth in Section 9. Should the Company's efforts to restore electric energy be unsuccessful such that the Equipment fails to produce power for two (2) consecutive months, the Customer may terminate this Agreement and the Company shall remove the Equipment at its sole cost and expense and will return the Customer's up-Front Payment within 30 days.

14. Sale of Premises. In the event the Customer intends to sell the premises where the Equipment is located during the term of this Agreement, it must notify Company in writing of such intention no less than thirty (30) days prior to the closing of such sale. The sale of the premises shall constitute a default pursuant to Section 11, unless (a) the Company and new owner agree that this Agreement shall be assigned to the new owner under the same terms and conditions, such consent not to be unreasonably withheld by Company, or (b) Customer agrees to enter into a new original Agreement with Company for the same Equipment at a new location within the State of Vermont. Customer shall be responsible for all costs associated with relocating the Equipment. In the event the new owner assumes this Agreement as provided herein, the new owner shall be entitled to apply Customer's Up-Front Payment to reduce the purchase price of the Equipment should the new owner exercise the option to purchase the Equipment immediately upon the conclusion of the Initial Term pursuant to Section 7.

15. Removal of Equipment. In the event the Equipment is removed from the premises by Company, the Customer forfeits its Up-Front Payment and the Company shall return the premises to a condition reasonably similar to the condition of the premises at the time when the Equipment was initially installed. The Customer shall notify the Company within five (5) days of Equipment removal if it perceives any deficiencies in restoration.

16. Monitoring Equipment Performance. Customer acknowledges that Company generally monitors the performance of and updates firmware on the Equipment through the use of the Customer's internet service via an Ethernet connection. Accordingly, Customer agrees to allow Company to have access to Customer's available internet service via an Ethernet connection for the sole purpose of monitoring the performance of and updating firmware on the Equipment. In the event that Customer opts not to allow Company access to Customer's internet service or if Customer does not have internet service suitable for Company's purposes, Customer agrees to provide kilowatt-hour information (read from the meter on the Equipment) on a quarterly basis to Company to ensure the Equipment is operating correctly. Failure to provide such information may result in Customer paying for electricity that was not delivered to Customer if the Equipment fails. Company will not share with third parties any information concerning Customer's use of the Equipment ("Information"), except as follows: (i) when third parties provide necessary technical services and require Information to provide those services; (ii) to collect and combine Information with data Company obtains from other users and to use all of that data to produce and use nonpersonal aggregate statistical information; (iii) if required by applicable law or pursuant to subpoenas, court orders or legal process; or (iv) as deemed necessary, in Company's discretion, to protect the legal rights or the property of Company, or to prevent personal injury.

17. Green Attributes. During the term of this Agreement, the Company will retain all rights to the green attributes of the Equipment including all Renewable Energy Credits ("REC"). The Company agrees that it will not sell or otherwise pledge any of the green attributes or RECs during the term of

the Agreement. Accordingly, the Customer shall be free to make claims that they are receiving renewable power from the Equipment.

18. Notices. Any notice to be given hereunder shall be deemed given when sent by registered or certified mail to Company at 94 Harvest Lane, Williston, VT 05495 and to Customer at \_Town of Waitsfield, Attn: Town Clerk, 9 Bridge Street, Waitsfield, VT 05673\_.

19. Assignment or Subleasing. Customer shall not assign, sublet, transfer, pledge, or mortgage any of its rights under this Agreement or to any of the Equipment without the prior written consent of Company.

20. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

21. Governing Law; Jurisdiction. Any action to enforce this Agreement or any breach or alleged breach of this Agreement and to determine the rights and duties arising from this Agreement may be brought only in the courts of the State of Vermont. The parties expressly consent to the jurisdiction of the federal and state courts of the State of Vermont and agree that this Agreement shall be construed, performed, and interpreted in accordance with, and governed by, the laws of the State of Vermont.

22. Entire Agreement. This Agreement contains the entire agreement between the parties, and shall be binding on Company and Customer, and their respective successors and assigns. This Agreement may not be amended or altered except by a written agreement signed by both parties.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the date(s) set forth below.

**EARTH NRG SERVICES, LLC**

By \_\_\_\_\_  
Its Duly Authorized Agent

Dated: \_\_\_\_\_

**CUSTOMER**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT A**  
**EQUIPMENT**

**Serial Number:**

## **EXHIBIT B**

### **Equipment Purchase Price**

**The estimated Fair Market Value at the end of the first term is \$167,400.00.**

**EXHIBIT C**

**FORM OF AUTOMATIC PAYMENT AUTHORIZATION**

**Please complete the following information to initiate the Automatic Cash Handling (ACH) method of payment.**

**Model # of Tracker: 4000**

**Quantity of Tracker(s): 18**

**PPA Charge (\$/mo): \$1,522.80**

**ACCOUNT HOLDER INFORMATION**

**Name:**

**Address:**

**FINANCIAL INSTITUTION INFORMATION**

**Institution Name:**

**Branch Location:**

**Address:**

**Transit/Routing Number:**

**Account Number:**

**Type of Account (Checking/Savings):**

**Account Holder Name as it Appears on Account:**

- **Please attach a voided check or a savings deposit form from the account**

I authorize **EARTH NRG SERVICES, LLC** to instruct my financial institution to deduct my Agreement payments from the account designated above on the first day (1<sup>st</sup>) of each month or the first business day thereafter. I authorize my financial institution to debit the amount of my Agreement payments from my designated account. This authorization shall remain in effect until the Agreement terminates. My notification must afford **EARTH NRG SERVICES, LLC** and my financial institution reasonable time to act on it.

**Signature:**

**Date:**

**Print Name:**

