

## SOLAR ENERGY SERVICES AGREEMENT

(Host Customer)

This Solar Energy Services Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 2014 (the "Effective Date"), by and between The Town of Waitsfield VT, ("Service Provider") and the Waitsfield Town School District ("Customer"). Service Provider and Customer shall be referred to herein, each, as a "Party" and collectively, as the "Parties."

### RECITALS

**WHEREAS**, Customer desires to increase its use of renewable power through net metering and to promote the generation of renewable energy from solar photovoltaic facilities constructed in Vermont; and

**WHEREAS**, Service Provider has constructed a solar photovoltaic electricity generating facility with a nominal capacity of approximately 102 kW (DC) on Service Provider's premises as described on Exhibit A hereto (the "System") within the service territory of Green Mountain Power Corporation (the "Utility"). Commissioning of the System occurred on \_\_\_\_\_, 2014 (the "Estimated Commissioning Date"); and

**WHEREAS**, Service Provider has secured from the Vermont Public Service Board (the "PSB") a Certificate of Public Good (the "CPG") to construct and install the System and operate the System as a group net-metering system pursuant to 30 V.S.A. § 219a and § 248 (the "Group Net Metering System"). Service Provider will be a member of the Group Net Metering System will be the administrator for the Group Net Metering System; and

**WHEREAS**, following the commissioning of the System, the Utility will allocate to the designated electric meters of the members of the Group Net Metering System (each, a "Group Member") credits for the kilowatt hours of electricity output generated by the System. Credit for electricity output generated by the System shall be allocated among the Group Members' electricity meters pursuant to allocation instructions provided to the Utility by the administrator. Each kilowatt hour allocated to a designated electric meter of a Group Member will result in a corresponding monetary credit against the Utility charges for such meter (such monetary credits attributable to output of the System, "Net Metering Credits"); and

**WHEREAS**, the Customer desires to engage the services of the Service Provider, become a Group Member, and receive the benefits of Net Metering Credits attributable to the electricity output of the System pursuant to the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE**, in consideration of the agreements and covenants hereinafter set forth, the Parties hereby covenant and agree as follows:

### ARTICLE I DEFINITIONS

Capitalized terms used herein but not otherwise defined herein shall have the following meanings:

"Business Day" means any day other than Saturday, Sunday or a day on which the Federal Reserve Bank is authorized or required to be closed.

"Customer Meters" means all Meters of the Customer or Meters included at Customer's request or direction in the Net Metering Arrangement contemplated by this Agreement.

Chris Badger 12/4/2014 12:10 PM

Deleted: Warren

Chris Badger 12/4/2014 12:10 PM

Deleted: Warren

Chris Badger 12/4/2014 12:12 PM

Deleted: 162

Chris Badger 12/4/2014 12:12 PM

Deleted: AC

“Environmental Credits” means any and all mandatory or voluntary federal, state or local renewable energy certificates or emissions credits, rebates, subsidies, incentive payments or any other green tags, tax credits, grants or other benefits or incentives related to the environmental characteristics of the System, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the date hereof or enacted thereafter.

“Lender” or “Lenders” means, either in the singular or collectively, as applicable, the entities lending money, extending credit or providing debt, equity or lease financing for or secured by the System and any trustee or agent acting on any such Person’s behalf.

“Meters” shall mean each of the designated electric meters of the members of the Group Net Metering System to which credit for electricity generated by the System is allocated from time to time, including each of the electricity meters listed in Exhibit C hereto.

“Net Metering Arrangements” means an agreement between one or more electric utility customers, located within the same electric company service territory, to combine electricity in order to share and allocate credits for the electricity generated by a qualified renewable-generation facility pursuant to 30 V.S.A. § 219.

“Output” means all of the electricity produced by the System and delivered to the Host Utility, measured in kilowatt hours.

“Premises” means any and all real property belonging to the Service Provider within the boundaries of which the Site and the System shall be located.

“Service Commencement Date” has the meaning given to such term in Section 2.4.

“Services” means any and all of the services provided by Service Provider to Customer pursuant to this Agreement, including admitting the Customer as a Group Member, administration of the Group Net Metering Arrangement contemplated hereby, production and delivery of Output by the System to the Utility, and the allocation of Net Metering Credits to the designated Customer Meters.

“Site” means the areas on the Premises on which the Service Provider will install the System, as described in Exhibit A-1 hereto.

“System” shall have the meaning given to such term in the recitals hereto, and shall include all equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring and other components included therein. The System excludes any part of the Customer’s existing electrical systems that are owned or leased, operated, maintained and controlled by Customer, and interconnected with the Utility.

## **ARTICLE II TERM AND SCHEDULE**

Section 2.1 Service Term. The “Service Term” shall be the initial period of 20 years commencing on the Service Commencement Date, unless terminated earlier in accordance with the terms and conditions of this Agreement. If the Parties mutually agree, the Service Term may be extended by one additional 5-year term. The term of this Agreement shall commence on the Effective Date and terminate on the expiration of the Service Term, unless terminated earlier in accordance with the terms and conditions of this Agreement.

Section 2.2 Schedule. Provider has obtained all permits and approvals required for the construction, installation, start-up and operation of the System, including the CPG (collectively, “Permits”), and has completed the commissioning of the System on or before the Estimated Commissioning Date.

Chris Badger 11/13/2014 4:41 PM

**Comment [1]:** Should review with both town and school as whether this length of an agreement can be accommodated and whether it is prudent. Normally these agreements are set to the length of the proposed life of the loan/life of the system to increase the degree of certainty for the purchasing of the power. However, in this case, as the town has a new town office coming and many other variables that come into play, I would suggest a shorter term for this agreement. 5-10 years unless it is somehow stipulated in the terms of our loan or agreement with CEDF for the grant.

Section 2.3 Construction Preconditions. Notwithstanding the foregoing or anything herein to the contrary, Service Provider shall have no obligation to commence operating the System, unless the following conditions precedent (collectively, the “Construction Preconditions”) have been satisfied or waived by Service Provider on or prior to \_\_\_\_\_, 2014 (“Conditional Early Termination Date”):

(a) Service Provider shall have obtained all Permits that the Service Provider, in its Sole discretion, deems necessary or desirable: (1) for the construction, installation and operation of the System, (2) for the provision of Services to the Customer under this Agreement, and (3) for the Net Metering Arrangement contemplated hereby, and all such approvals, permits, licenses and authorizations shall be in force and effect.

(b) Provider shall have obtained any necessary easements, leases, licenses, consents and approvals and property and other rights that Service Provider, in its Sole discretion, deems necessary or desirable for the construction, installation, operation and maintenance of the System.

(c) Service Provider shall have obtained all funding and financing commitments for the System from one or more third parties on terms acceptable to Service Provider, in its sole discretion.

(d) Service Provider shall have completed its due diligence review relating to Customer, the Premises and the Site, including legal, accounting and technical reviews, and the results of such review shall be satisfactory to Service Provider in its sole discretion. Such due diligence review may include visits by Service Provider to the Premises, meetings between Service Provider’s management and Customer’s management, and other due diligence activities reasonably deemed necessary by Service Provider.

Section 2.4 Service Commencement Date. Service Provider will give Customer not less than three (3) Business Days’ prior notice that the System will begin delivery of Output to the Utility. The first date after such notice on which the System actually delivers Output to the Utility, which subsequently results in Net Metering Credits for such Output being allocated by the Utility to Customer’s electricity bills, is referred to herein as the “Service Commencement Date.”

Section 2.5 Optional Termination Rights. If (i) the Construction Preconditions are not satisfied or waived on or prior to the Conditional Early Termination Date and construction has not commenced, or if (b) the Service Commencement Date does not occur within one hundred eighty (180) days of the date of this Agreement, then the Service Provider and Customer shall each have the option to terminate this Agreement in accordance with and subject to the terms and conditions of Section 11.1 hereof. The foregoing termination right shall be Customer’s sole remedy for any breach of Section 2.4 hereof, and in no event shall Service Provider be liable to Customer for any damages or losses of any kind arising out of any failure to obtain or maintain any necessary Permit or any failure to complete the commissioning of the System or all or any aspect of the construction or installation of the System.

### **ARTICLE III**

#### **PERMITTING, CONSTRUCTION AND INSTALLATION OF SYSTEM**

Section 3.1 Location of System. The System will be located on the Site, as further described in Exhibit A-1 hereto. Service Provider shall furnish Customer with notice of any changes to the location of the Site or installation of any System component outside of the Site.

Section 3.2 Permitting. Service Provider shall be responsible for obtaining all Permits required for the construction, installation, start-up and operation of the System and the performance of the Service Provider’s obligations hereunder.

Section 3.3 Construction of System; Installation Plan. The installation, construction, servicing and testing of the System shall be consistent with the technical specifications set forth in Exhibit A, and be performed in a good and workmanlike manner and in accordance with applicable laws and regulations.

Section 3.4 Construction Contractors. Service Provider shall have the right to enter into contracts with contractors, installers, equipment providers and other third parties as Service Provider shall select in its discretion to perform its obligations under this Agreement, provided however that the use of such third parties shall not relieve Service Provider of its obligations and responsibilities hereunder.

Section 3.5 Interconnection. Service Provider shall be responsible for the interconnection of the System and shall be solely responsible for all costs, equipment, maintenance, repairs and inspections associated therewith. Service Provider shall cause to have installed one or more Meters at the Site, which shall measure the electricity generated by the System and the electricity usage of the System (the "Service Provider Meters").

#### **ARTICLE IV**

##### **SYSTEM OUTPUT AND ALLOCATION**

Section 4.1 Allocation Instructions. Service Provider shall instruct the Utility to allocate credit for the Output of the System to the Customer Meters in accordance with the allocation instructions attached hereto as Exhibit C (the "Allocation Instructions"). Service Provider shall have the right to: (a) designate from time to time, in its sole discretion, the administrator and designated person (as defined in 30 V.S.A. § 219a(g)(1)) for this Group Net Metering System (the "Administrator"); and (b) change, amend or modify the Allocation Instructions to maximize the monetary value of the Net Metering Credits or the benefits to the Customer under the Allocation Instructions. Upon Service Provider's request from time to time during the term of this Agreement, Customer shall cooperate with Service Provider to identify the optimum allocation of the Output of the System that maximizes the monetary value of the Net Metering Credits or benefits to the Customer.

Section 4.2 System Output. During the Service Term, the System is estimated to have an approximate annual generating capacity of 102,106 kWh. Customer acknowledges and agrees that: (i) the Output from the System will vary from time to time; (ii) Service Provider is not providing any warranty or guarantee of any particular level of Output of the System; (iii) during any Utility billing period during the term of this Agreement, Customer's Utility charges for the Customer Meters may exceed the Net Metering Credits attributable to Output of the System for such billing period (for example, if Customer's electricity usage exceeds the Output of the System); (iv) Customer is solely responsible, at its cost and expense and through its Utility, for paying any and all Utility charges in excess of the Net Metering Credits allocated to Customer or when the System is not in operation; and (iv) Service Provider is not a utility or an electricity provider and does not assume any regulatory or statutory obligations of a utility or electricity provider.

Section 4.3 Interruptions Are Expected. The Parties acknowledge and understand that the System consists of intermittent generation facilities, and will not provide an uninterrupted supply of electricity or Output. Utility service shall continue to be provided by Utility to the Customer under applicable rules and tariffs. This Agreement provides no warranty or guarantee to Customer with respect to the supply of electricity or Output. Service Provider shall not be liable for any damages caused by or resulting from any interruption in the provision of electricity or Output during the Term, nor shall Service Provider be responsible for the cost of alternative supplies of electricity during any interruption.

Section 4.4 Service Provider's Interruption of Output. Notwithstanding anything to the contrary herein, Service Provider shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output, or at the direction of authorized

Chris Badger 12/4/2014 12:16 PM  
Deleted: \_\_\_\_\_

Governmental Authorities or electric utilities. Other than in the event of unexpected interruptions or in the event of an emergency, Service Provider shall give Customer notice at least five (5) Business Days prior to an interruption of Output deliveries and an estimate of the expected duration of the interruption.

## **ARTICLE V SERVICE COSTS, INVOICING AND PAYMENT**

Section 5.1 Service Price. Customer agrees to pay Service Provider the price for Services set forth on Exhibit B hereto, which is incorporated herein by reference and shall have the same force and effect as though fully set forth herein in its entirety (the “Service Price”).

Section 5.2 Billing. The Customer will be charged on a monthly basis starting on the Service Commencement Date, a flat amount that is equal to the Estimated Monthly Service Price (as defined in Exhibit B hereto), which amount shall be prorated for the first month. The monthly payment will be due and payable on the first (1st) business day of each month. Service Provider shall conduct an annual audit of System Output upon the anniversary of the Service Commencement Date and shall reconcile the Customer’s billing account to actual electricity produced.

Section 5.3 Payments. Customer shall pay the full amount of each such invoice pursuant to Exhibit B promptly upon receipt.

Section 5.4 Late Fees. If any part of a monthly payment is not made by Customer within twenty (20) days following the date of receipt of an invoice, Customer agrees to pay Service Provider a late fee that shall accrue on the basis of the lesser of one percent (1%) per month or the highest rate permissible under applicable law, in either case, compounded monthly (“Late Fee”). The Late Fee shall be imposed upon the unpaid balance, including any prior unpaid late payment charges and shall be assessed on such unpaid balances once each month after it is initially imposed on an unpaid balance, so long as a balance remains unpaid.

Section 5.5 Monthly Reports; System Monitoring. Customer shall cooperate with Service Provider to obtain monthly reports from the Utility explaining how System output and Net Metering Credits were allocated among the Meters, how such Net Metering Credits were valued by the Utility, and if there are excess Net Metering Credits available for use in future months. Service Provider shall use data acquisition firmware and an Ethernet connection to monitor the performance of the System. Accordingly, Service Provider agrees that it shall provide Customer access to all System performance data.

## **ARTICLE VI ENVIRONMENTAL CREDITS AND SYSTEM ATTRIBUTES**

Section 6.1 Environmental Credits. All Environmental Credits shall be the property of Service Provider its affiliates and assigns. Service Provider shall have the exclusive right to sell, transfer, grant, convey or assign the Environmental Credits to any other person, in Service Provider’s sole discretion. Customer shall fully cooperate with Service Provider and its affiliates and assigns in the execution of any document or task related thereto, including signing authorizations, transfers or other documents needed to obtain or transfer any Environmental Credits, including performance based incentives payments to be made under any incentive program offered by a utility company, a third-party provider or the State of Vermont to or at the direction of Service Provider or as part of a sale, transfer, grant, conveyance, assignment or disposition of Service Provider’s interest in the Environmental Credits from time to time.

## **ARTICLE VII REPRESENTATIONS**

Section 7.1 Customer Representations. Customer hereby represents and warrants to Service Provider as of the Effective Date that: (i) Customer is a duly organized, valid and existing entity and in

Chris Badger 11/13/2014 4:11 PM

**Comment [2]:** Why isn't the school simply repaying the amount credited on the monthly electric bill? Otherwise a true up will be required at year end...which seems to be what is stated in the last sentence of the paragraph.

Chris Badger 11/13/2014 4:08 PM

**Comment [3]:** Does this align with the school's normal billing cycle?

Chris Badger 11/13/2014 4:12 PM

**Comment [4]:** Stated above as the 1<sup>st</sup> business day of each month.

Chris Badger 11/13/2014 4:15 PM

**Comment [5]:** As the Town is still the prime customer and lead for the Group Net Metered System, I believe the town (Valerie) should be receiving this report. Alternatively requesting copies of the school's monthly electric bill would also provide this record.

Chris Badger 11/13/2014 4:16 PM

**Comment [6]:** Due to the nature of the CEDF grant, this is not the case. We cannot transfer ownership or sell the environmental credits.

good standing under the laws of its state of organization and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (ii) Customer has all requisite power and (including all necessary corporate action, if applicable) to enter into this Agreement and any other documents or agreements entered into in connection with this Agreement, to perform its obligations thereunder and to consummate the transactions contemplated thereby and such actions do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Customer; (iii) all government approvals necessary for Customer's execution, delivery and performance of its obligations under this Agreement and any other documents or agreements entered into in connection with this Agreement have been obtained and are in full force and effect; (iv) this Agreement and any other documents or agreements entered into in connection with this Agreement are legal, valid and binding obligations of Customer enforceable against it in accordance with their respective terms except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceedings therefor may be brought; and (v) Customer is a customer of the Utility in good standing and each of the Customer Meters is subject to the Utility's demand-billed or time-of-use rate schedule.

#### Section 7.2 Service Provider Representations.

(a) Service Provider represents and warrants to Customer as of the Effective Date that (i) Service Provider is duly organized, validly existing and in good standing under the laws of the state of its organization, and Service Provider has all requisite power and authority (including all necessary corporate action) to enter into this Agreement and any other documents or agreements entered into in connection with this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated thereby and such actions do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Service Provider; (ii) all government approvals necessary for Service Provider's execution, delivery and performance of its obligations under this Agreement and any other documents or agreements entered into in connection with this Agreement have been obtained and are in full force and effect; (iii) this Agreement and any other documents or agreements entered into in connection with this Agreement are legal, valid and binding obligations of Service Provider enforceable against it in accordance with their respective terms except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceedings therefor may be brought.

(b) CUSTOMER ACKNOWLEDGES AND AGREES THAT SERVICE PROVIDER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THE SYSTEM OR THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN CONTRACT BETWEEN SERVICE PROVIDER AND CUSTOMER, EXCEPT AS EXPRESSLY PROVIDED HEREIN. SERVICE PROVIDER SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Chris Badger 11/13/2014 4:19 PM

**Comment [7]:** These sections may want to be reviewed with respect to the nature of the Town of Waitsfield and the school and any statements/obligations/claims it can legally enter in to.

## **ARTICLE VIII**

### **COVENANTS AND AGREEMENTS OF THE PARTIES**

Section 8.1 Operation and Maintenance. Service Provider shall be solely responsible for the operation and maintenance of the System during the Service Term, and shall comply with and operate the System in accordance with all applicable laws, regulations, orders, Permits, approvals and ordinances in all material respects. Service Provider may assign or transfer its responsibilities for the operation and maintenance of the System to one or more third parties and shall have the right to enter into contracts, including an Operation and Maintenance Agreement, with any person or other service or material providers as Service Provider shall select in its discretion to perform its operation and maintenance obligations under this Agreement.

Section 8.2 Ownership of the System. Throughout the Term of this Agreement, Service Provider, together with its successors and assigns will be the legal and beneficial owner of the System. Nothing in this Agreement shall have the effect of passing any right, title or interest in or to the System or any Environmental Credits, or any portion thereof, to the Customer or any other Person. Customer will not take any position inconsistent with Service Provider's ownership of the System. Customer acknowledges and agrees that other than the Services expressly provided herein and the Purchase Option provided herein, Customer has no right, title or interest in the System and Service Provider is the exclusive custodian and operator of the System.

Section 8.3 Notice of Malfunction; Non-Interference. Customer shall notify Service Provider promptly upon Customer's actual knowledge of (a) any material malfunction of or damage to the System and (b) any interruption or alteration of the electricity generation and Output of the System. Customer shall not adjust, modify, maintain, alter, service or in any way unreasonably interfere with the System, except as authorized in writing by Service Provider.

Section 8.4 Cooperation Regarding Approvals. The Parties shall cooperate and assist one another in procuring and maintaining all necessary Permits, approvals and consents described in this Agreement or such other cooperation as is required to effect the purposes of this Agreement, including but not limited to the prompt execution and delivery of any documents necessary therefore.

Section 8.5 Reports. If requested by Service Provider, Customer shall provide Service Provider with copies of all Utility bills and invoices and all other written communications received by the Customer from the Utility with respect to the Customer's Meters.

Section 8.6 Exclusivity. The Customer shall not enter into a Group Net Metering Arrangement with any other person or entity during the Term with respect to any Customer Meter.

Section 8.7 Utility. Customer shall remain a customer of the Utility in good standing at all times during the Term hereof, and shall not take any action to cause any Meter to be disconnected or removed from the Utility's service without Service Provider's prior written consent. Customer shall pay its obligations to the Utility as the same become due and payable at all times during the Term.

## **ARTICLE IX**

### **TERMINATION AND PARTIES' RIGHTS**

Section 9.1 Termination for Failure to Meet Conditions Precedent. If (i) the Construction Preconditions are not satisfied or waived on or prior to the Conditional Early Termination Date and construction has not commenced, or if (b) the Service Commencement Date does not occur within one hundred eighty (180) days of the date of this Agreement, then the Service Provider and Customer shall each have the option to terminate this Agreement upon thirty (30) days prior written notice to the other party if such conditions are not satisfied, waived or cured prior to the expiration of such thirty (30) day period.

Section 9.2 Termination for Event of Default. Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the option, but not the obligation, to terminate this Agreement upon providing written notice of termination to the defaulting Party.

Section 9.3 Rights and Remedies.

(a) Upon the termination of this Agreement by Service Provider due an Event of Default by Customer, Customer shall pay to Service Provider all amounts due and payable to Service Provider hereunder as of the termination date, which amounts shall be due and payable to Service Provider within ten (10) Business Days. At all times following an Event of Default by Customer until the termination of this Agreement by Service Provider, Service Provider shall have the right, but not the obligation, to deliver the Services to Customer in accordance with this Agreement, and Customer shall be obligated to receive and pay for such Services in accordance with this Agreement.

(b) All payment obligations of Customer, and all rights and remedies of the Parties hereto, arising prior to the termination of this Agreement shall survive the termination thereof.

## **ARTICLE X INDEMNIFICATION**

Section 10.1 Mutual General Indemnity. To the maximum extent permitted by law, each Party hereto (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents, assigns, independent contractors and employees of such other Party, and the affiliates of the same (collectively, the “Indemnified Parties”), from and against all loss, damage, expense and liability, (including reasonable attorney’s fees) incurred by any Indemnified Party in connection or otherwise arising out of: (a) personal injury, death, property damage arising from the negligent or intentional acts or omissions of the Indemnifying Party or any of its direct or indirect contractors, sub-contractors, agents, employees, partners, members, managers, owners, subsidiaries, affiliates or invitees, or (b) the Indemnifying Party’s breach of this Agreement.

## **ARTICLE XI INSURANCE**

Section 11.1 Insurance. Each Party shall procure and maintain insurance or risk retention coverage with respect to their respective undertakings hereunder.

## **ARTICLE XII MISCELLANEOUS**

Section 12.1 Disputes. The Parties agree that any breach or dispute (“Dispute”) arising out of this Agreement shall first be submitted to mediation for resolution. Mediation shall commence no later than thirty (30) days after submission of the Dispute, and shall be conducted in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved in mediation, each Party may pursue any rights and remedies as each may have, whether hereunder or in law or at equity.

Section 12.2 Assignment. Neither Party may assign or transfer its respective rights and interests in this Agreement to any other another person or entity without Service Provider’s prior written consent, and any attempted assignment or transfer without such consent shall be void. The Parties acknowledge that an assignment or transfer of this Agreement or any part of the System may result in the obligations of the Service Provider issued to finance the System being classified as “private activity bonds” under Section 141 of the Internal Revenue Code of 1986.

Section 12.3 Notices. All notices, requests, demands, claims and other communications (each, a “Notice”) hereunder shall be in writing, addressed to the intended recipient as set forth on the signature



pages to this Agreement, or to such other person, address or number as the Party entitled to such Notice shall have specified by notice to the other Party given in accordance with the provisions of this Section. Any such Notice shall be deemed duly given on the earliest of: (i) when delivered personally to the recipient; (ii) one (1) business day after being sent to the recipient by reputable overnight courier services (charges prepaid); (iii) one (1) business day after being sent to the recipient by facsimile transmission; or (iv) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid.

Section 12.4 Applicable Law and Jurisdiction; Waiver. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without giving effect to principles of conflict of laws that would require the application of any other law. Customer hereby consents and submits to the personal jurisdiction of the state and federal courts sitting in the State of Vermont. EACH OF SERVICE PROVIDER AND CUSTOMER HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM ARISING OUT OF THIS AGREEMENT. SERVICE PROVIDER AND CUSTOMER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED.

Section 12.5 Complete Agreement. This Agreement, and any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations whether oral or written. This Agreement may not be amended, waived or modified except by an instrument in writing executed by the party against whom such amendment, waiver or modification is to be enforced.

Section 12.6 Severability; Construction. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any provision of this Agreement that is not essential to the purpose of this Agreement that is declared or rendered unlawful, invalid or unenforceable by any applicable court of law or regulatory agency or deemed or rendered unlawful, invalid or unenforceable because of a statutory or regulatory change, including any order of the PSB or any change in the Utility's tariff regarding Group Net Metering (individually or collectively, such events referred to as a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; further, if a Regulatory Event occurs, the Parties shall use their best efforts to reform the Agreement in order to give effect to the original intention of the Parties. Notwithstanding the foregoing, or anything else in the Agreement to the contrary, in the event that, as a result of a Regulatory Event, a Party (the "Excused Party") is excused from any payment or performance obligation, the other Party shall be correspondingly excused from any payment or performance obligation that would have arisen but for the failure or inability of the Excused Party to perform. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

Section 12.7 Waiver of Rule of Construction; Fees and Expenses. The Parties waive the benefit of any rule that this Agreement is to be construed against one Party or the other. Each Party will bear its own fees and expenses incurred in the transactions contemplated by this Agreement.

Section 12.8 Effect of Agreement. This Agreement shall not be construed as a contract of agency, partnership or joint venture. The Parties agree that this Agreement is an interlocal contract authorized and entered into under Sections 4901-4902 of Title 24, Vermont Statutes Annotated.

IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their Duly Authorized Officers, do hereby execute this Solar Services Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

**Service Provider:**

THE TOWN OF WAITSFIELD VT

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Title: Chair, Selectboard

Service Provider Notice Address:  
The Town of Waitsfield VT

Chris Badger 12/4/2014 12:20 PM  
**Deleted: WARREN**

Chris Badger 12/4/2014 12:21 PM  
**Deleted: Warren**

WAITSFIELD TOWN SCHOOL DISTRICT

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Title: Chair, Board of School Directors

Customer Notice Address:

Chris Badger 12/4/2014 12:21 PM  
**Deleted: WARREN**

EXHIBIT A  
Technical Specifications

System Location "Site"	Ground Mount array at <a href="#">Waitsfield Town Garage on Tremblay Rd.</a>
System Size	<a href="#">102kW DC / 85 kW AC</a>
System Type	Ground
Equipment	
PV Panels	SolarWorld
Inverters	SMA
Racking Systems	RBI
Web Monitoring	AlsoEnergy
Other Equipment	All other equipment including mounting assemblies, combiner boxes, AC and DC disconnects, breakers, fuses, cable and wire, conduit, grounding hardware etc
Installation	Turnkey installation by Aegis Renewables
Adherence to Code	UL for equipment and adherence to utility guidelines
System Commissioning	Per ACE guidelines; system calibration, testing and commissioning
Safety	Adherence to all local, State and OSHA guidelines

Chris Badger 12/4/2014 12:21 PM

**Deleted:** Brooks Field

Chris Badger 12/4/2014 12:22 PM

**Deleted:** 150kW

Chris Badger 12/4/2014 12:22 PM

**Deleted:** AC

Chris Badger 12/4/2014 12:24 PM

**Deleted:** Roof and

## EXHIBIT B

### Service Price

**Net Metering Credits:** For each kWh of Output allocated to a Customer Meter, the Customer will receive a monetary Net Metering Credit on its Utility bill for such Customer Meter. Under the Utility's current rates and policies, the value of the Net Metering Credits per kWh allocated to the Customer Meter on a demand-billed rate schedule would be \$0.207 per kWh, comprised of the current retail rate of \$0.147 per kWh plus an additional solar incentive payment of \$0.060 per kWh.

**Service Price:** For each kWh of Output allocated to a Customer Meter, Customer agrees to pay Service Provider a "Service Price" equal to ninety percent (90%) of the monetized value of the Net Metering Credit for such kWh of Output, which shall equal the Utility's Residential Rate 1 base kWh rate plus any adder or adjuster for solar or other renewable energy that the Utility offers for solar or other renewable energy production attributable to production from the System; provided, however, that in no event shall the Service Price per kWh of Net Metering Credit be less than \$0.160 per kWh or greater than \$0.250 per kWh (such proviso, the "Collar"). The Service Price shall be the sole amount due or payable by Customer for any Services rendered to Customer or otherwise performed by Service Provider hereunder. The "Initial Service Price" based on the Utility's current rates and policies is: **\$0.186/kWh.**

Projected Annual System Output: 102,106 kWh

Net Metering Credit issued by Utility to Customer: **\$0.207 per kWh**

Percentage of monetized value of Net Metering Credits payable to Service Provider: **90%**

\*Current Net Metering Credit from Utility is \$0.207 per kWh, comprised of the current retail rate of \$.147 per kWh plus a Solar Incentive payment of \$.060 per kWh. The retail rate and Solar Incentive are subject to future change by the Utility, however the System shall be entitled to the Solar Incentive for not less than 10 years from the date the System is installed.

**Annual Audit and Reconciliation:** On the annual anniversary of the Service Commencement Date, Service Provider shall review actual annual System Output, and actual Net Metering Credits applied to Customer's service account by the Utility. Service Provider shall issue a one-time reimbursement or invoice to Customer for the difference.

Chris Badger 11/13/2014 4:58 PM

**Comment [8]:** Based on the 90% value, this is the repayment rate from the school to the town. Based on the current estimates, the school would use about 60% of the solar generated revenue (~\$13k annually) and the town would use the 40% balance (\$8.4k). However, this could shift on a month to month basis based on how the credits are applied on to the individual meters. Initially the school was identified as the prime meter, but this could also be a % allocation (e.g. 60/40%). Moving forward, as the new town office comes online, this % could shift to a greater amount for the town. In this initial case and at the 90% repayment, the school would see a \$1300 savings annually and the town would be in the same ballpark and then increasing over time.

Chris Badger 11/13/2014 5:03 PM

**Comment [9]:** This assumes full production going to the school for their system. For Waitsfield, the Customer (WES) would receive a portion of the overall estimated annual output and with a not to exceed based on their actual monthly/annual utility bills. This will be important to provide additional clarity to alleviate any concerns from Kaiya and the WES SB. As there is an annual reset I would suggest setting this around 55,000 kWh applied annually to the school account. We should discuss this with GMP to make sure we have a good handle on the options for setting and resetting the amount to not exceed the school's annual utility bills.

Chris Badger 12/4/2014 12:27 PM

**Deleted:** 165,300

Chris Badger 11/13/2014 4:36 PM

**Comment [10]:** Need to discuss with the SB whether the Town of Waitsfield is also looking to extend the 10% credit to WES. This would share the benefits with WES and I would support it. Due to the nature of the loan repayment, the performance of the system economically is better with each year. As there is little warranty risk in the first year due to the contract with Aegis, this gives the town a higher degree of certainty for developing a performance track record moving forward. I can help walk the town through the economic analysis.

Chris Badger 11/13/2014 4:36 PM

**Comment [11]:** We need to make sure the timing of this aligns with the school and town budget cycles.

**EXHIBIT C**  
**Allocation Instructions**

Service Provider will instruct the Utility to allocate the kWh of electricity generated by the System and fed back to the distribution system (in excess of the electricity used by the System) to the Meters as follows:

NM Priority	Account #	Customer	Meter Location
<u>1</u>		<u>Waitsfield Elementary School</u>	
<u>2</u>		<u>Waitsfield Town Office</u>	
<u>3</u>		<u>Waitsfield Town Garage</u>	
<u>4</u>		<u>Waitsfield Fire Station</u>	
<u>5</u>		<u>General Wait House</u>	
<u>6</u>		<u>Joslin Memorial Library</u>	

Chris Badger 12/4/2014 12:31 PM  
Deleted: 68633000002  
Chris Badger 12/4/2014 12:31 PM  
Deleted: WARREN  
Chris Badger 12/4/2014 12:31 PM  
Deleted: REC FIELD RD . 1