

**SOLAR MAINTENANCE SERVICES AGREEMENT BETWEEN**  
**CLIENT**  
**AND**  
**DRIFTWIND ELECTRICAL**  
**DATE, 2018**

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## **OPERATION AND MAINTENANCE SERVICES AGREEMENT**

This Solar Maintenance Services Agreement (this “Agreement”), is dated as of (the “Effective Date”) between DRIFTWIND ELECTRICAL (“Owner”), and CLIENT NAME., a Queensland corporation (“Operator”). Owner and Operator are sometimes referred to individually as a “Party” and jointly as “Parties.”

### **RECITALS**

WHEREAS, Operator, itself or through its vendors, suppliers and Subcontractors, engineers, procures and constructs solar photovoltaic electric generating systems (each, a “Solar System”) and Operator has entered into a Construction Agreement with Owner, providing that Operator will engineer, procure and construct the Solar System set forth on Exhibit A (the “System”), located at the site identified on Exhibit A (the “Site”);

WHEREAS, Operator has the capability to perform maintenance on the System and Owner wishes to engage Operator as an independent contractor during the Term of this Agreement for the purpose of performing maintenance services on the System, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the agreements contemplated hereby, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound and to bind their respective successors and assigns, the Parties do hereby mutually agree as follows.

### **ARTICLE I**

#### **DEFINITIONS**

As used in this Agreement, all capitalized terms have the respective meanings given to them in this Agreement and in the Schedule of Definitions attached as Exhibit B.

### **ARTICLE II**

#### **TERM; EXCLUSIVITY**

The term of this Agreement shall commence upon the date upon which the local utility has provided permission to operate the System (the “Commercial Operation Date”), and, unless terminated earlier in accordance with the terms and conditions hereof, shall continue until the ten-year anniversary of the Commercial Operation Date (the “Term”); provided, that Operator shall not be obligated to perform any Services with respect to the System until the Commercial Operation Date for the System has occurred.

During the Term, Operator shall be the exclusive provider of operation and maintenance services for the System and, except in an Emergency, Owner shall not perform, or permit the performance of, any repair, maintenance or operation activities, on or related to the System by any other provider without Operator’s prior written consent; provided that without Operator’s

consent, Owner may perform any repair, maintenance or operation activities on the System other than the Services or any Additional Services agreed to by the parties.

## **ARTICLE III**

### **SCOPE OF SERVICES**

#### **3.01 Services.**

During the Term of this Agreement, Operator shall perform the services set forth in Exhibit C (the “Services”). For the avoidance of doubt, Operator’s Services shall not include any of the items set forth on Exhibit D (“Excluded Services”). Upon completion of any Services, Operator shall notify Owner in writing by delivering a standard service call report.

#### **3.02 Additional Services.**

From time to time as mutually agreed by the Parties, Owner may request that Operator provide other services related to the System(s) beyond the scope of the Services, (the “Additional Services”). The terms and conditions of any Additional Services shall be set forth in a written work order signed by both Parties. If communications from Owner indicate that a System requires maintenance, repair or service that would constitute an Additional Service (for example, as a result of vandalism, remodeling or roofleaks not caused by the System), Operator shall have no obligation to complete the service required, except in the event of an Emergency as set forth in Section 3.05. Prior to undertaking any such Additional Services, Operator may require Owner to agree in advance in writing to pay Operator at specified rates on a time and materials basis for such Additional Services. Operator’s labor rates, hours of work, and minimum hours for Additional Services are set forth in Exhibit F (“Labor Rates”). Except to the extent set forth in such work order, the general terms and conditions of this Agreement shall apply to any Additional Services.

#### **3.03 General Operating Standards.**

Operator shall perform the Services in accordance with (i) the terms of this Agreement, (ii) all applicable Laws and Applicable Permits, (iii) all applicable warranties and guarantees provided by manufacturers, suppliers or Subcontractors, (iv) all manufacturer’s maintenance instructions and specifications and (v) the requirements of any insurance policies maintained by Operator with respect to the Systems.

#### **3.04 Materials and Equipment.**

Operator shall provide all tools and equipment needed to perform the Services and all consumables used in connection with rendering the Services. Operator shall procure, at Owner’s expense, all replacement parts, components and equipment attached to, part of or constituting a System (together, the “Replacement Components”) necessary for the performance of the Services during the Term; provided, however, if any such Replacement Components are required as a result of Operator’s failure to perform its obligations under this Agreement, then Operator shall procure such Replacement Components at Operator’s expense. To the extent available,

### 3.05 Emergencies.

In the event of any Emergency, Operator shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss to the System and shall, as soon as possible, report any such incident, including Operator's response thereto, to Owner. If Operator isn't immediately available, Owner may take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage or loss to the System, and shall inform Operator in writing of the specific mitigation actions undertaken within five days of such actions.

### 3.06 Place of Operations and Hours of Maintenance.

Except in the event of an Emergency, Operator shall perform its operation and maintenance services on the Systems at the Site, and may perform certain monitoring and component inspection services off-site, during Operator's regular business hours.

### 3.07 Monitoring Equipment.

During the Term, Operator shall maintain the system monitoring equipment set forth on Exhibit E at the Site, or such other monitoring equipment as is otherwise provided by Owner from time to time ("System Monitoring Equipment"). Operator shall use commercially reasonable efforts to ensure and monitor the internet connectivity of the System Monitoring Equipment such that data regarding the performance of and output from the System shall be communicated electronically to Operator on a continuous basis. Operator agrees to notify Owner within four hours in the event any outages or other material issues arise from the System or the System Monitoring Equipment. The System Monitoring Equipment shall be inspected and tested by Operator at least annually at its sole cost and expense, or upon the request of either Party at such Party's sole cost and expense, in accordance with the testing protocols set forth in Exhibit E.

### 3.08 Engagement of Third Parties.

Operator may engage Subcontractors (including Operator's Affiliates) as it deems advisable for the purpose of performing or carrying out any of its obligations under this Agreement; provided that no such engagement shall relieve Operator of any of its obligations or liabilities under this Agreement. As between Owner and Operator, Operator shall be solely responsible for the acts, omissions or defaults of its Subcontractors and their agents, representatives and employees, including all Persons engaged pursuant to this Section 3.08. Nothing in this Agreement shall be construed to impose on Owner any obligation, liability or duty to a Subcontractor, or to create any contractual relationship between such Subcontractor and Owner.

### 3.09 Access to System.

Subject to any requirements of applicable Law and the terms of this Agreement, Owner shall provide Operator and its Subcontractors, agents and employees with reasonable access to

the System and the Site during reasonable times -as required for the performance of Operator's duties under this Agreement. Operator will use reasonable efforts to schedule normal, routine maintenance in advance with the owner, landlord or property manager of each Site. Operator shall notify site staff when they arrive to perform work.

## **ARTICLE IV**

### **DRIFTWIND'S GENERAL COVENANTS**

#### 4.01 Environmental Matters.

Operator acknowledges and agrees that it will not bring Hazardous Materials to the Site, or if Operator determines such Hazardous Materials are necessary, Operator will notify Owner prior to bringing any such Hazardous Materials to the Site. To the extent Hazardous Materials at the Site results, due to acts of Operator, in contamination or deterioration of water or soil at a level exceeding permissible levels established by any Governmental Authority having jurisdiction over such contamination, then Operator shall advise Owner (and the applicable regulatory agency if required by applicable Law) and, at Operator's sole cost and expense, promptly take any and all action necessary to clean up such contamination or deterioration if required by applicable Law or as a condition to the issuance or continuing effectiveness of any permit which relates to the System.

#### 4.02 Personnel.

Operator's personnel as a group, and any Persons engaged by Operator pursuant to Section 3.08 shall be qualified and experienced in the duties to which they are assigned. Operator shall retain sole authority, control and responsibility with respect to labor matters in connection with its personnel and shall meet the requirements of all applicable Laws and Applicable Permits.

#### 4.03 Liens.

Operator shall not, as a consequence of its own acts or acts of its suppliers and Subcontractors, suffer or permit liens or encumbrances to attach to the System or the Site.

## **ARTICLE V**

### **FEES AND COST REIMBURSEMENT**

#### 5.01 Annual Fee.

Owner shall pay Operator an annual fee per calendar year for Owner's performance of the Services during the Term in the amounts set forth on Exhibit A (the "Annual Fee"). Beginning with the second Annual Fee due under this Agreement, the Annual Fee shall increase by 2% per calendar year. The Annual Fee for the System shall be paid by Owner in advance on or before the first day of each calendar year during the Term, provided that the first Annual Fee with respect to the System will be due and payable on or before the Commercial Operation Date of such System.

5.02 Invoiced Fees.

Any Additional Services provided by Operator shall be paid within 30 days of the invoice date, unless provided otherwise in the work order for such Additional Services. Replacement Components shall be invoiced separately and shall be paid within 30 days of the invoice date. All invoiced payments made by Owner to Operator under this Article V shall be paid by check or electronic transfer of funds at Owner's discretion, to Operator at an account designated in writing by Operator.

5.03 Disputed Payments.

If there is a dispute about any amount invoiced by Operator, the undisputed amount shall be paid pursuant to Section 5.02, and any disputed amount which is ultimately determined to have been payable shall be paid immediately upon such resolution, along with interest in accordance with the provisions of Section 5.04.

5.04 Past Due Amounts.

Any amounts due under this Agreement, other than disputed payments that are determined to have been properly withheld by Owner, if not timely paid by the Party from whom they are due, shall bear interest at the per annum rate equal to the prime rate, as published in the Wall Street Journal from time to time, plus 2% annually (or such lower rate as is the maximum rate permitted by applicable Law), prorated on the basis of a 365-day year from the date that such amount was due.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Party that the following representations are true and correct at and as of the Effective Date:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it; and
- (c) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms.



## ARTICLE VII

### EVENTS OF DEFAULT; REMEDIES

#### 7.01 Events of Default.

An “Event of Default” means, with respect to either Party, the occurrence of any of the following during the Term:

(a) Any representation or warranty made by such Party herein is false or misleading in any material respect when made, if: (i) such misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice or (ii) such inaccuracy is not capable of a cure, but the non-breaching Party’s damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within 15 Business Days after a Notice of such damages is provided by the non-breaching Party to the breaching Party.

(b) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure (or such shorter period as may be specified below), which Notice sets forth in reasonable detail the nature of the failure; provided that, if such failure is not reasonably capable of being cured within the 30 day cure period specified above, the Party shall have such additional time (not exceeding an additional 45 days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;

(c) A Party fails to make when due any payment in a material amount (including not making when due any material portion of the payment) required under this Agreement and such failure is not cured within fifteen Business Days after Notice of such failure;

(d) A Party becomes Bankrupt;

(e) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or

#### 7.02 Remedies.

If an Event of Default shall have occurred, there will be no opportunity for cure except as specified in Section 7.01. The non-defaulting Party shall have the right:

(a) to designate by Notice, a day, no earlier than 20 calendar days after the Notice is effective, for the early termination of this Agreement;

- (b) to immediately suspend performance under this Agreement; and
- (c) to pursue all remedies available at law or in equity against the defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

## **ARTICLE VIII**

### **FORCE MAJEURE**

Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by any Force Majeure if and to the extent that such Party is prevented or delayed from performing by reason of the Force Majeure; provided, however, that (a) the suspension of performance shall be of no greater scope and of no longer duration than is necessarily caused by the Force Majeure and required by any remedial measures, (b) no obligations of any Party that arose before the occurrence of such causes shall be excused as the result of the occurrence, and (c) each Party shall use commercially reasonable efforts to remedy its inability to perform. If the performance by either Party of its obligations under this Agreement is affected by any Force Majeure, such Party shall notify the other Party within 5 business days after the initial occurrence of the claimed Force Majeure of the nature, the extent thereof, timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and the anticipated length of time that the Force Majeure will prevent the Party's performance under this Agreement. When the claiming Party is able to resume performance of its obligations under this Agreement, it shall give the other Party prompt Notice to that effect.

## **ARTICLE IX**

### **INSURANCE**

#### 9.01 Insurance Provisions.

During the Term, Operator shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, the following insurance coverages with an insurance company or companies rated at least "A-" by A.M. Best Company and be responsible for its Subcontractors maintaining sufficient limits of the appropriate insurance coverage consistent with industry practice.

- (a) **Workers' Compensation and Employers' Liability.**
  - (i) Operator shall obtain workers' compensation and basic employers' liability insurance for all employees in accordance with applicable Law.
  - (ii) Operator shall obtain employers' liability insurance with limits of at least \$1,000,000 for injury or death occurring as a result of each accident.

- (b) Business Auto.
  - (i) Operator shall obtain comprehensive automobile liability insurance with bodily injury, death and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired or non-owned.
- (c) Commercial General Liability.
  - (i) Operator shall obtain comprehensive or commercial general liability insurance written on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including premises/operations, owner's protective, broad form property damage liability, explosion and collapse hazard coverage, blanket contractual liability, independent contractors, products and completed operations and personal injury. If coverage includes an aggregate limit, that limit should be at least \$2,000,000. Owner may maintain a program of self-insurance to satisfy its obligations under this Section 9.01(c).
- (d) Excess Umbrella Liability Insurance.
  - (i) Operator shall obtain excess umbrella liability insurance with a single limit of at least \$5,000,000 per occurrence and in the aggregate, in excess of the limits of insurance provided above.
- (e) Additional Insurance Provisions.
  - (i) Operator's insurance shall include (1) provisions or endorsements including Owner as an additional insured; and (2) provisions that such policies shall not be canceled or their limits of liability reduced without 30 days' prior Notice to the other Party. Operator shall provide Owner with certificates of insurance upon written request evidencing the policies, provisions and endorsements listed above within 10 days after they have been obtained. Owner will provide evidence of its self-insurance program upon the request of Operator.
  - (ii) Reviews of such insurance may be conducted by Owner on an annual basis.
  - (iii) Upon written request, Operator shall furnish Owner evidence of insurance for its Subcontractors.

#### 9.02 Notification.

Each Party shall notify the other of any casualty and keep the other Party timely apprised of insurance claim proceedings.

## **ARTICLE XI**

### **LIMITATION OF LIABILITIES**

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY DRIFTWIND UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. BORREGO'S TOTAL LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT

OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY OF BORREGO'S OBLIGATIONS UNDER THIS AGREEMENT, OR THE USE OF THE SERVICES BY OR ON BEHALF OF OWNER, OR ANY OTHER THIRD PARTY, SHALL BE SOLELY FOR OWNER'S DIRECT DAMAGES.

NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

## **ARTICLE XII**

### **DISPUTE RESOLUTION**

#### **12.01 Continued Prosecution of the Work.**

In case of any Dispute, Operator shall continue to diligently perform the Services and any Additional Services, so long as Owner continues to make payments to Operator for those Services and Additional Services that are not the subject of dispute.

## **ARTICLE XIII**

### **MATERIALS AND DATA**

Title to all Replacement Components and other items purchased or obtained by Operator hereunder for the System(s) shall pass immediately to and vest in the Owner when paid for by the Owner. A copy of all materials and documents related to the maintenance history of the System and any manuals and warranties related to the System shall be delivered to Owner upon expiration or termination of this Agreement.

## **ARTICLE XIV**

### **MISCELLANEOUS**

#### **14.01 Execution.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and the schedules and exhibits hereto, may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

#### 14.02 Amendments.

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by both parties.

#### 14.03 Headings.

The headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties.

#### 14.04 Assignment.

Either Party may assign this Agreement to an Affiliate with the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed if the non-assigning Party has been provided with proof to its reasonable satisfaction that the proposed assignee: (a) has experience in operating and maintaining solar photovoltaic systems, greater than or equal to that of the assigning party; and (b) has the financial capability and credit rating equal to or greater than that of the assigning Party; and (c) has the ability to maintain the System and provide the Services provided pursuant to this Agreement in the manner required by this Agreement and provides all applicable warranties that it shall do so. Upon notice to the other Party this Agreement may be assigned in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of such Party without the consent of the other Party. Either party may pledge this Agreement or make a collateral assignment in connection with obtaining financing. Any other assignment shall require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

#### 14.05 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, to the extent that assignment is permitted hereunder.

#### 14.06 Other Customers.

Nothing in this Agreement shall be construed to prevent or prohibit Operator from providing the same or similar services as the Services to any Person not a Party to this Agreement.

#### 14.07 No Waiver of Rights.

Except as may be specifically agreed in writing, the failure by any Party to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Agreement or to exercise any right herein contained or provided by law or equity, shall not be construed as, or constitute in any way, a waiver, modification or relinquishment of the performance of such provision or right(s), or of the right to subsequently demand such strict performance or exercise such right(s), and all such rights shall continue unchanged and remain in full force and effect.

#### 14.08 Severability.

If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and, accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein. To the extent that any provision is held void, voidable, invalid or inoperative, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

#### 14.09 Construction.

All references herein to any agreement shall be to such agreement as amended, supplemented or modified from time to time. All references to a particular entity shall include a reference to such entity's successors and permitted assigns. The words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa. "Includes" or "including" shall mean "including, without limitation." All exhibits, schedules and appendices to this Agreement are hereby incorporated herein by reference.

#### 14.10 Relationship.

Operator shall act as an independent contractor of Owner with respect to the performance of its obligations hereunder. Neither Operator nor its Affiliates, employees, Subcontractors, vendors or suppliers, or the employees of any such parties employed in connection with this Agreement shall be deemed to be agents, representatives, employees, or servants of Owner. Operator shall not have the right or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of Owner. This Agreement is not intended to create, and shall not be construed to create, a relationship of partnership or an association of profit between Owner and Operator.

#### 14.11 Entire Agreement.

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous written and oral agreements, proposals, negotiations, warranties, guarantees, understandings and representations pertaining to the subject matter hereof.

#### 14.12 Confidentiality.

Subject to the California Public Records Act (California Government Code Section 6250, et seq.), and Section 14.13, each Party agrees to keep the terms of this Agreement and the other agreements contemplated hereby strictly confidential and to not use or disclose to any other Person any non-public documents or other information that relates directly or indirectly to this Agreement; provided that either Party may disclose the terms of this Agreement to (a) any Affiliate, advisor, agent, representative, employee or Subcontractor, and (b) any third party

considering providing capital or financing to, or merging with or acquiring all or substantially all of the assets of, either of the Parties hereto or as required by law. The confidentiality obligations set forth in this Section 14.12 shall survive the termination or expiration of this Agreement for a period of two years.

14.13 Publicity.

Except as may be required by law, no press release, announcement or other publicity concerning this Agreement or the transactions contemplated hereby shall be issued without advance written approval to the form and substance thereof by Owner and Operator. The Parties share a common desire to generate favorable publicity regarding the System and their association with it. The Parties agree that they may, from time-to-time, issue press releases regarding the System and that they shall cooperate with each other in connection with the issuance of such releases including without limitation by completing review of press releases proposed to be issued by the other Party within five business days after submission by such other Party. Owner and Operator shall cooperate to finalize the text of at least one press release from each Party or a joint press release relating to their entering into a definitive agreement to install the System. Each Party agrees that it shall not issue any press release regarding the System without the prior consent of the other, and each Party agrees not to unduly withhold or delay any such consent.

14.14 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, EXCLUDING ANY CHOICE OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER STATE.

14.15 Further Assurances.

Each Party shall use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the request of the other, shall, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.

*[signature page follows]*



**IN WITNESS WHEREOF**, the Parties, intending to be legally bound hereby, have caused this Operation and Maintenance Services Agreement to be executed by their duly authorized officers as of the date first written above.

**DRIFTWIND SOLAR SYSTEMS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLIENT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**SYSTEMS, SITES AND ANNUAL FEE**

<b><u>NAME</u></b>	<b><u>CITY</u></b>	<b><u>ANNUAL FEE</u></b>
<b>CONTRA COSTA COUNTY</b>	<b>HERCULES</b>	<b>\$6,305.28</b>
<b><u>SYSTEM SIZE</u></b>	<b><u>STREET ADDRESS</u></b>	<b><u>TERMS</u></b>
<b>257 kW</b>	<b>151 LINUS PAULING DRIVE</b>	<b>INCREASES 2% ANNUALLY</b>

## EXHIBIT B

### SCHEDULE OF DEFINITIONS

The terms defined in this Schedule of Definitions shall include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof. When used in the Agreement (as defined below), unless otherwise defined therein, the following terms shall have the respective meanings set forth below:

“Additional Services” shall have the meaning set forth in Section 3.02.

“Annual Fee” shall have the meaning set forth in Section 5.01.

“Affiliate” means, with respect to any Person, any other Person, who (a) such first Person directly or indirectly, in whole or in part, owns, is owned by or is in common ownership with, or (b) such first Person directly or indirectly controls, is controlled by or is under common control with.

“Agreement” shall mean this Operation and Maintenance Services Agreement.

“Applicable Permits” means each and every material national, autonomous, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including, without limitation, any agreement, consent or approval from or with any other Person that is required by any applicable Law or that is otherwise necessary for the performance of the Services.

“Bankrupt” means with respect to any entity, such entity: (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it that is not dismissed within 60 days; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes bankrupt or insolvent (however evidenced); (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (e) Is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday or federal holiday.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Emergency” means an event occurring at any Site, or any adjoining property, that (a) poses actual or imminent risk of (i) serious personal injury, or (ii) material physical damage to the System, and (b) requiring, in the good faith determination of Operator or Owner, immediate preventative or remedial action.

“Event of Default” shall have the meaning set forth in Article VII.

“Force Majeure” means any occurrence that was not anticipated as of the Effective Date that: (a) in whole or in part: (i) delays a Party’s performance under this Agreement; (ii) causes a Party to be unable to perform its obligations; or (iii) prevents a Party from complying with or satisfying the conditions of this Agreement; (b) is not within the control of that Party; and (c) the Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority.

“Governmental Authority” means any international, federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Hazardous Materials” means (a) hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.O. Section 9601 et seq.; (b) hazardous wastes, as defined in by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (c) petroleum and petroleum products; (d) any radioactive material, including, without limitation, any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq.; (e) asbestos in any form or conditions; (f) polychlorinated biphenyls; (g) any other material, substance or waste to which liability or standards of conduct can be imposed under any Law related to protection, preservation or conservation of the environment and public or worker health and safety, including, but not limited to applicable state and local statutes, rules and regulation; and (h) all materials defined as “Hazardous Materials”, or “Hazardous Substances.”

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

“Notice” shall have the meaning set forth in Article X.

“Operator” shall have the meaning given thereto in the introductory paragraph of this Agreement, and its successors and permitted assigns, if any.

“Owner” shall have the meaning given thereto in the introductory paragraph of the Agreement, and its permitted successors and assigns, if any.

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

“Replacement Components” shall have the meaning set forth in Section 3.04.

“Services” shall have the meaning set forth in Section 3.01.

“Site” shall have the meaning set forth in the Recitals hereto.

“Subcontractors” means any subcontractor, of any tier, or supplier of services to Operator or any subcontractor, of any tier that has executed a contract with Owner to perform Services set forth this Agreement.

“System” shall have the meaning set forth in the Recitals hereto.

“System Monitoring Equipment” shall have the meaning set forth in Section 3.07.

“Term” shall have the meaning set forth in Article II.

## **EXHIBIT C**

### **SERVICES**

During the Term, and for the Annual Fees, Operator shall perform the following services on the System:

#### **Background**

The System will be installed with an Internet-based Data Acquisition System (DAS). The DAS will have the capability to send alarms identifying low power to remote locations.

Description of Work	Frequency
Remote System Monitoring	24 hours / 7 days per week
On-Call System Service Technician	Per request
Electrical Inspection	One time per year

#### **Scope of Work**

1. System Monitoring and On-call Service Technician
  - a. Provide remote monitoring of System operations via Internet connection. Track changes and respond to power outages within three business days.
  - b. If necessary and reasonably appropriate as a solution to a low power alarm, a service technician will be required to visit the Site or determine an action plan to troubleshoot and resolve the issue within two business days of an alarm to identify the cause.
2. Electrical Inspection & Maintenance:
  - a. Electrical Maintenance

The technician will:

    - i. Perform a visual inspection of PV modules and array wiring, strain relief, mounting system, trackers, inverters, switchgear, transformers, combiner boxes, wireways and conduit, protection devices, data acquisition system, weather sensors and outdoor lighting.
    - ii. Perform vegetation management around array and equipment pad or make recommendations to host for vegetation removal.
    - iii. Check pyranometers and reference cells

- iv. Record operational data from inverters and meters
- b. External and/or Internal DC Disconnects and Combiner Boxes

During the inspection, the technician will:

- i. Ensure that Imp testing is performed on all DC strings.
- ii. Tighten loose electrical connections in combiner boxes, switchgear and inverters.

- c. Inverter and Transformer

The technician will:

- i. Clean out all electrical enclosures
- ii. Clean inverter air filters
- iv. Perform visual inspection of security and equipment fences.
- v. Perform Preventive Maintenance on the inverter(s) as required to maintain inverter manufacturer's warranty.

- d. AC Disconnect

- i. The technician will check for proper operation.

### 3. Preventive Maintenance, Troubleshooting, Repairs and Customer Service

- a. Preventive Maintenance.

- i. Operator shall perform all necessary preventive and corrective maintenance on the System, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/inverter cleaning (interior and exterior) with supporting documentation delivered to Owner after the work has been performed. Maintenance by Owner will ensure that all warranties, particularly inverter warranties, are preserved. The frequency and timing of panel wash-downs shall be determined by Operator based on System monitoring data. Environmental sensors such as pyranometers shall be tested and recalibrated at least once every three (3) years.

- ii. Operator's routine System maintenance will include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, and other minor maintenance repair work.

- iii. Operator shall perform module cleaning at a frequency to be determined by the ongoing monitoring of the System such that the effect on production is no more than 5%, but not less often than twice a year.
  - iv. Operator shall perform routine DAS maintenance to include sensor calibration and data integrity check.
- b. Troubleshooting and Repairs.
- i. Operator will dispatch field service resources within two business days of notification (via automated or manual means) for repairs as necessary to maintain System performance.
  - ii. Operator shall complete any corrective action required to restore the System to fully operational status within 24 hours of the service resources arriving on-site.
  - iii. Major system repairs, not to include mid-voltage switchgear or transformers.
- c. Customer Service Support.
- i. Operator will provide Owner with a support telephone number for Owner to ask questions and report issues.
  - ii. Operator's support line will be staffed during operational hours from 8:00 a.m. to 6:00 p.m. Pacific Standard Time ("Business Hours"). During times outside of Business Hours, Emergency calls will be routed to a supervisor for immediate action.



**EXHIBIT D**

**EXCLUDED SERVICES**

1. Any installation of additional monitoring equipment that may be required if site conditions change for reasons beyond Operator's control. Specifically, interference from additions or repairs to the premises after the start of the Term.
2. Parts or equipment that were not specified in the Master Engineering, Procurement and Construction Agreement entered into by the Parties, and installed by Operator or its Subcontractors.
3. In the event that any manufacturer of materials, equipment or similar items relating to the System is not able or willing to honor its product warranty to owner, Operator shall not be responsible for the costs of any such manufacturer's components.

## **EXHIBIT E**

### **SYSTEM MONITORING EQUIPMENT**

A revenue grade monitoring system will be used to provide the actual kWh production data from the System. On an annual basis the monitoring system will be tested by Operator at its sole cost and expense to verify that it is operating as intended. Automatic e-mail alerts will be setup at the time of System commissioning, which will send alerts if the System goes offline at any time for any reason. Owner will be notified of alerts and Operator will acknowledge the alerts and respond with a reason for the alert or an action plan to continue to monitor for changes or troubleshoot the problem.

**[EXHIBIT F**

**LABOR RATES**

Hourly rate regular business hours (7:00AM – 4:00PM Monday-Friday): \$110

Hourly rate off hours: \$140

Hourly rate Sundays & Holidays: TBD

All visits a minimum of 4 hours including travel]