



PERFORMANCE WARRANTY CONTRACT

This Performance Warranty Contract ("Agreement") is made and entered into as of [Date] by and between Mechatron Solar Inc. incorporated in the State of Delaware with main office in 1653 El Pinal dr, Stockton, CA, 95205 ("Operator"), and [Legal name, form and country of O&M firm] ("Solar Project Owner").

RECITALS

WHEREAS, Solar Project Owner owns a [Description of solar Project] with trackers commissioned and operating ("Project") and desires to contract for preventive maintenance of the solar trackers sold by the Operator to the project,

WHEREAS, Operator provides preventive maintenance services for the solar trackers and has agreed to provide those services on the terms and conditions set forth in this performance warranty contract,

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

ARTICLE 1 AGREEMENT

Section 1.1 - *Effective Date and Term.* This Agreement shall be effective and shall govern the rights and obligations of the parties from and after the date of this Agreement for a period of twenty (20) years. The Owner has the right to terminate the annual renewal of this contract at any year of the 20-year warrantee period for any reason, upon such termination the performance compensation clause of this contract is voided. The Limited Warrantee of the products remain in effect throughout the Performance Warrantee period.

Section 1.2 - *Relationship of The Parties.* Operator has been retained by Owner as an independent contractor to provide preventive maintenance to the solar trackers purchased by the Owner from the Operator for the operation of the Project. Owner has delegated to Operator overall responsibility for providing preventive maintenance and as needed repair measurements to the Project's solar trackers to ensure that the Project is available at minimum uptime equal to the annual uptime as defined in appendix A.

ARTICLE 2 SERVICES

Section 2.1 - *Scope of Services.* Operator shall (i) provide preventive maintenance to the solar trackers of the project with visits at the Project site to perform thorough inspection of all trackers, their mechanical and hydraulic components and perform testing of trackers movements and validate accuracy, speed of rotation and self-restoring capabilities (ii) provide all necessary labor to replace malfunctioning equipment as part of the product warranty offered by the Operator.

In detail the services rendered will be

1. Visual inspection of all tracker moving components including valves, pressure pump, hydraulics for azimuth movement, hydraulics for elevation movement, slewing ring
2. Functional checks of all protective and safety components like anemometer, orientation compass, electrical circuitry with breakers
3. Lubrication of slewing ring
4. Measure the break friction pads material thickness and evaluate replacement year
5. Measure hydraulic pressure at manifold pressure valve and at main brake check valve and adjust pump pressure as deemed necessary
6. Detailed maintenance report after each visit for preventive work or repair

All works to be performed according to the Company's official and current Maintenance Manual.

Remote monitoring

1. online monitoring of trackers at customer's solar park.
2. future upgrades of new releases of the telemetry software

Section 2.2 - *Operator's Personnel Standards*. Operator shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Project personnel under the Project Agreements. The individuals employed by Operator to perform the Services shall be either employees of Operator or sub-contractor operating under the same terms and conditions. Their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by Operator.

Section 2.3 – *Spare parts*. Operator shall maintain always adequate number of spare parts in the Project site comprised of a combination of hydraulic cylinders for the azimuth motion, electric pump and electrical valves/coils. The amount and type of stored spare parts will be determined at or before the effective date of this contract based on the number and type of trackers operating in the Project site. Spare parts will be used by Operator's personnel to perform replacement actions as deemed necessary to repair faulty trackers. After the successful conclusion of the repair, Operator will replenish the used parts no more than 10 days from the day of the repair.

Section 2.4 - *Operating Records and Reports*. Operator shall maintain the Project operating logs, records, and reports that document the preventive maintenance of the Project and equipment replacement operations, all in form and substance sufficient to meet Owner's reporting requirements under the Project Agreements.

ARTICLE 3

COMPENSATION AND PAYMENT

Section 3.1 - *Payments*. As compensation to Operator for performance of the Services hereunder and ensuring performance warranty with uptime as described in Appendix A, Owner shall pay Operator the Annual Operating Fee.

Section 3.2 - *Annual Preventive Maintenance and Technical Replacement Fee*. For the first Contract Year and each subsequent Contract Year, Owner shall pay to Operator the sum of \$300 per year for each tracker operating in the Project and being served and supported by this contract. Beginning on the first day of the second Contract Year and on the first day of each Contract Year thereafter, the Annual Operating Fee shall be adjusted according to the inflation rate of the previous calendar year.

Section 3.3 - *Billing and Payment*. Within 15 days following the beginning of each Contract Year, Operator shall submit the invoice for the services and within 15 days after receipt of such invoice, Owner shall pay Operator the full amount specified in such invoice.

Section 3.4 - *Interest*. Any amount owed to the Operator under this Agreement by the other party which remains unpaid more than 30 days after the date such amount is due and payable shall begin to accrue interest at the Reference Rate commencing on the thirty-first day after such due date.

Section 3.5 – *Performance warranty penalty*. In the event Operator fails to keep the operating uptime of the Project’s trackers per year as defined in Appendix A, the Owner is entitled to receive compensation from the Operator as set in Appendix A for all the hours exceeding the minimum guaranteed operating hours of the total population of the trackers in the Project. If the Owner chooses to terminate the annual contract renewal at any year during the 20-year warrantee period then the Operator is not liable for the Performance Warrantee compensation but still obligated to provide to the Owner broken parts replacements as part of the limited warrantee of the products.

ARTICLE 4 CONFIDENTIALITY

Section 4.1 - *Operator*. Operator agrees to hold in confidence for a period of [Period of confidential treatment] from the date of disclosure, any information supplied to Operator by Owner or others acting on its behalf. Operator further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

Section 4.2 - *Owner*. Owner agrees to hold in confidence for a period of [Period of confidential treatment] from the date of disclosure, any information supplied to Owner by Operator or others acting on its behalf, provided that Owner may disclose such information as is required by Lenders (including their agents and advisors), provided Lenders enter into appropriate nondisclosure agreements. Owner further agrees, to the extent requested by the supplier of such information, to require its members and contractors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

Section 4.3 - *Exceptions*. The provisions of this Article shall not apply to information that was in the public domain, was already in the receiving party’s possession, or was received lawfully and free of any obligation to treat it as confidential.

Section 4.4 - *Required Disclosure*. If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Article 12, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

ARTICLE 5 RESOLUTION OF DISPUTES

Section 5.1 - *Resolution Through Discussions*. If any dispute or difference of any kind (a Dispute") arises between Owner and Operator in connection with, or arising out of, this Agreement, the Owner and Operator within 30 days shall attempt to settle such Dispute in the first instance through discussions. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Owner and Operator have

had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration ("Arbitration Notice"). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration.

Section 5.2 - *Arbitration*. Any Dispute arising out of, or in connection with, this Agreement and not settled by the procedure prescribed in Section 8.1, shall (regardless of the nature of the Dispute) be finally settled in accordance with UNCITRAL Rules of International Arbitration for a single arbitrator.

Section 5.3 - *Continued Performance*. During the pendency of any arbitration, Operator and Owner shall continue to perform their obligations under this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

Section 6.1 - *Assignment*. Neither Owner nor Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by Owner without such prior consent to any successor of Owner, to a person or entity acquiring all or substantially all of the Project, or to a Lender or any purchaser of the Project upon the exercise of remedies under a Project Agreement by a Lender. Operator hereby consents to the assignment by Owner of a security interest in this Agreement to Lenders. Operator further agrees to execute documentation to evidence such consent reasonably required by the Lenders typical for project finance. Operator recognizes that such consent may grant certain rights to such Lenders, which shall be fully described in the consent documents.

Section 6.2 - *Access to Project*.

Operator and his respective agents and representatives shall have access at all times to the Project, Owner shall make available to Operator assigned persons or entities and provide them with access to the Project site at any times.

Section 6.3 - *Force Majeure*. If either Owner or Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 6.4 - *Amendments*. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties..

Section 6.5 - *No Waiver*. It is understood and agreed that any delay, waiver or omission by Owner or Operator with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Owner or Operator of any subsequent breach or default of the same or other required performance on the part of Owner or Operator.

Section 6.6 - *Notices*. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax

number. All Notices shall be (i) delivered personally or (ii) sent by fax, electronic mail, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (A) when transmitted if sent by fax, electronic mail or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To Operator:	To Owner:
<i>Mechatron Solar Inc</i>	<i>[Name of O&M firm]</i>
1653 El Pinal dr, Stockton, CA 95205	<i>[Address of O&M firm]</i>
ATTN:	ATTN:
Tel:	Tel:
Fax:	Fax:
E-Mail:	E-Mail:

Section 6.7 - *Representations And Warranties*. Each party represents and warrants to the other party that:

(a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

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

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

Mechatron Solar Inc	Owner name
By:	By:
Name:	Name:
Title:	Title:

APPENDIX A

Annual Performance Uptime Warranty, compound time of all trackers per Project	99.6%
Compensation for downtime hours in violation of uptime warranty, per hour	\$1