

Ken Birrell

From: jason@orangeinsure.com
Sent: Wednesday, August 15, 2012 8:34 AM
To: Ken Birrell
Subject: Solar program contracts
Attachments: Equipment_Purchase_Agreement_Don (1).pdf; Operation_and_Maintenance_Don.pdf; Referral_Contract_new - Converted Doc.rtf; Disclaimer_new - Converted doc.rtf; Solar - Imputed Interest - Treasury Regulations.docx

Ken,

Here is the contracts designed for clients to participate in the solar program.

I will just send you what I have, and you can let me know what you still need.

We have an independent CPA who works with our clients, and who is very familiar with the program and may be a very good source for you.

Bryan Bolander - CPA
Company: Van Tienderen, Carter and Bolander

6802 South 1300 East Salt Lake City, UT 84121

(801) 561-8685

He has been working with this program for several years. One of his clients also was audited by the IRS, and the IRS agent visited Bryan at his office and was gone is just a few short minutes, content with the program in that case.

I can also get you access to the Founder/CEO of the engineering firm that owns the technology, and the ones offering the program.

The company is IAS, International Automated Systems. Website is <http://iaus.com/>

It's publicly traded as IAUS: <http://www.marketwatch.com/investing/stock/iaus>

The main marketing arm of IAS, which is a privately held company, is XSun Energy: <http://www.xsunenergy.com/>

There is a lot of information about the program, technology, and the companies on these sites.

There is also a copy and paste doc about imputed interest. That question arose with Don and his accountants. In reviewing the loan that the purchaser is agreeing to, and the terms that are being offered



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by XSun Energy, the concern was the IRS could impute interest. The attached doc and reference is what we have found regarding exemption from this. You can do a more thorough examination on this issue if needed.

Please let me know what else you would like. I will make myself available to you until you have what you need.

Thanks,

Jason Clement
CEO
Solartech
801-787-9788

XSUN ENERGY EQUIPMENT PURCHASE AGREEMENT

Alternative Energy Systems

This Equipment Purchase Agreement (the "Agreement") is entered into this day _____, 20____, by and between XSun Energy LLC with offices at 4035 South 4000 West, Suite 150, Deseret, Utah 84624, hereinafter referred to as "Seller", and _____ whose address is _____ hereinafter referred to as "Purchaser".

BACKGROUND

1. Seller is the licensee of certain proprietary alternative energy technology, which technology relates to solar energy collection and which technology is utilized for the design and fabrication of certain components which are identified below and which are hereinafter collectively referred to as the "Alternative Energy System".
2. Seller and Purchaser now desire to enter into an agreement whereby Seller will sell Purchaser the Alternative Energy System specifically described below.

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. Systems Purchased. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller the Alternative Energy System(s). The number of Alternative Energy Systems purchased by Purchaser from Seller under this Agreement shall be 20,000.

Seller shall furnish, deliver, install and startup the Alternative Energy System(s), at a site yet to be determined. When a site is selected, it shall be referred to as the "Installation Site".

2. Documentation for Potential Tax Benefits. Seller shall provide to Purchaser all required documentation relating to the Alternative Energy System and its components as requested by Purchaser for federal, state and local review of the Alternative Energy System for potential tax benefits. However, Purchaser hereby expressly acknowledges that neither Seller nor any other person or entity affiliated with Seller has made representations to Purchaser regarding potential tax benefits of this Agreement to Purchaser and Purchaser has relied entirely on hi/her own analysis of potential tax benefits. Purchaser hereby waives any and all claims against Seller and its employees, agents, officers, affiliates and representatives relating to Purchaser's failure to receive any anticipated tax benefit.

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3. Payment Terms. Purchaser shall pay to Seller the sum of \$3,500 for each Alternative Energy System purchased, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as the cost of warranty work performed during the warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule:

Initial Down Payment in the amount of \$525 (Five hundred twenty five dollars) for each Alternative Energy System purchased, which shall be paid at the time this agreement is entered into.

The Installation Date shall be defined as the date the Alternative Energy Equipment has been installed and begins to produce revenue. After the Alternative Energy Equipment has been installed and producing revenue for a five (5) year period, annual payments will begin. The annual payment will be as follows. Thirty Annual Installments in the amount of \$99.00 (Ninety-nine dollars) for each Alternative Energy System purchased, hereinafter referred to as "Annual Installments," shall be paid to Seller, the first Installment being due five years following the Installation Date and the last Installment being due Twenty-Nine years thereafter, the Thirty-Five year period from the Installation Date to a date one year following the due date of the last Installment, shall be referred to hereinafter as the "Installment Period" and the schedule of Installment payments shall be referred to hereafter as the "Installment Schedule."

4. Operations and Management Company. The Alternative Energy System shall be placed in operation only at and operated only at the Installation Site, and shall be operated and managed for the Installment Period by an independent Operations and Management Company hereinafter referred to as "Operations and Management Company". In the event that Operations and Management Company shall cease to operate and manage the Alternative Energy System for any reason during the Installment Period, a Substitute Operations and Management Company approved by Buyer shall be employed to operate and manage the Alternative Energy System. The Substitute Operations and Management Company must be expressly approved by Buyer.

5. Failure to Pay. In the event that Purchaser fails to pay any of the Annual Installments or any portion thereof, when due, interest shall accrue on the overdue amount at the rate of one and one-half percent (1-1/2%) per month until paid. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within a thirty (30) day grace period thereafter, Seller may immediately, upon written notice to Purchaser, enter the Installation Site and repossess the Alternative Energy System and any and all of the components thereof. In such event, Seller shall be entitled to recover its attorney fees, court costs, arbitration costs, collection costs, repossession fees and expenses incurred in repossessing the Alternative Energy System and any components thereof. In the event that Purchaser voluntarily relinquishes the Alternative Energy System to Seller, and thereby minimizes the expense to Seller in repossessing the Alternative Energy System, Seller agrees not to report Purchaser to any credit agencies for Purchaser's default, and Purchaser shall receive a credit against the balance owed under the Installment Schedule in an amount equal to the value of the Alternative Energy System as established by an independent, qualified appraiser approved by Purchaser and Seller. The credit for the value of the Alternative Energy System shall be given if Purchaser voluntarily relinquishes the Alternative Energy System, whether the Alternative Energy System is re-sold by Seller or not. If, for any reason, the Purchaser does not receive a rental/lease payment, the Purchaser shall have the right to choose to either make the payment as scheduled, or delay that year's loan repayment, thereby automatically extending the terms of the repayment schedule by one year. The Purchaser shall remain fully liable for the repayment of the loan.

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6. Seller's Rights upon Default. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within the thirty (30) days grace period thereafter, or if Purchaser becomes subject to any state or federal insolvency, bankruptcy, receivership, trusteeship or similar proceeding, or if Purchaser shall default in any other term of this Agreement, Seller may immediately terminate this Agreement by notice in writing to Purchaser and repossess the Alternative Energy System and all of the components thereof as stated above. In such event, Purchaser shall remain liable for all sums then due and unpaid, less the credit for the value of the repossessed Alternative Energy System as described above, plus a reasonable amount for attorneys' fees and such expenses as may be expended in the repossession of the Alternative Energy System.

7. Right to Reduce Purchase Amount. If changes are made to the Internal Revenue Code after the date of this Agreement and prior to January 31, 2013, which materially reduce any tax benefit of this agreement anticipated by the Purchaser, Purchaser may elect to reduce the number of Alternative Energy Systems purchased and the Seller agrees to accept the reduced amount, provided that the reduced amount is not less than the total amount already paid as a down payment or one-time payment. Any notice stating that Buyer wishes to elect a reduction must be emailed (with confirmation of delivery) or must arrive to the Seller via hand delivery, as set forth in this paragraph, on or before Jan 31, 2013.

8. Warranty. Seller hereby warrants, for the thirty five (35) year period from the Installation Date to the end of the Installment Period, hereinafter referred to as the "Warranty Period", that the Alternative Energy System shall remain in good operating condition. Seller shall initiate, within five (5) business days following the receipt of written notice that the Alternative Energy System is not operating properly or is not in good operating condition, either directly or through the use of one or more independent maintenance or repair entities, maintenance or repair of the malfunctioning or non-operating components of the Alternative Energy System. Seller shall complete such maintenance or repair work within a reasonable time thereafter. Seller shall be responsible for all material, equipment and labor costs incurred to complete such maintenance and repair work. Seller shall not be responsible for or liable for loss of revenue or other consequential damages sustained by Purchaser due to the failure of the Alternative Energy System to remain in good operating condition. Seller's obligations shall be limited to the maintenance and repair obligations stated herein.

9. Seller's Warranty Obligations. Seller hereby warrants, for the thirty five (35) year Warranty Period, the Alternative Energy System and each of the components thereof, from defects in materials and workmanship. Within five (5) business days following the receipt of written notice from Purchaser, Seller shall initiate reasonable efforts to ascertain repair or replacement requirements, to order replacement parts and equipment needed for repair, and to deploy qualified maintenance personnel. The cost of warranty parts, replacement equipment and labor shall be borne by Seller. Seller shall not be responsible for or liable for loss of revenue or other consequential damages sustained by Purchaser due to defects in materials or workmanship. Seller's obligations shall be limited to the parts, equipment replacement, and repair obligations stated herein.

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10. Target Production Rate. Seller and Purchaser acknowledge that the Target Production Rate from one Alternative Energy System is 600 peak watts, rated for clear sky conditions at noon, local time, June 21, at a latitude of forty degrees (40 degrees) North (the "Rating Conditions"), and the Warranty Production Rate is ninety-five percent (95%) of the Target Production Rate. Seller hereby warrants that for the initial five year period from the Installation Date to a date five years following the Installation Date, the Warranty Energy Production for the Alternative Energy system, shall be no less than 570 peak watts, at the Rating Conditions.

In the event that the actual peak energy production, at the Rating Conditions, from the Alternative Energy System during the initial five year period is less than the Warranty Energy Production, Purchaser shall have the option to terminate this Agreement and relinquish the Alternative Energy System to Seller. Purchaser shall thereafter have no further obligation under this Agreement to make any further payment or to perform any other obligation to Seller arising under this Agreement, except to cooperate with and assist Seller in obtaining possession of the Alternative Energy System. If Purchaser elects to terminate this Agreement as provided above, Purchaser shall not be entitled to a reimbursement of any portion of the Initial Down Payment. The foregoing option to terminate must be exercised within sixty (60) calendar days following the expiration of the initial five year period and must be exercised by Purchaser providing written notice to Seller.

11. Waiver for Delays. Purchaser hereby waives any and all claims against Seller for delays, including but not limited to claims for damages due to delays in preparing plans; delays in applying for or obtaining approvals or permits; delays in the delivery, installation, or start-up; or delays in performing warranty work. This waiver includes any and all direct, indirect or consequential damages.

12. Limitation of Liability. Neither of the parties shall have liability for consequential damages to the other arising out of this agreement or the transactions, events or occurrences related thereto and each hereby waives any and all such claims for consequential damages against the other. Seller's liability for any breach under this agreement shall be limited to any amounts actually paid by Purchaser and received by Seller under this Agreement.

13. Liability Insurance. Purchaser agrees to require Operations and Management Company to maintain liability insurance to insure against bodily injury, property damage, product liability or other claims related to the design, manufacture, delivery, installation, start-up, operation or maintenance of the Alternative Energy System.

14. Assignment of Agreement. This Agreement shall not be assigned by Purchaser without the express written consent of Seller. Seller may assign its rights and obligations under this Agreement but Seller shall remain liable to Purchaser for the failure of its assignee to perform the obligations of Seller under this Agreement.

15. Binding Agreement. This Agreement shall be binding upon the successors and assigns of each of the parties.

16. No Additional Warranties. Seller makes no representations or warranties, expressed or implied, including the implied warranty of merchantability and fitness, except as expressly stated

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in this Agreement.

17. Authorized Personnel. Purchaser shall not repair, modify or adjust the Alternative Energy System or any component thereof and Purchaser agrees to prohibit anyone other than Seller's authorized personnel to repair, modify or adjust the Alternative Energy System or any component thereof.

18. Notification to Seller. Purchaser shall notify Seller immediately of accidents, disabilities, failures or like information concerning the Alternative Energy System.

19. Warranty Limitations. In the event the Alternative Energy System becomes inoperable for any reason, except as otherwise provided under the warranty during the Warranty Period, Seller shall not be obligated to furnish a substitute Alternative Energy System or any component thereof. In any event, Seller shall not be liable for any special or consequential damages of any nature resulting from such inoperability.

20. Operating Site and Guidelines. Purchaser agrees that the Alternative Energy System shall be used and operated only at the Installation Site and in accordance with the "Safety and Operating Guidelines" which shall be written and set forth by Seller. Purchaser agrees that the Alternative Energy System shall not be relocated by Purchaser without the written consent of Seller.

21. Written Notice. Any notice under this Agreement shall be deemed sufficient if it is in writing and it is delivered to Purchaser, personally or sent by mail addressed to Purchaser at the address set forth above.

22. Rights, Liens, Title, and Interest. Nothing herein conveys to Purchaser any right, title or interest in or to the Alternative Energy System or any component thereof, except as a Purchaser. Seller reserves the right to file or record such documents and instruments as it may deem necessary from time to time to protect its rights, liens, title and interest in the Alternative Energy System. Purchaser agrees to cooperate with Seller and to execute such documents as may be required or requested by Purchaser to assist Seller in protecting its rights, liens, title and interest in the Alternative Energy System.

23. Breach of Agreement. In the event of the breach of this Agreement by either party, the injured party shall be entitled to recover its costs, attorney fees, arbitration costs and arbitration fees incurred in enforcing the agreement and in pursuing appropriate remedies.

24. Potential Tax Benefits Responsibility of Purchaser. Seller and Purchaser acknowledge that they each understand that the Alternative Energy System may qualify for certain tax incentives and benefits under the 2005 Energy Policy Act and other statutes. Purchaser agrees to obtain the evaluation and opinion of its own tax attorney or accountant as to any tax matters relating to this Agreement and to the Alternative Energy System. Seller does not guarantee any tax incentive or benefit to Purchaser. Seller hereby transfers to Purchaser any and all energy tax credits, if any, related to the Alternative Energy System. Seller shall not claim any such energy tax credits. Seller and Purchaser agree to the respective initial values of the components of the Alternative Energy System.

25. Dispute Resolution. In the event of a dispute arising out of this Agreement or the transactions, events or occurrences related thereto, Seller shall have the sole option of electing to have such disputes resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association with all hearings and other proceedings in that

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arbitration being conducted in Salt Lake City, State of Utah. Seller shall have the right to elect arbitration at any time up to and including the time that either party files an Answer in pending litigation between the parties relating to such disputes.

26. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Utah.

27. **Entire Agreement.** This is the entire agreement between the parties. This agreement shall not be modified except by written amendment signed by Purchaser and Seller.

28. **Right of Revocation.** Purchaser understands and acknowledges that s/he may revoke this Agreement for a period of up to 14 days after s/he signs it and delivers payment (counting the day it was signed and/or payment received) and that the Agreement will not become effective or enforceable until the 14-day revocation period has expired. To revoke this Agreement, Purchaser must give written notice stating that s/he wishes to revoke to the Seller's authorized sales representative or to the Seller via email to "cancel@xsunenergy.com". Any notice stating that Purchaser wishes to revoke this Agreement must be emailed (with confirmation of delivery) or must arrive to the Seller via hand delivery, as set forth in this paragraph, on or before the expiration of the 14-day revocation period.

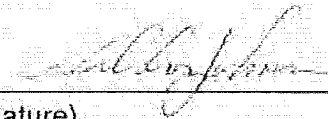
PURCHASER

(Signature)

Title: _____

Date: _____

XSUN ENERGY, SELLER



(Signature)

Title: MANAGER

Date: _____

For Internal Use Only:
AEPA #: _____

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OPERATION AND MAINTENANCE AGREEMENT

Alternative Energy Systems

This Operation and Maintenance Agreement (the "Agreement") is entered into this _____ day of _____, 20____, (the "Effective Date") by and between LTB, LLC (the "Operator"), a Nevada Limited Liability Company with principal offices at 3838 Raymert Drive, Suite #10, Las Vegas, Nevada 89121, and _____ (the "Owner"), whose address is _____.

RECITALS

WHEREAS pursuant to an Equipment Purchase Agreement (the "Purchase Agreement") between the Owner and XSun Energy, LLC ("XSun"), a copy of which is attached as Attachment A, the Owner has purchased certain solar thermal energy equipment which consists of _____ (the "Number of Owner's Alternative Energy Systems") Alternative Energy Systems (the "Owner's Alternative Energy Systems") which are particularly described in the Purchase Agreement that will be installed at a Power Plant and/or other facilities hereafter associated therewith (collectively, the "Project") at a location designated by the Equipment Purchase Agreement (the "Installation Site").

WHEREAS, the Owner desires to rent to Operator and Operator desires to rent from Owner, the Owner's Alternate Energy Systems.

WHEREAS, the Owner desires to contract with the Operator for Operator to provide operation and maintenance services in respect of the Project.

WHEREAS, the Operator, at the Operator's sole discretion, may also be operating and maintaining solar thermal energy equipment other than the Alternative Energy System of the Owner, at the Installation Site.

WHEREAS, the Operator is willing to provide such services on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 **Alternative Energy System.** Solar energy concentrator system.
- 1.2 **Imbedded Definitions.** The definitions of other key terms are as stated in the text of this Agreement.

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ARTICLE 2

OPERATOR SCOPE OF WORK

2.1 Appointment.

The Owner appoints the Operator and the Operator accepts the appointment to perform the following services subject to and in accordance with the provisions of this Agreement (collectively, the "Work"):

2.1.1 Routine O&M Services;

2.1.2 Additional Services; and

2.1.3 Transition Services.

2.2 Effective Date.

The Operator shall begin performing the Work on the date the Owner's Alternative Energy Systems are installed at the Installation Site (the "Effective Date").

2.3 Operation and Maintenance Services.

The Operator will perform the Work in accordance with the standard of a reasonable and prudent operator in the state wherein the Installation Site is located and in compliance with the Safety and Operating Guidelines ("Guidelines") provided by XSun to Operator, except to the extent that a reasonable and prudent operator would be unable, or would be hindered in its ability, to perform such obligations. Operator and Owner agree that XSun may modify or amend the Guidelines from time to time in the sole discretion of XSun. The Guidelines, as amended and modified hereafter in the sole discretion of XSun, are hereby incorporated by reference into this Agreement and Operator and Owner hereby agree to be bound thereby.

2.4 Appointment of Liaison.

The Operator may appoint a representative who will represent the Operator under this Agreement and be responsible for receiving approvals or instructions from the Owner that may be required from time to time. The Owner shall be entitled to rely on the actions of such representative for the purposes of this Agreement.

2.5 Governmental Approvals.

The Operator shall apply for and use reasonable efforts to obtain and maintain all Governmental Approvals that are required to be in the Operator's name and that are necessary for the Operator to perform its obligations under this Agreement. The Operator shall assist the Owner, to the extent reasonably necessary, in obtaining Governmental Approvals that the Owner is required to obtain pursuant to Article 3.

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2.6 Work Force.

The Operator is responsible for hiring, employing, training and managing, and additionally, in respect of employees employed by Affiliates of the Operator, overseeing the work force necessary to operate, maintain and repair the Project in accordance with this Agreement.

2.7 Access.

The Operator shall at all times provide access to the areas of the Project to the designated representatives of the Owner, provided that such access is in compliance with the Equipment Purchase Agreement and is coordinated with the Operator to ensure that it does not unreasonably interrupt or interfere with the performance of the Work or the safe operation of the Project and is at the sole risk and expense of the Owner, as applicable.

2.8 Legal Requirements.

The Operator shall comply in all material respects with all applicable law in the performance of the Work.

2.9 Property Tax.

The Operator shall comply with and pay all property tax on the Alternate Energy Systems.

ARTICLE 3

OWNER SCOPE OF RESPONSIBILITIES

3.1 Delivery of the Project.

Once this Agreement becomes effective, the Owner shall grant the Operator and its designated and identified Affiliates, employees, agents and representatives, access to the Installation Site and the Project, as are necessary or desirable for the Operator to carry out the Work and to comply with the Operator's obligations hereunder.

3.2 Appointment of Liaison.

The Owner may appoint a representative who will represent the Owner under this Agreement and be responsible for giving approvals or instructions to the Operator that may be required from time to time. The Operator shall be entitled to rely on the approvals or instructions of such representative.

3.3 Governmental Approvals.

The Owner shall apply for and use reasonable efforts to obtain and maintain all Governmental Approvals that are required to be in the Owner's name and that are necessary for the Owner to perform its obligations under this Agreement. The Owner shall assist the Operator; to the extent reasonably necessary, in obtaining Governmental Approvals that the Operator is required to obtain pursuant to Article 2.

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3.4 Compliance with Applicable Law.

The Owner shall comply in all material respects with all applicable law in connection with the performance of this Agreement.

ARTICLE 4

SAFETY AND OPERATING GUIDELINES

4.1 Safety and Operating Guidelines.

Pursuant to the Equipment Purchase Agreement between the Owner and XSun, XSun has provided Safety and Operating Guidelines ("Guidelines") for operating and maintaining the Project, which Guidelines include but are not limited to a description of the services to be provided by Operator to Owner. The services are categorized by the Guidelines into Routine O&M Services, Additional Services, and Transition Services. The Guidelines written and set forth by XSun are subject to modification or amendment by XSun without prior notice, in the sole discretion of XSun. Operator shall perform the Work in accordance with and in full compliance with the Guidelines, as modified or amended by XSun from time to time, which Guidelines are incorporated by reference into this Agreement.

4.2 Health, Environmental and Safety Standards.

The Operator agrees that the Project shall be operated in compliance with all applicable laws and with the OSHA Standards and that the Operator shall not be obligated to perform the Work in a manner that does not meet the OSHA Standards or that would violate applicable law.

ARTICLE 5

COMPENSATION AND PAYMENT

5.1 Owner's Alternative Energy System(s) Production.

In consideration for the performance by Operator of the services set forth in this Agreement, from the Effective Date of this Agreement until the Date of Termination of this Agreement as provided below, as for so long as Operator is in possession and control of the Project, Operator shall be entitled to receive all revenue from the use or sale of thermal energy or electric power generating using the Alternative Energy Systems.

5.2 Rental payment.

Once the Owner's Alternative Energy System(s) are installed and producing revenue, then at the end of each quarter a rental payment will be due and owing from Operator to Owner.

The Operator shall send to Owner, on a quarterly basis, the rental payment by check or wire transfer to an account specified by Owner. The rental payment from Operator to Owner will

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culminate into an annual payment equal to \$150 (One Hundred Fifty Dollars) per Alternative Energy System for the first 5 years, after which time the annual payment will increase to \$165 for the remaining time period of the contract. All Payments shall be in dollars unless otherwise agreed. Each Payment shall be delivered to Owner within thirty (30) calendar days following the end of the quarter.

5.3 Late Payments.

Late payments under this Agreement shall bear interest at a rate calculated from day to day on the basis of a 360 day year equal to one percent (1%) per annum above the Discount Rate. The payment of interest shall not excuse or cure any late payment hereunder.

5.4 Lease of Structural Components

Operator will provide a structure that holds the Owner's Alternative Energy Systems and a receiver to collect the energy from the Owner's Alternative Energy Systems. The Operator has agreed to lease space on the structure to the Owner, at one dollar (\$1.00) per year per Alternative Energy System for ninety-nine (99) years or until the Owner of the Alternative Energy Systems chooses to move the Alternative Energy Systems to another location.

ARTICLE 6

INDEMNIFICATION

6.1 Scope of Indemnification.

(a) The Owner shall indemnify, defend and hold harmless the Operator, its Affiliates and their respective directors, officers, employees and agents ("**Operator Indemnified Persons**") from and against any liability, loss, damage, claim, cost, charge or expense of any kind or nature, including reasonable attorneys' fees, expenses and other costs of litigation (collectively, "**Damages**") incurred by any Operator Indemnified Person in connection with (i) injury to or death of any person or damage to property (including the Project and any facilities related to the Project) and (ii) any claims by third parties, in each case, as a result of or otherwise relating to (A) the breach by the Owner of any of its obligations under this Agreement, (B) the gross negligence or willful misconduct of the Owner, its Affiliates and its and their respective directors, officers, employees and agents, or (C) the Project; provided that the Owner shall not be liable to indemnify any such Operator Indemnified Person for any Damages to the extent that such Damages are to be indemnified by the Operator pursuant to Section 6.1(b)(ii) or are the result of the gross negligence or willful misconduct of the Operator or, in respect of any such Operator Indemnified Person, such Operator Indemnified Person.

(b) Subject to the limitation of liability under Article 10, the Operator shall indemnify, defend and hold harmless the Owner, its Affiliates and its and their respective directors, officers, employees and agents ("**Owner Indemnified Persons**") from and against any Damages incurred by any Owner indemnified Person in connection with (i) injury to or death of any person or damage to property (including the Project and any facilities related to the Project) and (ii) any claims by third parties, in each case, as a result of (A) the breach by the Operator

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of any of its obligations under this Agreement or (B) the gross negligence or willful misconduct of the Operator, its Affiliates and its and their respective directors, officers, employees and agents; provided that the Operator shall not be liable to indemnify any such Owner Indemnified Person to the extent Damages are the result of the gross negligence or willful misconduct of the Owner or any such Owner Indemnified Person or the breach by the Owner of any of its obligations under this Agreement.

6.2 Limitation of Liability.

The limitation of liability under Article 10 shall not apply to or include the amount of insurance proceeds received by the Operator under insurance obtained in accordance with this Agreement other than insurance obtained and paid by the Operator unless the amount paid by the Operator is reimbursed by the Owner hereunder.

6.3 No Effect on Insurers.

The provisions of this Article 6 will not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance Policy.

6.4 Gross Negligence.

No Party shall have its liability limited hereunder for its own gross negligence or willful misconduct.

6.5 Survival.

The Parties' obligations under this Article 6 survive any termination of this Agreement.

ARTICLE 7

INSURANCE

7.1 Insurance Required of the Operator.

The Operator shall procure and maintain the insurance listed below:

- (a) Workers' compensation insurance, or the equivalent, as required by law.
- (b) Comprehensive general liability coverage, or the equivalent, including bodily injury and physical damage, with a per occurrence limit of US\$1,000,000.00.

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ARTICLE 8
FORCE MAJEURE

8.1 Event of Force Majeure.

Any failure by the Operator or the Owner to carry out any of its obligations under this Agreement will not be deemed a breach of contract or default, other than obligations to pay monies due and payable pursuant to this Agreement, if such failure is caused by an Event of Force Majeure, that Party having taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. If any activity is delayed, curtailed or prevented by an Event of Force Majeure, then, anything in this Agreement to the contrary notwithstanding, the time for carrying out the activity thereby affected and the term of this Agreement will each be extended for a period equal to the total of the periods during which such causes or their effects were operative, and for such further periods, if any, as are necessary to make good the time lost as a result of such Event of Force Majeure.

8.2 Notice; Cooperation.

The Party whose ability to perform its obligations is affected by an Event of Force Majeure shall notify as soon as practicable the other Party in writing, stating the cause, and the Parties shall endeavor to do all reasonable acts and things within their power to remove such cause. No Party is obligated to resolve or terminate any disagreement with third parties, including labor disputes, except under conditions acceptable to it or pursuant to the final decision of any arbitral, judicial or statutory agent having jurisdiction to finally resolve the disagreement. As to labor disputes, any Party may request the other Party to cooperate in a joint endeavor to alleviate any conflict which may arise.

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ARTICLE 9

TERM AND TERMINATION

9.1 Term of Agreement.

This Agreement becomes effective as of the Effective Date and, unless terminated by either Party pursuant to this Article 9, will terminate upon the termination of the Equipment Purchase Agreement.

9.2 Termination by the Owner.

This Agreement may be terminated at any time by the Owner if the Operator breaches any of its material obligations under this Agreement and Operator fails to cure such breach within 90 days of the receipt of written notice from the Owner; provided that the exercise of any termination right to be effective must occur within 90 days after the Owner becomes aware that its termination right exists. The Operator will have the opportunity, within 90 days of receiving notice of the event or breach to cure the event or breach, or, if such event or breach is not reasonably capable of being cured within such period, to submit to the Owner a plan (an "Operator Remedial Plan") calculated to cure such event or breach within an additional reasonable period of time. The Owner may terminate this Agreement if, having commenced actions to cure the event or breach in accordance with an Operator Remedial Plan, the Operator fails to pursue such actions diligently or is unable to effect a cure within the period contemplated in the Operator Remedial Plan; provided that if the existence of such event or breach is disputed, such termination may occur only following resolution of the dispute regarding the existence or non-existence of a breach. The Date of Termination shall be the date that all conditions and contingencies to termination have been satisfied and the Owner is entitled to terminate this Agreement.

9.3 Termination by the Operator.

This Agreement may be terminated at any time by the Operator if the Owner breaches any of its material obligations under this Agreement, and Owner fails to cure such breach within 90 days of the receipt of written notice from Operator. The Operator shall have the right to immediately suspend performance hereunder in the event of any such default, until the same is cured by the Owner, and the Owner shall have no rights against the Operator in respect of such suspension until the time of such cure. Additionally, the Operator may terminate this Agreement if any change in ownership results in the Operator no longer being an Affiliate of the Owner. The exercise of any termination right to be effective must occur within 90 days after the Operator becomes aware that its termination right exists. The Date of Termination shall be the date that all conditions and contingencies to termination have been satisfied and the Operator is entitled to terminate this Agreement.

9.4 Transition to New Operator.

In the event of any termination under Section 9.2, the Owner may request that the Operator continue to maintain a sufficient number of local and expatriate employees to assist in training a replacement operator and to perform such other transition work as the Owner may reasonably request, and the Operator shall comply with any such request for a period not to exceed three months.

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**ARTICLE 10
LIMITATIONS OF LIABILITY**

Neither of the parties shall have liability for consequential damages to the other arising out of this agreement or the transactions, events or occurrences related thereto and each hereby waives any and all such claims for consequential damages against the other.

**ARTICLE 11
CONSULTATION AND ARBITRATION**

11.1 Arbitration.

(a) If any Dispute arising out of this Agreement cannot be resolved by the Parties, then such Dispute shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be the sole and exclusive forum for resolution of such Dispute, and the award rendered shall be final and binding. Judgment on the award rendered may be entered in any court having jurisdiction thereof.

(b) The arbitration shall be conducted in the English and shall be held in Salt Lake City, Utah.

(c) Any award of the arbitrator(s) (i) shall be in writing, (ii) shall state the reasons upon which such award is based and (iii) may include an award of costs, including reasonable attorneys' fees and disbursements.

(d) The arbitrators shall have no authority to award consequential damages or punitive damages or any other damages not measured by the prevailing Party's actual direct damages, and the arbitrators may not, in any event, make any ruling, finding or award that does not conform to the term and conditions of this Agreement.

(e) Any Party may make an application to the arbitrators seeking injunctive relief to maintain the status quo until such time as the arbitration award is rendered or the dispute, controversy or claim is otherwise resolved. Any Party may also apply to any court having jurisdiction and seek injunctive relief in order to maintain the status quo until such time as the arbitration award is rendered or the dispute, controversy or claim is otherwise resolved.

In the course of resolving Disputes, to the extent practicable, the Parties shall continue to perform the terms and conditions of this Agreement that are not in dispute.

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ARTICLE 12

REPRESENTATIONS AND WARRANTIES

12.1 By the Owner.

In order to induce the Operator to enter into this Agreement the Owner makes the following representations and warranties as of the date hereof, which survive the execution and delivery hereof:

(a) the Owner is an individual or authorized representative of a legal entity having all requisite power and authority to enter into and perform this Agreement;

(b) the execution, delivery and performance of this Agreement (i) have been duly authorized by all necessary actions on the part of the Owner, and (ii) will not result in any violation of or conflict with or constitute a default under any provision of applicable law or of any judgment, decree or order of a court or Governmental Instrumentality applicable to the Owner or any material agreement or other instrument to which the Owner is a party or by which it is bound, including the Energy Sales Contract; and

(c) this Agreement constitutes a valid and binding obligation of the Owner.

12.2 By the Operator.

In order to induce the Owner to enter into this Agreement, the Operator makes the following representations and warranties as of the date hereof, which survive the execution and delivery hereof:

(a) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite corporate power and authority to enter into and perform this Agreement;

(b) the execution, delivery and performance of this Agreement (i) have been duly authorized by all necessary corporate action on its part and (ii) will not result in any violation of or conflict with or constitute a default under any provision of applicable law or its charter or by-laws or any judgment, decree or order applicable to it or any material agreement or other instrument to which it is a party or by which it is bound; and

(c) this Agreement constitutes a valid and binding obligation of the Operator.

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ARTICLE 13
MISCELLANEOUS

13.1 Governing Law.

This Agreement is governed by and construed in accordance with the laws of the State of Utah, United States of America.

OWNER

By: _____

(Signature)

Title: _____

Date: _____

LTB LLC

OPERATOR

By: _____

(Signature)

Title: _____

Date: _____

For Internal Use Only:

AEPA #: _____

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Alternative Energy System Marketing Referral Fee Contract

This Marketing Referral Fee Contract is made by and between XSun Energy of 4035 South 4000 West, Deseret, UT 84624, and _____

Hereinafter referred to as "Purchaser", with an address of _____

In consideration for (a) the purchase by Purchaser of Alternative Energy Systems as evidenced by the execution of the Equipment Purchase Agreement dated _____ (hereinafter referred to as "Equipment Purchase Agreement"); (b) the payment by Purchaser to XSun Energy of the initial Purchase payment at the time of signing the Equipment Purchase Agreement; (c) Purchaser agreeing to make and continuing to make the Systems available to XSun Energy as a reference for marketing and sales purposes to show and demonstrate to potential customers; and (d) Purchaser timely making all future payments required under the Equipment Purchase Agreement, Purchaser shall earn and shall thereafter receive a referral fee for services performed by allowing access and use for sales purposes. The Purchaser agrees that the Alternative Energy Systems shall be placed "in service" immediately upon execution of this Contract for this purpose.

For each Alternative Energy System contracted herein, a quarterly credit equivalent to 0.000245% of total new gross revenue (0.0000245 x gross revenue) received from XSun Energy in the calendar quarter, times the number of Alternative Energy Systems owned by Purchaser, will be deducted from the outstanding amount owed for Purchaser's Alternative Energy Systems, provided that the Purchaser's amount outstanding is greater than zero. However, the foregoing quarterly credits shall not be used to reduce the amount that must be paid by Purchaser under the Equipment Purchase Agreement for the balance of the down payment, and the credits at any time shall not exceed the balance owed by Purchaser under the Equipment Purchase Agreement.

The total amount of the foregoing credits to Purchaser shall be limited to \$2,450.00 for each Alternative Energy System purchased by Purchaser. Once the total amount of the quarterly credits made equal \$2,450.00 times the number of Alternative Energy Systems purchased, no further credits will be made. The number of Alternative Energy Systems used to compute the amount of credit to purchaser shall be reduced to the actual number purchased, if the Purchaser elects to make a reduction under Section 7 of the Equipment Purchase Agreement.

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As evidenced by the execution of the Equipment Purchase Agreement, the total number of Systems purchased by Purchaser is _____ (_____)

This agreement is based upon proof of purchase and down payment has been received in full.

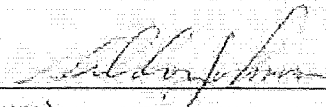
PURCHASER

(Signature)

Title: _____

Date: _____

XSUN ENERGY, SELLER



(Signature)

Title: MANAGER

Date: _____

For Internal Use Only:

AEPA #: _____

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XSUN ENERGY ALTERNATIVE ENERGY SYSTEMS SALES DISCLAIMER

Please read, initial by each line, and sign below.

_____ INITIAL I recognize that XSun Energy and their Sales Team is NOT offering financial, investment, or tax advice. I recognize that the equipment I am purchasing may qualify for certain tax advantages, however my participation in those tax advantages is optional. I have been advised that in the event that I desire to take advantage of any tax advantages I should consult with my accountant and/or CPA.

_____ INITIAL I recognize that the Energy Credit for 30% of the purchase price is available as a tax credit and must be filed for with the appropriate paperwork through the IRS, and is not coming by or through XSun Energy. I recognize that XSun Energy's is only selling me a piece of equipment that qualifies for the Energy Credit.

_____ INITIAL I recognize that the contracts I am signing are legal, binding agreements and represent all final agreements between myself and XSun Energy and supersede anything that might have been verbally represented by XSun Energy and/or an affiliated sales representative(s).

Signature of Purchaser: _____ Date: _____

For Internal Use Only: AEPA #: _____

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Treasury Regulations, Subchapter A, Sec. 1.7872-5T

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Sec. 1.7872-5T Exempted loans (temporary)

(a) *In general*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans.* If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872 (c)(1)(D).

(b) *List of exemptions.* Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) Loans which are made available by the lender to the general public on the same terms and conditions and which are consistent with the lender's customary business practice;

(2) Accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business;

(3) Acquisitions of publicly traded debt obligations for an amount equal to the public trading price at the time of acquisition;

(4) Loans made by a life insurance company (as defined in section 816 (a)), in the ordinary course of its business, to an insured, under a loan right contained in a life insurance policy and in which the cash surrender values are used as collateral for the loans;

(5) Loans subsidized by the Federal, State (including the District of Columbia), or Municipal government (or any agency or instrumentality thereof), and which are made available under a program of general application to the public;

(6) Employee-relocation loans that meet the requirements of paragraph (c)(1) of this section;

(7) Obligations the interest on which is excluded from gross income under section 103;

(8) Obligations of the United States government;

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(9) Gift loans to a charitable organization (described in section 170(c)), but only if at no time during the taxable year will the aggregate outstanding amount of gift loans by the lender to that organization exceed \$250,000. Charitable organizations which are effectively controlled, within the meaning of §1.482-1(a)(1), by the same person or persons shall be considered one charitable organization for purposes of this limitation.

(10) Loans made to or from a foreign person that meet the requirements of paragraph (c)(2) of this section;

(11) Loans made by a private foundation or other organization described in section 170(c), the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B);

(12) Indebtedness subject to section 482, but such indebtedness is exempt from the application of section 7872 only during the interest-free period, if any, determined under §1.482-2(a)(1)(iii) with respect to intercompany trade receivables described in §1.482-2(a)(1)(ii)(A)(ii). See also §1.482-2(a)(3);

(13) All money, securities, and property—

(i) Received by a futures commission merchant or registered broker/dealer or by a clearing organization (A) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (B) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, so long as the amounts so received to purchase, margin, guarantee or secure such contracts for future delivery or such options contracts are reasonably necessary for such purposes and so long as any commissions received by the futures commission merchant, registered broker-dealer, or clearing organization are not reduced for those making deposits of money, and all money accruing to account holders as the result of such futures and options contracts or

(ii) Received by a clearing organization from a member thereof as a required deposit to a clearing fund, guaranty fund, or similar fund maintained by the clearing organization to protect it against defaults by members.

(14) Loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of this section; and

(15) Loans, described in revenue rulings or revenue procedures issued under section 7872(g)(1)(C), if the Commissioner finds that the factors justifying an exemption for such loans are sufficiently similar to the factors justifying the exemptions contained in this section.

(c) *Special rules—*(1) *Employee-relocation loans—*(i) *Mortgage loans.* In the case of a compensation-related loan to an employee, where such loan is secured by a mortgage on the new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee, acquired in

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connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The loan is a demand loan or is a term loan the benefits of the interest arrangements of which are not transferable by the employee and are conditioned on the future performance of substantial services by the employee;

(B) The employee certifies to the employer that the employee reasonably expects to be entitled to and will itemize deductions for each year the loan is outstanding; and

(C) The loan agreement requires that the loan proceeds be used only to purchase the new principal residence of the employee.

(ii) *Bridge loans.* In the case of a compensation-related loan to an employee which is not described in paragraph (c)(1)(i) of this section, and which is used to purchase a new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The conditions contained in paragraphs (c)(1)(i) (A), (B), and (C) of this section;

(B) The loan agreement provides that the loan is payable in full within 15 days after the date of the sale of the employee's immediately former principal residence;

(C) The aggregate principal amount of all outstanding loans described in this paragraph (c)(1)(ii) to an employee is no greater than the employer's reasonable estimate of the amount of the equity of the employee and the employee's spouse in the employee's immediately former principal residence, and

(D) The employee's immediately former principal residence is not converted to business or investment use.

(2) *Below-market loans involving foreign persons.* (i) Section 7872 shall not apply to a below-market loan (other than a compensation-related loan or a corporation-shareholder loan where the borrower is a shareholder that is not a C corporation as defined in section 1361(a)(2)) if the lender is a foreign person and the borrower is a U.S. person unless the interest income imputed to the foreign lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

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(ii) Section 7872 shall not apply to a below-market loan where both the lender and the borrower are foreign persons unless the interest income imputed to the lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(iii) For purposes of this section, the term "foreign person" means any person that is not a U.S. person.

(3) *Loans without significant tax effect.* Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are—

(i) Whether items of income and deduction generated by the loan offset each other;

(ii) The amount of such items;

(iii) The cost to the taxpayer of complying with the provisions of section 7872 if such section were applied; and

(iv) Any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

(26 U.S.C. 7872)

[T.D. 8045, 50 FR 33520, Aug. 20, 1985, as amended by T.D. 8093, 51 FR 25033, July 10, 1986; 51 FR 28553, Aug. 8, 1986; T.D. 8204, 53 FR 18282, May 23, 1988]

Category: Treasury Regulations

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