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**SOLAR POWER SERVICES AGREEMENT**

**Dated as of**

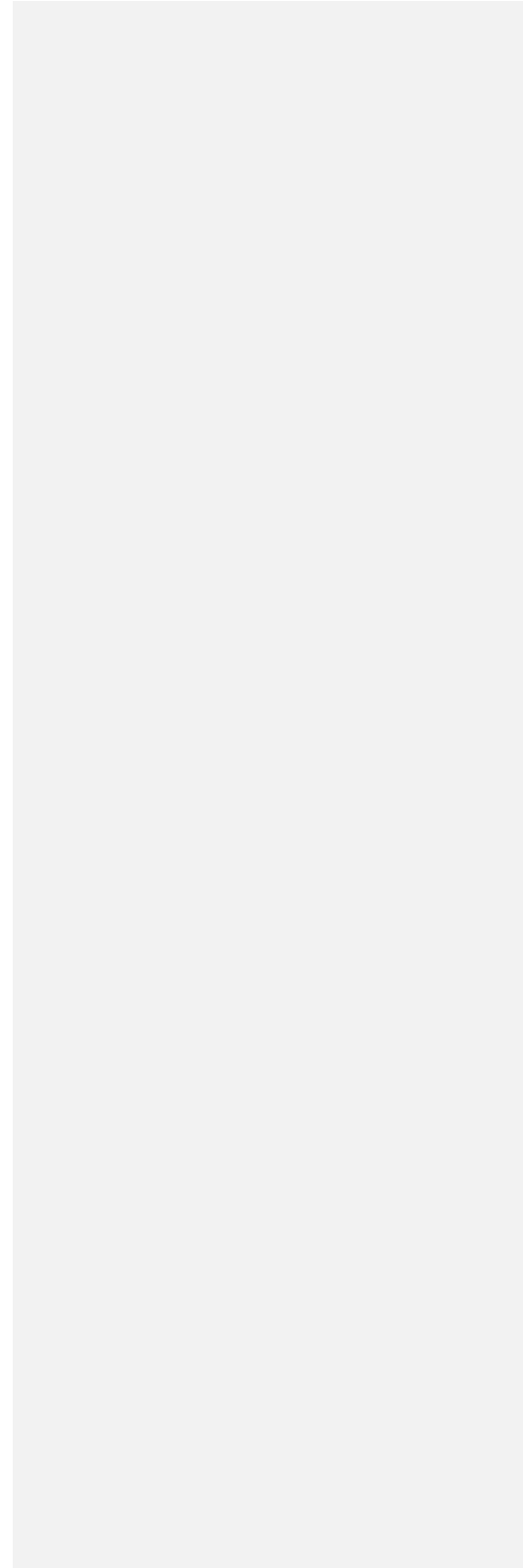
\_\_\_\_\_, 2023

**between**

**THE CITY OF STAMFORD**

**and**

**ALLCO RENEWABLE ENERGY LIMITED**



## SOLAR POWER SERVICES AGREEMENT

This Solar Power Services Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2023 (the "Effective Date"), by and between **Allco Renewable Energy Limited**, a Delaware corporation, with a local place of business located at 157 Church Street, 19th Floor, New Haven, CT, 06510, and acting herein by Thomas Melone, its duly authorized President, together with any successors and permitted assigns ("Provider"), and the **City of Stamford**, a Connecticut Municipality, with its government center located at 888 Washington Boulevard, Stamford, CT 06901, and acting herein by Caroline Simmons, its duly authorized Mayor, together with any successors and permitted assigns ("Purchaser", and, together with Provider, each, a "Party" and together, the "Parties").

WHEREAS, Provider is the lessee of the real property comprising the Site (as described in Exhibit B attached hereto), and desires to use a portion of such property for the construction, operation and maintenance of a solar powered electric generating system, and to sell the electric energy produced by the system to the Purchaser; and

WHEREAS, Purchaser desires to purchase the electric energy production from the Provider's solar powered electric generating system to obtain the Virtual Net Metering Credits and Provisional Virtual Net Metering Credits available from the output of the such system; and

NOW, THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Monthly Production" means the amount of energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means this Solar Power Services Agreement.

"Annual True-Up Payment" shall mean in any calendar year during the Term in which there are Provisional Virtual Net Metering Credits available to Purchaser under the Provisional VNM Program an amount equal to the difference between (i) the average annual price paid by Provider for Virtual Net Metering Credits for such year and (ii) the kWh Rate multiplied by the Net Metered Production for such year; provided that the Net Metered Production for purposes of calculating the Annual True-Up Payment shall be limited to the amount of energy delivered to the Local Electric Utility and credited to the Purchaser as Provisional Net Metering Credits by the Local Electric Utility under the Provisional VNM Program in such year.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either:

(a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (vi) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (vii) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

"Billing Cycle" means the monthly billing cycle established by the Local Electric Utility.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in Stamford, CT are required or authorized by Applicable Law to be closed for business.

"Capacity Benefits" means the amount of capacity that is attributable to the physical generating capacity of Provider's System which may count toward the New England Independent System Operator's (ISO-NE) installed capacity market or the capacity market of any other independent system operator located in the United States.

"Commencement Date" shall have the meaning set forth in Schedule VII.

"Commercial Operation" and "Commercial Operation Date" have the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Contracted Mitigation Amount" means the present value, if any, as determined by the Provider in its reasonable discretion, of one or more third party contracts for the sale of the electricity generated by the system to such third parties, entered into between Provider and such third parties within one (1) year following termination of this Agreement pursuant to Section 11.2 hereof. For purposes of the foregoing, the present value shall be calculated as of the effective date of the contract between the Provider and the third party, and the amounts shall be deemed received in the month such third-party contract becomes effective.

"Covenants, Conditions and Restrictions" or "CCR" means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

"Dispute" has the meaning provided in Section 17.1.

"Effective Date" has the meaning set forth in the preamble.

"Environmental Attributes" excludes electric energy and capacity produced but includes, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products and shall specifically include any Zero Emission Renewable Energy Certificates or Low Emission Renewable Energy Certificates generated by the production of the System at the Site as well as any other emissions, air quality, or other

environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of energy by a low emissions or zero emissions renewable energy facility as defined in the Energy Act, whether existing as of the Effective Date or in the future, and whether as a result of any present or future local, state or federal laws or regulations or local, state, national or international voluntary program, as well as any and all generation attributes under the Connecticut RPS regulations and under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future; and further, means: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the NEPOOL GIS in connection with energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of energy by the Facility. If during the Term, a change in laws or regulations occurs that creates value in Environmental Attributes, then at Provider's request, Purchaser shall cooperate with Provider to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for Buyer.

"Estimated Remaining Payments" means as of any date, the estimated remaining payments to be made through the end of the then-applicable Term, as reasonably determined and supported by Provider.

"Estimated Annual Production" has the meaning set forth in Section 5.2.

"Excess Net Metering Credit" shall mean the monetary value of the excess electricity generated by the Solar Electric Generating Equipment, and credited to the Purchaser by the Local Electric Utility for any period of time in any year after the Purchaser has reached the VNM Annual Credit Cap.

"Expiration Date" means the date on which the Agreement terminates by reason of expiration of the Initial Term.

"Financing Party" means any Person (or its agent) who has made or will make a loan to or otherwise provide financing to Provider (or to an Affiliate of Provider) with respect to the System.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Indemnified Persons" means the "Purchaser Indemnified Parties" as defined in Section 16.1 or the "Provider Indemnified Parties," as defined in Section 16.2 as the context requires.

"Initial Term" has the meaning set forth in Section 2.1 for the time period specified in Schedule 7 hereto.

"Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for the benefit of the Provider at the Premises.

"Invoice Date" has the meaning set forth in Section 6.3.

"kWh Rate" means (a) for the Initial Term, the price per kWh set forth in Schedule 2 hereto and (b) for the Renewal Term, the rate as provided pursuant to Section 2.1 hereof.

"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

"Losses" means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

"Material Adverse Change" means any event, circumstance, fact, change, development, condition or effect that either individually or in the aggregate, has, had or could reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Purchaser.

"Net Energy Metering" means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a Solar System and fed back to the Local Electric Utility, as set forth in the Net Metering Rules.

"Net Energy Meter" has the meaning set forth in Section 4.2.

"Net Metered Production" means the amount of energy delivered to the Local Electric Utility generated by the System.

"Net Metering Rules" means, collectively, and as amended from time to time, the State of Connecticut General Statutes Section 16-244u as amended by Public Act No. 13-298, Sections 35 and Public Act 13-247 Section 119; General Statutes 16-1 and 16-243y; the Regulations of Connecticut State Agencies Sections 16-11-100 through 16-11-238; as well as any statutes or regulations relevant to virtual net metering that are later amended, enacted or adopted and further subject to the virtual net metering policies adopted by Public Utilities Regulatory Authority (PURA) in its Final Decision dated December 17, 2014 Docket No. 13-08-14RE01, PURA Development of the Administrative Processes and Program Specifications for Virtual Net Metering – VNM Methodology, and any Connecticut net metering regulations related thereto, orders issued by the PURA, and the associated net metering tariff of the Local Electric Utility, including, without limitation, PURA Ruling to Motion No. 007, dated January 14, 2022, Docket No. 13-08-14RE05, Motion 7, which established the provisional VNM program (the "Provisional VNM Program").

"Party" or "Parties" has the meaning set forth in the preamble to the Solar Power Services Agreement.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

"Premises" means the premises described in Schedule 1 hereto. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 hereto.

"Provider" has the meaning set forth in the preamble to this Agreement.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Provider Indemnified Parties" has the meaning set forth in Section 16.2.

"Provisional Virtual Net Metering Credit" shall mean the monetary value of the electricity generated by Solar Electric Generating Equipment, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility under the Provisional VNM Program and in excess of the Virtual Net Metering Credit.

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Purchaser Indemnified Parties" has the meaning set forth in Section 16.1.

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 hereto and all other solar or renewable energy subsidies and incentives.

"Solar Power Services Agreement" means this Solar Power Services Agreement, including the following Schedules and Exhibits attached hereto and hereby made a part hereof as if fully set forth herein:

- Exhibit A – General Conditions for the Benefit of the Financing Parties;
- Exhibit B – Descriptions of the Sites;
- Exhibit C – Virtual Net Metering Services Agreements;
- Exhibit D – City of Stamford RFP No. 802 Virtual Net Metering Services, issued May 1, 2020;
- Exhibit E – Addendum No. 1, dated May 26, 2020, to City of Stamford RFP No. 802;
- Exhibit F – Provider's Response, dated June 4, 2020, to City of Stamford RFP No. 802;
- Schedule 1 – Description of Premises and Systems;
- Schedule 2 – kWh Rate;
- Schedule 3 – Intentionally Omitted;
- Schedule 4 – Estimated Annual Production;
- Schedule 5 – Notice Information;
- Schedule 6 – Time of Payment; and
- Schedule 7 – Initial Term.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"System" or "Solar Electric Generating Equipment" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 hereto that generates electricity.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance with the requirements contained herein.

"Term" has the meaning set forth in Section 2.1.

"Virtual Net Metering Credit" shall mean the monetary value of the electricity generated by Solar Electric Generating Equipment, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility.

"Virtual Net Metering Services Agreement" shall mean that certain Virtual Net Metering Service Agreement between the \_\_\_\_\_ and the Connecticut Light & Power Company d/b/a Eversource Energy with a VNM Queue Acceptance Date of \_\_\_\_\_, attached hereto as Exhibit C.

"VNM Annual Credit Cap" shall mean \$ \_\_\_\_\_ or as otherwise set forth on the Virtual Net Metering Services Agreement.

**Commented [DC1]:** Alco will complete these sections with the information from the respective Provisional VNM Agreements.

1.2 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof", "herein", and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to "Articles" and "Sections" refer to Articles and Sections of this Agreement.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for the number of years from the Commencement Date specified in Schedule 7 hereto for the Initial Term, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for an additional five (5) year term (a "Renewal Term"). At least one hundred and eighty (180) days, but no more than three hundred and sixty five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term, including the kWh Rate that would be applicable during the Renewal Term. Purchaser shall have sixty (60) days to agree to the continuation of the Agreement for the Renewal Term. Absent agreement to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term."

2.2 Provider Conditions of the Agreement Prior to Commencement. In the event that any of the following events or circumstances occur prior to the Commencement Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination.

(a) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors.

(b) Provider has not received evidence reasonably satisfactory to it that the System will be eligible for Net Energy Metering Services.

(c) Provider has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the operation, maintenance or removal of the System.

(d) There has been a Material Adverse Change in Purchaser's credit-worthiness.

## 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider has caused the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 hereto and Applicable Law.

3.2 Approvals; Permits. Purchaser shall reasonably assist Provider (without Purchaser's expenditure of monies) in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR.

3.3 Commercial Operation Date. The Commercial Operation Date occurred on June 18, 2021.

#### 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a direct result of Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. The Local Electric Utility will install and maintain a meter, referred to as the "Net Energy Meter", which will measure the net amount of electrical energy flowing to and from the Premises, or Net Metered Production. Provider may, at its discretion, install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may also, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility at the Premises.

4.3 Meter Accuracy. On behalf of Purchaser as the Local Electric Utility's customer of record, Provider may, on its own initiative, and shall upon the request of the Purchaser, exercise Local Electric Utility customer rights to arrange for testing of the accuracy of the Net Energy Meter.

#### 5. DELIVERY OF NET METERED PRODUCTION.

5.1 Purchase Requirement. If the Parties are participating in the Standard VNM Program (as defined in Section 5.5 below), Purchaser agrees to purchase the Net Metered Production generated by the System during each relevant month of the Term, whether or not Purchaser is able to use any of such Net Metered Production.

5.2 Estimated Annual Production. The annual estimate of electricity generated by the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set forth in Schedule 4 hereto. Purchaser acknowledges and agrees that the actual energy production could exceed the Estimated Annual Production in any given year and if the Parties are participating in the Standard VNM Program (as defined in Section 5.5 below), Purchaser shall still be responsible for purchasing any energy delivered by Provider to Purchaser above the Estimated Annual Production.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase does not include Environmental Attributes, Capacity Benefits or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives, Capacity Benefits or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party.

5.5 Net Energy Metering. The Parties will work cooperatively and in good faith to meet all Net Energy Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements. The Parties will participate together in the Provisional VNM Program unless and until the Parties qualify to participate in the non-provisional VNM program (the "Standard VNM Program"). The Parties agree that (a) Provider shall transmit such Net Metered Production into the Local Electric Utility system on behalf of and for the account of Purchaser, and (b) Purchaser (or its designee) shall be entitled to any and all Provisional Virtual Net Metering Credits or Virtual Net Metering Credits issued by the Local Electric Utility resulting from such transmission. Provided that the Parties are unable to participate together in Standard VNM Program, Purchaser authorizes Provider to annually confirm the Parties' participation in the Provisional VNM Program to the extent available to the Parties. Both parties agree that there is no guarantee that (i) the Parties may ever participate in the Standard VNM Program, or



(ii) any Provisional Virtual Net Metering Credits will be available in any given year under the Provisional VNM Program. Purchaser acknowledges that any Provisional Virtual Net Metering Credits under the Provisional VNM Program that are available will be applied only in January of the year following the energy production.

## 6. PRICE AND PAYMENT.

### 6.1 Consideration Under the Provisional VNM Program.

(a) Purchaser shall pay to Provider a monthly payment equal to the amount of payments received from the Local Electric Utility for the electricity generated by the System, if any, and delivered to the Local Electric Utility during each monthly Billing Cycle of the Term.

(b) In addition, Purchaser shall pay to Provider an Annual True-Up Payment (if any) under the Provisional VNM Program to the extent applicable.

6.2 Consideration Under the Standard VNM Program. Purchaser shall pay to Provider a monthly payment for the electricity generated by the System and delivered to the Local Electric Utility during each monthly Billing Cycle of the Term equal to the product of (x) the Net Metered Production for the System for the relevant month multiplied by (y) the kWh Rate for such month.

6.2 Invoice. Purchaser shall provide Provider with a copy of each monthly bill from the Local Electric Utility in Purchaser's capacity as Customer-Generator of the System within five (5) business days of receipt. Following Provider's receipt of such monthly bill, Provider shall invoice Purchaser (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commencement Date, for the payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within the time specified in Schedule 6 hereto.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. If Purchaser does not have electronic funds transfer capability, the Parties shall agree to an alternative method of payment. All payments that are not paid when due and not disputed shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.6 below, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

6.6 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of a Local Electric Utility billing adjustment to correct an inaccuracy of the Net Energy Meter, the quantity of Net Metered Production is decreased (the "Electricity Deficiency Quantity") and the Local Electric Utility reduces the amount of Provisional Virtual Net Metering Credits or Virtual Net Metering Credits awarded for such period, Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity. If the quantity of Net Metered Production is increased (the "Electricity Surplus Quantity") and the Local Electric Utility increases the amount of Provisional Virtual Net Metering

Credits or Net Metering Credits for such period, Purchaser shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System or the electrical production of the System.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Purchaser be responsible for any Interconnection Obligations.

(e) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work and System Operations and shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(f) Compliance with City of Stamford Code Provisions. Provider shall fully comply, to the extent applicable, with the requirements of the City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. The provisions of the City of Stamford Code of Ordinances can be found at [www.municode.com](http://www.municode.com).

(g) Gifts. During the Term of this Agreement, including any extensions, the Provider shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Provider shall include its members, officers, directors, employees, and owners of more than 5% equity in the Provider.

(h) Code of Ethics. Provider is prohibited from using its status as a contractor with the City to derive any interest(s) or benefit(s) from other individuals or organizations and Provider shall comply with the prohibitions set forth in the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances.

(i) Morals Clause. Neither Provider, Provider's representatives, nor Provider's key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with Purchaser. If either Provider, Provider's representatives, or Provider's key personnel are accused of any act

involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or are accused of performing or committing any act which could adversely impact Provider's events, programs, services, or reputation, Purchaser shall have the right to terminate this Agreement upon fifteen (15) days written notice specifying the reason, within which period Provider may cure such offense. The determination of whether and to what extent the offense is cured shall be made by Purchaser at its sole discretion.

7.2 Purchaser's Covenants. Purchaser covenants and agrees to the following:

(a) Purchaser shall provide to Provider such documentation (including billing statements from the Local Electric Utility), as may be reasonably requested by Provider for the purposes hereof.

(b) Customer-Generator. Purchaser shall execute documents to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the beneficiary of Provisional Virtual Net Metering Credits and Virtual Net Metering Credits from the System for purposes of the Local Electric Utility.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a commercially reasonable, timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall use commercially reasonable efforts to cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives, however, in no event shall Purchaser be required to expend money to assist Provider under this section.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its

Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) To Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) To Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 Additional Purchaser Representations. Purchaser acknowledges the essential nature of the services being provided under this Agreement and in connection therewith, represents, warrants and covenants that:

(a) existing appropriations exist with respect to all payments required hereunder during Purchaser's current fiscal year.

(b) it has fully complied with all procurement, public bidding and municipal contracting requirements under Applicable Law; and

(c) none of the electricity to be generated by the Provider will be used to generate energy for the purposes of heating a swimming pool.

8.4 Non-Appropriation. Notwithstanding the provisions of this Agreement, including, but not limited to, Sections 8.3 and 11.2, the Parties agree that Purchaser is a municipal corporation and, therefore, Purchaser's obligation to make payments under this Agreement is contingent upon the appropriation by the City of Stamford Board of Representatives of funds sufficient for such purposes for each budget year in which this Agreement is in effect;

8.5 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 4.1, AND 7.1 AND THIS SECTION 8, THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Provider Obligations. Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

9.2 Service Contract. The Parties intend this Agreement be a "service contract" within the meaning of 7701(e)(3) of the Internal Revenue Code of 1986. The parties hereby agree that by executing this Agreement, no interest will be created in any real or personal property leased, owned, maintained, or controlled by the Purchaser.

9.3 Setoff of Property Taxes Owed to the City of Stamford. Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended, Purchaser shall have the right to set-off or withhold any payment, or portion thereof, due to Provider pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by provider are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from Provider pursuant to this section shall be applied to Provider's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees or contractors of the Provider or as a result of such party's failure to comply with a collective bargaining agreement). A Force Majeure Event shall not be based on the economic hardship of either Party, a change in law or the action or inaction by a Governmental Authority. Natural phenomena shall not be considered a Force Majeure Event unless such event causes physical damage to the System.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Provisional Virtual Net Metering Credits or Virtual Net Metering Credits delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the other Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

## 11. DEFAULT.

### 11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

### 11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and
- (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, Provider may terminate this Agreement and upon such termination, the following liquidated damages provisions shall apply:

(i) Contemporaneously with such termination, Provider shall submit to Purchaser an invoice for an amount ("Purchaser Termination Fee") equal to the Purchaser's annual projected payments due to Provider (calculated using the applicable kWh rate set forth on Schedule 2 and the applicable estimated annual production set forth on Schedule 4) for the remainder of the fiscal year in which the alleged Purchaser Default occurred. For a period of one (1) calendar year following such termination, the Provider shall use reasonable efforts to mitigate its damages under Section 11.2(b), including, without limitation, to use commercially reasonable efforts to resell the electricity generated by the System to a third party. Purchaser shall cooperate with Provider to consummate the sale of such electricity to a third party. If Provider actually receives, or had deemed received, Contracted Mitigation Amounts, the Purchaser Termination Fee will be refunded to the Purchaser by the remittance to the Purchaser of such Contracted Mitigation Amounts (up to

the amount of the Purchaser Termination Fee) within thirty (30) days of receipt or deemed receipt of such Contracted Mitigation Amounts.

(ii) Within thirty (30) days of receiving the invoice under 8.4(a), the Purchaser shall remit to Provider the Purchaser Termination Fee in immediately available funds.

(c) The Parties agree that it would be extremely difficult to determine precisely the amount of actual damages that would be suffered by Provider due to the termination of this Agreement due to a Purchaser Default, but that liquidated damages set forth in Section 11.2(b) (the "Liquidated Damages") are a fair and reasonable determination of the amount of actual damages that would be suffered by Provider for the applicable deficiency, and that these Liquidated Damages and other amounts do not constitute a penalty. Purchaser hereby expressly waives any defense or right to contest the validity of these Liquidated Damages on the grounds that they are void as penalties or are not reasonably related to actual damages. For the avoidance of doubt, the Liquidated Damages are the only remedy for Provider in the event of a Purchaser Default.

## 12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection, with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (a) indemnity obligations hereunder in respect of personal injury, intellectual property infringement claims, and (b) any obligation of Provider to remove or restore the System as provided herein.

12.3 Notwithstanding the foregoing in Section 12.1 and 12.2, the limitations of liability shall not apply for damages that occur after the expiration or termination of the Agreement, including but not limited to, damages occurring from the removal of the System by the Provider.

## 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (a) assign this Agreement to an Affiliate provided such assignment occurs no later than 90 days after the Commencement Date, and that Affiliate has the financial wherewithal and ability to perform Provider's obligations at least equal to Provider; (b) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit A hereto. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third- party beneficiary of this Section 13.2. Further, Purchaser shall, upon the request of Provider or any Financing Party, provide a signed acknowledgement and confirmation for the benefit of the Financing Party, substantially in the form as Provider or the Financing Party may reasonably request; which acknowledgment and confirmation shall certify, to the extent true and correct, among other things that (1) this Agreement is in full force and effect, (2) no modifications have been made, (3) no disputes or defaults exist, (4) no events have occurred that would, with the giving of notice or the passage of time, constitute a default under this Agreement, (5) all amounts then due and owing have been paid, and (6) the Commercial Operation Date has occurred.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's and Financing Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that Provider and Financing Party each reserves the right in its sole discretion to reject the assignment of this Agreement by the Purchaser to any party that does not have a credit rating equal to or better than the Purchaser. Any assignment by Purchaser without the prior written consent of Provider and Financing Party shall not release Purchaser of its obligations hereunder.

#### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 hereto, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

#### 15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential



Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 15.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law (including but not limited to, the Connecticut Freedom of Information Act, as may be amended from time to time) or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law,

such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

#### 16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Section 12, to the extent permitted by applicable law, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct; or (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work or System Operations and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

Provider shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Requirements included in City of Stamford Request for Proposals No. 802, attached hereto as Exhibit D. Provider shall be solely responsible for ensuring that its agents, including contractors and subcontractors, maintain insurance coverage at levels no less than those required of the Provider pursuant to this section.

16.2 Purchaser's Indemnity. Subject to Section 12, to the extent permitted by applicable law, Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by the Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Purchaser's negligence or willful misconduct. Purchaser shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

#### 17. DISPUTE RESOLUTION.

17.1 Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party. Such negotiation shall be conducted through a meeting of the chief executives of each Party, or their respective designees ("Executive Meeting")

17.2 Mediation. If, after such Executive Meeting, conducted in accordance with Section 17.1, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. Such mediation shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of the written notice of the Dispute. A request for mediation shall be made in writing, delivered to the other Party to this Agreement, and filed with the person or entity administering the mediation;

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings; and

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City of Stamford, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof;

17.3 Arbitration. Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of Purchaser, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of the written notice of Dispute. A demand for arbitration shall be made in writing, delivered to the other Party to this Agreement, and filed with the person or entity administering the arbitration;

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Dispute would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Dispute. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law; and Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

17.4 Performance During Dispute. Unless otherwise directed by Purchaser, the Provider shall continue performance under this Agreement while matters in dispute are being resolved;

## 18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or

relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Connecticut without reference to any choice of law principles. The Parties agree that the State and Federal courts in Connecticut shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

18.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.9 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.10 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Any signature on a copy of this Agreement or any document necessary or convenient thereto sent by facsimile, PDF or other electronic format shall be binding upon such transmission and the facsimile, PDF or other electronic format copy shall be deemed an original for the purposes of this Agreement.

18.12 Non-Waiver. The failure of either Party to insist upon strict performance of any of the terms, conditions or covenants herein shall not be deemed a waiver of any rights or remedies that party may have; and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained. The parties reserve the right to require strict compliance therewith at any time, with or without notice, except as may be otherwise required herein.

18.13 No Exclusive Right to Work. Nothing contained herein shall grant Provider an exclusive right to perform the Scope of Services. Purchaser may enter into similar agreements with other contractors at its sole discretion on an as-needed basis.

18.14 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

***[Remainder of page intentionally left blank.]***

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

“PURCHASER”: CITY OF STAMFORD, CONNECTICUT

By: \_\_\_\_\_

Name: Caroline Simmons

Title: Mayor

Date:

“PROVIDER”: Allco Renewable Energy Limited

By: \_\_\_\_\_

Name: Thomas Melone

Title: President

Date:

**Exhibit A**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of the Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

i. If Provider defaults in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, constitute a Provider Default or enable Purchaser to terminate or suspend its performance under the Agreement (a "Default or Termination Event"), Purchaser will not terminate or suspend its performance under the Agreement until it first gives written notice of such Default or Termination Event to Financing Party and affords Financing Party the right to cure such Default or Termination Event within the applicable cure period concurrent with that afforded Provider under the Agreement ("Cure Period").

ii. In addition, if Financing Party gives Purchaser written notice prior to the expiration of the Cure Period of Financing Party's intention to cure such Default or Termination Event (which notice shall include a reasonable description of the time during which it anticipates to cure such Default or Termination Event) and is diligently proceeding to cure such Default or Termination Event, notwithstanding the applicable Cure Period, Financing Party shall have a period of sixty (60) days (or, if such Default or Termination Event is for failure by the Provider to pay an amount to Purchaser which is due and payable under the Agreement, thirty (30) days) from the expiration of the applicable Cure Period to cure such Default or Termination Event, provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary Default or Termination Event and Financing Party has commenced foreclosure proceedings within sixty (60) days after notice of such Default or Termination Event and is diligently pursuing such foreclosure proceedings, Financing Party will be allowed a reasonable time, not to exceed one hundred eighty (180) days, to complete such proceedings and cure such Default or Termination Event, and (b) if Financing Party is prohibited from curing any such Default or Termination Event by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Provider, then the Cure Period specified herein shall be extended for the period of such prohibition, so long as Financing Party is diligently pursuing removal of such process, stay or injunction. Financing Party shall provide Purchaser with reports concerning the status of efforts to cure a Default or Termination Event upon Purchaser's reasonable request.

iii. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the

Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Agreement.

**EXHIBIT B**

**Description of Site**

**Commented [DC2]:** Allco will insert the Site Description (survey).



**EXHIBIT C**

**[INSERT VIRTUAL NET METERING AGREEMENT BY AND BETWEEN  
AND EVERSOURCE]SCHEDULES**

**I. Schedule 1: Description of Premises and System**

**Solar System Premises:** 134A Bilton Road, Somers, CT

**Project Name:** Barrow Solar

**Anticipated Rebate or Subsidy:** Low Emission Renewable Energy Certificates

**Solar System Size:** 2,000 kW (AC)

**Scope:** Design and supply grid-interconnected, ground mounted solar photovoltaic (PV) system

**Module:** Trina TSM-PE14A 330W or similar

**Inverter:** KACO – 125TL3 or similar type string inverter

**II. Schedule 2 - - kWh Rate**

For each year of the system term as listed on Schedule 4, the kWh Rate with respect to the Systems under the Agreement for such year shall be \$0.09per kWh for the Net Metered Production for such year used by the Local Utility to calculate the Net Metering Credit received by Purchaser each year.

**III. Schedule 3 – [Intentionally Omitted.]**

**Commented [DC3]:** Allco will insert the Provisional VNM Agreement

**Commented [DC4]:** Allco will revise this information for each agreement/site.

IV. **Schedule 4 – Estimated Annual Production**

**Commented [DC5]:** Allico will complete this Schedule.

Estimated Annual Production commencing on the Commencement Date with respect to the Systems under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

The values set forth in the tables above are estimates, of approximately how many kWhs are expected to be generated annually by the Systems. The table will be updated upon final design of the Systems.

V. **Schedule 5 – Notice Information**

**Purchaser:**  
Director of Operations  
City of Stamford  
Government Center – 10<sup>th</sup> Floor  
888 Washington Boulevard  
Stamford, CT 06901  
Phone: (203) 977-4141

**With a copy to:**  
Director of Legal Affairs  
City of Stamford  
Government Center – 9<sup>th</sup> Floor  
888 Washington Boulevard  
Stamford, CT 06901  
Phone: (203) 977-4082

**Provider:**  
Allico Renewable Energy Limited  
Attn: Thomas Melone  
157 Church Street, 19<sup>th</sup> Floor  
New Haven, CT 06510  
Phone: (212) 681-1120  
E-mail:  
Thomas.Melone@allcous.com  
Fax:

**With a copy to**  
Ecos Energy LLC  
Attn: Steve Broyer  
222 S 9th St, Suite 1600  
Minneapolis, MN 55402  
Phone: (651) 268-2053  
E-mail:  
steve.broyer@ecosrenewable.com  
Fax:

**Financing Party:**  
[To be provided by Provider when known]

**VI. Schedule 6 – Time of Payment**

Purchaser shall pay all undisputed amounts due hereunder within sixty (60) after the date of the applicable Invoice Date.

**VII. Schedule 7 – Initial Term**

The Initial Term of the Agreement shall commence on January 1, 2023 (the "Commencement Date") and shall continue for twenty (20) years, unless and until terminated earlier pursuant to the provisions of the Agreement.

**Commented [DC6]:** Allco will provide a retroactive start date that maximizes allowable credit to the City.