

**RENEWABLE STANDARD OFFER CONTRACT  
(Power Purchase Agreement)**

**General Terms and Conditions**

**ARTICLE I: DEFINITIONS**

1.1 “Actual Supply” has the meaning specified in Section 8.1.

1.2 “Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Alternative Compliance Payment” means the greater of the amount designated under the terms of the Renewable Energy Standard (RES), which is the amount that an entity subject to such RES must pay in lieu of the transfer of RECs in order to comply with the RES requirements for a given RES compliance year, or in the absence of any Federal requirements, 1.0¢/kWh.

1.4 “Ancillary Services” means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of TVA’s transmission system in accordance with Good Utility Practice.

1.5 “Applicable Law” means all Federal, state, local, or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives, and requirements of all regulatory and other Governmental Authorities.

1.6 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.7 “Base Prices” has the meaning set forth in Section 4.6.

1.8 “Base Price Average” has the meaning set forth in Section 4.6.

1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. CPT.

1.10 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Project is located.

1.11 “Cash” means cash in United States Dollars.

1.12 “Claiming Party” has the meaning set forth in Section 16.2.

1.13 “Commercially Reasonable” means, with respect to any action required to be made, attempted, or taken by TVA or Seller under this Agreement, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such action, including the amount of notice of the need to take such action, the duration and type of action, the competitive environment in which such action occurs, and the risk to the Party required to take such action. With respect to price or cost, Commercially Reasonable means the price or cost obtained or reasonably expected to be obtainable given good faith efforts in a competitive business environment. The price or cost obtained for such purchase or sale need not necessarily be the lowest or highest (as the case may be) price or cost available at the time so long as such price or cost can be demonstrated as having been obtained through good faith efforts in a competitive business environment. Commercially Reasonable shall not include the payment of fees not otherwise contemplated under this Agreement or the making of any material, financial or other concessions as a condition to accomplishing the result contemplated.

1.14 “Contract Prices” has the meaning set forth in Section 4.6.

1.15 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements that replace this Agreement; and all reasonable expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement pursuant to Section 9.2(i).

1.16 “CPT” means Central Prevailing Time, meaning prevailing Standard Time or Daylight Saving Time in the Central Time Zone.

1.17 “CSPP” means the simple average of Part B rates set forth in the Dispersed Price Schedule CSPP of TVA’s “Dispersed Power Production Guidelines for TVA and Distributors of TVA Power.”

1.18 “Curtailed” means any curtailment in whole or in part of energy production at the Project pursuant to the instruction or other directive made or issued by TVA, Distributor, or any Regional Transmission Organization in its official capacity as a Reliability Coordinator, any other affected transmission service provider, or any governmental authority with applicable authority to direct such a curtailment of energy production.

1.19 “Defaulting Party” has the meaning set forth in Section 9.1.

1.20 “Deficient Energy” has the meaning as specified in Section 8.1.

1.21 “Delivery Period” means for all purposes of this Agreement (a) in the case of the first such period, the period commencing on the Initial Delivery Date and ending on the December 31<sup>st</sup> next following the Initial Delivery Date, (b) in the case of each such period subsequent to the first such period (but not including the last such period), each twelve (12) calendar months commencing on the January 1<sup>st</sup> next following the end of the prior period, and (c) in the case of the last such period during the Term, the period beginning on the January 1<sup>st</sup> next preceding the final anniversary of the Initial Delivery Date and ending on such final anniversary of the Initial Delivery Date.

1.22 “Delivery Point” has the meaning set forth in the Cover Sheet of this Agreement.

1.23 “Distributor’s System” means a system connected to the TVA transmission system for distributing Energy Output and includes any structures, equipment, or other items used for that purpose.

1.24 “Distributor” means the owner or operator of a Distributor’s System within the TVA Power Service Area.

1.25 “Downgrade Event” means if a Party’s or Party’s Guarantor’s credit rating fails to meet the Ratings Limit.

1.26 “Early Termination Date” has the meaning set forth in Section 9.2.

1.27 “Effective Date” has the meaning set forth in the Cover Sheet of this Agreement.

1.28 “Energy Output” means the amount of energy (in kWh) generated by the Project and delivered to the Delivery Point from and after the Initial Delivery Date, as metered by the Metering Equipment, net of parasitic or auxiliary load.

1.29 “Equitable Defenses” means any bankruptcy, insolvency, reorganization, and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.30 “Environmental Attributes” means any and all credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to a Qualifying Resource, or otherwise attributable to the generation, purchase, sale, or use of electrical energy from a Qualifying Resource during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement, or offset of the emission of any gas, chemical, or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC, or its successor, or crediting “early action” emissions reduction, or laws or regulations involving or administered by

the Clean Air Markets Division of the United States Environmental Protection Agency (EPA), or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Renewable Energy Credit reporting rights to such Environmental Attributes.

1.31 “Event of Default” has the meaning set forth in Section 9.1.

1.32 “Excused Hours” has the meaning as set forth in Section 8.2.

1.33 “Expected Initial Delivery Date” means the date set forth in the Cover Sheet to this Agreement, which reflects the date Seller anticipates will be the Initial Delivery Date.

1.34 “Extended Force Majeure/Forced Outage Period” has the meaning as specified in Section 6.3.

1.35 “Force Majeure” has the meaning as specified in Section 16.1.

1.36 “Forced Project Outage” means any reduction or cessation of energy generation by the Project involving the shutdown of, and physical unavailability of generation from, Project facilities caused by any condition at the Project (as opposed to a Curtailment resulting from conditions on the Transmission System), but excluding Project Maintenance and Force Majeure.

1.37 “Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining term of this Agreement, determined in a Commercially Reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs in the relevant markets, all of which should be calculated for the remaining term of this Agreement and include the value of Environmental Attributes. Third parties providing information hereunder shall not be Affiliates of the Parties hereto.

1.38 “Good Utility Practice” means any of the practices, methods, and acts engaged in or adopted by a significant portion of the electric generating industry during the relevant time period, or practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to any particular set of optimum practices, methods, or acts to the exclusion of all others, but rather is intended to include a spectrum of acceptable practices, methods, or acts generally accepted in the electric generating industry.

1.39 “Governmental Authority” means any nation, government, state or other political subdivision thereof, whether foreign or domestic, including, without limitation, any municipality,

township and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including, without limitation, any corporation, or any entity owned or controlled by any of the foregoing.

1.40 “Gross Nameplate Capacity” means the manufacturer’s total installed rated capacity of the Project to generate Energy Output and as set forth in the Cover Sheet to this Agreement.

1.41 “Guaranty” means a guaranty in substantially the form attached hereto as Attachment 1 to Exhibit D.

1.42 “Guaranteed Party” means the Party in whose favor Performance Assurance is provided.

1.43 “Guarantor” means, with respect to a Party, the guarantor, if any. Guarantor shall issue a Guaranty in substantially the same format attached hereto as Attachment 1 to Exhibit D.

1.44 “Initial Delivery Date” means the first day following receipt by TVA of notice from Seller that (i) all actions by Seller necessary to construct and generate electricity from the Project have been taken; and (ii) the Project is capable of generating and delivering Energy Output to the Delivery Point in a consistent and reliable manner; provided that such date shall be no earlier than the Expected Initial Delivery Date as specified in the Cover Sheet to this Agreement and no later than twelve (12) Months after Seller’s receipt of a Notice to Proceed from TVA.

1.45 “Interconnection Agreement” means the interconnection agreement entered into between Seller and either TVA or the Distributor to provide for the interconnection of the Project to TVA’s or the Distributor’s electric system, as the case may be.

1.46 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.47 “kW” means kilowatt.

1.48 “kWh” means kilowatt-hour.

1.49 “Letter of Credit” means an irrevocable standby letter of credit from a Qualified Bank in substantially the form attached hereto as Attachment 2 to Exhibit D, naming the Guaranteed Party as the beneficiary.

1.50 “Losses” means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining term of this Agreement, determined in a Commercially Reasonable manner. Factors used in determining the loss of economic benefit may include reference to

information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs in the relevant markets, all of which should be calculated for the remaining term of this Agreement and include the value of Environmental Attributes. Third parties providing information hereunder shall not be Affiliates of the Parties hereto.

1.51 “Material Credit Event” means any event that results in a Party’s failure to meet the Performance Assurance Requirements applicable to it; or if Seller has provided or caused to be provided a Guaranty from a Qualified Guarantor in satisfaction of its Performance Assurance Requirements, then any of the following shall be deemed to be a Material Credit Event: (a) any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated; (b) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure is not remedied within thirty (30) calendar days after written notice; (c) a Downgrade Event has occurred; (d) a Guarantor becomes Bankrupt; (e) the failure of a Guarantor’s Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party; or (f) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

1.52 “Metering Equipment” has the meaning given to such term in Section 5.1.

1.53 “Minimum Energy Quantity” has the meaning as set forth in Exhibit B.

1.54 “Month” means a calendar month commencing at 00:00 CPT on the first calendar day of such month and ending at 24:00 CPT on the last calendar day of such month.

1.55 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.56 “Non-Defaulting Party” has the meaning set forth in Section 9.2.

1.57 “Notice to Proceed” means the written notice issued by TVA to a Seller who has (i) submitted a NTP Request to TVA, and (ii) successfully demonstrated compliance with the criteria required under the NTP Request.

1.58 “NTP Request” means the submission by Seller of the Prescribed Form together with all necessary materials and documentation that show compliance with Seller’s Conditions under Article III, by which Seller requests that TVA issue a Notice to Proceed.

1.59 “Off-Peak Months” means those Months that are not Peak Months.

1.60 “Off-Peak Month Period” means the period of time within the Delivery Period that incorporates only the Off-Peak Months.

- 1.61 “Off-Peak Month Supply Guarantee” has the meaning as set forth in Exhibit B.
- 1.62 “Other Project Attributes” means, collectively, Environmental Attributes and, if applicable, Capacity Attributes and Ancillary Services.
- 1.63 “Parties” means both TVA and Seller.
- 1.64 “Party” means either TVA or Seller.
- 1.65 “Peak Months” has the meaning set for in Exhibit B.
- 1.66 “Peak Month Period” means the period of time within the Delivery Period that incorporates only the Peak Months.
- 1.67 “Peak Month Supply Guarantee” has the meaning as set forth in Exhibit B.
- 1.68 “Performance Assurance” means collateral in the form of Cash, Letter(s) of Credit, or a Guaranty from a Qualified Guarantor, as set forth in the Cover Sheet to this Agreement, which shall guarantee a Party’s payment obligations under this Agreement including, in the case where Seller is the Performance Assurance Party, collateral required to be delivered to TVA.
- 1.69 “Performance Assurance Party” means Seller, if Seller is providing Performance Assurance to TVA.
- 1.70 “Performance Assurance Requirements” means, with respect to any Person, that such Person has provided and maintained the applicable Performance Assurance or caused the applicable Performance Assurance to be provided and maintained.
- 1.71 “Permit” means any permit, exemption, approval, license, consent, authorization, concession, order, easement, or other right that is required by any applicable state or federal authority to develop, construct, finance, operate, and maintain the Project or Interconnection Facilities or to generate and sell the Project electrical output.
- 1.72 “Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, governmental authority, or other form of entity.
- 1.73 “Prescribed Form” means the latest version of the corresponding form appearing on the TVA website, as may be amended or replaced by TVA from time to time and without notice to Seller.
- 1.74 “Product” means, on and after the Initial Delivery Date, Energy Output, Capacity Attributes (if any), Ancillary Services (if any), and Environmental Attributes.

1.75 “Project” means the Qualifying Resource generation facility identified in the Cover Sheet to this Agreement.

1.76 “Project Maintenance” means Seller’s planned partial or complete reduction of the Project’s generating capability for routine maintenance purposes.

1.77 “Qualified Bank” means a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating on its senior unsecured debt of (a)(1) “A3” or higher from Moody’s or (2) “A-” or higher from S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

1.78 “Qualified Biomass” means a solid, liquid, or gaseous form of renewable biomass that is produced from the following fuels in a manner that complies with Applicable Law: a) All wood waste including “black liquor” from pulp and paper processing, mill residues, industrial waste wood, and waste wood from woodworking or wood processing, so long as the wood is not chemically treated or coated; b) All agricultural crops or waste; c) All animal and other organic waste; d) All energy crops; and e) Landfill gas and wastewater methane.

1.79 “Qualified Guarantor” means a Person who satisfies the Ratings Limit and who is domiciled in a country with a sovereign rating of ‘AAA.’

1.80 “Qualifying Resource” has the meaning as set forth in Section 4.1.

1.81 “Ratings Limit” means, with respect to any Person, such Person has a long-term credit rating (corporate or long-term senior unsecured debt) of (a)(1) “Baa2” or higher by Moody’s or (2) “BBB” or higher by S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

1.82 “Regional Transmission Organization” means a large-scale electric transmission system operator that satisfies the definition in 18 C.F.R. § 35.34(b)(1).

1.83 “Reliability Coordinator” means, as defined by the North American Reliability Council, the entity that is the highest level of authority who is responsible for the reliable operation of the bulk electric system where the Project is located or where electrical energy output from the Project is being transmitted or scheduled, has the wide area view of the bulk electric system, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations.”

1.84 “Renewable Energy Credit” or “REC” means the certificate that evidences the ownership of Environmental Attributes for purposes of compliance with a Renewable Energy Standard or from any voluntary market.

1.85 “Renewable Energy Standard” means a United States Federal law or a State law that is legally applicable to TVA and requires TVA to achieve a percentage of its annual electric power sales to end-use customers through production or purchase of specified renewable energy

sources and/or through the acquisition of RECs or payment of an Alternative Compliance Payment.

1.86 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.87 “Seller” means the entity so identified in the Cover Sheet to this Agreement.

1.88 “Seller’s Conditions” has the meaning as set forth in Article III.

1.89 “Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the early termination of this Agreement pursuant to Section 9.2.

**1.90** “Solar Solutions Initiative” and “SSI” shall refer to the TVA pilot referred to in Exhibit F.

1.91 “Supply Guarantee” has the meaning as set forth in Exhibit B.

1.92 “Term” has the meaning as specified in the Cover Sheet to this Agreement and Article II.

1.93 “Termination Payment” has the meaning set forth in Section 9.3.

1.94 “TVA” means the Tennessee Valley Authority.

1.95 “TVA Power Service Area” means the area in portions of seven States as defined in section 15d(a) of the TVA Act, 16 U.S.C. § 831n-4(a).

## **ARTICLE II: TERM**

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of this Agreement, shall remain in full force and effect until 24:00 CPT on the final anniversary of the Initial Delivery Date in accordance with the term of agreement checked on the Cover Sheet to this Agreement, unless otherwise extended by an amendment to this Agreement consistent with Section 17.17.

## **ARTICLE III: NOTICE TO PROCEED AND INITIAL DELIVERY DATE**

Section 3.1 NTP Request and Notice to Proceed. Upon full satisfaction of the conditions set forth below (“Seller’s Conditions”), Seller shall submit a NTP Request to TVA that incorporates all necessary documentation and materials that demonstrate compliance with each of Seller’s Conditions. If a NTP Request is not delivered to TVA within twelve (12) Months after the Effective Date of this Agreement, then TVA has the right, in its sole discretion, to terminate this Agreement, in which event neither Party shall have any further obligation or

financial liability to the other Party as a result of such termination, except for any amounts accrued and owed by Seller to TVA upon the date of termination. Seller's Conditions are:

- (a) Demonstration to TVA of Project financing arrangements or application therefor.
- (b) Receipt of, or application for, any applicable permits for the Project's construction.
- (c) Execution of any necessary Interconnection Agreements or other necessary documentation between Seller and either TVA or Distributor, as applicable.
- (d) Execution of any necessary metering agreements with TVA and/or the Distributor for the installation, operation, maintenance, and reading of the Metering Equipment.
- (e) Receipt from TVA of any necessary executed transmission service agreements including Network Integration Transmission Service Agreements and Network Operating Agreements with TVA and/or the Distributor for transmitting the Energy Output to TVA loads.
- (f) Completion of a fuel resource survey indicating adequate fuel for the production of the Minimum Energy Quantity.
- (g) The determination by TVA that the Project is deemed to be environmentally acceptable and consistent with environmental analyses done for and contained in TVA's environmental review and prepared in accordance with applicable requirements under Federal environmental laws and regulations. The determination of "environmentally acceptable" shall be at TVA's sole discretion and shall take into account said applicable Federal environmental laws and regulations and shall mean that the location, operation, and maintenance of the Project and any associated facilities not result in unacceptable impacts inconsistent with the purposes, provisions, and requirements of applicable Federal, State, and local environmental laws and regulations. TVA, or a TVA-approved third party, shall perform such environmental review at Seller's cost.
- (h) Submittal of additional Performance Assurance in the amount set forth in the Cover Sheet of this Agreement for the NTP Request.
- (i) For projects co-firing fifty percent (50%) or more Qualified Biomass, a fuel consumption heat content verification method approved by TVA.

Upon receipt of the NTP Request, TVA shall review the materials for adequacy, and, if TVA deems the NTP Request to be satisfactory, shall issue to Seller a Notice to Proceed. If TVA does not find the NTP Request to be satisfactory, TVA has the right, in its sole discretion, to terminate this Agreement and, upon termination, neither Party shall have any further obligation or financial liability to the other Party as a result of such termination, except for any amounts accrued and owed by Seller to TVA upon the date of termination.

Section 3.2 Failure to Provide Notice of Initial Delivery Date. If Seller does

not achieve, and provide notice of its declaration of, an Initial Delivery Date within twelve (12) Months after Seller's receipt of the Notice to Proceed, TVA, in its sole discretion, may terminate this Agreement, and liquidated damages shall be assessed against Seller's Performance Assurance. Such liquidated damages shall be established as the full amount of Seller's Performance Assurance.

#### **ARTICLE IV: QUALIFYING RESOURCES, ENERGY OUTPUT, ENVIRONMENTAL ATTRIBUTES, AND PRICING**

##### **Section 4.1 Qualifying Resources.**

- (i) In order for the Project to be a Qualifying Resource under this Agreement, Seller must be able to demonstrate, on an ongoing basis, that the Project generates electricity from one of the following resources with the following characteristics:
  - (a) Solar: poly-crystalline panels or thin film cells using fixed or single/dual axis tracking systems, which can be ground or structure mounted.
  - (b) Wind: turbines in conventional sizes for utility-scale generation.
  - (c) Direct combustion or gasification of Qualified Biomass resources, verifying at least quarterly that consumption of Qualified Biomass represents ninety-five percent (95%) or more of total heat input to the Project and must meet the following condition:
    - (i) The Project must be in compliance with all Applicable Law including Applicable Law regarding emissions.
  - (d) Co-firing of at least fifty percent (50%) Qualified Biomass meeting the following conditions:
    - (i) The biomass is in a gaseous or liquid state, is separately metered, and contracts are in place to verify, by TVA on an ongoing basis, that the biomass portion was converted to Energy Output or the Project uses a fuel consumption heat content verification method that is approved by TVA on an ongoing basis; and
    - (ii) Only the share of Energy Output generated from Qualified Biomass shall count under the Renewable Standard Offer and shall be purchased for the price specified in Section 4.6; the remainder shall be purchased at prices that are equal to the applicable CSPP prices payable by TVA under its Dispersed Power Production (DPP) Program during the same hours as generation is received from the Renewable Standard Offer participant; and

(iii) The Project must be in compliance with Applicable Law, including Applicable Law regarding emissions.

(e) Biodiesel meeting the following conditions:

(i) The Project has a valid operating permit or written approval from its state or local program without relying on provisions in state or local programs that exempt stationary engines from permitting requirements due to being classified solely as emergency standby sources;

(ii) The Project is able to achieve a NO<sub>x</sub> emission rate of 1.6 lbs/MWh, or lower;

(iii) The Project uses bio-diesel manufactured in the Valley from sources present locally; and

(iv) The Project must be in compliance with Applicable Law, including Applicable Law regarding emissions.

(ii) Should the Project cease to qualify as a Qualifying Resource under this Agreement, then TVA, in its sole discretion, may terminate this Agreement upon thirty (30) calendar days prior written notice, and liquidated damages shall be assessed against Seller's Performance Assurance in accordance with Exhibit C.

Section 4.2 Energy Output. In accordance with and subject to the terms and conditions of this Agreement, including Section 4.1(i)(d)(ii) above, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall sell to TVA, and TVA shall purchase from Seller, any and all right, title, and interest in and to the Energy Output generated from the Project and delivered to the Delivery Point. Pursuant to Section 8.1, Seller shall guarantee the supply of a total amount of Energy Output to TVA during each Delivery Period. Energy Output shall be deemed made available to TVA for billing and payment purposes under Article X in the Month in which Energy Output is made available at the Delivery Point.

Section 4.3 Environmental Attributes. RECs and other Environmental Attributes cannot be owned by or credited to more than one entity. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall transfer to TVA, and TVA shall receive from Seller, any and all right, title, and interest in and to Environmental Attributes and associated RECs, as applicable, equal to the amount of Energy Output that is generated by the Project. As such, Seller shall not make claims with respect to the renewable energy sold to TVA except to note its sale to TVA. All Environmental Attributes (including all RECs pertaining thereto, if applicable) associated with Energy Output made available by Seller during such Month shall be delivered by Seller to TVA in accordance with Article VII. In the case of combustion or co-firing resources,

the Environmental Attributes (including all RECs pertaining thereto, if applicable) associated with the percentage of the Project that utilizes Qualified Biomass for electrical generation shall pass to TVA pursuant to this Section 4.3.

Section 4.4 Capacity Attributes. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall deliver to TVA, and TVA shall receive from Seller, any and all right, title, and interest in and to all Capacity Attributes available with respect to the Energy Output.

Section 4.5 Ancillary Services. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Initial Delivery Date and continuing through the end of the Term, Seller shall transfer to TVA, and TVA shall receive from Seller, any and all right, title, and interest in and to Ancillary Services available with respect to the Energy Output.

Section 4.6 Base Prices and Contract Prices.

- (i) Subject to Section 4.1(i)(d)(ii) above, Base Prices for Energy Output are specified according to the seasonal time of day in the currently effective version of Exhibit A. These Base Prices are always stated in constant, unescalated United States currency as of the date of execution of this Agreement, even when Exhibit A is revised as described in subparagraph (iv), below, in years subsequent to the execution of this Agreement. Notwithstanding any such revisions, the average of such Base Prices for every hour of any given calendar year (the "Base Price Average") shall remain fixed at the Base Price Average specified in Exhibit A.
- (ii) The Contract Price for any given seasonal time of day equals the Base Price for that seasonal time of day escalated at a rate of three percent (3%) per year starting in 2012 plus any applicable Solar Solutions Initiative price adder indicated on the Cover Sheet.
- (iii) Subject to Section 4.1(i)(d)(ii) above, for each hour that the Project delivers Energy Output to the Delivery Point, TVA shall pay Seller the Contract Price per kWh for that hour's Energy Output so delivered. This payment shall constitute TVA's payment for and entitle TVA to the following: (a) the Energy Output made available at the Delivery Point from and after the Initial Delivery Date; (b) the Environmental Attributes and associated RECs (if any) attributable to Energy Output made available at the Delivery Point; (c) if applicable, the Capacity Attributes available with respect to the Energy Output from and after the Initial Delivery Date; and (d) if applicable, the Ancillary Services available with respect to the Energy Output from and after the Initial Delivery Date.
- (iv) Upon ninety (90) days notice, TVA may unilaterally change one or more of the Base Prices in Exhibit A. TVA may change each Base Price in each seasonal time-of-day category stated on Exhibit A by no more than one

percent (1%) per calendar year; and any such change to these prices shall thereafter be applied. However, TVA shall make such changes to the Base Prices so that the Base Price Average remains fixed as described in subparagraph (i), above.

## **ARTICLE V: METERING AND ATTESTATION**

Section 5.1 It is recognized that TVA or the Distributor, as the case may be, and Seller shall enter into separate arrangement(s) for the installation, operation, maintenance, and reading of the metering and related facilities (“Metering Equipment”). The Metering Equipment shall be used to determine the amounts of electric energy delivered to and purchased by TVA at the Delivery Point under this Agreement.

Section 5.2 These separate arrangement(s) shall provide for TVA or the Distributor, as the case may be, to make periodic tests and inspections of the Metering Equipment in order to maintain a high standard of accuracy. If tests show that the meter(s) are accurate within an acceptable threshold, as set forth under the separate arrangements, fast or slow, no adjustment shall be made to the payments submitted by TVA to Seller pursuant to Section 10.2. In case any tests show the meter(s) to be in excess of the acceptable threshold fast or slow, however, adjustments shall be made to the payments submitted by TVA to Seller pursuant to Section 10.2 for any known or agreed upon period of inaccuracy; in the absence of any such knowledge or agreement, the adjustment shall be limited to one-half the period of time from the date of the last previous test of the meter(s) and the most recent test but in no event shall the period covered by the correction exceed one hundred eighty (180) days.

Section 5.3 Upon TVA’s request, Seller shall provide, at no cost to TVA, routine and non-routine attestations and other verifications of the delivery of Energy Output, Capacity Attributes, Ancillary Services, and Environment Attributes from the Project to demonstrate performance under this Agreement.

## **ARTICLE VI: MAINTENANCE AND OUTAGES**

Section 6.1 Scheduled Outage. Seller shall provide, or cause to be provided, to TVA a scheduled outage schedule for Project Maintenance no later than thirty (30) calendar days before the Initial Delivery Date for the period from such date through the end of the first Delivery Period. Seller shall submit to TVA a scheduled outage schedule no later than thirty (30) calendar days before each Delivery Period after the first Delivery Period that covers scheduled outages for such subsequent Delivery Period. To the extent practicable, scheduled outages should be scheduled during the Months of October, November, March, and April.

Section 6.2 Forced Project Outages. As soon as practicable after commencement of a Forced Project Outage, Seller shall provide TVA with notice and expected duration (if known) of any Forced Project Outage. Each such notice shall set forth, if known by Seller, a detailed

explanation for the cause of the Forced Project Outage, identification of the equipment impacted, the expected duration of the Forced Project Outage, and Seller's proposed course of action to remedy such Forced Project Outage.

Section 6.3 Extended Force Majeure/Forced Project Outage. TVA shall have the right, but not the obligation, to terminate this Agreement, without liability to Seller except with respect to obligations or liabilities that arose prior to such termination, by giving at least thirty (30) calendar days advance written notice of such termination to Seller, if one or more Force Majeure events or Forced Project Outages on Seller's side of the Delivery Point occur and prevent Seller from generating more than fifty percent (50%) of the Minimum Energy Quantity for each of any two (2) consecutive Delivery Periods ("Extended Force Majeure/Forced Project Outage Period") during the term of this Agreement. Notwithstanding anything to the contrary in this Section 6.3, if the Force Majeure or Forced Outage event has been cured, mitigated, or has otherwise been overcome prior to Seller's receipt of any termination notice by TVA pursuant to this Section 6.3, and Seller is capable of generating, in a consistent manner, the Minimum Energy Quantity, then TVA's right to terminate under this Section 6.3 shall no longer be applicable.

## **ARTICLE VII: RENEWABLE ENERGY CREDITS**

In consideration of TVA's payment obligations under this Agreement, TVA shall also have the sole right, title, and interest in any Renewable Energy Credits ("RECs") that arise or accrue as a result of the generation of the Energy Output delivered to and paid for by TVA, or as provided in Exhibit C, under this Agreement throughout the Term. With regard to the foregoing, and at no additional cost to TVA, Seller shall be obligated to execute all reasonable documentation and take all other reasonable action that a recipient of RECs must take in order to receive RECs and then transfer any and all of the aforementioned RECs to TVA as soon as practicable after their issuance; provided that such issuance shall be in accordance with a tracking system (or certification entity or other methodology) that is recognized by the administrator of the Renewable Energy Standard ("RES") after such RES is implemented. Such RECs shall be used only by TVA, and neither the Environmental Attributes nor the electric energy that was generated in conjunction with the Environmental Attributes shall be claimed or otherwise referenced by Seller or any other entity other than TVA with respect to any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate. Marketing by Seller or any other entity other than TVA that implies the consumption of the renewable energy by Seller or any entity other than TVA is prohibited.

## **ARTICLE VIII: SUPPLY GUARANTEE; DISCONNECTION OR CURTAILMENT**

Section 8.1 Supply Guarantee Generally. Commencing on the Initial Delivery Date, Seller shall guarantee the supply of sufficient Energy Output (in kWh) to TVA during each Delivery Period so as to meet or exceed (1) the Peak Month Supply Guarantee and (2) the Off-Peak Month Supply Guarantee for such Delivery Period. If the kWh of energy actually delivered

to the Delivery Point by Seller to TVA under this Agreement (“Actual Supply”) is not sufficient to meet either or both of the Peak Month Supply Guarantee and/or the Off-Peak Month Supply Guarantee for the Delivery Period in question (such shortfall being referred to herein as “Deficient Energy”), Seller shall pay liquidated damages to TVA with respect to either or both of such supply guarantees: (i) with respect to Deficient Energy, and (ii) with respect to RECs associated with the amount of the Deficient Energy, if applicable. The determination of TVA’s damages in such an event and the manner in which TVA shall be compensated by Seller for such damages shall be as set forth in Exhibit C. The Parties further acknowledge and agree that the amount of such damages suffered by TVA are not able to be readily calculated or determined by normal means and that the proper measure of liquidated damages to which TVA shall be entitled under this Section 8.1 shall be in the amount as set forth in Exhibit C, and payable as set forth in Section 10.3.

Section 8.2 Excused Hours. In determining whether Seller has met a Supply Guarantee for a given Peak Month Period or Off-Peak Month Period, there shall be deducted, from the total number of hours in said Delivery Period, as expressed as “PH” or “OPH” in the formulas set forth in Exhibit B, any and all hours (“Excused Hours”) during which Seller was unable to deliver and/or TVA was unable to receive and utilize energy supplied from the Project due solely to:

- (a) a disconnection or Curtailment;
- (b) an event of Force Majeure;
- (c) a suspension pursuant to Section 9.6; or
- (d) an outage on the TVA transmission system or Distributor System.

Section 8.3 Disconnection of Project or Curtailment of Deliveries. In order to remain consistent with Good Utility Practice and Applicable Law, TVA or Distributor may require Seller: (1) to effect a Curtailment of deliveries from the Project or (2) to disconnect the Project from the TVA, or Distributor system, as the case may be, as necessary or appropriate to eliminate adverse impacts attributable to operation of the Project, including the following circumstances, whether such circumstances exist on the TVA transmission system, Distributor System, or another system:

- (i) if a condition exists that presents an imminent physical threat to persons or property and disconnection or Curtailment appears necessary for TVA or Distributor to protect such persons or property; or
- (ii) to overcome transmission system reliability problems caused by an emergency; or
- (iii) if such disconnection or Curtailment is necessary to construct, install, maintain, repair, replace, remove, investigate, inspect, or test any affected part of the TVA transmission system or Distributor’s System; or

(iv) as permitted under any other express provisions of this Agreement that provide for any such disconnection or Curtailment.

## **ARTICLE IX: EVENTS OF DEFAULT; REMEDIES**

Section 9.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) The failure by a Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice from the other Party;

(b) Any representation or warranty made by a Party herein being false or misleading in any material respect when made or when deemed made or repeated;

(c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default under another subsection of this Section 9.1, and except for the failure of Seller or TVA to comply with an obligation under this Agreement for which a specific remedy has been agreed) if such failure is not remedied within thirty (30) calendar days after written notice from the other Party;

(d) The filing of an involuntary petition in bankruptcy or any involuntary proceeding under any other insolvency law against a Party as debtor and the failure to have the same dismissed within one hundred and twenty (120) calendar days from the date of filing thereof;

(e) The filing by a Party of a voluntary petition in bankruptcy or for insolvency or reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or a Party voluntarily taking advantage of any such law or act by answer or otherwise;

(f) The failure of a Party to satisfy the Performance Assurance Requirements pursuant to Exhibit D;

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

(h) The Project ceases to qualify as a Qualifying Resource under this Agreement

Section 9.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right (i) to designate a day,

no earlier than the day such notice is effective and no later than twenty (20) calendar days after such notice is effective as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to exercise any combination or all of the remedies provided in Section 9.6. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

Section 9.3 Net Out of Settlement Amount. The Non-Defaulting Party shall aggregate the Settlement Amount into a single amount by: netting out (a) the Settlement Amount that is due to the Defaulting Party (if any), plus any or all other amounts due to the Defaulting Party under this Agreement against (b) the Settlement Amount that is due to the Non-Defaulting Party (if any), plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”). If the Termination Payment is in favor of the Non-Defaulting Party, such Termination Payment in favor of the Non-Defaulting Party shall be due and payable by the Defaulting Party to the Non-Defaulting Party, but, if such Termination Payment is in favor of the Defaulting Party, such Termination Payment shall not be due or payable from the Non-Defaulting Party to the Defaulting Party.

Section 9.4 Notice of Payment of Termination Payment. As soon as practicable after a declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment (if any). The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. If the Termination Payment is in favor of the Non-Defaulting Party, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after such notice is effective.

Section 9.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

Section 9.6 Remedies for an Event of Default.

(a) Subject to Article XIII, Seller shall have the right, but not the obligation, to do the following upon the occurrence and notice to TVA of TVA’s Event of Default:

(i) suspend performance of its obligations under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof

given pursuant to Section 9.2; and/or

(ii) receive payment from TVA for direct damages that Seller incurred in connection with such Event of Default (including during any applicable cure period, whether or not Seller elected to suspend performance during such cure period).

(b) Subject to Article XIII, TVA shall have the right, but not the obligation, to do the following upon the occurrence and notice to Seller of Seller's Event of Default:

(i) suspend performance of its obligations under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 9.2; and/or

(ii) call on and draw down upon the Performance Assurance that Seller provided to satisfy any and all payments due and amounts otherwise owing under this Agreement; and/or

(iii) receive payment from Seller for direct damages that TVA incurred in connection with such Event of Default (including during any applicable cure period, whether or not TVA elected to suspend performance during such cure period).

#### **ARTICLE X: BILLING AND PAYMENT**

Section 10.1 From recorded meter data provided by the Metering Equipment installed per Section 5.1, TVA shall pay the applicable Contract Price to Seller each Month for all Energy Output in accordance with Article 4.

Section 10.2 TVA shall provide Seller a detailed accounting of the amounts of Energy Output received, as determined by TVA. From said meter readings and in accordance with this Agreement, TVA shall calculate the monthly amount to be paid for Energy Output received by TVA and shall promptly pay Seller within thirty (30) calendar days or if the thirtieth (30th) calendar day is not a Business Day, then on the next Business Day. Each payment to Seller shall be made electronically through the Automated Clearing House (ACH) network to Seller's account as set forth in the Cover Sheet of this Agreement. TVA shall have four (4) additional Business Days to effect such a transfer of funds.

Section 10.3 Amounts owed by each Party to the other Party during a Monthly billing period under this Article X shall be offset against each other so that only one Party shall pay a net amount to the other Party. Any liquidated damages owed by Seller to TVA pursuant to Article VIII and Exhibit C shall be applied as a credit toward amounts owed Seller by TVA under the monthly amount calculated under Section 10.2.

#### **ARTICLE XI: RISK MANAGEMENT**

Seller agrees to provide and maintain the Performance Assurance, in the form and amount as set forth in the Cover Sheet to this Agreement, for the duration of the Term of this Agreement and in accordance with Exhibit D.

## **ARTICLE XII**

[RESERVED]

## **ARTICLE XIII: LIMITATIONS**

Section 13.1 Limitation of Remedies, Liability, and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

SUBJECT TO THE LAST SENTENCE OF THIS PARAGRAPH, THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. NOTWITHSTANDING ANY OF THE FOREGOING, THE PARTIES ACKNOWLEDGE AND AGREE THAT STATUTORY PUNITIVE DAMAGES SHALL NOT BE WAIVED UNDER THIS AGREEMENT IN THE EVENT THAT SUCH DAMAGES ARE AVAILABLE THROUGH A FEDERAL STATUTE FOR WRONGS COMMITTED AGAINST THE FEDERAL GOVERNMENT.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE

DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **ARTICLE XIV: GOVERNMENTAL CHARGES**

Section 14.1 Cooperation. Each Party shall use reasonable efforts to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

Section 14.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product arising prior to the Delivery Point. TVA shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, franchise, or income taxes that are related to the sale of the Product and are, therefore, the responsibility of Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges that are TVA’s responsibility hereunder, TVA shall promptly reimburse Seller for such Governmental Charges. If TVA is required by law or regulation to remit or pay Governmental Charges that are Seller’s responsibility hereunder, TVA may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. Each Party shall cooperate with the other Party in order to qualify for or take advantage of any available reduction in or exemption from such Governmental Charges and to otherwise minimize the amount of such Governmental Charges that must be paid under applicable law.

#### **ARTICLE XV: REPRESENTATIONS AND WARRANTIES**

Section 15.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(iii) the execution, delivery, and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Applicable Law;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by

it or, to its knowledge, threatened against it that would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its reasonable knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement;

(ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement to which it is a Party; and

(xi) with respect to this Agreement involving the purchase or sale of a Product, it is a producer, processor, commercial user, or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such.

## **ARTICLE XVI: FORCE MAJEURE**

Section 16.1 Definition. “Force Majeure” means causes or events beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, that by exercise of due diligence and reasonable foresight could not reasonably have been avoided, including, but not limited to, acts of God; fire; war; riots; lightning; fire; ice storms; requirements imposed by, and/or actions or failures to act on the part of, Governmental Authorities that prevent or delay performance under this Agreement. Notwithstanding anything herein to the contrary, a lack of, reduction in, or depletion of renewable fuel or reduction in quality of renewable fuel shall not be considered an event of Force Majeure.

Section 16.2 Force Majeure Occurrence and Notice. To the extent that any Party is prevented by a Force Majeure event from carrying out, in whole or in part, its obligations under this Agreement or from complying with, in whole or in part, conditions under this Agreement, such Party (the “Claiming Party”) shall give notice and details of the Force Majeure event to the other Party as soon as practicable, unless otherwise specified by the terms of this Agreement. In addition, any completion milestones or deadlines or time periods by which performance is due shall be extended for a period of time equal to the time period of such Force Majeure event plus

a reasonable number of additional days as may be required to remobilize or otherwise recommence the repair, reconstruction, or re-equipping of the Project, unless otherwise agreed upon herein. The Claiming Party shall use Commercially Reasonable efforts to remedy the Force Majeure event with all reasonable dispatch. The suspension of performance and compliance with such conditions due to the Force Majeure event shall be of no longer duration and no greater scope than is required by the Force Majeure event. The Claiming Party shall promptly notify the non-Claiming Party when it is able to resume performance of its obligations and compliance with such conditions under this Agreement, if it is able to do so. Until the non-Claiming Party is so notified, it shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by a Force Majeure event. No Party shall be relieved by operation of this Article XVI of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure event. If the Force Majeure event reduces but does not prevent Seller from generating and delivering to the Delivery Point available Energy Output and Other Project Attributes, then Seller shall suspend deliveries of Energy Output and Other Project Attributes on a pro rata basis relative to the extent by which the Force Majeure event reduces the Energy Output and Other Project Attributes that the Project would otherwise produce but for the Force Majeure event. If deliveries of Energy Output or Other Project Attributes are prevented in whole or in part by a Force Majeure event, the deliveries in question shall not be made up and the Term shall not be extended to permit any makeup or offset of the lost deliveries.

## **ARTICLE XVII: MISCELLANEOUS**

Section 17.1 Title. Delivery of energy being purchased by TVA shall be deemed completed at the Delivery Point, and title to such energy shall pass to TVA upon delivery.

Section 17.2 Waiver. The non-exercise of, or delay in exercising, any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

Section 17.3 Choice of Law. This Agreement shall be construed and interpreted in accordance with the Federal laws of the United States of America.

Section 17.4 Exhibits Made Part of this Agreement. The Exhibits identified in this section and attached to this Agreement are made a part of this Agreement. The Base Prices are specified in the attached Exhibit A. The manner of calculating the Supply Guarantee is attached as Exhibit B. The manner of calculating liquidated damages payable by Seller is attached as Exhibit C. A Credit Annex is attached as Exhibit D. Certain legally required clauses, with which the Parties must comply to the extent applicable, are attached as Exhibit E. The Terms of the Solar Solutions Initiative, if Applicable, are attached as Exhibit F.

Section 17.5 Successors and Assigns. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, such consent not to be

unreasonably withheld.

Section 17.6 Approvals. Each Party hereto shall use Commercially Reasonable efforts and shall cooperate with the other to obtain any Permit. TVA, however, shall not be obligated to obtain or have financial responsibility for obtaining any Permit.

Section 17.7 Severability. In the event that any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such term, covenant, or condition shall be held invalid by any court or administrative body having jurisdiction, it is the intention of the Parties that in lieu of each such term, covenant, or condition that is invalid, the Parties shall negotiate a valid term, covenant, or condition as similar in terms as possible to such invalid term, covenant, or condition. The Agreement shall not otherwise be affected thereby and shall remain in full force and effect.

Section 17.8 Integration. The terms and provisions contained in this Agreement between TVA and Seller, including the Cover Sheet hereto, constitute the entire agreement between TVA and Seller, and supersede all previous communications and representations, either oral or written, between TVA and Seller with respect to the subject matter of this Agreement.

Section 17.9

- (a) Notices and Invoices. Except as otherwise expressly provided under this Agreement, any notice or invoice provided for in this Agreement must be in writing and shall be effective on the day on which it is actually received (provided that such day is a Business Day, otherwise it shall be deemed to be received on the first Business Day immediately following such day), in person by U.S. Mail or other nationally recognized delivery service, or by facsimile transmission at the addresses provided in the Cover Sheet to this Agreement.
- (b) Payments. All payments required to be made to TVA under this Agreement shall be made by Automated Clearing House (ACH) to the account provided in the Cover Sheet to this Agreement (or to other account as may subsequently be designated by TVA), with the amounts deemed received as of the date the electronic fund transfer to the recipient's account is deemed effective

Section 17.10 Audit.

- (a) The Parties shall maintain accurate records and books of account. Said books and records shall present fairly all costs and expenses utilized in computing any charges or payments to the other Party under this Agreement.
- (b) Each Party shall have the right at its own expense, upon two Business Days advance notice and during normal business hours, to have its own personnel or its independent auditors inspect the books and records of the other Party hereto pertaining solely to the performance of this Agreement at the offices of the other Party, to the extent necessary to verify the amounts of energy delivered, the amounts owed to Seller by

TVA, and any amount owed to TVA by Seller. The Party conducting the inspection shall use its best efforts to minimize any disruptions of the other Party's operations that might result from any such inspection.

Section 17.11 Dispute Resolution. Should any question, disagreement, or need for clarification or interpretation about this Agreement arise, the Parties agree to use their best efforts to resolve disputes informally at the lowest possible levels of decision making. Disputes not resolved at the working level should be referred to higher levels of management of both Seller and TVA for consideration, as necessary. Any legal action arising out of or related to this Agreement shall be brought in the United States District Court for the Eastern District of Tennessee and shall be nonjury. This Section 17.11 is not a "Disputes" clause within the meaning of the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 ("CDA"), and this Agreement is not subject to the provisions of the CDA.

Section 17.12 Indemnity. Seller shall save, defend, and hold harmless TVA and its officers, employees, contractors, and agents from any and all claims for injury to person or persons or damage to property or the environment to the extent caused by Seller's negligent or reckless acts or omissions in activities within the scope of this Agreement. Seller is solely responsible for the risk of loss of, or damage to, its equipment, except to the extent that the loss or damage results from the negligent acts or omissions of TVA and its officers, employees, contractors, or agents.

Section 17.13 Interpretation. Unless otherwise expressly stated, references in this Agreement to "Sections" are to Sections of this Agreement, references to "Articles" are to Articles of this Agreement, and references to "Exhibits" are to the Exhibits attached to this Agreement. All references to Sections in the Exhibits to this Agreement are to the Sections in the Exhibits in which they appear unless otherwise noted. All titles, headings, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of this Agreement. Words defined in the singular have the corresponding meaning in the plural and vice versa. Use of "including" means including without limitation. References to one gender include all others. Any capitalized terms used in the Exhibits to this Agreement that are not specifically defined in such Exhibits shall have the meanings ascribed to them in this Agreement. Such Exhibits shall constitute a material part of this Agreement, and the provisions of such Exhibits shall be interpreted and enforced as if such provisions were directly set forth in this Agreement.

Section 17.14 No Partnership. Nothing in this Agreement shall be treated as creating a partnership or joint venture between either of the Parties under the laws of any applicable jurisdiction and, except as specifically provided in this Agreement, neither Party may act or have any authority to act as agent of or in any way bind or commit the other Party to any obligation.

Section 17.15 Costs and Expenses. Each Party shall bear and is responsible for its own costs (including attorney's fees) in connection with the negotiation, preparation, execution, completion, implementation, and ongoing administration of this Agreement.

Section 17.16 Rights Cumulative. Except as specifically provided in this Agreement, the

rights and remedies provided in this Agreement are cumulative with and do not exclude any rights or remedies provided by law.

Section 17.17 Amendment. This Agreement may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

Section 17.18 Survival of Obligations. Except as specifically provided in this Agreement, cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, including warranties, remedies, and promises of indemnity.

Section 17.19 Counterparts. This Agreement may be executed in more than one counterpart, each of which is signed by one of the Parties but all of which together shall constitute the same agreement.

*[remainder of page intentionally left in blank]*

## **EXHIBITS**

Exhibit A	Base Prices
Exhibit B	Supply Guarantee
Exhibit C	Liquidated Damages
Exhibit D	Credit Annex
Exhibit E	Legally Required Clauses
Exhibit F	Terms of the Solar Solutions Initiative, if Applicable

**EXHIBIT A**  
**BASE PRICES**

Seasonal and time-of-day Base Prices in constant, unescalated United States currency as of the date of execution of the Agreement to which this is an exhibit:

<b>Month</b>	<b>Time of Day (CPT)</b>	<b>Base Price (¢/kWh)</b>
July & August	Mon-Fri 12pm-8pm	15.966
	Mon-Fri 6am-12pm and 8pm-12am; Sat & Sun 6am-12am	6.420
	Everyday 12am-6am	4.078
June & September	Mon-Fri 12pm-8pm	8.139
	Mon-Fri 6am-12pm and 8pm-12am; Sat & Sun 6am-12am	5.263
	Everyday 12am-6am	3.963
January & February	Mon-Fri 6am-10pm	5.937
	Mon-Fri 10pm-12am; Sat & Sun 6am-12am	4.868
	Everyday 12am-6am	4.278
December & March	Mon-Fri 6am-10pm	5.596
	Mon-Fri 10pm-12am; Sat & Sun 6am-12am	4.717
	Everyday 12am-6am	4.151
April, May, October, & November	Mon-Fri 6am-10pm	5.616
	Mon-Fri 10pm-12am; Sat & Sun 6am-12am	4.431
	Everyday 12am-6am	3.793

The Base Price Average throughout the Term is fixed at 5.611¢/kWh.

## EXHIBIT B

### SUPPLY GUARANTEE

For each Delivery Period throughout the Term of the Agreement to which this Exhibit B is attached, Seller guarantees delivery to the Delivery Point of Energy Output in an amount at least equal to: (i) the applicable Minimum Energy Quantity, pursuant to this Exhibit B, attributable to the Peak Months, as set forth below (“Peak Month Supply Guarantee”), and (ii) the applicable Minimum Energy Quantity, pursuant to this Exhibit B, attributable to the Off-Peak Months (“Off Peak Month Supply Guarantee”).

Therefore, the number of kWh of energy that TVA must receive from Seller during Peak Months in order for Seller to meet the Peak Month Supply Guarantee and the number of kWh of energy that TVA must receive from Seller during Off-Peak Months in order for Seller to meet the Off-Peak Month Supply Guarantee is calculated as specified below.

#### Peak Month Supply Guarantee:

$$\text{PSG} = \text{MEQ} \times [(\text{PH} - \text{EH}) / \text{PH}]$$

Where:

PSG = Peak Month Supply Guarantee

P = Percentage applied to the applicable technology, as set forth below

GNC = Gross Nameplate Capacity (in kW)

MEQ = Minimum Energy Quantity

Where:  $\text{MEQ} = \text{P} \times \text{GNC} \times \text{PH}$

PH = total number of Hours in Peak Months

EH = total number of Excused Hours, as defined under Section 8.2 of the Agreement to which this Exhibit B is attached

#### Off-Peak Month Supply Guarantee:

$$\text{OPSG} = \text{MEQ} \times [(\text{OPH} - \text{EH}) / \text{OPH}]$$

Where:

OPSG = Off-Peak Month Supply Guarantee

P = Percentage applied to the applicable technology, as set forth below

GNC = Gross Nameplate Capacity (in kW)

MEQ = Minimum Energy Quantity

Where:  $MEQ = P \times GNC \times OPH$

OPH = total number of Hours in Off-Peak Months

EH = total number of Excused Hours, as defined under Section 8.2 of the Agreement to which this Exhibit B is attached

<b>Technology Category</b>	<b>Delivery Period</b>	<b>Percentage to be used in MEQ calculations above</b>
Biomass Direct Combustion	Peak	80%
	Off-Peak	70%
Methane Recovery	Peak	80%
	Off-Peak	70%
Biomass Gasification	Peak	80%
	Off-Peak	70%
Wind	Annual	15%
Solar Photovoltaic	Annual	10%

“Peak Months” means the months of January, February, June, July, August, and September.

“Annual Delivery Periods” means Peak Months for calculation of Liquidated Damages

“Off-Peak Months” means the months of March, April, May, October, November, and December.

## EXHIBIT C

### LIQUIDATED DAMAGES

#### Energy

The formulas for calculating the amount of any liquidated damages (LD) owed to TVA by Seller for Deficient Energy for any Delivery Period during the Term are as follows:

#### For Peak Months:

$$LD = [DE \times PDPA] + [DE \times PDEA]$$

Where:

DE = Deficient Energy in kWh and is calculated as

$$DE = PSG - AS$$

Where:

PSG = Peak Month Supply Guarantee in kWh

AS = Actual Supply in kWh

**For any Peak Month Period in which the calculation of Deficient Energy above yields a negative number, there shall be no Deficient Energy for that Peak Month Period, and there shall be no (zero) liquidated damages with regard to supply performance during that Peak Month Period. Further, there shall be no further calculations using the formulas that follow with respect to said Peak Month Period.**

PDPA (Peak Deficient Performance Amount) =

Wind - 3.6¢/kWh

Solar - 5.4¢/kWh

Biomass Direct Combustion & Methane Recovery - 1.5¢/kWh

Biomass Gasification - 1.5¢/kWh

Escalated annually by 3%, such escalation beginning in 2012.

PDEA (Peak Deficient Energy Amount) = (PCSPP - CP)

Where:

PCSPP = The average of the CSPP hourly prices for each and every hour during the Peak Month Period in question, as expressed in ¢/kWh

CP = Contract Price, as expressed in ¢/kWh

**Provided, however, that if the calculation of PDEA above yields a negative number with respect to a Peak Month Period, PDEA shall be deemed to be zero (0) in the formula above for calculating “LD” for said Peak Month Period.**

**For Off-Peak Months:**

$$LD = [DE \times OPDPA] + [DE \times OPDEA]$$

Where:

DE = Deficient Energy in kWh and is calculated as

$$DE = OPSG - AS$$

Where:

OPSG = Off-Peak Month Supply Guarantee in kWh

AS = Actual Supply in kWh

**For any Off-Peak Month Period in which the calculation of Deficient Energy above yields a negative number, there shall be no Deficient Energy for that Off-Peak Month Period, and there shall be no (zero) liquidated damages with regard to supply performance during that Off-Peak Month Period. Further, there shall be no further calculations using the formulas that follow with respect to said Off-Peak Month Period.**

OPDPA (Off-Peak Deficient Performance Amount) =

Biomass Direct Combustion & Methane Recovery - 0.2¢/kWh

Biomass Gasification - 0.2¢/kWh

Escalated annually by 3%, such escalation beginning in 2012.

OPDEA (Off-Peak Deficient Energy Amount) = (OPCSPP - CP)

Where:

OPCSPP = The average of the CSPP hourly prices for each and every hour during the Off-Peak Month Period in question, as expressed in ¢/kWh

CP = Contract Price, as expressed in ¢/kWh

**Provided, however, that if the calculation of OPDEA above yields a negative number with respect to an Off-Peak Month Period, OPDEA shall be deemed to be zero (0) in the formula above for calculating “LD” for said Off-Peak Month Period.**

**RECs**

Notwithstanding any of the foregoing regarding the calculation of LDs for Deficient Energy, if Seller fails to deliver all or part of the Supply Guarantee as referenced above within any particular Delivery Period and if a RES has been enacted and is in effect with regard to that Delivery Period, Seller shall transfer to TVA, at no cost to TVA, the corresponding amount of RECs, regardless of whether Seller owes a LD payment to TVA under the provisions above in this Exhibit C. If Seller is incapable of transferring the corresponding amount of RECs associated with the deficiency in the amount of Seller's supply for the Delivery Period after using Commercially Reasonable efforts to do so, Seller shall pay the Alternative Compliance Payment for the number of RECs owed to TVA pursuant to this Exhibit.

## **EXHIBIT D**

### **CREDIT ANNEX**

#### Section 1

(a) **Performance Assurance.** Seller shall provide or cause to be provided Performance Assurance in the amount and in the form as set forth in the Cover Sheet to the Agreement to which this Exhibit D is attached.

(b) **Notice of Material Credit Event.** Seller shall notify TVA in writing of the occurrence of any event that, with notice or the passage of time or both, would constitute a Material Credit Event with respect to Seller, which notice shall be given by Seller within five (5) Business Days of the occurrence of such event. If at any time there shall occur a Material Credit Event with respect to Seller, and such Material Credit Event is not cured or replacement Performance Assurance is not provided within thirty (30) calendar days notice of such event, then an Event of Default shall be deemed to have occurred pursuant to Section 9.1(f) of the Agreement to which this Exhibit D is attached.

**Section 2 Letter of Credit as Performance Assurance.** If Performance Assurance consists of a Letter of Credit, such Letter of Credit shall:

(a) be issued by a Qualified Bank;

(b) if the Letter of Credit is issued by a foreign bank with a U.S. branch, permit the Guaranteed Party to present for payment to the U.S. branch;

(c) permit the Guaranteed Party to draw up to the then current "Available Amount" as defined in the Letter of Credit for the purpose of paying any and all amounts owing to the Guaranteed Party under the Agreement to which this Exhibit D is attached following the occurrence and during the continuation of an Event of Default; and

(d) permit the Guaranteed Party to draw the entire "Available Amount" thereunder to hold as cash collateral for any and all amounts owing to the Guaranteed Party under the Agreement to which this Exhibit D is attached if (i) the Letter of Credit will expire in fewer than forty-five (45) calendar days and (ii) the Performance Assurance Party has not provided the Guaranteed Party with alternative Performance Assurance.

#### Section 3 Substitution, Return, and Handling of Performance Assurance.

(a) **Election to Change Form of Performance Assurance.** A Performance Assurance Party shall have the right to, at any time and from time to time, request replacement of any or all of the Performance Assurance provided by it (the "*Outstanding Performance Assurance*") with one or more alternative forms of Performance Assurance, whereupon the Guaranteed Party shall cooperate with the Performance Assurance Party in obtaining the

concurrent release, termination, or return (as many as may be applicable) of the Outstanding Performance Assurance in favor of or held by the Guaranteed Party.

(b) Return of Original Performance Assurance Documents. Without limitation to the generality of the foregoing, the Guaranteed Party shall return to the Performance Assurance Party all original Letter of Credit and Guaranty Performance Assurance documents, and all amendment, extension, and other related documents, within sixty (60) days of the termination, cancellation, or replacement thereof.

#### Section 4 Financial Statements.

(a) TVA's Financial Statements. If requested by Seller, TVA shall deliver (i) within 120 days following the end of each fiscal year, a copy of TVA's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of TVA's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as TVA diligently pursues the preparation, certification, and delivery of the statements.

(b) Seller's Financial Statements. If requested by TVA, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for Seller or Seller's Guarantor and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for Seller or Seller's Guarantor. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification, and delivery of the statements.

## FORM OF GUARANTY

This Guaranty is made by \_\_\_\_\_ (“Guarantor”), a corporation created and existing under the laws of the \_\_\_\_\_, in favor of the Tennessee Valley Authority (“TVA”), a corporate agency and instrumentality of the United States of America created by and existing under the Tennessee Valley Authority Act of 1933, as amended, to guarantee any and all obligations and liabilities (“Guaranteed Obligations”), of \_\_\_\_\_ (“Debtor”), a corporation created and existing under the laws of the \_\_\_\_\_. The Obligations that are covered by this Guaranty are all Guaranteed Obligations, whether billed or unbilled, of Debtor arising under or related to any agreement, whether currently existing or hereafter created, including but not limited to: (1) the purchase and sale of electricity, natural gas, or other energy commodities (including damages for non-performance), (2) the purchase, sale, or transportation of bituminous coal, limestone, or ammonia, (3) the purchase of transmission service, (4) any liability incurred under an interconnection or keep-whole agreement, and (5) any financial derivative transactions under one or more agreements, contracts, or confirmations, or a combination thereof (collectively, the (“Agreement(s)”) entered into between Debtor and TVA.

For one dollar and other valuable consideration, receipt of which is hereby acknowledged, Guarantor absolutely and unconditionally guarantees, as a compensated guarantor, the payment when due, by acceleration or otherwise, as well as the performance of all of Debtor’s Guaranteed Obligations, direct or indirect, now existing or hereafter created, arising under or related to the Agreements, together with all interest and charges accruing thereon.

The liability of Guarantor under this Guaranty is primary, unlimited, and unconditional, and shall be enforceable before, concurrently, or after any claim or demand is made or suit is filed against Debtor or any other Obligor and before, concurrently, or after any proceeding by TVA against any collateral or other security for the Guaranteed Obligations and shall be effective regardless of the solvency or insolvency of Debtor or any other Obligor at any time, the extension or modification of any of the Guaranteed Obligations by operation of law, or the subsequent reorganization, merger, or consolidation of Debtor or any other Obligor or any change in their composition, nature, ownership, personnel, or location, and this Guaranty shall be a continuing guaranty of any and all agreements given in extension or renewal of the Guaranteed Obligations. Guarantor acknowledges, agrees, and confirms that this is a guaranty of payment and performance and not of collection only and that demand for payment may be made hereunder on any number of occasions in the amount of all or any portion of the Guaranteed Obligations then due, and no single demand shall exhaust the rights of TVA hereunder. This Guaranty shall continue in full force and effect until the date the Agreements are all terminated or expire; provided Guarantor agrees that the Obligations and liabilities hereunder shall continue in full force and effect with respect to any and all guaranteed Obligations accrued or contracted for prior to such expiration or termination.

Guarantor hereby waives: (a) notice of acceptance of this Guaranty, (b) notice of changes in the Agreements, (c) notice of changes of Debtor’s Guaranteed Obligations under the

Agreements, (d) notice of the acceptance, surrender, release, exchange, or alteration of any other security held by TVA for Debtor's Guaranteed Obligations, (e) any requirement that suit be brought or that remedies be pursued against Debtor or any other entity or security as a condition of enforcement of this Guaranty, (f) any other notice or demand, and (g) any right to trial by jury in any action relating to this Guaranty.

Guarantor's liability hereunder shall not be released or reduced by the insolvency, bankruptcy, reorganization, release, receivership, or discharge of Debtor. Any payment made by Debtor to TVA that is rescinded or must otherwise be returned to the Debtor because of insolvency, bankruptcy, reorganization, or otherwise, shall be deemed a payment that was never made by Debtor.

Guarantor consents without the requirement of any notice to or further assent by Guarantor, to the fullest extent permitted by applicable law, that (i) the time of payment of any Guaranteed Obligation may be extended, (ii) any provision of the Agreement may be amended, waived, or modified, (iii) any Obligor may be released from its obligations or other obligors or guarantors substituted therefor or added, (iv) any collateral or other property now or hereafter securing the Guaranteed Obligations may be released, exchanged, substituted, compromised, or subordinated in whole or in part or any security may be added, and (v) TVA may proceed against Guarantor or any Obligor without proceeding against any other Obligor.

Guarantor has the right and power and has taken all necessary action to authorize it to guarantee the Guaranteed Obligations hereunder and to execute, deliver, and perform this Guaranty in accordance with its terms. This Guaranty has been duly executed and delivered by the duly authorized officers of the Guarantor and is a legal, valid, and binding obligation of the Guarantor enforceable in accordance with its terms.

The obligations of Guarantor hereunder are irrespective of and shall not be dependent upon or affected by (i) the existence, value, or condition of any collateral or other security for the Guaranteed Obligations, (ii) the validity, perfection, or priority of any security interest in any collateral or other security, or (iii) any other dealings among TVA and Debtor.

No amendment of this Guaranty shall be effective unless consented to in writing by TVA. Guarantor may revoke this Guaranty by delivering written notice to Tennessee Valley Authority, 400 West Summit Hill Drive, WT 4C, Knoxville, TN 37902-1401, Attn: Director, Corporate Credit, that this Guaranty will not apply to obligations created after the effective revocation date specified in the notice, which date shall be at least 30 calendar days after the delivery date of such notice. Any such revocation shall apply only to obligations created after the effective revocation date; such revocation shall not apply to payment obligations created prior to the effective revocation date even when such Obligations may become due and payable after such revocation.

The validity, interpretation, performance, and enforcement of the Guaranty shall be governed by the Federal laws of the United States, including but not limited to, Federal Bankruptcy Code; provided that the laws of the State of New York may be applied to the extent

not inconsistent with, or duplicative of, the Federal laws of the United States. Guarantor agrees to jurisdiction and venue in the United States District Court for the Eastern District of Tennessee in any action to enforce this Guaranty. Should TVA be the prevailing party in any action to enforce this Guaranty, Grantor agrees to pay, in addition to the guaranteed amount, any and all reasonable legal fees, costs, and other expenses incurred by TVA in enforcing this Guaranty.

This Guaranty may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

IN WITNESS WHEREOF, as shown by the signature below, Guarantor, acting by and through its duly authorized officer has executed this Guaranty this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GUARANTOR**

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

As: \_\_\_\_\_

**FORM LETTER OF CREDIT**

[LETTERHEAD]

[DATE]

Irrevocable Standby Letter of Credit No.

**Beneficiary:**

**Applicant:**

Tennessee Valley Authority  
400 West Summit Hill Drive, WT 4C  
Knoxville, TN 37902-1401

Attn: Kirk A. Kelley  
Director, Corporate Credit

Dear Madam or Sir:

We hereby establish for the account of \_\_\_\_\_ (Seller) \_\_\_\_\_ (“Seller’s name” or “Applicant”), our irrevocable standby letter of credit in your favor for an amount of USD \_\_\_\_\_ (\_\_\_\_\_ Dollars United States currency). Applicant has advised us that this letter of credit is issued in connection with the \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_, between Applicant and Beneficiary (as amended and as may be further amended, supplemented, or otherwise modified, the “\_\_\_\_\_ Agreement”). This letter of credit shall; (i) become effective immediately for the term of one (1) year and shall expire on \_\_\_\_\_ (the “Expiration Date”), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation and (b) the original of the letter of credit (the “Accompanying Documents”) and presented at our office located at \_\_\_\_\_, attention \_\_\_\_\_ (or at any other office that may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a “Business Day”). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation. Upon any draw of the letter of credit, unless otherwise agreed to by Tennessee Valley Authority, Applicant shall be obligated to replenish the amount of the letter of credit draw within twenty (20) days.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for periods of one (1) year from the present or any future expiration date, unless at least forty-five (45) days prior to any such expiration date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for any such additional period.

4. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98).

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement referred to herein, except for Annexes 1, 2, and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except as otherwise provided in this paragraph 5.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. \_\_\_\_\_.

Very truly yours,

[LOC Issuer]

Authorized signature

**ANNEX 1**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Draft under Letter of Credit No. \_\_\_\_\_

[ Month, Day , Year ]

On [*third business day next succeeding date of presentation*]

Pay to Tennessee Valley Authority U.S. \$ \_\_\_\_\_ [not to exceed amount available to be drawn]

400 West Summit Hill Drive, WT 4C  
Knoxville, TN 37902-1401

[*insert any wire instructions*]

For value received and charge to account of Letter of Credit No. \_\_\_\_\_ of  
\_\_\_\_\_

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

Title: \_\_\_\_\_

**ANNEX 2**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Drawing under Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of the **Tennessee Valley Authority**, a corporate agency and instrumentality of The United States of America (“Beneficiary”), hereby certifies on behalf of Beneficiary to \_\_\_\_\_ with reference to irrevocable standby Letter of Credit No. \_\_\_\_\_ (the “Letter of Credit”) issued for the account of \_\_\_\_\_, (“ X ”), that:

1) [pursuant to the \_\_\_\_\_ Agreement between Beneficiary and  X , as of the date hereof Beneficiary is entitled to draw under the Letter of Credit;]

--or--

[Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit and, as such, as of the date hereto Beneficiary is entitled to draw under the Letter of Credit;]

2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$ \_\_\_\_\_, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;

3) the amount specified on the sight draft accompanying this certificate does not exceed the amount to which Beneficiary is entitled to draft under said \_\_\_\_\_ Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: \_\_\_\_\_

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

**ANNEX 3**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Notice of surrender of Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Attention: Letter of Credit Department

Re: Letter of Credit No. \_\_\_\_\_ issued for the account of     (Seller)    

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

\_\_\_\_\_

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

Title: \_\_\_\_\_

## **EXHIBIT E**

### **LEGALLY REQUIRED CLAUSES**

The Parties shall comply with all Applicable Law. To the extent legally required by Applicable Law, the following clauses shall apply to the Parties' performance of the Agreement to which this Exhibit E is attached.

#### **AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY**

To the extent applicable, contract incorporates by reference the Affirmative Action for Disabled Veterans and Veterans of the Vietnam-Era clause, 41 C.F.R. § 60-250.4; the Affirmative Action for Handicapped Workers clause, 41 C.F.R. § 60-741.4; the Equal Opportunity clause, 41 C.F.R. § 60-1.4; and the Discrimination on the Basis of Age clause, 18 C.F.R. § 1316.6; and all amendments thereto and all applicable regulations, rules, and orders issued thereunder. Seller complies with applicable regulatory requirements, including information reports and affirmative action programs.

## BYRD RIDER

Lobbying. This contract is subject to the requirements of Public Law No. 101-121 (codified at 31 U.S.C. § 1352), which prohibits certain lobbying activities and requires disclosure of certain others, and to TVA's implementing regulations published at 55 Fed. Reg. 6736 (codified at 18 C.F.R. § 1315).

### A. Prohibition, Certification, and Disclosure

- (1) Appropriated Funds. Section 319 of Public Law No. 101-121 provides that none of the funds appropriated by any act of Congress may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with: (a) the awarding of any Federal contract; (b) the making of any Federal grant; (c) the making of any Federal loan; (d) the entering into of any cooperative agreement; or (e) the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) Certification. Seller, by signing this contract, certifies in accordance with Exhibit, "Certification for Contracts, Grants, Loans, and Cooperative Agreements," attached hereto and made a part hereof ("Certification"), that it has not violated the foregoing prohibition.
- (3) Other Than Appropriated Funds. Except as provided in subsection D, below, if Seller has paid or will pay any funds other than Federal appropriated funds to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this contract, Seller shall complete and submit to TVA Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (Copies of Standard Form-LLL may be obtained from the TVA representative for this contract.) The requirements of this subsection A(3) shall not apply to payments of reasonable compensation to regularly employed officers or employees. The term "regularly employed," with respect to an officer or employee of a person requesting or receiving a contract, means an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates TVA's consideration of such person for receipt of such contract.

- B. Updating. At the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in the Certification or, if applicable, Standard Form-LLL, Seller shall file with TVA an initial or new Standard Form-LLL with such new information or modifications as are necessary to correct any inaccuracies in the information originally declared and certified.
- C. Subcontractors. Seller shall include or cause to be included the form of the Certification in any subcontract exceeding \$100,000 at any tier. Seller shall promptly file with TVA each Standard Form-LLL provided by a subcontractor.
- D. Exceptions. The prohibition described in subsection A(1) above and the disclosure requirements in subsection A(3) do not apply in the case of (1) a payment of reasonable compensation made to an officer or employee of Seller to the extent that the payment is for agency and legislative liaison activities not directly related to a Federal action referred to in subsection A; or (2) any reasonable payment to a person, or any payment or reasonable compensation to an officer or employee of Seller, if the payment is for professional or technical services rendered directly in the preparation or negotiation of this Agreement.
- E. Definitions. Terms not defined herein shall have the meanings ascribed to them in Public Law No. 101-121 and TVA's implementing regulations.
- F. Penalties. (1) Any person who makes an expenditure prohibited by Public Law No. 101-121 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure; and (2) any person who fails to file or amend a certification required under subsection A(2) above or a disclosure required to be filed or amended under subsection A(3) above shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 and to such other remedies as may apply for each such failure.

## BYRD RIDER EXHIBIT

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## EXHIBIT F

### TERMS OF THE SOLAR SOLUTIONS INITIATIVE, IF APPLICABLE

A Seller that constructs a Project that is a solar photovoltaic (PV) Qualifying Resource with a nameplate capacity greater than 50 kilowatts (kW) and no greater than 1,000 kW direct current (DC) may apply for TVA's Solar Solutions Initiative ("SSI") pilot incentives in 2012 and 2013.

A Seller must submit to TVA a fully completed and accurate SSI Application (Attachment 1 to this Exhibit F) along with the Renewable Standard Offer application documentation in order to be considered for the SSI pilot incentives. TVA will approve SSI Applications on a first-come, first-served basis after verifying Project eligibility in accordance with the currently effective TVA requirements for the SSI pilot. The current eligibility requirements for the SSI pilot are provided on the TVA web site.

The appropriate sections of the Cover Sheet to this Agreement indicate whether Seller is approved to participate in the SSI pilot and whether the Seller receives an SSI incentive price adder for the first ten years of the Agreement in accordance with Section 4.6.

Sellers that apply for the SSI pilot must certify that all information provided on the SSI Application (Attachment 1 to this Exhibit F) is accurate and must also update the Application prior to executing the Agreement to confirm continued eligibility for the SSI pilot if the Project's components or any other information on the original Application has changed since submittal.