

**Knoxville Utilities Board  
Board Meeting Minutes  
Thursday, November 21, 2024 Noon**

**Call to Order**

The Knoxville Utilities Board met in regular session in the Larry A. Fleming Board Room at 445 S. Gay Street, on Thursday, November 21, 2024, pursuant to the public notice published in the January 6, 2024, edition of the *News Sentinel*. Chair Adrienne Simpson-Brown called the meeting to order at 12:00 p.m.

**Roll Call**

Commissioners Present: Claudia Caballero, Ron Feinbaum, Cynthia Gibson, Kathy Hamilton, Celeste Herbert, Dr. Craig Pickett, Jr, and Adrienne Simpson-Brown

Commissioners Absent: None

**Approval of Minutes**

Upon a motion by Commissioner Feinbaum and a second by Commissioner Herbert, the October 28, 2024 Board meeting minutes were approved by a roll call vote. The following Commissioners voted "aye": Caballero, Feinbaum, Gibson, Hamilton, Herbert, Pickett, Jr, and Simpson-Brown. No Commissioner voted "nay".

**Old Business**

None

**New Business**

**Resolution 1497 – A Resolution Amending the Knoxville Utilities Board Procurement Procedures**

President Gabriel Bolas recognized Mark Walker, Senior Vice President and Chief Financial Officer, to review proposed amendments to KUB's Procurement Procedures.

Upon a motion by Commissioner Hamilton and a second by Commissioner Gibson, Resolution 1497 (*Attachment 1*) was adopted by a roll call vote on first and final reading. The following Commissioners voted "aye": Caballero, Feinbaum, Gibson, Hamilton, Herbert, Pickett, Jr, and Simpson-Brown. No Commissioner voted "nay".

November 21, 2024

**Resolution 1498 – A Resolution Authorizing the Execution of a Letter of Intent and Associated Power Purchase Agreements Required to Purchase and Resell Solar Energy from SR Durhamville, LLC Under Tennessee Valley Authority’s Power Supply Flexibility Program**

President Gabriel Bolas recognized Erin Gill, Vice President of Sustainability and Government Relations, to review proposed Resolution 1498, which authorizes the execution of a series of agreements for 33 MW of solar from a solar facility in Durhamville, Tennessee that will be developed, owned, and operated by Silicon Ranch.

Upon a motion by Commissioner Herbert and a second by Commissioner Caballero, Resolution 1498 (*Attachment 2*) was adopted by a roll call vote on first and final reading. The following Commissioners voted “aye”: Caballero, Feinbaum, Gibson, Hamilton, Herbert, Pickett, Jr, and Simpson-Brown. No Commissioner voted “nay”.

**President’s Report**

**Natural Gas Purchasing & Winter Update**

President Gabriel Bolas reminded Commissioners that staff provides an update each fall on the natural gas industry and KUB’s compliance with natural gas purchasing requirements and a winter energy bill forecast. He recognized Sherri Ottinger, Manager of Rates and Analytical Services, to provide this year’s update.

**2024 United Way Campaign**

President Gabriel Bolas advised Commissioners that we recently completed our annual 100% employee-funded United Way campaign. The annual campaign reflects KUB’s mission of service and employee commitment to the community. He recognized Leslye Hartsell, Director of Community Relations, to share an overview of this year’s campaign.

**APPA Customer Satisfaction Survey**

President Bolas advised Commissioners the American Public Power Association recently recognized KUB with a bronze Customer Satisfaction Award for the excellent customer service we provide to our customers and community. He recognized Tiffany Martin, Senior Vice President and Chief Customer Officer, to share the results of this achievement.

November 21, 2024

**Association of Metropolitan Water Agencies Awards**

President Bolas also shared that KUB was the sole recipient of the Association of Metropolitan Water Agencies' Environmental Justice and Equity Award and a second time recipient of the Sustainable Water Utility Management Award.

**Other Business**

None

**Public Comment**

None

**Adjournment**

There being nothing further to come before the Board, Vice Chair Feinbaum declared the Board meeting adjourned at 12:55 p.m.

  
\_\_\_\_\_  
Adrienne Simpson-Brown, Chair  
\_\_\_\_\_  
Mark Walker, Board Secretary

Attachment 1	Recommendation Letter and Resolution 1497 – A Resolution Amending the Knoxville Utilities Board Procurement Procedures	<b><u>Page(s)</u></b> 13124 – 13135
	Resolution 1498 – A Resolution Authorizing the Execution of a Letter of Intent and Associated Power Purchase Agreements Required to Purchase and Resell Solar Energy from SR Durhamville, LLC Under Tennessee Valley Authority's Power Supply Flexibility Program	13136 – 13258





November 15, 2024

Knoxville Utilities Board  
445 S. Gay Street  
Knoxville, Tennessee 37902-1109

Commissioners:

The November 21 Board meeting includes two official action items, including amending KUB's Procurement Procedures and requesting authorization to enter into agreements for a future solar power project under TVA's Expanded Flexibility power supply program. An overview of each resolution is provided below.

**Resolution 1497**

The Board has previously adopted Procurement Procedures, governing the purchase of goods and services subject to the Municipal purchasing requirements of state law.

Staff is proposing the Procurement Procedures be amended as follows:

- Expand the scope of authority of the President and CEO to resolve protests related to a competitive bid and contract disputes;
- Provide a general delegation of authority to the President and CEO to implement the Procedures and take any action necessary to manage all aspects of Procurement; and
- Update references to state law.

Staff discussed the proposed changes with the Board's Audit and Finance Committee at the Committee's meeting on October 23.

Resolution 1497 amends the Procurement Procedures to reflect the proposed changes. The resolution is enclosed for your information in addition to a red-lined version of the Procedures. I recommend the approval of Resolution 1497 on first and final reading.

**Resolution 1498**

As you will recall, staff is working to execute a series of project agreements that will enable KUB to benefit from TVA's Expanded Flexibility program, which allows KUB to self-supply 5% of its electric load from certain sources within the Tennessee Valley.

Resolution 1498 authorizes the execution of a series of agreements for 33 MW of solar from a solar facility in Durhamville, Tennessee (western portion of state) that will be developed, owned, and operated by Silicon Ranch. The proposed solar project represents a collaboration between the Electric Power Board of Chattanooga (EPB) and

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November 15, 2024

KUB. EPB selected Silicon Ranch through a competitive solicitation in 2023 for a 66 MW solar facility expected to come on-line in 2028. Through multiple agreements described below, KUB will purchase 50% of the energy produced by the 66 MW solar facility for a period of 20 years.

The resolution authorizes KUB to execute the following agreements:

- Letter of Intent (LOI) with Silicon Ranch committing KUB to execute a Power Purchase Agreement (PPA) with Silicon Ranch in 2026 or approximately two years before the projected in-service date of the project. The LOI has the effect of securing KUB's partnership with Silicon Ranch to provide the assurance needed for all parties to proceed with the project at a locked-in competitive price, while remaining in compliance with contract term limits for KUB under the City Charter.
- PPA with Silicon Ranch through which Silicon Ranch agrees to sell, and KUB agrees to purchase 50% of the solar power generated by the 66 MW project at a fixed price of \$50.90 per megawatt hour (MWh).
- Flexibility Option Purchase Power Agreement (FOPPA) with TVA, which runs parallel to the PPA with Silicon Ranch and enables KUB to sell the power to TVA at a defined price of \$55.55 per MWh plus the standard service total monthly fuel cost per MWh produced.

The projected net power cost savings to KUB resulting from the agreements is \$1.5 million annually for 20 years.

Resolution 1498 and the LOI, PPA, and FOPPA are enclosed for your information. I recommend the approval of Resolution 1498 on first and final reading.

Respectfully submitted,



Gabriel J. Bolas, II  
President and Chief Executive Officer

## **RESOLUTION NO. 1497**

### **A Resolution Amending the Knoxville Utilities Board Procurement Procedures**

**Whereas**, Section 1106(T) of the Charter of the City of Knoxville (the "Charter") provides that the Knoxville Utilities Board has the authority to adopt procedures governing purchasing for the KUB system requiring competition when practical; and

**Whereas**, the KUB Board of Commissioners ("Board") previously adopted Resolution No. 1067, establishing the Knoxville Utilities Board Procurement Procedures ("KUB Procurement Procedures"); and

**Whereas**, the Board previously adopted Resolution No. 1197, amending the KUB Procurement Procedures to reflect certain changes in state law; and

**Whereas**, the Board previously adopted Resolution No. 1466, amending the KUB Procurement Procedures to reflect certain changes in state law and KUB's best interests; and

**Whereas**, KUB staff has recommended the Board further amend the KUB Procurement Procedures to reflect certain changes that are in line with current practices in the industry and in the best interest of KUB and its customers; and

**Whereas**, the Board finds it in the best interest of KUB and its customers to replace the existing KUB Procurement Procedures with the amended KUB Procurement Procedures attached hereto as Exhibit "A".

**Now, Therefore, Be it Hereby Resolved by the Board of Commissioners of the Knoxville Utilities Board:**

1. The KUB Procurement Procedures attached hereto and incorporated herein as Exhibit "A" to this Resolution are approved by the adoption of this Resolution.
2. The KUB Procurement Procedures shall be liberally interpreted and applied to promote the underlying principles.
3. The President and Chief Executive Officer is authorized and empowered generally to take such actions and authorize such persons to take such actions as may be necessary, proper, and convenient to carry into effect this Resolution.



**Be It Further Resolved** that this Resolution shall take effect upon its passage.

Adrienne Simpson-Brown/s  
Adrienne Simpson-Brown, Chair

Mark Walker/s  
Mark Walker, Board Secretary

APPROVED ON 1<sup>st</sup>  
& FINAL READING: 11-21-24  
EFFECTIVE DATE: 11-21-24  
MINUTE BOOK 49 PAGE 13126-13135



## EXHIBIT A

### KNOXVILLE UTILITIES BOARD PROCUREMENT PROCEDURES

#### Section I. Principles

It is the intent of the Knoxville Utilities Board ("KUB") that these procedures promote the following principles:

- a. Purchase goods and services in a manner that is both the most cost efficient and uses competition when practical.
- b. Promote effective competition for all other procurement activities when it is in KUB's best interests.
- c. Promote fair treatment to all suppliers and contractors (or prospective suppliers and contractors) of goods and services.
- d. Maintain public confidence in KUB procurement.
- e. Adhere to the requirements set forth in T.C.A. § 12-4-101 (Personal interests of officers prohibited) and T.C.A. § 6-54-107 (Interest of officer in municipal contracts prohibited).
- f. Support of the development of a diverse supplier community that reflects the communities KUB serves by encouraging small business, women and minority owned business enterprises to participate in KUB's procurement processes.
- g. Simplify, clarify, and modernize the guidelines describing KUB procurement.
- h. Ensure that the procurement practices of the various KUB organizational elements are as uniform as possible.
- i. Promote the continued evolution and development of procurement guidelines.

#### Section II. Procurement Defined

For these Procurement Procedures, the term "procurement" shall refer to all rights, powers, duties, and authorities relating to the purchase and other acquisition of supplies, materials, vehicles, equipment, services, construction, and real estate; the management, control and distribution of supplies, materials, vehicles, equipment, services, construction, and real estate; and the sale and other disposal of surplus real property and personal property.

### Section III. Source Selection Using Competition

1. Solicitation of Bids and Proposals. When practical, purchases and leases or lease-purchase agreements by authorized KUB officials will be made using competition. The following are the authorized not-to-exceed monetary limits for the solicitation of bids and proposals for goods and services to KUB.

- a. \$0-\$19,999.99. No advertisement or competitive bidding is required.
- b. \$20,000.00-\$49,999.99. KUB authorized officials will obtain at least three (3) written (including but not limited to e-mail) quotations, when possible.
- c. \$50,000.00 and above. KUB authorized officials will advertise and conduct a competitive bidding process.

The President and Chief Executive Officer is authorized to amend the KUB Procurement Procedures in response to any future changes in state law regarding the threshold amount for purchases requiring public advertising and competitive bidding, provided the Board's Audit and Finance Committee be provided no less than 60 days' advance notice prior to the effective date of the amendment to the KUB Procurement Procedures.

2. Procedures for Public Advertising, Securing and Opening Bids. The President and Chief Executive Officer or his/her designee will implement procedures for public advertising, securing, and opening bids.

- a. Public Advertising
  - i. Purchase, lease, lease-purchase, or other agreements for material or services in the amount of \$50,000.00 and above, unless exempt from competitive bidding by these Procedures, shall be advertised for a competitive selection process.
  - ii. The President and Chief Executive Officer or his/her designee shall develop an advertisement for bids/proposals for each purchase or agreement for services meeting the requirements of this part which, at a minimum, shall include:
    - (For service contracts) KUB's project name and control number.
    - (For purchases of goods and materials) A description of the item and estimated quantity to be purchased.

- A description of and charge for any Bid Documents.
  - Instructions on where to obtain and return Bid Documents.
  - A timetable for the bidding/proposal process.
  - A statement of KUB's reservation of rights with respect to bidding/proposing.
  - Any licensing requirements.
  - Any requirement for bid deposit and bid coversheet.
  - Any limitation on withdrawal of bids/proposals.
- iii. The President and Chief Executive Officer or his/her designee shall determine and implement for each purchase meeting the requirements of this part, a schedule for publication of advertisements for bids/proposals, the date for any pre-bid or pre-proposal meetings, deadlines for questions and KUB responses, and the deadline for submitting bids or proposals. The schedule and deadlines shall be included with the Bid Documents for each purchase or agreement for services.
- iv. Advertisements required by this part shall be published in a manner that best meets the needs of each purchase or agreement for service, which may include, but not be limited to, the KUB website, the local newspaper of general circulation, trade journals, KUB bid board, electronic message board, KUB phone bid line, or third-party distribution (Plan Rooms). KUB procurement personnel may also engage in direct communication to potential bidders or proposers in a particular project where it is determined to be in the best interest of KUB.
- b. Securing Bids/Requests for Proposals
- i. The President and Chief Executive Officer or his/her designee is authorized to develop and implement those actions, guidelines, or processes necessary to maximize a full, diverse, and confidential competitive process for all purchase, lease, lease-purchase, or other agreements for materials or services under this part.
- ii. KUB will make available, upon request and at a reasonable charge, the Bid Documents for all prospective bidders/proposers for KUB purchases or agreements for services. The Bid Documents will include a description of the project or item to be purchased and/or services to be



employed, a description of the competitive process, appropriate background information, references, and definitions, relevant timelines, and deadlines, bidding/proposing requirements, and evaluation criteria. The Bid Documents may also include, but not be limited to the following, when applicable:

- Instructions to bidders
  - Form of Agreement
  - Specifications
  - Form of Bid, Performance and Payment Bonds
- iii. KUB will determine for each competitive process whether it is necessary to conduct a pre-bid/pre-proposal meeting. Where necessary, the time, location and tentative agenda for such meeting will be provided with the Bid Documents.
- iv. KUB will determine for each competitive process whether it is necessary to conduct a question-and-answer period for bidders/proposers. Where determined to be necessary, the deadline for questions and deadline for responses will be stated in the Bid Documents. KUB will provide to all bidders/proposers who obtain Bid Documents from KUB, a list of the questions asked and KUB responses to those questions.
- v. For Sealed, Low Bid competitive processes, KUB will receive and maintain the sealed bids, unopened, in a secure location, until the date and time designated for the opening of bids.
- vi. For all RFPs, Evaluated Bids, or other evaluated competitive processes, KUB will receive and maintain confidentiality of all bids/proposals submitted to KUB. Any communication between KUB and a bidder/proposer will be conducted to clarify the bid or proposal and will be conducted in a manner that will not provide any bidder/proposer an advantage or disadvantage in the competitive process. KUB's evaluation and conclusions shall be confidential until the date KUB announces the successful proposer.
- c. Opening Bids and Request for Proposals
- i. Sealed Low Bid Competitive Processes.



- KUB will establish a date to open and announce the apparent low bidder (“Bid Date”), which shall be communicated in the Bid Documents.
  - The name of the apparent low bidder shall be announced on the Bid Date.
  - After all bids have been fully evaluated, a Notice of Award shall be communicated in writing to the successful bidder which shall describe the process and include necessary documents for completion of the contract process.
  - A letter concerning the announcement of successful bidder and including a return of any Bid Security shall be sent to all unsuccessful bidders.
  - KUB reserves the right to reject any and all bids received.
- ii. For RFPs, Evaluated Bids, or other Evaluated Competitive Processes:
- KUB will establish a date to receive all proposals (“Proposal Date”), which shall be communicated in the RFP Documents.
  - A Notice of Award letter to the successful proposer will be sent after all evaluations are complete, along with any documents and instructions necessary for completion of the contract process.
  - A letter announcing the successful proposer and returning any required Bid Security, where applicable, shall be mailed to all unsuccessful proposers.
  - KUB reserves the right to reject all proposals received.
- iii. All Bid Documents, bids, proposals, and other written documentation in connection with a competitive bidding or proposal process shall be maintained by the KUB Procurement Department in the normal course of its business.

#### **Section IV. Intergovernmental and Industry Partnering**

The President and Chief Executive Officer or his/her designee is authorized to enter into cooperative purchasing agreements with other public utilities and governmental agencies pursuant to T.C.A. § 12-3-1205 (Cooperative purchasing agreements); T.C.A. § 12-3-1202 (Purchase of secondhand articles or equipment by municipalities); T.C.A. § 12-3-1203 (Purchase for other local governmental units); and T.C.A. 12-2-420 (Transfer of surplus personal property among governmental entities) including agreements for the cooperative use of inventory.

## **Section V. Procurement Records**

The President and Chief Executive Officer or his/her designee shall establish practices related to the retention of procurement records.

## **Section VI. Exemptions from Competitive Bidding**

The following shall be exempt from public advertisement and competitive bidding.

1. Purchases costing less than \$50,000.00, subject to the requirements of Section III (1);
2. The purchase of goods or services that may not be procured by competitive means because of the existence of a single source of supply or because of a proprietary product;
3. Purchases or leases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work;
4. Leases or lease-purchase agreements requiring total payments of less than \$50,000.00 in each fiscal year, subject to the requirements of Section III (1), provided that this exemption shall not apply to leases of like or related items that individually may be leased or lease-purchased with total payments of less than \$50,000.00 in any fiscal year, but that are customarily leased or lease-purchased in numbers of two or more, if the total for lease-purchase payments for such items under a single agreement would be \$50,000.00 or more in any fiscal year;
5. Purchases, leases, or lease-purchases of real property;
6. Purchases, leases, or lease-purchases from federal, state, or local governmental units or agencies of secondhand articles or equipment or other materials, supplies, commodities and equipment;
7. Purchases of perishable commodities when such items are purchased in the open market;
8. Fuel and fuel products may be purchased in the open market without public advertisement, but shall, whenever possible, be based upon at least three competitive bids (including but not limited to telephone, fax, or e-



mail). Fuel and fuel products may be purchased from the Department of General Services Contract where available;

9. Purchases for resale of electric power, natural gas, and propane gas (T.C.A. §§ 6-56-304 and 7-51-910);
10. Contracts for certain professional services. Except as otherwise provided in this section, the President and Chief Executive Officer or his/her designee shall determine if a service constitutes a professional service pursuant to TCA § 12-3-1209 and 12-4-107 (Contracts for Professional Services) and shall have the authority to negotiate contracts for such professional services.
11. The selection of KUB's general counsel and outside auditors are specifically excluded from these Procurement Procedures. The Board reserves for itself the responsibility for selecting, retaining, or replacing both the general counsel and the outside auditors.
12. A record of all purchases made pursuant to the exemptions in subsections 2, 3 and 7 of this section shall be made by the Procurement Manager or his/her designee and shall specify the amount paid, the item purchased and from whom the purchase was made. For any emergency purchases pursuant to subsection 3, the report shall include the nature of the emergency.

The Procurement Manager, not less than semi-annually, shall make a report to the President and Chief Executive Officer of all purchases made pursuant to the exemptions in subsections 2, 3, and 7 of this section. Not less than annually, the President and Chief Executive Officer or his/her designee shall make a report of such purchases to the Audit and Finance Committee of the Board.

## **Section VII. Inventory Management and the Sale, Lease, or Other Disposal of Surplus Real and Personal Property**

The President and Chief Executive Officer or his/her designee is responsible for the management of all KUB inventory. Upon a determination in writing by a Senior Vice President that certain personal property is no longer necessary and useful for the continued operation of the affected system, and after a further determination in writing by the President and Chief Executive Officer that such personal property is not needed by any other organizational element, the President and Chief Executive Officer or his/her designee will be authorized to sell, lease or otherwise dispose of such personal property in accordance with the procurement guidelines and these Procurement Procedures.

Upon a finding by the Board, by a Resolution duly adopted, that real property is no longer necessary and useful for the continued operation of the affected system, and after a further determination in writing by the President and Chief Executive Officer that such real property is not needed by any other organizational element, the President and Chief Executive Officer or his/her designee shall sell, lease, or otherwise dispose of such real property in a manner that is in the best interest of KUB and is in accordance with the procurement guidelines.

### **Section VIII. Administrative Remedies**

The President and Chief Executive Officer or his/her designee(s) shall have the authority to resolve the protest of a bidder, proposer, or contractor, actual or prospective, who claims to be aggrieved, concerning the solicitation, selection, or awarding, of a contract, and contract and breach of contract disputes. The President and Chief Executive Officer or his/her designee is authorized to establish processes addressing the resolution of said protests and disputes and determine appropriate remedies.

### **Section IX. Procurement Guidelines**

The President and Chief Executive Officer shall approve Procurement Guidelines addressing KUB procurement activities. Those guidelines may further limit but shall not exceed the authority granted by these Procurement Procedures.

The President and Chief Executive Officer will provide notification in writing to the Board's Audit and Finance Committee of any changes to the Procurement Guidelines. Any changes to the Procurement Guidelines will not take effect until at least sixty (60) days after the written notification.

### **Section X. General Delegation of Authority.**

In addition to any other delegation of authority herein, the President and Chief Executive Officer or his/her designee is authorized to develop and implement those actions, guidelines or processes that are necessary to implement these Procurement Procedures and to take whatever actions are necessary to manage all aspects of Procurement for KUB.



## RESOLUTION NO. 1498

### **A Resolution Authorizing the Execution of a Letter of Intent and Associated Power Purchase Agreements Required to Purchase and Resell Solar Energy from SR Durhamville, LLC Under Tennessee Valley Authority's Power Supply Flexibility Program**

**Whereas**, pursuant to the TVA Power Contract, TV-75110A, Knoxville Utilities Board ("KUB") has executed a Power Supply Flexibility Agreement ("Flexibility Agreement") with the Tennessee Valley Authority ("TVA") that gives KUB the flexibility to generate up to 5% of electric energy by deploying certain energy resources, including but not limited to solar; and

**Whereas**, Tennessee Code § 7-51-910 allows KUB the option to purchase electric power for resale without complying with competitive bidding requirements; and

**Whereas**, through a competitive procurement issued by the Electric Power Board of Chattanooga ("EPB"), SR Durhamville, LLC has demonstrated the capacity to develop, own, and operate a 66 MW solar photovoltaic electric generation facility that meets the criteria defined by the Flexibility Agreement ("the project"); and

**Whereas**, under the proposed Power Purchase Agreement ("PPA"), SR Durhamville will sell to KUB 50% of the energy output and other associated attributes produced by the project in exchange for a fixed per unit contract price over a 20-year term; and

**Whereas**, under the proposed Flexibility Option Power Purchase Agreement ("FOPPA"), KUB will sell the purchased power to TVA in exchange for a specified per unit contract price over a 20-year term; and

**Whereas**, the pricing terms of the PPA and FOPPA will result in net savings to KUB; and

**Whereas**, the proposed Letter of Intent (LOI) will commit KUB to sign the PPA with SR Durhamville within a specified time period, thereby confirming KUB's commitment to the project while respecting contract term limits contemplated in the City of Knoxville Charter; and

**Whereas**, the Board has determined, upon recommendation from KUB staff, that it is in the best interest of KUB, its customers, and the community to execute the LOI, PPA, and FOPPA, respectively.

**Now, Therefore, Be It Hereby Resolved by the Board of Commissioners of the Knoxville Utilities Board:**

**Section 1.** The President and Chief Executive Officer is hereby authorized to execute the LOI and associated PPA with SR Durhamville, including related documents, substantially in the form attached hereto and is further authorized to approve any minor changes or revisions to said documents as are in the best interest of KUB and its customers.

**Section 2.** The President and Chief Executive Officer is hereby authorized to execute the TVA FOPPA and related documents in substantially the form attached hereto and is further authorized to approve any minor changes or revisions to said documents as are in the best interest of KUB and its customers.

**Section 3.** That this Resolution shall take effect from and after its passage.

Adrienne Simpson-Brown  
Adrienne Simpson-Brown, Chair

Mark Walker  
Mark Walker, Board Secretary

APPROVED ON 1<sup>st</sup>  
& FINAL READING: 11-21-24  
EFFECTIVE DATE: 11-21-24  
MINUTE BOOK 49 PAGE 13136-13258

November \_\_, 2024

Knoxville Utilities Board  
445 S. Gay Street  
Knoxville, Tennessee 37902  
Attention: Gabriel Bolas, President and Chief Executive Officer

**Re: Power Purchase Agreement – 66 MWac Durhamville Solar Project**

To Whom It May Concern:

This letter agreement (this “**Letter Agreement**”) between SR Durhamville, LLC, a Delaware limited liability company (“**SR Durhamville**”), and Knoxville Utilities Board, a municipal utility created and existing pursuant to the Charter of the City of Knoxville (“**KUB**” and, together with SR Durhamville, each a “**Party**” and, collectively, the “**Parties**”) sets forth the terms and conditions under which the Parties will execute a power purchase agreement for the purchase and sale of energy and environmental attributes from the 66 MWac solar photovoltaic energy generation facility to be located in Durhamville, Tennessee and owned and operated by SR Durhamville (the “**Project**”).

1. Sale of Energy and Environmental Attributes; Execution of the PPA.

(a) SR Durhamville will sell to KUB, and KUB will purchase from SR Durhamville, 50% of the energy and environmental attributes generated by the Project at a bundled price of \$50.90/MWh for a commercial operations term of 20 years, subject to the terms and conditions of a power purchase agreement in substantially the form attached hereto as Exhibit A (the “**PPA**”). Upon 20 days’ written notice (the “**PPA Notice**”) from SR Durhamville to KUB, but in no event later than June 30, 2026 (subject to any permitted extension under Section 1(b)), the Parties will mutually execute the PPA with the only permissible deviations being project-specific updates (excluding changes to the Contract Price (as defined in the PPA)), updates to comply with changes in applicable law or mandatory changes in the Tennessee Valley Authority’s (“**TVA**”) Power Supply Expanded Flexibility Program (the “**Flex Program**”), or updates provided for in Section 1(d). KUB hereby acknowledges that its obligation to execute the PPA upon SR Durhamville’s delivery of the PPA Notice is fully binding and enforceable, and shall not be subject to any condition precedent, including, but not limited to, further approvals of the PPA by KUB’s board of directors, city council, or other applicable governing body or internal approval process.

(b) The Parties intend to mutually execute the PPA approximately two years prior to the Expected Initial Delivery Date (as defined in the PPA), which is currently June 30, 2028. If SR Durhamville reasonably expects that the Expected Initial Delivery Date will be delayed, then SR Durhamville will provide KUB with notice of the new Expected Initial Delivery Date, and the



Parties will cooperate in good faith to delay execution of the PPA for an amount of time corresponding with such delay.

(c) KUB's obligation to execute the PPA under Section 1(a) upon receipt of the PPA Notice does not apply in the following events:

(i) SR Durhamville increases the bundled Contract Price (as currently defined in the PPA at \$50.90/MWh);

(ii) SR Durhamville provides notice that the Expected Initial Delivery Date has been extended beyond December 31, 2029, for any reason; or

(iii) TVA fails to award a separate PPA between KUB and TVA, substantially in the form of the Flexibility Option Power Purchase Agreement attached hereto as Exhibit B, for TVA's purchase and title to all energy output delivered from the Project onto the TVA transmission system that results in TVA taking physical delivery of all energy output delivered from the Project and crediting KUB for that energy under the Flexibility Program Guidelines pricing structure.

(d) KUB acknowledges that SR Durhamville intends to execute a power purchase agreement with Chattanooga EPB for the remaining 50% of the energy and environmental attributes generated by the Project (the "**Chattanooga EPB PPA**") and that the Parties intend for the PPA and the Chattanooga EPB PPA to substantially mirror each other, with only local power company-specific deviations permitted. SR Durhamville shall extend to KUB the opportunity to reasonably modify the PPA to reflect the terms and conditions of the Chattanooga EPB PPA to the extent of any deviation.

2. Representations and Warranties. As of the date hereof, each Party represents and warrants to the other Party that:

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

(b) the execution, delivery, and performance of this Letter Agreement are within its powers, have been duly authorized by all necessary action, and are not inconsistent with any of the terms and conditions in its governing documents, any contracts to which it is a party, or any applicable law;

(c) this Letter Agreement and each other document to be executed and delivered in accordance with this Letter Agreement, including the PPA, constitutes its legally valid and binding



obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and

(d) there is not pending or, to its 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 Letter Agreement or execute the PPA.

3. Event of Default and Remedies; Break-up Fee; Limitations of Liability.

(a) An “**Event of Default**” means the occurrence of any of the following:

(i) with respect to KUB, the failure to execute the PPA in accordance with Section 1(a) for a reason other than those allowed in Section 1(c);

(ii) with respect to either Party, the failure to perform any material covenant or obligation set forth in this Letter Agreement (except for the failure of a Party to execute the PPA in accordance with Section 1(a)) if such failure is not remedied within 20 days after written notice from the other Party, but in no event later than June 30, 2026;

(iii) with respect to either Party, any representation or warranty made by such Party in Section 2 is, or becomes any time during the term of this Letter Agreement, false or misleading in any material respect, and such Party fails to take such action as may be necessary to make such representations and warranties not false and misleading in all material respects within 20 days after receipt of written notice from the other Party; or

(iv) with respect to either Party, such Party has filed against it an involuntary petition in bankruptcy or any involuntary proceeding under any other insolvency law and fails to have the same dismissed within 120 days from the date of filing, or such Party files 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.

(b) Upon an Event of Default by KUB, in addition to any other rights or privileges it may have under applicable law, SR Durhamville shall have the right to (i) pursue an action for damages; (ii) seek and obtain specific performance of KUB’s obligations under this Letter Agreement; and (iii) terminate this Letter Agreement and receive the Termination Fee in Section 3(d).

(c) Upon an Event of Default by SR Durhamville, KUB shall have the right to pursue an action for direct damages or to terminate this Letter Agreement without penalty.

(d) If SR Durhamville terminates this Letter Agreement pursuant to Section 3(b), KUB shall pay to SR Durhamville a non-refundable fee of \$3,000,000 (the “**Termination Fee**”) within 30 days of termination. The Parties acknowledge that the agreements in this Section 3(d) are an integral part of the transactions contemplated by this Letter Agreement and that the Termination Fee is not a penalty, but rather is a reasonable amount that will compensate SR Durhamville for the efforts and resources expended and opportunities foregone in reliance on this Letter Agreement and in the expectation of the execution of the PPA, which amount would otherwise be impossible to calculate with precision.

4. Termination.

(a) This Letter Agreement will automatically terminate upon the execution of the PPA by the Parties.

(b) In addition to SR Durhamville’s right to terminate this Letter Agreement under Section 3(b) upon an Event of Default by KUB or KUB’s right to terminate this Letter Agreement under Section 3(c) upon an Event of Default by SR Durhamville, this Letter Agreement may be terminated:

- (i) by mutual agreement of the Parties;
- (ii) by either SR Durhamville or KUB if SR Durhamville gives KUB written notice that (A) SR Durhamville has abandoned the Project or (B) the Expected Initial Delivery Date has been extended past December 31, 2029; or
- (iii) by KUB upon the occurrence of any of the events identified in Section 1(c).

(c) If this Letter Agreement is terminated pursuant to Section 4(a) or Section 4(b), neither Party shall have any further liability to the other Party in respect hereof. Notwithstanding the foregoing, Sections 3(d), 5, 6, 7, 8, and 9 shall survive any termination of this Letter Agreement.

5. GOVERNING LAW; VENUE. **THIS LETTER AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH INTERNAL LAWS OF THE STATE OF TENNESSEE, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF TENNESSEE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THOSE OF THE STATE OF TENNESSEE.** Any legal or equitable action related to this Letter Agreement shall be brought in the United States District Court for the Eastern District of Tennessee located in Knox County and THE PARTIES HEREBY WAIVE: (a) ANY OBJECTION TO THAT COURT’S



JURISDICTION OVER THEM, OR THAT VENUE IS PROPER IN SUCH COURT, AND (b) ANY RIGHT TO A JURY TRIAL.

6. Confidentiality. This Letter Agreement is confidential to the Parties and their representatives and is subject to that certain Mutual Confidentiality Agreement, dated April 12, 2024, between the Parties, which continues in full force and effect. Notwithstanding any provision of this Letter Agreement, SR Durhamville and KUB acknowledge and understand that KUB is a Tennessee governmental entity, subject to the Tennessee Public Records Act and the Tennessee Open Meetings Law. Any requirements or prohibition on disclosure of this Letter Agreement or associated confidential information shall not apply to disclosures necessitated by the Tennessee Public Records Act or the Tennessee Open Meetings Law. However, KUB agrees to provide SR Durhamville a courtesy notice as soon as practicable and to the extent permitted by law of any such public records requests.

7. No Third-Party Beneficiaries. Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Letter Agreement.

8. Expenses. The Parties will each pay their own transaction expenses, including the fees and expenses of counsel and other advisors, incurred in connection with this Letter Agreement and the PPA.

9. Assignment; Successors and Assigns. Neither Party may assign its rights or delegate its obligations under this Letter Agreement without the prior written consent of the other Party. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assignees.

10. Miscellaneous. This Letter Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The headings of the various sections of this Letter Agreement have been inserted for reference only and shall not be deemed to be a part of this Letter Agreement. This Letter Agreement sets forth the entire agreement and supersedes all prior negotiations, understandings, and agreements between the Parties with respect to the subject matter herein. No provision of this Letter Agreement may be amended, waived, or changed except by a writing signed by the Parties. If any provision of this Letter Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Letter Agreement shall remain in full force and effect.

*[Signatures appear on the following page.]*



IN WITNESS WHEREOF, the parties have executed this Letter Agreement to be effective as of the date set forth above.

Very truly yours,

SR DURHAMVILLE, LLC

By: \_\_\_\_\_  
Name: D. Reagan Farr  
Title: President

**AGREED TO AND ACCEPTED:**

KNOXVILLE UTILITIES BOARD

By: \_\_\_\_\_  
Name: Gabriel Bolas  
Title: President and Chief Executive Officer

**EXHIBIT A**  
**Form of PPA**

*See attached.*

**EXHIBIT B**

**Form of TVA Flexibility Option Power Purchase Agreement**

*See attached.*



**POWER PURCHASE AGREEMENT**

**BETWEEN**

**KNOXVILLE UTILITIES BOARD (KUB)**

**And**

**SR DURHAMVILLE, LLC**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**KNOXVILLE UTILITIES BOARD**

**AND**

**SR DURHAMVILLE, LLC**

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THIS AGREEMENT, is made and entered into this \_\_\_ day of \_\_\_\_\_, 2026 (“Effective Date”), by and between KNOXVILLE UTILITIES BOARD, a municipal utility created and existing pursuant to the Charter of the City of Knoxville, Tennessee, hereinafter called “LPC,” and SR DURHAMVILLE, LLC, a limited liability company duly organized, created, and existing under and by virtue of the laws of the State of Delaware, hereinafter called “Seller,” collectively “the Parties,” and each individually a “Party.”

**RECITALS**

WHEREAS, LPC is engaged in the supply of electric power and energy in the Tennessee Valley region;

WHEREAS, Seller is developing and will own and operate a solar photovoltaic electric generation facility known as SR Durhamville, located in Haywood County, Tennessee (the “Project”) with a capacity as measured at the Delivery Point of up to 66 MW, to be interconnected to TVA’s transmission system at TVA’s Covington-Alamo 161 kV transmission line;

WHEREAS, Seller desires to sell to LPC, and LPC desires to purchase from Seller, LPC’s Fraction of Energy Output and Other Project Attributes from the Project, subject to the terms and conditions herein; and

WHEREAS, LPC intends to sell LPC’s Fraction of Energy Output to TVA pursuant to a separate power purchase agreement between LPC and TVA (“TVA PPA”) in accordance with a TVA program that is commonly known as the “Power Supply Expanded Flexibility Program.”

NOW, THEREFORE, in consideration of the promises and the representations, warranties, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I: DEFINITIONS**

1.1 “Acceptable Surety” means a surety company that holds a Certificate of Authority as Acceptable Surety in the Federal Register.

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 1.0¢/kWh or the amount designated under the terms of any applicable Renewable Energy Standard (“RES”) 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.

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. For the avoidance of doubt, Ancillary Services do not include continuous reactive power support that Seller may provide to TVA pursuant to the terms of a separate agreement.

1.5 “Annual Supply Guarantee” has the meaning set forth in Exhibit B.

1.6 “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, judicial, and other Governmental Authorities that legally apply in the particular situation in question.

1.7 “Bankrupt” means with respect to any Person, such Person (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.

1.8 “Business Day” means any day except a Saturday, Sunday, or a federal holiday observed by LPC. Such holidays currently are New Year’s Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. CPT.

1.9 “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 Applicable Law and market rules or other transactional requirements applicable in the region where the Project is located.

1.10 “Cash” means money denominated in United States Dollars.

1.11 “Claiming Party” has the meaning set forth in Section 16.1.



1.12 “Commercially Reasonable” means, with respect to any action required to be made, attempted, or taken by LPC 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 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 to have been reasonably obtained through good faith efforts in a competitive business environment. Commercially Reasonable efforts shall not generally require the payment of fees not otherwise contemplated under this Agreement nor the making of any material financial or other concessions as a condition to accomplishing the result contemplated.

1.13 “Contract Price” has the meaning set forth in Section 4.5 and Exhibit A.

1.14 “Contract Output” (CO) is specified in Exhibit G-1.

1.15 “Costs” means, with respect to the Non-Defaulting Party: (a) brokerage fees, commissions, financing breakage fees, and other similar third-party transaction costs (including any related make-whole costs for early prepayment provisions payable to lenders, tax equity investors and other financing parties), and necessary expenses incurred by such Party in a Commercially Reasonable manner (i) as a result of the termination of this Agreement, (ii) in entering into new arrangements that replace this Agreement, or (iii) LPC acquiring the Environmental Attributes and related RECs provided for in Section 4.2, plus (b) all expenses or liabilities incurred in a Commercially Reasonable manner by, or imposed upon or claimed against the Non-Defaulting Party, in connection with the termination of this Agreement pursuant to Section 9.2, or the specific Seller Event of Default described in Section 9.1.

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

1.17 “Curtailement” means any reduction in whole or in part of energy production at the Project to maintain transmission system reliability pursuant to the instruction or other directive made or issued by TVA, LPC, or any Regional Transmission Organization, any other affected transmission service provider, or any other entity with authority to direct such a reduction of energy production.

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

1.19 “Deficient Energy” has the meaning set forth in Section 8.1.

1.20 “Delivery Period” means (a) in the case of the first such period (Year 1), the period commencing on the Initial Delivery Date and ending on the next December 31<sup>st</sup> that is at least 365 days later, (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 (each a “Full Contract Year”), 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.

1.21 “Delivery Point” is the point of transmission interconnection to the TVA system, as set forth in Exhibit G-1.

1.22 “Distributor” means the owner or operator of a Distributor’s System.

1.23 “Distributor’s System” means a system within the TVA Power Service Area connected to the TVA transmission system that transmits or distributes electric energy and includes any structures, equipment, or other items used for that purpose.

1.24 “Downgrade Event” means a reduction in the credit rating of a Qualified Bank such that it is no longer a Qualified Bank.

1.25 “Early Termination Date” has the meaning set forth in Section 9.3.

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

1.27 “Electric System” means the network of electric transmission or distribution facilities, equipment, and other devices owned and/or controlled by TVA or the Distributor to which the Project interconnects.

1.28 “Energy Output” means the amount of energy generated by the Solar Asset and delivered to the Delivery Point from and after the Test Commencement Date, as metered by the Metering Equipment, net of parasitic or auxiliary load, and shall not exceed the Contract Output over any applicable metering interval.

1.29 “Environmental Agreement” means an agreement between TVA, Seller, and a consultant selected by Seller regarding the completion of certain actions necessary for TVA’s environmental review and to meet the requirements of Applicable Law relating to environmental and cultural resources that may be impacted by the Project.

1.30 “Environmental Attributes” means any and all aspects, credits, certificates, claims, characteristics, or benefits associated with the use of a quantity of energy generated by a renewable energy resource and that is capable of being measured, verified, or calculated, including credits, benefits, emissions reductions, environmental air quality credits, emission reduction credits, Renewable Energy Credits, certificates, offsets, and allowances attributable to a renewable energy resource, or otherwise attributable to the generation, purchase, sale, or use of electric energy from a renewable energy resource during the Term, without regard to the name given to such Environmental Attributes, which Environmental Attributes result 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 Governmental Authority with jurisdiction over a program involving



identification or transferability of Environmental Attributes, and any Renewable Energy Credit reporting rights under Section 1605(b) of the Energy Policy Act of 1992, or any other present or future reporting and compliance rights under a state, federal, or supranational program, to such Environmental Attributes. Environmental Attributes do not include, (i) Federal or state production tax credits; (ii) any investment tax credits (including the ITC) or other tax credits associated with the construction or ownership of the Project; or (iii) any state, Federal, or private cash payments or grants relating in any way to the construction or ownership of the Project; or (iv) any avoided adverse wildlife or environmental impacts or avoided emissions of pollutants to the environment.

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

1.32 “Excused Hours” (EH) has the meaning set forth in Section 8.2.

1.33 “Expected Initial Delivery Date” has the meaning set forth in Exhibit G-1.

1.34 “Extended Outage Period” has the meaning set forth in Section 6.3.

1.35 “Facility In-Service Conditions” means that (i) the Project has been synchronized to the Electric System, (ii) based on testing of the Project through the Facility In-Service Date, the Project appears capable of producing power to the Delivery Point, and (iii) Seller has commenced testing of the Project and is delivering limited amounts of Test Energy to LPC.

1.36 “Facility In-Service Date” means the date as of which Seller notifies LPC that Seller has achieved the Facility In-Service Conditions, so long as Seller actually has achieved the Facility In-Service Conditions by such date.

1.37 “Financing Party” means any Person and any trustee, collateral agent, or similar entity acting on behalf of such Person, or successors in interest thereof (a) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction of the Project, or the interim or permanent financing or refinancing of the Project, (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project), (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project, (iv) for any capital improvement or replacement related to the Project, or (v) for the purchase of the Project and the related rights by Seller; (b) participating (directly or indirectly) as an equity investor (including a tax equity investor) in the Project; or (c) acting as a lessor under a sale-leaseback or lease finance arrangement relating to the Project (including any property tax abatement transaction structured as a sale-leaseback with a Governmental Authority).

1.38 “Firm Transmission Service” means (a) electric transmission service designated firm under the open access transmission tariff of an entity, including a Regional Transmission Organization, having an open access transmission tariff, or (b) if purchased from an entity providing transmission services that does not have an open access transmission tariff, electric transmission service sold by such entity as firm transmission service and generally considered, pursuant to Good Utility Practice, to be substantially equivalent to the firm transmission service referenced in section (a) of this definition.



1.39 “Force Majeure Event” means the following or similar (in nature and severity) event(s): act of God, act of civil or military authority, war, terrorist attacks, riot, insurrection, unusually severe weather, blockades, embargoes, sabotage, pandemics, or epidemics, in any of the foregoing cases, which: (i) are outside the control and without fault or negligence of a Party claiming that such event has occurred, and (ii) directly and actually cause delay(s) in or prevent a Party’s performance or completion of critical work. Notwithstanding anything herein to the contrary, (i) a lack of or reduction in the amount of sunshine, (ii) economic hardship, (iii) any failure to secure or maintain permits, except to the extent caused by a separate Force Majeure Event, and (iv) inability to obtain or maintain any expected tax benefits are not (separately or together) Force Majeure Event(s).

1.40 “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), other than Project Maintenance or Force Majeure Event(s).

1.41 “Full Contract Year” has the meaning set forth in the definition of “Delivery Period.”

1.42 “Gains” means with respect to a Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), that directly results 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 non-Affiliate 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, or 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.

1.43 “Good Utility Practice” means any of the practices, methods, and acts engaged in or adopted by a significant portion of the electric utility 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 utility industry.

1.44 “Governmental Authority” means any nation, government, state, or other political subdivision thereof, whether foreign or domestic, including any municipality, township, and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation, or any entity owned or controlled by any of the foregoing. The term “Governmental Authority” shall not include TVA when acting in a non-governmental capacity.

1.45 “Governmental Charges” has the meaning set forth in Section 14.2.

1.46 “Initial Delivery Date” or “IDD” means the first day following LPC’s approval of notice from Seller that (i) all actions by Seller necessary to construct and operate the Project and generate the Contract Output have been taken; (ii) the Project is fully interconnected, integrated, and synchronized with the TVA transmission system in compliance with the terms of the Interconnection Agreement, and is capable of generating and delivering Energy Output to the Delivery Point in a consistent, safe, and reliable manner; and (iii) all requirements under the Interconnection Agreement have been timely satisfied.

1.47 “Initial Delivery Date Damages” means liquidated damages in an amount equal to the product of (i) \$275 per day, multiplied by (ii) the Contract Output of the Project in MW, multiplied by (iii) LPC’s Fraction.

1.48 “Interconnection Agreement” means an agreement entered into between Seller and TVA to provide for the interconnection of the Project to TVA’s Electric System.

1.49 “Investment Tax Credit” or “ITC” means the investment tax credit under Section 48 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to the cost of or investment in the Project (or any part or component thereof).

1.50 “kW” means kilowatt or kilowatts, alternating current.

1.51 “kWh” means kilowatt-hour or kilowatt-hours.

1.52 “Letter of Credit” means an irrevocable standby letter of credit from a Qualified Bank in substantially the form attached hereto as Attachment 1 to Exhibit D, naming LPC as the beneficiary.

1.53 “Losses” means with respect to a Non-Defaulting 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 non-Affiliate 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, or 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. If Seller (or Seller’s owners or Affiliates, if Seller is a pass-through entity for tax purposes) loses or is required to recapture any tax benefits with respect to the Project because of a breach by LPC, Losses shall include, calculated on an after-tax basis, the amount of such lost or recaptured tax benefits.

1.54 “LPC’s Fraction” means 50%.



1.55 “Material Credit Event” means any event that results in Seller’s failure to meet the Performance Assurance Requirements. If Seller has provided or caused to be provided a Letter of Credit in satisfaction of its Performance Assurance Requirements, then any of the following shall be deemed to be a Material Credit Event: (a) a representation or warranty made by a Qualified Bank in the Letter of Credit or related to this Agreement is false or misleading in any material respect at any point during the term of this Agreement with regard to the Qualified Bank’s; (b) the failure of the Qualified Bank to perform an obligation in any Letter of Credit made in connection with this Agreement and such failure is not remedied within ten (10) calendar days after written notice; (c) a Downgrade Event has occurred; (d) a Qualified Bank becomes Bankrupt or its ownership or control is assumed by the Federal Deposit Insurance Corporation; (e) the failure of the Letter of Credit to be in full force and effect or extended for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all of Seller’s obligations under this Agreement without LPC’s written consent; or (f) the Qualified Bank repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Letter or Credit. If Seller has provided or caused to be provided a Surety Bond in satisfaction of its Performance Assurance Requirements, then any of the following shall be deemed to be a Material Credit Event: (a) the failure of the Acceptable Surety to perform an obligation in any Surety Bond made in connection with this Agreement and such failure is not remedied within ten (10) calendar days after written notice; (b) the surety providing the Surety Bond ceases to meet the criteria of an Acceptable Surety; (c) the Acceptable Surety becomes Bankrupt; (d) the failure of the Surety Bond to be in full force and effect or extended for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all of Seller’s obligations under this Agreement without LPC’s written consent; or (e) the Acceptable Surety repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Surety Bond. If Seller has provided or caused to be provided a Sponsor Guaranty in satisfaction of its Performance Assurance Requirements, then Material Credit Event shall mean an event or condition resulting in a material adverse change in Sponsor’s creditworthiness that LPC in good faith believes, after consideration of all facts and circumstances then existing, is reasonably likely to impair Sponsor’s performance of its obligations under the Sponsor Guaranty, and the event or condition giving rise to such material adverse change is not remedied within ten (10) Business Days after written notice to Sponsor to remedy such condition or situation.

1.56 “Metering Equipment” has the meaning set forth in Section 5.1.

1.57 “Minimum Capacity Factor” (MCF) has the meaning set forth in Exhibit B.

1.58 “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.

1.59 “Moody’s” means Moody’s Investors Service, Inc. or its successor.

1.60 “MVAR” means megavolt-ampere reactive.

1.61 “MW” means megawatt or megawatts, alternating current.

1.62 “MWh” means megawatt-hour or megawatt-hours.

1.63 “Non-Defaulting Party” has the meaning set forth in Section 9.3.



1.64 “Notice to Proceed” or “NTP” means the written notice issued by LPC to Seller after Seller has (i) submitted an NTP Request to LPC, and (ii) successfully demonstrated compliance with the criteria required under the NTP Request (or LPC has otherwise waived compliance with specific criteria in its sole discretion).

1.65 “NTP Conditions” has the meaning set forth in Section 3.2.

1.66 “NTP Deadline” has the meaning set forth in Exhibit G-1.

1.67 “NTP Deadline Damages” means liquidated damages in amount equal to the product of (i) \$50, multiplied by (ii) the Contract Output of the Project in kW, multiplied by (iii) LPC’s Fraction.

1.68 “NTP Request” means a submission by Seller, together with all necessary materials and documentation, which shows compliance with the NTP Conditions under Article III, by which Seller requests that LPC issue a Notice to Proceed.

1.69 “Other LPC” has the meaning set forth in Section 17.25.

1.70 “Other Project Attributes” means, collectively, all applicable Environmental Attributes, Capacity Attributes, and Ancillary Services.

1.71 “Parties” means both LPC and Seller.

1.72 “Party” means either LPC or Seller, as applicable.

1.73 “Performance Assurance” means collateral in the form of Cash, Letter(s) of Credit from Qualified Bank(s), a Surety Bond from an Acceptable Surety, or a Sponsor Guaranty, in each case in the amounts indicated in Exhibit D, which shall secure Seller’s payment obligations under this Agreement.

1.74 “Performance Assurance Requirements” means Seller’s provision and maintenance of the applicable Performance Assurance or causing such Performance Assurance to be provided and maintained.

1.75 “Permit” means any permit, exemption, approval, license, consent, certification, authorization, concession, order, easement, or other right that is required by any applicable Governmental Authority to develop, construct, finance, operate, or maintain the Project or interconnection facilities or to generate or sell the Project electric output.

1.76 “Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of legal entity.

1.77 “Product” means, on and after the Initial Delivery Date, LPC’s Fraction of Energy Output and Other Project Attributes.

1.78 “Project” means the Solar Asset and all related equipment, structures, electrical lines, and other facilities installed at the Site on Seller’s side of the point of interconnection under the Interconnection Agreement that is used for the production, control, delivery, or monitoring of electric energy described in Exhibit G-1.

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

1.80 “Real Property Agreement” means a separate lease, contract, agreement, or option for any of the foregoing, together with any amendment, modification, replacement, or termination thereof, regarding the Site and Seller’s rights thereto, including but not limited to documents relating to timbering, farming, hunting, or other land uses on or affecting the Site.

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

1.82 “Qualified Bank” means a U.S. commercial bank or a U.S. branch of a foreign bank, 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).

1.83 “Reliability Coordinator” means, as defined by the North American Reliability Council, the entity that is the highest level of authority responsible for the reliable operation of the bulk electric system where the Project is located or where Energy Output 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 “Renewable Energy Certificate” or “REC” means a fungible commodity that is created when one megawatt hour (MWh) of energy is created from a renewable energy resource.

1.85 “Renewable Energy Standard” or “RES” means an Applicable Law that requires TVA, LPC or other distributors of TVA power to achieve a percentage of annual electric power sales through production or purchase of specified renewable energy sources and/or through the acquisition of RECs or payment in lieu of the acquisition of RECs.

1.86 “Settlement Amount” has the meaning set forth in Section 9.3.

1.87 “Site” means the land on which the Project is located, as more specifically described in Exhibit G-2.

1.88 “Solar Asset” means the photovoltaic solar generating facility to be located at the Site with a total installed capacity, as further described in Exhibit G-1.

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



1.90 “Sponsor” means Silicon Ranch Corporation, a Delaware corporation.

1.91 “Sponsor Guaranty” means a guaranty agreement executed by Sponsor in favor of LPC guaranteeing Seller’s obligations under this Agreement in an amount not to exceed the then-required Performance Assurance as set forth on Exhibit D.

1.92 “Surety Bond” means a surety bond meeting the requirements set forth on Exhibit D.

1.93 “Term” has the meaning set forth in Article II.

1.94 “Termination IDD Damages” means liquidated damages in an amount equal to the product of (i) \$100, multiplied by (ii) the Contract Output of the Project in kW, multiplied by (iii) LPC’s Fraction.

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

1.96 “Test Commencement Date” means the date prior to the Expected Initial Delivery Date upon which the Project has been interconnected to TVA’s Electric System and is permitted to test the Project pursuant to the Test Power Agreement.

1.97 “Test Energy” means Energy Output that is delivered to the Delivery Point prior to the Initial Delivery Date pursuant to the Test Power Agreement.

1.98 “Test Energy Price” shall be set forth in the Test Power Agreement.

1.99 “Test Power Agreement” means an agreement entered into among Seller, LPC, and TVA with respect to the testing of the Project in accordance with TVA’s commissioning requirements and the sale of Test Energy from Seller to LPC at the Test Energy Price.

1.100 “TVA” means the Tennessee Valley Authority, a corporate agency and instrumentality of the United States of America created by and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended.

1.101 “TVA Power Service Area” means the area served at retail by either TVA or Distributors of TVA power in conformity with section 15d(a) of the TVA Act, as amended, 16 U.S.C. § 831n-4(a).

1.102 “TVA PPA” has the meaning set forth in the recitals above.

## **ARTICLE II: TERM**

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated or extended in accordance with the provisions of this Agreement, shall remain in full force and effect until 24:00 CPT on the twentieth (20<sup>th</sup>) anniversary of the Initial Delivery Date.



**ARTICLE III: PROJECT MILESTONES, PRE-CONSTRUCTION ACTIVITIES,  
NOTICE TO PROCEED, AND INITIAL DELIVERY DATE**

Section 3.1 Project Milestones and Start of Construction.

(a) The Project Development Milestone Schedule, attached to this Agreement as Exhibit H, sets forth a detailed development plan for the Project, outlining each significant activity in the Project development process and providing a projected completion date for each step in the Project schedule. Prior to NTP, Seller shall provide LPC, on or before the tenth (10<sup>th</sup>) day of each January, April, July, and October, written updates of progress made toward completion of the milestones set forth on Exhibit H. After NTP, Seller shall provide LPC, on or before the tenth (10<sup>th</sup>) day of each Month, written updates of progress made toward completion of the milestones set forth in Exhibit H. Each monthly report will include a schedule update reporting current Project details as available including but not limited to all developments and impacts relating to real estate, permitting, engineering, deliveries, construction, and contract performance, along with mitigation and action plans for making up any delays. Seller shall provide LPC with Site access for reasonable review of Seller's construction and site preparation activities.

(b) LPC will not be responsible under this Agreement for any costs or expenses (including overheads and administrative costs) or risks incurred in connection with the design, construction, installation, operation, or maintenance of any interconnection facilities up to the Delivery Point. Seller is responsible for determining interconnection rules, practices, and policies with which it must comply and for coordination with any other Person in connection with the interconnection process.

(c) Within thirty (30) days of the later of the Effective Date or execution of the same, Seller shall deliver to LPC evidence that Seller has provided TVA a copy of any Real Property Agreement, in each case only to the extent such documents or copies thereof are actually in Seller's possession. Seller may mark such documents confidential pursuant to Section 17.19 and may redact provisions thereof which do not relate to historical or allowed uses of the Site.

(d) Within sixty (60) days of the Effective Date, Seller shall deliver to LPC evidence that Seller has provided TVA the Environmental Agreement executed by Seller and an environmental consultant selected by Seller. The consultant and the form of the agreement must be reasonably acceptable to TVA. Seller shall bear the cost of the environmental reviews under the Environmental Agreement.

(e) Seller shall ensure that no Prohibited Land Activity (as hereinafter defined) is conducted at the Site for a period beginning on the Effective Date and continuing until TVA has provided written notice to Seller that TVA's environmental reviews of the Project have been satisfactorily completed ("Notice of Environmental Review Completion"). "Prohibited Land Activity" means any natural resource disturbing activities, including tree clearing, earth moving, grading, or excavating taken by Seller, property owner, or others, but excluding any activities that TVA determines in writing to be consistent with existing land use practices which Seller is able to document to TVA's satisfaction. If Seller's failure to comply with this paragraph results in TVA excluding a portion of the Project Site to which such failure relates, then the scope of the Project under this Agreement will be correspondingly reduced.

Section 3.2 NTP Request and Notice to Proceed. Upon Seller's satisfaction in full of the conditions set forth below ("NTP Conditions"), Seller shall submit a NTP Request to LPC that incorporates all necessary documentation and materials that demonstrate Seller's achievement of the NTP Conditions. The NTP Conditions are:

(a) Reasonable evidence of external or internal construction financing arrangements or, if applicable, application therefor.

(b) Execution of an Engineering and Procurement Agreement ("E&P Agreement") with TVA or other necessary documentation between Seller and either LPC, TVA, or another Distributor, as applicable, to address metering, operation, maintenance, and other related matters.

(c) Completion of a solar resource assessment indicating adequate solar resource for the production of the Annual Supply Guarantee.

(d) Demonstration to LPC that TVA and Seller have executed the Environmental Agreement and that TVA has provided Notice of Environmental Review Completion and has determined that the Project is environmentally acceptable.

(e) Submittal of additional Performance Assurance for the NTP Request as required by Exhibit D.

(f) Execution of any necessary station service agreements or other necessary documentation between Seller and either LPC, TVA or another Distributor, as applicable.

(g) Completion, and approval by TVA, of no less than 90% interconnection engineering design unless a lower percentage is deemed acceptable by TVA.

(h) Execution of a separate agreement between Seller and TVA with respect to Seller's provision of continuous reactive power support (CRPS) to TVA, at no additional cost to LPC, unless TVA waives the CRPS requirement.

Seller shall complete all NTP Conditions and deliver an NTP Request to LPC on or before the NTP Deadline; provided, however, that:

(i) LPC may extend the NTP Deadline if Seller provides a written extension request to LPC no later than twenty (20) Business Days prior to the NTP Deadline. Such written request must state (i) that Seller reasonably believes it will not be able to satisfactorily complete all of the NTP Conditions by the NTP Deadline, (ii) the reasons why Seller is unable to complete the NTP Conditions by the NTP Deadline, (iii) that Seller desires to continue its performance under the Agreement, and (iv) the extension period requested by Seller, which period may be no more than one hundred and eighty (180) days. LPC will respond to Seller's request in writing within twenty (20) Business Days setting forth LPC's determination with regard to Seller's request. If LPC elects to extend the NTP Deadline, the extended NTP Deadline stated in LPC's response will become the new NTP Deadline without the need for an amendment to this Agreement.



(ii) LPC will extend the NTP Deadline and the Expected Initial Delivery Date if and to the extent (on a day-for-day basis) that Seller can demonstrate, to LPC's reasonable satisfaction, that Seller's failure to satisfy NTP Conditions on or before the NTP Deadline were primarily caused by TVA's, LPC's, or another Distributor's failure to take actions prerequisite to Seller's satisfaction of the NTP Conditions.

Delay or failure in the submittal by or on behalf of Seller of any item that Seller must submit that is necessary for LPC to complete its review does not constitute an LPC failure and does not state a basis upon which LPC will grant an extension (as described in this paragraph).

Upon receipt of the NTP Request, LPC shall have ten (10) Business Days to review Seller's submissions for adequacy and, if LPC deems the NTP Request to be satisfactory, issue to Seller a Notice to Proceed. If LPC reasonably determines that the NTP Request is unsatisfactory, (1) LPC will provide Seller with written notice of its finding, and (2) Seller will have until the later of (i) sixty (60) days after receipt of written notice from LPC and (ii) the NTP Deadline to submit a satisfactory NTP Request to LPC. If LPC reasonably determines that Seller's second NTP Request is also unsatisfactory, then LPC may exercise any or all of its remedies stated in Section 3.3. If LPC does not respond within such initial ten (10)-Business Day Period with either issuance of a Notice to Proceed or written notice that Seller's NTP Request is unsatisfactory, then the NTP Request will be deemed satisfactory, and LPC will be deemed to have issued Notice to Proceed.

Section 3.3 NTP Remedies. If Seller fails to comply with any of its obligations under Section 3.2, then LPC may exercise one or more of the following cumulative remedies:

(a) Collect from Seller the NTP Deadline Damages; provided that LPC shall promptly reimburse NTP Deadline Damages to Seller if Seller subsequently achieves the Initial Delivery Date for the entire Contract Output by the Expected Initial Delivery Date; or

(b) Terminate this Agreement.

Notwithstanding the foregoing, if Seller fails to achieve NTP due solely to a TVA determination under Section 3.2(d) that the Project is not environmentally acceptable and such determination was not due to any Seller fault, then LPC will terminate this Agreement under Section 3.3(b) and the NTP Deadline Damages due from Seller will be reduced by 75%.

(d) This Section 3.3 sets forth LPC's exclusive remedies for a failure by Seller to comply with its obligations under Section 3.2, and in no event will Seller's monetary liability for a failure to achieve NTP in accordance with Section 3.2 exceed the NTP Deadline Damages.

Section 3.4 Facility In-Service Date. Within five (5) Business Days of Seller achieving the Facility In-Service Date, LPC shall execute and deliver to Seller a certification acknowledging achievement of the Facility In-Service Conditions.

Section 3.5 Failure to Meet the Expected Initial Delivery Date.

(a) If Seller achieves NTP (either by the NTP Deadline or otherwise) but fails to achieve the Initial Delivery Date by the Expected Initial Delivery Date, then Seller shall pay LPC, as liquidated damages, Initial Delivery Date Damages for each day thereafter until Seller achieves



the Initial Delivery Date. If Seller fails to achieve the Initial Delivery Date by the date that is twelve (12) Months after the Expected Initial Delivery Date, then LPC may, in its sole discretion, terminate this Agreement. If (A) LPC has not exercised such termination right by the date that is twenty-four (24) Months after the Expected Initial Delivery Date and (B) LPC has received Initial Delivery Date Damages in an amount not less than LPC's Fraction of the then-required Performance Assurance as of that date, then Seller may terminate this Agreement. Termination will be with no further recourse by either Party, except for any amounts, including Initial Delivery Date Damages and other liquidated damages, owed by Seller to LPC as of the date of termination. This Section 3.5(a) sets forth LPC's exclusive remedies arising solely from a failure of Seller to achieve the Initial Delivery Date in accordance with the requirements of this Section, and in no event will Seller's monetary liability for a failure to achieve the Initial Delivery Date in accordance with this Agreement exceed LPC's Fraction of the then-required Performance Assurance as of the date of termination.

(b) If Seller's failure to achieve the Initial Delivery Date is caused (i) primarily by TVA's failure to complete construction of interconnection facilities, other than a failure caused by a Force Majeure Event (in which case the provisions of Section 16.1 would apply), or (ii) by a material modification in TVA's modeling or commissioning requirements applicable to the Project from the modeling or commission requirements in effect at the time TVA provides the Notice of Environmental Review Completion (assuming TVA's environmental reviews support the issuance of the notice), then, in each such case, Seller shall be entitled to a corresponding day-for-day extension of the Expected Initial Delivery Date.

Section 3.6 Adequate Assurances. In the event that LPC has reasonable grounds for insecurity with respect to Seller's ability to perform or comply with this Agreement at any time prior to Seller achieving the Initial Delivery Date, LPC may request, and Seller shall provide, adequate written assurance (in LPC's reasonable discretion) of such performance or compliance. Such written assurance must be provided within ten (10) Business Days of LPC's request. LPC shall notify Seller of its determination within ten (10) Business Days of LPC's receipt of Seller's written assurance. If LPC notifies Seller that such written assurance is not adequate, then Seller shall have the opportunity to provide further written assurance within five (5) Business Days of receipt of LPC's notice of inadequacy. If Seller fails to provide written assurance as required by this Section, then, after the applicable cure period in this Section, LPC may declare that such failure constitutes an Event of Default under Section 9.1(k) and may exercise any remedies available to it under Article IX.

Reasonable grounds for LPC insecurity are events, actions, or inactions that LPC believes, in good faith, may materially affect Seller's ability to achieve the Initial Delivery Date, including but not limited to: (i) material litigation in which Seller is a named defendant (either directly or through counter-claims or cross-claims) and for which the potential damages resulting from such litigation would not be covered by insurance or Seller's right to indemnification from a third-party who has financial capacity to satisfy such indemnification, (ii) Seller's inactivity in development or operation of the Project, (iii) Seller's failure to timely obtain necessary financing for the Project, or (iv) Seller experiences a material non-TVA caused or non-LPC caused delay in starting or completing a project development milestone set forth in Exhibit H. This Section does not constitute a waiver of Seller's rights with regard to any Force Majeure Event.



Section 3.7 Forced Labor. In connection with the Project, Seller will comply, and will use Commercially Reasonable efforts to cause each of its subcontractors and vendors to comply, with the requirements of the Uyghur Forced Labor Prevention Act (2021), as amended, including all related Applicable Laws. Seller will ensure that all equipment purchased for use in the Project will clear United States Customs.

#### **ARTICLE IV: ENERGY OUTPUT, OTHER PROJECT ATTRIBUTES, AND PRICING**

Section 4.1 Energy Output. Commencing on the Test Commencement Date and continuing through the end of the Term, Seller shall sell and deliver to LPC, and LPC shall purchase and receive from Seller, any and all right, title, and interest in and to LPC's Fraction of the Energy Output at the Delivery Point. Pursuant to Section 8.1, Seller shall guarantee the supply of a total amount of Energy Output to LPC during each Delivery Period. Energy Output shall be deemed made available to LPC for billing and payment purposes under Section 4.5, Article X, and Exhibit A in the Month in which Energy Output is made available at the Delivery Point.

Section 4.2 Environmental Attributes. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Test Commencement Date and continuing through the end of the Term, LPC shall have any and all right, title, and interest in and to Environmental Attributes, as applicable, equal to the amount of LPC's Fraction of Energy Output. Seller shall execute all necessary documentation, bear all cost, and take all other necessary action to register, receive, authenticate, attest, and transfer to LPC any and all RECs and other Environmental Attributes as promptly as practicable; provided that issuance of RECs shall be in accordance with a tracking or certification system selected by LPC. In the event LPC requires "Green-e" certification associated with the Project, Seller will cooperate in all necessary actions to achieve such certification. RECs and other Environmental Attributes shall be for use and disposition as determined only by LPC or any entity to whom LPC may grant permission to market, transfer, or otherwise dispose of the RECs or other Environmental Attributes; and neither such Environmental Attributes nor the associated energy shall be claimed or otherwise referenced by Seller with respect to any RES, renewable energy goal, Federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate, standard, or commitment. Seller agrees to be at all times fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, 16 Code of Federal Regulations, Part 260, in any communication concerning the Project, energy from the Project, or the RECs. LPC prohibits Seller from collecting for its benefit cryptocurrency based upon or relating to the renewable generation, such as "SolarCoin." Representations by Seller or any other entity that imply use of, title to, or interest in LPC's Fraction of the renewable energy are prohibited except as LPC may permit.

Section 4.3 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 LPC, and LPC shall receive from Seller, any and all right, title, and interest in and to LPC's Fraction of Capacity Attributes available with respect to the Project.

Section 4.4 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 LPC, and LPC shall receive from Seller, any and all right, title, and interest in and to LPC's Fraction of Ancillary Services available with respect to the Project. Ancillary Services shall include the provision of primary frequency response with a maximum 5 percent droop and  $\pm 0.036$  Hz deadband. Seller's provision of Ancillary Services and Seller's provision of CRPS to TVA shall be at no additional cost to LPC.

**Section 4.5 Pricing.**

(a) The "Contract Price" is set forth in Exhibit A. The Contract Price will remain fixed for the Term and is not subject to adjustment.

(b) In consideration for the Product, LPC shall pay Seller the Contract Price for each hour that Seller (a) provides Energy Output from the Project, or (b) is economically curtailed by TVA or LPC as described in Section 8.4.

(c) In consideration of the Test Energy and associated Environmental Attributes, LPC shall pay Seller the applicable hourly Test Energy Price for each hour that the Project delivers Test Energy pursuant to the Test Power Agreement.

**ARTICLE V: METERING AND ATTESTATION**

Section 5.1 Metering Arrangements. Seller shall enter into separate contractual arrangements with LPC, another Distributor, and/or TVA, as the case may be, for the installation, operation, maintenance, and reading of the metering and related facilities ("Metering Equipment"). The Metering Equipment shall be used to determine the amount of energy delivered to and purchased by LPC at the Delivery Point under this Agreement.

Section 5.2 Meter Testing. These separate arrangements shall provide for LPC, another Distributor, or TVA, as the case may be, to perform 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, fast or slow, as set forth under the separate arrangements, no adjustment shall be made to the payments submitted by LPC to Seller pursuant to Section 10.2. In case any tests show the meter(s) to exceed the acceptable threshold, fast or slow, adjustments shall be made to the payments submitted by LPC 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 Attestations. Upon LPC's reasonable request, Seller shall provide, at no cost to LPC, routine attestations and other verifications of the delivery of any or all of the Energy Output and Other Project Attributes from the Project to demonstrate performance under this Agreement.



## ARTICLE VI: MAINTENANCE AND OUTAGES

Section 6.1 Scheduled Outages. Seller shall provide, or cause to be provided, to LPC and TVA (if required by the Interconnection Agreement) a 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 LPC and TVA (if required by the Interconnection Agreement) a schedule for Project Maintenance no later than each subsequent December 1st, applicable to the following calendar year. To the extent practicable, Project Maintenance will be scheduled during the Months of October, November, March, and April, or during non-daylight hours.

Section 6.2 Forced Project Outages. As soon as practicable after commencement of a Forced Project Outage, Seller shall provide LPC and TVA with notice and expected duration of such Forced Project Outage. Each such notice shall set forth, to the extent of Seller's knowledge and judgment, 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 event and prevent similar future events.

Section 6.3 Extended Outage. An "Extended Outage Period" occurs when, for each of any two (2) consecutive Delivery Periods, the Energy Output to the Delivery Point is less than the Minimum Capacity Factor from the Solar Asset, calculated as follows:

$$\text{MCF} \times \text{CO} \times \text{PH}$$

Where:

MCF = Minimum Capacity Factor

CO = Contract Output

PH = Possible Hours

LPC may terminate this Agreement by giving at least thirty (30) calendar days' advance written notice of such termination to Seller: (a) if one or more Force Majeure Events occurs and prevents Seller from generating at the Minimum Capacity Factor for an Extended Outage Period, and without liability to Seller except with respect to obligations or liabilities that arose prior to such termination, or (b) by declaring an Event of Default, if Seller causes a Forced Project Outage for an Extended Outage Period, after which, LPC may exercise any remedies available to it under Article IX, at law, or in equity. Notwithstanding anything to the contrary in this Section 6.3, if the Force Majeure Event or Forced Project Outage event has been cured, mitigated, or otherwise resolved prior to Seller's receipt of any termination notice by LPC pursuant to this Section 6.3, and Seller demonstrates to LPC's reasonable satisfaction that Seller is capable of generating, in a consistent manner, at the Minimum Capacity Factor, then LPC shall no longer have a right to terminate under this Section 6.3 for that Extended Outage Period.

Section 6.4 Project Description and Characteristics. Exhibit G-1 provides a detailed description of the Project. Exhibit G-2 provides additional information with respect to major equipment and components expected to make up the Project. Seller shall provide advance written notice to LPC at the earliest practicable time of any material proposed changes to Exhibit G-1. Seller shall also provide advance written notice to LPC at the earliest practical time regarding any

proposed changes to equipment that may decrease the Project's generation capability below the Contract Output or that would change the NTP Deadline or Expected Initial Delivery Date. Seller shall also periodically report to LPC any changes to Exhibit G-2.

## **ARTICLE VII: RESERVED**

### **ARTICLE VIII: SUPPLY GUARANTEE, DISCONNECTION, AND CURTAILMENT**

Section 8.1 Supply Guarantee Generally. Commencing on the Initial Delivery Date, Seller shall guarantee the supply of sufficient Energy Output during each Delivery Period so as to meet or exceed the Annual Supply Guarantee for such Delivery Period. If the Energy Output provided by Seller under this Agreement is not sufficient to meet the Annual Supply Guarantee for the Delivery Period in question (such shortfall being referred to herein as "Deficient Energy"), Seller shall pay liquidated damages to LPC with respect to such Annual Supply Guarantee: (i) with respect to Deficient Energy and (ii) with respect to Environmental Attributes associated with the amount of the Deficient Energy, if applicable, as measured in accordance with Exhibit C, and payable as set forth in Section 10.2.

If the Initial Delivery Date occurs after the start of any calendar year, the number of possible hours for the first Delivery Period (expressed as "PH" in Exhibit B) shall be adjusted to reflect the additional hours included in the first Delivery Period. For example, if the Initial Delivery Date occurs at the start of December 1st, then PH for the first Delivery Period would be  $8,760 + 744 = 9,504$ .

If this Agreement terminates prior to the end of any calendar year, there shall be deducted from the number of possible hours for that final Delivery Period (expressed as "PH" in Exhibit B) any and all hours during such calendar year occurring after the termination of this Agreement. For example, if the final Delivery Period terminates at the end of June 30th, then PH for the final Delivery Period would be  $8,760 - 4,416 = 4,344$ .

Section 8.2 Excused Hours. In determining whether Seller has met the Annual Supply Guarantee, there shall be deducted from the total number of hours in said Delivery Period any and all hours ("Excused Hours") during which Seller was unable to deliver and/or TVA or LPC, as applicable, was unable to receive and utilize energy supplied from the Project due solely to one or more of the following:

- (a) a disconnection or Curtailment pursuant to Section 8.3;
- (b) a Force Majeure Event;
- (c) a suspension pursuant to Section 9.2; or
- (d) an outage on the TVA transmission system or Distributor's System.

Section 8.3 Disconnection of Project or Curtailment of Deliveries. In order to remain consistent with Good Utility Practice and/or in compliance with Applicable Law, or in compliance with the Interconnection Agreement, LPC (pursuant to the TVA PPA) or TVA may require Seller:



(1) to effect a Curtailment of deliveries from the Project or (2) to temporarily disconnect the Project from the TVA transmission system 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 or another system:

(a) if a condition exists that presents an imminent physical threat to persons or property and disconnection or Curtailment appears necessary to protect such persons or property; or

(b) to overcome transmission or distribution system reliability problems; or

(c) 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

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

Section 8.4 Economic Curtailment. Notwithstanding the foregoing, the Parties acknowledge that TVA or LPC (including at the direction of TVA under the terms of the TVA PPA) may curtail Project energy based on TVA power system cost in order to effectively manage the economics of the overall TVA power system. Any available Project Energy Output that is curtailed by TVA or LPC for economic purposes shall be considered delivered energy from Seller for purposes of the Annual Supply Guarantee and for purposes of Section 6.3 "Extended Outage." For any Month in which TVA or LPC has curtailed the Project for economic reasons, LPC shall pay Seller, in addition to amounts otherwise due, an amount equal to the Contract Price multiplied by the estimated amount of LPC's Fraction of such curtailed Energy Output. The Parties shall estimate the expected amount of such economically curtailed Energy Output that would have been generated but for the curtailment, in a Commercially Reasonable manner, consistent with Good Utility Practice, based on measured solar irradiance for each hour during the economic curtailment period. For the avoidance of doubt, a curtailment by LPC for any reason other than a reason stated in Section 8.3 shall constitute an economic curtailment subject to this Section 8.4.

Section 8.5 Automatic Generation Control. Seller shall install, at Seller's expense and by no later than the Initial Delivery Date, an automatic generation control (AGC) system for the Project in accordance with TVA's specifications and direction. Unless otherwise provided for herein, any disconnection or Curtailment under Section 8.3 or curtailment under Section 8.4 will be administered through TVA's energy management system.

## **ARTICLE IX: DEFAULT, EARLY TERMINATION, AND REMEDIES**

Section 9.1 Events of Default. An "Event of Default" means, 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, including a failure to pay liquidated damages, if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the other Party;



(b) any representation or warranty made by such Party in Section 15.1 is false or misleading in any material respect as of the Effective Date, or with regard to the representations or warranties set forth in Section 15.1(a) through (d), becomes false and misleading in any material respect at any time during the Term of this Agreement, and such Party fails to take such action as may be necessary to make such representations and warranties not false and misleading in all material respects within twenty (20) Business Days after receipt of written notice from the other Party;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent addressed as a separate Event of Default under another subsection of this Section 9.1, and except for the failure of Seller or LPC to comply with an obligation under this Agreement for which a specific remedy has been agreed upon) if such failure is not remedied within thirty (30) calendar days after written notice from the other Party; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party may have up to an additional fifteen (15) calendar days to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy and provides to the other Party a written action plan therefor;

(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;

(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 Seller to comply with the requirements stated in Exhibit D – Credit Annex and all of its attachments (including, without limitation, Seller’s delivery to LPC of Performance Assurance) consistent with Article XI and all related provisions of this Agreement;

(g) such 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;

(h) the Solar Asset at any time after the Initial Delivery Date fails to generate and deliver electric power and energy exclusively from solar energy by means of monocrystalline panels, polycrystalline panels, or thin film cells;

(i) Seller makes sales or transfers of LPC’s Fraction of Energy Output or Environmental Attributes to any third party, or makes claims that trigger retirement of any of LPC’s RECs or other Environmental Attribute associated with the Project;

(j) Seller’s failure to deliver LPC’s Fraction of any Other Project Attributes associated with the Project;

(k) (i) Seller breaches or causes an event of default under the Interconnection Agreement, the Environmental Agreement, or any other written agreement between Seller and TVA that is necessary for TVA to receive Energy Output or CRPS, (ii) such event of default is not cured by the time provided in said agreement, and (iii) TVA terminates such agreement and/or the TVA PPA as a result of such event of default; or

(l) Seller's failure to provide adequate assurances in accordance with Section 3.6.

Section 9.2 Remedies for an Event of Default.

(a) Subject to Article XIII, Seller shall have the right, but not the obligation, to do one or more of the following upon the occurrence of, and after providing written notice to LPC of, LPC's Event of Default:

(i) suspend performance of its obligations under this Agreement, including withholding any payments due to LPC 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 9.3; or

(ii) declare an Early Termination Date and receive a Termination Payment from LPC.

(b) Subject to Article XIII, LPC shall have the right, but not the obligation, to do one or more of the following upon the occurrence of, and after providing written notice to Seller of, Seller's Event of Default:

(i) suspend performance of its obligations under this Agreement, including withholding any payments due to Seller 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 9.3;

(ii) make a written request and draw upon the Performance Assurance that Seller provided to satisfy any and all payments due and amounts otherwise owing (including any liquidated damages) under this Agreement;

(iii) declare an Early Termination Date and receive a Termination Payment from Seller, or

(iv) seek and obtain specific performance of Seller's obligations under this Agreement, but only with regard to an Event of Default occurring after Seller has achieved IDD and only if LPC has not exercised any right it has to terminate this Agreement.

The remedies set forth in this Section 9.2 shall constitute the Non-Defaulting Party's sole and exclusive remedies for an Event of Default.



Section 9.3 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (“Non-Defaulting Party”) may 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 then owing between the Parties and to liquidate and terminate this Agreement. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date. In making the calculation described in the foregoing sentence, the “Settlement Amount” means the Non-Defaulting Party’s Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation and termination of this Agreement pursuant to this Section. Notwithstanding the foregoing, (i) if the Event of Default occurs prior to Seller achieving NTP and Seller is the Defaulting Party, then the Settlement Amount shall be the amount of NTP Deadline Damages, and (ii) if the Event of Default occurs after Seller achieves NTP but prior to Seller achieving IDD and Seller is the Defaulting Party, then the Settlement Amount shall be the lesser of (A) an amount calculated in accordance with the definition thereof or (B) fixed at the amount of the Termination IDD Damages. The Non-Defaulting Party shall (a) aggregate the Settlement Amount with all other amounts due to the Non-Defaulting Party under this Agreement as of the date of such termination and (b) net out any amounts due and owing to the Defaulting Party under this Agreement as of the date of such termination so that all such amounts constitute a single liquidated amount (the “Termination Payment”); provided, that, no Termination Payment will be due or payable from the Non-Defaulting Party to the Defaulting Party as a result of the Event of Default, even if the netting calculations described herein otherwise would result in a payment due to the Defaulting Party.

Section 9.4 Termination Payment Limitation. If the termination is due to a Seller Event of Default prior to the Initial Delivery Date, the Termination Payment shall not exceed LPC’s Fraction of the Performance Assurance amount then required from Seller as of the date of termination.

Section 9.5 Notice of Termination Payment Amount. 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 request for payment and a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Defaulting Party shall pay the any undisputed portion of the Termination Payment to the Non-Defaulting Party within five (5) Business Days after receiving a request for the same.

Section 9.6 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 after 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 and extent of such dispute.

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

Section 10.1 Billing. Based on recorded meter data provided by the Metering Equipment installed per Section 5.1 (“Meter Readings”), LPC shall pay Seller the Contract Price or Test



Energy Price, as applicable, for LPC's Fraction of the Energy Output from the Project each Month of the Term. LPC or TVA shall provide Seller with a detailed accounting of the amount of Energy Output received for such Month.

Section 10.2 Payment. Seller must provide an invoice to LPC based on said Meter Readings within ten (10) Business Days following the Month of actual energy delivery (provided that such time period shall be extended as necessary to the extent LPC or TVA is delayed in providing Seller the Meter Readings). Upon receipt of such invoice, LPC shall promptly pay Seller within thirty-five (35) calendar days or if the thirty-fifth (35<sup>th</sup>) 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 designated by Seller.

Section 10.3 Invoice Submittal. Seller shall submit all invoices, including supporting documentation, electronically to LPC at \_\_\_\_\_.<sup>1</sup>

Section 10.4 Netting. 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 LPC pursuant to Article VIII and Exhibit C ordinarily will be applied as a credit toward amounts owed Seller by LPC under Section 10.1 and calculated and invoiced under Section 10.2.

**ARTICLE XI:  
FINANCIAL STATEMENTS, ASSIGNMENT, AND PROJECT FINANCE**

Section 11.1 Performance Assurance. Seller shall provide and maintain the Performance Assurance in compliance with Exhibit D for the duration of the Term of this Agreement.

Section 11.2 Assignment.

(a) Except as otherwise expressly set forth in this Section, neither Party will assign this Agreement nor any of its rights or obligations hereunder without the prior, written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Without such consent from LPC, Seller may assign, transfer, or pledge its interest in the revenues and payments to be made under this Agreement. In the event Seller's rights, interests, or obligations under this Agreement are assigned or assumed as a matter of law to an entity with which Seller is merged or consolidated ("Successor Seller"), any such assignment or assumption shall be contingent upon Seller and Successor Seller furnishing LPC with adequate assurances that the Successor Seller is financially capable of performing Seller's obligations under this Agreement. No assignment, transfer, or pledge of Seller's or a Successor Seller's interests in the Agreement shall release the assignor, pledger, or transferor from any of its obligations under this Agreement to accrue prior to such assignment, transfer, or pledge. Except as stated above, either Party's purported assignment of this Agreement, in whole or in part, without the prior, written approval of the other Party is null and void.

(b) Notwithstanding anything in Section 11.2(a) to the contrary, LPC may assign, direct or otherwise transfer the rights to receive all or a portion of the Product to one or more other

<sup>1</sup> NTD: KUB to provide contact for execution version.

local power companies that are eligible to purchase and sell such Product in accordance with their own "Power Supply Enhanced Flexibility Agreements" or other comparable arrangements with TVA. LPC shall continue to be responsible for all obligations to Seller associated with such Product under this Agreement unless and until Seller consents to the assignment and releases LPC from the associated obligations under this Agreement, which consent shall not be unreasonably withheld.

(c) Notwithstanding anything in Section 11.2(a) to the contrary, Seller may, without the consent of LPC but with notice to LPC, (a) assign, pledge, or encumber any or all of Seller's right, title, and interest in this Agreement to a Financing Party as collateral security in connection with any financing or refinancing of the Project, or (b) sell, assign, or transfer all or any portion of the Project in connection with (i) a sale-leaseback, inverted lease or partnership flip tax equity financing transaction with respect to the Project, or (ii) a sale-leaseback or other structured transaction required by any local taxing authority, industrial development board or other Governmental Authority for Seller or its applicable Affiliates to secure tax abatements or "payments in lieu of taxes" rights for real or personal property or other applicable taxes in connection with the Project or Site.

Section 11.3 Project Finance. In connection with any financing or refinancing of the Project, LPC shall, from time to time, within ten Business days after receiving a written request from Seller, deliver to Seller, or Seller's designee: (a) a consent to collateral assignment of this Agreement in the form attached hereto as Exhibit I, and (b) an estoppel certificate in the form attached hereto as Exhibit J (or modified as necessary to accurately describe the fact of the matters therein addressed). If a form of consent to collateral assignment or estoppel certificate is requested other than in the form attached hereto as Exhibit I or Exhibit J, respectively, LPC agrees to negotiate in good faith such form with Seller and the applicable Financing Party, but LPC shall not be obligated to agree to any material modification of the terms of the attached forms.

### **ARTICLE XIII: LIMITATIONS**

#### **Section 13.1 Limitations of Liability.**

UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT OR CONTRACT, UNDER ANY PROVISION OF THIS AGREEMENT. THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION ARE IMPOSED WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE.

#### **Section 13.2 Liquidated Damages.**

WHERE THIS AGREEMENT SPECIFIES THAT SELLER WILL BE LIABLE, DUE TO SELLER FAILURE(S) OR ACTION(S), TO PAY LPC LIQUIDATED DAMAGES IN CONNECTION WITH SUCH FAILURE(S) OR ACTION(S), THE PARTIES AGREE THAT THESE ARE LIQUIDATED DAMAGES, AND AS SUCH, THESE DAMAGES ARE: (A)



REASONABLE APPROXIMATIONS OF AND STATE ADEQUATE REMEDIES FOR THE SUBJECT HARM OR LOSSES, (B) IN LIEU OF ACTUAL DAMAGES, WHICH WOULD BE DIFFICULT OR IMPOSSIBLE TO QUANTIFY, AND (C) NEITHER PENAL NOR PUNITIVE.

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

Section 14.1 Cooperation. Each Party shall use Commercially 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. LPC 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, income or other similar taxes or charges that are related to the sale of the Product and are, therefore, the responsibility of Seller). If Seller is required by Applicable Law to remit or pay Governmental Charges that are LPC’s responsibility hereunder, LPC shall promptly reimburse Seller for such Governmental Charges. If LPC is required by Applicable Law to remit or pay Governmental Charges that are Seller’s responsibility hereunder, LPC may offset the amount of any such Governmental Charges against 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 Applicable Law. Each Party shall cooperate with the other Party 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. As of the Effective Date, each Party represents and warrants to the other Party that:

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

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except those authorizations which Seller reasonably expects to receive in the ordinary course, e.g., those required to be obtained from or with the cooperation of TVA or LPC;

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

(d) 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;

(e) 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;

(f) there is not pending or, to its 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;

(g) nothing which would constitute an 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;

(h) 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;

(i) the Parties intend for this Agreement to be a “forward contract” as defined in 11 U.S.C. § 101(25);

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

(k) with respect to 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; and

(l) it is an “eligible contract participant” within the meaning of the United States Commodity Exchange Act.

**EXCEPT AS SET FORTH EXPLICITLY IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**

#### **ARTICLE XVI: FORCE MAJEURE**

Section 16.1 Force Majeure Occurrence and Notice. To the extent that any Party is prevented by a Force Majeure Event from performing, in whole or in part, its obligations under this Agreement (other than the obligation to pay money) or from complying with, in whole or in part, requirements 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. In addition, any completion milestones or deadlines or time periods by which performance is due will be extended for a period of time equal to the time period during which such Force Majeure Event actually prevents the Claiming Party’s performance. The Claiming Party shall use Commercially Reasonable efforts to remedy the Force Majeure Event and mitigate any adverse effects on the performance of its obligations under this Agreement. The Claiming Party shall promptly notify the other 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 other 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 will be relieved or excused 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 the amount of generation but does not prevent entirely Seller from generating and delivering available Energy Output and Other Project Attributes, then Seller shall generate and deliver available Energy Output and Other Project Attributes. 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 LPC's Fraction of Energy Output and Other Project Attributes being purchased by LPC shall be deemed completed at the Delivery Point, and title to such Energy Output and Other Project Attributes shall pass to LPC upon delivery thereto.

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 governed, construed and interpreted in accordance with the laws of the State of Tennessee.

Section 17.4 Exhibits Made Part of this Agreement. The Exhibits attached to this Agreement are made a part of this Agreement.

Section 17.5 Approvals. Each Party hereto shall use Commercially Reasonable efforts and shall cooperate with the other to obtain any Permit. LPC, however, shall not be obligated to obtain any Permit or have financial responsibility for obtaining any Permit.

Section 17.6 Severability. In the event that any of the terms, covenants, or conditions of this Agreement 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 held invalid, the Parties shall negotiate a valid term, covenant, or condition as similar in effect 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 17.7 Integration. The terms and provisions contained in this Agreement between the Parties constitute the entire agreement between the Parties, and supersede all previous communications and representations, either oral or written, between the Parties with respect to the subject matter of this Agreement.

Section 17.8 Notices and Payments.

(a) Notices. Except as otherwise expressly provided under this Agreement, any notice 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, by other nationally recognized delivery service, or by e-mail at the addresses provided set forth below:

If to LPC:

KNOXVILLE UTILITIES BOARD  
445 S. Gay Street  
Knoxville, Tennessee 37902  
Attention: President and Chief Executive Officer  
Email: [execdept@kub.org](mailto:execdept@kub.org)

If to Seller:

SR Durhamville, LLC  
c/o Silicon Ranch Corporation  
222 Second Avenue South, Suite 1900  
Nashville, TN 37201  
Attention: D. Reagan Farr, President and CEO  
Email: [reagan.farr@siliconranch.com](mailto:reagan.farr@siliconranch.com)  
[notices@siliconranch.com](mailto:notices@siliconranch.com)  
Phone: (615) 577-4609

(b) Payments. All payments required to be made to LPC under this Agreement shall be made by Automated Clearing House (ACH) to such account as may be designated by LPC, with the amounts deemed received as of the date the electronic fund transfer to the recipient's account is deemed effective.

All payments required to be made to Seller under this Agreement shall be made by wire to:

Beneficiary Name: Silicon Ranch Corporation  
Receivables Account  
Beneficiary Address: 222 2<sup>nd</sup> Ave. South, Suite 1900  
Nashville, TN 37201  
Intermediary Bank Name: Regions Bank  
Bank Address: One Nashville Place, 150 4<sup>th</sup> Ave. North  
Nashville, TN 37219  
Swift Code or ABA: 062005690  
Account Number: 0259465409



Section 17.9 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 LPC, and any amount owed to LPC 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.

(c) Upon at least ten (10) Business Days' prior written notice from LPC, and no more than once per Delivery Period, Seller shall make the Project, including records relating to its operations, maintenance, and warranty repairs, available to LPC for inspection during normal business hours.

Section 17.10 Dispute Resolution. Unless otherwise provided in this Agreement, the Parties agree to use their best efforts to resolve disputes related to this Agreement informally at the lowest possible levels of decision making. Disputes not resolved at the working level will be referred to higher levels of management of both Seller and LPC for consideration, as necessary, and resolution, if possible. Any legal or equitable action related to this Agreement shall be brought in the United States District Court for the Eastern District of Tennessee and THE PARTIES HEREBY WAIVE: (a) ANY OBJECTION TO THAT COURT'S JURISDICTION OVER THEM, OR THAT VENUE IS PROPER IN SUCH COURT, AND (b) ANY RIGHT TO A JURY TRIAL.

Section 17.11 Indemnity and Insurance.

(a) Seller shall indemnify, defend, save, and hold harmless LPC and its directors, officers, employees, contractors, and agents from any and all third-party claims for injury to persons or damage to property or the environment, including any adverse wildlife or environmental impacts, to the extent caused by: (i) Seller's negligent, reckless, or intentional acts or omissions in conducting activities within the scope of this Agreement, or (ii) Seller's failure to comply with Applicable Law or the specific environmental requirements concerning the Project that are set forth in TVA's Notice of Environmental Review Completion. Seller is solely responsible for the risk of loss of, or damage to, the Project, Site, or adjacent properties to the Site, except to the extent that the loss or damage results from the reckless or intentional acts or omissions of LPC and its directors, officers, employees, contractors, or agents.

(b) Seller shall maintain or cause to be maintained the insurance required by Exhibit D. Failure of Seller to do so shall be deemed a failure to perform a material covenant or obligation set forth in Section 9.1(c).

Section 17.12 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 17.13 No Partnership or Agency. Nothing in this Agreement shall be treated as creating a partnership or joint venture between the Parties under Applicable Law 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 17.14 Costs and Expenses. Each Party shall bear and is responsible for its own costs (including attorney fees) in connection with the negotiation, preparation, execution, completion, implementation, and ongoing administration of this Agreement.

Section 17.15 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 17.16 Amendment. This Agreement may be amended, changed, modified, altered, or extended, provided that such amendment, change, modification, alteration, or extension shall be in writing and signed by both Parties.

Section 17.17 Survival of Obligations. Except as specifically provided in this Agreement, cancellation, expiration, or early 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 17.18 Counterparts. This Agreement may be executed in two or more counterparts, each of which is signed by one of the Parties but all of which together shall constitute but one and the same agreement.

Section 17.19 Confidentiality.

(a) A Party may not disclose the terms of this Agreement, any information provided hereunder that is conspicuously marked as confidential, or any information provided hereunder that, based on the nature of the information and circumstances of disclosure, a reasonable person would consider confidential (together, "Confidential Information") to a third party except as follows: (i) a Party may disclose Confidential Information to the Party's Affiliates, potential or existing investors, consultants, potential or existing lenders, counsel, counsel for potential or existing investors or lenders, or accountants, or specific Distributor customers receiving the benefit of Environmental Attributes associated with the Project, or prospective assignees permitted pursuant to Section 11.2 to the extent required for the consideration of an assignment, that have



agreed in writing to keep the Confidential Information confidential on terms no less restrictive than those set forth in this Section, (ii) LPC may disclose Confidential Information (other than pricing information) to TVA solely as needed to comply with its obligations under the Power Supply Expanded Flexibility Program, (iii) a Party may disclose Confidential Information to comply with Applicable Law, (iv) LPC may disclose Confidential Information to specific Distributor customers receiving the benefit of Environmental Attributes associated with the Project details regarding an actual or anticipated Seller breach or non-performance of this Agreement or a claim of a Force Majeure Event by Seller, (v) either Party may disclose Confidential Information to the Other LPC as necessary to facilitate negotiation, execution, and administration of this Agreement or any amendment thereto, (vi) LPC may disclose Confidential Information to one or more members of its Board of Directors, which may include disclosures in meetings that are open to the public, or (vii) with the other Party's prior written approval.

(b) A Party shall promptly notify the other Party if it is required by Applicable Law to disclose Confidential Information so that the Party that owns or controls the Confidential Information may take action, at its own expense, to prevent or limit the scope of such required disclosure. Without limiting the foregoing, LPC will provide to Seller prompt (but in no event later than two (2) Business Days') notice of LPC's receipt of any public records request seeking disclosure of this Agreement or its terms, so that Seller may have an opportunity to intervene, if possible, or review the scope of the disclosed information prior to disclosure.

(c) The Parties acknowledge and agree that disclosure or unauthorized use of information described in this Section 17.19 could damage the other Party and that said other Party, therefore, has an interest in protecting that information by all legal means, and further that breach of the promises set forth above could cause irreparable damage to the Party possessing proprietary rights in Confidential Information wrongfully disclosed, and still further that in the event of such breach, said Party shall have the right to an injunction, specific performance, or other equitable relief to prevent the violation of the promises mentioned above. Further, in addition to the equitable relief identified above, Seller shall only be entitled to recover from LPC, its directors, officers, agents, and employees any and all gains wrongfully acquired, directly or indirectly, from unauthorized disclosure of any Confidential Information.

Section 17.20 Project Communications. Seller will, when communicating publicly about the Project and associated RECs, identify LPC and TVA (by name or by LPC or TVA logo) in promotional efforts and materials associated with the Project. Use of the LPC and TVA logos must follow LPC's and TVA's logo use guidelines, as applicable. If Seller intends to include language expressly referencing LPC or TVA (or using LPC's or TVA's logos), Seller must provide such language to LPC and TVA in advance for approval. Seller will notify LPC and TVA of public events in advance to enable reasonable efforts to participate. LPC acknowledges that, by executing this Agreement, it has obtained the right for Seller to use TVA's name and logo as prescribed in this Section 17.20. For the avoidance of doubt, this Section 17.20 does not prohibit Seller from making any public statements about the Project (i) as required by Applicable Law, including in connection with public permitting proceedings or filings, or (ii) without reference to LPC or TVA as required in the ordinary course of development, construction, and operations and maintenance activities, such as, by way of example, public hearings to obtain zoning variances or development or construction permits.



Section 17.21 Project Collaboration. Parties will endeavor to find mutually agreeable opportunities for education and research that benefit the Parties, and/or specific LPC or TVA customers or specific customers served by Distributors of TVA power receiving the benefit of Environmental Attributes associated with the Project.

Section 17.22 Service Contract. Each Party intends this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

Section 17.23 TVA PPA. If the TVA PPA terminates without renewal or extension prior to the termination of this Agreement, Seller and LPC shall use Commercially Reasonable efforts to (i) arrange for the delivery of LPC’s Fraction of Energy Output to LPC, including any necessary interconnection agreements and agreements for transmission service (including Firm Transmission Service if needed), in accordance with Good Utility Practice and the then current requirements of Applicable Law; (ii) arrange for the sale and delivery of LPC’s Fraction of Energy Output to TVA, the Other LPC, or another Distributor under such alternative arrangements as may be negotiated between LPC and such other Person, as applicable (subject to any conditions or restrictions imposed by TVA’s Power Supply Expanded Flexibility Program), or (iii) to deliver or arrange transmission service, including Firm Transmission Service if needed, for the delivery of all or any portion of the Energy Output to one or more third-party purchasers of Energy Output. Notwithstanding such termination or expiration of the TVA PPA, unless otherwise agreed by Seller, this Agreement shall remain in full force and effect.

Section 17.24 Other Covenants of Seller. Seller is responsible, at its sole cost and expense, for complying with the following obligations of LPC under TVA’s Power Supply Expanded Flexibility Program Guidelines that are in effect as of the Effective Date (the “Guidelines”), a copy of which is attached as Exhibit K to this Agreement:

(i) Participating in any “Facilities Study,” “System Impact Study,” “Transmission Screen” and providing any “Flexibility Device Kit,” as each such term is defined in the Guidelines;

(ii) Complying with all “Interconnection Requirements”, “Commissioning Requirements”, “Modeling Requirements”, and “TVA Operating Procedures” and related requirements, as such terms and requirements are specified in the Guidelines; provided, however, that the Interconnection Agreement and TVA’s published interconnection procedures shall control all matters relating to the interconnection of the Project to the TVA Electric System;

(iii) Installing any protection equipment and taking any actions determined by TVA to be necessary to address any adverse impacts on TVA’s transmission system that will be caused by the installation or operation of the Project, and reimbursing TVA for any equipment costs incurred by TVA in connection with addressing these transmission system impacts, all in accordance with TVA’s published interconnection procedures and the Interconnection Agreement;

(iv) Reimbursing TVA for the costs of procuring and installing any TVA-owned meters that are required for the deployment and operation of the Project in accordance with



TVA's "Metering Requirements" as such term is defined in the Guidelines;

(v) Providing such metering and communication devices for the Project as may be required by TVA to ensure its operational reliability under its operating guidelines, to provide TVA with unrestricted remote access to metering data at all times, and physical access to metering facilities for the purpose of confirming remotely accessed data, all in accordance with TVA's published interconnection procedures and the Interconnection Agreement;

(vi) Complying with TVA interconnection procedures and standards in effect at the time of interconnection; and

(vii) Executing any necessary agreements and other necessary documentation as TVA may require pursuant to the Guidelines relating to the metering, operation and maintenance of the Project.

Seller shall be responsible for fully discharging each of these obligations on behalf of LPC. Except as expressly set forth in Section 17.24(a), Seller does not assume any other obligations, liabilities, or duties of LPC under the Guidelines or under any Power Supply Expanded Flexibility Agreement or similar agreement between TVA and LPC related to LPC's purchase of energy from TVA or LPC's participation in any TVA program permitting LPC's procurement of energy from sources other than TVA.

(b) Notwithstanding any other provision in this Agreement to the contrary, in the event of a conflict between the terms of this Agreement and the foregoing requirements under the Guidelines, the Guidelines will control as necessary to resolve the conflict, except (i) where the Guidelines incorporate by reference the Power Supply Expanded Flexibility Agreement or similar agreement between TVA and LPC, it being understood that Seller is not party to, and has not been provided with, such agreement, and in which case this Agreement shall control over the Guidelines, and (ii) where such conflict relates to the interconnection or parallel operation of the Project, in which case TVA's published interconnection procedures and the Interconnection Agreement shall control.

Section 17.25 Multiple Offtakers. LPC acknowledges that contemporaneously with the execution of this Agreement, Seller intends to execute a power purchase agreement with Chattanooga EPB (the "Other LPC") to sell the balance of the Energy Output and Other Project Attributes from the Project that are excluded from the Product. LPC and the Other LPC may have overlapping or duplicative approval, consent, or veto rights in their respective power purchase agreements. To avoid inconsistent directions, if LPC and the Other LPC provide conflicting instructions or fail to approve, consent to, or reject in unison a Seller action, Seller may elect to proceed in accordance with whichever instruction, approval, or consent it so chooses in its sole discretion. Seller shall have no liability to the party whose instruction, approval, consent, or rejection it declines to follow, and such party shall have no claim against Seller for breach of contract or Event of Default as a result of Seller's election under this Section 17.25. LPC agrees

to cooperate in good faith with the Other LPC and Seller to minimize as much as possible the occurrence of conflicting instructions, approvals, consents, or rejections.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

SR DURHAMVILLE, LLC

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

Name: D. Reagan Farr

Title: President and CEO

KNOXVILLE UTILITIES BOARD

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

Name: \_\_\_\_\_

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

## EXHIBITS

Exhibit A	Solar Asset Prices
Exhibit B	Supply Guarantee
Exhibit C	Liquidated Damages
Exhibit D	Credit Annex
Exhibit E	Insurance
Exhibit F	Legally Required Clauses
Exhibit G-1	Project Description
Exhibit G-2	Project Characteristics
Exhibit H	Project Development Milestone Schedule
Exhibit I	Form of Consent and Agreement
Exhibit J	Form of Estoppel Certificate
Exhibit K	Current TVA Guidelines



**EXHIBIT A**

**CONTRACT PRICE**

In accordance with Section 4.5, the "Contract Price" is \$50.90/MWh.

## **EXHIBIT B**

### **ANNUAL SUPPLY GUARANTEE**

For each Delivery Period throughout the Term of the Agreement to which this Exhibit B is attached, Seller guarantees delivery of Energy Output, which shall include energy that has been curtailed for economic purposes, to the Delivery Point in an amount at least equal to the “Annual Supply Guarantee” calculated as here defined:

$$\text{ASG} = \text{MCF} \times \text{CO} \times (\text{PH} - \text{EH})$$

Where:

ASG = Annual Supply Guarantee

MCF = Minimum Capacity Factor = 20%

CO = Contract Output

PH = Possible Hours = 8,760 hours

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



## EXHIBIT C

### LIQUIDATED DAMAGES

#### a. Deficient Energy

The formulas for calculating the amount of any liquidated damages (LD) owed to LPC by Seller under Section 8.1 for Deficient Energy for any Delivery Period during the Term are as follows:

$$\mathbf{LD = DE \times CP \times LPC's \text{ Fraction}}$$

Where:

CP = the Contract Price.

DE = Deficient Energy in kWh and is calculated as:

$$\mathbf{DE = ASG - EO}$$

Where:

ASG = Annual Supply Guarantee in kWh

EO = Energy Output in kWh

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

#### b. RECs

If Seller fails to deliver all or part of the Annual Supply Guarantee in any particular Delivery Period, LPC will have the option, at no cost to LPC, to receive from Seller either (a) solar RECs equivalent to LPC's Fraction of the total MWh of the Deficient Energy on a MWh-for-MWh basis, if available, or (b) LPC's Fraction of the then-current Alternative Compliance Payment, regardless of whether Seller otherwise owes a LD payment to LPC under this Exhibit.

**EXHIBIT D**  
**CREDIT ANNEX**

Section 1      Amount of Performance Assurance and Notice of Material Credit Event.

(a)      Performance Assurance. Seller shall provide and maintain throughout the Term of this Agreement or cause to be provided Performance Assurance in amounts as follows based on LPC's Fraction of the Contract Output of the Project:

<b>Milestone</b>	<b>\$/kW</b>
Effective Date	\$50
The earlier of the NTP Deadline (as may be extended pursuant to the terms of this Agreement) or Seller's submittal of the NTP Request	\$125
Initial Delivery Date	\$100
The tenth anniversary of the Initial Delivery Date	\$75

Performance Assurance for the Effective Date Milestone must be provided to LPC prior to or contemporaneous with LPC's signature of this Agreement. LPC will not be obligated to return Performance Assurance as of the Initial Delivery Date or tenth anniversary of the Initial Delivery Date unless Seller has first provided LPC with replacement Performance Assurance meeting the requirements of this Agreement.

For the purpose of determining the amount of the required Performance Assurance, the Contract Output of the Project will be rounded up to the nearest whole kW.

(b)      Notice of Material Credit Event. Seller shall notify LPC 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 ten (10) 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 or confirmed by a Qualified Bank;
- (b) permit LPC 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 LPC under the Agreement to which this Exhibit D is attached following the occurrence and during the continuation of an Event of Default; and
- (c) permit LPC to draw the entire "Available Amount" thereunder to hold as Cash collateral for any and all amounts owing to LPC 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 Seller has not provided LPC with alternative Performance Assurance.

Section 3 Surety Bond as Performance Assurance. If Performance Assurance consists of a Surety Bond, such Surety Bond shall:

- (a) be issued by an Acceptable Surety;
- (b) renew automatically unless the Acceptable Surety provides notice to LPC at least ninety (90) days prior to the Surety Bond's expiration that such Acceptable Surety will not renew the Surety Bond; and
- (c) specify that funds will be disbursed within ten (10) Business Days after notice is given to the Acceptable Surety by LPC of the occurrence and during the continuation of an Event of Default under the Agreement for the purpose of paying any and all amounts owing to LPC under the Agreement.

Section 4 Substitution, Return, and Handling of Performance Assurance.

(a) Election to Change Form of Performance Assurance. Seller 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 LPC shall cooperate with the Seller 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 LPC.

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

Section 5 Financial Statements.

(a) LPC's Financial Statements. If requested by Seller, LPC shall deliver (i) within 120 days following the end of each fiscal year, a copy of LPC'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 LPC'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 (except, in the case of unaudited financial statements, for the absence of footnotes and customary year-end adjustments); 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 LPC diligently pursues the preparation, certification, and delivery of the statements.

(b) Seller's Financial Statements. If requested by LPC, 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 Affiliate, 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 Affiliate. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles (except, in the case of unaudited financial statements, for the absence of footnotes and customary year-end adjustments); 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.

(c) Sponsor's Financial Statements. If Seller has satisfied the Performance Assurance Requirements by delivery of a Sponsor Guaranty, then if requested by LPC, 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 Sponsor, 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 Sponsor. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles (except, in the case of unaudited financial statements, for the absence of footnotes and customary yearend adjustments); 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 LETTER OF CREDIT**

[LETTERHEAD]

[DATE]

Irrevocable Standby Letter of Credit No.

**Beneficiary:**

**Applicant:**

Knoxville Utilities Board  
445 S. Gay Street  
Knoxville, Tennessee 37902  
Attention: President and Chief Executive Officer

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) (the “LC Amount”). 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 representative 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. Within five Business Days after payment of any draw of the letter of credit, we shall provide you with a new letter of credit in the LC Amount.

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 representative 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 following 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 Knoxville Utilities Board

U.S. \$ \_\_\_\_\_ [not to exceed amount available to be drawn]  
445 S. Gay Street  
Knoxville, Tennessee 37902

[*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 representative of Knoxville Utilities Board, a municipal utility created and existing pursuant to the Charter of the City of Knoxville ("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 representative 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**

### **INSURANCE**

A. Seller Insurance Coverages. Seller shall maintain or cause to be maintained the types of insurance coverages described in this Part A, provided that Seller shall be required to maintain the insurance coverages described in this Part A only to the extent that such coverages are available on Commercially Reasonable terms in the commercial insurance markets. All insurance coverages described herein shall be placed with Acceptable Insurance Companies. An “Acceptable Insurance Company” means an insurance company that, at the applicable time, is legally permitted to write the applicable insurance coverage and that (i) has a Credit Rating of A- or better from Standard & Poor’s at such time or (ii) has an insurance company rating of A- or better from A.M. Best at such time.

1. Workers’ Compensation Insurance. Seller shall maintain or cause to be maintained workers’ compensation insurance in compliance with Applicable Law. Such required workers compensation coverage shall also include Employer’s Liability with limits of no less than \$500,000 and shall also include a waiver of subrogation in favor of LPC.

2. Commercial General Liability Insurance. Seller shall maintain or cause to be maintained commercial general liability insurance, including coverage for bodily injury, property damage, personal injury, death, products/completed operations, premises/operations, explosion, collapse and underground hazards, broad form property damage and blanket contractual liability for written contracts, with primary and non-contributory coverage limits of not less than \$1,000,000 per occurrence and an annual aggregate limit of not less than \$2,000,000.

3. Automobile Liability Insurance. Seller shall maintain or cause to be maintained automobile liability insurance for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law, with a combined single limit of not less than \$1,000,000 with respect to bodily injury, property damage or death.

4. Umbrella Liability Insurance: Seller shall maintain an umbrella liability with a minimum limit of \$1,000,000 excess of the insurances required in 2 and 3 above.

5. All-Risk Property Insurance. Seller shall maintain or cause to be maintained all-risk property coverage for the Project with Commercially Reasonable limits, sub-limits and deductibles.

B. Seller Insurance General Terms. To the extent available on Commercially Reasonable terms in the commercial insurance markets:

1. Evidence of Coverage. Seller shall deliver to LPC certificates or other evidence of all insurance policies maintained (or caused to be maintained) by Seller upon request.

2. Additional Insureds. LPC shall be named as an additional insured on all liability policies required under this Exhibit.

3. Termination of Coverage. Seller shall provide LPC prior written notice of any cancellation or non-renewal of any insurance policy required to be maintained (or caused to be maintained) by Seller, and which insurance policy is not replaced, pursuant to this Exhibit E.

C. Self-Insurance. Notwithstanding the foregoing, Seller may self-insure to meet the minimum insurance requirements of this Exhibit E to the extent it maintains a self-insurance program, provided that Seller's senior secured debt meets the ratings requirements applicable to a Qualified Bank and its self-insurance program meets the minimum insurance requirements of this Exhibit E. For any period of time that Seller's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, Seller shall comply with the insurance requirements applicable to it under this Exhibit E. In the event that Seller is permitted to self-insure pursuant to this section, it shall notify LPC that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in this Exhibit E.



## EXHIBIT F

### LEGALLY REQUIRED CLAUSES

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

#### AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY

To the extent applicable, this 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 the "Certification for Contracts, Grants, Loans, and Cooperative Agreements," set forth below ("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 G-1**

### **PROJECT DESCRIPTION**

The Project comprises the Solar Asset and associated equipment and facilities, together known as SR Durhamville, located in Durhamville, Tennessee, including the real property, fixtures, and land rights associated with the facility. The coordinate location of the Project is approximately 35.624271N, 89.465531W.

The Solar Asset is a 66 MW solar photovoltaic generating facility.

The Solar Asset at all times will generate and deliver electric power and energy exclusively from solar energy by means of monocrystalline panels, polycrystalline panels, or thin film cells, which may be either ground- or structure-mounted. Unless approved in advance by LPC in writing, the Solar Asset will not generate or deliver electric power or energy by means of non-solar generation technologies.

The Project will be interconnected at the "Delivery Point," which is tap off of the TVA's Covington-Alamo 161 kV transmission line.

The Contract Output will be 66 MW. The Contract Output is the maximum instantaneous AC power output of the Project, using the Metering Equipment, as measured at the high side of the Delivery Point transformer, net of any station service and transmission and distribution losses.

The NTP Deadline is June 30, 2027.

The Expected Initial Delivery Date is June 30, 2028

## **EXHIBIT G-2**

### **PROJECT CHARACTERISTICS**

Pending completion of final design, the project's major equipment and components will likely include First Solar Series 6+ modules, SMA SC-4000 UP-US inverters, and Nextracker Single Axis Tracker system. The Project is designed to deliver 66 MWac of solar energy to the Delivery Point and will be interconnected on TVA's Covington-Alamo 161kv transmission line in Haywood County, Tennessee.

PV Modules: First Solar (either Series 6+ or Series 7)

Pre-Approved Alternates: Hanwha Q-Cells, Canadian Solar, Maxeon, Jinko, Trina, LONGi, Vikram, Waaree, Adani, Trina, Risen or other Tier 1 Supplier

Main Power Transformer(s): HICO

Pre-Approved Alternates: JSHP, Siemens, WEG, Waukesha/SPX, ABB, GE/Prolec or other Tier 1 Supplier

Pad-Mount (MV) Transformer(s): Either Cooper, WEG, CG, Virginia Transformer, GE, VanTran, JSHP, ABB, Eaglerise or other Tier 1 Supplier

Inverters: Either TMEIC, SMA, Sungrow, Chint, ABB, GE, Power Electronics, Siemens Gamesa, Solis, Delta, EPC Power or other Tier 1 Supplier

Racking: Nextracker

Pre-Approved Alternates: Array Technologies, Terrasart, Polar Rack, Solar Flex Rack, Gamechange, SOL Components or other Tier 1 Supplier

# PROJECT LAYOUT

Project Address:  
343-1 Moreau Rice Rd, Ripley, TN 38063, USA

Project Coordinates:  
Latitude: 35.6201565181965  
Longitude: -89.4667170283109

Project Developer  
Aldrich Christopher

Project Site Description  
Elevation 98.00 metres

Solar Production  
Tracker Mounting System

Photovoltaic System Parameters  
86.4 MWp DC capacity

October 12, 2023

Scale: 0 to 1.6 km

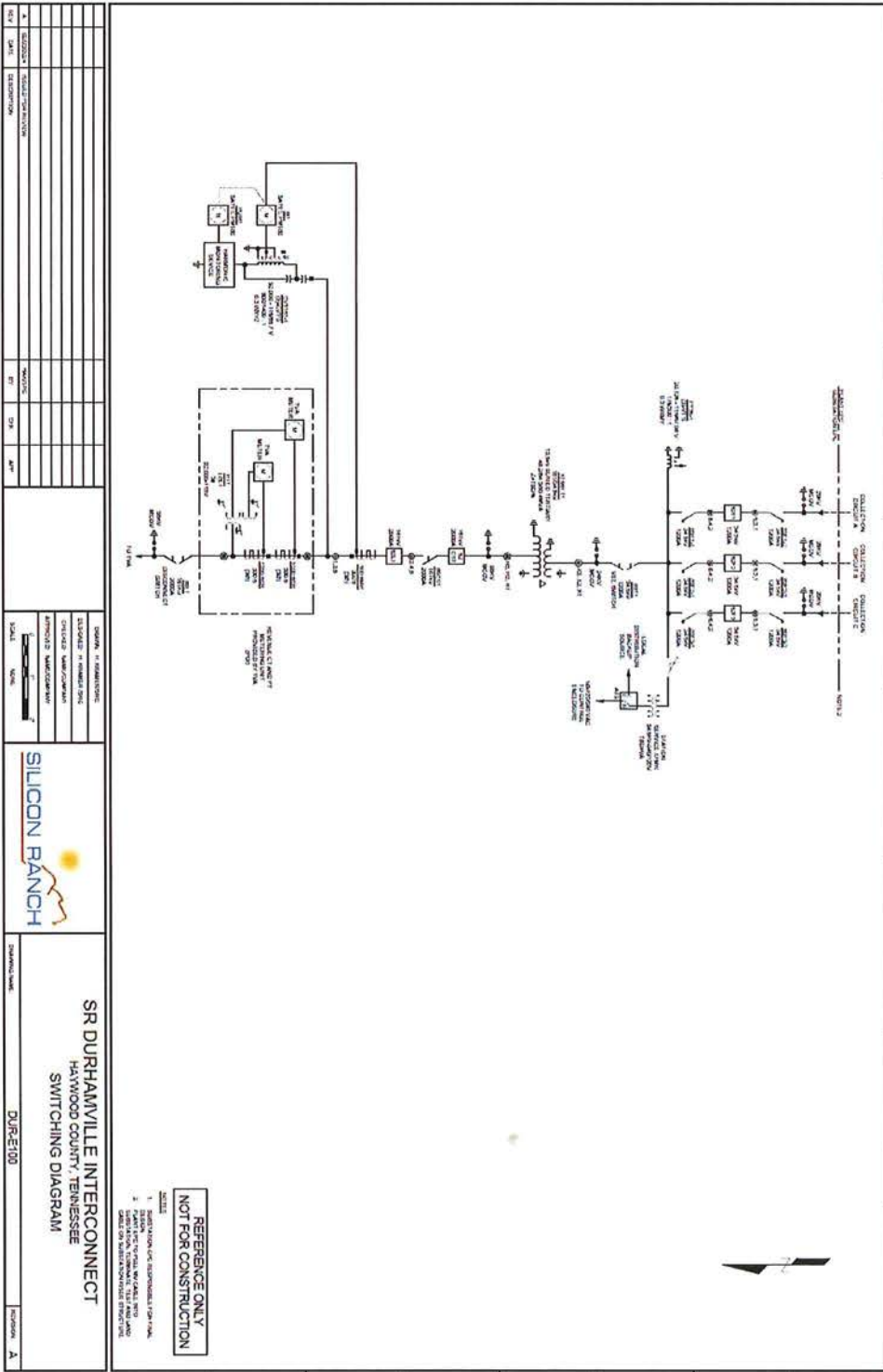
Coordinates: 34.36, 112.00

SR Durhamville

<ul style="list-style-type: none"> <li>Inverter Capacity (MWp) 64.6</li> <li>DC (MWp) 96.4</li> <li>Available AC Power at POD (MW) 62.57</li> <li>Delivered AC Power at Pod (MW) 62.57</li> <li>DC AC 1.33</li> <li>MODULE First Solar -7S9-</li> <li>MODULE DC RATING(W) 470 W</li> <li>MODULES 183728</li> <li>MODULES STRING 600</li> <li>STRINGS 30618</li> <li>INVERTER THL6C -P-VU U600CR</li> <li>INVERTER TYPE CENTRAL</li> <li>INVERTERS STATION 1</li> <li>TRANSFORMERS STATION</li> <li>INVERTERS STATION</li> <li>INVERTER PATTING(MV)</li> <li>INVERTERS 800</li> <li>INTERCONNECTION VOLTAGE(MV) 81</li> <li>INTERCONNECTION LENGTH (MILES) 161</li> <li>TRANSMISSION LENGTH (MILES) 0.10</li> <li>MODULE TILT 0°</li> <li>AZIMUTH 180°</li> <li>GCR 34.56%</li> <li>ROW SPACING(M) 19.00</li> <li>ASHRAE MIN TEMP(C) -12.00</li> <li>ASHRAE MAX TEMP(C) 34.70</li> <li>PROPERTY AREAS(CRS) 698.00</li> </ul>	<p>VIEW Layout</p> <p><b>VIEW-809b</b></p> <p>ID: 6525a6528cbd670df6d1809b</p>
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# SINGLE LINE DIAGRAM



## EXHIBIT H

### PROJECT DEVELOPMENT MILESTONE SCHEDULE

<b>Milestone Description</b>	<b>Milestone Date</b>
Completed all Interconnection Studies and requisite agreements, including System Impact Study and Facility Study	12/31/2024
Initiate all applicable NEPA, state, and local environmental permitting and approvals for the Project	09/01/2025
Receive all applicable NEPA, state, and local environmental permitting and approvals for the Project	03/01/2027
Receive all local, state, and federal permits and regulatory approvals required to construct the Project (other than applicable NEPA, state, and local environmental permitting and approvals)	12/31/2026
Executed all Real Property Agreements necessary to establish sufficient control of the real property to construct or cause to be constructed any facilities on the Site	05/10/2026
Provide, in P6, Microsoft Project, or other industry accepted schedule format, Engineering/Design schedule	07/01/2026
Engineering/Design Start	07/01/2026
Engineering/Design finish (IFC design)	12/01/2025
NTP Request to LPC	02/01/2027
RFPs for owner-furnished major material acquisition, including main power transformer, solar panels and tracking systems have been issued (if applicable)	10/31/2025
EPC contract(s) executed	02/01/2027
Provide in P6 or other industry accepted schedule format, detailed construction schedule	02/01/2027
Construction start	02/01/2027
Provide dates that major materials, including, but not limited to, switch house, transformers, solar panels, inverters, racking and associated systems, tracking systems, and piling	02/01/2027
Ready for backfeed	12/15/2027

<b>Milestone Description</b>	<b>Milestone Date</b>
Provide, in P6 or other industry accepted schedule format, the schedule for all commissioning requirements and testing, to include all requirements contained in TVA's OASIS commissioning requirements: <a href="https://www.oasis.oati.com/woa/docs/TVA/TVAdocs/Interconnection_-_Commissioning_Checklist_and_Guidelines_-_v0.pdf">https://www.oasis.oati.com/woa/docs/TVA/TVAdocs/Interconnection_-_Commissioning_Checklist_and_Guidelines_-_v0.pdf</a>	09/01/2027
Commissioning and testing start	01/18/2028
Expected Initial Delivery Date	06/30/2028



## EXHIBIT I

### **[FORM OF] CONSENT AND AGREEMENT**

This Consent and Agreement (“Consent”), is made as of the following date: \_\_\_\_\_ (“Effective Date”) and, is among KNOXVILLE UTILITIES BOARD, a municipal utility created and existing pursuant to the Charter of the City of Knoxville, Tennessee (“LPC”), SR DURHAMVILLE, LLC, a Delaware limited liability company (“Seller”), and [BANK NAME], as collateral agent (in such capacity and together with its successors in such capacity, the “Collateral Agent”). The parties hereto are sometimes referred to herein as a “Party” or “Parties.”

The Seller is a party to that certain credit agreement, dated as of the date hereof, among the Seller, the Collateral Agent, the lenders, note holders, and issuing banks party thereto from time to time, and the other parties named therein (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”), pursuant to which, among other things, subject to the terms therein, such lenders have committed to extend loans to the Seller and such issuing banks have committed to issue certain letters of credit for the account of the Seller.

The Seller and LPC are parties to a Power Purchase Agreement dated \_\_\_\_\_, 2026 (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”), pertaining to a certain photovoltaic electric generation facility known as SR Durhamville, located in Haywood County, Tennessee (the “Project”). Unless defined otherwise, capitalized terms used in this Consent shall have the meanings assigned to them in the Assigned Agreement. Pursuant to the Assigned Agreement, Seller is to sell to LPC, and LPC is to purchase from Seller, electric power generated by the Project.

#### **ARTICLE I: CONSENT TO ASSIGNMENT**

Section 1.1 Consent to Assignment. The Seller gives notice to LPC of the collateral assignment by the Seller of all of its right, title, and interest in, to, and under (but not its obligations, liabilities, or duties with respect to) the Assigned Agreement, including, without limitation, the right to receive payment thereunder, under the terms of that certain security agreement, as amended, amended and restated, supplemented, or otherwise modified from time to time, between the Seller and the Collateral Agent (the “Security Agreement”), and LPC acknowledges receipt of such notice and irrevocably consents to such collateral assignment. LPC has no actual notice of, and has not consented to, any previous assignment or collateral assignment by the Seller of all or any part of its rights under the Assigned Agreement.

#### **ARTICLE II: NOTICE AND CURE RIGHTS**

Section 2.1 Notice to Collateral Agent. LPC shall, concurrently with the delivery to Seller of any notice of an Event of Default (“Default Notice”) or notice of early termination (“Termination Notice”) under the Assigned Agreement, provide a copy of such Default Notice or Termination Notice to Collateral Agent pursuant to Section 6.5 of this Consent. In addition, Seller shall provide a copy of the Default Notice or Termination Notice to Collateral Agent the next

Business Day after receipt from LPC, independent of any agreement of LPC to deliver such Default Notice or Termination Notice.

Section 2.2 Cure Period Available to Collateral Agent Prior to Declaration of Early Termination.

(i) Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 2.1 above, LPC shall not declare an Early Termination Date pursuant to Section 9.3 of the Assigned Agreement unless it or the Seller provides Collateral Agent with Default Notice and affords Collateral Agent a Cure Period, as defined below, to cure the Event of Default.

(ii) For the purposes of this Agreement, "Cure Period" shall mean (i) with respect to a payment default as defined in Section 9.1(a) of the Assigned Agreement, ten (10) days in addition to the cure period provided to Seller in the Assigned Agreement; and (ii) with respect to all other Events of Default specified in Section 9.1 of the Assigned Agreement, thirty (30) days in addition to the cure period provided to Seller in the Assigned Agreement.

Section 2.3 Failure by LPC to Deliver Default Notice. If neither LPC nor Seller delivers a Default Notice to the Collateral Agent as provided in Section 2.1, the Collateral Agent's applicable cure period shall begin on the date on which Default Notice is delivered to Collateral Agent by either LPC or Seller, whichever is delivered earliest. Except for a delay in the commencement of the cure period for the Collateral Agent and a corresponding delay in LPC's ability to declare an Early Termination Date, failure of LPC to deliver any Default Notice shall not waive, impair, or prejudice any of LPC's rights or remedies under the Assigned Agreement and LPC will not be subject to any damages or liability for failure to provide such notice.

Section 2.4 Extension for Foreclosure. If possession of the Project is necessary for the Collateral Agent to cure an Event of Default and the Collateral Agent commences foreclosure proceedings against Seller within the Cure Period provided in Section 2.2(ii) above, the Collateral Agent shall, with LPC's consent, be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed sixty (60) days; provided, however, that the Collateral Agent shall provide a written notice to LPC that it intends to commence foreclosure proceedings with respect to Seller within ten (10) days of receiving Default Notice from LPC or Seller, whichever is received first.

Section 2.5 Remedies for Event of Default and Supply Guarantee. It is understood and agreed that, notwithstanding the Collateral Agent's right to cure Events of Default as set forth herein, LPC may elect to pursue one or more of the remedies available under Section 9.2(b) of the Assigned Agreement prior to the expiration of the Cure Period until such Event of Default is otherwise cured; provided that any declaration of an Early Termination Date provided in the Assigned Agreement shall be subject to the Collateral Agent's applicable Cure Period in accordance with Section 2.2 above. The failure of the Seller to satisfy the Supply Guarantee provided for in Article VIII and Exhibit B of the Assigned Agreement shall not constitute an Event of Default under Section 9.1 of the Assigned Agreement, so long as Seller pays to LPC the liquidated damages required pursuant to Section 8.1 of the Assigned Agreement.



Section 2.6 Disconnection of Project or Curtailment of Deliveries. Nothing in this Consent Agreement shall limit LPC's ability to disconnect the project or curtail deliveries for safety, reliability, or any other reason provided for in Section 8.3 of the Assigned Agreement, if applicable.

### **ARTICLE III: LIMITATION ON ASSIGNMENT**

Section 3.1 Limitation on Assignment. If the Collateral Agent or a designee or transferee succeeds to the interests of the Seller, whether by foreclosure or otherwise, the Collateral Agent or such designee or transferee, as the case may be (any such Person, an "Assuming Party"), shall assume liability for the Seller's obligations only to the extent such obligations are expressly set forth in the Assigned Agreement. Except to the extent that the Collateral Agent or its designee or transferee expressly becomes an Assuming Party hereunder, the Collateral Agent shall not be liable for the performance or observance of any of the obligations or duties of the Seller under the Assigned Agreement.

### **ARTICLE IV: REPRESENTATIONS AND WARRANTIES**

Section 4.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Parties 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 Consent;
- (iii) the execution, delivery, and performance of this Consent are within its powers, have been duly authorized by all necessary action, and do not violate any Applicable Law;
- (iv) it is not Bankrupt and there are no proceeding pending or being contemplated by it or, to its knowledge, threatened against it that would result in it being or becoming Bankrupt; and
- (v) it is acting for its own account, has made its own independent decision to enter into this Consent and as to whether this Consent is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of any 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 Consent.

Section 4.2 Seller's Right, Title, or Interest. Seller and Collateral Agent each recognizes and acknowledges that LPC makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement. Collateral Agent is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Collateral Agent releases LPC from any liability resulting from the assignment of the Assigned Agreement. The Parties acknowledge that LPC intends for the Assigned Agreement to be a "forward contract" within the meaning of the United States Bankruptcy Code.



## ARTICLE V: PAYMENTS, SETOFFS, AND DEDUCTIONS

Section 5.1 Payments. LPC shall, as of the date hereof, make all payments due to the Seller under the Assigned Agreement directly to [ ] for the benefit of the Collateral Agent and any other secured parties, to ABA No. [ ], Account No. [ ], or such other account as to which the Collateral Agent shall notify LPC in writing. Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, LPC, and the Collateral Agent agrees that each such payment by LPC to such depository agent of the amount due to Seller from LPC under the Assigned Agreement shall satisfy LPC's corresponding payment obligation under the Assigned Agreement.

Section 5.2 Setoffs and Deductions. Each of Seller and Collateral Agent agrees that LPC shall have the right to set off or deduct from payments due to Seller each and every amount due to LPC from Seller pursuant to Section 10.3 of the Assigned Agreement. Collateral Agent further agrees that it takes the assignment for security purposes of the Assigned Agreement subject to any defenses or causes of action LPC may have against Seller.

## ARTICLE VI: MISCELLANEOUS

Section 6.1 Waiver. The non-exercise of, or delay in exercising, any power or right of any Party to this Consent 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 6.2 Choice of Law. This Consent shall be construed and interpreted in accordance with the laws of the State of Tennessee. Any legal action arising out of or related to this Consent shall be brought in the United States District Court for the Middle District of Tennessee, and the Parties hereby waive any right to a jury trial in any such action.

Section 6.3 Successors and Assigns. No Party shall assign this Consent or its rights hereunder without the prior written consent of the other Parties, such consent not to be unreasonably withheld.

Section 6.4 Severability. In the event that any term, covenant, or condition of this Consent 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 as possible to such invalid term, covenant, or condition. This Consent shall not otherwise be affected thereby and shall remain in full force and effect.

Section 6.5 Notices and Invoices. Except as otherwise expressly provided under this Consent, any notice or invoice provided for in this Consent 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. Notices and invoices sent to LPC or Seller shall be made at the addresses provided in the Cover

Sheet to the Assigned Agreement. Notices and invoices sent to Collateral Agent shall be made at the address provided below:

For Collateral Agent

Mail Notices to: [Name]  
[Address]

Section 6.6 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 Consent.

Section 6.7 Amendment. This Consent may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by all Parties hereto.

Section 6.8 Counterparts. This Consent may be executed in more than one counterpart, each of which is signed by one or more of the Parties but all of which together shall constitute the same agreement.

*[signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed as of the date first above written.

SR DURHAMVILLE, LLC

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

Name: \_\_\_\_\_

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

KNOXVILLE UTILITIES BOARD

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

Name: \_\_\_\_\_

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

Agreed and Accepted:

[BANK/COLLATERAL AGENT]

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

Name: \_\_\_\_\_

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



## EXHIBIT J

### [FORM OF] CONFIRMATION, ESTOPPEL AND AGREEMENT

This CONFIRMATION, ESTOPPEL AND AGREEMENT (this "Agreement"), effective as of [\_\_\_\_\_] (the "Effective Date"), is entered into by KNOXVILLE UTILITIES BOARD (together with its successors and permitted assigns, "LPC") for the benefit of SR DURHAMVILLE, LLC, a Delaware limited liability company ("Seller"), and [NAME OF FINANCING PARTY], a [type of entity] (together with its successors, the "Financing Party"). This Estoppel may not be relied upon by any parties other than Seller and Financing Party.

#### RECITALS

A. The Seller and LPC are parties to that certain Power Purchase Agreement, dated as of [\_\_\_\_\_] (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement"), a copy of which is attached hereto as Exhibit A. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Assigned Agreement.

B. The Seller is a party to a [\_\_\_\_\_] transaction with the Financing Party (the "Financing Transaction"), pursuant to which, among other things, subject to the terms therein, the Financing Party will [*describe financing transaction*].

C. [If applicable: Pursuant to that certain Consent and Agreement (the "Consent Agreement") by and among LPC, Seller, and Financing Party dated as of [\_\_\_\_\_] , a copy of which is attached hereto as Exhibit B, LPC consented to a collateral assignment by the Seller to the Financing Party of all of Seller's right, title, and interest in, to and under the Assigned Agreement.]

#### AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and intending to be legally bound, the parties hereto hereby agree, as follows:

#### SECTION 1. REPRESENTATIONS AND WARRANTIES

LPC hereby represents and warrants that:

(a) each of the representations and warranties of LPC as set forth in Article XV of the Assigned Agreement are true and correct as of the Effective Date of this Agreement;

(b) the execution, delivery and performance by LPC of this Agreement has been duly authorized by all necessary corporate or other action on the part of LPC and does not require any approvals, filings with, or consents of any entity or person which have not previously been obtained or made;

(c) the Assigned Agreement is in full force and effect;

(d) to LPC's knowledge no default has occurred and is continuing under the Assigned Agreement, and to LPC's knowledge there are no disputes or legal proceedings regarding the Assigned Agreement between LPC on the one hand and Seller on the other hand;

(e) no amounts are currently due from Seller to LPC under the Assigned Agreement and LPC is not aware of any existing claims for payment by LPC against Seller of any nature under the Assigned Agreement;

(f) LPC is not aware of any event, act, circumstance or condition constituting a Force Majeure Event under the Assigned Agreement, and LPC has not received any notice from the Seller that the Seller is unable to perform its obligations to LPC under the Assigned Agreement due to a Force Majeure Event;

(g) to date and to LPC's knowledge, the Seller has observed and performed all of the terms, covenants and conditions on its part to be observed and performed under the Assigned Agreement; and

(h) attached hereto as Exhibit A is a true, correct, and complete copy of the Assigned Agreement, including all amendments, modifications, supplements and waivers with respect to the Assigned Agreement as of the Effective Date of this Agreement.

## SECTION 2. LPC ACKNOWLEDGMENTS.

LPC acknowledges that:

(a) all Performance Assurance requirements of the Seller required under the Assigned Agreement as of the Effective Date of this Agreement have been satisfied and are currently maintained in [FORM OF PERFORMANCE ASSURANCE: CASH OR LETTER OF CREDIT];

(b) a Notice to Proceed was issued on [\_\_\_\_], as such term is defined in Article III of the Assigned Agreement;

(c) the Seller has satisfied all requirements under the Assigned Agreement to start delivering Energy Output; and

(d) the Initial Delivery Date occurred on [\_\_\_\_], as such term is defined in Article III of the Assigned Agreement.

## SECTION 3. AMENDMENT

This Agreement may be modified only by a writing that is signed by all parties hereof. This Agreement does not amend or modify the Assigned Agreement in any way; nor does providing same waive, impair, or prejudice any rights or remedies of LPC thereunder.

SECTION 4. SEVERABILITY

If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all other provisions of this Agreement will remain in full force and effect.

SECTION 5. GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE, WITHOUT REGARD FOR TENNESSEE'S CHOICE OF LAW PROVISIONS. JURISDICTION AND VENUE FOR ANY SUCH DISPUTES WILL LIE IN THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE.

SECTION 6. COUNTERPARTS

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

KNOXVILLE UTILITIES BOARD

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

Name: \_\_\_\_\_

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

**Exhibit A**  
**Assigned Agreement**

[Attached.]



**EXHIBIT K**  
**CURRENT TVA GUIDELINES**

See attached.

**Draft- Not for Execution**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**TENNESSEE VALLEY AUTHORITY**

**And**

**DISTRIBUTOR**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**TENNESSEE VALLEY AUTHORITY**

**And**

**DISTRIBUTOR**

---

THIS AGREEMENT, is made and entered into this \_\_\_ day of MONTH, YEAR ("Effective Date"), by and between TENNESSEE VALLEY AUTHORITY, a corporate agency and instrumentality of the United States of America created by and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended, hereinafter called "TVA," and DISTRIBUTOR, hereinafter called "Seller," collectively "the Parties," and each individually a "Party."

**RECITALS**

WHEREAS, TVA is engaged in the generation, transmission, and supply of electric power and energy in the Tennessee Valley region;

WHEREAS, Seller purchases its power requirements from TVA for resale under contract number TV-#####A, effective Month DD, YYYY, as amended ("Power Contract");

The parties entered into the Long-Term Agreement, Supplement XXX to the Power Contract, effective Month DD, YYYY ("LTA"), covering arrangements to increase the length of and strengthen the contractual relationship of the parties to help ensure the long-term success of the public power model;

WHEREAS the parties previously entered into a Power Supply Expanded Flexibility Agreement, Contract No. TV #####A, Supp. No. ###, effective Month DD, YYYY, as amended ("Expanded Flexibility Agreement"), to expand the opportunities under which Seller may deploy energy resources to produce its own power and further strengthen the public power model;

WHEREAS, pursuant to a power purchase agreement (the "Frontend PPA") entered into or to be entered into between Seller and [-----]("Developer"), Developer is developing a solar photovoltaic electric generation facility known as PROJECT NAME, located in COUNTY, STATE (the "Project") with a capacity as measured at the Delivery Point of up to TBD MW, to be interconnected at the INTERCONNECTION LOCATION;

WHEREAS, pursuant to the Frontend PPA, Seller will acquire from Developer all of the energy output and environmental attributes and other project attributes (as those terms are similarly defined in this Agreement) generated by the Project;

WHEREAS, Seller desires to sell to TVA, and TVA desires to purchase from Seller, the entire amount of Energy Output and Other Project Attributes from the Project, subject to the terms and conditions herein;

NOW, THEREFORE, in consideration of the promises and the representations, warranties, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:



## ARTICLE I: DEFINITIONS

1.1 "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.

1.2 "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. For the avoidance of doubt, Ancillary Services do not include Continuous Reactive Power Support.

1.3 "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, judicial, and other Governmental Authorities that legally apply in the particular situation in question.

1.4 "Bankrupt" means with respect to any Person, such Person (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.

1.5 "Business Day" means any day except a Saturday, Sunday, or a federal holiday observed by TVA. Such holidays currently are New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. CPT.

1.6 "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 Applicable Law and market rules or other transactional requirements applicable in the region where the Project is located. Capacity Attributes do not include any credits or certificates falling within the definition of Environmental Attributes.

1.7 "Cash" means money denominated in United States Dollars.

1.8 "Claiming Party" has the meaning set forth in Section 14.1.

1.9 "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 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 to have been reasonably obtained through good faith efforts in a competitive business environment. Commercially Reasonable efforts shall not generally require the payment of fees not otherwise contemplated under this Agreement.

nor the making of any material financial or other concessions as a condition to accomplishing the result contemplated.

1.10 "Continuous Reactive Power Support" or "CRPS" means the Ancillary Service described in, and provided by Developer to TVA in accordance with, the CRPS Agreement.

1.11 "Contract Price" has the meaning set forth in Section 4.5.

1.12 "Contract Output" (CO) is specified in Exhibit D-1.

1.13 "Costs" means, with respect to the Non-Defaulting Party: (a) brokerage fees, commissions, financing breakage fees, and other similar third-party transaction costs (including any related make-whole costs for early prepayment provisions payable to lenders, tax equity investors and other financing parties), and necessary expenses incurred by such Party in a Commercially Reasonable manner (i) as a result of the termination of this Agreement, or (ii) in entering into new arrangements that replace this Agreement, plus (b) all expenses or liabilities incurred in a Commercially Reasonable manner by, or imposed upon or claimed against the Non-Defaulting Party, in connection with the termination of this Agreement pursuant to Article VIII, or the specific Seller Event of Default described in Section 8.1.

1.14 "CPT" means Central Prevailing Time, meaning prevailing Standard Time or Daylight Saving Time in the Central Time Zone.

1.15 "CRPS Agreement" is defined in Section 3.4.

1.16 Reserved

1.17 "Curtailment" means any reduction in whole or in part of energy production at the Project to maintain transmission system reliability pursuant to the instruction or other directive made or issued by TVA, any other affected transmission service provider, or any other entity with authority to direct such a reduction of energy production.

1.18 "Defaulting Party" has the meaning set forth in Section 8.1.

1.19 "Delivery Period" means (a) in the case of the first such period (Year 1), the period commencing on the Initial Delivery Date and ending on the next December 31<sup>st</sup> that is at least 365 days later, (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 (each a "Full Contract Year"), 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.

1.20 "Delivery Point" is the point of transmission interconnection to the TVA system, as set forth in Exhibit D-1.

1.21 "Developer" has the meaning set forth in the recitals.

1.22 "Downgrade Event" means a reduction in the credit rating of a Qualified Bank.

1.23 "Early Termination Date" has the meaning set forth in Section 8.3.

1.24 "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

1.25 "Electric System" means the network of electric transmission or distribution facilities, equipment, and other devices owned and/or controlled by TVA to which the Project interconnects.



1.26 "Energy Output" means the amount of energy, generated by the Solar Asset and delivered to the Delivery Point from and after the Test Commencement Date, as metered by the Metering Equipment, net of parasitic or auxiliary load, and shall not exceed the Contract Output over any applicable metering interval.

1.27 "Environmental Agreement" means an agreement between TVA, Developer, and a consultant selected by Developer, regarding the completion of certain actions necessary to meet the requirements of Applicable Law relating to environmental and cultural resources that may be impacted by the Project.

1.28 "Environmental Attributes" means any and all aspects, credits, certificates, claims, characteristics, or benefits associated with the use of a quantity of energy generated by a renewable energy resource and that is capable of being measured, verified, or calculated. Environmental Attributes do not include: (a) federal, state, or local tax credits or other similar incentives; or (b) any avoided adverse wildlife or environmental impacts or avoided emissions of pollutants to the environment.

1.29 "Event of Default" has the meaning set forth in Section 8.1.

1.30 "Expected Initial Delivery Date" has the meaning set forth in Exhibit D-1.

1.31 "Force Majeure Event" means the following or similar (in nature and severity) event(s): act of God, act of civil or military authority, war, terrorist attacks, riot, insurrection, unusually severe weather, blockades, embargoes, sabotage, pandemics, or epidemics, in any of the foregoing cases, which: (i) are outside the control and without fault or negligence of a Party claiming that such event has occurred, and (ii) directly and actually cause delay(s) in or prevent a Party's performance or completion of critical work. Notwithstanding anything herein to the contrary, (i) a lack of or reduction in the amount of sunshine, (ii) economic hardship, (iii) any failure to secure or maintain permits, except to the extent caused by a separate Force Majeure Event, and (iv) inability to obtain or maintain any expected tax benefits are not (separately or together) Force Majeure Event(s).

1.32 "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), other than Project Maintenance or Force Majeure Event(s).

1.33 "Full Contract Year" has the meaning set forth in the definition of "Delivery Period."

1.34 "Gains" means with respect to a Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), that directly results 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 non-Affiliate 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, or 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.

1.35 "Good Utility Practice" means any of the practices, methods, and acts engaged in or adopted by a significant portion of the electric utility 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 utility industry.



1.36 "Governmental Authority" means any nation, government, state, or other political subdivision thereof, whether foreign or domestic, including any municipality, township, and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation, or any entity owned or controlled by any of the foregoing. The term "Governmental Authority" shall not include TVA, Seller, or Seller when acting in a non-governmental capacity.

1.37 "Governmental Charges" has the meaning set forth in Section 13.2.

1.38 "IDD Request" means a submission by Seller, together with any necessary materials and documentation, that show Seller meets the requirements under this Agreement to achieve IDD.

1.39 "Initial Delivery Date" or "IDD" means the first day following TVA's approval of notice from Seller that (i) all actions by Developer necessary to construct and operate the Project and generate the Contract Output have been taken; (ii) the Project is fully interconnected, integrated, and synchronized with the TVA transmission system in compliance with the terms of the Interconnection Agreement, and is capable of generating and delivering Energy Output to the Delivery Point in a consistent, safe, and reliable manner; and (iii) requirements under the Interconnection Agreement have been timely satisfied; provided that such date shall be no earlier than the Expected Initial Delivery Date and, subject to Section 3.3, no later than twelve (12) Months after the Expected Initial Delivery Date.

1.40 "Interconnection Agreement" means an agreement entered into between interconnection requestor and TVA to provide for the interconnection of the Project to TVA's electric system.

1.41 "kW" means kilowatt or kilowatts, alternating current.

1.42 "kWh" means kilowatt-hour or kilowatt-hours.

1.43 "Letter of Credit" means an irrevocable standby letter of credit from a Qualified Bank in substantially the form attached hereto as Attachment 1 to Exhibit A, naming TVA as the beneficiary.

1.44 "Losses" means with respect to a Non-Defaulting 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 non-Affiliate 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, or 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. If Seller loses or is required to recapture any tax benefits with respect to the Project because of a breach by TVA, Losses shall include, calculated on an after-tax basis, the amount of such lost or recaptured tax benefits.

1.45 "Material Credit Event" means any event that results in Seller's failure to meet the Performance Assurance Requirements. If Seller has provided or caused to be provided a Letter of Credit in satisfaction of its Performance Assurance Requirements, then any of the following shall be deemed to be a Material Credit Event: (a) a representation or warranty made by a Qualified Bank is false or misleading in any material respect at any point during the term of this Agreement with regard to the Qualified Bank's; (b) the failure of an obligation in any Letter of Credit made in connection with this Agreement and such failure is not remedied within ten (10) calendar days after written notice; (c) a Downgrade Event has occurred; (d) a Qualified Bank becomes Bankrupt or its ownership or control is assumed by the Federal Deposit Insurance Corporation; (e) the failure of the Letter of Credit to be in full force and effect or extended for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all of Seller's obligations under this Agreement without TVA's written consent; or (f)

the Qualified Bank repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Letter or Credit.

- 1.46 "Metering Equipment" has the meaning set forth in Section 5.1.
- 1.47 "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.
- 1.48 "Moody's" means Moody's Investors Service, Inc. or its successor.
- 1.49 "MVAR" means megavolt-ampere reactive.
- 1.50 "MW" means megawatt or megawatts, alternating current.
- 1.51 "MWh" means megawatt-hour or megawatt-hours.
- 1.52 "Non-Defaulting Party" has the meaning set forth in Section 8.3.
- 1.53 "Other Project Attributes" means, collectively, Capacity Attributes, and Ancillary Services.
- 1.54 "Parties" means both TVA and Seller.
- 1.55 "Party" means either TVA or Seller, as applicable.
- 1.56 "Performance Assurance" means collateral in the form of Cash or Letter(s) of Credit from Qualified Bank(s), in the amounts indicated in Exhibit A, which shall secure Seller's payment obligations under this Agreement.
- 1.57 "Performance Assurance Requirements" means Seller's provision and maintenance of the applicable Performance Assurance, or causing such Performance Assurance to be provided and maintained.
- 1.58 "Permit" means any permit, exemption, approval, license, consent, certification, authorization, concession, order, easement, or other right that is required by any applicable Governmental Authority to develop, construct, finance, operate, or maintain the Project or interconnection facilities or to generate or sell the Project electric output.
- 1.59 "Person" means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of legal entity.
- 1.60 "Product" means, on and after the Initial Delivery Date, any and all Energy Output, Capacity Attributes, and Ancillary Services.
- 1.61 "Project" means the Solar Asset and all related equipment, structures, electrical lines, and other facilities installed at the Site on Seller's or Developer's side of the point of interconnection under the Interconnection Agreement that is used for the production, control, delivery, or monitoring of electric energy described in Exhibit D-1.
- 1.62 "Project Maintenance" means Seller's or Developer's planned partial or complete reduction of the Project's generating capability for routine maintenance purposes.
- 1.63 "Proper Invoice" means a numbered and dated invoice with a detailed accounting of the amounts of any and all Energy Output delivered during the invoice period (if any), which states this TVA contract number, purchase order number, and contains the Contract Price for the Energy Output or Test



Energy Price for Energy Output from the Project (as applicable), and a brief statement of payment terms, consistent with this Agreement, and other details and supporting documentation, as required by this Agreement.

1.64 "Qualified Bank" means a U.S. commercial bank or a U.S. branch of a foreign bank, 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).

1.65 "Settlement Amount" has the meaning set forth in Section 8.3.

1.66 "Site" means the land on which the Project is located, as more specifically described in Exhibit D-2.

1.67 "Solar Asset" means the photovoltaic solar generating facility to be located at the Site with a total installed capacity, as further described in Exhibit D-1.

1.68 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.69 "Term" has the meaning set forth in Article II.

1.70 "Termination Payment" has the meaning set forth in Section 8.3.

1.71 "Test Commencement Date" means the date prior to the Expected Initial Delivery Date upon which the Project has been interconnected to TVA's electric system and Seller is permitted to test the Project.

1.72 "Test Energy" means Energy Output that is delivered to the Delivery Point prior to the Initial Delivery Date.

1.73 "Test Energy Price" shall be set forth in the Test Power Agreement.

1.74 "Test Power Agreement" means an agreement entered into among TVA, Seller, and Developer with respect to the testing of the Project in accordance with TVA's commissioning requirements and the sale of Test Energy from Developer to Seller and Seller's subsequent delivery of Test Energy to TVA.

1.75 "TVA Power Service Area" means the area served at retail by either TVA or distributors of TVA power in conformity with section 15d(a) of the TVA Act, as amended, 16 U.S.C. § 831n-4(a).

1.76 "Frontend PPA" has the meaning set forth in the recitals.

## ARTICLE II: TERM

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated or extended in accordance with the provisions of this Agreement, shall remain in full force and effect until the earlier of: (a) twenty years from the Effective Date; provided however, that on each anniversary of the Effective Date, this twenty year period will be extended automatically without further action of the parties for an additional one (1) year if, as of each such anniversary, the Power Contract remains in effect; or (b) the termination or expiration of the initial term of the Frontend PPA, except that if Seller exercises one or more options to purchase the Project pursuant to the Frontend PPA or otherwise acquires ownership of the Project, then notwithstanding the termination of the Frontend PPA as a result of such acquisition, this Agreement shall not terminate pursuant to this provision (b) but instead shall remain in full force and effect on the same terms and conditions as applied immediately prior to the termination of the Frontend



PPA for the balance of the initial term of the Frontend PPA as if the Frontend PPA had remained in full force and effect.

### ARTICLE III: THE PROJECT

#### Section 3.1 Project Milestones and Start of Construction.

(a) The Project Development Milestone Schedule, attached to this Agreement as Exhibit E, sets forth a detailed development plan for the Project, outlining each significant activity in the Project development process and providing a projected completion date for each step in the Project schedule. Throughout the development of the Project, Seller shall provide TVA, on or before the tenth (10<sup>th</sup>) day of each Month, written updates of progress made toward completion of the milestones set forth in Exhibit E. The information provided shall be in a format designated by TVA. Unless otherwise specified by TVA, each monthly report must include a schedule update reporting current Project details as available including but not limited to all developments and impacts relating to real estate, permitting, engineering, deliveries, construction, and contract performance, along with mitigation and action plans for making up any delays. Seller shall provide TVA with Site access for reasonable review of the Project's construction and site preparation activities.

(b) TVA will not be responsible under this Agreement for any costs or expenses (including overheads and administrative costs) or risks incurred in connection with the design, construction, installation, operation, or maintenance of any interconnection facilities up to the Delivery Point

(c) Within thirty (30) days of the Effective Date, Seller shall provide a copy to TVA of the Frontend PPA, and in producing a copy of the Frontend PPA, Seller may redact pricing information from the copy that it provides to TVA.

(d) Seller shall require Developer to provide to TVA, within sixty (60) days of the Effective Date, the Environmental Agreement executed by Developer and an environmental consultant selected by Developer. The environmental consultant and the form of the Environmental Agreement must be reasonably acceptable to TVA.

(e) Seller shall ensure that no Prohibited Land Activity (as hereinafter defined) is conducted at the Site for a period beginning on the Effective Date and continuing until TVA has provided written notice to Seller and Developer that TVA's environmental reviews of the Project have been satisfactorily completed ("Notice of Environmental Review Completion"). "Prohibited Land Activity" means any natural resource disturbing activities, including tree clearing, earth moving, grading, or excavating taken by Developer, property owner, or others, but excluding any activities that TVA determines in writing to be consistent with existing land use practices which Seller or Developer is able to document to TVA's satisfaction. Seller's failure to comply with this paragraph may, in TVA's reasonable discretion, cause that portion of the Project site to which such failure relates to be excluded from the Project.

Section 3.2 IDD Request. Seller shall submit an IDD Request to TVA when Seller determines that it has met the requirements under this Agreement to achieve the Initial Delivery Date. Seller's IDD Request must include any necessary supporting documentation and materials. Upon receipt of the IDD Request, TVA shall make its determination with regard to Seller achieving IDD. If Seller has not met the requirements for IDD, TVA may, in its sole discretion, exercise the remedy stated in Section 3.3. Upon any such exercise, Seller will have no further recourse against TVA; provided that (1) TVA has provided Seller with written notice of its finding, and (2) Seller has failed to meet the requirements to achieve the Initial Delivery Date (and provide written notice and satisfactory supporting documentation to TVA) by the later of (i) sixty (60) days after receipt of written notice from TVA and (ii) the Expected Initial Delivery Date.



Section 3.3 Remedies. If Seller fails to comply with any of its obligations under Section 3.1 (following notice and an opportunity to cure under Section 8.1(c)) or fails to achieve the Initial Delivery Date no later than twelve (12) Months after the Expected Initial Delivery Date, then TVA may, in its sole discretion, terminate this Agreement; provided, however, that if Seller's failure to achieve the Initial Delivery Date is caused primarily by (i) TVA's failure to take actions prerequisite to Developer's satisfaction of notice to proceed conditions under the Frontend PPA; (ii) TVA's failure to complete construction of interconnection facilities, other than a failure caused by a Force Majeure Event (in which case the provisions of Section 14.1 would apply); or (iii) a material modification in TVA's modeling or commissioning requirements applicable to the Project from the modeling or commissioning requirements in effect at the time TVA provides the Notice of Environmental Review Completion (assuming TVA's environmental reviews support issuance of the notice), Seller shall be entitled to a corresponding day-for-day extension of the Expected Initial Delivery Date.

Section 3.4 Frontend PPA. Seller agrees that:

- (a) It has entered into, or will enter into within thirty (30) days of the Effective Date, the Frontend PPA with Developer, and
- (b) The Frontend PPA will have an initial term of not longer than thirty (30) years from the Initial Delivery Date and includes, or will include:
  - (i) provisions that ensure Seller is able to fulfill its obligations under this Agreement, including the obligations to provide TVA with Product, Energy Output, Contract Output, Capacity Attributes, and Ancillary Services, and obligations relating to the Initial Delivery Date, metering, and the implementation of Curtailment instructions from TVA,
  - (ii) Provisions requiring the Developer to execute an agreement with TVA for the provision of CRPS from Developer to TVA, in a form satisfactory to TVA in its reasonable discretion ("CRPS Agreement"), prior to Seller submitting an IDD Request to TVA,
  - (iii) The provisions set forth in Exhibit C-1 to require the Developer to follow certain requirements under TVA's Flexibility Program Guidelines ("Guidelines") in effect as of the Effective Date (a copy of which is attached as Exhibit C-2), and a statement providing that the applicable requirements of the Guidelines control in the event of a conflict between the Frontend PPA and the Guidelines,
  - (iii) provisions that require the transfer of all Environmental Attributes to the Seller in accordance with the Guidelines, and
  - (iv) the provisions set forth below:
    - A. Forced Labor. In connection with the project that is the subject of this Agreement, [Developer Name] will comply, and will use Commercially Reasonable efforts to cause each of its subcontractors and vendors to comply, with the requirements of the Uyghur Forced Labor Prevention Act (2021), as amended, including all related Applicable Laws. Seller will ensure that all equipment purchased for use in the Project will clear United States Customs.
    - B. Legally Required Clauses. The provisions set forth in Exhibit C-3 to this Agreement.
- (c) Upon TVA's request, Seller agrees to undertake Commercially Reasonable efforts to enforce any of the Frontend PPA provisions required under this Section 3.4.
- (d) Seller's inclusion in the Frontend PPA of the provisions described in subsections (b)(iii) and (iv) immediately above, TVA's approval of the Initiation Notice Form for the Project, and Seller's compliance with the obligations set forth in subsection (c), immediately above, shall fully satisfy Seller's obligations under the Guidelines and the Power Supply Flexibility Agreement to incorporate terms into the Frontend PPA.

A failure of Seller to comply with its obligations under this Section 3.4 will constitute a failure to perform a material obligation under Section 8.1(c).



**ARTICLE IV: ENERGY OUTPUT,  
OTHER PROJECT ATTRIBUTES, AND PRICING**

Section 4.1 Energy Output. Commencing on the Test Commencement Date and continuing through the end of the Term, Seller shall sell and deliver to TVA, and TVA shall purchase and receive from Seller, any and all right, title, and interest in and to the Energy Output at the Delivery Point. Energy Output shall be deemed made available to TVA for billing and payment purposes under Section 4.5 and Article X in the Month in which Energy Output is made available at the Delivery Point.

Section 4.2 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 Project.

Section 4.3 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 all Ancillary Services available with respect to the Project. Ancillary Services shall include the provision of primary frequency response with a maximum 5 percent droop and  $\pm 0.036$  Hz deadband. Seller's provision of Ancillary Services, including Continuous Reactive Power Support, shall be at no additional cost to TVA.

Section 4.4 Pricing.

(a) In consideration for the Product, TVA shall pay Seller the applicable Contract Price for each hour that Seller (a) provides Energy Output from the Project, or (b) is economically curtailed by TVA as described in Section 7.2. The price payable shall be equal to \$55.55/MWh plus the Standard Service Total Monthly Fuel Cost, as set forth in the fuel cost adjustment Statement of Amounts, for the corresponding payment month (the "Contract Price").

(b) In consideration of the Test Energy, TVA shall pay Seller the applicable hourly Test Energy Price for each hour that the Project delivers Test Energy pursuant to the Test Power Agreement.

(c) TVA shall adjust the Contract Price consistent with adjustments, increase or decrease, to Standard Service Wholesale rate changes and adjustments. TVA will make any such adjustment by delivering written notice to Seller referencing this subsection and setting forth the new Contract Price and the effective date for the Contract Price change.

(d) In the event Seller serves TVA notice of intent to terminate the Power Contract or causes the expiration without renewal or extension of the Power Contract, the Contract Price paid to Seller under this Agreement in such event shall be the Dispersed Power Providers (DPP) rate paid by TVA under its Dispersed Power Providers program or a successor program, and any associated DPP guidelines and price schedules; provided, however, that the following occurrences will not result in a change to the Contract Price under this Section 4.4(d): (i) if notice of intent to terminate the Power Contract is given by Seller due to TVA default, or (ii) if the Power Contract is terminated by Seller due to a TVA default thereunder that is not cured within any applicable cure period.

(e) Notwithstanding provision (a) of Article II or subsection (d), immediately above, in the event that Seller makes a permitted assignment in accordance with Section 10.2(b), below, this Agreement shall continue in full force and effect and the Valley Partner-assignee(s) shall continue to receive compensation for Energy Output in accordance with subsections (a) through (c) above.



## ARTICLE V: METERING AND ATTESTATION

Section 5.1 Metering Arrangements. Seller, or at TVA's discretion, Developer or an agent of Seller, shall enter into separate contractual arrangements with TVA, as the case may be, for the installation, operation, maintenance, and reading of the metering and related facilities ("Metering Equipment"). The Metering Equipment shall be used to determine the amount of energy delivered to and purchased by TVA at the Delivery Point under this Agreement.

Section 5.2 Meter Testing. These separate arrangements shall provide for TVA 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, fast or slow, as set forth under the separate arrangements, no adjustment shall be made to the payments submitted by TVA to Seller pursuant to Section 9.2. In case any tests show the meter(s) to exceed the acceptable threshold, fast or slow, adjustments shall be made to the payments submitted by TVA to Seller pursuant to Section 9.2 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 Attestations. Upon TVA's request, Seller shall provide or cause Developer to provide, at no cost to TVA, routine and non-routine attestations and other verifications of the delivery of any or all of the Energy Output and Other Project Attributes from the Project to demonstrate performance under this Agreement.

Section 5.4 Automatic Generation Control. Seller shall require Developer to install, at no cost to TVA and by no later than the Expected Initial Delivery Date, an automatic generation control (AGC) system for the Project in accordance with TVA's specifications and direction. Any disconnection or Curtailment will be administered through TVA's energy management system or in a manner otherwise acceptable to TVA.

## ARTICLE VI: MAINTENANCE AND OUTAGES

Section 6.1 Scheduled Outages. Seller shall provide, or cause to be provided, to TVA a 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 schedule for Project Maintenance no later than each subsequent December 1st, applicable to the following calendar year. To the extent practicable, Project Maintenance will be scheduled during the Months of October, November, March, and April, or during non-daylight hours.

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 of such Forced Project Outage. Each such notice shall set forth, to the extent of Seller's knowledge and judgment, 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 event and prevent similar future events.

Section 6.3 Project Description and Characteristics. Exhibit D-1 provides a detailed description of the Project. Exhibit D-2 provides additional information with respect to major equipment and components expected to make up the Project. Seller shall provide advance written notice to TVA at the earliest practicable time of any proposed changes to Exhibit D-1. Seller shall also provide advance written notice to TVA at the earliest practical time regarding any proposed changes to equipment that may alter generation capabilities other than capacity or items set forth in Exhibit D-1. Seller shall also periodically report to TVA any changes to Exhibit D-2.



## ARTICLE VII: DISCONNECTION OR CURTAILMENT

Section 7.1 Disconnection of Project or Curtailment of Deliveries. In order to remain consistent with Good Utility Practice or compliant with Applicable Law, TVA may require Seller: (1) to effect a Curtailment of deliveries from the Project or (2) to temporarily disconnect the Project from the TVA transmission system, 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, Seller's transmission system, or another system:

- (a) if a condition exists that presents an imminent physical threat to persons or property and disconnection or Curtailment appears necessary to protect such persons or property; or
- (b) to overcome transmission or distribution system reliability problems; or
- (c) 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 Seller's transmission system; or
- (d) as permitted under any other express provisions of this Agreement that provide for any such disconnection or Curtailment.

Section 7.2 Economic Curtailment. Notwithstanding the foregoing, TVA shall have the right to curtail Project energy based on TVA power system cost in order to effectively manage the economics of the overall TVA power system. For any Month in which TVA has curtailed the Project for economic reasons, TVA shall pay Seller, in addition to amounts otherwise due, an amount equal to the Contract Price multiplied by the estimated amount of such curtailed energy. The Parties shall estimate the expected amount of such economically curtailed energy that would have been generated but for the curtailment, in a Commercially Reasonable manner, consistent with Good Utility Practice, based on measured solar irradiance for each hour during the economic curtailment period.

## ARTICLE VIII: DEFAULT; EARLY TERMINATION; REMEDIES

Section 8.1 Events of Default. An "Event of Default" means, with respect to a Party or Seller (including an Affiliate of Seller), as specified (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, including a failure to pay liquidated damages, if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the other Party;
- (b) any representation or warranty made by such Party in Section 13.1 is false or misleading in any material respect as of the Effective Date, or with regard to the representations and warranties set forth in Section 13.1(a) through (d), at any time during the Term;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent addressed as 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 upon) if such failure is not remedied within thirty (30) calendar days after written notice from the other Party; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party may have up to an additional fifteen (15) calendar days to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy and provides to the other Party a written action plan therefor;

(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;

(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) such 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;

(g) the Solar Asset at any time after the Initial Delivery Date fails to generate and deliver electric power and energy exclusively from solar energy by means of monocrystalline panels, polycrystalline panels, or thin film cells;

(h) Seller's failure to deliver any Other Project Attributes associated with the Project; or

(i) Developer breaches or causes an event of default under the Interconnection Agreement, the Environmental Agreement, or any other written agreement between Developer and TVA that is necessary for TVA to receive Energy Output or CRPS (each a "Developer Agreement") and such event of default is not cured by the time provided in said agreement.

Notwithstanding the provisions of subsection (i), in the event that Developer breaches or causes an event of default under a Developer Agreement (each, a "Developer Default"), such occurrence shall not become an Event of Default unless TVA serves a copy of any written notice of such Developer Default on Seller. Notwithstanding anything to the contrary in this Agreement or in the relevant Developer Agreement, Seller shall have the right to cure, or cause to be cured, the Developer Default at any time within thirty (30) days after Seller receives notice of such Developer Default from TVA, and if Seller determines that such Developer Default (other than a monetary Developer Default) cannot be cured within such thirty (30) day period, Seller shall have such further time to cure the Developer Default as is reasonably necessary so long as Seller promptly provides notice to TVA of its intent to cure and Seller proceeds with reasonable diligence to cure the Developer Default. Notwithstanding Seller's cure rights with regard to a Developer Default under this paragraph, TVA will continue to have the right to exercise remedies under the Developer Agreement other than termination of the Developer Agreement, including remedies related to safety, reliability, performance assurance, and suspension of performance.

#### Section 8.2 Remedies for an Event of Default.

(a) Subject to Article XII, Seller shall have the right, but not the obligation, to do one or more of the following upon the occurrence of, and after providing written notice to TVA of, TVA's Event of Default:

(i) suspend performance of its obligations under this Agreement, including withholding any payments due to TVA 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 8.3; or



(ii) declare an Early Termination Date and receive a Termination Payment from TVA.

(b) Subject to Article XII, TVA shall have the right, but not the obligation, to do one or more of the following upon the occurrence of, and after providing written notice to Seller of, Seller's Event of Default:

(i) suspend performance of its obligations under this Agreement, including withholding any payments due to Seller 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 8.3;

(ii) make a written request and draw upon the Performance Assurance that Seller provided to satisfy any and all payments due and amounts otherwise owing (including any liquidated damages) under this Agreement; or

(iii) declare an Early Termination Date and receive a Termination Payment from Seller.

The remedies set forth in this Section 8.2 shall constitute the Non-Defaulting Party's sole and exclusive remedies for an Event of Default.

Section 8.3 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party ("Non-Defaulting Party") may 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; provided that the Early Termination Date shall be no earlier than the date the Non-Defaulting Party notifies the Defaulting Party of the Early Termination Date and no later than twenty (20) calendar days after such notification of the Early Termination Date. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date, which Settlement Amount will then be considered due and owing. In making the calculation described in the foregoing sentence, the "Settlement Amount" means the Non-Defaulting Party's Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation and termination of this Agreement pursuant to this Section. The Non-Defaulting Party shall aggregate the Settlement Amount with all other amounts due to the Non-Defaulting Party under this Agreement so that all such amounts constitute a single liquidated amount (the "Termination Payment"). Notwithstanding the foregoing, Seller will not owe TVA a Termination Payment if the basis for TVA's declaration of an Early Termination Date is a breach under Section 8.1(i).

Section 8.4 Notice of Termination Payment Amount. 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 request for payment and a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after receiving a request for the same.

Section 8.5 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 ten (10) Business Days after 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 and extent of such dispute; provided, however, that if Seller is the Defaulting Party, Seller shall first ensure that TVA holds Performance Assurance in the form of Cash (whether through draws on any Letter of Credit held as Performance Assurance or otherwise) in an amount equal to the disputed portion of the Termination Payment.



## ARTICLE IX: BILLING AND PAYMENT

Section 9.1 Billing. Based on recorded meter data provided by the Metering Equipment installed per Section 5.1 ("Meter Readings"), and after receipt of a Proper Invoice TVA shall pay the Contract Price for the Energy Output and/or Test Energy Price for Energy Output from the Project (as applicable) to Seller each Month of the Term.

Section 9.2 Payment. Seller must provide a Proper Invoice to TVA based on said Meter Readings, within ten (10) Business Days following the Month of actual energy delivery. Unless Seller requests early payment as specified below, upon receipt of a Proper Invoice TVA shall promptly pay Seller within thirty five (35) calendar days or if the thirtieth fifth (35th) 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 designated by Seller.

Section 9.3 Early Payment. Seller may request early payment by stating such request both in a Proper Invoice and in an accompanying transmittal message (e.g., email). Upon receipt of such request for early payment, TVA shall apply a three (3) percent early payment discount to the total monthly invoice payment and shall promptly pay Seller within ten (10) calendar days or if the ten<sup>th</sup> (10th) calendar day is not a Business Day, then by the first Business Day following such calendar day.

Section 9.4 Invoice Submittal. Seller shall submit all invoices, including supporting documentation, electronically to TVA at SettlementsFA@tva.gov, solarprojects@tva.gov and AssetManagement@tva.gov.

Section 9.5 Netting. 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.

Section 9.6 Offset. If Seller is in breach of any requirement of this Agreement or any other agreement with TVA, TVA may withhold payments that may be due to Seller and may offset any costs incurred by TVA as a result of the breach, other damages, or monies owed to TVA against funds due Seller under this or any agreement that Seller has with TVA.

## ARTICLE X: PERFORMANCE ASSURANCE, ASSIGNMENT, AND PROJECT FINANCE

Section 10.1 Performance Assurance. Seller shall provide and maintain the Performance Assurance in compliance with Exhibit A, and consistent with the Long-Term Partner Benefit provision in 15.23, for the duration of the Term of this Agreement.

Section 10.2 Assignment.

(a) Except as otherwise expressly set forth in this Section, neither Party will assign this Agreement nor any of its rights or obligations hereunder (including any collateral assignment of its rights or interest in connection with any financing related to the construction, operation, or maintenance of the Project) without the prior, written consent of the other Party, which consent shall not be unreasonably withheld. Without such consent from TVA, Seller may assign, transfer, or pledge its interest in the revenues and payments to be made under this Agreement. Further, neither Party may, without the other Party's written consent, which shall not be unreasonably withheld, enter into any transaction or series of transactions in which a third party obtains more than a 50% controlling interest in the Party ("Change of Control"). In the event Seller's rights, interests, or obligations under this Agreement are assigned or assumed as a matter of law to an entity with which Seller is merged or consolidated ("Successor Seller"), any such assignment or assumption shall be contingent upon Seller and Successor Seller furnishing TVA



with adequate assurances that the Successor Seller is financially capable of performing Seller's obligations under this Agreement. No assignment, transfer, or pledge of Seller's or a Successor Seller's interests in the Agreement shall release the assignor, pledger, or transferor from any of its obligations under this Agreement to accrue prior to such assignment, transfer, or pledge. Except as stated above, either Party's purported assignment of this Agreement, in whole or in part, or a Change in Control, without the prior, written approval of the other Party is null and void.

(b) Notwithstanding the provisions of subsection (a), Seller may assign its interest in this Agreement to one or more assignees; provided that (i) each assignee is a "Valley Partner" that is eligible to purchase and sell such Energy Output in accordance with its own Power Supply Enhanced Flexibility Agreement with TVA, (ii) the assignee or group of assignees agree to assume all of Seller's obligations under this Agreement pursuant to an assignment and assumption agreement that is acceptable to TVA, in its reasonable discretion, (iii) Seller assigns to assignee(s), and assignee(s) assume, all of Seller's rights and obligations under the Frontend PPA and such assignment and assumption is allowed under the Frontend PPA or the Developer consents to such assignment and assumption, and (iv) TVA consents to the assignment, which consent may not be unreasonably withheld. Seller shall continue to be responsible for its obligations under this Agreement unless and until TVA consents to the assignment and releases Seller from its obligations under this Agreement.

(c) TVA shall, within 15 Business Days of written request from Seller, execute and deliver to Seller an estoppel certificate regarding this Agreement, such estoppel certificate to confirm (to the extent accurate) that this Agreement remains in force and effect (and identifying any amendments to the Agreement, if any), that to TVA's knowledge there are no defaults existing or alleged to exist under the Agreement, that to TVA's knowledge all obligations under the Agreement have been performed by the parties and are current (including payment obligations), and otherwise such estoppel certificate to be in a form and content as agreed upon between the parties.

## ARTICLE XI: LIMITATIONS

### Section 11.1 Limitations of Liability.

UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT OR CONTRACT, UNDER ANY PROVISION OF THIS AGREEMENT.

THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION ARE IMPOSED WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE.

### Section 11.2 Liquidated Damages.

WHERE THIS AGREEMENT SPECIFIES THAT SELLER WILL BE LIABLE, DUE TO SELLER FAILURE(S) OR ACTION(S), TO PAY TVA MONETARY DAMAGES IN CONNECTION WITH SUCH FAILURE(S) OR ACTION(S), THE PARTIES AGREE THAT THESE ARE LIQUIDATED DAMAGES, AND AS SUCH, THESE DAMAGES ARE: (A) REASONABLE APPROXIMATIONS OF AND STATE ADEQUATE REMEDIES FOR THE SUBJECT HARM OR LOSSES, (B) IN LIEU OF ACTUAL DAMAGES, WHICH WOULD BE DIFFICULT OR IMPOSSIBLE TO QUANTIFY, (C) NEITHER PENAL NOR PUNITIVE, AND (D) NOT SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 11.1.

## ARTICLE XII: GOVERNMENTAL CHARGES

Section 12.1 Cooperation. Each Party shall use Commercially Reasonable efforts to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

Section 12.2 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 Applicable Law 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 Applicable Law to remit or pay Governmental Charges that are Seller's responsibility hereunder, TVA may offset the amount of any such Governmental Charges against 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 Applicable 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 XIII: REPRESENTATIONS AND WARRANTIES

Section 13.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except those authorizations which Seller reasonably expects to receive in the ordinary course, e.g., those required to be obtained from or with the cooperation of TVA;
- (c) the execution, delivery, and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and are not inconsistent with any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Applicable Law;
- (d) 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;
- (e) 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;
- (f) there is not pending or, to its 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;
- (g) nothing which would constitute an 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;
- (h) 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;

(i) the parties intend for this Agreement to be a "forward contract" as defined in 11 U.S.C. § 101(25);

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

(k) with respect to 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; and

(l) it is an "eligible contract participant" within the meaning of the United States Commodity Exchange Act.

EXCEPT AS SET FORTH EXPLICITLY IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

#### ARTICLE XIV: FORCE MAJEURE

Section 14.1 Force Majeure Occurrence and Notice. To the extent that any Party is prevented by a Force Majeure Event from performing, in whole or in part, its obligations under this Agreement (other than the obligation to pay money) or from complying with, in whole or in part, requirements 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. In addition, any completion milestones or deadlines or time periods by which performance is due will be extended for a period of time equal to the time period during which such Force Majeure Event actually prevents the Claiming Party's performance. The Claiming Party shall use Commercially Reasonable efforts to remedy the Force Majeure Event and mitigate any adverse effects on the performance of its obligations under this Agreement. The Claiming Party shall promptly notify the other 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 other 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 will be relieved or excused by operation of this Article XIV 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 does not entirely prevent Seller from providing Energy Output and Other Project Attributes, then Seller shall provide Energy Output and Other Project Attributes not so prevented. 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 XV: MISCELLANEOUS

Section 15.1 Title. Delivery of any and all Energy Output and Other Project Attributes being purchased by TVA shall be deemed completed at the Delivery Point, and title to such Energy Output shall pass to TVA upon delivery thereto.

Section 15.2 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 15.3 Choice of Law. This Agreement shall be governed, construed and interpreted in accordance with the Federal laws of the United States of America.

Section 15.4 Exhibits Made Part of this Agreement. The Exhibits identified in, and attached to, this Agreement are made a part of this Agreement.

Section 15.5 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 any Permit or have financial responsibility for obtaining any Permit.

Section 15.6 Severability. In the event that any of the terms, covenants, or conditions of this Agreement, including 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 held invalid, the Parties shall negotiate a valid term, covenant, or condition as similar in effect 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 15.7 Integration. The terms and provisions contained in this Agreement between the Parties constitute the entire agreement between the Parties, and supersede all previous communications and representations, either oral or written, between the Parties with respect to the subject matter of this Agreement.

Section 15.8 Notices and Payments.

(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, by other nationally recognized delivery service, or by e-mail or facsimile transmission at the addresses provided set forth below:

If to TVA:

Tennessee Valley Authority  
1101 Market Street, MR 2C  
Chattanooga, TN 37402  
Attention: Director, Origination & Utility Scale Solar

Email: [AssetManagement@tva.gov](mailto:AssetManagement@tva.gov) and [solarprojects@tva.gov](mailto:solarprojects@tva.gov)

If to Seller:

PROJECT, LLC  
ADDRESS  
CITY, STATE, ZIP  
Attention:  
Phone:  
Email:

(b) Payments. All payments required to be made to TVA under this Agreement shall be made by Automated Clearing House (ACH) to the following account (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:

Depository Institution Name:



Address:  
ABA Routing Number:  
Receiving Company Name:  
DFI Account Number:  
Standard Entry Class:  
Transaction Code:  
Employer Identification No (EIN):

All payments required to be made to Seller under this Agreement shall be made by wire to:

Beneficiary Name:  
Beneficiary Address  
Intermediary Bank Name:  
Bank Address:  
Swift Code or ABA:  
Account Number:

Section 15.9 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. Nothing in this Section 15.9(b) shall diminish the rights of TVA's Office of the Inspector General to conduct any audit or inspection related to the Agreement.

(c) Upon at least ten (10) Business Days' prior written notice from TVA, and no more than once per Delivery Period, Seller shall make the Project, including records relating to its operations, maintenance, and warranty repairs, available to TVA for inspection during normal business hours.

Section 15.10 Dispute Resolution. Unless otherwise provided in this Agreement, the Parties agree to use their best efforts to resolve disputes related to this Agreement informally at the lowest possible levels of decision making. Disputes not resolved at the working level will be referred to higher levels of management of both Seller and TVA for consideration, as necessary, and resolution, if possible. Any legal or equitable action related to this Agreement shall be brought in the United States District Court for the Coo District of Tennessee and THE PARTIES HEREBY WAIVE: (a) ANY OBJECTION TO THAT COURT'S JURISDICTION OVER THEM, OR THAT VENUE IS PROPER IN SUCH COURT, and (b) ANY RIGHT TO A JURY TRIAL. This Section 17.10 is not a Disputes clause within the meaning of the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, and this Agreement is not subject to the provisions of such Act.

Section 15.11 Indemnity and Insurance.

(a) To the extent permitted under applicable law, Seller shall indemnify, defend, save, and hold harmless TVA and its directors, officers, employees, contractors, and agents from any and all claims for injury to persons or damage to property or the environment, including any adverse wildlife or environmental impacts, to the extent caused by: (i) Seller's negligent, reckless, or intentional acts or omissions in conducting activities within the scope of this Agreement, or (ii) Seller's failure to comply with Applicable Law or the specific environmental requirements concerning the Project that are set forth in the Notice of Environmental Review Completion. Seller is solely responsible for the risk of loss of, or damage to, the Project, Site, or adjacent properties, except to the extent that the loss or damage results from the reckless or intentional acts or omissions of TVA and its directors, officers, employees, contractors, or agent.

(b) Seller shall maintain or cause to be maintained the insurance required by Exhibit B. Failure of Seller to do so shall be deemed a failure to perform a material covenant or obligation set forth in Section 8.1(c).

Section 15.12 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 15.13 No Partnership or Agency. Nothing in this Agreement shall be treated as creating a partnership or joint venture between the Parties under Applicable Law 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 15.14 Costs and Expenses. Each Party shall bear and is responsible for its own costs (including attorney fees) in connection with the negotiation, preparation, execution, completion, implementation, and ongoing administration of this Agreement.

Section 15.15 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 15.16 Amendment. This Agreement may be amended, changed, modified, altered, extended, or terminated, provided that such amendment, change, modification, alteration, extension, or termination shall be in writing and signed by both Parties.

Section 15.17 Survival of Obligations. Except as specifically provided in this Agreement, cancellation, expiration, or early 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 15.18 Counterparts. This Agreement may be executed in two or more counterparts, each of which is signed by one of the Parties but all of which together shall constitute but one and the same agreement.



Section 15.19 Confidentiality.

(a) A Party may not disclose the terms of this Agreement or any confidential information provided hereunder that is conspicuously marked as confidential (together, "Confidential Information") to a third party except as follows (i) to the Party's parents, Affiliates, potential or existing investors, consultants, potential or existing lenders, counsel, counsel for potential or existing investors or lenders, or accountants, or specific Seller customers receiving the benefit of Environmental Attributes associated with the Project, or prospective assignees permitted pursuant to Section 10.2 to the extent required for the consideration of an assignment, that have agreed in writing to keep the Confidential Information confidential on terms no less restrictive than those set forth in this Section, (ii) to comply with Applicable Law, or (iii) with the other Party's prior written approval.

(b) A Party shall promptly notify the other Party if it is required by Applicable Law to disclose Confidential Information so that the Party that owns or controls the Confidential Information may take action to prevent or limit the scope of such required disclosure.

(c) The Parties acknowledge and agree that disclosure or unauthorized use of information described in this Section 15.19 could damage the other Party and that said other Party, therefore, has an interest in protecting that information by all legal means, and further that breach of the promises set forth above could cause irreparable damage to the Party possessing proprietary rights in Confidential Information wrongfully disclosed, and still further that in the event of such breach, said Party shall have the right to an injunction, specific performance, or other equitable relief to prevent the violation of the promises mentioned above. Under 18 U.S.C. Section 1905, officers and employees of TVA may be subject to criminal liability in the event Confidential Information is disclosed unless such disclosure is authorized by law. Accordingly, Seller agrees that, in addition to the equitable relief identified above, Seller shall only be entitled to recover from TVA, its officers, agents, and employees any and all gains wrongfully acquired, directly or indirectly, from unauthorized disclosure of any Confidential Information.

Section 15.20 Project Communications. Seller will, when communicating publicly about the Project and associated RECs, identify TVA (by name or through the use of the TVA logo) in promotional efforts and materials associated with the Project. Use of the TVA logo must follow TVA's logo use guidelines. If Seller intends to include language in addition to TVA's name and/or logo, Seller must provide such language to TVA in advance for approval. Seller will notify TVA of public events in advance to enable reasonable efforts to participate. For the avoidance of doubt, this Section 15.20 does not prohibit Seller or Developer from making any public statements about the Project as required in the ordinary course of development, construction, operations and maintenance activities, such as, by way of example, public hearings to obtain zoning variances or development permits.

Section 15.21 Project Collaboration. The Parties will endeavor to find mutually agreeable opportunities for education and research that benefit the Parties, and/or specific customers served by distributors of TVA power receiving the benefit of Environmental Attributes associated with the Project.

Section 15.22 Service Contract. Each Party intends this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

Section 15.23 Long Term Partnership Benefit. As long as the notice period to terminate the Power Contract remains at twenty (20) year and Seller has not provided notice to terminate the Power Contract, Seller will not be required to provide any Performance Assurance to TVA, including but not limited to Article X and Exhibit A.

Section 15.24. Replacement PPA. In the event that TVA offers or otherwise makes available an updated flexibility option power purchase agreement for TVA-interconnected projects to other distributors of TVA power that have executed a long-term agreement with TVA under substantially the same terms as the current LTA, TVA will provide Seller at least ninety (90) days to evaluate the updated flexibility option power purchase agreements and, if Seller desires to adopt that agreement in place of this Agreement,

TVA and Seller will engage in good faith discussions regarding the replacement of this Agreement with such substitute power purchase agreement and will endeavor to enter into such replacement power purchase agreement within a reasonable time after Seller notifies TVA that it desires to replace this Agreement.

[Signatures on following page]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

DISTRIBUTOR

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

Name: \_\_\_\_\_

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

TENNESSEE VALLEY AUTHORITY

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

Name: \_\_\_\_\_

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

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## EXHIBITS

Exhibit A	Credit Annex
Exhibit B	Insurance
Exhibit C-1	Provisions Relating to the Guidelines
Exhibit C-2	TVA's Flexibility Program Guidelines
Exhibit C-3	Legally Required Clauses
Exhibit D-1	Project Description
Exhibit D-2	Project Characteristics
Exhibit E	Project Development Milestone Schedule

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**EXHIBIT A**  
**CREDIT ANNEX**

Section 1      Amount of Performance Assurance and Notice of Material Credit Event

(a)      Performance Assurance. Seller shall provide and maintain throughout the Term of this Agreement or cause to be provided Performance Assurance as follows based on the Contract Output of the Project:

Milestone	\$/kW
Effective Date	\$85
The earlier of (i) TVA's issuance of Notice of Environmental Review Completion, (ii) the NTP Deadline under the Frontend PPA, or (iii) Developer's submittal to Seller of the NTP Request under the Frontend PPA	\$170
Initial Delivery Date	\$150
The tenth anniversary of the Initial Delivery Date	\$125

Performance Assurance for the Effective Date Milestone must be provided to TVA prior to TVA's signature of this Agreement. TVA will not be obligated to return Performance Assurance as of the Initial Delivery Date or tenth anniversary of the Initial Delivery Date unless Seller has first provided TVA with replacement Performance Assurance meeting the requirements of this Agreement.

For the purpose of determining the amount of the required Performance Assurance, the Contract Output of the Project will be rounded up to the nearest whole kW.

(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 ten (10) calendar days' notice of such event, then an Event of Default shall be deemed to have occurred pursuant to Section 9.1(c) of the Agreement to which this Exhibit A 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) permit TVA 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 TVA under the Agreement to which this Exhibit A is attached following the occurrence and during the continuation of an Event of Default; and
- (c) permit TVA to draw the entire "Available Amount" thereunder to hold as Cash collateral for any and all amounts owing to TVA under the Agreement to which this Exhibit A is attached if (i) the Letter of Credit will expire in fewer than forty-five (45) calendar days and (ii) the Seller has not provided TVA with alternative Performance Assurance.

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

(a) Election to Change Form of Performance Assurance. Seller 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 TVA shall cooperate with the Seller 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

(b) Return of Original Performance Assurance Documents. Without limitation to the generality of the foregoing, TVA shall return to the Seller all original Letter of Credit 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 Affiliate, 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 Affiliate. 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 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: Name  
Director, Corporate Credit & Insurance

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) (the "LC Amount"). 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 representative 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. Within five Business Days after payment of any draw of the letter of credit, we shall provide you with a new letter of credit in the LC Amount.

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 representative 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 following 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 representative 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 representative 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 B

### INSURANCE

A. Seller Insurance Coverages. Seller shall maintain or cause to be maintained the types of insurance coverages described in this Part A, provided that Seller shall be required to maintain the insurance coverages described in this Part A only to the extent that such coverages are available on Commercially Reasonable terms in the commercial insurance markets. All insurance coverages described herein shall be placed with Acceptable Insurance Companies. An "Acceptable Insurance Company" means an insurance company that, at the applicable time, is legally permitted to write the applicable insurance coverage and that (i) has a Credit Rating of A- or better from Standard & Poor's at such time or (ii) has an insurance company rating of A- or better from A.M. Best at such time.

1. Workers' Compensation Insurance. Seller shall maintain or cause to be maintained workers' compensation insurance in compliance with Applicable Law.

2. Commercial General Liability Insurance. Seller shall maintain or cause to be maintained commercial general liability insurance, including coverage for bodily injury, property damage, personal injury, death, premises/operations, explosion, collapse and underground hazards, broad form property damage and blanket contractual liability for written contracts, with primary coverage limits of not less than \$1,000,000 for injuries or death to one or more Persons or damage to Property per occurrence and an aggregate limit of not less than \$5,000,000.

3. Automobile Liability Insurance. Seller shall maintain or cause to be maintained automobile liability insurance for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law, with limits of not less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

4. All-Risk Property Insurance. Seller shall maintain or cause to be maintained all-risk property coverage for the Project with Commercially Reasonable limits, sub-limits and deductibles.

B. Seller Insurance General Terms. To the extent available on Commercially Reasonable terms in the commercial insurance markets:

1. Evidence of Coverage. Seller shall deliver to TVA certificates or other evidence of all insurance policies maintained (or caused to be maintained) by Seller within twenty (20) days after the Execution Date and each time thereafter when there is any renewal of such insurance policies.

2. Termination of Coverage. Seller shall provide TVA prior written notice of any cancellation or non-renewal of any insurance policy required to be maintained (or caused to be maintained) by Seller pursuant to this Exhibit B.

C. Self Insurance. Notwithstanding the foregoing, Seller may self-insure to meet the minimum insurance requirements of this Exhibit B to the extent it maintains a self-insurance program, provided that Seller's senior secured debt meets the ratings requirements applicable to a Qualified Bank and its self-insurance program meets the minimum insurance requirements of this Exhibit B. For any period of time that Seller's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, Seller shall comply with the insurance requirements applicable to it under this Exhibit B. In the event that Seller is permitted to self-insure pursuant to this section, it shall notify TVA that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in this Exhibit B.



## EXHIBIT C-1

### PROVISIONS RELATING TO THE GUIDELINES

In accordance with Section 3.4(b) of the Agreement, Seller will include the provisions set forth below (or substantially equivalent language) in the Frontend PPA:

(a) [Developer] is responsible, at its sole cost and expense, for complying with the following obligations of [Seller] under the TVA's Flexibility Program Guidelines that are in effect as of the effective date of this Agreement ("Guidelines"), a copy of which is attached as Exhibit C-2 to this Agreement:

(i) Participating in any "Facilities Study", "System Impact Study", "Transmission Screen" and providing any "Flexibility Device Kit," as each such term is defined in the Guidelines;

(ii) Complying with all "Interconnection Requirements", "Commissioning Requirements", "Modeling Requirements", and "TVA Operating Procedures" and related requirements, as such terms and requirements are specified in the Guidelines; provided, however, that the Interconnection Agreement and TVA's published interconnection procedures shall control all matters relating to the interconnection of the Project to the TVA Electric System;

(iii) Installing any protection equipment and taking any actions determined by TVA to be necessary to address any adverse impacts on TVA's transmission system that will be caused by the installation or operation of the Project, and reimbursing TVA for any equipment costs incurred by TVA in connection with addressing these transmission system impacts, all in accordance with TVA's published interconnection procedures and the Interconnection Agreement;

(iv) Reimbursing TVA for the costs of procuring and installing any TVA-owned meters that are required for the deployment and operation of the Project in accordance with TVA's "Metering Requirements" as such term is defined in the Guidelines;

(v) Providing such metering and communication devices for the Project as may be required by TVA to ensure its operational reliability under its operating guidelines, to provide TVA with unrestricted remote access to metering data at all times, and physical access to metering facilities for the purpose of confirming remotely accessed data, all in accordance with TVA's published interconnection procedures and the Interconnection Agreement;

(vi) Complying with TVA interconnection procedures and standards in effect at the time of interconnection; and

(vii) Executing any necessary agreements and other necessary documentation as TVA may require pursuant to the Guidelines relating to the metering, operation and maintenance of the Project.

Seller shall be responsible for fully discharging each of these obligations on behalf of DISTRIBUTOR.

(b) Notwithstanding any other provision in this Agreement to the contrary, in the event of a conflict between the terms of this Agreement and the foregoing requirements under the Guidelines, the Guidelines will control as necessary to resolve the conflict, except (i) where the Guidelines incorporate by reference the Power Supply Expanded Flexibility Agreement or similar agreement between TVA and DISTRIBUTOR, and in which case this Agreement shall control over the Guidelines; and (ii) where such conflict relates to the interconnection or parallel operation of the Project, in which case TVA's published interconnection procedures and the Interconnection Agreement shall control.

EXHIBIT C-2

TVA'S FLEXIBILITY PROGRAM GUIDELINES



## EXHIBIT C-3

### LEGALLY REQUIRED CLAUSES

The Parties shall comply with all Applicable Law. To the extent required by Applicable Law, the following clauses shall apply to the Parties' performance of the Agreement to which this Exhibit C is attached. References in this Exhibit C to "contract" refer to the Agreement to which Exhibit C is attached.

#### AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY

To the extent applicable, this 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 the "Certification for Contracts, Grants, Loans, and Cooperative Agreements," set forth below ("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.

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 D-1

### PROJECT DESCRIPTION

The Project comprises the Solar Asset and associated equipment and facilities, together known as PROJECT NAME, located in COUNTY, STATE, including the real property, fixtures, and land rights associated with the facility. The coordinate location of the Project is: Latit<sup>o</sup>de x°x'x" and Longitude: x°x'x".

The Solar Asset is a TBD MW solar photovoltaic generating facility.

The Solar Asset at all times will generate and deliver electric power and energy exclusively from solar energy by means of monocrystalline panels, polycrystalline panels, or thin film cells, which may be either ground- or structure-mounted. Unless approved in advance by TVA in writing, the Solar Asset will not generate or deliver electric power or energy by means of non-solar generation technologies.

The Project will be interconnected at the "Delivery Point," which is DESCRIPTION OF INTERCONNECTION LOCATION.

The Contract Output will be TBD MW. Whether the Project satisfies the Contract Output requirement will be determined by measuring the maximum instantaneous AC power output of the Project, using the Metering Equipment, at the high side of the Delivery Point transformer, net of any station service and transmission and distribution losses.

The NTP Deadline is MONTH, DAY, YEAR *[date will be at minimum twelve months earlier than the Expected Initial Delivery Date, unless otherwise agreed to by the Parties]*

The Expected Initial Delivery Date is MONTH, DAY, YEAR.

EXHIBIT D-2

PROJECT CHARACTERISTICS

[Include a general description of the Solar Asset's panels and inverters and the Project configuration.]

PROJECT LAYOUT

[Include a diagram or plat of the real property on which the Project will be situated, showing site boundaries, planned locations of key Project equipment and components, etc.]

EXHIBIT E

PROJECT DEVELOPMENT MILESTONE SCHEDULE

<b>Milestone Description</b>	<b>Milestone Date</b>
Completed and executed all Interconnection Studies, including System Impact Study and Facility Study	DATE
Executed all land options/fee purchase agreements to have sufficient control of the land to construct or cause to be constructed any facilities on the project site	DATE
Acquired all local, state, and federal required permits and regulatory approvals to construct the facility	DATE
Initiate all applicable NEPA, state, and local Environmental Permitting and Approvals	DATE
Provide, in P6 or other industry accepted schedule format, Engineering/Design schedule	DATE
Engineering/Design Start	DATE
All applicable NEPA, state, and local Environmental Permitting and Approvals are completed	DATE
All RFPs for major material acquisition, to include, but not limited to main power transformer, solar panels, inverters, racking and associated systems, tracking systems, and pilings have been issued	DATE
EPC contract(s) is executed	DATE
Engineering/Design finish (100% design)	DATE
Provide in P6 or other industry accepted schedule format, detailed construction schedule	DATE
Construction start	DATE
Provide dates that major materials, including, but not limited to, switch house, transformers, solar panels, inverters, racking and associated systems, tracking systems, and piling	DATE
Ready for backfeed	DATE
Provide, in P6 or other industry accepted schedule format, the schedule for all commissioning requirements and testing, to include all requirements contained in TVA's OASIS commissioning requirements: <a href="https://www.oasis.oati.com/woa/docs/TVA/TVAdocs/Interconnection_-">https://www.oasis.oati.com/woa/docs/TVA/TVAdocs/Interconnection_-</a>	DATE



\_Commissioning\_Checklist\_and\_Guidelines\_-\_v0.pdf

Commissioning and testing start

DATE

Expected Initial Delivery Date

DATE

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