

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

T ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 30, 2012

OR

o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-34166

**SunPower Corporation**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**94-3008969**

(I.R.S. Employer Identification No.)

**77 Rio Robles, San Jose, California 95134**

(Address of Principal Executive Offices and Zip Code)

**(408) 240-5500**

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock \$0.001 par value	Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act:

**None**  
**(Title of Class)**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒ T

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 of Section 15(d) of the Act. Yes ☐ No ☒ x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ T No ☐ o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ T No ☐ o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐ o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ o

Accelerated filer ☒ x

Non-accelerated filer ☐ o

Smaller reporting company ☐ o

(Do not check if a smaller reporting  
company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ o No ☒ T

The aggregate market value of the voting stock held by non-affiliates of the registrant on July 1, 2012 was \$191.5 million. Such aggregate market value was computed by reference to the closing price of the common stock as reported on the Nasdaq Global Select Market on June 29, 2012. For purposes of determining this amount only, the registrant has defined affiliates as including Total Gas & Power USA, SAS and the executive officers and directors of registrant on June 29, 2012.

The total number of outstanding shares of the registrant's common stock as of February 15, 2013 was 119,269,194.

**DOCUMENTS INCORPORATED BY REFERENCE**

Parts of the registrant's definitive proxy statement for the registrant's 2013 annual meeting of stockholders are incorporated by reference in Items 10, 11, 12, 13, and 14 of Part III of this Annual Report on Form 10-K.

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## **Trademarks**

The following terms, among others, are our trademarks and may be used in this report: SunPower®, Maxeon®, Oasis®, PowerLight®, and Tenesol®. Other trademarks appearing in this report are the property of their respective owners.

## **Unit of Power**

When referring to our facilities' manufacturing capacity, total sales and components sales, the unit of electricity in watts for kilowatts ("KW"), megawatts ("MW"), and gigawatts ("GW") is direct current ("dc"). When referring to our solar power systems, the unit of electricity in watts for KW, MW, and GW is alternating current ("ac").

## **Levelized Cost of Energy ("LCOE")**

The LCOE equation is an evaluation of the life-cycle energy cost and life-cycle energy production of an energy producing system. It allows alternative technologies to be compared when different scales of operation, investment or operating time periods exist. It captures capital costs and ongoing system-related costs, along with the amount of electricity produced, and converts them into a common metric. Key drivers for LCOE reduction for photovoltaic products include panel efficiency, capacity factors, reliable system performance, and the life of the system.

## **Cautionary Statement Regarding Forward-Looking Statements**

*This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "potential," "will," "would," "should," and similar expressions to identify forward-looking statements. Forward-looking statements in this Annual Report on Form 10-K include, but are not limited to, our plans and expectations regarding future financial results, expected operating results, business strategies, projected costs and cost reduction, products, ability to monetize utility projects, competitive positions, management's plans and objectives for future operations, the sufficiency of our cash and our liquidity, our ability to obtain financing, the availability of credit and liquidity support from Total S.A., the ability to comply with debt covenants or cure any defaults, trends in average selling prices, the success of our joint ventures and acquisitions, expected capital expenditures, warranty matters, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions, industry trends, impact of changes in government incentives, expected restructuring charges, and the likelihood of any impairment of project assets and long-lived assets. These forward-looking statements are based on information available to us as of the date of this Annual Report on Form 10-K and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Please see "Part I. Item 1A: Risk Factors" herein and our other filings with the Securities and Exchange Commission ("SEC") for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.*

*The following information should be read in conjunction with the Consolidated Financial Statements and the accompanying Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K. Our fiscal year ends on the Sunday closest to the end of the applicable calendar year. All references to fiscal periods apply to our fiscal quarter or year which ends on the Sunday closest to the calendar month end.*

## PART I

### ITEM 1: BUSINESS

#### Corporate History

We were originally incorporated in California in 1985 and subsequently reincorporated in Delaware during 2005 in connection with our initial public offering. In November 2011, our stockholders approved the reclassification of all outstanding former class A common stock and class B common stock into a single class of common stock listed on the Nasdaq Global Select Market under the symbol "SPWR". In June 2011, we became a subsidiary of Total Gas & Power USA, SAS ("Total"), a subsidiary of Total S.A. ("Total S.A."). Total acquired 60% of our former class A and class B common stock as of June 13, 2011. In January 2012, we entered into an additional agreement with Total to sell shares of our common stock, thereby increasing Total's ownership to approximately 66% of our outstanding common stock.

#### Company Overview

We are a vertically integrated solar products and solutions company that designs, manufactures and delivers high-performance solar systems worldwide, serving as a one-stop shop for residential, commercial, and utility-scale power plant customers. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity. These high efficiency cells are then utilized in our array of high reliability SunPower products.

We believe that there are several factors that set us apart when compared with various competitors:

- Go-to-market platform that is broad and deep with our more than eight years in rooftop and ground mount channels, including turn-key systems:
  - High performance delivered by enhancing energy delivery and financial return through systems technology design;
  - Cutting edge systems designed to meet customer needs and reduce cost, including non-penetrating, fast roof installation technologies; and
  - Expanded reach has been enhanced by Total S.A.'s long-established presence in many countries where significant solar goals are being established;
- Technology advantage which includes being the only solar company manufacturing back-contact, back-junction technology. Our modules produce more electricity, last longer and degrade much less:
  - Superior performance, including the ability to generate up to 50% more power per unit area than conventional solar cells;
  - Superior aesthetics, with our uniformly black surface design that eliminates highly visible reflective grid lines and metal interconnect ribbons;
  - Superior reliability, as confirmed by multiple independent reports and internal reliability data;
  - Superior energy production per rated watt of power as confirmed by multiple independent reports;
  - More KW per pound can be transported using less packaging, resulting in lower distribution costs; and
  - More efficient use of silicon, a key raw material used in the manufacture of solar cells;
- Costs that are decreasing faster and more steadily with an aggressive but we believe achievable cost reduction plan and value that benefits all customers:
  - We offer a significantly lower area-related cost structure for our customers because our solar panels require a substantially smaller roof or land area than conventional solar technology and half or less of the roof or land area of many commercial solar thin film technologies;

- Through our leasing program, customers can get high efficiency solar products for no money down at competitive energy rates; and
  - Solar power systems designed to generate electricity over a system life typically exceeding 25 years
- Strong balance sheet backed by Total S.A. that gives us an advantage in today's challenging environment.

## Segments Overview

In December 2011, we announced a reorganization to align our business and cost structure to a regional focus in order to support the needs of our customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, we changed our segment reporting from our Utility and Power Plant ("UPP") Segment and Residential and Commercial ("R&C") Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. Historical results have been recast under the new segmentation. For more information about the financial condition and results of operations of each segment, please see *Part II - "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations"* and *"Item 8: Financial Statements and Supplementary Data."*

## Our Products and Services

### Products

#### Solar Cells

Solar cells are semiconductor devices that directly convert sunlight into direct current electricity. Our A-300 solar cell is a silicon solar cell with a specified power value of 3.1 watts and a conversion efficiency averaging between 20.0% and 21.5%. Our A-330 solar cell delivers 3.3 watts with a conversion efficiency of up to 22.7%. During 2012, we commenced commercial production of our next generation solar cells with demonstrated efficiencies exceeding 24%. Our solar cells are designed without highly reflective metal contact grids or current collection ribbons on the front of the solar cells. This feature enables our solar cells to be assembled into solar panels that exhibit a more uniform appearance than conventional solar panels.

#### Solar Panels

Solar panels are solar cells electrically connected together and encapsulated in a weatherproof panel. We believe solar panels made with our solar cells are the highest efficiency solar panels available for the mass market. Because our solar cells are more efficient relative to conventional solar cells, when our solar cells are assembled into panels, the assembly cost per watt is less because more power can be incorporated into a given size panel. Higher solar panel efficiency allows installers to mount a solar power system with more power within a given roof or site area and can reduce per watt installation costs. During 2012, we commenced production of our next generation solar panels with average module efficiency of greater than 21%. The following SunPower® solar panel series are incorporated into our solar power systems and are available to provide customers with the right solution to fit their needs:

- *SunPower® E18 Series Solar Panel ("E18")*

Available in a 72-cell configuration, the E18 series panel uses our A-300 all back-contact solar cells and delivers a total panel conversion efficiency of 18.1% to 18.5%. E18 panels feature high transmission tempered front glass and a sturdy anodized frame allowing panels to operate reliably in multiple mounting configurations. The E18 panel's reduced voltage-temperature coefficient and low-light performance attributes provide outstanding energy delivery per peak power watt.

- *SunPower® E19 Series Solar Panel ("E19")*

Available in a 72, 96, and 128-cell configuration, the E19 series panel uses our A-300 all back-contact solar cells and delivers total panel conversion efficiency of 19.3% to 19.7%. The E19 panel features high transmission tempered glass with anti-reflective coating which allows for more diffuse off-angle light to be captured.

- *SunPower® E20 Series Solar Panel ("E20")*

Available in a 96-cell configuration, the E20 series panel uses our A-330 all back-contact solar cells and delivers total panel conversion efficiency of up to 20.1%. With comprehensive inverter compatibility, E20 panels can be used with both inverters that require transformers as well as the highest performing transformer-less inverters to maximize output. E20 panels are additionally equipped with a positive power tolerance rating which ensures that the power generated by each panel meets or exceeds that panel's rating.

The development of the E20 solar panel series is a direct result of the investment in SunPower by the United States Department of Energy through its Solar America Initiative program. The E20 panel conversion efficiency rating was further confirmed by the Department of Energy's National Renewable Energy Lab.

### *Inverters*

Every solar power system needs an inverter to transform the direct current electricity collected from the solar panels into utility-grade alternating current power that is ready for household use. We sell a line of SunPower branded inverters manufactured by third parties.

### *Solar Power Systems*

We offer several types of rooftop and ground-mounted solar products. The following tiles and systems are included within our suite of products:

#### *Roof Mounted Products*

- *SunPower® T-5 Solar Roof Tile System ("T-5")*

Tilted at a 5-degree angle, the T-5 roof tile was the industry's first all-in-one non-penetrating photovoltaic rooftop product that combines solar panel, frame, and mounting system into one pre-engineered unit. The all-in-one mounting system and frame is made from an engineered glass-filled polymer that is non-reactive, eliminating the need for electrical grounding of the array. The patented design is adaptable to virtually any flat or low-slope rooftop while providing the roof membrane protection from corrosion. The tiles further interlock for wind resistance and secure installation. Since the T-5 solar roof tile typically weighs less than three pounds per square foot and is stacked for shipping, more KW per pound can be transported using less packaging, resulting in lower distribution costs. These benefits make the T-5 solar roof tile easier and faster to install than other rooftop systems as well as an effective solution for area or weight constrained flat rooftops.

The development of the T-5 solar roof tile is a direct result of the investment in SunPower by the United States Department of Energy through its Solar America Initiative program.

- *SunPower® T-10 Commercial Solar Roof Tiles ("T-10")*

Tilted at a 10-degree angle, the T-10 commercial solar roof tiles can allow for generation of up to 10% more annual energy output than traditional flat roof-mounted systems, depending on geographical location and local climate conditions. These non-penetrating panels interlock for secure, rapid installation without compromising the structural integrity of the roof. Further, the lightweight tile weighs less than four pounds per square foot. Sloped side and rear wind deflectors improve wind performance, allowing T-10 solar arrays to withstand winds up to 120 miles per hour. Performance is optimized for larger roofs with less space constraints as well as underutilized tracks of land, such as ground reservoirs.

#### *Ground Mounted Products*

- *SunPower® T-0 Tracker ("T-0")*

The T-0 tracker is a single-axis tracking systems that automatically pivots solar panels to track the sun's movement throughout the day. This tracking feature increases the amount of sunlight that is captured and converted into energy by up to 30% over flat or fixed-tilt systems, depending on geographic location and local climate conditions. A single motor and drive mechanism can control 10 to 20 rows, or more than 200 KW of solar panels. This multi-row feature represents a cost advantage for our customers over dual axis

tracking systems, as such systems require more motors, drives, land, and power to operate per KW of capacity. The SunPower Tracker system can be assembled onsite, and is easily scalable. The T-0 tracker features our TMAC Advanced Tracker Controller ("TMAC") software, which includes real-time tracker status updates, remote (wireless) monitoring and control, proprietary energy production optimization algorithms, and improved reliability. The T-0 tracker has been installed in a wide range of geographical markets principally in the United States, Germany, Italy, Portugal, South Korea, and Spain.

- *SunPower® Oasis® Power Plant ("Oasis")*

The Oasis is the industry's first modular solar power block that scales from 1.5 MW distributed installations to large central station power plants. Oasis provides a fully integrated, cost-effective way to rapidly deploy utility-scale solar power systems, streamlining the development and construction process while optimizing the use of available land. Each power block integrates the SunPower Oasis tracker, a 425-watt utility solar panel, pre-manufactured cabling, and our TMAC software. The power block kits are shipped pre-assembled to the job site for rapid field installation, and offer a high capacity factor and reliable long-term performance. The Oasis operating system is designed to support future grid interconnection requirements for large-scale solar power plants, such as voltage ride through and power factor control. It features a utility-standard supervisory control and data acquisition operation and analytical tools, which include intelligent sensor and control networks for optimized power plant operation. The Oasis streamlines the entire power plant development process, from permitting through construction and financing.

- *SunPower® C-7 Tracker ("C-7")*

Named for its ability to concentrate the Sun's energy by seven times, we expect C-7 to deliver the lowest levelized cost of electricity for utility scale deployment when fully ramped. The C-7 combines a horizontal single-axis tracker with rows of parabolic mirrors, reflecting light onto linear arrays of our high efficiency solar cells. The SunPower cell is uniquely suited for this application due to its extremely high efficiency under low levels of concentration. This tracker's components come factory preassembled enabling rapid installation using standard tools and requiring no specialized field expertise.

- *Fixed Tilt SunPower® Parking Structures*

SunPower has developed and patented designs for solar power systems for parking structures in multiple configurations. These dual-use systems typically incorporate solar panels into the roof of a carport or similar structure to deliver onsite solar power while providing shade and protection. Aesthetically-pleasing, standardized and scalable, they are well suited for parking lots adjacent to facilities. SunPower Tracker technology can be incorporated for elevated parking structures to provide a differentiated product to our customers.

#### *Other System Offerings*

We have other products that leverage our core systems. For example, our metal roof system is designed for sloped-metal roof buildings, which are used in some winery and warehouse applications. This solar power system is designed for rapid installation.

#### *Balance of System Components*

"Balance of system components" are components of a solar power system other than the solar panels, and include SunPower branded inverters, mounting structures, charge controllers, grid interconnection equipment, and other devices depending on the specific requirements of a particular system and project.

#### **Services**

We provide our solar power plant customers end-to-end management of the project lifecycle, from early stage site assessment, financing support, and project development, including full-scale environmental and construction permitting, through engineering, procurement, construction, and commissioning. Our projects are built incorporating industry-leading standards for safety, quality, performance, and reliability. Once a site is operational, our plant O&M organization provides customers with field-based preventative maintenance services, "utility-quality" data collection, performance monitoring,

diagnostic and performance reporting services, as well as lifecycle asset planning and management with industry leading software applications.

### *Operations and Maintenance*

Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years. We provide commissioning, warranty, administration, operations, maintenance, and performance monitoring services with the objective of optimizing our customers' electrical energy production. Commissioning services include testing to verify that equipment and system performance meet design requirements and specifications. We also pass through to customers long-term warranties from the original equipment manufacturers ("OEMs") of certain system components. We provide warranties of 25 years for our solar panels, which is standard in the solar industry, while our inverters typically carry warranty periods ranging from 5 to 10 years. In addition, we generally warrant our workmanship on installed systems for periods ranging up to 10 years. Systems under warranty and systems under a performance monitoring contract employ our proprietary software and hardware systems to collect and remotely analyze equipment operating and system performance data from all of our sites in our offices located in the United States, Europe, and the Philippines. We offer our commercial customers a comprehensive suite of solar power system maintenance services ranging from system monitoring, to preventive and corrective maintenance, to rapid-response outage restoration and inverter repair. Our Performance Monitoring Service Agreement for commercial and utility systems includes continuous remote monitoring, inverter outage notification, system performance website access, and a 24/7 technical support line. Our Performance Basic Service Agreement adds preventive maintenance to the Standard Monitoring Services Agreement, and our Performance Plus Service Agreement includes all of the Performance Basic Service Agreement features plus on-site troubleshooting and corrective maintenance using regionally-located field service technicians. Residential lease solar system customers are also remotely monitored by SunPower O&M for performance and availability using SunPower's proprietary monitoring software.

### *Monitoring*

Our O&M personnel have access to a powerful set of tools developed on industry leading information technology platforms that facilitate the management of our global fleet of residential, commercial, and utility scale photovoltaic power plants. Real time flow of data from our customers' sites is aggregated centrally where an engine applies advanced solar specific algorithms to detect and report potential performance issues. Our work management system routes any anomalies to the appropriate responders to ensure timely resolution. The enterprise asset management system stores the operational history of thousands of systems and over 1 GW sold and delivered through our regional segments. We have implemented highly automated workflow processes that minimize the time from detection to analysis to dispatch and repair. Our O&M photovoltaic fleet management systems are built on more than a decade of solar services experience, allowing us to provide premier O&M services to our customers worldwide.

We have developed a proprietary set of advanced monitoring applications built upon the leading electric utility real-time monitoring platform (the "SunPower Monitoring System"). The SunPower Monitoring System continuously scans the operational status and performance of the solar power system and automatically identifies system outages and performance deficiencies to our 24/7 monitoring technicians. Customers can access historical or daily system performance data through our customer website ([www.sunpowermonitor.com](http://www.sunpowermonitor.com)). Some customers choose to install "digital signs" or kiosks to display system performance information from the lobby of their facility. We believe these displays enhance our brand and educate the public and prospective customers about solar power.

In 2008, we released the SunPower Monitoring System, and in 2009, we released the industry's first monitoring application for the Apple iPhone®, iPod touch® and iPad® mobile devices. In 2011, we expanded our monitoring application to Android™ devices as well. With the addition of these applications to the SunPower Monitoring System, residential and commercial customers now have four easy ways to access information about the energy generated by their SunPower solar power systems. Along with the iPhone, iPod touch, iPad and Android applications, the SunPower Monitoring System offers homeowners the ability to monitor SunPower solar power systems with a wireless, in-home wall-mounted liquid crystal display that provides power production and cumulative energy information. The monitoring system also provides the convenience of Internet access to a solar power system's performance from virtually anywhere. Customers can view a system's energy performance and environmental savings on an hourly, monthly, and annual basis.

### ***Solar Park Project Development***

Our power plant development and project teams have established a scalable, fully integrated, vertical approach to developing utility-scale photovoltaic power plants in a sustainable way. Our power plant development and project finance teams evaluate sites for solar developments; obtain land rights through purchase and lease options; conduct environmental and



grid transmission studies; and obtain building, construction and grid-interconnection permits, licenses, and regulatory approvals.

The plants and project development rights, initially owned by us, are sold to third parties. In the United States, commercial and electric utility customers typically choose to purchase solar electricity under a PPA with an investor or financing company that buys the system from us. In Europe and Israel, the projects are typically purchased by an investor or financing company and operated as central-station solar power plants.

For more information about the costs associated with solar park project development see "*Item 1A: Risk Factors*" including "*We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity, and results of operations*" and "*Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products, and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.*"

### **Residential Leasing Program**

Our residential lease program with dealers in the United States, in partnership with third-party financial institutions, allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. The program includes system maintenance and warranty coverage as well as an early buy-out option after six years or at any time when the lessees sell their home. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines.

The program does not yet represent a material portion of our revenue. However, we may face additional material risks as the program expands, including our ability to obtain additional financing partners as well as our ability to collect finance and rent receivables in view of the general challenging credit markets worldwide. We believe that our concentration of credit risk is limited because of our large number of customers, credit quality of the customer base, small account balances for most of these customers, and customer geographic diversification. We have applied and will apply for the §48(c) solar commercial investment tax credit ("ITC") and Treasury Grant payments under Section 1603 of the American Recovery and Reinvestment Act (the "Cash Grant"), which is administered by the U.S. Internal Revenue Services ("IRS") and Treasury Department, for residential leases. We have structured the tax incentive applications, both in timing and amount, to be in accordance with the guidance provided by Treasury and IRS. If the amount or timing of the ITC or Cash Grant payments received in connection with the residential lease program varies from what we have projected, this may impact our revenues and margins and we may have to recognize losses, which may adversely impact our results of operations and cash flows. We make certain assumptions in accounting for the residential lease program, including, among others, the residual value of the leased systems. As the residential lease program grows, if the residual value of leased systems does not materialize as assumed, our results of operations would be adversely affected.

For more information about Cash Grant payments received in connection with the residential lease program see "*Item 1A: Risk Factors*" including "*A change in our anticipated 1603 Treasury cash grant proceeds or solar investment tax credits could adversely impact our business, revenues, margins, results of operations and cash flows.*"

### **Research and Development**

We engage in extensive research and development efforts to improve solar cell efficiency through enhancement of our existing products, development of new techniques such as concentrating photovoltaic power, and reducing manufacturing cost and complexity. Our research and development group works closely with our manufacturing facilities, our equipment suppliers and our customers to improve our solar cell design and to lower solar cell, solar panel and system product manufacturing and assembly costs. In addition, we have dedicated employees who work closely with our current and potential suppliers of crystalline silicon, a key raw material used in the manufacture of our solar cells, to develop specifications that meet our standards and ensure the high quality we require, while at the same time controlling costs. Under our Research & Collaboration Agreement with Total, our majority stockholder, we have established a joint committee to engage in long-term research and development projects with continued focus on maintaining and expanding our technology position in the crystalline silicon domain and ensuring our industrial competitiveness. See Note 2 of Notes to Consolidated Financial Statements in *Part II - "Item 8: Financial Statements and Supplemental Data."*

For more information about these contracts, including the government's rights to use technology developed as a result of such contracts, please see "*Item 1A: Risk Factors*" including "*Our past reliance on government programs to partially fund our research and development programs could impair our ability to commercialize our solar power products and services.*"

## Supplier Relationships, Manufacturing, and Module Assembly

We purchase polysilicon, ingots, wafers, solar cells, and balance of system components from various manufacturers, including our joint venture, on both a contracted and a purchase order basis. We have contracted with some of our suppliers for multi-year supply agreements. Under such agreements, we have annual minimum purchase obligations and in certain cases prepayment obligations. We have certain purchase obligations under our material supply agreement with our joint venture AUO SunPower Sdn. Bhd. ("AUOSP"), which is a supplier of our cells. This material supply contract has a remaining term of 5 years and does not contain prepayment obligations. Please see the Contractual Obligations disclosure in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" for further information regarding the amount of our purchase obligations in 2013 and beyond. Under other supply agreements, we are required to make prepayments to vendors over the terms of the arrangements. As of December 30, 2012, advances to suppliers totaled \$351.4 million. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate. For further information regarding our future prepayment obligations, please see "*Item 8. Financial Statements and Supplementary Data - Note 10 - Commitment and Contingencies - Advance to Suppliers.*" We currently believe our supplier relationships and various short- and long-term contracts will afford us the volume of material and services required to meet our planned output. For more information about risks related to our supply chain, please see "*Item 1A: Risk Factors - Risks Related to Our Supply Chain.*"

We are working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale. Crystalline silicon is the leading commercial material for solar cells and is used in several forms, including single-crystalline, or monocrystalline silicon, multicrystalline, or polycrystalline silicon, ribbon and sheet silicon, and thin-layer silicon. Our solar cell value chain starts with high purity silicon called polysilicon. Polysilicon is created by refining quartz or sand. We have negotiated multiple long-term, fixed price contracts with large polysilicon suppliers.

Polysilicon is melted and grown into crystalline ingots and sawed into wafers by business partners specializing in those processes. The wafers are processed into solar cells in our manufacturing facility located in the Philippines and by our joint venture, AUOSP, located in Malaysia. SPML Land, Inc., owns a 344,000 square foot facility in the Philippines which serves as a solar cell manufacturing facility ("FAB2") and which currently operates twelve lines with a total rated annual solar cell manufacturing capacity of over 700 MW. AUOSP currently operates twelve solar cell manufacturing lines with a total rated annual solar cell manufacturing capacity of over 800 MW.

Using our solar cells, we manufacture our solar panels at our solar panel assembly facilities located in the Philippines and Mexico. In our Philippines facility, we currently operate fourteen solar panel assembly lines with a total rated annual solar panel manufacturing capacity of approximately 600 MW. In our Mexicali, Mexico facility we currently operate ten additional solar panel assembly lines. When fully online, our Mexico facility will house twelve solar panel assembly lines with an expected total rated annual solar panel manufacturing capacity of approximately 500 MW. As a result of our January 2012 acquisition of Tenesol S.A., a global solar provider headquartered in La Tour de Salvagny, France, which operated under the common control of Total, we acquired solar panel assembly facilities in France and South Africa with a combined total rated annual solar cell manufacturing of approximately 170 MW. Our solar panels are also assembled for us by third-party contract manufacturers in California and China.

We source the solar panels and balance of system components based on quality, performance, and cost considerations both internally and from third-party suppliers. We generally assemble proprietary components, such as cementitious coatings and certain adhesive applications, while we purchase generally available components from third-party suppliers. The balance of system components can make up as much as two-thirds of the cost of a solar power system. Therefore, we are focused on standardizing our products with the goal of driving down installation costs, such as with our SunPower Oasis operating system.

## Sales and Marketing

### Customers

We sell our products through our regional segments including North America, Europe, the Middle East, Asia, and Australia. Our customers typically include investors, financial institutions, project developers, electric utilities, and independent power producers, commercial and governmental entities, production home builders, and residential owners and small commercial building owners who are served by our third-party global dealer network.

We work with development, construction, system integration, and financing companies to deliver our solar power systems to wholesale sellers, retail sellers, and retail users of electricity. In the United States, commercial and electric utility

customers typically choose to purchase solar electricity under a purchase power agreement ("PPA") with an investor or financing company that buys the system from us. End-user customers typically pay the investors and financing companies over an extended period of time based on energy they consume from the solar power systems, rather than paying for the full capital cost of purchasing the solar power systems. In Europe and the United States, our products and systems are typically purchased by an investor or financing company and operated as central-station solar power plants. In addition, our third-party global dealer network and our new homes division have deployed thousands of SunPower rooftop solar power systems to residential customers.

We have offices in markets such as Australia, England, France, Germany, India, Israel, Italy, Japan, South Africa, Spain, and the United States. We anticipate developing additional customer relationships in other markets and geographic regions as we expand our business. We generally do not have long-term agreements with our customers; see *"Item 1A: Risk Factors"* including *"We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our operating results to decline."*

The table below represents our significant customers which accounted for greater than 10 percent of total revenue during fiscal 2012, 2011, and 2010.

Revenue		Year ended		
		December 30, 2012	January 1, 2012	January 2, 2011
Significant Customers:	Business Segment			
NRG Solar, Inc.	Americas	35%	*	*
Customer B	EMEA	*	*	12%

\* denotes less than 10% during the period

### Seasonal Trends

Our business is subject to industry-specific seasonal fluctuations. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two calendar quarters of a fiscal year. Lower seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters of a fiscal year. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the annual reduction of the applicable minimum feed-in tariff and the fact that the coldest winter months in the Northern Hemisphere are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons. In addition, sales in the new home development market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

### Marketing and Sales

We market and sell solar electric power technologies worldwide through a direct sales force and through our third-party global dealer network. We sell products and services to residential, commercial, utility and power plant customers through direct sales personnel and dealer representatives. Our direct sales personnel and dealer representatives are located in Australia, France, Germany, Korea, Italy, Japan, Spain, Switzerland, and the United States. Our dealer network in the United States serves over 40 states. We have three dealership tiers in the program: Elite, Premier, and Authorized. Approximately 10% to 15% of the dealers in the United States have earned Elite status and approximately 25% to 35% have earned Premier status. We provide warranty coverage on systems we sell through our direct sales personnel and dealers. To the extent we sell through dealers, we may provide system design and support services while the dealers are responsible for installation, maintenance, and service.

Our overall marketing programs are in place to build awareness for the SunPower brand, to communicate the key messages that differentiate our offerings and to create loyalty with our customers. We participate in conferences, seminars, trade shows as well as communicating via our corporate website, social media, public relations, and advertising. Our marketing group is also responsible for driving demand generation activities that create qualified leads to support our sales teams' efforts. We assist our global dealer network through a marketing resource center and customer support organization. We have marketing personnel in San Jose and Richmond, California, and Austin, Texas, United States, as well as in Paris, France, Frankfurt, Germany, Madrid, Spain and Geneva, Switzerland.

## Backlog

Our solar power system project backlog represents the uncompleted portion of contracted and financed projects. Contingent customer orders that are not yet financed are excluded from backlog. Our solar power system projects are often cancelable by our customers under certain conditions. In addition, revenue and related costs are often subject to delays or scope modifications based on change orders agreed to with our customers, or changes in the estimated construction costs to be incurred in completing the project.

Our residential and light commercial business and the components business include large volume sales of solar panels, mounting systems, and other solar equipment to third parties, which are typically ordered by our third-party global dealer network and customers under standard purchase orders with relatively short delivery lead-times, generally within one to three months. We have entered into multi-year supply agreements with certain customers of our components business that contain minimum firm purchase commitments. However, specific products that are to be delivered and the related delivery schedules under these long-term contracts are often subject to modifications based on change orders and amendments agreed to with our customers. Our backlog represents the uncompleted portion of firm purchase commitments and open purchase orders by our third-party global dealer network.

Management believes that backlog at any particular date is not necessarily a meaningful indicator of future revenue for any particular period of time because our backlog excludes contracts signed and completed in the same quarter and contracts still conditioned upon obtaining financing. Backlog totaled approximately \$1,664.5 million and \$1,688.0 million as of December 30, 2012 and January 1, 2012, respectively. Of the backlog as of December 30, 2012, \$876.6 million is expected to be recognized in fiscal 2013.

## Competition

The market for solar electric power technologies is competitive and continually evolving. We expect to face increased competition, which may result in price reductions, reduced margins, or loss of market share. Our solar power products and systems compete with a large number of competitors in the solar power market, including, but not limited to:

- *Residential and Commercial:* Canadian Solar Inc., Hanwha Corporation, JA Solar Holdings Co., Kyocera Corporation, Mitsubishi Corporation, Sanyo Corporation (a subsidiary of Panasonic Corporation), Sharp Corporation, SolarCity Corporation, SolarWorld AG, Sungevity, Inc., SunRun, Inc., Suntech Power Holdings Co. Ltd., Trina Solar Ltd., and Yingli Green Energy Holding Co. Ltd.
- *Utility and Power Plant:* Abengoa Solar S.A., Acconia Energia S.A., AES Solar Energy Ltd., Chevron Energy Solutions (a subsidiary of Chevron Corporation), EDF Energy plc, First Solar Inc., NextEra Energy, Inc., NRG Energy, Inc., OPDE Group, Recurrent Energy (a subsidiary of Sharp Corporation), Sempra Energy, Skyline Solar, Inc., Solargen Energy, Inc., Solaria Corporation, SolFocus, Inc., SunEdison (a subsidiary of MEMC Electronic Materials Inc.), and Tenaska, Inc.

We also face competition from resellers that have developed related offerings that compete with our product and service offerings, or have entered into strategic relationships with other existing solar power system providers. We compete for limited government funding for research and development contracts, customer tax rebates and other programs that promote the use of solar, and other renewable forms of energy with other renewable energy providers and customers.

In addition, universities, research institutions, and other companies have brought to market alternative technologies such as thin films and high concentration photovoltaic, which compete with our technology in certain applications. Furthermore, the solar power market in general competes with conventional fossil fuels supplied by utilities and other sources of renewable energy such as wind, hydro, biomass, solar thermal, and emerging distributed generation technologies such as micro-turbines, sterling engines and fuel cells.

In the large-scale on-grid solar power systems market, we face direct competition from a number of companies, including those that manufacture, distribute, or install solar power systems as well as construction companies that have expanded into the renewable sector. In addition, we will occasionally compete with distributed generation equipment suppliers.

We believe that the key competitive factors in the market for solar panels include:

- total system price;

- LCOE evaluation;
- power efficiency and performance;
- aesthetic appearance of solar panels;
- strength of distribution relationships;
- availability of third-party financing and investments;
- timeliness of new product introductions; and
- warranty protection, quality, and customer service.

The principal elements of competition in the solar power systems market include technical expertise, price, experience, delivery capabilities, diversity of product offerings, financing structures, marketing and sales, product performance, quality, efficiency and reliability, and technical service and support. We believe that we can compete favorably with respect to each of these factors, although we may be at a disadvantage in comparison to larger companies with broader product lines, greater technical service and support capabilities, and financial resources. For more information about risks related to our competition, please see *"Item 1A: Risk Factors"* including *"The increase in the global supply of solar cells and panels, and increasing competition, may cause substantial downward pressure on the prices of our products and cause us to lose sales or market share, resulting in lower revenues, earnings, and cash flow,"* and *"If we fail to successfully execute our cost reduction roadmap, and develop and introduce new and enhanced products and services, we may not be able to compete effectively, and our ability to generate revenues will suffer."*

## Intellectual Property

We rely on a combination of patent, copyright, trade secret, trademark, and contractual protections to establish and protect our proprietary rights. "SunPower" and the "SunPower" logo are our registered trademarks in countries throughout the world for use with solar cells, solar panels and mounting systems. We also hold registered trademarks for "Connectis", "Fournisseur d'accès au soleil", "Maxeon", "Oasis", "PowerLight", "PowerGuard", "Serengeti", "Smarter Solar", "Solbox", "SunTile", "SuPo Solar", "SunPower Electric", "Tenesol", "Tenesolbox", "Tenesol, sun access provider", "The Planet's Most Powerful Solar", "The World's Standard for Solar", and "Use More Sun" in certain countries. We are seeking and will continue to seek registration of the "SunPower" trademark and other trademarks in additional countries as we believe is appropriate. As of December 30, 2012, we held registrations for 16 trademarks in the United States, and had 2 trademark registration applications pending. We also held 100 trademark registrations and had over 22 trademark applications pending in foreign jurisdictions. We require our business partners to enter into confidentiality and nondisclosure agreements before we disclose any sensitive aspects of our solar cells, technology, or business plans. We typically enter into proprietary information agreements with employees, consultants, vendors, customers, and joint venture partners.

We own multiple patents and patent applications which cover aspects of the technology in the solar cells, mounting products, and electrical and electronic systems that we currently manufacture and market. We continue to file for and receive new patent rights on a regular basis. The lifetime of a utility patent typically extends for 20 years from the date of filing with the relevant government authority. We assess appropriate opportunities for patent protection of those aspects of our technology, designs, methodologies, and processes that we believe provide significant competitive advantages to us, and for licensing opportunities of new technologies relevant to our business. As of December 30, 2012, we held 112 patents in the United States, which will expire at various times between 2013 and 2031, and had 173 patent applications pending. We also held 111 patents and had 384 patent applications pending in foreign jurisdictions. While patents are an important element of our intellectual property strategy, our business as a whole is not dependent on any one patent or any single pending patent application. We additionally rely on trade secret rights to protect our proprietary information and know-how. We employ proprietary processes and customized equipment in our manufacturing facilities. We therefore require employees and consultants to enter into confidentiality agreements to protect them.

We are currently in litigation in Germany against Knubix GmbH related to alleged violations of our patent rights.

For more information about risks related to our intellectual property, please see *"Item 1A: Risk Factors"* including *"We are dependent on our intellectual property, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights,"* and *"We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability*

to compete and generate revenue could suffer," and "We may not obtain sufficient patent protection on the technology embodied in the solar products we currently manufacture and market, which could harm our competitive position and increase our expenses."

## **Government Regulations**

### **Public Policy Considerations**

Different policy mechanisms have been used by governments to accelerate the adoption of solar power. Examples of customer-focused financial mechanisms include capital cost rebates, performance-based incentives, feed-in tariffs, tax credits, and net metering. Some of these government mandates and economic incentives are scheduled to be reduced or to expire, or could be eliminated altogether, including the feed-in tariffs in Germany and Italy. Capital cost rebates provide funds to customers based on the cost and size of a customer's solar power system. Performance-based incentives provide funding to a customer based on the energy produced by their solar power system. Feed-in tariffs pay customers for solar power system generation based on energy produced, at a rate generally guaranteed for a period of time. Tax credits reduce a customer's taxes at the time the taxes are due. In the United States and other countries, net metering has often been used as a supplemental program in conjunction with other policy mechanisms. Under net metering, a customer can generate more energy than used, during which periods the electricity meter will run backwards. During these periods, the customer "lends" electricity to the grid, retrieving an equal amount of power at a later time.

In addition to the mechanisms described above, new market development mechanisms to encourage the use of renewable energy sources continue to emerge. For example, many states in the United States have adopted renewable portfolio standards which mandate that a certain portion of electricity delivered to customers come from eligible renewable energy resources. In certain developing countries, governments are establishing initiatives to expand access to electricity, including initiatives to support off-grid rural electrification using solar power. For more information about risks related to public policies, please see "Item 1A: Risk Factors" including *"The reduction, modification or elimination of government and economic incentives could cause our revenue to decline and harm our financial results,"* and *"Existing regulations and policies and changes to these regulations and policies may present technical, regulatory, and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services."*

### **Environmental Regulations**

We use, generate, and discharge toxic, volatile, or otherwise hazardous chemicals and wastes in our research and development, manufacturing, and construction activities. We are subject to a variety of foreign, federal, state, and local governmental laws and regulations related to the purchase, storage, use, and disposal of hazardous materials.

We believe that we have all environmental permits necessary to conduct our business and expect to obtain all necessary environmental permits for future activities. We believe that we have properly handled our hazardous materials and wastes and have appropriately remediated any contamination at any of our premises. We are not aware of any pending or threatened environmental investigation, proceeding or action by foreign, federal, state or local agencies, or third parties involving our current facilities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to substantial financial liabilities, operational interruptions, and adverse publicity, any of which could materially and adversely affect our business, results of operations, and financial condition.

### **Iran**

The Iran Threat Reduction and Syria Human Rights Act of 2012, signed into law by President Obama on August 10, 2012 ("ITRSHRA"), added a new Section 13(r) to the Securities Exchange Act of 1934, as amended, which requires us to disclose whether Total S.A. ("Total") or any of its affiliates (collectively, the "Total Group") has engaged during the 2012 calendar year in certain Iran-related activities. While the Total Group has not engaged in any activity that would be required to be disclosed pursuant to subparagraphs (A), (B), (C), (D)(i) or (D)(ii) of Section 13(r)(1), affiliates of Total may be deemed to have engaged in a transaction or dealing with the government of Iran pursuant to Section 13(r)(1)(D)(iii), as discussed below. The below information concerning fiscal year 2012 was provided to us by Total and is current as of February 19, 2013. The percentages below indicate ownership interest in the entities named. SunPower and its subsidiaries did not engage in any activities required to be disclosed pursuant to Section 13(r)(1).

The Total Group has no exploration and production activities in Iran. Some payments are yet to be reimbursed to the Total Group with respect to past expenditures and remuneration under buyback contracts entered into between 1997 and 1999 with the National Iranian Oil Company ("NIOC") for the development of the South Pars 2&3 and Dorood fields. With respect



to these contracts, development operations have been completed and the Total Group, which is no longer involved in the operation of these fields, has no information on the production from these fields. The Total Group maintains a local office in Iran solely for non-operational functions. In 2012, Total E&P Iran (100%), Elf Petroleum Iran (99.7%) and Total South Pars 2&3 (99.7%) collectively made payments of approximately €1 million to the Iranian administration with respect to certain taxes and social security in relation to payments made in 2012 to the Total Group under the Dorood and South Pars 2&3 buyback contracts and the maintenance of the local office mentioned above and its personnel. Total did not recognize any revenues or profits from the aforementioned in 2012. Payments for taxes and social security are expected to be made in 2013.

In 2012, as part of its ongoing global strategy for the protection of its intellectual property, Total filed two patent applications in Iran that it had filed in many other countries. The filing of an application to obtain a patent in Iran is an activity that the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") licenses, and, although Total is not a U.S. person, it believes its activity is consistent with this license.

Total E&P UK Limited ("TEP UK"), a wholly-owned affiliate of Total, had limited contacts in 2012 with the Iranian Oil Company UK Ltd ("IOC"), a subsidiary of NIOC. These contacts related to agreements governing certain transportation, processing and operation services formerly provided to a joint venture at the Rhum field in the UK, co-owned by BP (50%, operator) and IOC (50%), by a joint venture at the Bruce field between BP (37%, operator), TEP UK (43.25%), BHP Billiton Petroleum Great Britain Ltd (16%) and Marubeni Oil & Gas (North Sea) Limited (3.75%) and by TEP UK's Frigg UK Association pipeline (100%). To the Total Group's knowledge, no services have been provided under the aforementioned agreements since November 2010, when the Rhum field stopped production following the adoption of European Union sanctions, other than critical safety-related services (*i.e.*, monitoring and marine inspection of the Rhum facilities). These agreements led to the signature in 2005 of an agreement by TEP UK and Naftiran Intertrade Co. ("NICO") (IOC's parent company and a subsidiary of NIOC) for the purchase by TEP UK of Rhum field natural gas liquids from NICO. There have been no purchases under this agreement since November 2010. TEP UK's contacts with IOC and NICO in 2012 in regard to the aforementioned agreements were limited to exchanging letters and notifications regarding contract administration and declarations of force majeure. TEP UK may have similar limited contacts with IOC and NICO in 2013. Total did not recognize any revenues or profits from the aforementioned in 2012.

The Total Group does not own or operate any refineries or chemicals plants in Iran. Until December 2012, at which time Total sold its entire interest, it held a 50% interest in the company Beh Total along with Behran Oil (50%), a company controlled by entities with ties to the government of Iran. Beh Total produced and marketed in 2012 small quantities of lubricants (16,885 metric tons) for sale to domestic consumers in Iran. In 2012, revenue generated from Beh Total's activities in Iran was approximately €50 million, net income was approximately €3 million and Beh Total paid approximately €1 million in taxes and approximately €4 million of dividends for fiscal year 2010 (share of Total: approximately €2 million).

In addition, Total holds a 50% interest in, but does not operate, Samsung Total Petrochemicals Co. Ltd ("STC"), a South Korean incorporated joint venture with Samsung General Chemicals Co., Ltd. (50%). During the first six months of 2012 and prior to Executive Order 13622, STC purchased 292,000 metric tons of condensates directly or indirectly from companies affiliated with the Iranian government for approximately €253 million. As such condensates are used by STC as inputs for its manufacturing processes, it is not possible to estimate the revenues from sales or net income attributable to such purchases. In reliance on the exemption provided in Section 1245(d)(4)(D) of the National Defense Authorization Act (NDAA) announced on December 7, 2012, STC contracted to recommence such purchases. However, STC's management has recently stated that STC would no longer take deliveries under such contract arrangement as from March 31, 2013. In addition, STC sold 1,450 metric tons of polymers for approximately €156 million to two Korean traders, Skyplast and Tera Korea, which may have subsequently exported some or all of this product to Iran. Taking into account the uses for such polymers (*e.g.*, food packaging, pipes, car interiors), the end-customers likely were private companies. STC may make similar sales in the future.

Prior to January 23, 2012, the Total Group's Trading & Shipping ceased its purchase of Iranian hydrocarbons. Before this date, Total International Limited, a wholly-owned subsidiary of Total, purchased in Iran during 2012 pursuant to a mix of spot and term contracts approximately 2 million barrels of hydrocarbons from state-controlled entities for approximately €189 million, which it subsequently resold for approximately €176 million. As Total hedges the risk associated with a fluctuation in hydrocarbon prices during its trading activities, the overall net income before tax attributable to such activity was €3 million. Trading & Shipping owed to state controlled entities in Iran approximately €235 million as of December 31, 2011 and €83 million as of December 31, 2012, which represented the value of the hydrocarbons purchased prior to the cessation of such activity.

## Employees

As of December 30, 2012, we had approximately 5,020 employees worldwide, excluding employees of our joint ventures. As of December 30, 2012, approximately 700 employees were located in the United States, 2,880 employees were located in the Philippines and 1,440 employees were located in other countries. Of these employees, approximately 3,440 were engaged in manufacturing, 280 in construction projects, 230 in research and development, 650 in sales and marketing, and 420 in general and administrative services. Although we have works councils and statutory employee representation obligations in certain countries, our employees are not represented by a labor union. We have never experienced a work stoppage, and we believe relations with our employees are good.

## **Geographic Information**

Sales outside the United States represented approximately 30%, 47% and 72% of total revenue for fiscal years 2012, 2011, and 2010, respectively. Information regarding the physical location of our property, plant and equipment and our foreign and domestic operations is contained in Note 7 and Note 18, respectively, of Notes to Consolidated Financial Statements in *Part II - "Item 8: Financial Statements and Supplemental Data,"* which information is incorporated herein by reference. See also *"Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations,"* for other information about our operations and activities in various geographic regions.

## **Available Information**

We make available our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 free of charge on our website at [www.sunpowercorp.com](http://www.sunpowercorp.com), as soon as reasonably practicable after they are electronically filed or furnished to the SEC. Additionally, copies of materials filed by us with the SEC may be accessed at the SEC's Public Reference Room at 100 F Street NE, Washington, D.C. or at the SEC's website at <http://www.sec.gov>. For information about the SEC's Public Reference Room, the public may contact 1-800-SEC-0330. Copies of material filed by us with the SEC may also be obtained by writing to us at our corporate headquarters, SunPower Corporation, Attention: Investor Relations, 77 Rio Robles, San Jose, California 95134, or by calling (408) 240-5500. The contents of our website are not incorporated into, or otherwise to be regarded as a part of, this Annual Report on Form 10-K.



**ITEM 1A: RISK FACTORS**

***Our operations and financial results are subject to various risks and uncertainties, including risks related to our sales channels, liquidity, supply chain, operations, intellectual property, and our debt and equity securities. Although we believe that we have identified and discussed below certain key risk factors affecting our business, there may be additional risks and uncertainties that are not presently known or that are not currently believed to be significant that may also adversely affect our business, financial condition, results of operations, cash flows, and trading price of our common stock as well as our 4.50% senior convertible debentures, 4.75% senior convertible debentures, and 0.75% senior convertible debentures.***

**Risks Related to Our Sales Channels**

***The increase in the global supply of solar cells and panels, and increasing competition, may cause substantial downward pressure on the prices of such products and cause us to lose sales or market share, resulting in lower revenues, earnings, and cash flow.***

Global solar cell and panel production capacity has been materially increasing since 2009, and solar cell and solar panel manufacturers continue to have significant excess capacity, particularly in China. Excess capacity and industry competition have resulted, and will continue to result, in substantial downward pressure on the price of solar cells and panels, including SunPower products. Increasing competition could also result in us losing sales or market share. Such price reductions or loss of sales or market share could continue to have a negative impact on our revenue and earnings, and could materially adversely affect our business and financial condition and cash flows. In addition, our internal forecasts of pricing may not be accurate in the current market environment, which could cause our financial results to be different than forecasted. See also *"If we fail to successfully execute our cost reduction roadmap, and develop and introduce new and enhanced products and services, we may not be able to compete effectively, and our ability to generate revenues will suffer."*

***Our operating results will be subject to fluctuations and are inherently unpredictable.***

We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses. We may not be profitable on a quarterly basis. For example, we experienced net losses in each quarter of 2012. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. Revenue from our large commercial and, utilities and power plant customers (for example, our California Valley Solar Ranch ("CVSR") project and our Antelope Valley Solar Projects ("AVSP")) is susceptible to large fluctuations. The amount, timing and mix of sales to our large commercial and utilities and power plant customers, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results as, at any given time, a single large-scale project can account for a material portion of our total revenue in a given quarter. Our inability to monetize our projects as planned, or any delay in obtaining the required government support or initial payments to begin recognizing revenue under the relevant recognition criteria, and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue, may similarly cause large fluctuations in our revenue and other financial results. A delayed disposition of a project could require us to recognize a gain on the sale of assets instead of recognizing revenue. Further, our revenue mix of materials sales versus project sales can fluctuate dramatically from quarter to quarter, which may adversely affect our margins and financial results in any given period. Any decrease in revenue from our large commercial, utilities and power plant customers, whether due to a loss or delay of projects or an inability to collect, could have a significant negative impact on our business. Our agreements with these customers may be canceled if we fail to meet certain product specifications or materially breach the agreement. In the event of a customer bankruptcy, our customers may seek to renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders, whether due to liquidity issues or otherwise, could materially and adversely affect our results of operations. Sales to our residential and light commercial customers are similarly susceptible to fluctuations in volumes and revenues. Declining average selling prices immediately impact our residential and light commercial sales volumes, and therefore lead to large fluctuations in revenues. Any of the foregoing may cause us to miss any current and future revenue or earnings guidance and negatively impact liquidity.

We base our planned operating expenses in part on our expectations of future revenue and a significant portion of our expenses is fixed in the short term. If revenue for a particular quarter is lower than we expect, we likely will be unable to proportionately reduce our operating expenses for that quarter, which would harm our operating results for that quarter. This may cause us to miss any earnings guidance announced by us.

***The execution of our growth strategy is dependent upon the continued availability of third-party financing arrangements for our solar power plants, our residential lease program and our customers, and is affected by general economic conditions.***

The general economy, the current European debt crisis, and limited availability of credit and liquidity could materially and adversely affect our business and results of operations. We often require project financing for development and construction of our solar power plant projects, which require significant investments before the equity is later sold to investors. Many purchasers of our systems projects have entered into third-party arrangements to finance their systems over an extended period of time, while many end-customers have chosen to purchase solar electricity under a power purchase agreement ("PPA") with an investor or financing company that purchases the system from us or our authorized dealers. In addition, under our power purchase business model, we often execute PPAs directly with the end-user customer purchasing solar electricity, with the expectation that we will later assign the PPA to a financier. Under such arrangements, the financier separately contracts with us to build and acquire the solar power system, and then sells the electricity to the end-user customer under the assigned PPA. When executing PPAs with the end-user customers, we seek to mitigate the risk that a financier will not be available for the project by allowing termination of the PPA in such event without penalty. However, we may not always be successful in negotiating for penalty-free termination rights for failure to obtain financing, and certain end-user customers have required substantial financial penalties in exchange for such rights. These structured finance arrangements are complex and may not be feasible in many situations.

Due to the general challenging credit markets worldwide, we may be unable to obtain project financing for our projects, customers may be unable or unwilling to finance the cost of our products, we may have difficulties in reaching agreements with financiers to finance the construction of our solar power systems, or the parties that have historically provided this financing may cease to do so, or only do so on terms that are substantially less favorable for us or our customers, any of which could materially and adversely affect our revenue and growth in all segments of our business. We are actively arranging additional third-party financing for our residential lease program; however, due to the general challenging credit markets worldwide, we may be unable to arrange additional financing partners for our residential lease program in future periods, which could have a negative impact on our sales. In the event we enter into a material number of additional leases without obtaining corresponding third-party financing, our cash, working capital and financial results could be negatively impacted. In addition, in the United States, with the expiration of the Treasury Grant under Section 1603 of the American Recovery and Reinvestment Act program, we will need to identify, in the near term, interested financiers with sufficient taxable income to monetize the tax incentives created by our solar systems. In the long term, as we look towards incentive-less markets, we will continue to need to identify financiers willing to finance residential solar systems. Our plans to continue to grow our residential lease program may be delayed if credit conditions prevent us from obtaining or maintaining arrangement(s) to finance the program. The lack of project financing could delay the development and construction of our solar power plant projects, thus reducing our revenues from the sale of such projects. Many customers, especially in the United States, choose to purchase solar electricity under a PPA with a financing company that buys the system from us and the lack of availability of such financing could lead to reduced revenues. If economic recovery is slow in the United States or elsewhere, or if the European debt crisis remains unresolved or worsens, we may experience decreases in the demand for our solar power products, which may harm our operating results. We may in some cases seek to pursue partnership arrangements with financing entities to assist residential and other customers to obtain financing for the purchase or lease of our systems, which would expose us to credit or other risks. In addition, a rise in interest rates would likely increase our customers' cost of financing or leasing our products and could reduce their profits and expected returns on investment in our products. The general reduction in available credit to would-be borrowers or lessees, the poor state of economies worldwide, and the condition of housing markets worldwide could delay or reduce our sales of products to new homebuilders and authorized resellers.

***The reduction, modification or elimination of government and economic incentives could cause our revenue to decline and harm our financial results.***

The market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, depends in large part on the availability and size of government mandates and economic incentives because, at present, the cost of solar power generally exceeds retail electric rates in many locations and wholesale peak power rates in some locations. In addition, on-grid applications depend on access to the grid, which is also regulated by government entities. Incentives and mandates vary by geographic market. Various government bodies in most of the countries where we do business have provided incentives in the form of feed-in tariffs, rebates, and tax credits and other incentives and mandates, such as renewable portfolio standards, to end-users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. In 2011, some of these government mandates and economic incentives were reduced or fundamentally restructured, including the feed-in tariffs in Germany and incentives offered by other European countries, which has had a materially negative effect on the market size and price of solar systems in Europe and caused our earnings in 2011 and 2012 to decline in Europe and adversely affected our financial results. Governmental decisions regarding the provision of economic incentives often depend on political and economic factors that are largely beyond our control. Because our sales are into the on-grid market, the reduction, modification or elimination of grid access, government mandates and economic incentives in one or

more of our customer markets would materially and adversely affect the growth of such markets or result in increased price competition, either of which could cause our revenue to decline and harm our financial results.

***Existing regulations and policies and changes to these regulations and policies may present technical, regulatory, and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services.***

The market for electric generation products is heavily influenced by federal, state and local government laws, regulations and policies concerning the electric utility industry in the United States and abroad, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation, and could deter further investment in the research and development of alternative energy sources as well as customer purchases of solar power technology, which could result in a significant reduction in the potential demand for our solar power products. The market for electric generation equipment is also influenced by trade and local content laws, regulations and policies which can discourage growth and competition in the solar industry, create economic barriers to the purchase of solar power products, thus reducing demand for our solar products. We anticipate that our solar power products and their installation will continue to be subject to oversight and regulation in accordance with federal, state, local and foreign regulations relating to construction, safety, environmental protection, utility interconnection and metering, trade, and related matters. It is difficult to track the requirements of individual states or local jurisdictions and design equipment to comply with the varying standards. In addition, the U.S., European Union and Chinese governments have imposed tariffs or are in the process of evaluating the imposition of tariffs on solar panels, solar cells, polysilicon and potentially other components. These tariffs may increase the price of our solar products and adversely impact our cost reduction roadmap, which could harm our results of operations and financial condition. Any new regulations or policies pertaining to our solar power products may result in significant additional expenses to us, our resellers and our resellers' customers, which could cause a significant reduction in demand for our solar power products.

***We may incur unexpected warranty and product liability claims that could materially and adversely affect our financial condition and results of operations.***

Our current standard product warranty for our solar panels includes a 25-year warranty period for defects in materials and workmanship and a 25-year warranty period for declines in power performance. We believe our warranty offering exceeds industry practice. We perform accelerated lifecycle testing that expose our solar panels to extreme stress and climate conditions in both environmental simulation chambers and in actual field deployments in order to highlight potential failures that would occur over the 25-year warranty period. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. Although we conduct accelerated testing of our solar panels and have several years of experience with our all-back-contact solar cell architecture, our solar panels have not and cannot be tested in an environment that exactly simulates the 25-year warranty period and it is difficult to test for all conditions that may occur in the field. We have sold solar panels since the early 2000's and have therefore not experienced the full warranty cycle.

In our project installations, our current standard warranty for our solar power systems differs by geography and end-customer application and usually includes a limited warranty of 10 years for defects in work and workmanship, after which the customer may typically extend the period covered by its warranty for an additional fee. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have completed a project and recognized revenues. Warranty and product liability claims may also result from defects or quality issues in certain third party technology and components that our business incorporates into its solar power systems, particularly solar cells and panels, over which we have little or no control. While we generally pass through to our customers manufacturer warranties we receive from our suppliers, in some circumstances, we may be responsible for repairing or replacing defective parts during our warranty period, often including those covered by manufacturers' warranties, or incur other non-warranty costs. If the manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer. Furthermore, our warranties may exceed the period of any warranties from our suppliers covering components, such as third party solar cells, third party panels and third party inverters, included in our systems. In addition, manufacturer warranties may not fully compensate us for losses associated with third-party claims caused by defects or quality issues in their products. For example, most manufacturer warranties exclude many losses that may result from a system component's failure or defect, such as the cost of de-installation, re-installation, shipping, lost electricity, lost renewable energy credits or other solar incentives, personal injury, property damage, and other losses. In certain cases our direct warranty coverage provided by SunPower to our customers, and therefore our financial exposure, may exceed our recourse available against cell, panel or other manufacturers for defects in their products. In addition, in the event we seek recourse through warranties, we will also be dependent on the creditworthiness and continued existence of the suppliers to our business. Some of our suppliers have entered bankruptcy and our likelihood of a successful warranty claim against them is minimal.

Increases in the defect rate of SunPower or third-party products could cause us to increase the amount of warranty reserves and have a corresponding negative impact on our results of operations. Further, potential future product failures could cause us to incur substantial expense to repair or replace defective products, and we have agreed in some circumstances to indemnify our customers and our distributors against liability from some defects in our solar products. A successful indemnification claim against us could require us to make significant damage payments. Repair and replacement costs, as well as successful indemnification claims, could materially and negatively impact our financial condition and results of operations.

Like other retailers, distributors and manufacturers of products that are used by customers, we face an inherent risk of exposure to product liability claims in the event that the use of the solar power products into which solar cells and solar panels are incorporated results in injury, property damage or other damages. We may be subject to warranty and product liability claims in the event that our solar power systems fail to perform as expected or if a failure of our solar power systems results, or is alleged to result, in bodily injury, property damage or other damages. Since our solar power products are electricity producing devices, it is possible that our systems could result in injury, whether by product malfunctions, defects, improper installation or other causes. In addition, since we only began selling our solar cells and solar panels in the early 2000's and the products we are developing incorporate new technologies and use new installation methods, we cannot predict whether or not product liability claims will be brought against us in the future or the effect of any resulting negative publicity on our business. Moreover, we may not have adequate resources in the event of a successful claim against us. We rely on our general liability insurance to cover product liability claims and have not obtained separate product liability insurance. A successful warranty or product liability claim against us that is not covered by insurance or is in excess of our available insurance limits could require us to make significant payments of damages. In addition, quality issues can have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, which could also adversely affect our business and operating results.

***If we fail to successfully execute our cost reduction roadmap, and develop and introduce new and enhanced products and services, we may not be able to compete effectively, and our ability to generate revenues will suffer.***

Our solar panels are currently competitive in the market compared with lower cost conventional solar cells, such as thin-film, due to their higher efficiency. If our competitors are able to drive down their manufacturing costs faster than us, our products may become less competitive even when adjusted for efficiency. While raw materials costs and other third party component costs have been decreasing, if such costs were to increase, we may not be able to meet our cost reduction targets. If we cannot effectively execute our cost reduction roadmap, our competitive position would suffer, and we could lose market share and our margins would be adversely impacted as we face downward pricing pressure.

The solar power market is characterized by continually changing technology requiring improved features, such as increased efficiency and higher power output and improved aesthetics. Technologies developed by our direct competitors, including thin film solar panels, concentrating solar cells, solar thermal electric and other solar technologies, may provide power at lower costs than our products. We also face competition in some markets from other power generation sources, including conventional fossil fuels, wind, biomass, and hydro. In addition, other companies could potentially develop a highly reliable renewable energy system that mitigates the intermittent power production drawback of many renewable energy systems. Companies could also offer other value-added improvements from the perspective of utilities and other system owners, in which case such companies could compete with us even if the cost of electricity associated with such new system is higher than that of our systems.

Our failure to further refine our technology, reduce cost in our manufacturing process, and develop and introduce new solar power products could cause our products or our manufacturing facilities to become uncompetitive or obsolete, which could reduce our market share, cause our sales to decline, and cause the impairment of our assets. This will require us to continuously develop new solar power products and enhancements for existing solar power products to keep pace with evolving industry standards, competitive pricing and changing customer requirements. If we cannot continually improve the efficiency of our solar panels as compared to those of our competitors, our pricing will become less competitive, we could lose market share and our margins would be adversely impacted. We have new products such as our C7 Tracker technology, which has not been mass deployed in the market. We need to prove its reliability in the field as well as drive down its cost in order to gain market acceptance. We also compete with traditional utilities that supply energy to our potential customers. Such utilities have greater financial, technical, operational and other resources than we do. If electricity rates decrease and our products become less competitive by comparison, our operating results and financial condition will be adversely affected. As we introduce new or enhanced products or integrate new technology into our products, we will face risks relating to such transitions including, among other things, technical challenges, acceptance of products by our customers, disruption in customers' ordering patterns, insufficient supplies of new products to meet customers' demand, possible product and technology defects arising from the integration of new technology and a potentially different sales and support environment relating to any new technology. Our

failure to manage the transition to newer products or the integration of newer technology into our products could adversely affect our business's operating results and financial condition.

***A limited number of customers and large projects are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from those customers or projects, payment of liquidated damages, or an increase in related expenses, could have a significant adverse effect on us.***

Even though we expect our customer base and number of large projects to expand and our revenue streams to diversify, a substantial portion of our revenues could continue to depend on sales to a limited number of customers as well as construction of a limited number of large projects (for example, the AVSP and CVSR projects), and the loss of sales to, or construction of, or inability to collect from those customers or for those projects, or an increase in expenses (such as financing costs) related to any such large projects, would have a significant negative impact on our business. For example, if the notice to proceed for AVSP phase 1 project (309 MW) is delayed or not obtained, it would have a significant adverse impact on our financial results. These larger projects create concentrated operating and financial risks. The effect of recognizing revenue or other financial measures on the sale of a larger project, or the failure to recognize revenue or other financial measures as anticipated in a given reporting period because a project is not yet completed under applicable accounting rules by period end, may materially impact our financial results. In addition, if construction, warranty or operational issues arise on a larger project, or if the timing of such projects unexpectedly shifts for other reasons, such issues could have a material impact on our financial results. Our agreements for such projects may be cancelled or we may incur large liquidated damages if we fail to execute the projects as planned, obtain certain approvals or consents by a specified time, meet certain product and project specifications, materially breach the governing agreements, or in the event of a customer's or project entity's bankruptcy, and our customers may seek to cancel or renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders and the construction process, whether due to liquidity issues, failure of anticipated government support or otherwise, could materially and negatively affect our results of operations.

***We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our operating results to decline.***

Our product sales to residential dealers and components customers are frequently not made under long-term agreements. We also contract to construct or sell large projects with no assurance of repeat business from the same customers in the future. Although we believe that cancellations on our purchase orders to date have been infrequent, our customers may cancel or reschedule purchase orders with us on relatively short notice. Cancellations or rescheduling of customer orders could result in the delay or loss of anticipated sales without allowing us sufficient time to reduce, or delay the incurrence of, our corresponding inventory and operating expenses. In addition, changes in forecasts or the timing of orders from these or other customers expose us to the risks of inventory shortages or excess inventory. These circumstances, in addition to the completion and non-repetition of large projects, declining average selling prices, changes in the relative mix of sales of solar equipment versus solar project installations, and the fact that our supply agreements are generally long-term in nature and many of our other operating costs are fixed, in turn could cause our operating results to fluctuate and may result in a material adverse effect in our business and financial results. In addition, since we rely partly on our network of dealers internationally for marketing and other promotional programs, if our dealers fail to perform up to our standards, our operating results may decline.

***Almost all of our engineering, procurement and construction ("EPC") contracts are fixed price contracts which may be insufficient to cover unanticipated or dramatic changes in costs over the life of the project.***

Almost all of our EPC contracts are fixed price contracts. All essential costs are estimated at the time of entering into the EPC contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the subcontractors, suppliers, and any other parties that may become necessary to complete the project. Thus, if the cost of materials were to rise dramatically as a result of sudden increased demand, or if financing costs were to increase due to use of the Liquidity Support Facility (as defined below) or otherwise, these costs may have to be borne by us.

In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. In several instances in the past, we have obtained change orders that reimburse us for additional unexpected costs due to various reasons. Should miscalculations in planning a project or delays in execution occur, there can be no guarantee that we would be successful in obtaining reimbursement and we may not achieve our expected margins or we may be required to record a loss in the relevant fiscal period.

***Our business could be adversely affected by seasonal trends and construction cycles.***

Our business is subject to significant industry-specific seasonal fluctuations. Sales have historically reflected these seasonal trends with the largest percentage of total revenues being realized during the last two calendar quarters. Low seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the annual reduction of the applicable minimum feed-in tariff and the fact that the coldest winter months in the Northern Hemisphere are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons. In addition, sales in the new home development market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

***The competitive environment in which we operate often requires us to undertake customer obligations that could materially and adversely affect our financial condition and results of operations if our customer obligations are more costly than expected.***

We are often required as a condition of financing or at the request of our end customer to undertake certain obligations such as:

- System output performance guarantees;
- System maintenance;
- Penalty payments or customer termination rights if the system we are constructing is not commissioned within specified timeframes or other construction milestones are not achieved;
- Guarantees of certain minimum residual value of the system at specified future dates; and
- System put-rights whereby we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met.

Such financing arrangements and customer obligations involve complex accounting analyses and judgments regarding the timing of revenue and expense recognition, and in certain situations these factors may require us to defer revenue recognition until projects are completed, which could adversely affect revenue and profits in a particular period.

#### **Risks Related to Our Liquidity**

***Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products, and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.***

We expect total capital expenditures related to purchases of property, plant and equipment in the range of \$70 million to \$90 million in fiscal 2013. To develop new products, support future growth, achieve operating efficiencies, and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. We also anticipate increased costs as we make advance payments for raw materials or pay to procure such materials, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, invest in our residential lease business, and continue our research and development efforts with respect to our products and manufacturing technologies. Our manufacturing and assembly activities have required and will continue to require significant investment of capital and substantial engineering expenditures. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants for sale to customers. The development and construction of solar power plants can require long periods of time and substantial initial investments. The delayed disposition of such projects could have a negative impact on our liquidity. See "*Risk Related to Our Operations-We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity and results of operations.*" A significant portion of our revenue is generated from a limited number of customers and large projects, and our inability to execute those projects, or to collect from those customers or for those projects, would have a significant negative impact on our business. See "*Risk Related to Our Sales Channels-A limited number of customers and large projects are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from those customers or projects, payment of liquidated damages, or an increase in related expenses, could have a significant adverse effect on us.*"



Our capital expenditures and use of working capital may be greater than we currently expect if we decide to make additional investments in the development and construction of solar power plants, or if sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. In addition, we will in the future make additional investments in certain of our joint ventures or could guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures. In addition, if our financial results or operating plans change from our current assumptions, or if the holders of our outstanding 4.50% convertible debentures due 2015 become entitled, and elect, to convert the debentures into cash, we may not have sufficient resources to support our business plan or pay cash in connection with the redemption of outstanding 4.50% debentures. See *"Our substantial indebtedness and other contractual commitments could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the 4.50% and 4.75% debentures and our other debt."*

Certain of our customers also require performance bonds issued by a bonding agency, or bank guarantees or letters of credit issued by financial institutions, which are returned to SunPower upon satisfaction of contractual requirements. If there is a contractual dispute with the customer, the customer may withhold the security or make a draw under such security, which could have an adverse impact on our liquidity position. As of December 30, 2012 letters of credit issued under the Deutsche Bank Trust facility amounted to \$17.5 million and were fully collateralized with restricted cash. Our uncollateralized letter of credit facility with Deutsche Bank, which as of December 30, 2012 had an outstanding amount of \$725.3 million, is guaranteed by Total S.A. pursuant to the Credit Support Agreement between us and Total S.A. Any draws under this uncollateralized facility would require SunPower to immediately reimburse the bank for the drawn amount. A default under the Credit Support Agreement or the guaranteed letter of credit facility, or if our other indebtedness greater than \$25 million becomes accelerated, could cause Total S.A., subject to its obligations under the Liquidity Support Facility (described below), to declare all amounts due and payable to Total S.A. and direct the bank to cease issuing additional letters of credit on behalf of SunPower, which could have a material adverse effect on our operations.

We believe that our current cash and cash equivalents, cash generated from operations, and funds available under our revolving credit facility with Credit Agricole will be sufficient to meet our working capital requirements and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power plants over the next 12 months. As of December 30, 2012, \$275.0 million was outstanding under our revolving credit facility with Credit Agricole.

We are also party to a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. or its affiliates, under which Total S.A. has agreed to provide us with a liquidity facility to a maximum amount of \$600 million (the "Liquidity Support Facility"). Total S.A. is required, through its affiliates, to provide liquidity support to us under this facility, and we are required to accept such liquidity support from Total, S.A., if either our actual or projected unrestricted cash, cash equivalents and unused borrowing capacity are reduced below \$100 million, or we fail to satisfy any financial covenant under our indebtedness, including the Credit Agricole facility. In either such event, subject to an \$600 million aggregate limit, Total S.A. is required to provide us with sufficient liquidity support to increase the amount of our unrestricted cash, cash equivalents and unused borrowing capacity to above \$100 million, and to restore our compliance with our financial covenants. In general, our cost of financing under the Liquidity Support Agreement would increase as the aggregate amount of liquidity support we require over time increases. On December 24, 2012, Total S.A. agreed to guarantee our revolving credit facility with Credit Agricole, which reduced the capacity available under the Liquidity Support Facility by \$275 million.

The lenders under our credit facilities and holders of our debentures may also require us to repay our indebtedness to them in the event that our obligations under other indebtedness or contracts in excess of the applicable threshold amount, such as \$25 million, are accelerated and we fail to discharge such obligations. If our capital resources are insufficient to satisfy our liquidity requirements, for example, due to cross acceleration of indebtedness, we may seek to sell additional equity securities or debt securities or obtain other debt financings, including under the Liquidity Support Facility; although the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms. The sale of additional equity securities or convertible debt securities, including under the Liquidity Support Facility, may result in additional dilution to our stockholders and may not be available on favorable terms or at all. Additional debt would result in increased expenses and could impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under certain of our current debt agreements and debentures. Financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us. If additional financing is

not available, we may also seek to sell assets, or reduce or delay capital investments, which could negatively impact our financial results.

Under certain circumstances under the Liquidity Support Facility, we are required to issue to Total S.A. or its affiliates, in exchange for the provision of liquidity support, warrants to purchase our common stock. The number of shares of our common stock covered by these warrants will be equal to an agreed percentage of the amount of support provided at a particular time, divided by the volume-weighted average of our stock price over the 30-day trading period ending on the trading day immediately preceding the date when the support is provided. The exercise price of these warrants is also set by reference to this volume-weighted average price, and therefore may be set at a discount to our stock price currently or at the time the warrants are issued. Any convertible debt we issue to Total S.A. or its affiliates under the Liquidity Support Facility will be convertible into our common stock at its market price at the time of conversion, which may be lower than our current stock price. Finally, any common stock we issue to Total S.A. under the Liquidity Support Facility will be priced at a 17% discount to the volume-weighted average stock price for the 30-day trading period ending on the trading day preceding the date of issuance. For all these reasons, use of the Liquidity Support Facility could be dilutive to the equity interests of our other stockholders, and the degree of dilution will increase if our stock price decreases. Any other equity financing we may seek would also likely be dilutive to our stockholders' equity interests.

In the first half of 2013, \$275 million of Credit Agricole revolver and \$230 million of 4.75% debentures will have a maturity of less than 12 months and be reclassified to short term debt on our consolidated balance sheet. We are evaluating options to repay or refinance such indebtedness during 2013 or 2014, but there are no assurances that we will have sufficient available cash to repay such indebtedness or we will be able to refinance such indebtedness on similar terms to the expiring indebtedness. If we cannot generate sufficient cash flows, find other sources of capital to fund our operations and solar power plant projects, make adequate capital investments to remain technologically and price competitive, or provide bonding or letters of credit required by our projects, we will need to sell additional equity securities or debt securities, or obtain other debt financings. If adequate funds and other resources are not available on acceptable terms, our ability to fund our operations, develop and construct solar power plants, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts, provide collateral for our projects, meet our debt service obligations, or otherwise respond to competitive pressures would be significantly impaired. Our inability to do any of the foregoing could have a material adverse effect on our business and results of operations.

***Our substantial indebtedness and other contractual commitments could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the 4.50% and 4.75% debentures and our other debt.***

We currently have a significant amount of debt and debt service requirements that could have material consequences on our future operations, including:

- making it more difficult for us to meet our payment and other obligations under the 4.50% and 4.75% debentures and our other outstanding debt;
- resulting in an event of default if we fail to comply with the financial and other restrictive covenants contained in our debt agreements (with certain covenants becoming more restrictive over time), which event of default could result in all of our debt becoming immediately due and payable if not cured pursuant to the Liquidity Support Facility;
- reducing the availability of our cash flow to fund working capital, capital expenditures, project development, acquisitions and other general corporate purposes, and limiting our ability to obtain additional financing for these purposes;
- subjecting us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates;
- subjecting us to the risk of currency fluctuations and government-fixed foreign exchange rates and the effects of currency hedging activity or inability to hedge currency fluctuation;
- limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to, changes in our business, the industry in which we operate and the general economy; and
- placing us at a competitive disadvantage compared to our competitors that have less debt or are less leveraged.



Our indebtedness may increase if we require liquidity support from Total S.A. under the Liquidity Support Facility, and in general the economic cost of such indebtedness will increase, both in absolute dollars and in our cost per dollar borrowed, if the aggregate amount of liquidity support we require increases. In the event our joint ventures are consolidated with our financial statements, such consolidation could significantly increase our indebtedness.

Any of the above-listed factors could have an adverse effect on our business, financial condition and results of operations and our ability to meet our payment obligations under the 4.50% and 4.75% debentures and our other debt. In addition, we also have significant contractual commitments for the purchase of polysilicon, some of which involve prepayments, and we may enter into additional, similar long-term supply agreements in the future. Further, if the holders of our outstanding 4.50% debentures have been entitled to, and do convert their debentures, the principal amount must be settled in cash. Future conversions could materially and adversely affect our liquidity and our ability to meet our payment obligations under our debt.

***Our current tax holidays in the Philippines and Switzerland will expire within the next several years.***

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary's registration with the Philippine Economic Zone Authority ("PEZA"), which provide that we pay no income tax in the Philippines for those operations subject to the ruling. Our current income tax holidays were granted as manufacturing lines were placed in service and thereafter expire within this fiscal year, and we are in the process of or have applied for extensions and renewals upon expiration. We currently expect such approvals to be granted. We believe that if our Philippine tax holidays expire, (a) gross income attributable to activities covered by our PEZA registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate, currently 30%. An increase in our tax liability could materially and negatively affect our financial condition and results of operations.

We have an auxiliary company ruling in Switzerland where we sell our solar power products. The auxiliary company ruling results in a reduced effective Swiss tax rate of approximately 11.5%. The current ruling expires in 2015. If the ruling is not renewed in 2015, Swiss income would be taxable at the full Swiss tax rate of approximately 24.2%.

Our joint venture AUOSP benefits from a tax holiday granted by the Malaysian government subject to certain hiring, capital spending, and manufacturing requirements. The joint venture partners of AUOSP have decided to postpone the construction of an additional manufacturing facility ("Fab 3B") due to current solar market conditions, which fails to meet certain conditions required to continue to benefit from the tax ruling. Our joint venture is currently in discussions with the Malaysian government to extend the period by which buildout has to be completed. Should AUOSP be unable to renegotiate the tax ruling, they would be subject to statutory tax rates which could negatively impact our share of equity earnings reported in our Consolidated Statements of Operations.

***A change in our effective tax rate can have a significant adverse impact on our business, and an adverse outcome resulting from examination of our income or other tax returns could adversely affect our results.***

A number of factors may adversely impact our future effective tax rates, such as the jurisdictions in which our profits are determined to be earned and taxed; changes in the valuation of our deferred tax assets and liabilities; adjustments to estimated taxes upon finalization of various tax returns; adjustments to our interpretation of transfer pricing standards, changes in available tax credits, grants and other incentives; changes in stock-based compensation expense; changes in tax laws or the interpretation of such tax laws (for example, proposals for fundamental U.S. international tax reform); changes in U.S. generally accepted accounting principles; expiration or the inability to renew tax rulings or tax holiday incentives; and the repatriation of non-U.S. earnings for which we have not previously provided for U.S. taxes. A change in our effective tax rate due to any of these factors may adversely impact our future results from operations.

Significant judgment is required to determine the recognition and measurement attribute prescribed in the accounting guidance for uncertainty in income taxes. The accounting guidance for uncertainty in income taxes applies to all income tax positions, including the potential recovery of previously paid taxes, which if settled unfavorably could adversely impact our provision for income taxes. In addition, we are subject to examination of our income tax returns by various tax authorities. We regularly assess the likelihood of adverse outcomes resulting from any examination to determine the adequacy of our provision for income taxes. An adverse determination of an examination could have an adverse effect on our operating results and financial condition. See Note 14 of Notes to Consolidated Financial Statements in *Part II - "Item 8: Financial Statements and Supplemental Data."*

We have significant balances of refundable value added tax outside the U.S., which we believe are fully recoverable, but if the amounts are determined by tax authorities to be nonrefundable, it could have an adverse impact on our financial condition.

***Our insurance for certain indemnities we have made to our officers and directors may be inadequate, and potential claims could materially and negatively impact our financial condition and results of operations.***

Our certificate of incorporation, by-laws and indemnification agreements require us to indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. Although we currently maintain directors and officers liability insurance for certain potential third-party claims for which we are legally or financially unable to indemnify them, such insurance may be inadequate for specific claims. In addition, in previous years, we have primarily self-insured with respect to potential third-party claims. If we were required to pay a significant amount on account of these liabilities for which we self-insured, our business, financial condition and results of operations could be materially harmed. See also *"Risks Related to Our Operations -- We and certain of our current and former officers and directors have been named as parties to various lawsuits relating to our past Audit Committee accounting investigation, and may be named in further litigation, including with respect to the restatement of our consolidated financial statements, all of which could require significant management time and attention, result in significant legal expenses or damages, and cause our business, financial condition, results of operations and cash flows to suffer."*

***Our credit agreements contain covenant restrictions that may limit our ability to operate our business.***

We may be unable to respond to changes in business and economic conditions, engage in transactions that might otherwise be beneficial to us, or obtain additional financing, because our debt agreements, our Credit Support Agreement and our Liquidity Support Agreement with Total S.A., our Affiliation Agreement with Total, foreign exchange hedging agreements and equity derivative agreements contain, and any of our other future similar agreements may contain, covenant restrictions that limit our ability to, among other things:

- incur additional debt, assume obligations in connection with letters of credit, or issue guarantees;
- create liens;
- make certain investments or acquisitions;
- enter into transactions with our affiliates;
- sell certain assets;
- redeem capital stock or make other restricted payments;
- declare or pay dividends or make other distributions to stockholders; and
- merge or consolidate with any person.

Our ability to comply with these covenants is dependent on our future performance, which will be subject to many factors, some of which are beyond our control, including prevailing economic conditions. In addition, our failure to comply with these covenants could result in a default under the 4.50% and 4.75% debentures and our other debt, which could permit the holders to accelerate such debt if the default is not cured pursuant to the Liquidity Support Facility. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt, which could materially and negatively affect our financial condition and results of operation.

### **Risks Related to Our Supply Chain**

***Limited competition among suppliers has required us in some instances to enter into long-term, firm commitment supply agreements that could result in excess or insufficient inventory, place us at a competitive disadvantage on pricing, or lead to disputes, each of which could impair our ability to meet our cost reduction roadmap.***

Due to the industry-wide shortage of polysilicon experienced prior to 2011, we purchased polysilicon that we resold to third-party ingot and wafer manufacturers who deliver wafers to us that we then use in the manufacturing of our solar cells. Without sufficient polysilicon, some of those ingot and wafer manufacturers would not have been able to produce the wafers on

which we rely. To match our estimated customer demand forecasts and growth strategy for the next several years, we have historically entered into multiple long-term supply agreements. Some agreements have long terms and provide for fixed or inflation-adjusted pricing, substantial prepayment obligations, and firm purchase commitments that require us to pay for the supply whether or not we accept delivery. If any long term and fixed commitment agreements require us to purchase more supplies than required to meet our actual customer demand over time, the resulting excess inventory could materially and negatively impact our results of operations. Prices for raw materials and components have been rapidly declining. If we are unable to access spot market pricing of commodities and decrease our dependency on long term or fixed commitment supply agreements, we would be paying more at unfavorable payment terms for such supplies than the current market prices and payment terms available to our competitors. We would then be placed at a competitive disadvantage against competitors who were able to leverage better pricing, we would be unable to meet our cost reduction roadmap, and our profitability could decline.

Certain of our long-term supply agreements may also contain other provisions, such as termination rights, that enable us to respond to changes in our requirements for, and market conditions in respect of polysilicon, ingots or wafers. However, our exercise of such rights may give rise to disputes. For example, we are currently engaged in arbitration with First Philec Solar Corporation, one of our suppliers, which is also a joint venture in which we have a minority interest. First Philec Solar is claiming damages for our purported failure to fulfill our purchase commitment under a 2007 wafer supply contract that we believe we validly terminated in August 2012. Additionally, First Solar Electric Corporation, our co-venturer in First Philec Solar, has claimed that our failure to fulfill our purchase agreement also obligates us to purchase its interests in the joint venture at a premium. Although we believe we have meritorious defenses to these claims, and that we have made meritorious counterclaims against First Philec Solar and First Solar Electric, the outcome of the arbitration is not certain and an adverse award may adversely affect our financial position, liquidity or results of operations.

If our agreements provide insufficient inventory to meet customer demand, or if our suppliers are unable or unwilling to provide us with the contracted quantities, we could purchase additional supply at available market prices which could be greater than expected and could materially and negatively impact our results of operations. Such market prices could also be greater than prices paid by our competitors, placing us at a competitive disadvantage and leading to a decline in our profitability. Further, we face significant specific counterparty risk under long-term supply agreements when dealing with suppliers without a long, stable production and financial history. In the event any such supplier experiences financial difficulties or goes into bankruptcy, it could be difficult or impossible, or may require substantial time and expense, for us to recover any or all of our prepayments. In the event any such supplier experiences financial difficulties or goes into bankruptcy, we would also be unlikely to collect for warranty claims against such suppliers. Any of the foregoing could materially harm our financial condition and results of operations.

***We will continue to be dependent on a limited number of third-party suppliers for certain raw materials and components for our products, which could prevent us from delivering our products to our customers within required timeframes, which in turn could result in sales and installation delays, cancellations, penalty payments and loss of market share.***

We rely on a limited number of third-party suppliers, including our joint ventures, for certain raw materials and components for our solar cells, panels and power systems such as polysilicon, inverters and module material. If we fail to maintain our relationships with our suppliers, or if suppliers are unable to meet demand through industry consolidation, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay. Such delays could prevent us from delivering our products to our customers within required timeframes and cause order cancellations and loss of market share. To the extent the processes that our suppliers use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers. In addition, the financial markets could limit our suppliers' ability to raise capital if required to expand their production or satisfy their operating capital requirements. As a result, they could be unable to supply necessary raw materials, inventory and capital equipment to us which we would require to support our planned sales operations which would in turn negatively impact our sales volumes profitability and cash flows. The failure of a supplier to supply raw materials or components in a timely manner, or to supply raw materials or components that meet our quality, quantity and cost requirements, could impair our ability to manufacture our products or increase the cost of production. If we cannot obtain substitute materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required timeframes, which could result in sales and installation delays, cancellations, penalty payments or loss of market share, any of which could have a material adverse effect on our business, results of operations, and cash flows.

***If third-party manufacturers become unable or unwilling to sell their solar cells or panels to us, our business and results of operations may be materially negatively affected.***

In January 2012, we completed the acquisition of Tenesol S.A. ("Tenesol"), a European-based manufacturer and developer of solar projects with module manufacturing operations in France and South Africa which formerly operated under the common control of Total S.A. Through Tenesol, we purchase a portion of our total product mix from third-party manufacturers of solar cells. Such products increase our inventory available for sale to customers in some markets. However, such manufacturers may not be willing to sell solar cells and panels to us at the quantities and on the terms and conditions we require. Such manufacturers may be our direct competitors. If they are unable or unwilling to sell to us, we may not have sufficient products available to sell to customers and satisfy our sales commitments, thereby materially and negatively affecting our business and results of operations. In addition, warranty and product liability claims may result from defects or quality issues in connection with third party solar cells that we incorporate into our solar power products. See also "*Risks Related to Our Sales Channels -- We may incur unexpected warranty and product liability claims that could materially and adversely affect our financial condition and results of operations.*"

### **Risks Related to Our Operations**

***We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity, and results of operations.***

The development and construction of solar power plants require long periods of time and substantial initial investments, which we may make without first obtaining project financing or getting final regulatory clearance. Such costs may never be recovered if the necessary permits and government support and approvals are not obtained, project financing is not obtained, or if a potential project sale cannot be completed on commercially reasonable terms or at all. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation, and the eventual sale of the projects. We will often choose to bear the costs of such efforts prior to obtaining project financing, prior to getting final regulatory clearance, and prior to our final sale to a customer, if any. This involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts, the sale of equity in the project and the receipt of any cash or revenue, much of which may not be recognized for several additional months or years following contract signing. Our ability to monetize solar power plant projects is dependent on successfully executing and selling large scale projects and often a single project can account for a material portion of our total revenue in a given quarter. We have deferred revenue recognition on certain construction projects until the projects have been financed, constructed, and sold to independent third parties. Alternatively, we may choose to build, own and operate certain solar power plants for a period of time, after which the project assets may be sold to third parties. In such cases, the delayed disposition of projects could require us to recognize a gain on the sale of assets instead of recognizing revenue. Our potential inability to obtain regulatory clearance, required government support, project financing, or enter into sales contracts with customers could adversely affect our business, liquidity and results of operations. Our inability to monetize our projects as planned, or any delay in obtaining the required initial payments to begin recognizing revenue under the relevant recognition criteria, and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue, may cause large fluctuations in our revenue and other financial results. In the event the project is subsequently canceled, abandoned, or is deemed likely to occur, we will charge all prior capital costs as an operating expense in the quarter in which such determination is made, which could materially adversely affect operating results. Our liquidity could also be adversely impacted if we cannot obtain timely project financing or if project sales are delayed.

***We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity and political instability.***

A substantial portion of our sales are made to customers outside of the United States, and a substantial portion of our supply agreements are with supply and equipment vendors located outside of the United States. Currently our solar cell and module production lines are located at our manufacturing facilities in the Philippines, Mexico, France and South Africa, and our joint venture's manufacturing facility in Malaysia. In addition, in January 2012, we completed the acquisition of Tenesol, a European-based manufacturer and developer of solar projects with significant international operations.

Risks we face in conducting business internationally include:

- multiple, conflicting and changing laws and regulations, export and import restrictions, employment laws, environmental protection, regulatory requirements and other government approvals, permits and licenses;
- difficulties and costs in staffing and managing foreign operations as well as cultural differences;
- potentially adverse tax consequences associated with our permanent establishment of operations in more countries;

- relatively uncertain legal systems, including potentially limited protection for intellectual property rights, and laws, changes in the governmental incentives we rely on, regulations and policies which impose additional restrictions on the ability of foreign companies to conduct business in certain countries or otherwise place them at a competitive disadvantage in relation to domestic companies;
- repatriation of non-U.S. earnings taxed at rates lower than the U.S. statutory effective tax rate;
- inadequate local infrastructure and developing telecommunications infrastructures;
- financial risks, such as longer sales and payment cycles and greater difficulty collecting accounts receivable;
- currency fluctuations and government-fixed foreign exchange rates and the effects of currency hedging activity or inability to hedge currency fluctuations;
- political and economic instability, including wars, acts of terrorism, political unrest, boycotts, curtailments of trade and other business restrictions;
- trade barriers such as export requirements, tariffs, taxes and other restrictions and expenses, which could increase the prices of our products and make us less competitive in some countries; and
- liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act and similar laws outside of the United States).

In addition, we need to manage our international operations with an efficient and scalable organization. If we are unable to effectively manage our international inventory and warehouses, for example, our shipping movements may not map with product demand and flow. If we are unable to successfully manage any such risks, any one or more could materially and negatively affect our business, financial condition and results of operations.

***If we experience interruptions in the operation of our solar cell production lines, or we are not successful in operating our joint venture AUOSP, our revenue and results of operations may be materially and adversely affected.***

If our current or future solar cell or module production lines were to experience any problems or downtime, we would be unable to meet our production targets and our business would suffer. Our manufacturing activities have required and will continue to require significant management attention, a significant investment of capital and substantial engineering expenditures.

Under a joint venture agreement, we and AU Optonics Corporation ("AUO") jointly own and manage a joint venture, AUO SunPower Sdn. Bhd. ("AUOSP"), that has constructed a manufacturing facility in Malaysia. The success of our joint venture is subject to significant risks including:

- cost overruns, delays, supply shortages, equipment problems and other operating difficulties;
- custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed;
- incorporating first-time equipment designs and technology improvements, which we expect to lower unit capital and operating costs, but this new technology may not be successful;
- problems managing the joint venture with AUO, whom we do not control and whose business objectives may be different from ours and may be inconsistent with our best interests;
- the joint venture's ability to obtain or maintain third party financing to fund its capital requirements;
- difficulties in maintaining or improving our historical yields and manufacturing efficiencies;
- difficulties in protecting our intellectual property and obtaining rights to intellectual property developed by the joint venture;
- difficulties in hiring key technical, management, and other personnel;

- difficulties in integration, implementing IT infrastructure and an effective control environment; and
- potential inability to obtain, or obtain in a timely manner, financing, or approvals from governmental authorities for operations.

If we experience any of these or similar difficulties, our supply from the joint venture may be delayed or be more costly than expected, substantially constraining our supply of solar cells. The joint venture partners of AUOSP have decided to postpone the construction of an additional manufacturing facility ("Fab 3B") due to current solar market conditions, and therefore assessed that additional equity need not be provided to AUOSP at this time. As a result, as of December 31, 2012, AUOSP is in technical breach of a covenant in its \$300 million secured loan facility which required the joint venture partners to make equity injections in 2012. AUOSP is currently working with its lenders and will be providing its lenders with 2012 audited financial statements in the second quarter of 2013 to request that the lenders grant a waiver for the technical covenant breach. This default does not create a cross default under SunPower's debt agreements so long as AUOSP remains unconsolidated, is not a "significant subsidiary" as defined by Reg S-X of Securities and Exchange Act of 1934, and SunPower's ownership in AUOSP remains no higher than 50%. However, if the lenders were to accelerate payment on the loan or enforce their security interest, the supply of solar cells to SunPower could be interrupted. If we are unable to utilize our manufacturing capacity at the joint venture as planned, or we experience interruptions in the operation of our existing production lines, our per-unit manufacturing costs would increase, we would be unable to increase sales or gross margins as planned, we may need to increase our supply of third party cells, and our results of operations would likely be materially and adversely affected.

***If we do not achieve satisfactory yields or quality in manufacturing our solar products, our sales could decrease and our relationships with our customers and our reputation may be harmed.***

The manufacture of solar cells is a highly complex process. Minor deviations in the manufacturing process can cause substantial decreases in yield and in some cases, cause production to be suspended or yield no output. We have from time to time experienced lower than anticipated manufacturing yields. As we expand our manufacturing capacity and qualify additional suppliers, we may initially experience lower yields. If we do not achieve planned yields, our product costs could increase, and product availability would decrease resulting in lower revenues than expected. In addition, in the process of transforming polysilicon into ingots, a significant portion of the polysilicon is removed in the process. In circumstances where we provide the polysilicon, if our suppliers do not have very strong controls in place to ensure maximum recovery and utilization, our economic yield can be less than anticipated, which would increase the cost of raw materials to us.

Additionally, products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells or solar panels may contain defects that are not detected until after they are shipped or are installed because we cannot test for all possible scenarios. These defects could cause us to incur significant warranty, non-warranty and re-engineering costs, divert the attention of our engineering personnel from product development efforts and significantly affect our customer relations and business reputation. If we deliver solar products with errors or defects, including cells or panels of third-party manufacturers, or if there is a perception that such solar products contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed. In addition, some of our arrangements with customers include termination or put rights for non-performance. In certain limited cases, we could incur liquidated damages or even be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met.

***A change in our anticipated 1603 Treasury cash grant proceeds or solar investment tax credits could adversely impact our business, revenues, margins, results of operations and cash flows.***

We have incorporated into our financial planning and agreements with our customers certain assumptions regarding the future level of U.S. tax incentives, including the §48(c) solar commercial investment tax credit ("ITC") and the Treasury grant under Section 1603 of the American Recovery and Reinvestment Act (the "Cash Grant") program, which is administered by the U.S. Treasury Department ("Treasury") and provides Cash Grant payments in lieu of the ITC. The ITC and Cash Grant allow qualified applicants to claim an amount equal to 30% of the eligible cost basis for qualifying solar energy property. We hold projects and have sold projects to certain customers based on certain underlying assumptions regarding the ITC and Cash Grant, including for CVSR and AVSP. We have also accounted for certain projects and programs in our business using the same assumptions.

Owners of our qualifying projects and our residential lease program have applied or will apply for the ITC, and have applied or will apply for the Cash Grant. We have structured the tax incentive applications, both in timing and amount, to be in accordance with the guidance provided by Treasury and Internal Revenue Service ("IRS"). Any changes to the Treasury or IRS

guidance which we relied upon in structuring our projects, failure to comply with the requirements, including the safe harbor protocols, lower levels of incentives granted, or changes in assumptions including the estimated residual values and the estimated fair market value of financed and installed systems for the purposes of Cash Grant and ITC applications, could materially and adversely impact our business and results of operations. While we have received notification that certain of our applications will be fully paid by Treasury in 2013, if the IRS or Treasury disagrees, as a result of any future review or audit, with the fair market value of, or other assumptions concerning, our solar projects or systems that we have constructed or that we construct in the future, including any systems for which tax incentives have already been paid, it could have a material adverse effect on our business and financial condition. We also have obligations to indemnify certain of our customers for the loss of tax incentives to such customers. We may have to recognize impairments or lower margins than initially anticipated for certain of our projects, including AVSP, CVSR and our residential lease program. Additionally, if the amount or timing of the Cash Grant or ITC payments received varies from what we have projected, this will impact our revenues, margins and cash flows and we may have to recognize losses, which will adversely impact our results of operations and cash flows.

Pursuant to the Budget Control Act of 2011, Cash Grants could be subject to sequestration beginning in 2013. The U.S. federal government's Office of Management and Budget, in a report issued in September 2012, outlined the anticipated sequestration, which would result in approximately a 9% reduction in spending for the Cash Grant, with a resulting decrease in Cash Grant received by us. In addition, applicable authorities may adjust or decrease incentives from time to time or include provisions for minimum domestic content requirements or other requirements to qualify for these incentives. Any such reduction or additional requirements could adversely impact our results of operations.

There are continuing developments in the interpretation and application of how companies should calculate their eligibility and level of Cash Grant and ITC incentives. There have been recent cases in the U.S. district courts which challenge the criteria for a true lease, which could impact whether the structure of our residential lease program qualifies under the Cash Grant and ITC. Additionally, the Office of the Inspector General of the Treasury has issued subpoenas to a number of significant participants in the rooftop solar energy installation industry. The Inspector General is working with the Civil Division of the U.S. Department of Justice to investigate the administration and implementation of the Cash Grant program, including possible misrepresentations concerning the fair market value of the solar power systems submitted for Cash Grant under that program. While we have not received a subpoena, we could be asked to participate as a part of the information gathering process. The results of the current investigation could impact the underlying assumption used by the solar industry, including us, in our Cash Grant and ITC applications, which could adversely impact our results of operations and cash flows.

***We obtain certain of our capital equipment used in our manufacturing process from sole suppliers and if this equipment is damaged or otherwise unavailable, our ability to deliver products on time will suffer, which in turn could result in order cancellations and loss of revenue.***

Some of the capital equipment used in the manufacture of our solar power products has been developed and made specifically for us, is not readily available from multiple vendors and would be difficult to repair or replace if it were to become damaged or stop working. If any of these suppliers were to experience financial difficulties or go out of business, or if there were any damage to or a breakdown of our manufacturing equipment, our business would suffer. In addition, a supplier's failure to supply this equipment in a timely manner, with adequate quality and on terms acceptable to us, could delay our future capacity expansion or manufacturing process improvements and otherwise disrupt our production schedule or increase our costs of production.

***Project development or construction activities may not be successful, which could increase our costs and impair our ability to recover our investments.***

The development and construction of solar power electric generation facilities and other energy infrastructure projects involve numerous risks. We may be required to spend significant sums for preliminary engineering, permitting, legal, and other expenses before we can determine whether a project is feasible, economically attractive or capable of being built. Successful completion of a particular project may be adversely affected by numerous factors, including:

- failures or delays in obtaining desired or necessary land rights, including ownership, leases and/or easements;
- failures or delays in obtaining necessary permits, licenses or other governmental support or approvals, or in overcoming objections from members of the public or adjoining land owners;
- uncertainties relating to land costs for projects;
- unforeseen engineering problems;



- access to available transmission for electricity generated by our solar power plants;
- construction delays and contractor performance shortfalls;
- work stoppages or labor disruptions;
- cost over-runs;
- availability of products and components from suppliers;
- adverse weather conditions;
- environmental, archaeological and geological conditions; and
- availability of construction and permanent financing.

If we are unable to complete the development of a solar power plant, or fail to meet one or more agreed target construction milestone dates, we may be subject to liquidated damages and/or penalties under the EPC agreement or other agreements relating to the power plant, and we typically will not be able to recover our investment in the project. We expect to invest a significant amount of capital to develop projects initially owned by us or ultimately owned by third parties. If we are unable to complete the development of a solar power project, we may write-down or write-off some or all of these capitalized investments, which would have an adverse impact on our net income in the period in which the loss is recognized.

***We may be unable to obtain financing for our residential lease program and we may be unable to extend our third party ownership model to other jurisdictions, which could all have an adverse effect on our growth and financial results.***

We offer a residential lease program in partnership with third-party financial institutions, which allows residential customers to obtain our systems under lease agreements for terms of up to 20 years. We are actively arranging additional third-party financing for our residential lease program; however, due to the general challenging credit markets worldwide, we may be unable to arrange additional financing partners for our residential lease program in future periods, which could limit our sales and our plans to grow the residential lease program. If financing costs were to increase, our lease product will be less attractive to our customers. In the event we enter into a material number of additional leases without obtaining corresponding third-party financing, our cash, working capital and financial results could be negatively impacted. Our residential lease program has been and will be eligible for the ITC and Cash Grant. We have relied on, and will continue to rely on, financing structures that monetize a substantial portion of those benefits. If, for any reason, we were unable to continue to monetize the tax benefits in our financing structures, we may be unable to provide financing or pricing that is attractive for our customers. Under current law, the ITC will be reduced from approximately 30% of the cost of the solar systems to approximately 10% for solar systems placed in service after December 31, 2016. In addition, Cash Grants are no longer available for new solar systems. Changes in existing law and interpretations by the IRS, Treasury and the courts could reduce the willingness of fund investors to invest in funds associated with our residential lease program. Additionally, if the amount or timing Cash Grant payments or ITC received in connection with the residential lease program varies from what we have projected, this will impact our revenues, cash flows and margins and we may have to recognize losses, which will adversely impact our results of operations and cash flows. See also “A change in our anticipated 1603 Treasury cash grant proceeds or solar investment tax credit could adversely impact our business, revenues, margins, results of operations and cash flows.”

We have to quickly build infrastructure to support the residential lease program, and any failure or delay in implementing the necessary processes and infrastructure could adversely impact our financial results. We establish credit approval limits based on the credit quality of the customers. We may not be able to collect from rent payments from our residential lease customers in the event they enter into bankruptcy or otherwise fail to make payments when due after the period in which the third-party financial institution has agreed to assume this risk ends. We make certain assumptions in accounting for the solar lease program, including, among others, the residual value of the leased systems. As the residential lease program grows, if the residual value of leased systems does not materialize as assumed, it will adversely impact our results of operations. At the end of the term of the lease, our customers have the option to purchase at fair market value, extend the lease or return the leased systems to us. Should there be a large number of returns, we may incur de-installation costs in excess of amounts reserved.

Our leases are third-party ownership arrangements. Sales of electricity by third parties face regulatory challenges in some states and jurisdictions. Other challenges pertain to whether third-party owned systems qualify for the same levels of rebates or other non-tax incentives available for customer-owned solar energy systems. Reductions in, or eliminations of, this



treatment of these third-party arrangements could reduce demand for our residential lease program. As we look to extend the third party ownership model outside of the U.S., we will be faced with the same risks and uncertainties we have in the U.S. Our growth outside of the U.S. could depend on our ability to expand the third party ownership model, and our failure to successfully implement a third-party ownership model globally could adversely impact our financial results.

***We act as the general contractor for many of our customers in connection with the installations of our solar power systems and are subject to risks associated with construction, cost overruns, delays and other contingencies tied to performance bonds and letters of credit, or other required credit and liquidity support guarantees, which could have a material adverse effect on our business and results of operations.***

We act as the general contractor for many of our customers in connection with the installation of our solar power systems. Some customers require performance bonds issued by a bonding agency or letters of credit issued by financial institutions, or may require other forms of liquidity support. Due to the general performance risk inherent in construction activities, it has become increasingly difficult recently to attain suitable bonding agencies willing to provide performance bonding. Obtaining letters of credit may require collateral. In the event we are unable to obtain bonding or sufficient letters of credit or other liquidity support, we will be unable to bid on, or enter into, sales contracts requiring such bonding. See also "*Risks Related to Our Sales Channels--Almost all of our engineering, procurement and construction ("EPC") contracts are fixed price contracts which may be insufficient to cover unanticipated or dramatic changes in costs over the life of the project.*"

In addition, the contracts with some of our larger customers require that we would be obligated to pay substantial penalty payments for each day or other period a solar installation for any such customer is not completed beyond an agreed target date, up to and including the return of the entire project sale price. This is particularly true in Europe, where long-term, fixed feed-in tariffs available to investors are typically set during a prescribed period of project completion, but the fixed amount declines over time for projects completed in subsequent periods. We face material financial penalties in the event we fail to meet the completion deadlines, including but not limited a full refund of the contract price paid by the customers. In certain cases we do not control all of the events which could give rise to these penalties, such as reliance on the local utility to timely complete electrical substation construction.

Furthermore, investors often require that the solar power system generate specified levels of electricity in order to maintain their investment returns, allocating substantial risk and financial penalties to us if those levels are not achieved, up to and including the return of the entire project sale price. Also, our customers often require protections in the form of conditional payments, payment retentions or holdbacks, and similar arrangements that condition its future payments on performance. Delays in solar panel or other supply shipments, other construction delays, unexpected performance problems in electricity generation or other events could cause us to fail to meet these performance criteria, resulting in unanticipated and severe revenue and earnings losses and financial penalties. Construction delays are often caused by inclement weather, failure to timely receive necessary approvals and permits, or delays in obtaining necessary solar panels, inverters or other materials. Additionally, we sometimes purchase land in connection with project development and assume the risk of project completion. All such risks could have a material adverse effect on our business and results of operations.

***Acquisitions of other companies or investments in joint ventures with other companies could materially and adversely affect our financial condition and results of operations, and dilute our stockholders' equity.***

To increase our business and maintain our competitive position, we have and may continue to acquire other companies or engage in joint ventures in the future. For example, in March 2010, we completed our acquisition of SunRay, in July 2010, we formed AUOSP as a joint venture with AUO, and in January 2012, we acquired Tenesol. In December 2012, we entered into a joint venture agreement with partners in China to manufacture our C-7 Tracker systems for the Chinese market.

Acquisitions and joint ventures involve a number of risks that could harm our business and result in the acquired business or joint venture not performing as expected, including:

- insufficient experience with technologies and markets in which the acquired business or joint venture is involved, which may be necessary to successfully operate and/or integrate the business or the joint venture;
- problems integrating the acquired operations, personnel, IT infrastructure, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;

- potential failure to retain or hire key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining or building relationships with suppliers and customers of the acquired business or joint venture, particularly where such customers or suppliers compete with us;
- potential failure of the due diligence processes to identify significant issues with product quality and development or legal and financial liabilities, among other things;
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities or work councils, which could delay or prevent acquisitions, delay our ability to achieve synergies, or our successful operation of acquired companies or joint ventures;
- potential necessity to re-apply for permits of acquired projects;
- problems managing joint ventures with our partners, meeting capital requirements for expansion, and reliance upon joint ventures which we do not control; for example, our ability to effectively manage our joint venture with AUO;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, and liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act).

Additionally, we may decide that it is in our best interests to enter into acquisitions or joint ventures that are dilutive to earnings per share or that negatively impact margins as a whole. In an effort to reduce our cost of goods sold, we have and may continue to enter into acquisitions or joint ventures involving suppliers or manufacturing partners, which would expose us to additional supply chain risks. Acquisitions or joint ventures could also require investment of significant financial resources and require us to obtain additional equity financing, which may dilute our stockholders' equity, or require us to incur additional indebtedness. Such equity or debt financing may not be available on terms acceptable to us. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures.

To the extent that we invest in upstream suppliers or downstream channel capabilities, we may experience competition or channel conflict with certain of our existing and potential suppliers and customers. Specifically, existing and potential suppliers and customers may perceive that we are competing directly with them by virtue of such investments and may decide to reduce or eliminate their supply volume to us or order volume from us. In particular, any supply reductions from our polysilicon, ingot or wafer suppliers could materially reduce manufacturing volume.

Moreover, our joint venture arrangements may lead to disputes with our co-venturers. For example, we are currently engaged in arbitration with First Solar Electric Corporation, our co-venturer in First Philec Solar Corporation, a Philippines wafer manufacturing joint venture in which we hold a minority interest. See also *“Risks Related to Our Supply Chain-Limited competition among suppliers has required us in some instances to enter into long-term, firm commitment supply agreements that could result in excess or insufficient inventory, place us at a competitive disadvantage on pricing or lead to disputes, each of which could impair our ability to meet our cost reduction roadmap.”*

***We may not be able to increase or sustain our recent growth rate, and we may not be able to manage our future growth effectively.***

We may not be able to continue to expand our business or manage future growth. We plan to continue to improve our manufacturing processes and build additional cell manufacturing production capacity in 2016, which will require successful execution of:

- expanding our existing manufacturing facilities and developing new manufacturing facilities, which would increase our fixed costs and, if such facilities are underutilized, would negatively impact our results of operations;
- ensuring delivery of adequate polysilicon and ingots;
- enhancing our customer resource management and manufacturing management systems;

- implementing and improving additional and existing administrative, financial and operations systems, procedures and controls, including the need to centralize, update and integrate our global financial internal control;
- hiring additional employees;
- expanding and upgrading our technological capabilities;
- managing multiple relationships with our customers, suppliers and other third parties;
- maintaining adequate liquidity and financial resources; and
- continuing to increase our revenues from operations.

Improving our manufacturing processes, expanding our manufacturing facilities or developing new facilities may be delayed by difficulties such as unavailability of equipment or supplies or equipment malfunction. Ensuring delivery of adequate polysilicon and ingots is subject to many market risks including scarcity, significant price fluctuations and competition. Maintaining adequate liquidity is dependent upon a variety of factors including continued revenues from operations, working capital improvements, and compliance with our indentures and credit agreements. If we are unsuccessful in any of these areas, we may not be able to achieve our growth strategy and increase production capacity as planned during the foreseeable future. In addition, we need to manage our organizational growth, including rationalizing reporting structures, support teams, and enabling efficient decision making. For example, the administration of the residential lease program requires processes and systems to support this new business model. If we are not successful or if we delay our implementation of such systems and processes, we may adversely affect the anticipated volumes in our residential lease business. If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities, develop new solar cells and other products, satisfy customer requirements, execute our business plan or respond to competitive pressures.

***As a result of fluctuations in the demand for our products, our project assets and other long-lived assets may be impaired, or we may write off equipment or inventory, and each of these events would adversely affect our future financial results.***

We have tangible project assets on our Consolidated Balance Sheets related to capitalized costs incurred in connection with the development of solar power systems. Project assets consist primarily of capitalized costs relating to solar power system projects in various stages of development that we incur prior to the sale of the solar power system to a third party. These costs include costs for land and costs for developing and constructing a solar power system. These project assets could become impaired if there are changes in the fair value of these capitalized costs. If these project assets become impaired, we may write-off some or all of the capitalized project assets, which would have an adverse impact on our financial results in the period in which the loss is recognized.

In addition, if the demand for our solar products decreases, our manufacturing capacity could be underutilized, and we may be required to record an impairment on our long-lived assets, including facilities and equipment, which would increase our expenses. In improving our manufacturing processes consistent with our cost reduction roadmap, we could write off equipment that is removed from the manufacturing process. In addition, if product demand decreases or we fail to forecast demand accurately, we could be required to write off inventory or record excess capacity charges, which would have a negative impact on our gross margin. Factory-planning decisions may shorten the useful lives of long-lived assets, including facilities and equipment, and cause us to accelerate depreciation. Each of the above events would adversely affect our future financial results.

***Fluctuations in Solar Renewable Energy Credit prices may adversely impact our results of operations.***

We acquire Solar Renewable Energy Credits ("SRECs") in the ordinary course of business in New Jersey by agreeing in certain cases to purchase SRECs generated by a solar system we install for a specified period at specified pricing. We then sell the SRECs to utilities to help them meet their state renewable energy portfolio requirements, or to other third parties. SREC prices have decreased significantly in recent years as the supply of SRECs has increased. If SREC prices continue to fluctuate or remain lower than our purchase commitment prices, we may have to recognize losses, which will adversely impact our results of operations.

***A change in our anticipated foreign exchange transactions could affect the accounting of our foreign currency hedging program and adversely impact our revenues, margins, and results of operations.***

Our hedging program is designed to reduce our exposure to movements in foreign currency exchange rates. As a part of this program, we designate certain derivative transactions as effective cash flow hedges of anticipated foreign currency

revenues and record the effective portion of changes in the fair value of such transactions in "Accumulated other comprehensive income (loss)" in our Consolidated Balance Sheets until the anticipated revenues have occurred, at which point the associated income or loss would be recognized in revenue. If we conclude that we have a pattern of determining that hedged forecasted transactions will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations.

***Fluctuations in foreign currency exchange rates and interest rates could adversely impact our business and results of operations.***

We have significant sales globally, and we are exposed to movements in foreign exchange rates, primarily related to sales to European customers that are denominated in Euros. A depreciation of the Euro would adversely impact our margins on sales to European customers. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. As a result, substantial unfavorable changes in foreign currency exchange rates could have a substantial adverse effect on our financial condition and results of operations. Although we seek to reduce our currency exposure by engaging in hedging transactions where we deem it appropriate, we do not know whether our efforts will be successful. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize, we could experience losses. In the past, we have experienced an adverse impact on our revenue, gross margin, cash position and profitability as a result of foreign currency fluctuations. In addition, any break-up of the Eurozone would disrupt our sales and supply chain, expose us to financial counterparty risk, and materially and adversely affect our results of operations and financial condition.

We are exposed to interest rate risk because many of our customers depend on debt financing to purchase our solar power systems. An increase in interest rates could make it difficult for our customers to obtain the financing necessary to purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could lower a customer's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, which could reduce our revenue and gross margin and adversely impact our operating results. Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. In addition, lower interest rates have an adverse impact on our interest income. See also Item 7A "Quantitative and Qualitative Disclosures About Market Risk" and "Risks Related to Our Sales Channels-The execution of our growth strategy is dependent upon the continued availability of third-party financing arrangements for our solar power plants, our residential lease program and our customers, and is affected by general economic conditions."

***We are exposed to the credit risk of our financial counterparties, customers and suppliers.***

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, notes receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions, and purchased options. We are exposed to losses in the event of nonperformance by the counterparties to our financial and derivative instruments.

We enter into agreements with suppliers that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make significant prepayments to the vendors over the terms of the arrangements. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate. In addition, we may not be able to collect from our customers in the event of the deterioration of their credit or if they enter into bankruptcy. Any of the preceding could materially and adversely impact our financial conditions, results of operations and liquidity. See also Item 7A "Quantitative and Qualitative Disclosures About Market Risk."

***We depend on third-party contract manufacturers to assemble a significant portion of our solar cells into solar panels and any failure to obtain sufficient assembly and test capacity could significantly delay our ability to ship our solar panels and damage our customer relationships.***

We outsource a portion of module manufacturing to contract manufacturers in the United States and China. As a result of outsourcing this final step in our production, we face several significant risks, including limited control over assembly and testing capacity, delivery schedules, quality assurance, manufacturing yields and production costs. If the operations of our third-

party contract manufacturers were disrupted or its financial stability impaired, or if they were unable or unwilling to devote capacity to our solar panels in a timely manner, our business could suffer as we might be unable to produce finished solar panels on a timely basis. We also risk customer delays resulting from an inability to move module production to an alternate provider or to complete production internationally, and it may not be possible to obtain sufficient capacity or comparable production costs at another facility in a timely manner. In addition, migrating our design methodology to third-party contract manufacturers or to a captive panel assembly facility could involve increased costs, resources and development time, and utilizing additional third-party contract manufacturers could expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could impair our revenue by significantly delaying our ability to ship products and potentially damage our relationships with new and existing customers, any of which could have a material and adverse effect on our financial condition and results of operation.

***While we believe we currently have effective internal control over financial reporting, we may identify a material weakness in our internal controls over financial reporting that could cause investors to lose confidence in the reliability of our financial statements and result in a decrease in the value of our common stock.***

Our management is responsible for maintaining internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with U.S. GAAP. While the Company had material weaknesses in fiscal 2009, management remediated these material weaknesses, and concluded that as of January 1, 2012 and December 30, 2012, our internal control over financial reporting and our disclosure controls and procedures were effective.

We need to continuously maintain our internal control processes and systems and adapt them as our business grows and changes. This process is expensive, time-consuming and requires significant management attention. We cannot be certain that our internal control measures will continue to provide adequate control over our financial processes and reporting and ensure compliance with Section 404 of the Sarbanes-Oxley Act. Furthermore, as we grow our business or acquire other businesses, our internal controls may become more complex and we may require significantly more resources to ensure they remain effective. Failure to implement required new or improved controls, or difficulties encountered in their implementation, either in our existing business or in businesses that we may acquire, could harm our operating results or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm identify material weaknesses in our internal controls, the disclosure of that fact, even if quickly remedied, may cause investors to lose confidence in our financial statements and the trading price of our common stock may decline.

Remediation of a material weakness could require us to incur significant expense and if we fail to remedy any material weakness, our financial statements may be inaccurate, our ability to report our financial results on a timely and accurate basis may be adversely affected, our access to the capital markets may be restricted, the trading price of our common stock may decline, and we may be subject to sanctions or investigation by regulatory authorities, including the SEC or The Nasdaq Global Select Market. We may also be required to restate our financial statements from prior periods.

***We and certain of our current and former officers and directors have been named as parties to various lawsuits relating to our past Audit Committee accounting investigation, and may be named in further litigation, including with respect to the restatement of our consolidated financial statements, all of which could require significant management time and attention, result in significant legal expenses or damages, and cause our business, financial condition, results of operations and cash flows to suffer.***

Three securities class action lawsuits were filed against our Company and certain of our current and former officers in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired our securities from April 17, 2008, through November 16, 2009. The actions arise from our announcement on November 16, 2009, that our Audit Committee commenced an internal investigation regarding certain unsubstantiated accounting entries. The complaints allege that the defendants made material misstatements and omissions concerning our financial results for 2008 and 2009, seek an unspecified amount of damages, and allege violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and sections 11 and 15 of the Securities Act of 1933. These cases were consolidated as *In re SunPower Securities Litigation*, Case No. CV-09-5473-RS (N.D. Cal.), and an amended complaint was filed on April 18, 2011. The amended complaint added two former employees as defendants. Defendants moved to dismiss the amended complaint, and on December 19, 2011, the court dismissed the claims brought pursuant to sections 11 and 15 of the Securities Act of 1933 and the claims brought against the two newly added former employees. In addition, derivative actions purporting to be brought on our behalf have also been filed in state and federal courts against several of our current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. The federal derivative complaints assert state-law claims for breach of fiduciary duty, waste of corporate

assets, and unjust enrichment. The Delaware state derivative complaint asserts state-law claims for breach of fiduciary duty and contribution and indemnification. The complaints seek an unspecified amount of damages.

On December 14, 2012, we announced that an agreement in principle was reached to settle the consolidated securities class action lawsuit for \$19.7 million. On February 1, 2013, the parties filed a stipulation of settlement and a motion for preliminary approval of the settlement. The motion is noticed to be heard on March 14, 2013. The settlement is subject to certain conditions, including final approval by the court after members of the proposed settlement class receive notice and an opportunity to be heard. Until the conditions to the settlement have been satisfied, there can be no assurance that the settlement will become final. Other risks and uncertainties include the extent to which individual claimants opt out of the settlement class and pursue individual claims; our ability to overcome any objections or appeals regarding the settlement; and our ability to absorb the cost of the settlement and the timing of the impact on financial statements.

We cannot predict the outcome of these lawsuits. The matters which led to our Audit Committee's investigation and the restatement of our consolidated financial statements have exposed us to greater risks associated with litigation, regulatory proceedings and government enforcement actions. We and our current and former officers and directors may, in the future, be subject to additional private and governmental actions relating to such matters. Subject to certain limitations, we are obligated to indemnify our current and former officers and directors in connection with such lawsuits and governmental investigations and any related litigation or settlements amounts. Regardless of the outcome, these lawsuits, and any other litigation that may be brought against us or our current or former officers and directors, could be time-consuming, result in significant expense and divert the attention and resources of our management and other key employees. An unfavorable outcome in any of these matters could exceed coverage provided under potentially applicable insurance policies, which is limited. Any such unfavorable outcome could have a material adverse effect on our business, financial condition, results of operations and cash flows. Further, we could be required to pay damages or additional penalties or have other remedies imposed against us, or our current or former directors or officers, which could harm our reputation, business, financial condition, results of operations or cash flows. In addition, our Company is largely self insured for these claims so that expenses, settlements or damages in excess of \$5 million in these actions will not be recoverable under the primary coverage insurance policies. Moreover, such policies are subject to several terms, conditions and exclusions. See also *"Risks Related to Our Liquidity - Because we self-insure for certain indemnities we have made to our officers and directors, potential claims could materially and negatively impact our financial condition and results of operations."*

***We may not fully realize the anticipated benefits of our relationship with Total.***

We and Total S.A., parent of Total Gas & Power USA SAS ("Total"), have entered into a Credit Support Agreement under which Total S.A. has agreed to enter into one or more guarantee agreements with banks providing letter of credit facilities to us in support of certain of our businesses and other permitted purposes. Total S.A. will guarantee the payment to the applicable issuing bank of our obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and us. In consideration for the commitments of Total S.A., we are required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a guaranty, starting at 1% and increasing to 2.35% in the fifth year following the completion of the tender offer. We entered into a letter of credit facility agreement with Deutsche Bank AG New York Branch in August 2011 supported by a Total S.A. guarantee. We have also entered into the Liquidity Support Facility, under which Total S.A. has agreed to provide up to \$600 million of liquidity support in the event that our then-current or projected unrestricted cash, cash equivalents and unused borrowing capacity is reduced below \$100 million or we are not in compliance with any financial covenant contained in our indebtedness.

We and Total have also entered into a Research & Collaboration Agreement that establishes a framework under which we engage in long-term research and development collaboration with Total. The Research & Collaboration Agreement is expected to encompass a number of different projects, with a focus on advancing technologies in the area of photovoltaics.

We may not realize the expected benefits of these agreements in a timely manner, or at all. The Credit Support Agreement can provide guarantees to our letter of credit facility, but not our other indebtedness. As the guarantee fee goes up over time, it may not be price competitive for us to continue to utilize the guarantee under the Credit Support Agreement and we may choose not to do so, which may cause our lenders to seek cash collateral. If the credit quality of Total S.A. were to deteriorate, then the guarantees would not be as beneficial to our lenders, which could reduce their willingness to lend to us and raise our costs of borrowing. We could incur additional expenses related to the Credit Support Agreement, especially relating to the guarantee fee. The Liquidity Support Facility may cause potential dilution to our other stockholders through the issuance of equity, warrants, and convertible debt securities to Total S.A. and its affiliates. The amount of support Total S.A. must provide under the Liquidity Support Facility is limited to \$600 million. On December 24, 2012, Total S.A. agreed to guarantee our revolving credit facility with Credit Agricole, which reduced the capacity available under the Liquidity Support Facility by \$275 million. Finally, the Liquidity Support Facility will no longer be available, and all outstanding debt under the Liquidity



Support Facility (excluding the guarantee provided by Total S.A. under the revolving credit facility with Credit Agricole) will become due, upon the completion of CVSR, which we expect to occur before the end of fiscal 2013.

We may have difficulties in fully leveraging the research and development efforts of Total while protecting our intellectual property rights and our long term strategic interests. Further, the collaboration envisioned by the parties from the Research & Collaboration Agreement could be subject to governmental controls that could limit the full set of benefits.

In addition, we are a U.S.-based, high growth, technology and alternative energy company, while Total S.A. is a more mature and much larger French diversified energy company. The resulting differences in our organizational cultures may prevent us from fully realizing the anticipated benefits from our relationship. If we have a potential conflict with Total, the resolution may be less favorable to us than if we were dealing with an unaffiliated party. Such disagreements may relate to any determination with respect to mergers and other business combinations, our acquisition or disposition of assets, our financing activities, allocation of business opportunities, employee retention or recruiting.

***Our agreements with Cypress Semiconductor Corporation ("Cypress") require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to pursue certain business initiatives.***

On October 6, 2005, while a subsidiary of Cypress, our former parent company, we entered into a tax sharing agreement with Cypress providing for each party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress would pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis while we were a member of Cypress's consolidated or combined group for federal, state, local and foreign tax purposes. Our portion of tax liabilities or benefits was determined based upon our separate return tax liability as defined under the tax sharing agreement. These tax liabilities or benefits were based on a pro forma calculation as if we were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis, subject to adjustments as set forth in the tax sharing agreement.

On June 6, 2006, we ceased to be a member of Cypress's consolidated group for federal income tax purposes and certain state income tax purposes. On September 29, 2008, we ceased to be a member of Cypress's combined group for all state income tax purposes. To the extent that we become entitled to utilize our separate portion of any tax credit or loss carryforwards existing as of such date, we will distribute to Cypress the tax effect, estimated to be 40% for federal and state income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. We will distribute these amounts to Cypress in cash or in our shares, at Cypress's option. As of December 30, 2012, we have a potential future liability of approximately \$2.2 million that may be due under this arrangement. In both fiscal 2012 and 2011, we did not make any cash payments to Cypress related to this arrangement.

We were jointly and severally liable for any tax liability during all periods in which we were deemed to be a member of the Cypress consolidated or combined group. Accordingly, although the tax sharing agreement allocates tax liabilities between Cypress and all its consolidated subsidiaries, for any period in which we were included in Cypress's consolidated or combined group, we could be liable in the event that any federal or state tax liability was incurred, but not discharged, by any other member of the group.

We will continue to be jointly and severally liable to Cypress until the statute of limitations runs or all appeal options are exercised for all years in which we joined in the filing of tax returns with Cypress. If Cypress experiences adjustments to their tax liability pursuant to tax examinations, we may incur an incremental liability.

We would also be liable to Cypress for taxes that might arise from the distribution by Cypress of our former class B common stock to Cypress's stockholders on September 29, 2008, or "spin-off". In connection with Cypress's spin-off of our former class B common stock, we and Cypress, on August 12, 2008, entered into an amendment to our tax sharing agreement ("Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

Subject to certain caveats, Cypress obtained a ruling from the IRS to the effect that the distribution by Cypress of our former class B common stock to Cypress's stockholders qualified as a tax-free distribution under Section 355 of the Internal Revenue Code ("Code"). Despite such ruling, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the voting power or value of our stock was or is later acquired as part of a plan or series of related transactions that included the distribution of our stock. The Amended Tax Sharing Agreement requires us to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability

attributable to certain dispositions of our stock by Cypress, that cause Cypress's distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

Under the Amended Tax Sharing Agreement, we also agreed that, until October 29, 2010, we would not effect a conversion of any or all of our former class B common stock to former class A common stock or any similar recapitalization transaction or series of related transactions (a "Recapitalization"). On November 16, 2011, we reclassified our former class A common stock and class B common stock into a single class of common stock. In the event this reclassification does result in the spin-off being treated as taxable, we could face substantial liabilities as a result of our obligations under the Amended Tax Sharing Agreement.

***Any future agreements with Total S.A. regarding tax indemnification and certain tax liabilities may adversely impact our financial position.***

We currently believe that we will not join in tax filings on a consolidated, combined or unitary basis with Total S.A. Accordingly, no tax sharing arrangement is currently in place. If we and Total join in a tax filing in the future, a tax sharing agreement will be required, which would allocate the tax liabilities among the parties and may adversely impact our financial position.

***Our headquarters and manufacturing facilities, as well as the facilities of certain subcontractors and suppliers, are located in regions that are subject to earthquakes, floods, and other natural disasters, and climate change and climate change regulation could have an adverse effect on our operations.***

Our headquarters and research and development operations are located in California, and our manufacturing facilities are located in the Philippines, France, South Africa and Mexico. The facilities of our joint venture for manufacturing is located in Malaysia. Any significant earthquake, tsunami or other natural disaster in these countries or countries where our suppliers are located could materially disrupt our management operations and/or our production capabilities, and could result in our experiencing a significant delay in delivery, or substantial shortage, of our products and services.

In addition, legislators, regulators, and non-governmental organizations, as well as companies in many business sectors, are considering ways to reduce green-house gas emissions. Further regulation could be forthcoming at the federal or state level with respect to green-house gas emissions. Such regulation or similar regulations in other countries could result in regulatory or product standard requirements for our global business, including our manufacturing operations. Furthermore, the potential physical impacts of climate change on our operations may include changes in weather patterns (including floods, tsunamis, drought and rainfall levels), water availability, storm patterns and intensities, and temperature levels. These potential physical effects may adversely impact the cost, production, sales and financial performance of our operations.

***We could be adversely affected by any violations of the U.S. Foreign Corrupt Practices Act ("FCPA") and foreign anti-bribery laws.***

The U.S. FCPA generally prohibits companies and their intermediaries from making improper payments to non-U.S. government officials for the purpose of obtaining or retaining business. Other countries in which we operate also have anti-bribery laws, some of which prohibit improper payments to government and non-government persons and entities. Our policies mandate compliance with these anti-bribery laws. We continue to acquire businesses outside of the United States and operate in many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. In addition, due to the level of regulation in our industry, our entry into new jurisdictions through internal growth or acquisitions requires substantial government contact where norms can differ from U.S. standards. While we implement policies and procedures and conduct training designed to facilitate compliance with these anti-bribery laws, thereby mitigating the risk of violations of such laws, our employees, subcontractors and agents may take actions in violation of our policies and anti-bribery laws. Any such violation, even if prohibited by our policies, could subject us to criminal or civil penalties or other sanctions, which could have a material adverse effect on our business, financial condition, cash flows and reputation.

***We sell our solar products to agencies of the U.S. government, and as a result, we are subject to a number of procurement rules and regulations, and our business could be adversely affected by an audit by the U.S. government if it were to identify errors or a failure to comply with regulations.***

We have sold and continue to sell our solar power systems to various U.S. government agencies. In connection with these contracts, we must comply with and are affected by laws and regulations relating to the award, administration, and performance of U.S. government contracts, which may impose added costs on our business. We are expected to perform in



compliance with a vast array of federal laws and regulations, including, without limitation, the Federal Acquisition Regulation, the Truth in Negotiations Act, the Federal False Claims Act, the Anti-Kickback Act of 1986, the Trade Agreements Act, the Buy American Act, the Procurement Integrity Act, and the Davis Bacon Act. A violation of specific laws and regulations, even if prohibited by our policies, could result in the imposition of fines and penalties, reductions of the value of our contracts, contract modifications or termination, or suspension or debarment from government contracting for a period of time.

In some instances, these laws and regulations impose terms or rights that are more favorable to the government than those typically available to commercial parties in negotiated transactions. For example, the U.S. government may terminate any of our government contracts either at its convenience or for default based on performance. A termination arising out of our default may expose us to liability and have a material adverse effect on our ability to compete for future contracts.

U.S. government agencies may audit and investigate government contractors. These agencies review a contractor's performance under its contracts, cost structure, and compliance with applicable laws, regulations, and standards. If an audit or investigation uncovers improper or illegal activities, we may be subject to civil or criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines, and suspension or prohibition from doing business with the U.S. government. In addition, we could suffer reputational harm if allegations of impropriety were made against us.

***Compliance with environmental regulations can be expensive, and noncompliance with these regulations may result in adverse publicity and potentially significant monetary damages and fines.***

We are required to comply with all foreign, U.S. federal, state and local laws and regulations regarding pollution control and protection of the environment. In addition, under some statutes and regulations, a government agency, or other parties, may seek recovery and response costs from operators of property where releases of hazardous substances have occurred or are ongoing, even if the operator was not responsible for such release or otherwise at fault. We use, generate and discharge toxic, volatile and otherwise hazardous chemicals and wastes in our research and development and manufacturing activities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations. In addition, if more stringent laws and regulations are adopted in the future, the costs of compliance with these new laws and regulations could be substantial. To date such laws and regulations have not had a significant impact on our operations, and we believe that we have all necessary permits to conduct operations as they are presently conducted. If we fail to comply with present or future environmental laws and regulations, however, we may be required to pay substantial fines, suspend production or cease operations.

In addition, new U.S. legislation includes disclosure requirements regarding the use of "conflict" minerals mined from the Democratic Republic of Congo and adjoining countries and procedures regarding a manufacturer's efforts to prevent the sourcing of such "conflict" minerals. The implementation of these requirements could affect the sourcing and availability of minerals used in the manufacture of solar products. As a result, there may only be a limited pool of suppliers who provide conflict free minerals, and we cannot be certain that we will be able to obtain products in sufficient quantities or at competitive prices. Also, since our supply chain is complex, we may face reputational challenges with our customers and other stakeholders if we are unable to sufficiently verify the origins for all minerals used in our products.

***Our success depends on the continuing contributions of our key personnel.***

We rely heavily on the services of our key executive officers and the loss of services of any principal member of our management team could adversely impact our operations. In addition, we anticipate that we will need to hire a number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. Due to the current economic environment, we have conducted several restructurings, which may negatively affect our ability to execute our strategy and business model. The competition for qualified personnel is intense in our industry. We may not be successful in attracting and retaining sufficient numbers of qualified personnel to support our anticipated growth. We cannot guarantee that any employee will remain employed with us for any definite period of time since all of our employees, including our key executive officers, serve at-will and may terminate their employment at any time for any reason.

***We may in the future be required to consolidate the assets, liabilities and financial results of certain of our existing or future joint ventures, which could have an adverse impact on our financial position, gross margin and operating results.***

The Financial Accounting Standards Board has issued accounting guidance regarding variable interest entities ("VIEs") that affects our accounting treatment of our existing and future joint ventures. We have variable interests in AUOSP, our joint venture with AUO. To ascertain if we are required to consolidate these entities, we determine whether these entities are VIEs and if we are the primary beneficiary in accordance with the accounting guidance. Factors we consider in determining whether

we are the VIE's primary beneficiary include the decision making authority of each partner, which partner manages the day-to-day operations of the joint venture and each partner's obligation to absorb losses or right to receive benefits from the joint venture in relation to that of the other partner. Changes in the financial accounting guidance, or changes in circumstances at each of these joint ventures, could lead us to determine that we have to consolidate the assets, liabilities and financial results of such joint ventures. The consolidation of AUOSP would significantly increase our indebtedness. Consolidation of our VIEs could have a material adverse impact on our financial position, gross margin and operating results. In addition, we may enter into future joint ventures or make other equity investments, which could have an adverse impact on us because of the financial accounting guidance regarding VIEs.

### **Risks Related to Our Intellectual Property**

***We are dependent on our intellectual property, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights.***

From time to time, we, our respective customers, or third parties with whom we work may receive letters, including letters from various industry participants, alleging infringement of their patents. Although we are not currently aware of any parties pursuing or intending to pursue infringement claims against us, we cannot assure investors that we will not be subject to such claims in the future. Additionally, we are required by contract to indemnify some of our customers and our third-party intellectual property providers for certain costs and damages of patent infringement in circumstances where our products are a factor creating the customer's or these third-party providers' infringement liability. This practice may subject us to significant indemnification claims by our customers and our third-party providers. We cannot assure investors that indemnification claims will not be made or that these claims will not harm our business, operating results or financial condition. Intellectual property litigation is very expensive and time-consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, our customers or our third-party intellectual property providers, we may be required to pay substantial damages to the party claiming infringement, stop selling products or using technology that contains the allegedly infringing intellectual property, or enter into royalty or license agreements that may not be available on acceptable terms, if at all. Parties making infringement claims may also be able to bring an action before the International Trade Commission that could result in an order stopping the importation into the United States of our solar products. Any of these judgments could materially damage our business. We may have to develop non-infringing technology, and our failure in doing so or in obtaining licenses to the proprietary rights on a timely basis could have a material adverse effect on our business.

***We have filed, and may continue to file, claims against other parties for infringing our intellectual property that may be very costly and may not be resolved in our favor.***

To protect our intellectual property rights and to maintain our competitive advantage, we have, and may continue to, file suits against parties who we believe infringe our intellectual property. Intellectual property litigation is expensive and time consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition, and our enforcement efforts may not be successful. In addition, the validity of our patents may be challenged in such litigation. Our participation in intellectual property enforcement actions may negatively impact our financial results.

***We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer.***

We seek to protect our proprietary manufacturing processes, documentation and other written materials primarily under trade secret and copyright laws. We also typically require employees, consultants, and third parties such as our vendors and customers, with access to our proprietary information to execute confidentiality agreements. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. Our systems may be subject to intrusions, security breaches, or targeted theft of our trade secrets. In addition, our proprietary rights may not be adequately protected because:

- people may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;
- policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, the remedy obtained may be inadequate to restore protection of our intellectual property, and moreover, we may be unable to determine the extent of any unauthorized use;

- the laws of other countries in which we market our solar products, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies; and
- reports we file in connection with government-sponsored research contracts are generally available to the public and third parties may obtain some aspects of our sensitive confidential information.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without compensating us for doing so. We also have formed the joint venture to manufacture our solar cells at AUOSP, and signed a joint venture agreement with partners in China with respect to our C-7 Tracker technology. Our joint venture partners may not be deterred from misappropriating our proprietary technologies despite contractual and other legal restrictions. Legal protection in countries where our joint ventures are located may not be robust and enforcement by us of our intellectual property rights may be difficult. As a result, our joint venture partners could directly compete with our business. Any such activities or any other inability to adequately protect our proprietary rights could harm our ability to compete, to generate revenue and to grow our business.

***We may not obtain sufficient patent protection on the technology embodied in the solar products we currently manufacture and market, which could harm our competitive position and increase our expenses.***

Although we substantially rely on trade secret laws and contractual restrictions to protect the technology in the solar products we currently manufacture and market, our success and ability to compete in the future may also depend to a significant degree upon obtaining patent protection for our proprietary technology. We currently own multiple patents and patent applications which cover aspects of the technology in the solar cells and mounting systems that we currently manufacture and market. Material patents that relate to our systems products and services primarily relate to our rooftop mounting products and ground-mounted tracking products. We intend to continue to seek patent protection for those aspects of our technology, designs, and methodologies and processes that we believe provide significant competitive advantages.

Our patent applications may not result in issued patents, and even if they result in issued patents, the patents may not have claims of the scope we seek or we may have to refile patent applications due to newly discovered prior art. In addition, any issued patents may be challenged, invalidated, or declared unenforceable, or even if we obtain an award of damages for infringement by a third party, such award could prove insufficient to compensate for all damages incurred as a result of such infringement.

The earliest term of any issued patents would be 20 years from their earliest priority date and if our applications are pending for a long time period, we may have a correspondingly shorter term for any patent that may issue. Our present and future patents may provide only limited protection for our technology and may be insufficient to provide competitive advantages to us. For example, competitors could develop similar or more advantageous technologies on their own or design around our patents. Also, patent protection in certain foreign countries may not be available or may be limited in scope and any patents obtained may not be as readily enforceable as in the United States, making it difficult for us to effectively protect our intellectual property from misuse or infringement by other companies in these countries. Our inability to obtain and enforce our intellectual property rights in some countries may harm our business. In addition, given the costs of obtaining patent protection, we may choose not to protect certain innovations that later turn out to be important.

***We may not be able to prevent others from using the term SunPower or similar terms in connection with their solar power products which could adversely affect the market recognition of our name and our revenue.***

"SunPower" and the "SunPower" logo are our registered trademark in certain countries, including the United States, for uses that include solar cells and solar panels. We are seeking registration of the "SunPower" trademark in other countries but we may not be successful in some of these jurisdictions. We hold registered trademarks for SunPower®, SunPower Electric®, Maxeon®, Oasis®, PowerGuard®, PowerLight®, Serengeti®, and SunTile®, in certain countries, including the United States. We have not registered, and may not be able to register, these trademarks in other key countries. In the foreign jurisdictions where we are unable to obtain or have not tried to obtain registrations, others may be able to sell their products using trademarks compromising or incorporating "SunPower," or a variation thereof, or our other chosen brands, which could lead to customer confusion. In addition, if there are jurisdictions where another proprietor has already established trademark rights in marks containing "SunPower," or our other chosen brands, we may face trademark disputes and may have to market our products with other trademarks or without our trademarks, which may undermine our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to the SunPower mark, or our other marks, which if not resolved favorably, could cause our branding efforts to suffer. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

***Our past reliance on government programs to partially fund our research and development programs could impair our ability to commercialize our solar power products and services.***

Government funding of some of our research and development efforts imposed certain restrictions on our ability to commercialize results and could grant commercialization rights to the government. In some funding awards, the government is entitled to intellectual property rights arising from the related research. Such rights include a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention developed under an award throughout the world by or on behalf of the government. Other rights include the right to require us to grant a license to the developed technology or products to a third party or, in some cases, if we refuse, the government may grant the license itself, if the government determines that action is necessary because we fail to achieve practical application of the technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give the United States industry preference. Accepting government funding can also require that manufacturing of products developed with federal funding be conducted in the United States.

***We may be subject to information technology system failures or network disruptions that could damage our business operations, financial conditions, or reputation.***

We may be subject to information technology system failures and network disruptions. These may be caused by natural disasters, accidents, power disruptions, telecommunications failures, acts of terrorism or war, computer viruses, physical or electronic break-ins, or similar events or disruptions. System redundancy may be ineffective or inadequate, and our disaster recovery planning may not be sufficient for all eventualities. Such failures or disruptions could result in delayed or canceled orders. System failures and disruptions could also impede the manufacturing and shipping of products, delivery of online services, transactions processing, and financial reporting.

***We may be subject to breaches of our information technology systems, which could lead to disclosure of our internal information, or could damage our reputation or relationships with dealers and customers, or could disrupt access to our online services. Such breaches could subject us to significant reputational, financial, legal, and operational consequences.***

Our business requires us to use and store customer, employee, and business partner personally identifiable information ("PII"). This may include names, addresses, phone numbers, email addresses, contact preferences, tax identification numbers, and payment account information. Malicious attacks to gain access to PII affect many companies across various industries, including ours.

We use encryption and authentication technologies to secure the transmission and storage of data. These security measures may be compromised as a result of third-party security breaches, employee error, malfeasance, faulty password management, or other irregularity, and result in persons obtaining unauthorized access to our data. Third parties may attempt to fraudulently induce employees or customers into disclosing passwords or other sensitive information, which may in turn be used to access our information technology systems.

We devote resources to network security, data encryption, and other security measures to protect our systems and data, but these security measures cannot provide absolute security. We may experience a breach of our systems and may be unable to protect sensitive data. We could also be exposed to a risk of loss or litigation and possible liability, which could result in a detrimental effect on our business, results of operations and financial condition.

***Our business is subject to a variety of U.S. and international laws, rules, policies and other obligations regarding data protection.***

We are subject to federal, state and international laws relating to the collection, use, retention, security and transfer of PII. In many cases, these laws apply not only to third-party transactions, but also to transfers of information between one company and its subsidiaries, and among the subsidiaries and other parties with which we have commercial relations. Several jurisdictions have passed new laws in this area, and other jurisdictions are considering imposing additional restrictions. These laws continue to develop and may be inconsistent from jurisdiction to jurisdiction. Complying with emerging and changing international requirements may cause us to incur costs or require us to change our business practices. Noncompliance could result in penalties or legal liability.

A failure by us, our suppliers or other parties with whom we do business to comply with a posted privacy policies or with other federal, state or international privacy-related or data protection laws and regulations could result in proceedings against us by governmental entities or others, which could have a detrimental effect on our business, results of operations and financial condition.

## Risks Related to Our Debt and Equity Securities

***Total's majority ownership of our common stock may adversely affect the liquidity and value of our common stock.***

As of December 30, 2012, Total owned approximately 66% of our outstanding common stock. Pursuant to the Affiliation Agreement between us and Total, the Board of Directors of SunPower includes five designees from Total, giving Total majority control of our Board. As a result, subject to the restrictions in the Affiliation Agreement, Total possesses significant influence and control over our affairs. Our non-Total stockholders have reduced ownership and voting interest in our company and, as a result, have less influence over the management and policies of our company than they exercised prior to Total's tender offer. As long as Total controls us, the ability of our other stockholders to influence matters requiring stockholder approval is limited. Total's stock ownership and relationships with members of our Board of Directors could have the effect of preventing minority stockholders from exercising significant control over our affairs, delaying or preventing a future change in control, impeding a merger, consolidation, takeover or other business combination or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us, limiting our financing options. These factors in turn could adversely affect the market price of our common stock or prevent our stockholders from realizing a premium over the market price of our common stock. The Affiliation Agreement limits Total and any member of the Total affiliated companies ("Total Group") from effecting, seeking, or entering into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning our shares in excess of certain thresholds during a standstill period. The Affiliation Agreement also imposes certain limitations on the Total Group's ability to seek to affect a tender offer or merger to acquire 100% of our outstanding voting power. Such provisions may not be successful in preventing the Total Group from engaging in transactions which further increase their ownership and negatively impact the price of our common stock. In connection with our acquisition of Tenesol and our entry into the Liquidity Support Facility, we agreed to exempt the shares issued in connection with those transactions from the ownership limitations imposed by the Affiliation Agreement, so that Total may own up to the stated limits plus any such shares. In return for providing certain guarantees or other support, as was the case with the Liquidity Support Agreement, Total may request additional equity to be issued to it or its affiliates, or it may convert previously issued convertible debt into equity or exercise previously granted warrants, potentially at a discount or at a smaller premium than our other stockholders would prefer, which may lead to additional dilution to our stockholders. Due to the pricing of the equity compensation elements of the Liquidity Support Facility, the degree of dilution to our other stockholders will tend to increase to the extent that we require more support and to the extent that our stock price decreases. See also "*Risks Related to Our Liquidity--Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products, and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.*" Finally, the market for our common stock has become less liquid and more thinly traded as a result of the Total tender offer. The lower number of shares available to be traded could result in greater volatility in the price of our common stock and affect our ability to raise capital on favorable terms in the capital markets.

***Conversion of our outstanding 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.***

To the extent we issue common stock upon conversion of our outstanding 4.75% debentures, the conversion of some or all of such debentures will dilute the ownership interests of existing stockholders, including holders who had previously converted their debentures. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. Sales of our common stock in the public market or sales of any of our other securities could dilute ownership and earnings per share, and even the perception that such sales could occur could cause the market prices of our common stock to decline. In addition, the existence of our outstanding debentures may encourage short selling of our common stock by market participants who expect that the conversion of the debentures could depress the prices of our common stock.

We issued warrants to affiliates of the underwriters of our 4.50% and 4.75% debentures, which are exercisable for a total of approximately 11.1 million shares and 8.7 million shares of our common stock, respectively. The warrants, together with certain convertible hedge transactions, are meant to reduce our exposure upon potential conversion of our 4.50% and 4.75% debentures. If the market price of our common stock exceeds the respective exercise prices of the warrants, such warrants will have a dilutive effect on our earnings per share, and could dilute the ownership interests for existing stockholders if exercised.

***The price of our common stock, and therefore of our outstanding 0.75%, 4.50%, and 4.75% debentures, may fluctuate significantly.***

Our common stock has experienced extreme price and volume fluctuations. The trading price of our common stock could be subject to further wide fluctuations due to many factors, including the factors discussed in this risk factors section. In addition, the stock market in general, and the Nasdaq Global Select Market and the securities of technology companies and solar companies in particular, have experienced severe price and volume fluctuations. These trading prices and valuations, including our own market valuation and those of companies in our industry generally, may not be sustainable. These broad market and industry factors may decrease the market price of our common stock, regardless of our actual operating performance. Because the 0.75%, 4.50%, and 4.75% debentures are convertible into our common stock (and/or cash equivalent to the value of our common stock), volatility or depressed prices of our common stock could have a similar effect on the trading price of these debentures.

***Delaware law and our certificate of incorporation and by-laws contain anti-takeover provisions, our outstanding 0.75%, 4.50%, and 4.75% debentures provide for a right to convert upon certain events, and our Board of Directors entered into a rights agreement and declared a rights dividend, any of which could delay or discourage takeover attempts that stockholders may consider favorable.***

Provisions in our restated certificate of incorporation and by-laws may have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the right of the Board of Directors to elect a director to fill a vacancy created by the expansion of the Board of Directors;
- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the Board of Directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of the Board of Directors to issue, without stockholder approval, up to 10.0 million shares of preferred stock with terms set by the Board of Directors, which rights could be senior to those of common stock;
- our Board of Directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible;
- stockholders may not call special meetings of the stockholders, except by Total under limited circumstances;
- our Board of Directors is able to alter our by-laws without obtaining stockholder approval.

Certain provisions of our outstanding debentures could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, including an entity becoming the beneficial owner of 75% of our voting stock (such as Total), holders of our outstanding debentures will have the right, at their option, to require us to repurchase, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest on the debentures, all or a portion of their debentures. We may also be required to issue additional shares of our common stock upon conversion of such debentures in the event of certain fundamental changes. In addition, we entered into a Rights Agreement with Computershare Trust Company, N.A., commonly referred to as a "poison pill," which could delay or discourage takeover attempts that stockholders may consider favorable.

## **ITEM 1B: UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 2: PROPERTIES**

Our corporate headquarters is located in San Jose, California where we occupy approximately 129,000 square feet under a lease that expires in April 2021. In Richmond, California, we occupy approximately 186,000 square feet for office, light industrial and research and development use under a lease that expires in December 2018. In addition to these facilities, we also have our European headquarters located in Geneva, Switzerland where we occupy approximately 4,000 square feet under a lease that expires in September 2017, as well as global sales and support offices including locations in Austin, Texas and La Tour de Salvagny, France.

SPML Land, Inc., owns an approximately 215,000 square foot building in the Philippines, which served as one of our solar cell manufacturing facilities ("FAB1") until the second half of fiscal 2012. The lease for the underlying land expires in May 2048 and is renewable for an additional 25 years. SPML Land, Inc. additionally owns a 344,000 square foot building in the Philippines, which serves as a solar cell manufacturing facility ("FAB2") with twelve solar cell manufacturing lines in operation. Our FAB 2 solar cell manufacturing facility has a total rated annual solar cell manufacturing capacity of over 700 MW.

SPML Land, Inc. owns an approximately 175,000 square foot building in the Philippines which serves as a solar panel assembly facility that currently operates fourteen solar panel assembly lines. We lease an approximately 320,000 square foot building in Mexicali, Mexico which serves as a solar panel assembly facility and support offices, under a lease that expires in August 2021. Our Mexicali facility currently houses ten solar panel assembly lines and will house twelve once fully online in fiscal 2013. We additionally lease facilities in Toulouse, France and Capetown, South Africa which serve as solar panel assembly facilities. Our solar panel assembly facilities have a combined total annual manufacturing capacity of more than 1 GW.

We may require additional space in the future, which may not be available on commercially reasonable terms or in the location we desire. We do not identify or allocate assets by business segment. For more information on property, plant and equipment by country, see Note 7 of Notes to Consolidated Financial Statements in *Part II - "Item 8: Financial Statements and Supplemental Data."*

## **ITEM 3. LEGAL PROCEEDINGS**

Three securities class action lawsuits were filed against the Company and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired the Company's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as *In re SunPower Securities Litigation*, Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning the Company's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and sections 11 and 15 of the Securities Act of 1933. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010. The court dismissed the consolidated complaint with leave to amend on March 1, 2011. An amended complaint was filed on April 18, 2011. The amended complaint added two former employees as defendants. Defendants filed motions to dismiss the amended complaint on May 23, 2011. The motions to dismiss the amended complaint were heard by the court on August 11, 2011. On December 19, 2011, the court granted in part and denied in part the motions to dismiss, dismissing the claims brought pursuant to sections 11 and 15 of the Securities Act of 1933 and the claims brought against the two newly added former employees. On December 14, 2012, the Company announced that it reached an agreement in principle to settle the consolidated securities class action lawsuit for \$19.7 million. The Company recorded a charge in its fiscal fourth quarter of 2012 in the same amount which is further classified within "Accrued liabilities" on the Company's Consolidated Balance Sheets as of December 30, 2012. On February 1, 2013, the parties filed a stipulation of settlement and a motion for preliminary approval of the settlement. The motion is noticed to be heard on March 14, 2013. The settlement is subject to certain conditions, including final approval by the court after members of the proposed settlement class receive notice and an opportunity to be heard. Until the conditions to the settlement have been satisfied, there can be no assurance that the settlement will become final. If the settlement does not become final, the Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters.



Derivative actions purporting to be brought on the Company's behalf have also been filed in state and federal courts against several of the Company's current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as *In re SunPower Corp. S'holder Derivative Litig.*, Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs are scheduled to file a consolidated complaint on March 5, 2012. The federal derivative complaints were consolidated as *In re SunPower Corp. S'holder Derivative Litig.*, Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The federal complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Plaintiffs filed a consolidated complaint on May 13, 2011, in the Delaware Court of Chancery. A Delaware state derivative case, *Brenner v. Albrecht, et al.*, C.A. No. 6514-VCP (Del Ch.), was filed on May 23, 2011. The complaint asserts state-law claims for breach of fiduciary duty and contribution and indemnification, and seeks an unspecified amount of damages. The Company intends to oppose all the derivative plaintiffs' efforts to pursue this litigation on the Company's behalf. Defendants moved to stay or dismiss the Delaware derivative action on July 5, 2011. The motion to stay was heard by the court on October 27, 2011, and on January 27, 2012 the court granted the Company's motion and stayed the case indefinitely subject to plaintiff seeking to lift the stay under specified conditions. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

The Company is also a party to various other litigation matters and claims that arise from time to time in the ordinary course of our business. While the Company believes that the ultimate outcome of such matters will not have a material adverse effect on it, their outcomes are not determinable and negative outcomes may adversely affect its financial position, liquidity or results of operations.

#### **ITEM 4: MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

### ITEM 5: MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Market Information

Prior to November 17, 2011, our former class A and class B common stock was listed on the Nasdaq Global Select Market under the trading symbols "SPWRA" and "SPWRB," respectively. On November 15, 2011, our Stockholders approved reclassification of all outstanding shares of our former class A and class B common stock into a single class of common stock. Therefore, effective November 17, 2011, our common stock is listed on the Nasdaq Global Select Market under the trading symbol "SPWR".

The high and low trading prices of our common stock during fiscal 2012 and 2011 were as follows:

	SPWR		SPWRA		SPWRB	
	High	Low	High	Low	High	Low
<b>Fiscal Year 2012</b>						
Fourth quarter	\$ 6.00	\$ 3.90	*	*	*	*
Third quarter	\$ 5.35	\$ 3.71	*	*	*	*
Second quarter	\$ 6.68	\$ 4.51	*	*	*	*
First quarter	\$ 9.54	\$ 6.28	*	*	*	*
<b>Fiscal Year 2011</b>						
Fourth quarter: November 17, 2011 through January 1, 2012	\$ 8.60	\$ 4.94	*	*	*	*
Fourth quarter: October 3, 2011 through November 16, 2011	*	*	\$ 10.88	\$ 6.61	\$ 10.12	\$ 5.99
Third quarter	*	*	\$ 23.35	\$ 8.06	\$ 17.72	\$ 7.35
Second quarter	*	*	\$ 22.60	\$ 14.87	\$ 22.10	\$ 14.65
First quarter	*	*	\$ 19.88	\$ 12.90	\$ 19.45	\$ 12.47

\* Not applicable due to class of SunPower stock outstanding and trading during that period.

As of February 15, 2013, there were approximately 1,882 record holders. A substantially greater number of holders are in "street name" or beneficial holders, whose shares are held of record by banks, brokers, and other financial institutions.

#### Dividends

We have never declared or paid any cash dividend on our common stock, and we do not currently intend to pay any cash dividend on our common stock in the foreseeable future. We intend to retain future earnings, if any, to finance the operation and expansion of our business.

#### Recent Sales of Unregistered Securities

None.

#### Issuer Purchases of Equity Securities

The following table sets forth all purchases made by or on behalf of us or any "affiliated purchaser," as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934, of shares of our common stock during each of the indicated periods.

Period	Total Number of Shares Purchased (1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs
October 1, 2012 through October 28, 2012	232	\$ 4.54	—	—
October 29, 2012 through November 25, 2012	64,032	\$ 4.06	—	—
November 26, 2012 through December 30, 2012	328	\$ 4.69	—	—
	64,592	\$ 4.06	—	—

- (1) The shares purchased represent shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

### Equity Compensation Plan Information

The following table provides certain information as of December 30, 2012 with respect to our equity compensation plans under which shares of our common stock are authorized for issuance:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (in thousands)	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in the first column) (in thousands)
Equity compensation plans approved by security holders	326	\$ 28.27	3,566
Equity compensation shares not approved by security holders	—	\$ —	—
	326	(1)	3,566

- (1) Shares associated with our warrants outstanding in connection with our 4.50% debentures and the Liquidity Support Agreement are excluded from the above table as the exercise price exceeded our closing stock as of December 30, 2012. This table additionally excludes options to purchase an aggregate of approximately 68,000 shares of common stock, at a weighted average exercise price of \$21.74 per share, that we assumed in connection with the acquisition of PowerLight Corporation, now known as SunPower Corporation, Systems, in January 2007. Under the terms of our three equity incentive plans, we may issue incentive or non-statutory stock options, restricted stock awards, restricted stock units, or stock purchase rights to directors, employees and consultants to purchase common stock. Our Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan includes an automatic share reserve increase feature effective for 2009 through 2015. This share reserve increase feature will cause an annual and automatic increase in the number of shares of our common stock reserved for issuance under the Stock Incentive Plan in an amount each year equal to the least of: 3% of the outstanding shares of all classes of our common stock measured on the last day of the immediately preceding fiscal year; 6,000,000 shares; and such other number of shares as determined by our Board.

**ITEM 6: SELECTED CONSOLIDATED FINANCIAL DATA**

The following selected consolidated financial data should be read together with "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Item 8: Financial Statements and Supplementary Data" included elsewhere in this Annual Report on Form 10-K.

(In thousands, except per share data)	Year Ended				
	December 30, 2012	January 1, 2012 (1)	January 2, 2011	January 3, 2010	December 28, 2008
<b>Consolidated Statements of Operations Data</b>					
Revenue	\$ 2,417,501	\$ 2,374,376	\$ 2,219,230	\$ 1,524,283	\$ 1,437,594
Cost of revenue	2,171,103	2,148,158	1,709,337	1,240,563	1,087,973
Gross margin	246,398	226,218	509,893	283,720	349,621
Operating income (loss)	(287,708)	(534,098)	138,867	61,834	154,407
Income (loss) from continuing operations before income taxes and equity in earnings (loss) of unconsolidated investees	(329,663)	(602,532)	183,413	43,620	(97,904)
Income (loss) from continuing operations	\$ (352,020)	\$ (613,737)	\$ 166,883	\$ 32,521	\$ (124,445)
Income (loss) from continuing operations per share of common stock:					
Basic	\$ (3.01)	\$ (6.28)	\$ 1.74	\$ 0.36	\$ (1.55)
Diluted	\$ (3.01)	\$ (6.28)	\$ 1.64	\$ 0.35	\$ (1.55)
Weighted-average shares:					
Basic	117,093	97,724	95,660	91,050	80,522
Diluted	117,093	97,724	105,698	92,746	80,522

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3 of Notes to Consolidated Financial Statements).

(In thousands)	Year Ended				
	December 30, 2012	January 1, 2012 (1) (2)	January 2, 2011	January 3, 2010	December 28, 2008
<b>Consolidated Balance Sheet Data</b>					
Cash and cash equivalents, restricted cash and cash equivalents, current portion and short-term investments	\$ 473,055	\$ 777,897	\$ 761,602	\$ 677,919	\$ 232,750
Working capital	976,627	1,163,245	1,005,492	747,335	420,067
Total assets	3,340,948	3,519,130	3,379,331	2,696,895	2,084,257
Long-term debt	375,661	364,273	50,000	237,703	54,598
Convertible debt, net of current portion	438,629	423,268	591,923	398,606	357,173
Long-term deferred tax liabilities	—	—	—	6,777	6,493
Customer advances, net of current portion	236,082	181,946	160,485	72,288	91,359
Other long-term liabilities	335,619	166,126	131,132	70,045	44,222
Total stockholders' equity	\$ 993,352	\$ 1,274,725	\$ 1,657,434	\$ 1,376,380	\$ 1,100,198

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3 of Notes to Consolidated Financial Statements).

(2) As adjusted to conform to the current period presentation for solar power systems leased and to be leased (see Note 1 of Notes to Consolidated Financial Statements).

## ITEM 7: MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### General Overview

We are a vertically integrated solar products and solutions company that designs, manufactures, and delivers high-performance solar systems worldwide, servicing as a one-stop shop for residential, commercial and utility-scale power plant customers. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity. These high efficiency cells are then utilized in our array of high reliability SunPower products.

We were originally incorporated in California in 1985 and subsequently reincorporated in Delaware during 2005 in connection with our initial public offering. In November 2011, our stockholders approved the reclassification of all outstanding former class A common stock and class B common stock into a single class of common stock listed on the Nasdaq Global Select Market under the symbol "SPWR". In June 2011, we became a subsidiary of Total Gas & Power USA, SAS (“Total”), a subsidiary of Total S.A. (“Total S.A.”). Total acquired 60% of our former class A and class B common stock as of June 13, 2011. In January 2012, we entered into an additional agreement with Total to sell shares of our common stock, thereby increasing Total's ownership to approximately 66% of our outstanding common stock.

### *Segments Overview*

In December 2011, we announced a reorganization to align our business and cost structure to a regional focus in order to support the needs of our customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, we changed our segment reporting from our Utility and Power Plant ("UPP") Segment and Residential and Commercial ("R&C") Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. Historical results have been recast under the new segmentation.

### *Seasonal Trends*

Our business is subject to industry-specific seasonal fluctuations. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two calendar quarters of a fiscal year. Lower seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters of a fiscal year. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the fact that the coldest winter months in the Northern Hemisphere are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons. In addition, sales in the new home development market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

### *Unit of Power*

When referring to our facilities’ manufacturing capacity, total sales and components sales, the unit of electricity in watts for kilowatts ("KW"), megawatts ("MW") and gigawatts ("GW") is direct current ("dc"). When referring to our solar power systems, the unit of electricity in watts for KW, MW, and GW is alternating current ("ac").

### *Levelized Cost of Energy ("LCOE")*

The LCOE equation is an evaluation of the life-cycle energy cost and life-cycle energy production of an energy producing system. It allows alternative technologies to be compared when different scales of operation, investment, or operating time periods exist. It captures capital costs and ongoing system-related costs, along with the amount of electricity produced, and converts them into a common metric. Key drivers for LCOE reduction for photovoltaic products include panel efficiency, capacity factors, reliable system performance, and the life of the system.

### *Fiscal Years*

We have a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. Fiscal years 2012, 2011 and 2010 were 52-week fiscal years. Fiscal year 2012 ended on December 30, 2012, fiscal year 2011 ended on January 1, 2012, and fiscal year 2010 ended on January 2, 2011.

## Outlook

During fiscal 2012 we saw a decline in overall demand for solar systems primarily in Europe as a result of the decline in European government incentives. The resulting over-supply environment drove down average selling prices across all product and service lines. Such pricing pressures have continued and are expected to generally continue throughout fiscal 2013.

We continue to be focused on reducing the cost of our solar panels and systems. We continue to emphasize improvement of our solar cell efficiency and LCOE performance through enhancement of our existing products, development of new products and reduction of manufacturing cost and complexity in conjunction with our overall cost-control strategies. We are further working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale.

We plan to continue to expand our business in growing and sustainable markets. We announced the first commercial deployment of our SunPower® C-7 Tracker technology under a power purchase agreement ("PPA") and commenced commercial production of our next generation solar cell with demonstrated efficiencies of up to 24%. Our acquisition of Tenesol S.A. ("Tenesol") in the first quarter of fiscal 2012 has further expanded our European and global customer channels as well as added manufacturing capabilities based in both Europe and South Africa.

### *Residential Leasing Program*

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. In fiscal 2012, we entered into arrangements with two financial institutions that will provide financing to support additional residential solar lease projects. In the first quarter of fiscal 2013, we entered into an arrangement with an additional financial institution. The program includes system maintenance and warranty coverage as well as an early buy-out option after six years or at any time when the lessees sell their home. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines.

The program does not yet represent a material portion of our revenue. However, we may face additional material risks as the program expands, including our ability to obtain additional financing partners as well as our ability to collect finance and rent receivables in view of the general challenging credit markets worldwide. We believe that our concentration of credit risk is limited because of our large number of customers, credit quality of the customer base, small account balances for most of these customers, and customer geographic diversification. We have applied and will apply for the §48(c) solar commercial investment tax credit ("ITC") and Treasury Grant payments under Section 1603 of the American Recovery and Reinvestment Act (the "Cash Grant"), which is administered by the U.S. Internal Revenue Services ("IRS") and Treasury Department, for residential leases. We have structured the tax incentive applications, both in timing and amount, to be in accordance with the guidance provided by Treasury and IRS. If the amount or timing of the ITC or Cash Grant payments received in connection with the residential lease program varies from what we have projected, this may impact our revenues and margins and we may have to recognize losses, which may adversely impact our results of operations and cash flows. We make certain assumptions in accounting for the residential lease program, including, among others, the residual value of the leased systems. As the residential lease program grows, if the residual value of leased systems does not materialize as assumed, our results of operations would be adversely affected.

## Financial Operations Overview

The following describes certain line items in our Consolidated Statements of Operations:

### **Revenue**

We recognize revenue on the following types of transactions within our regional segments:

- Power plant project development and projects, turn-key engineering, procurement, and construction ("EPC") services for power plant construction, and power plant operations and maintenance ("O&M") services;

- Components, including large volume sales of solar panels and mounting systems to third parties, sometimes on a multi-year, firm commitment basis;
- Solar equipment for the residential and small commercial market, sold through our third-party global dealer network; and
- Direct sales and EPC and O&M services for rooftop and ground-mounted solar power systems for new homes, commercial, and public sectors.

In the United States, where customers often utilize rebate and tax credit programs in connection with projects rated one MW or less of capacity, we typically sell solar power systems rated up to one MW of capacity to provide a supplemental, distributed source of electricity for a customer's facility as well as ground mount systems reaching up to hundreds of MWs for regulated utilities. In the United States, many customers choose to purchase solar electricity under a power purchase agreement ("PPA") with an investor or financing company which buys the system from us. In Europe and the United States, our systems are often purchased by third-party investors as central-station solar power plants, typically rated from one to 25 MW, which generate electricity for sale under tariff to regional and public utilities. We additionally have large utility power plants currently under construction which when completed will have total rated capacities greater than 250MW. We also sell our solar panels and balance of systems components under materials-only sales contracts in the United States, Europe and Asia. Our revenue recognition policies are described in more detail under "Critical Accounting Estimates."

### ***Cost of Revenue***

Our cost of revenue will fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large utility projects and large commercial installation projects. The cost of solar panels is the single largest cost element in our cost of revenue. Our cost of solar panels consists primarily of: (i) polysilicon, silicon ingots and wafers used in the production of solar cells, along with other materials such as chemicals and gas that are needed to transform silicon wafers into solar cells; (ii) raw materials such as glass, frame, backing and other materials; (iii) solar cells from our AUO SunPower Sdn. Bhd. ("AUOSP") joint venture; as well as (iv) direct labor costs and assembly costs we pay to our third-party contract manufacturers in California and China. Other cost of revenue associated with the construction of solar power systems includes real estate, mounting systems, inverters, third-party contract manufacturer costs, construction subcontract and dealer costs. In addition, other factors contributing to cost of revenue include amortization of other intangible assets, stock-based compensation, depreciation, provisions for estimated warranty claims, salaries, personnel-related costs, freight, royalties, facilities expenses, and manufacturing supplies associated with contracting revenue and solar cell fabrication as well as factory pre-operating costs associated with our manufacturing facilities. Such pre-operating costs included compensation and training costs for factory workers as well as utilities and consumable materials associated with preproduction activities.

We are targeting to improve cost of revenue over time as we implement cost reduction programs, improve our manufacturing processes, and grow our business to attain economies of scale on fixed costs. An expected reduction in cost of revenue based on manufacturing efficiencies, however, could be partially or completely offset by increased raw material costs.

### ***Gross Margin***

Our gross margin each quarter is affected by a number of factors, including average selling prices for our solar power products, the types of projects in progress, the gross margins estimated for those projects in progress, our product mix, our actual manufacturing costs, the utilization rate of our solar cell manufacturing facilities, and actual overhead costs. Historically, revenue from materials-only sales contracts generate a higher gross margin percentage than revenue generated from turn-key solar power system contracts. Turn-key contracts generate higher revenue per watt as a result of the included EPC services, O&M services and power plant project development.

From time to time, we enter into agreements whereby the selling price for certain of our solar power products is fixed over a defined period. In addition, almost all of our construction contracts are fixed price contracts. However, we have in several instances obtained change orders that reimburse us for additional unexpected costs due to various reasons. We also have long-term agreements for polysilicon, ingots, wafers, and solar cells with suppliers, some with take-or-pay arrangements. An increase in our manufacturing costs and other project costs over such a defined period could have a negative impact on our overall gross margin. Our gross margin may also be impacted by fluctuations in manufacturing yield rates and certain adjustments for inventory reserves. Our inventory policy is described in more detail under "Critical Accounting Estimates."

### ***Operating Expenses***



Our operating expenses include research and development ("R&D") expenses and sales, general and administrative ("SG&A") expenses, goodwill and other intangible asset impairment, and restructuring charges.

R&D expenses consist primarily of salaries and related personnel costs, depreciation of equipment and the cost of solar cells, solar panel materials, various prototyping materials, and services used for the development and testing of products. We expect our R&D expense to continually increase in absolute dollars as we continue to develop new processes to further improve the conversion efficiency of our solar cells and reduce their manufacturing cost, and as we develop new products to diversify our product offerings. R&D expense is reported net of any funding received under contracts with governmental agencies because such contracts are considered collaborative arrangements. These awards are typically structured such that only direct costs, R&D overhead, procurement overhead, and general and administrative expenses that satisfy government accounting regulations are reimbursed. In addition, our government awards from state agencies will usually require us to pay to the granting governmental agency certain royalties based on sales of products developed with government funding or economic benefit derived from incremental improvements funded. Royalties paid to governmental agencies are charged to cost of goods sold.

SG&A expense for our business consists primarily of salaries and related personnel costs, professional fees, insurance, and other selling and marketing expenses.

Goodwill and other intangible asset impairment primarily consists of impairment of goodwill as a result of our annual impairment test, performed in the third quarter of both fiscal 2012 and 2011, as we determined the carrying value of certain reporting units exceeded their fair value. Additionally, during the third quarter of both fiscal 2012 and 2011 we determined the carrying value of certain intangible assets in Europe were no longer recoverable. For additional details see Note 6 of Notes to Consolidated Financial Statements.

Restructuring expense consists of four restructuring plans effected in both fiscal 2012 and 2011 in response to reductions in European government incentives, which had a significant impact on the global solar market, and to accelerate operating cost reduction and improve overall operating efficiency. Charges in connection with these plans relate to employee severance and benefits, lease termination costs, and legal and other related charges. For additional details, see Note 9 of Notes to Consolidated Financial Statements.

#### ***Other Income (Expense), Net***

Interest income represents interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents, held-to-maturity securities and available-for-sale debt securities. Interest expense primarily relates to: (i) amortization expense recorded for warrants issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012; (ii) debt under our senior convertible debentures; (iii) fees for our outstanding letters of credit; (iv) outstanding term loans; (v) our revolving credit facilities; (vi) our mortgage loan; and (vii) customer advance payments. For additional details see Notes 8, 10, and 12 of Notes to Consolidated Financial Statements.

Gain on deconsolidation of consolidated subsidiary is the result of the deconsolidation of AUOSP in the third quarter of fiscal 2010. Net gain on change in equity interest in unconsolidated investee refers to the value of our equity interests in Woongjin Energy Co., Ltd. ("Woongjin Energy") and First Philec Solar Corporation ("First Philec Solar") being adjusted upon dilutive events. Gain on sale of equity interest in unconsolidated investee represents net gains from the sale of our Woongjin Energy shares in the open market during second half of fiscal 2011. For additional details see Note 11 of Notes to Consolidated Financial Statements.

Gain on mark-to-market derivatives during fiscal 2012, 2011 and 2010 relates to derivative instruments associated with our 4.50% senior cash convertible debentures ("4.50% debentures"): (i) the embedded cash conversion option; (ii) the over-allotment option; (iii) the bond hedge transaction; and (iv) the warrant transactions. The changes in fair value of these derivatives are reported in our Consolidated Statement of Operations until such transactions settle or expire. The bond hedge and warrant transactions are meant to reduce our exposure to potential cash payments associated with the embedded cash conversion option. For additional details, see Note 12 of Notes to Consolidated Financial Statements.

Gain on share lending arrangement relates to recovery of claims related to unreturned shares under our former share lending arrangement with Lehman Brothers International (Europe) Limited ("LBIE") following their bankruptcy.

Other, net consists primarily of gains or losses on foreign exchange and derivatives as well as gain on sale and impairment charges for certain available-for-sale securities and other investments.

## ***Income Taxes***

Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against deferred tax assets when management cannot conclude that it is more likely than not that some portion or all deferred tax assets will be realized. For additional details see Notes 1 and 14 of Notes to Consolidated Financial Statements.

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary's registration with the Philippine Economic Zone Authority ("PEZA"), which provide that we pay no income tax in the Philippines for those operations subject to the ruling. Our current income tax holidays were granted as manufacturing lines were placed in service and thereafter expire within the current fiscal year, and we are in the process of or have applied for extensions and renewals upon expiration. We expect such approvals to be granted. We believe that if our Philippine tax holidays expire, (a) gross income attributable to activities covered by our PEZA registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate, currently 30%. An increase in our tax liability could materially and negatively affect our financial condition and results of operations.

We have an auxiliary company ruling in Switzerland where we sell our solar power products. The auxiliary company ruling results in a reduced effective Swiss tax rate of approximately 11.5%. The current ruling expires at the end of 2015. If the ruling is not renewed in 2015, Swiss income would be taxable at the full Swiss tax rate of approximately 24.2%.

For financial reporting purposes, during periods when we were a subsidiary of Cypress, income tax expense and deferred income tax balances were calculated as if we were a separate entity and had prepared our own separate tax return. Effective with the closing of our public offering of common stock in June 2006, we were no longer eligible to file federal and most state consolidated tax returns with Cypress. As of September 29, 2008, Cypress completed a spin-off of all of its shares of our former class B common stock to its shareholders, so we are no longer eligible to file any remaining state consolidated tax returns with Cypress. Under our tax sharing agreement with Cypress, we agreed to pay Cypress for any federal and state income tax credit or net operating loss carryforwards utilized in our federal and state tax returns in subsequent periods that originated while our results were included in Cypress's federal tax returns.

## ***Equity in Earnings of Unconsolidated Investees***

In fiscal 2006, we entered into an agreement to form Woongjin Energy, a jointly owned entity located in South Korea, to manufacture monocrystalline silicon ingots. In fiscal 2007, we entered into an agreement to form First Philec Solar, a jointly owned entity located in the Philippines, to provide wafer slicing services of silicon ingots. In fiscal 2010, we entered into a joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO"), and AU Optronics Corporation, the ultimate parent company of AUO ("AUO Taiwan") to form AUOSP, a joint venture to construct a solar cell manufacturing facility ("FAB3") in Malaysia which manufactures and sells solar cells on a "cost-plus" basis to us and AUO. FAB3 became operational in the fourth quarter of fiscal 2010. We account for these investments using the equity method, in which the equity investments are classified as "Other long-term assets" in the Consolidated Balance Sheets and our share of the investees' earnings (loss) is included in "Equity in earnings (loss) of unconsolidated investees" in the Consolidated Statements of Operations. During fiscal 2011, we sold 15.5 million shares of Woongjin Energy on the open market subsequently reducing our percentage equity ownership in Woongjin Energy from 31% to 6%. During the first quarter of fiscal 2012, we sold our remaining shares of Woongjin Energy on the open market and as a result our percentage equity ownership and investment carrying balance was reduced to zero. For additional details see Note 11 of Notes to Consolidated Financial Statements.

## ***Income from Discontinued Operations, Net of Taxes***

In connection with our strategic acquisition of SunRay Malta Holdings Limited ("SunRay") in March 2010, we acquired a project company, Cassiopea PV S.r.l ("Cassiopea"), operating a previously completed 20 MW solar power plant in Montalto di Castro, Italy. In the period in which our asset is classified as held-for-sale, we are required to segregate for all periods presented the related assets, liabilities, and results of operations associated with that asset as discontinued operations. In August 2010, we sold Cassiopea, including all related assets and liabilities. Cassiopea's results of operations for fiscal 2010 are classified as "Income from discontinued operations, net of taxes" in our Consolidated Statement of Operations.

## ***Critical Accounting Estimates***

Our discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP").

The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue, and expenses. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. In addition to our most critical estimates and judgments as discussed below, we also have other key accounting policies that are less subjective and, therefore, judgments in their application would not have a material impact on our reported results of operations (See Note 1 of Notes to the Consolidated Financial Statements).

## **Revenue Recognition**

### *Solar Power Products*

We sell our solar panels and balance of system components primarily to dealers, system integrators and distributors, and recognize revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred, title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectability of the resulting receivable is reasonably assured and the risks and rewards of ownership have passed to the customer. Other than standard warranty obligations, there are no rights of return and there are no significant post-shipment obligations, including installation, training or customer acceptance clauses with any of our customers that could have an impact on revenue recognition. Our revenue recognition policy is consistent across all geographic areas.

### *Construction Contracts*

Revenue is also comprised of EPC projects which are governed by customer contracts that require us to deliver functioning solar power systems and are generally completed within three to twelve months from commencement of construction. Construction on large projects may be completed within eighteen to thirty six months, depending on the size. We recognize revenue from fixed price construction contracts, that do not include land or land rights, using the percentage-of-completion method of accounting. Under this method, revenue arising from fixed price construction contracts is recognized as work is performed based on the percentage of incurred costs to estimated total forecasted costs.

Incurred costs used in our percentage-of-completion calculation include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies, and tools. Project material costs are included in incurred costs when the project materials have been installed by being permanently attached or fitted to the solar power system as required by the project's engineering design.

In addition to an EPC deliverable, a limited number of arrangements also include multiple deliverables such as post-installation systems monitoring and maintenance. For contracts with separately priced monitoring and maintenance, we recognize revenue related to such separately priced elements over the contract period. For contracts including monitoring and maintenance not separately priced, we determined that post-installation systems monitoring and maintenance qualify as separate units of accounting. Such post-installation monitoring and maintenance are deferred at the time the contract is executed based on the best estimate of selling price on a standalone basis and are recognized to revenue over the contractual term. The remaining EPC revenue is recognized on a percentage-of-completion basis.

In addition, when arrangements include contingent revenue clauses such as customer termination or put rights for non-performance, we defer the contingent revenue until such time as the contingencies expire. In certain limited cases, we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. To date, no such repurchase obligations have been triggered.

Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

### *Development Projects*

We develop and sell solar power plants which generally include the sale or lease of related real estate. Revenue recognition for these solar power plants require adherence to specific guidance for real estate sales, which provides that if we execute a sale of land in conjunction with an EPC contract requiring the future development of the property, we recognize revenue and the corresponding costs under the full accrual method when all of the following requirements are met: the sale is

consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to subordination, the future costs to develop the property can be reasonably estimated and we have transferred the customary risk and rewards of ownership to the buyer. In general, a sale is consummated upon the execution of an agreement documenting the terms of the sale and a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. Depending on the value of the initial continuing investment of the buyer, and provided the recovery of the costs of the solar power plant are assured if the buyer defaults, we may defer revenue and profit during construction by aligning our revenue recognition and release of deferred project costs to cost of sales with the receipt of payment from the buyer. At the time we have unconditionally received payment from the buyer, revenue would be recognized and deferred project costs would be release to cost of sales at the same rate of profit estimated throughout the construction of the project. Our revenue recognition methods for solar power plants not involving real estate are accounted for using the percentage-of-completion method.

### ***Allowance for Doubtful Accounts and Sales Returns***

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. A considerable amount of judgment is required to assess the likelihood of the ultimate realization of accounts receivables. We make our estimates of the collectability of our accounts receivable by analyzing historical bad debts, specific customer creditworthiness and current economic trends.

In addition, at the time revenue is recognized from the sale of solar panels and balance of system components, we record estimates for sales returns which reduce revenue. These estimates are based on historical sales returns, analysis of credit memo data, and other known factors. Actual returns could differ from these estimates.

### ***Warranty Reserves***

We generally warrant or guarantee the performance of our solar panels that we manufacture at certain levels of power output for 25 years. In addition, we pass through to customers long-term warranties from the original equipment manufacturers ("OEMs") of certain system components, such as inverters. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, we generally warrant our workmanship on installed systems for periods ranging up to 10 years. We maintain reserves to cover the expected costs that could result from these warranties. Our expected costs are generally in the form of product replacement or repair. Warranty reserves are based on our best estimate of such costs and are recognized as a cost of revenue. We continuously monitor product returns for warranty failures and maintain a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations. For additional details see Note 10 of Notes to Consolidated Financial Statements.

### ***Valuation of Inventories***

Inventories are valued at the lower of cost or market value. We evaluate the recoverability of our inventories based on assumptions about expected demand and market conditions. Our assumption of expected demand is developed based on our analysis of bookings, sales backlog, sales pipeline, market forecast and competitive intelligence. Our assumption of expected demand is compared to available inventory, production capacity, available third-party inventory and growth plans. Our factory production plans, which drive materials requirement planning, are established based on our assumptions of expected demand. We respond to reductions in expected demand by temporarily reducing manufacturing output and adjusting expected valuation assumptions as necessary. In addition, expected demand by geography has changed historically due to changes in the availability and size of government mandates and economic incentives.

We evaluate the terms of our long-term agreements with suppliers, including joint ventures, for the procurement of polysilicon, ingots, wafers, and solar cells and establish accruals for estimated losses on adverse purchase commitments as necessary, such as lower of cost of market value adjustments, forfeiture of advanced deposits and liquidated damages.

Other market conditions that could impact the realizable value of our inventories and are periodically evaluated by management include the aging of inventories on hand, historical inventory turnover ratio, anticipated sales price, new product development schedules, the effect new products might have on the sale of existing products, product obsolescence, customer concentrations, product merchantability, and other factors. If we determine that the cost of inventories exceeds its estimated market value based on assumptions about expected demand and market conditions, we record a write-down equal to the difference between the cost of inventories and the estimated market value. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required that could negatively impact our gross margin and operating results. If actual market conditions are more favorable, we may have higher gross margin when products

that have been previously written down are sold in the normal course of business. For additional details see Note 7 of Notes to Consolidated Financial Statements.

### ***Stock-Based Compensation***

We provide share-based awards to our employees, executive officers and directors through various equity compensation plans including our employee stock option and restricted stock plans. We measure and record compensation expense for all share-based payment awards based on estimated fair values. The fair value of restricted stock awards and units is based on the market price of our common stock on the date of grant. We have not granted stock options subsequent to fiscal 2008.

We are required under current accounting guidance to estimate forfeitures at the date of grant. Our estimate of forfeitures is based on our historical activity, which we believe is indicative of expected forfeitures. In subsequent periods if the actual rate of forfeitures differs from our estimate, the forfeiture rates may be revised, as necessary. Changes in the estimated forfeiture rates can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

We also grant performance share units to executive officers and certain employees that require us to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in our estimate of the level of financial performance measures expected to be achieved, the related share-based compensation expense may be significantly increased or reduced in the period that our estimate changes.

### ***Investments in Equity Interests***

Investments in entities in which we can exercise significant influence, but do not own a majority equity interest or otherwise control, are accounted for under the equity method. Such investments are classified as "Other long-term assets" in our Consolidated Balance Sheets and our share of the investees' earnings (loss) is included as "Equity in earnings of unconsolidated investees" on the Consolidated Statements of Operations. We record our share of the results of Woongjin Energy and First Philec Solar in the same quarter and the results of AUOSP with a one quarter lag. To calculate our share of the investees' income or loss, we adjust the net income (loss) of each investee to conform to U.S. GAAP and multiply that by our equity investment ownership percentage.

### ***Variable Interest Entities ("VIE")***

We regularly evaluate our relationships and involvement with unconsolidated VIEs, including our equity method investments and joint venture with AUOSP, to determine if we have a controlling financial interest or become the primary beneficiary requiring us to consolidate their financial results into our financial statements. We do not consolidate the financial results of our investees as we have concluded that we are not the primary beneficiary. Although we are obligated to absorb losses or have the right to receive benefits from the investees that are significant to the entities, such variable interests held by us do not empower us to direct the activities that most significantly impact their economic performance. For additional details see Note 11 of the Notes to Consolidated Financial Statements for discussions of equity method investments.

In connection with the sale of the equity interests in the entities that hold solar power plants, we also consider if we retain a variable interest in the entity sold, either through retaining a financial interest or by contractual means. If we determine that the entity sold is a VIE and that we hold a variable interest, we then evaluate whether we are the primary beneficiary. The entity that is the primary beneficiary consolidates the VIE. The determination of whether we are the primary beneficiary is based upon whether we have the power to direct the activities that most directly impact the economic performance of the VIE and whether we absorb any losses or benefits that would be potentially significant to the VIE. To date, there have been no sales of entities holding solar power plants in which we have concluded that we are the primary beneficiary after the sale.

### ***Accounting for Business Combinations***

We record all acquired assets and liabilities, including goodwill, other intangible assets and in-process research and development, at fair value. The initial recording of goodwill, other intangible assets and in-process research and development requires certain estimates and assumptions concerning the determination of the fair values and useful lives. The judgments made in the context of the purchase price allocation can materially impact our future results of operations. Accordingly, for significant acquisitions, we obtain assistance from third-party valuation specialists. The valuations calculated from estimates are based on information available at the acquisition date. Goodwill is not amortized, but is subject to annual tests for impairment or more often if events or circumstances indicate it may be impaired. Other intangible assets are amortized over

their estimated useful lives and are subject to impairment if events or circumstances indicate a possible inability to realize the carrying amount. For additional details see Notes 4 and 6 of Notes to Consolidated Financial Statements.

### ***Valuation of Long-Lived Assets***

Our long-lived assets include property, plant and equipment, project assets and other intangible assets with finite lives. We evaluate our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Factors considered important that could result in an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets and significant negative industry or economic trends. Our impairment evaluation of long-lived assets includes an analysis of estimated future undiscounted net cash flows expected to be generated by the assets over their remaining estimated useful lives. If our estimate of future undiscounted net cash flows is insufficient to recover the carrying value of the assets over the remaining estimated useful lives, we record an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analyses.

### ***Goodwill Impairment Testing***

Goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. A two-step process is used to test for goodwill impairment. The first step is to determine if there is an indication of impairment by comparing the estimated fair value of each reporting unit to its carrying value, including existing goodwill. Goodwill is considered impaired if the carrying value of a reporting unit exceeds the estimated fair value. Upon an indication of impairment, a second step is performed to determine the amount of the impairment by comparing the implied fair value of the reporting unit's goodwill with its carrying value.

We conduct our annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at our reporting unit level. Management determined that the Americas Segment, the EMEA Segment, and the APAC Segment are also the reporting units. In estimating the fair value of the reporting units, we make estimates and judgments about our future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards. The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted revenue, gross margin, operating income, working capital cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of our reporting units are also compared to our external market capitalization to determine the appropriateness of its assumptions and adjusted, if appropriate. These assumptions take into account the current industry environment and its impact on our business. In the event that management determines that the value of goodwill has become impaired, we will incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made. For additional details see Note 6 of Notes to Consolidated Financial Statements.

### ***Fair Value of Financial Instruments***

Certain of our financial assets and financial liabilities, specifically our cash, cash equivalents, restricted cash, restricted cash equivalents, available-for-sale securities, foreign currency derivatives, interest rate swaps derivatives and convertible debenture derivatives are carried at fair value in our Consolidated Financial Statements. Accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. We enter into over-the-counter ("OTC") foreign currency derivatives and use standard valuation techniques to derive the value of option and forward currency contracts. In determining fair value, we use the market and income approaches. Current accounting guidance provides a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of us. Unobservable inputs are inputs that reflect our assumptions about market participants assumptions used in pricing the asset or liability, developed based on the best information available in the circumstances. As such, fair value is a market-based measure considered from the perspective of a market participant who holds the asset or owes the liability rather than an entity specific measure. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

- Level 1—Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment. Financial assets utilizing Level 1 inputs include money market funds.

- Level 2—Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, directly or indirectly. Financial assets utilizing Level 2 inputs include bank notes, debt securities, foreign currency option contracts, forward exchange contracts, interest rate swaps derivatives and convertible debenture derivatives. The selection of a particular technique to value a derivative depends upon the contractual term of, and specific risks inherent with, the instrument as well as the availability of pricing information in the market. We generally use similar techniques to value similar instruments. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. For derivatives that trade in liquid markets, such as generic forward, option and swap contracts, inputs can generally be verified and selections do not involve significant management judgment.
- Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement. We did not have any assets and liabilities measured at fair value on a recurring basis requiring Level 3 inputs.

Availability of observable inputs can vary from instrument to instrument and to the extent that valuation is based on inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by our management in determining fair value is greatest for instruments categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes the level in the fair value hierarchy within which the fair value measurement in its entirety falls is determined based on the lowest level input that is significant to the fair value measurement in its entirety.

Unrealized gains and losses of our available-for-sale securities and the effective portion of foreign currency derivatives are excluded from earnings and reported as a component of accumulated other comprehensive income (loss) on the Consolidated Balance Sheets. To the extent our foreign currency derivatives are not effective hedges, unrealized gains or losses are included in earnings. Similarly, the change in fair value of our interest rate swaps derivatives and convertible debenture derivatives are included in earnings. Additionally, we assess whether an other-than-temporary impairment loss on our available-for-sale securities has occurred due to declines in fair value or other market conditions. Declines in fair value that are considered other-than temporary are recorded in "Other, net" in the Consolidated Statements of Operations.

In general, investments with original maturities of greater than ninety days and remaining maturities of one year or less are classified as short-term investments. Investments with maturities beyond one year may also be classified as short-term based on their highly liquid nature and because such investments represent the investment of cash that is available for current operations. For additional details see Note 8 of Notes to Consolidated Financial Statements.

#### ***Valuation of Certain Convertible Debt***

Convertible debt instruments that may be settled in cash upon conversion require recognition of both the liability and equity components in the Consolidated Financial Statements. The debt component is required to be recognized at the fair value of a similar debt instrument that does not have an associated equity component. The equity component is recognized as the difference between the proceeds from the issuance of the convertible debt and the fair value of the liability, after adjusting for the deferred tax impact. The accounting guidance also requires an accretion of the resulting debt discount over the expected life of the convertible debt.

#### ***Accounting for Income Taxes***

Our global operations involve manufacturing, R&D, selling and project development activities. Profit from non-U.S. activities is subject to local country taxation, but not subject to United States tax until repatriated to the United States. It is our intention to indefinitely reinvest these earnings outside the United States. We record a valuation allowance to reduce our U.S. and French deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of December 30, 2012, we believe there is insufficient evidence to realize additional deferred tax assets, although it is possible that a reversal of the valuation allowance, which could be material, could occur in fiscal 2013.

The calculation of tax liabilities involves dealing with uncertainties in the application of complex global tax regulations. We recognize potential liabilities for anticipated tax audit issues in the United States and other tax jurisdictions based on our



estimate of whether, and the extent to which, additional taxes will be due. If payment of these amounts ultimately proves to be unnecessary, the reversal of the liabilities would result in tax benefits being recognized in the period in which we determine the liabilities are no longer necessary. If the estimate of tax liabilities proves to be less than the ultimate tax assessment, a further charge to expense would result. We accrue interest and penalties on tax contingencies which are classified as "Provision for income taxes" in the Consolidated Statements of Operations and are not considered material. For additional details see Note 14 of Notes to Consolidated Financial Statements.

Pursuant to the Tax Sharing Agreement with Cypress, we are obligated to indemnify Cypress upon current utilization of carryforward tax attributes generated while we were part of the Cypress consolidated or combined group. Further, to the extent Cypress experiences any tax examination assessments attributable to our operations while part of the Cypress consolidated or combined group, Cypress will require an indemnification from us for those aspects of the assessment that relate to our operations. See also "Item 1A: Risk Factors" including "Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to pursue certain business initiatives."

In addition, foreign exchange gains (losses) may result from estimated tax liabilities which are expected to be realized in currencies other than the U.S. dollar.

## Results of Operations

### Revenue

(In thousands)	Year ended					
	December 30, 2012	% of total revenue	January 1, 2012	% of total revenue	January 2, 2011	% of total revenue
Americas	\$ 1,696,348	70%	\$ 1,266,347	53%	\$ 632,053	28%
EMEA	489,484	20%	924,337	39%	1,526,480	69%
APAC	231,669	10%	183,692	8%	60,697	3%
Total revenue	<u>\$ 2,417,501</u>	100%	<u>\$ 2,374,376</u>	100%	<u>\$ 2,219,230</u>	100%

**Total Revenue:** During fiscal 2012, 2011, and 2010 our total revenue was \$2,417.5 million, \$2,374.4 million, and \$2,219.2 million, respectively. The increase in total revenue of 2% in fiscal 2012 as compared to fiscal 2011 was primarily driven by revenue recognized on large scale utility projects in North America during fiscal 2012 partially offset by a decline in utility-scale solar projects and related revenue within the EMEA region as well as a 10% decrease in overall revenue per watt. In fiscal 2012 we recognized revenue on 862.7 MW as compared to 765.8 MW in fiscal 2011.

The increase in total revenue of 7% in fiscal 2011 as compared to fiscal 2010 was primarily attributable to revenue from the development of several large scale projects in North America and Europe, as well as the continuous growth of our third-party global dealer network in the geographical regions in which we do business. In fiscal 2011 we recognized revenue on 765.8 MW as compared to 558.5 MW in fiscal 2010. The increase in our total revenue was partially offset by a 22% decrease in overall revenue per watt.

**Concentrations:** Sales outside the Americas Segment represented approximately 30%, 47% and 72% of total revenue for fiscal 2012, 2011, and 2010, respectively. The decrease in the percentage of sales outside of the Americas Segment over all periods was primarily due to slowdown in project development and component shipments in Europe due to reductions in government incentives and decline in overall European economy, coupled with increasing demand in the United States for our solar power products due to additional federal and state initiatives supporting attractive solar incentives within the residential, commercial, and utility sectors.

The table below represents our significant customers which accounted for greater than 10 percent of total revenue during fiscal 2012, 2011, and 2010.

Revenue		Year ended		
		December 30, 2012	January 1, 2012	January 2, 2011
Significant Customers:	Business Segment			
NRG Solar, Inc.	Americas	35%	*	*
Customer B	EMEA	*	*	12%

\* denotes less than 10% during the period

**Americas Revenue:** Americas revenue in fiscal 2012 increased 34% as compared to fiscal 2011 primarily as a result of an increase in the number and size of the various utility-scale solar power systems under construction, which includes the ramp up in construction of the 250 MW California Valley Solar Ranch ("CVSR") project in San Luis Obispo County, California; revenue recognized on the 579 MW Antelope Valley Solar Projects ("AVSP") in California; a 25 MW project in Modesto, California; and 20 MW project in North Carolina during fiscal 2012. The increase in Americas revenue in fiscal 2012 as compared to fiscal 2011 was partially offset by projects which were substantially completed during the interim period as well as a 52% decrease in component sales year over year. In fiscal 2012, we recognized 31.8 MW of component sales as compared to 66.9 MW in fiscal 2011.

Americas revenue in fiscal 2011 increased 100% as compared to fiscal 2010 primarily as a result of an increase in the number of utility-scale solar power systems under construction as well as an increase in component shipments. In fiscal 2011, we recognized revenue on 66.9 MW of components sales as compared to 7.6 MW in fiscal 2010. In fiscal 2011, we additionally recognized revenue under the percentage-of-completion method for several power plants, including three under construction in the United States, totaling 60 MW and the completion of a 20 MW solar plant in Ontario, Canada. Revenue recognition on project under construction in the Americas Segment during fiscal 2010 included a 20 MW solar power plant in Toronto, and a 17 MW solar power plant in Colorado.

**EMEA Revenue:** EMEA revenue in fiscal 2012 decreased 47% as compared to fiscal 2011 primarily due to the decline in utility-scale solar projects and related revenue as well as a decrease in components sales and average selling prices. In fiscal 2012, we recognized revenue on 24.1 MW of component sales as compared to 112.5 MW in fiscal 2011, which represents a 79% decrease in volume, period over period. The overall decline in our EMEA revenue was partially offset by \$103.9 million in revenue due to Tenesol's results of operations being incorporated into our financial results for year ended December 30, 2012.

EMEA revenue in fiscal 2011 decreased 39% as compared to fiscal 2010 primarily due to the decline in utility-scale solar power projects and related revenue driven by changes in European government incentives which had a materially negative effect on the market within the region. In the second half of fiscal 2010, we completed the sale of 44 MW and 8 MW solar power plants in Montalto di Castro, Italy as well as a 13 MW solar power plant in Anguillara, Italy and further recognized revenue under the percentage-of-completion method for several power plants totaling 28 MW in the Sicily region and Piedmont region of Italy.

**APAC Revenue:** APAC revenue in fiscal 2012 increased 26% as compared to fiscal 2011, primarily due to an increase in component sales partially offset by a reduction in systems revenue. In fiscal 2012, we recognized revenue on 120.4 MW of component sales as compared to 50 MW in fiscal 2011, which represents a 141% increase in volume year over year. This increase was partially offset by a decrease in systems revenue due to a shift in demand for our solar products in the residential and commercial markets coupled with an overall decrease in revenue per watt in the region.

APAC revenue in fiscal 2011 increased 203% as compared to fiscal 2010 primarily due to an increase in component sales. In fiscal 2011, we recognized revenue on 50.0 MW of component sales as compared to 23.6 MW in fiscal 2010, which represents a 112% increase in volume year over year.

## Cost of Revenue

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Americas	\$ 1,415,417	\$ 1,131,771	\$ 502,780
EMEA	559,993	868,330	1,159,115
APAC	195,693	148,057	47,442
Total cost of revenue	\$ 2,171,103	\$ 2,148,158	\$ 1,709,337
Total cost of revenue as a percentage of revenue	90%	90%	77%
Total gross margin percentage	10%	10%	23%

**Total Cost of Revenue:** During fiscal 2012, 2011, and 2010 total cost of revenue was \$2,171.1 million, \$2,148.2 million, and \$1,709.3 million, respectively. The 1% increase in fiscal 2012 as compared to fiscal 2011 was due to (i) a 13% increase in total MW of solar power products sold; (ii) \$13.9 million of accelerated depreciation of certain previously owned manufacturing equipment implemented as part of a manufacturing step reduction program; and (iii) \$11.9 million of idle equipment impairment resulting from deployment of our next generation of solar cell technology. These increases were partially offset by an overall decrease in material costs as well as \$55.7 million of charges incurred in fiscal 2011 associated with the change in European government incentives, as described below.

The 26% increase in total cost of revenue in fiscal 2011 as compared to fiscal 2010 is primarily due to a 37% increase in total MW of solar power products sold. Additionally contributing to the increase in total cost of revenue is \$55.7 million in charges incurred in fiscal 2011 associated with the change in European government incentives, including (i) a \$16.0 million write-down of project asset costs based on changes in fair value and our ability to develop, commercialize and sell active projects within Europe, and (ii) \$39.7 million related to the write-down of third-party inventory and costs associated with the termination of third-party solar cell supply contracts resulting from lower demand and average selling price in certain areas of Europe. The increase in total cost of revenue is partially offset by lower material costs, higher yields as well as better factory utilization as a result of higher output generated at our manufacturing facilities and our AUOSP joint venture.

#### Gross Margin

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Americas	17%	11%	20%
EMEA	(14)%	6%	24%
APAC	16%	19%	22%

**Americas Gross Margin:** Gross margin for our Americas Segment increased to 17% in fiscal 2012 from 11% in fiscal 2011. The increase in gross margin over the respective period is primarily driven by increased revenue from large utility-scale solar power systems under construction combined with lower material costs, partially offset by industry declines in average selling prices. Gross margin for our Americas Segment decreased to 11% in fiscal 2011 from 20% in fiscal 2010. The decrease in gross margin over the respective period is primarily due to declines in average selling prices as well as \$20.8 million of charges recorded during fiscal 2011 related to the write-down of third-party inventory and costs associated with the termination of above-market third party solar cell supply contracts, partially offset by an increase in component sales, which historically had higher margin percentages than our utility projects.

**EMEA Gross Margin:** Gross margin for our EMEA Segment decreased over both periods as a result of declines in government incentives resulting in changes in market demand. The changes in demand, general financing constraints experienced in the European economy, and the over-supply environment continued to significantly drive down average selling prices throughout the region in fiscal 2012. In fiscal 2011, the EMEA Segment additionally recorded \$32.3 million of charges related to write-down of project asset costs to estimated fair value based on changes in our ability to develop, commercialize, and sell active projects, as well as the write-down of third-party inventory and costs associated with the termination of above-market third party solar cell supply contracts.

**APAC Gross Margin:** Gross margin for our APAC Segment decreased over both periods primarily as a result of declining average selling prices, partially offset by lower material costs and additional volumes of higher margin component sales.

## Research and Development ("R&D")

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
R&D Expense	\$ 63,456	\$ 57,775	\$ 49,090
As a percentage of revenue	3%	2%	2%

The overall increase in our investment in R&D over all periods primarily resulted from costs related to the improvement of our current generation solar cell manufacturing technology, development of our next generation of solar cells, solar panels, trackers and rooftop systems, and development of systems performance monitoring products as well as operating expenses related to Tenesol which were incorporated into our financial results for the fiscal period 2012.

R&D expense increased \$5.7 million or 10% in fiscal 2012 as compared to fiscal 2011 primarily due to (i) a \$3.3 million increase in labor costs due to increased headcount and salary related expenses during the year; (ii) a \$2.2 million increase due to an impairment of equipment recorded as a result of changes in the deployment plan for our next generation of solar cell technology in one of our Fabs; (iii) a \$0.8 million decrease in R&D cost reimbursements received from government entities due to phase out of related programs beginning in 2010; and (iv) a \$0.5 million increase in other net expenses. This was partially offset by a \$1.1 million decrease in stock-based compensation due to lower valuation of stock grants as a result of the decline in our share price.

R&D expense increased \$8.7 million or 18% in fiscal 2011 over fiscal 2010 primarily due to (i) a \$5.9 million increase primarily due to additional costs related to the improvement of our current generation solar cell manufacturing technology, development of our next generation of solar cells, solar panels, trackers and rooftop systems, and development of systems performance monitoring products; and (ii) a \$4.1 million decrease in R&D cost reimbursements received from government entities due to phase out of related programs in 2010. This was partially offset by a \$1.4 million decrease in stock-based compensation due to lower valuation of stock grants as a result of the decline in our share price.

## Sales, General and Administrative ("SG&A")

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Total SG&A	\$ 310,246	\$ 331,380	\$ 321,936
As a percentage of revenue	13%	14%	15%

During fiscal 2012, 2011 and 2010, SG&A expense was \$310.2 million, \$331.4 million, and \$321.9 million, respectively. SG&A, as a percentage of revenue, decreased over all periods primarily as a result of our cost-control strategy implemented in response to the changes in the European market and resulting restructuring, including the overall reduction of consulting charges in Europe and the United States.

SG&A expense decreased \$21.1 million or 6% in fiscal 2012 as compared to fiscal 2011 primarily due to (i) a \$15.5 million decrease in amortization of intangible assets due to \$40.3 million of impairment of certain assets related to strategic acquisitions of EPC and O&M project pipelines in Europe recorded at the end of the third quarter of fiscal 2011; (ii) an \$8.4 million decrease in acquisition and integration related costs which were primarily incurred in the second quarter of fiscal 2011 as a result of the Total tender offer; (iii) a \$10.0 million decrease in personnel costs as a result of the implementation of approved restructuring plans; (iv) a \$16.6 million reduction in bad debt expense as a result of collection efforts for accounts receivable related to select European customers that were previously reserved based upon the then market condition in European economy; (v) a \$5.7 million decrease in consulting and outside services due to cost reduction initiatives; and (vi) a \$0.6 million increase in other expenses. The overall decrease was partially offset by (i) a charge of \$19.7 million for the securities class action settlement in the fourth quarter of fiscal 2012 and (ii) a \$16.0 million increase for Tenesol's operating expenses which were incorporated into our financial results for the period.

SG&A expense increased \$9.4 million or 3% in fiscal 2011 as compared to fiscal 2010 and was primarily due to (i) \$11.7 million in operating expenses related to Tenesol which were incorporated into our financial results during fiscal 2011; (ii) transaction expenses of \$13.9 million incurred in connection with the April 2011 Tender Offer Agreement with Total as well as

related integration costs; (iii) \$11.0 million in additional personnel related expenses as a result of net increase in headcount; (iv) additional bad debt expense of \$9.8 million related to several customers impacted by the recent changing market conditions in Europe; and (v) a \$9.3 million increase in other expenses. This increase was partially offset by (i) a \$11.9 million reduction in consulting charges in Europe and the United States as a result of our cost-control strategy implemented in response to the changes in the European market and the resulting restructuring; (ii) a \$13.2 million reduction in legal and other professional services as significant acquisition and integration related costs which were incurred as part of our acquisition of SunRay in March 2010 as well as with our Audit Committee's independent investigation of certain accounting entries in our Philippines operations; (iii) a \$8.9 million decrease due to amortization of our promissory notes reported in 2010; (iv) a \$6.9 million decrease due to amortization of other intangible assets reported in 2010; and (v) a decrease in stock based compensation due to lower valuation of stock grants as a result of the decline in our share price.

#### *Goodwill and Other Intangible Asset Impairment*

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Goodwill impairment	\$ 46,734	\$ 309,457	\$ —
Other intangible assets impairment	12,847	40,301	—
	<u>\$ 59,581</u>	<u>\$ 349,758</u>	<u>\$ —</u>
As a percentage of revenue	2%	15%	—%

Based on the impairment test performed in the third quarter of fiscal 2012, we determined that the carrying value of the Americas and EMEA reporting units exceeded their fair value. We calculated that the implied fair value of goodwill for the two reporting units was zero and therefore recorded a goodwill impairment loss of \$46.7 million, representing all of the goodwill associated with these reporting units. Based on the impairment test performed in the third quarter of 2011, we recorded a goodwill impairment loss of \$309.5 million related to the EMEA segment (see Note 6 of Notes to Consolidated Financial Statements).

During the third quarter of fiscal 2012, we determined that the carrying value of certain intangible assets in Europe were no longer recoverable and therefore recognized an impairment loss of \$12.8 million. During the first quarter of fiscal 2011, we determined the carrying value of certain intangible assets related to strategic acquisitions of EPC and O&M project pipelines in Europe were no longer recoverable and therefore recognized an impairment loss of \$40.3 million in the year ended January 1, 2012 (see Note 6 of Notes to Consolidated Financial Statements).

#### *Restructuring Charges*

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
October 2012 Plan	\$ 30,227	\$ —	\$ —
April 2012 Plan	61,379	—	—
December 2011 Plan	7,946	7,477	—
June 2011 Plan	1,271	13,926	—
Restructuring charges	<u>\$ 100,823</u>	<u>\$ 21,403</u>	<u>\$ —</u>
As a percentage of revenue	4%	1%	—%

**October 2012 Plan:** On October 12, 2012, our Board of Directors approved a reorganization (the "October 2012 Plan") to accelerate operating cost reduction and improve overall operating efficiency. In connection with the October 2012 Plan, which is expected to be completed within the twelve months following approval, we expect to eliminate approximately 900 positions primarily in the Philippines, representing approximately 15% of our global workforce. As a result, we expect to record restructuring charges totaling \$33.0 million to \$40.0 million, related to all segments. Such charges are composed of severance benefits, lease and related termination costs, and other associated costs, \$30.2 million of which were recorded in the fourth quarter of fiscal 2012. We expect greater than 90% of these charges to be cash.

**April 2012 Plan:** As a result of our continued cost reduction progress at its Fab 2 and our joint venture Fab 3 manufacturing facilities, on April 13, 2012, our Board of Directors approved a restructuring plan (the "April 2012 Plan") to

consolidate our Philippine manufacturing operations into Fab 2 and begin repurposing Fab 1 in the second quarter of 2012. We expect to recognize restructuring charges up to \$63.0 million, related to all segments, in the twelve months following the approval and implementation of the April 2012 Plan. We expect greater than 80% of these charges to be non-cash.

**December 2011 Plan:** To accelerate operating cost reduction and improve overall operating efficiency, in December 2011, we implemented a company-wide restructuring program (the "December 2011 Plan"). The December 2011 Plan eliminated approximately 2% of SunPower's global workforce. Restructuring activities associated with the December 2011 Plan were substantially completed as of December 30, 2012.

**June 2011 Plan:** In response to reductions in European government incentives, which had a significant impact on the global solar market, on June 13, 2011, our Board of Directors approved a restructuring plan (the "June 2011 Plan") to realign our resources. The June 2011 Plan eliminated approximately 2% of SunPower's global workforce, in addition to the consolidation or closure of certain facilities in Europe. Restructuring activities associated with the June 2011 Plan were substantially completed as of December 30, 2012.

See Note 9 of our Notes to Consolidated Financial Statements for further information regarding our restructuring plans.

*Other Income (Expense), Net*

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Interest income	\$ 1,091	\$ 2,337	1,541
Interest expense	(84,120)	(67,253)	(55,276)
Gain on sale of equity interest in unconsolidated investee	—	5,937	—
Gain on change in equity interest in unconsolidated investee	—	322	28,078
Gain on share lending arrangement	50,645	—	24,000
Gain on deconsolidation of consolidated subsidiary	—	—	36,849
Gain on mark-to-market derivative	4	343	35,764
Other, net	(9,575)	(10,120)	(26,410)
Other income (expense), net	\$ (41,955)	\$ (68,434)	44,546
As a percentage of revenue	(2)%	(3)%	2%

Other expense, net decreased \$26.5 million, or 39%, in fiscal 2012 as compared to fiscal 2011. The overall decrease was primarily driven by a \$50.6 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy. This was partially offset by, (i) a \$16.9 million increase in interest expense primarily due to the non-cash interest expenses as a result of amortization expense recorded for warrants issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012; (ii) a \$5.9 million cash gain from the sale of 15.5 million shares of Woongjin Energy Co. Ltd., which was recorded in 2011; and (iii) an increase in other net expenses totaling \$1.3 million.

Other expense, net increased \$113.0 million, or 254%, in fiscal 2011 as compared to fiscal 2010. The overall increase was primarily driven by (i) a non-cash gain of \$36.8 million as a result of the deconsolidation of AUOSP recorded in 2010; (ii) a \$35.8 million gain on mark-to-market derivatives during fiscal 2010 related to the change in fair value of the embedded cash conversion option, the over-allotment option, the bond hedge transaction, and the warrant transaction associated with the 4.50% debentures recorded in 2010; (iii) a \$28.1 million non-cash gain due to the dilution of our equity interest of our equity interest in Woongjin Energy as a result of Woongjin Energy's issuance of additional equity to other investor recorded in 2010; (iv) a \$24.0 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy recorded in 2010; (v) a \$12.0 million increase in interest expense due to additional indebtedness related to our 4.50% senior cash convertible debentures, and various borrowings made in 2010 and 2011. This was partially offset by (i) a \$5.9 million cash gain from the sale of 15.5 million shares of Woongjin Energy; (ii) a \$30.2 million favorable change in gain (loss) on derivatives and foreign exchange period over period primarily resulting from expensing the time value of option contracts and forward points on forward exchange contracts of effective cash flow hedges; and (iii) other net favorable changes totaling \$12.8 million including changes in fair value of our investment in unconsolidated investees given the overall economy and solar market conditions.

## Income Taxes

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Provision for income taxes	\$ (21,842)	\$ (17,208)	\$ (23,375)
As a percentage of revenue	(1)%	(1)%	(1)%

In fiscal 2012, our income tax provision of \$21.8 million, on a loss before income taxes and equity in earnings (losses) of unconsolidated investees of \$329.7 million was due to foreign income in certain jurisdictions where our operations were profitable, adjustments to unrecognized tax benefits, prior year return to provision adjustments and a valuation allowance recorded against a foreign deferred tax asset. In fiscal 2011, our income tax provision of \$17.2 million, on a loss from continuing operations of \$602.5 million, was primarily due to foreign income in certain jurisdictions where our operations were profitable. In fiscal 2010, our income tax provision of \$23.4 million on income from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$183.4 million was primarily due to the mix of income earned in domestic and foreign jurisdictions, nondeductible amortization of purchased other intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures, gain on change in equity interest in Woongjin Energy, mark-to-market fair value adjustments, changes in the valuation allowance on deferred tax assets, and discrete stock option deductions.

A material amount of our total revenue is generated from customers located outside of the United States, and a substantial portion of our assets and employees are located outside of the United States. United States income taxes and foreign withholding taxes have not been provided on the undistributed earnings of our non-United States subsidiaries as such earnings are intended to be indefinitely reinvested in operations outside the United States to extent that such earnings have not been currently or previously subjected to taxation of the United States.

We record a valuation allowance to reduce our United States and French deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of December 30, 2012, we believe there is insufficient evidence to realize additional deferred tax assets in fiscal 2012.

## Equity in Earnings (Loss) of Unconsolidated Investees

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Equity in earnings (loss) of unconsolidated investees	\$ (515)	\$ 6,003	6,845
As a percentage of revenue	— %	0.3%	0.3%

In fiscal 2012, 2011, and 2010, our equity in earnings of unconsolidated investees was a net loss of \$0.5 million, net gains of \$6.0 million, and net gains of \$6.8 million, respectively. The increase in net loss for fiscal 2012 over fiscal 2011 is primarily attributable to the sale of our equity ownership in Woongjin Energy during fiscal 2011 and the first quarter of fiscal 2012. The decrease in net earnings for fiscal 2011 over fiscal 2010 is primarily attributable a decrease in our equity share of Woongjin Energy's earnings, partially offset by a decrease in our share of losses from our AUOSP investment.

## Income from Discontinued Operations, Net of Taxes

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Income from discontinued operations, net of taxes	\$ —	\$ —	\$ 11,841
As a percentage of revenue	—%	—%	1%



In connection with our acquisition of SunRay on March 26, 2010, we acquired a European project company, Cassiopea PV S.r.l ("Cassiopea"), operating a previously completed 20 MW solar power plant in Montalto di Castro, Italy. In the period in which our asset is classified as held-for-sale, we are required to segregate for all periods presented the related assets, liabilities and results of operations associated with that asset as discontinued operations. On August 5, 2010, we sold the assets and liabilities of Cassiopea. Therefore, results of operations were classified as "Income from discontinued operations, net of taxes" in the Consolidated Statement of Operations in the year ended January 2, 2011.

### Net Income (Loss)

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Net income (loss)	\$ (352,020)	\$ (613,737)	\$ 178,724

Our net loss decreased \$261.7 million, or 42.64%, in fiscal 2012 over fiscal 2011. The decrease in net loss in fiscal 2012 versus 2011 is primarily driven by: (i) a \$290.2 million decrease in goodwill and other intangible asset impairment; (ii) a \$50.6 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy; and (iii) a \$15.5 million decrease in other operating expenses attributable to our cost-control strategy implemented in response to the changes in the European market and resulting restructuring. This was partially offset by \$79.4 million of additional charges associated with the implementation of approved restructuring programs and a \$16.9 million increase in interest expense primarily as a result of amortization of warrants, which were issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012. Information about other significant variances in our results of operations is described above.

Our net loss increased by \$792.5 million, or 443.40%, in fiscal 2011 over fiscal 2010. The increase in net loss in fiscal 2011 is primarily driven by: (i) \$283.7 million decrease in gross profit due to margin erosion associated with the decline in European government incentives and resulting oversupply in the market, (ii) \$349.8 million of goodwill and other intangible asset impairment; (iii) restructuring charges totaling \$21.4 million; and (iv) \$124.7 million of non-cash gains recorded in fiscal 2010.

## Liquidity and Capital Resources

### Cash Flows

A summary of the sources and uses of cash and cash equivalents is as follows:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Net cash provided by (used in) operating activities of continuing operations	\$ 28,903	\$ (94,304)	\$ 168,402
Net cash provided by (used in) investing activities of continuing operations	(220,067)	64,040	(461,360)
Net cash provided by (used in) financing activities of continuing operations	(75,708)	157,108	244,045

### Operating Activities

Net cash provided in operating activities of continuing operations in fiscal 2012 was \$28.9 million and was primarily the result of: (i) a non-cash loss of \$77.8 million on retirement of property, plant and equipment as primarily the result of our restructuring plan regarding Fab 1 consolidation and changes in the deployment plan for our next generation of solar cell technology; (ii) a \$65.7 million increase in customer advance due to additional prepayments received from AUOSP; (iii) non-cash impairment charges totaling \$59.6 million associated with goodwill and other intangible asset impairment in the third quarter of fiscal 2012; (iv) a \$54.7 million increase in billings in excess of costs and estimated earnings related to contractual timing of system project billings; (v) other net changes in operating assets and liabilities of \$126.5 million; and (v) \$207.3 million of other, net non-cash charges primarily attributable to depreciation and amortization, and stock based compensation. This was partially offset by (i) a net loss of \$352.0 million; (ii) increases in prepaid expense and other assets of \$136.1 million primarily related to deferred costs associated with several large utility-scale solar projects under construction in North America

and deferred costs associated with solar power systems to be leased; (iii) a \$50.6 million gain in connection with our former share lending arrangement with LBIE which was classified as cash from financing activities (see below); and (iv) an increase in project assets of \$23.4 million for construction of future and current projects primarily in North America.

Net cash used in operating activities of continuing operations in fiscal 2011 was \$94.3 million and was primarily the result of: (i) a net loss of \$613.7 million; (ii) increases in prepaid expense and other current assets of \$182.7 million primarily associated with outstanding receivables due and receivable from our joint ventures; (iii) increases in inventories and project assets of \$131.0 million for construction of future and current projects in North America and Europe; and (iv) an increase in advances to suppliers of \$40.5 million associated with prepayments for polysilicon in accordance with our long-term supply contracts. This was partially offset by: (i) non-cash impairment charges totaling \$349.8 million associated with goodwill and other intangible asset impairment in the third quarter of fiscal 2011, as well as inventories and project asset write-downs in fiscal 2011 associated with the change in European government incentives; (ii) other non-cash charges of \$205.8 million primarily related to depreciation and amortization, stock based compensation, and non-cash interest charges; and (iii) a decrease of \$296.8 million in other operating liabilities, net of changes to operating assets.

Net cash provided by operating activities of continuing operations of \$168.4 million in fiscal 2010 was primarily the result of: (i) income from continuing operations of \$166.9 million; (ii) increases in accounts payable and other accrued liabilities of \$158.0 million; and (iii) non-cash charges totaling \$255.1 million for depreciation, amortization, stock-based compensation, debt issuance costs, and non-cash interest expense. This was partially offset by: (i) increases to inventories of \$114.5 million as we continue to grow our business; (ii) increases in accounts receivable of \$132.2 million related to the increase in revenue; (iii) an increase in advance to suppliers of \$96.1 million associated with prepayments for polysilicon in accordance with long-term supply contracts; (iv) an \$0.8 million net gain on investments; (v) a \$24.0 million recovery on a previously recorded loss on a share lending arrangement to LBIE; (vi) net gains of \$35.8 million on mark-to-market derivatives related to the change in fair value of the derivative instruments associated with the 4.50% debentures; (vii) other non-cash income of \$72.0 million primarily related to our equity share in earnings of joint ventures, gain on deconsolidation of AUOSP, net gain on change in our equity interest in joint ventures; and (viii) other changes in operating assets and liabilities of \$27.4 million.

### *Investing Activities*

Net cash used in investing activities of continuing operations in fiscal 2012 was \$220.1 million, which included (i) \$255.2 million related to capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology, leasehold improvements associated with our San Jose, California office, the build-out of our new solar panel assembly facility in Mexicali, Mexico, and costs associated with solar power systems leased and to be leased; (ii) a \$13.8 million strategic equity investment in unconsolidated investees; and (iii) \$1.4 million in purchases of marketable securities. This was partially offset by (i) \$32.6 million of restricted cash released back to us due to expirations of fully cash-collateralized letter of credits under the September 2011 Letter of Credit Facility with Deutsche Bank Trust and transition of outstanding letter of credits into the August 2011 Deutsche Bank facility under which payment of obligations is guaranteed by Total S.A.; and (ii) \$17.4 million in proceeds from the sale of our equity interest in our Woongjin Energy joint venture on the open market.

Net cash provided by investing activities of continuing operations in fiscal 2011 was \$64.0 million, which included: (i) \$176.7 million of restricted cash released back to us due to transition of outstanding letter of credits in the August 2011 Deutsche Bank facility under which payment of obligations is guaranteed by Total S.A. and the release of deposited funds under our reimbursement agreement with Barclays Capital Inc. upon conversion of the CEDA bonds to a fixed rate instrument; (ii) \$75.3 million in proceeds from the sale of a portion of our equity interest in our Woongjin Energy joint venture on the open market; and (iii) \$43.8 million in proceeds received related to the sale of debt securities. This was partially offset by: (i) \$131.5 million related to capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology, leasehold improvements associated with new offices leased in San Jose, California, the build-out of new solar panel assembly facility in Mexicali, Mexico, and other projects; (ii) \$80.0 million related to additional cash investments in our AUOSP joint venture; and (iii) \$9.2 million in purchases of marketable securities.

Net cash used in investing activities of continuing operations in fiscal 2010 was \$461.4 million, made up of: (i) \$119.2 million for capital expenditures primarily associated with the continued construction of FAB3 in Malaysia prior to deconsolidation on July 5, 2010; (ii) \$272.7 million in cash paid for a strategic acquisition completed in March 2010, net of cash acquired; (iii) \$40.1 million for the purchase of debt securities; (iv) \$5.6 million of increases in restricted cash and cash equivalents; (v) \$17.8 million in cash paid for investments in AUOSP and non-public companies; and (vi) \$12.9 million related to cash of AUOSP that was deconsolidated on July 5, 2010. This was partially offset by (i) \$5.3 million in proceeds received

from the sale of equipment to a third-party contract manufacturer; and (ii) \$1.6 million on proceeds from sale or maturity of money market funds.

### *Financing Activities*

Net cash used in financing activities of continuing operations in fiscal 2012 was \$75.7 million, made up of: (i) \$169.6 million of cash distributions in connection with the transfer of entities under common control; (ii) \$198.6 million paid to fully repurchase the outstanding 1.25% convertible debentures; (iii) repayment of \$154.1 million of our outstanding borrowings primarily under the Credit Agricole revolving credit facility; and (iv) \$5.7 million in purchases of stock for tax withholding obligations on vested restricted stock. This was partially offset by (i) \$163.6 million in proceeds from the sale of 18.6 million shares of our common stock to Total; (ii) drawdowns of \$150.0 million under the Credit Agricole revolving credit facility; (iii) \$50.6 million of proceeds from the recovery of a claim in connection with our former share lending arrangement with LBIE; (iv) \$27.6 million from project loans; and (v) \$60.4 million of financing proceeds associated with our residential lease program.

Net cash provided by financing activities of continuing operations in fiscal 2011 of \$157.1 million reflects cash received of: (i) \$489.2 million in cash proceeds from gross drawdowns under the Union Bank, Société Générale, and Credit Agricole revolving credit facilities, and our IFC mortgage loan agreement; (ii) \$50.4 million in connection with the transfer of entities under common control; (iii) \$4.1 million from stock option exercises; and (iv) \$2.3 million in cash proceeds in conjunction with warrant holders' exercise of their rights to reduce warrant exercise prices (see Note 12 of Notes to Consolidated Financial Statements). This was partially offset by: (i) \$377.1 million repayment on outstanding balances under the Union Bank and Société Générale revolving credit facilities; and (ii) \$11.7 million in purchases of stock for tax withholding obligations on vested restricted stock.

Net cash provided by financing activities of continuing operations in fiscal 2010 of \$244.0 million reflects cash received of: (i) \$230.5 million in net proceeds from the issuance of \$250.0 million in principal amount of our 4.50% debentures, after reflecting the payment of the net cost of the call spread overlay; (ii) \$214.7 million and \$318.6 million in net proceeds from various bank and project loans, respectively; (iii) \$24.0 million received under the LBIE claim assignment agreement with Deutsche Bank; and (iv) \$0.9 million from stock option exercises. This was partially offset by: (i) \$333.5 million principal amount of project loans assumed by customers with the sale of 44 MW and 8 MW solar power plants in Montalto di Castro, Italy to a consortium of international investors; (ii) cash paid of \$30.0 million to Union Bank to terminate our \$30.0 million term loan; (iii) repayment of \$33.6 million to Piraeus Bank to terminate our current account overdraft agreement in Greece; (iv) repurchase of \$143.8 million in principal amount of our 0.75% debentures; and (v) \$3.7 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock units.

### *Debt and Credit Sources*

#### *Convertible Debentures*

As of both December 30, 2012 and January 1, 2012, an aggregate principal amount of \$250.0 million of the 4.50% debentures remain issued and outstanding. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our common stock (or any other securities). Prior to December 15, 2014, the 4.50% debentures are convertible only upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of \$22.53 per share of our common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, we will deliver an amount of cash calculated by reference to the price of our common stock over the applicable observation period. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.50% debentures, we entered into privately negotiated convertible debenture hedge transactions and warrant transactions which represent a call spread overlay with respect to the 4.50% debentures (the "CSO2015"), assuming full performance of the counterparties and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures. According to the counterparties to the warrants, the consummation of the Total tender offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, we and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00. Please see *"Conversion of our outstanding 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our common stock"*

or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease." in "Part I. Item 1A: Risk Factors".

As of both December 30, 2012 and January 1, 2012, an aggregate principal amount of \$230.0 million of the 4.75% senior convertible debentures ("4.75% debentures") remain issued and outstanding. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of our common stock at a conversion price equal to \$26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require us to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.75% debentures, we entered into certain convertible debenture hedge transactions (the "4.75% Bond Hedge") and warrant transactions (the "4.75% Warrants") with affiliates of certain of the underwriters of the 4.75% debentures. According to the counterparties to the warrants, the consummation of the Total tender offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, we and the counterparties to the 4.75% Warrants agreed to reduce the exercise price of the 4.75% Warrants from \$38.50 to \$26.40, which is no longer above the conversion price of the 4.75% debentures. Please see *"Conversion of our outstanding and 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease."* in "Part I. Item 1A: Risk Factors".

As of January 1, 2012, an aggregate principal amount of \$198.6 million of the 1.25% senior convertible debentures ("1.25% debentures") remained issued and outstanding. As of January 1, 2012, the 1.25% debentures were classified as short-term liabilities within "Convertible debt, current portion" in the Consolidated Balance Sheet as the holders may require us to repurchase all of their 1.25% debentures on February 15, 2012. On February 16, 2012, we repurchased \$198.6 million in principal amount of the 1.25% debentures at a cash price of \$199.8 million, representing 100% of the principal amount plus accrued and unpaid interest. None of the 1.25% debentures remained issued and outstanding after the repurchase.

#### *Mortgage Loan Agreement with IFC*

On May 6, 2010, we entered into a mortgage loan agreement with IFC. Under the loan agreement, we may borrow up to \$75.0 million during the first two years, and are required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. On October 3, 2012, IFC granted a temporary waiver of a financial covenant for the fourth quarter of fiscal 2012 through the fourth quarter of fiscal 2013. Subsequent to the waiver, we are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings through January 5, 2013; interest of LIBOR plus 4.25% per annum on outstanding borrowings from January 6, 2013 through September 30, 2013; interest of LIBOR plus 5% per annum on outstanding borrowings from October 1, 2013 through January 5, 2014; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. If we utilize the waiver for the fourth quarter of 2013, the 2013 rates would continue to apply in 2014. If we do not need to utilize the waiver, we are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. We may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. We have pledged certain assets as collateral supporting repayment obligations.

As of both December 30, 2012 and January 1, 2012, we had \$75.0 million outstanding under the mortgage loan agreement. Additionally, in accordance with the terms of the mortgage loan agreement, we are required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date.

As of December 30, 2012 and January 1, 2012, we had restricted cash and cash equivalents of \$6.4 million and \$1.3 million, respectively, related to the IFC debt service reserve.

#### *Loan Agreement with California Enterprise Development Authority ("CEDA")*

On December 29, 2010, we borrowed from CEDA the proceeds of the \$30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the

"Bonds") maturing April 1, 2031 under a loan agreement with CEDA. Certain of our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds initially bore interest at a variable interest rate (determined weekly), but in June 2011, at our option were converted into fixed-rate bonds at 8.50% per annum (which include covenants of, and other restrictions on, us). Additionally, in accordance with the terms of the loan agreement, we are required to keep all loan proceeds on deposit with Wells Fargo, the trustee, until funds are withdrawn by us for use in relation to the design and leasehold improvements of our new corporate headquarters in San Jose, California. As of December 30, 2012 and January 1, 2012, we had restricted cash and cash equivalents of \$3.0 million and \$10.0 million, respectively, for design and leasehold improvements and debt service reserves under the CEDA loan agreement.

As of both December 30, 2012 and January 1, 2012, the \$30.0 million aggregate principal amount of the Bonds was classified as "Long-term debt" in our Consolidated Balance Sheets.

#### *September 2011 Revolving Credit Facility with Credit Agricole*

On September 27, 2011, we entered into a revolving credit agreement with Credit Agricole, as administrative agent, and certain financial institutions, under which we may borrow up to \$275.0 million until September 27, 2013. On December 24, 2012, we amended the facility to reflect Total S.A.'s guarantee of our obligations under the facility. The facility amendment extended the maturity date to January 31, 2014, reduced interest rates payable and removed certain financial and restrictive covenants. Subsequent to the amendment, we are required to pay interest on outstanding borrowings of (a) with respect to any LIBOR loan, 0.6% plus the LIBOR divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; and (b) with respect to any alternative base loan, 0.25% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBOR plus 1%, and a commitment fee equal to 0.06% per annum on funds available for borrowing and not borrowed.

As of December 30, 2012, we had \$275.0 million outstanding under the revolving credit facility with Credit Agricole which was classified as "Long-term debt" on our Consolidated Balance Sheet.

#### *August 2011 Letter of Credit Facility with Deutsche Bank*

On August 9, 2011, we entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions, and further amended on December 20, 2011. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement between us and Total S.A. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing banks thereunder in order to support certain of our obligations, in an aggregate amount not to exceed (a) \$725.0 million until December 31, 2012; and (b) \$771.0 million for the period from January 1, 2013 through December 31, 2013. Aggregate letter of credit amounts may be increased upon the agreement of the parties, but otherwise may not exceed (i) \$878.0 million for the period from January 1, 2014 through December 31, 2014; (ii) \$936.0 million for the period from January 1, 2015 through December 31, 2015; and (iii) \$1.0 billion for the period from January 1, 2016 through June 28, 2016. Each letter of credit issued under the letter of credit facility must have an expiration date no later than the second anniversary of the issuance of that letter of credit, provided that up to 15% of the outstanding value of the letters of credit may have an expiration date of between two and three years from the date of issuance.

As of December 30, 2012, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled \$725.3 million.

#### *September 2011 Letter of Credit Facility with Deutsche Bank and Deutsche Bank Trust Company Americas (together, "Deutsche Bank Trust")*

On September 27, 2011, we entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by us, letters of credit to support our obligations in an aggregate amount not to exceed \$200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and we have entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of December 30, 2012 letters of credit issued under the Deutsche Bank Trust facility amounted to \$17.5 million which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

## **Liquidity**

As of December 30, 2012, we had unrestricted cash and cash equivalents of \$457.5 million as compared to \$725.6 million as of January 1, 2012. Our cash balances are held in numerous locations throughout the world and as of December 30, 2012, we had approximately \$124.3 million held outside of the United States. This offshore cash is used to fund operations of our EMEA and APAC business units as well as non-U.S. manufacturing operations, which requires local payment for product materials and other expenses. The amounts held outside of the United States represents the earnings of our foreign subsidiaries which, if repatriated to the United States under current law, would be subject to United States federal and state tax less applicable foreign tax credits. Repatriation of earnings that have not been subjected to U.S. tax and which have been indefinitely reinvested outside the U.S. could result in additional United States federal income tax payments in future years.

On July 5, 2010, we formed our AUOSP joint venture. Under the terms of the joint venture agreement, our subsidiary SunPower Technology, Ltd. ("SPTL") and AU Optronics Singapore Pte. Ltd. ("AUO") each own 50% of AUOSP. Both SPTL and AUO are obligated to provide additional funding to AUOSP in the future. Under the joint venture agreement, each shareholder agreed to contribute additional amounts to the joint venture through 2014 amounting to \$241.0 million, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). In addition, if AUOSP, SPTL, or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to \$50.0 million in the aggregate. Further, we could in the future guarantee certain financial obligations of AUOSP.

On January 31, 2012, we completed our acquisition from Total of 100% of the equity of Tenesol, a global solar provider headquartered in La Tour de Salvagny, France, and a wholly-owned subsidiary of Total, for \$165.4 million in cash pursuant to a stock purchase agreement entered into on December 23, 2011. Concurrently with the closing of the acquisition, Total purchased \$18.6 million shares of our common stock in a private placement at \$8.80 per share for total proceeds of \$163.7 million. Tenesol has module manufacturing operations in Toulouse, France and Capetown, South Africa and is in the process of developing a third site near Carling, France. Our manufacturing and assembly activities have required and will continue to require significant investment of capital and substantial engineering expenditures.

Our 4.50% debentures are convertible into cash. Under the terms of the 4.50% Warrants, we sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, subject to anti-dilution adjustments, up to 11.1 million shares of our common stock. The bond hedge and warrants described in Note 12 of Notes to the Consolidated Financial Statements represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties (and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures), the transactions effectively reduce our potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures. In the third quarter of fiscal 2011, we and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of \$70 million to \$90 million in fiscal 2013 in order to improve our current and next generation solar cell manufacturing technology and other projects. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants for sale to customers. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We often choose to bear the costs of such efforts prior to the final sale to a customer, which involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Any delays in disposition of one or more projects could have a negative impact on our liquidity.

Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions, which are returned to us upon satisfaction of contractual requirements. If there is a contractual dispute with the customer, the customer may withhold the security or make a draw under such security, which could have an adverse impact on our liquidity position. Obtaining letters of credit may require adequate collateral. All letters of credit issued under our August 2011 Deutsche Bank facility are guaranteed by Total S.A. pursuant to the Credit Support Agreement. Our letter of credit facility with Deutsche Bank Trust is fully collateralized by restricted cash, which reduces the amount of cash available for operations. As of December 30, 2012 letters of credit issued under the Deutsche Bank Trust facility amounted to \$17.5 million which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject



to financing availability. In fiscal 2012, we entered into arrangements with two financial institutions that will provide financing to support additional residential solar lease projects. In the first quarter of fiscal 2013, we entered into an arrangement with an additional financial institution. We receive upfront payments for periods under which the third-party financial institution has agreed to assume collection risk for certain residential leases. Changes in the amount or timing of upfront payments received from the financial institution may have an impact on our cash position within the next twelve months. The normal collection of monthly rent payments for leases placed in service is not expected to have a material impact on our cash position within the next twelve months. We are actively arranging additional third-party financing for our residential lease program; however, due to the general challenging credit markets worldwide, we may be unable to arrange additional financing partners for our residential lease program in future periods, which could have a negative impact on our sales. In the unlikely event that we have entered into a material number of additional leases without promptly obtaining corresponding third-party financing, our cash and working capital could be negatively impacted.

We believe that our current cash, cash equivalents and cash expected to be generated from operations will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power systems and plants over the next 12 months. In addition, we have the Liquidity Support Facility (described below) with up to \$325 million available from Total S.A. to us under certain specified circumstances. However, there can be no assurance that our liquidity will be adequate over time. A significant portion of our revenue is generated from a limited number of customers and large projects and our inability to execute these projects, or to collect from these customers or for these projects, would have a significant negative impact on our business. Our capital expenditures and use of working capital may be greater than we expect if we decide to make additional investments in the development and construction of solar power plants and sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures. See also *"A limited number of customers and large projects are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers or projects, payments of liquidated damages, or an increase in related expenses, could have a significant adverse effect on us,"* and *"Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned"* in Part I, Item 1A "Risk Factors".

We are party to an agreement with a customer to construct the California Valley Solar Ranch, a solar park. Part of the debt financing necessary for the customer to pay for the construction of this solar park is being provided by the Federal Financing Bank in reliance on a guarantee of repayment provided by the Department of Energy (the "DOE") under a loan guarantee program. On February 28, 2012, we entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide us, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of \$600 million (the "Liquidity Support Facility"). Total S.A. is required to provide liquidity support to us under the facility, and we are required to accept such liquidity support from Total S.A., if either our actual or projected unrestricted cash, cash equivalents, and unused borrowing capacity are reduced below \$100 million, or we fail to satisfy any financial covenant under our indebtedness. In either such event, subject to a \$600 million aggregate limit, Total S.A. is required to provide us with sufficient liquidity support to increase the amount of our unrestricted cash, cash equivalents and unused borrowing capacity to above \$100 million, and to restore compliance with our financial covenants. On December 24, 2012, Total S.A. agreed to guarantee our revolving credit facility with Credit Agricole, which reduced the capacity available under the Liquidity Support Facility by \$275 million. The Liquidity Support Facility is available until the completion of the solar park, expected to be completed before the end of 2013, and, under certain conditions, up to December 31, 2016, at which time all outstanding guarantees will expire and all outstanding debt under the facility will become due (except for the Total S.A. guarantee of our Credit Agricole facility). In return for Total S.A.'s agreement to provide the Liquidity Support Facility, on February 28, 2012, we issued to Total a seven-year warrant to purchase 9,531,677 shares of our common stock at an exercise price of \$7.8685 per share. During the term of the facility, we must pay Total S.A. a quarterly fee equal to 0.25% of the unused portion of the facility. Liquidity support may be provided by Total S.A. or through its affiliates in the form of revolving non-convertible debt, convertible debt, equity, guarantees of our indebtedness or other forms of liquidity support agreed to by us, depending on the amount outstanding under the facility immediately prior to provision of the applicable support among other factors. We are required to compensate Total S.A. for any liquidity support actually provided, and the form and amount of such compensation depends on the form and amount of support provided, with the amount of compensation generally increasing with the amount of support provided over time. Such compensation is to be provided in a variety of forms including guarantee fees, warrants to purchase common stock, interest on amounts borrowed, and discounts on equity issued. The use of the Liquidity Support Facility is not limited to direct obligations



related to the solar park, and is available for general corporate purposes, but we have agreed to conduct our operations, and use any proceeds from such facility in ways that minimize the likelihood of Total S.A. being required to provide further support.

In the first half of 2013, \$275 million of Credit Agricole revolver and \$230 million of 4.75% debentures will have a maturity of less than 12 months and become reclassified to short term debt on our consolidated balance sheet. We are evaluating options to repay or refinance such indebtedness during 2013 or 2014, but there are no assurances that we will have sufficient available cash to repay such indebtedness or we will be able to refinance such indebtedness on similar terms to the expiring indebtedness. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing, including under the Liquidity Support Facility. The current economic environment, however, could limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. The sale of additional equity securities or convertible debt securities, including under the Liquidity Support Agreement, would result in additional dilution to our stockholders (and potential for further dilution upon the exercise of warrants or the conversion of convertible debt issued under the Liquidity Support Facility) and may not be available on favorable terms or at all, particularly in light of the current conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under our current loan agreements and debentures. In addition, financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us.

### Contractual Obligations

The following summarizes our contractual obligations as of December 30, 2012:

(In thousands)	Total	Payments Due by Period			
		2013	2014-2015	2016-2017	Beyond 2017
Convertible debt, including interest (1)	\$ 518,943	\$ 22,176	\$ 496,767	\$ —	\$ —
IFC mortgage loan, including interest (2)	82,718	15,866	33,284	31,064	2,504
CEDA loan, including interest (3)	76,538	2,550	5,100	5,100	63,788
Credit Agricole revolving credit facility, including interest (4)	277,515	2,324	275,191	—	—
Future financing commitments (5)	246,978	150,208	96,770	—	—
Operating lease commitments (6)	177,099	24,737	35,032	29,769	87,561
Capital lease commitments (7)	8,993	2,064	2,642	1,896	2,391
Non-cancellable purchase orders (8)	214,194	214,194	—	—	—
Purchase commitments under agreements (9)	2,181,970	407,110	731,342	526,423	517,095
Total	\$ 3,784,948	\$ 841,229	\$ 1,676,128	\$ 594,252	\$ 673,339

- (1) Convertible debt, including interest, relates to the aggregate of \$480.1 million in outstanding principal amount of our senior convertible debentures on December 30, 2012. For the purpose of the table above, we assume that all holders of the 4.50% debentures and 4.75% debentures will hold the debentures through the date of maturity in fiscal 2015 and 2014, respectively, and all holders of the 0.75% debentures will require us to repurchase the debentures on August 1, 2015, and upon conversion, the values of the senior convertible debentures will be equal to the aggregate principal amount with no premiums.
- (2) IFC mortgage loan, including interest, relates to the \$75.0 million borrowed as of December 30, 2012. Under the loan agreement, we are required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. If we utilize a waiver signed with IFC, we are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings through January 5, 2013, LIBOR plus 4.25% per annum on outstanding borrowings from January 6, 2013 through September 30, 2013, LIBOR plus 5% per annum on outstanding borrowings from October 1, 2013 through January 5, 2014, and LIBOR plus 3% per annum on outstanding borrowings from January 6, 2014 through maturity. If we do not need to utilize the waiver, we are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; a front-end fee of 1% on the principal amount of

borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed.

- (3) CEDA loan, including interest, relates to the proceeds of the \$30.0 million aggregate principal amount of the Bonds. The Bonds mature on April 1, 2031. On June 1, 2011 the Bonds were converted to bear interest at a fixed rate of 8.50% through maturity.
- (4) Credit Agricole revolving credit facility, with interest, relates to the \$275.0 million borrowed as of December 30, 2012 and maturing on January 31, 2014. We are required to pay interest on outstanding borrowings of (a) with respect to any LIBOR loan, 0.6% plus the LIBOR divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; (b) with respect to any alternative base loan, 0.25% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBOR plus 1%.
- (5) We and AUO agreed in the joint venture agreement to contribute additional amounts to AUOSP in fiscal 2012 through 2014 amounting to \$241.0 million by each shareholder, or such lesser amount as the parties may mutually agree. Further, in connection with a purchase agreement with a non-public company we will be required to provide additional financing to such party of up to \$4.9 million, subject to certain conditions. Under our long-term convertible note agreement with Diamond Energy Pty. Ltd., we are additionally required to provide additional funds amounting to AUD 1.0 million during fiscal 2013.
- (6) Operating lease commitments primarily relate to certain solar power systems leased from unaffiliated third parties over minimum lease terms of up to 20 years and various lease agreements for our headquarters in San Jose, California, sales and support offices throughout the United States and Europe and a solar module facility in Mexicali, Mexico.
- (7) Capital lease commitments primarily relate to certain buildings, manufacturing and equipment under capital leases in Europe for terms of up to 12 years.
- (8) Non-cancellable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors.
- (9) Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements.

#### ***Liabilities Associated with Uncertain Tax Positions***

Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities. Therefore, they have been excluded from the table above. As of December 30, 2012, total liabilities associated with uncertain tax positions were \$35.0 million and are included in "Other long-term liabilities" in our Consolidated Balance Sheets as they are not expected to be paid within the next twelve months.

#### **Off-Balance-Sheet Arrangements**

As of December 30, 2012, we did not have any significant off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

#### **Recent Accounting Pronouncements**

See Note 1 "Recent Accounting Pronouncements," to our consolidated financial statements included in this Annual Report on Form 10-K for a summary of recent accounting pronouncements.

**ITEM 7A: QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK****Foreign Currency Exchange Risk**

Our exposure to movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented 20%, 39% and 69% of our total revenue in fiscal 2012, 2011, and 2010, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately \$48.9 million, \$92.4 million and \$152.6 million in fiscal 2012, 2011, and 2010, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Strengthening of the Malaysian Ringgit against the U.S. dollar would increase AUOSP's liability under the facility agreement with the Malaysian government which in turn would negatively impact our equity in earnings of the unconsolidated investee. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies.

We currently conduct hedging activities which involve the use of option and forward currency contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of December 30, 2012, we had outstanding hedge option currency contracts and forward currency contracts with aggregate notional values of \$71.0 million and \$148.2 million, respectively. As of January 1, 2012, we held option and forward contracts totaling \$130.4 million and \$200.8 million, respectively, in notional value. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience a reclassification of ineffective gains or losses into earnings. During fiscal 2011, in connection with the decline in forecasted revenue surrounding the overall change in the solar sector, we concluded that certain previously anticipated transactions were probable not to occur and thus we reclassified the amount held in "Accumulated other comprehensive income (loss)" in our Consolidated Balance Sheets for these transactions, which totaled a loss of \$1.6 million, to "Other, net" in our Consolidated Statement of Operations. If we conclude that we have a pattern of determining that hedged forecasted transactions probably will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations. We cannot predict the impact of future exchange rate fluctuations on our business and operating results.

**Credit Risk**

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, note receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions and a share lending arrangement for our common stock. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial and derivative instruments. Our investment policy requires cash and cash equivalents, restricted cash and cash equivalents, and investments to be placed with high-quality financial institutions and limits the amount of credit risk from any one issuer. We additionally perform ongoing credit evaluations of our customers' financial condition whenever deemed necessary and generally do not require collateral.

We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of December 30, 2012 and January 1, 2012, advances to suppliers totaled \$351.4 million and \$327.5 million, respectively. Two suppliers accounted for 76% and 23% of total advances to suppliers as of December 30, 2012, and 74% and 20% of total advances to suppliers as of January 1, 2012. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate.

We enter into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limit the amount of credit exposure to any single counterparty. The foreign currency derivative contracts are limited to a time period of less than one year. We regularly evaluate the credit standing of our counterparty financial institutions.

**Interest Rate Risk**

We are exposed to interest rate risk because many of our customers depend on debt financing to purchase our solar power systems. An increase in interest rates could make it difficult for our customers to obtain the financing necessary to purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could lower a customer's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, reduce gross margin and adversely impact our operating results. This risk is significant to our business because our sales model is highly sensitive to interest rate fluctuations and the availability of credit, and would be adversely affected by increases in interest rates or liquidity constraints.

Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. As of December 30, 2012, the outstanding principal balance of our variable interest borrowings was \$350.0 million. We do not believe that an immediate 10% increase in interest rates would have a material effect on our financial statements. In addition, lower interest rates have an adverse impact on our interest income. Our investment portfolio primarily consists of \$117.3 million in money market funds as of December 30, 2012, and exposes us to interest rate risk. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our money market funds. Since we believe we have the ability to liquidate substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

#### **Equity Price Risk Involving Minority Investments in Joint Ventures and Other Non-Public Companies**

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of December 30, 2012 and January 1, 2012, investments of \$111.5 million and \$129.9 million, respectively, are accounted for using the equity method, and \$14.9 million and \$4.9 million, respectively, are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future.

#### **Interest Rate Risk and Market Price Risk Involving Convertible Debt**

The fair market value of our 4.75%, 4.50%, and 0.75% convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our common stock increases and decrease as the market price of our common stock falls. The interest and market value changes affect the fair market value of the debentures, but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations, except to the extent increases in the value of our common stock may provide the holders of our 4.50% debentures, and/or 0.75% debentures the right to convert such debentures into cash in certain instances. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, and 0.75% debentures was \$447.8 million as of December 30, 2012. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, 1.25% debentures and 0.75% debentures was \$604.6 million as of January 1, 2012. Estimated fair values are based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of our then-outstanding debentures to \$492.6 million and \$665.0 million as of December 30, 2012 and January 1, 2012, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to \$403.0 million and \$544.1 million as of December 30, 2012 and January 1, 2012, respectively.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA****SUNPOWER CORPORATION****INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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## **Report of Independent Registered Public Accounting Firm**

### ***To the Board of Directors and Stockholders of SunPower Corporation***

We have audited the accompanying consolidated balance sheet of SunPower Corporation as of December 30, 2012, and the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of SunPower Corporation at December 30, 2012, and the consolidated results of its operations and its cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), SunPower Corporation's internal control over financial reporting as of December 30, 2012, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 22, 2013 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Jose, California  
February 22, 2013

## Report of Independent Registered Public Accounting Firm

### ***To the Board of Directors and Stockholders of SunPower Corporation***

We have audited SunPower Corporation's internal control over financial reporting as of December 30, 2012, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). SunPower Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, SunPower Corporation maintained, in all material respects, effective internal control over financial reporting as of December 30, 2012, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the 2012 consolidated financial statements of SunPower Corporation and our report dated February 22, 2013 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Jose, California  
February 22, 2013



## **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of SunPower Corporation

In our opinion, the accompanying consolidated balance sheet as of January 1, 2012 and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for each of two years in the period ended January 1, 2012 present fairly, in all material respects, the financial position of SunPower Corporation and its subsidiaries at January 1, 2012, and the results of their operations and their cash flows for each of the two years in the period ended January 1, 2012, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

San Jose, California

February 29, 2012, except for the effects of the change in reporting entity due to the transfer of an entity under common control discussed in Note 3 and the change in composition of reportable segments discussed in Note 18 to the consolidated financial statements, as to which the date is February 22, 2013

**SunPower Corporation**  
**Consolidated Balance Sheets**  
(In thousands, except share data)

	December 30, 2012	January 1, 2012 (1) (2)
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 457,487	\$ 725,618
Restricted cash and cash equivalents, current portion	15,568	52,279
Accounts receivable, net	398,150	438,633
Costs and estimated earnings in excess of billings	36,395	54,854
Inventories	291,386	445,501
Advances to suppliers, current portion	50,282	43,143
Project assets - plants and land, current portion	75,911	24,243
Prepaid expenses and other current assets (3)	613,053	487,766
Total current assets	1,938,232	2,272,037
Restricted cash and cash equivalents, net of current portion	31,396	27,276
Restricted long-term marketable securities	10,885	9,145
Property, plant and equipment, net	774,909	643,882
Project assets - plants and land, net of current portion	7,596	34,614
Goodwill	—	47,077
Other intangible assets, net	744	23,900
Advances to suppliers, net of current portion	301,123	284,378
Other long-term assets (3)	276,063	176,821
Total assets	\$ 3,340,948	\$ 3,519,130
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable (3)	\$ 414,335	\$ 441,655
Accrued liabilities	247,372	249,404
Billings in excess of costs and estimated earnings	225,550	170,828
Short-term debt	14,700	2,122
Convertible debt, current portion	—	196,710
Customer advances, current portion (3)	59,648	48,073
Total current liabilities	961,605	1,108,792
Long-term debt	375,661	364,273
Convertible debt, net of current portion	438,629	423,268
Customer advances, net of current portion (3)	236,082	181,946
Other long-term liabilities	335,619	166,126
Total liabilities	2,347,596	2,244,405
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, \$0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of both December 30, 2012 and January 1, 2012	—	—
Common stock, \$0.001 par value, 367,500,000 shares authorized; 123,315,990 shares issued, and 119,234,280 outstanding as of December 30, 2012; 101,851,290 shares issued, and 100,475,533 shares outstanding as of January 1, 2012	119	100
Additional paid-in capital	1,931,947	1,845,965
Accumulated deficit	(902,085)	(550,065)
Accumulated other comprehensive income (loss)	(2,521)	7,142
Treasury stock, at cost; 4,081,710 shares of common stock as of December 30, 2012; 1,375,757 shares of common stock as of January 1, 2012	(34,108)	(28,417)
Total stockholders' equity	993,352	1,274,725
Total liabilities and stockholders' equity	\$ 3,340,948	\$ 3,519,130

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

- (2) As adjusted to conform to the current period presentation for solar power systems leased and to be leased (see Note 1).
- (3) The Company has related party balances in connection with transactions made with unconsolidated entities in which the Company has a direct equity investment. These related party balances are recorded within the "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advances, current portion," and "Customer advances, net of current portion" financial statement line items in the Consolidated Balance Sheets (see Note 7, Note 10, and Note 11).

The accompanying notes are an integral part of these consolidated financial statements.

**SunPower Corporation**  
**Consolidated Statements of Operations**  
(In thousands, except per share data)

	Year ended		
	December 30, 2012	January 1, 2012 (1)	January 2, 2011
Revenue	\$ 2,417,501	\$ 2,374,376	\$ 2,219,230
Cost of revenue	2,171,103	2,148,158	1,709,337
Gross margin	246,398	226,218	509,893
Operating expenses:			
Research and development	63,456	57,775	49,090
Sales, general and administrative	310,246	331,380	321,936
Goodwill impairment	46,734	309,457	—
Other intangible asset impairment	12,847	40,301	—
Restructuring charges	100,823	21,403	—
Total operating expenses	534,106	760,316	371,026
Operating income (loss)	(287,708)	(534,098)	138,867
Other income (expense), net:			
Interest income	1,091	2,337	1,541
Interest expense	(84,120)	(67,253)	(55,276)
Gain on sale of equity interest in unconsolidated investee	—	5,937	—
Gain on change in equity interest in unconsolidated investee	—	322	28,078
Gain on deconsolidation of consolidated subsidiary	—	—	36,849
Gain on share lending arrangement	50,645	—	24,000
Gain on mark-to-market derivatives	4	343	35,764
Other, net	(9,575)	(10,120)	(26,410)
Other income (expense), net	(41,955)	(68,434)	44,546
Income (loss) before income taxes and equity in earnings (loss) of unconsolidated investees	(329,663)	(602,532)	183,413
Provision for income taxes	(21,842)	(17,208)	(23,375)
Equity in earnings (loss) of unconsolidated investees	(515)	6,003	6,845
Income (loss) from continuing operations	(352,020)	(613,737)	166,883
Income from discontinued operations, net of taxes	—	—	11,841
Net income (loss)	\$ (352,020)	\$ (613,737)	\$ 178,724
Net income (loss) per share of common stock:			
Net income (loss) per share - basic			
Continuing operations	\$ (3.01)	\$ (6.28)	\$ 1.74
Discontinued operations	—	—	0.13
Net income (loss) per share - basic	\$ (3.01)	\$ (6.28)	\$ 1.87
Net income (loss) per share - diluted			
Continuing operations	\$ (3.01)	\$ (6.28)	\$ 1.64
Discontinued operations	—	—	0.11
Net income (loss) per share - diluted	\$ (3.01)	\$ (6.28)	\$ 1.75
Weighted-average shares:			
Basic	117,093	97,724	95,660
Diluted	117,093	97,724	105,698

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

The accompanying notes are an integral part of these consolidated financial statements.

**SunPower Corporation**  
**Consolidated Statements of Comprehensive Income (Loss)**  
(In thousands)

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012 (1)	January 2, 2011
Net income (loss)	\$ (352,020)	\$ (613,737)	\$ 178,724
Components of comprehensive income (loss):			
Translation adjustment	(959)	1,401	1,103
Net unrealized gain (loss) on derivatives (Note 13)	(10,716)	(175)	23,124
Income taxes	2,012	2,276	(3,230)
Net change in accumulated other comprehensive income (loss)	(9,663)	3,502	20,997
Total comprehensive income (loss)	\$ (361,683)	\$ (610,235)	\$ 199,721

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

The accompanying notes are an integral part of these consolidated financial statements.

**SunPower Corporation**  
**Consolidated Statements of Stockholders' Equity**  
(In thousands)

	<u>Common Stock</u>						
	Shares	Value	Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Accumulated Deficit)	Total Stockholders' Equity
<b>Balances at January 3, 2010</b>	<b>97,072</b>	<b>\$ 97</b>	<b>\$ 1,520,933</b>	<b>\$ (12,984)</b>	<b>\$ (17,357)</b>	<b>\$ (114,309)</b>	<b>\$ 1,376,380</b>
Net income	—	—	—	—	—	178,724	178,724
Other comprehensive income	—	—	—	—	20,997	—	20,997
Issuance of common stock upon exercise of options	303	—	867	—	—	—	867
Issuance of restricted stock to employees, net of cancellations	967	1	—	—	—	—	1
Fair value of warrant transactions	—	—	30,218	—	—	—	30,218
Excess tax benefits from stock-based award activity	—	—	237	—	—	—	237
Stock-based compensation expense	—	—	54,442	—	—	—	54,442
Distribution to Cypress under tax sharing agreement	—	—	—	—	—	(743)	(743)
Purchases of treasury stock	(236)	—	—	(3,689)	—	—	(3,689)
<b>Balances at January 2, 2011</b>	<b>98,106</b>	<b>98</b>	<b>1,606,697</b>	<b>(16,673)</b>	<b>3,640</b>	<b>63,672</b>	<b>1,657,434</b>
Net loss	—	—	—	—	—	(613,737)	(613,737)
Other comprehensive income	—	—	—	—	3,502	—	3,502
Issuance of common stock upon exercise of options	993	1	4,051	—	—	—	4,052
Issuance of restricted stock to employees, net of cancellations	2,161	2	—	—	—	—	2
Proceeds from warrant transactions	—	—	2,261	—	—	—	2,261
Excess tax benefits from stock-based award activity	—	—	(2,415)	—	—	—	(2,415)
Stock-based compensation expense	—	—	46,880	—	—	—	46,880
Purchases of treasury stock	(784)	(1)	—	(11,744)	—	—	(11,745)
Transfer of entity under common control (Note 3)	—	—	188,491	—	—	—	188,491
<b>Balances at January 1, 2012 (1)</b>	<b>100,476</b>	<b>100</b>	<b>1,845,965</b>	<b>(28,417)</b>	<b>7,142</b>	<b>(550,065)</b>	<b>1,274,725</b>
Net loss	—	—	—	—	—	(352,020)	(352,020)
Other comprehensive loss	—	—	—	—	(9,663)	—	(9,663)
Issuance of common stock upon exercise of options	20	—	52	—	—	—	52
Issuance of restricted stock to employees, net of cancellations	2,844	2	(2)	—	—	—	—
Private offering of common stock, net of issuance costs (Note 2)	18,600	19	163,596	—	—	—	163,615
Cash distributions to Parent in connection with the transfer of entities under common control (Note 3)	—	—	(169,637)	—	—	—	(169,637)
Fair value of warrant issued	—	—	50,327	—	—	—	50,327
Returned shares from share lending agreement (Note 12)	(1,800)	(2)	—	2	—	—	—
Stock-based compensation expense	—	—	41,646	—	—	—	41,646
Purchases of treasury stock	(906)	—	—	(5,693)	—	—	(5,693)
<b>Balances at December 30, 2012</b>	<b>119,234</b>	<b>\$ 119</b>	<b>\$ 1,931,947</b>	<b>\$ (34,108)</b>	<b>\$ (2,521)</b>	<b>\$ (902,085)</b>	<b>\$ 993,352</b>

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

The accompanying notes are an integral part of these consolidated financial statements.

**SunPower Corporation**  
**Consolidated Statements of Cash Flows**  
(In thousands)

	Year ended		
	December 30, 2012	January 1, 2012 (1) (2)	January 2, 2011
<b>Cash flows from operating activities:</b>			
Net income (loss)	\$ (352,020)	\$ (613,737)	\$ 178,724
Less: Income from discontinued operations, net of taxes	—	—	11,841
Income (loss) from continuing operations, net of taxes	(352,020)	(613,737)	166,883
Adjustments to reconcile net income (loss) from continuing operations to net cash provided by (used in) operating activities:			
Stock-based compensation	42,439	46,736	54,372
Depreciation	108,656	107,100	102,192
Loss on retirement of property, plant and equipment	77,807	—	—
Amortization of other intangible assets	9,114	23,372	38,477
Goodwill impairment	46,734	309,457	—
Other intangible asset impairment	12,847	40,301	—
Loss (gain) on sale of investments	—	191	(770)
Gain on mark-to-market derivatives	(4)	(343)	(35,764)
Non-cash interest expense	38,177	28,627	30,616
Amortization of debt issuance costs	3,845	5,126	18,426
Amortization of promissory notes	—	3,486	11,054
Gain on change in equity interest in unconsolidated investee	—	(322)	(28,078)
Gain on sale of equity interest in unconsolidated investee	—	(5,937)	—
Equity in (earnings) loss of unconsolidated investees	515	(6,003)	(6,845)
Third-party inventories write-down	8,869	23,651	—
Gain on deconsolidation of consolidated subsidiary	—	—	(36,849)
Project assets write-down related to change in European government incentives	—	16,053	—
Gain on share lending arrangement	(50,645)	—	(24,000)
Deferred income taxes and other tax liabilities	(4,332)	(14,385)	15,889
Changes in operating assets and liabilities, net of effect of acquisition:			
Accounts receivable	11,522	23,383	(132,184)
Costs and estimated earnings in excess of billings	18,458	41,165	(63,444)
Inventories	28,324	(81,994)	(114,534)
Project assets	(23,397)	(34,113)	(10,687)
Prepaid expenses and other assets	(136,121)	(182,687)	(2,519)
Advances to suppliers	(23,883)	(40,492)	(96,060)
Accounts payable and other accrued liabilities	91,564	46,256	157,993
Billings in excess of costs and estimated earnings	54,723	121,488	33,591
Customer advances	65,711	49,317	90,643
Net cash provided by (used in) operating activities of continuing operations	28,903	(94,304)	168,402
Net cash used in operating activities of discontinued operations	—	—	(1,593)
Net cash provided by (used in) operating activities	28,903	(94,304)	166,809
<b>Cash flows from investing activities:</b>			
Decrease (increase) in restricted cash and cash equivalents	32,591	176,744	(5,555)
Purchase of property, plant and equipment	(104,786)	(131,512)	(119,152)
Cash paid for solar power systems, leased and to be leased	(150,446)	(11,631)	—
Proceeds from sale of equipment to third-party	424	514	5,284
Purchase of marketable securities	(1,436)	(9,180)	(40,132)
Proceeds from sales or maturities of available-for-sale securities	—	43,759	1,572
Cash decrease due to deconsolidation of consolidated subsidiary	—	—	(12,879)
Cash paid for acquisition, net of cash acquired	—	—	(272,699)
Cash received for sale of investment in unconsolidated investees	17,403	75,346	—
Cash paid for investments in unconsolidated investees	(13,817)	(80,000)	(17,799)
Net cash provided by (used in) investing activities of continuing	(220,067)	64,040	(461,360)



operations

Net cash provided by investing activities of discontinued operations	—	—	33,950
Net cash provided by (used in) investing activities	(220,067)	64,040	(427,410)
<b>Cash flows from financing activities:</b>			
Proceeds from issuance of bank loans, net of issuance costs	150,000	489,221	214,655
Proceeds from issuance of project loans, net of issuance costs	27,617	—	318,638
Repayment of bank loans, project loans and other debt	(154,078)	(377,124)	(63,646)
Proceeds from residential lease financing	60,377	—	—
Assumption of project loans by customers	—	—	(333,467)
Proceeds from recovery of claim in connection with share lending arrangement	50,645	—	24,000
Proceeds from issuance of convertible debt, net of issuance costs	—	—	244,241
Cash paid for repurchase of convertible debt	(198,608)	—	(143,804)
Cash paid for bond hedge	—	—	(75,200)
Proceeds from private offering of common stock, net of issuance costs	163,616	—	—
Cash increase in connection with the consolidation of an entity under common control	—	50,443	—
Cash distributions to Parent in connection with the transfer of entities under common control	(169,637)	—	—
Proceeds from warrant transactions	—	2,261	61,450
Proceeds from exercise of stock options	51	4,051	867
Purchases of stock for tax withholding obligations on vested restricted stock	(5,691)	(11,744)	(3,689)
Net cash provided by (used in) financing activities of continuing operations	(75,708)	157,108	244,045
Net cash provided by financing activities of discontinued operations	—	—	17,059
Net cash provided by (used in) financing activities	(75,708)	157,108	261,104
Effect of exchange rate changes on cash and cash equivalents	(1,259)	(6,646)	(10,962)
Net increase (decrease) in cash and cash equivalents	(268,131)	120,198	(10,459)
Cash and cash equivalents at beginning of period	725,618	605,420	615,879
Cash and cash equivalents, end of period	\$ 457,487	\$ 725,618	\$ 605,420
<b>Non-cash transactions:</b>			
Assignment of residential lease receivables to a third party financial institution	\$ 23,813	\$ —	\$ —
Property, plant and equipment acquisitions funded by liabilities	\$ 6,408	\$ 10,888	\$ 5,937
Costs of solar power systems, leased and to be leased, sourced from existing inventory	\$ 117,692	\$ 10,158	\$ —
Costs of solar power systems, leased and to be leased, funded by liabilities	\$ 6,544	\$ 1,767	\$ —
Non-cash interest expense capitalized and added to the cost of qualified assets	\$ 1,773	\$ 2,423	\$ 5,957
Issuance of warrants in connection with the Liquidity Support Agreement	\$ 50,327	\$ —	\$ —
Proceeds from issuance of bond, net of issuance costs	\$ —	\$ —	\$ 29,538
<b>Supplemental cash flow information:</b>			
Cash paid for interest, net of amount capitalized	\$ 40,621	\$ 28,280	\$ 16,592
Cash paid for income taxes	\$ 8,073	\$ 28,154	\$ 10,582

(1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

(2) As adjusted to conform to the current period presentation for solar power systems leased and to be leased (see Note 1).

The accompanying notes are an integral part of these consolidated financial statements.

**Note 1. THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES****The Company**

SunPower Corporation (together with its subsidiaries, the "Company" or "SunPower") is a vertically integrated solar products and solutions company that designs, manufactures and delivers high-performance solar systems worldwide, serving as a one-stop shop for residential, commercial, and utility-scale power plant customers. These high efficiency cells are then utilized in our array of high reliability SunPower products.

In December 2011, the Company announced a reorganization to align its business and cost structure with a regional focus in order to support the needs of its customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, the Company changed its segment reporting from its Utility and Power Plants ("UPP") Segment and Residential and Commercial ("R&C") Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. The Company's President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized the Company, manages resource allocations and measures performance of the Company's activities among these three regional segments.

Historically, the UPP Segment referred to the Company's large-scale solar products and systems business, which included power plant project development and project sales, turn-key engineering, procurement and construction ("EPC") services for power plant construction, and power plant operations and maintenance ("O&M") services. The UPP Segment also sold components, including large volume sales of solar panels and mounting systems, to third parties, sometimes on a multi-year, firm commitment basis. The Company's former R&C Segment focused on solar equipment sales into the residential and small commercial market through its third-party global dealer network, as well as direct sales and EPC and O&M services in the United States and Europe for rooftop and ground-mounted solar power systems for the new homes, commercial, and public sectors.

On June 21, 2011, the Company became a majority owned subsidiary of Total Gas & Power USA, SAS ("Total"), a subsidiary of Total S.A. ("Total S.A."), through a tender offer and Total's purchase of 60% of the outstanding former class A common stock and former class B common stock of the Company as of June 13, 2011. On January 31, 2012, Total purchased an additional 18.6 million shares of the Company's common stock in a private placement, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date (see Note 2).

**Basis of Presentation and Preparation***Principles of Consolidation*

The Consolidated Financial Statements are prepared in accordance with accounting principles generally accepted in the United States of America ("United States" or "U.S.") and include the accounts of the Company, all of its subsidiaries and special purpose entities, as appropriate under consolidation accounting guidelines. Intercompany transactions and balances have been eliminated in consolidation. The assets of the special purpose entities that the Company sets up related to project financing for customers are not designed to be available to service the general liabilities and obligations of the Company in certain circumstances.

*Reclassifications*

Certain prior period balances have been reclassified to conform to the current period presentation in the Company's Consolidated Financial Statements and the accompanying notes. Such reclassifications had no effect on previously reported results of operations or retained earnings. In connection with the growth of its residential lease program, during the fourth quarter of fiscal 2012 the Company began to separately classify both the cost of the leased assets and related investing cash flows based upon the nature of the lease entered into. The Company reclassified prior period balances to conform to the current period presentation, which resulted in an increase in long-term assets and operating cash flows of \$15.1 million and \$11.6 million, respectively, as of and for the year ended January 1, 2012.

*Fiscal Years*

The Company has a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. Fiscal years 2012, 2011 and 2010 were 52-week fiscal years. Fiscal year 2012 ended on December 30, 2012, fiscal year 2011 ended on January 1, 2012, and fiscal year 2010 ended on January 2, 2011.

### *Management Estimates*

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Significant estimates in these consolidated financial statements include percentage-of-completion for construction projects, allowances for doubtful accounts receivable and sales returns, inventory and project asset write-downs, stock-based compensation, estimates for future cash flows and economic useful lives of property, plant and equipment, goodwill, valuations for business combinations, other intangible assets and other long-term assets, asset impairments, fair value of financial instruments, certain accrued liabilities including accrued warranty, restructuring, and termination of supply contracts reserves, valuation of debt without the conversion feature, valuation of share lending arrangements, income taxes, and tax valuation allowances. Actual results could materially differ from those estimates.

## **Summary of Significant Accounting Policies**

### *Fair Value of Financial Instruments*

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The carrying values of cash and cash equivalents, accounts receivable, and accounts payable approximate their respective fair values due to their short-term maturities. Investments in available-for-sale securities are carried at fair value based on quoted market prices or estimated based on market conditions and risks existing at each balance sheet date. Foreign currency derivatives are carried at fair value based on quoted market prices for financial instruments with similar characteristics. Unrealized gains and losses of the Company's available-for-sale securities and the effective portion of foreign currency derivatives are excluded from earnings and reported as a component of "Accumulated other comprehensive income (loss)" in the Consolidated Balance Sheets. Additionally, the Company assesses whether an other-than-temporary impairment loss on its available-for-sale securities has occurred due to declines in fair value or other market conditions. Declines in fair value that are considered other-than-temporary and the ineffective portion of foreign currency derivatives are included in "Other, net" in the Consolidated Statements of Operations.

### *Comprehensive Income (Loss)*

Comprehensive income (loss) is defined as the change in equity during a period from non-owner sources. The Company's comprehensive income (loss) for each period presented is comprised of (i) the Company's net income (loss); (ii) foreign currency translation adjustment of the Company's foreign subsidiaries whose assets and liabilities are translated from their respective functional currencies at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at average exchange rates prevailing during the applicable period; and (iii) changes in unrealized gains or losses, net of tax, for the effective portion of derivatives designated as cash flow hedges (see Note 13) and available-for-sale securities carried at their fair value.

### *Cash Equivalents*

Highly liquid investments with original or remaining maturities of ninety days or less at the date of purchase are considered cash equivalents.

### *Cash in Restricted Accounts*

The Company maintains cash and cash equivalents in restricted accounts pursuant to various letters of credit, surety bonds, loan agreements, long-term polysilicon supply agreements, and other agreements in the normal course of business.

### *Short-Term and Long-Term Investments*

The Company invests in money market funds, bank notes, and debt securities. In general, investments with original maturities of greater than ninety days and remaining maturities of one year or less are classified as short-term investments, and investments with maturities of more than one year are classified as long-term investments. Investments with maturities beyond one year may be classified as short-term based on their highly liquid nature and because such investments represent the investment of cash that is available for current operations. Despite the long-term maturities, the Company has the ability and

intent, if necessary, to liquidate any of these investments in order to meet the Company's working capital needs within its normal operating cycles. The Company has classified these investments as available-for-sale securities (see Note 8).

### ***Inventories***

Inventories are valued at the lower of cost or market value. The Company evaluates the recoverability of its inventories based on assumptions about expected demand and market conditions. The Company's assumption of expected demand is developed based on its analysis of bookings, sales backlog, sales pipeline, market forecast, and competitive intelligence. The Company's assumption of expected demand is compared to available inventory, production capacity, available third-party inventory, and growth plans. The Company's factory production plans, which drive materials requirement planning, are established based on its assumptions of expected demand. The Company responds to reductions in expected demand by temporarily reducing manufacturing output and adjusting expected valuation assumptions as necessary. In addition, expected demand by geography has changed historically due to changes in the availability and size of government mandates and economic incentives.

Other market conditions that could impact the realizable value of the Company's inventories and are periodically evaluated by management include historical inventory turnover ratio, anticipated sales price, new product development schedules, the effect new products might have on the sale of existing products, product obsolescence, customer concentrations, product merchantability, and other factors. If the Company determines that the cost of inventories exceeds its estimated market value based on assumptions about expected demand and market conditions, the Company records a write-down equal to the difference between the cost of inventories and the estimated market value. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required that could negatively impact the Company's gross margin and operating results. If actual market conditions are more favorable, the Company may have higher gross margin when products that have been previously written down are sold in the normal course of business (see Note 7).

### ***Solar Power Systems Leased and to be Leased***

The Company leases solar power systems to residential customers under both operating and sales-type leases. Lease classification is determined at lease inception considering whether there is a transfer of ownership or bargain purchase option at the end of the lease, whether the lease term is greater than 75% of the systems' useful life, or whether the present value of minimum lease payments exceed 90% of the systems' fair value at lease inception. Solar power systems leased are stated at cost, less accumulated depreciation and are amortized to their estimated residual value over the life of the lease term.

Solar power systems to be leased represents systems that are under installation or which have not been interconnected, which will be depreciated as solar power systems leased to customers when the respective systems are completed, interconnected and subsequently leased to customers.

Initial direct costs for operating leases are capitalized and amortized over the term of the related customer lease agreements. Initial direct costs for sales-type leases are recognized as cost of sales when the solar power systems are placed in service.

### ***Property, Plant and Equipment***

Property, plant and equipment are stated at cost, less accumulated depreciation. Depreciation, excluding solar power systems leased to residential customers as described above, is computed using the straight-line method over the estimated useful lives of the assets as presented below. Leasehold improvements are amortized over the shorter of the estimated useful lives of the assets or the remaining term of the lease. Repairs and maintenance costs are expensed as incurred.

In fiscal 2011, the Company revised its estimated useful lives for buildings, leasehold improvements, and manufacturing equipment. Such change in estimate did not have a material impact on the Company's Consolidated Statement of Operations in fiscal 2011.

	Useful Lives in Years
Buildings	20
Leasehold improvements	1 to 20
Manufacturing equipment	8 to 15
Computer equipment	2 to 7
Solar power systems	30
Furniture and fixtures	3 to 5

### ***Interest Capitalization***

The interest cost associated with major development and construction projects is capitalized and included in the cost of the property, plant and equipment or project assets. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project at the Company's weighted average cost of borrowed money (see Note 7).

### ***Long-Lived Assets***

The Company evaluates its long-lived assets, including property, plant and equipment and other intangible assets with finite lives, for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Factors considered important that could result in an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets, and significant negative industry or economic trends. The Company's impairment evaluation of long-lived assets includes an analysis of estimated future undiscounted net cash flows expected to be generated by the assets over their remaining estimated useful lives. If the Company's estimate of future undiscounted net cash flows is insufficient to recover the carrying value of the assets over the remaining estimated useful lives, it records an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analysis.

Other intangible assets with finite useful lives are amortized using the straight-line method over their useful lives ranging primarily from one to six years (see Note 6).

### ***Project Assets - Plant and Land***

Project assets consist primarily of capitalized costs relating to solar power system projects in various stages of development that the Company incurs prior to the sale of the solar power system to a third-party. These costs include costs for land and costs for developing and constructing a solar power system. Development costs can include legal, consulting, permitting, and other similar costs. Once the Company enters into a definitive sales agreement, it reclassifies these costs to deferred project costs within "Prepaid expenses and other current assets" in its Consolidated Balance Sheet until the Company has met the criteria to recognize the sale of the project asset as revenue. The Company expenses these project assets to cost of revenue as each respective project asset or solar power system is sold to a customer, since the project is constructed for a customer (matching the underlying revenue recognition method), or if it determines that the project is commercially not viable.

The Company reviews project assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The Company considers the project commercially viable if it is anticipated to be sellable for a profit once it is either fully developed or fully constructed. The Company examines a number of factors to determine if the project will be profitable, including whether there are any environmental, ecological, permitting, or regulatory conditions that have changed for the project since the start of development. Such changes could cause the cost of the project to increase or the selling price of the project to decrease. Due to the development, construction, and sale timeframe of the Company's larger solar projects, it classifies project assets which are not expected to be sold within the next 12 months as "Project assets - plants and land, net of current portion" on the Consolidated Balance Sheets. Once specific milestones have been achieved, the Company determines if the sale of the project assets will occur within the next 12 months from a given balance sheet date and, if so, it then reclassifies the project assets as current.

### ***Goodwill***

Goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. A two-step process is used to test for goodwill impairment. The first step is to determine if there is an indication of impairment by comparing the estimated fair value of each reporting unit to its carrying value, including existing goodwill. Goodwill is considered impaired if the carrying value of a reporting unit exceeds the estimated fair value. Upon an indication of impairment, a second step is performed to determine the amount of the impairment by comparing the implied fair value of the reporting unit's goodwill with its carrying value.

The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at the Company's reporting unit level. Management determined that the Company's reporting units are the regional reporting segments. In estimating the fair value of the reporting units, the Company makes estimates and judgments about its future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards (see Note 8). The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted free cash flow, perpetual growth rates, and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of the Company's reporting units are also compared to its external market capitalization to determine the appropriateness of its assumptions (i.e. the discounted cash flow analysis) and to reduce the fair values of the Company's reporting units, if appropriate. These assumptions took into account the current economic environment and its impact on the Company's business. In the event that management determines that the value of goodwill has become impaired, the Company would incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made (see Note 6).

### ***Product Warranties***

The Company generally warrants or guarantees the performance of the solar panels that it manufactures at certain levels of power output for 25 years. In addition, the Company passes through to customers long-term warranties from the original equipment manufacturers ("OEMs") of certain system components, such as inverters. Warranties of 25 years from solar panel suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, the Company generally warrants its workmanship on installed systems for periods ranging up to 10 years. The Company maintains reserves to cover the expected costs that could result from these warranties. The Company's expected costs are generally in the form of product replacement or repair. Warranty reserves are based on the Company's best estimate of such costs and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations (see Note 10).

### ***Revenue Recognition***

#### ***Solar Power Products***

The Company sells its solar panels and balance of system components primarily to dealers, system integrators and distributors, and recognizes revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred, title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectability of the resulting receivable is reasonably assured, and the risks and rewards of ownership have passed to the customer. Other than standard warranty obligations, there are no rights of return and there are no significant post-shipment obligations, including installation, training or customer acceptance clauses with any of the Company's customers that could have an impact on revenue recognition. The Company's revenue recognition policy is consistent across all geographic areas.

The provision for estimated sales returns on product sales is recorded in the same period the related revenues are recorded. These estimates are based on historical sales returns, analysis of credit memo data, and other known factors. Actual returns could differ from these estimates.

#### ***Construction Contracts***

Revenue is also comprised of EPC projects which are governed by customer contracts that require the Company to deliver functioning solar power systems and are generally completed within three to twelve months from commencement of construction. Construction on large projects may be completed within eighteen to thirty-six months, depending on the size. The Company recognizes revenue from fixed price construction contracts, that do not include land or land rights, using the

percentage-of-completion method of accounting. Under this method, revenue arising from fixed price construction contracts is recognized as work is performed based on the percentage of incurred costs to estimated total forecasted costs.

Incurred costs used in the Company's percentage-of-completion calculation include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies, and tools. Project material costs are included in incurred costs when the project materials have been installed by being permanently attached or fitted to the solar power system as required by the project's engineering design.

In addition to an EPC deliverable, a limited number of arrangements also include multiple deliverables such as post-installation systems monitoring and maintenance. For contracts with separately priced monitoring and maintenance, the Company recognizes revenue related to such separately priced elements over the contract period. For contracts including monitoring and maintenance not separately priced, the Company determined that post-installation systems monitoring and maintenance qualify as separate units of accounting. Such post-installation monitoring and maintenance are deferred at the time the contract is executed based on the best estimate of selling price on a standalone basis and are recognized to revenue over the contractual term. The remaining EPC revenue is recognized on a percentage-of-completion basis.

In addition, when arrangements include contingent revenue clauses such as customer termination or put rights for non-performance, the Company defers the contingent revenue until such time as the contingencies expire. In certain limited cases, the Company could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. To date, no such repurchase obligations have been required.

Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

### *Development Projects*

The Company develops and sells solar power plants which generally include the sale or lease of related real estate. Revenue recognition for these solar power plants require adherence to specific guidance for real estate sales, which provides that if the Company executes a sale of land in connection with an EPC contract requiring the future development of the property, it recognizes revenue and the corresponding costs under the full accrual method when all of the following requirements are met: the sale is consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to subordination, the future costs to develop the property can be reasonably estimated and the Company has transferred the customary risk and rewards of ownership to the buyer. In general, a sale is consummated upon the execution of an agreement documenting the terms of the sale and a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. Depending on the value of the initial and continuing investment of the buyer, and provided the recovery of the costs of the solar power plant are reasonably assured if the buyer defaults, the Company may defer revenue and profit during construction by aligning its revenue recognition and release of deferred project costs to cost of sales with the receipt of payment from the buyer. At the time it has unconditionally received payment from the buyer, revenue would be recognized and deferred project costs would be released to cost of sales at the same rate of profit estimated throughout the construction of the project. The Company's revenue recognition methods for solar power plants not involving real estate are accounted for using the percentage-of-completion method.

### *Shipping and Handling Costs*

The Company records costs related to shipping and handling in cost of revenue.

### *Stock-Based Compensation*

The Company measures and records compensation expense for all share-based payment awards based on estimated fair values. The Company provides share-based awards to its employees, executive officers, and directors through various equity compensation plans including its employee stock option and restricted stock plans. The fair value of stock option awards is measured at the date of grant using a Black-Scholes option pricing model, and the fair value of restricted stock awards and units is based on the market price of the Company's common stock on the date of grant. The Company has not granted stock options since fiscal 2008.

The Company estimates forfeitures at the date of grant. The Company's estimate of forfeitures is based on its historical activity, which it believes is indicative of expected forfeitures. In subsequent periods if the actual rate of forfeitures differs from the Company's estimate, the forfeiture rates may be revised, as necessary. Changes in the estimated forfeiture rates can have a



significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

The Company also grants performance share units to executive officers and certain employees that require it to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in the Company's estimate of the level of financial performance measures expected to be achieved, the related share-based compensation expense may be significantly increased or reduced in the period that its estimate changes.

### ***Advertising Costs***

Advertising costs are expensed as incurred. Advertising expense totaled approximately \$9.2 million, \$3.9 million, and \$3.3 million in fiscal 2012, 2011, and 2010, respectively.

### ***Research and Development Expense***

Research and development expense consists primarily of salaries and related personnel costs, depreciation and the cost of solar cell and solar panel materials and services used for the development of products, including experiments and testing. All research and development costs are expensed as incurred. Research and development expense is reported net of any funding received under contracts with governmental agencies because such contracts are considered collaborative arrangements. These awards are typically structured such that only direct costs, research and development overhead, procurement overhead and general and administrative expenses that satisfy government accounting regulations are reimbursed. In addition, the Company's government awards from state agencies will usually require it to pay to the granting governmental agency certain royalties based on sales of products developed with government funding or economic benefit derived from incremental improvements funded. Royalties paid to governmental agencies are charged to the cost of goods sold.

### ***Translation of Foreign Currency***

The Company and certain of its subsidiaries use their respective local currency as their functional currency. Accordingly, foreign currency assets and liabilities are translated using exchange rates in effect at the end of the period. Foreign subsidiaries that use the U.S. dollar as their functional currency translate monetary assets and liabilities using exchange rates in effect at the end of the period. Non-monetary assets and liabilities are translated at their historical values.

The Company includes gains or losses from foreign currency transactions in "Other, net" in the Consolidated Statements of Operations with the other hedging activities described in Note 13.

### ***Concentration of Credit Risk***

The Company is exposed to credit losses in the event of nonperformance by the counterparties to its financial and derivative instruments. Financial and derivative instruments that potentially subject the Company to concentrations of credit risk are primarily cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, notes receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions, and purchased options. The Company's investment policy requires cash and cash equivalents, restricted cash and cash equivalents, and investments to be placed with high-quality financial institutions and to limit the amount of credit risk from any one issuer. Similarly, the Company enters into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limits the amount of credit exposure to any one counterparty. The foreign currency derivative contracts are limited to a time period of less than one year, while the purchased options will expire in 2014 and the bond hedge and warrant transactions expire in 2015. The Company regularly evaluates the credit standing of its counterparty financial institutions.

The Company performs ongoing credit evaluations of its customers' financial condition whenever deemed necessary and generally does not require collateral. The Company maintains an allowance for doubtful accounts based on the expected collectability of all accounts receivable, which takes into consideration an analysis of historical bad debts, specific customer creditworthiness and current economic trends. One customer accounted for 14% of accounts receivable as of December 30, 2012 and one customer accounted for 20% of accounts receivable as of January 1, 2012. In addition, one customer accounted for approximately 24% of the Company's "Costs and estimated earnings in excess of billings" balance as of December 30, 2012 on the Consolidated Balance Sheet as compared to one customer that accounted for approximately 21% of the balance as of January 1, 2012.

The Company has entered into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements.

In fiscal 2007, the Company entered into share lending arrangements of its former class A common stock with financial institutions for which it received a nominal lending fee of \$0.001 per share. The Company loaned 2.9 million shares and 1.8 million shares of its former class A common stock to Lehman Brothers International (Europe) Limited ("LBIE") and Credit Suisse International ("CSI"), respectively. Physical settlement of the shares is required when the arrangement is terminated. However, on September 15, 2008, Lehman Brothers Holding Inc. ("Lehman") filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. The Company filed a claim in the LBIE proceeding for \$240.9 million and a corresponding claim in the Lehman Chapter 11 proceeding under Lehman's guaranty of LBIE's obligations. On December 16, 2010, the Company entered into an assignment agreement with Deutsche Bank under which the Company assigned to Deutsche Bank its claims against LBIE and Lehman in connection with the share lending arrangement. During the fiscal years ended December 30, 2012 and January 2, 2011, the Company received proceeds of \$50.6 million and \$24.0 million, respectively, as a result of the assignment agreement and subsequent claim settlement (see Note 12).

### ***Income Taxes***

Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against deferred tax assets when management cannot conclude that it is more likely than not that some portion or all deferred tax assets will be realized.

As applicable, interest and penalties on tax contingencies are included in "Provision for income taxes" in the Consolidated Statements of Operations and such amounts were not material for any periods presented. In addition, foreign exchange gains (losses) may result from estimated tax liabilities, which are expected to be settled in currencies other than the U.S. dollar.

### ***Investments in Equity Interests***

Investments in entities in which the Company can exercise significant influence, but does not own a majority equity interest or otherwise control, are accounted for under the equity method. The Company records its share of the results of these entities as "Equity in earnings of unconsolidated investees" on the Consolidated Statements of Operations. The Company monitors its investments for other-than-temporary impairment by considering factors such as current economic and market conditions and the operating performance of the entities and records reductions in carrying values when necessary. The fair value of privately held investments is estimated using the best available information as of the valuation date, including current earnings trends, undiscounted cash flows, quoted stock prices of comparable public companies, and other company specific information, including recent financing rounds (see Notes 8 and 11).

### ***Business Combinations***

The Company records all acquired assets and liabilities, including goodwill, other intangible assets, and in-process research and development, at fair value. The initial recording of goodwill, other intangible assets, and in-process research and development requires certain estimates and assumptions concerning the determination of the fair values and useful lives. The judgments made in the context of the purchase price allocation can materially impact the Company's future results of operations. Accordingly, for significant acquisitions, the Company obtains assistance from third-party valuation specialists. The valuations calculated from estimates are based on information available at the acquisition date (see Notes 4 and 6). The Company charges acquisition related costs that are not part of the consideration to general and administrative expense as they are incurred. These costs typically include transaction and integration costs, such as legal, accounting, and other professional fees.

The Company initially records receipts of net assets or equity interests between entities under common control at their carrying amounts in the accounts of the transferring entity. Financial statements and financial information presented for prior years are retrospectively adjusted to effect the transfer as of the first date for which the entities were under common control. If the carrying amounts of the assets and liabilities transferred differ from the historical cost of the parent of the entities under common control then amounts recognized in the Company's financial statements reflect the transferred assets and liabilities at the historical cost of the parent of the entities under common control. Financial statements and financial information presented for prior years are also retrospectively adjusted to furnish comparative information as though the assets and liabilities had been transferred at that date.

## Recent Accounting Pronouncements

In May 2011, the Financial Accounting Standards Board ("FASB") amended its fair value principles and disclosure requirements. The amended fair value guidance states that the concepts of highest and best use and valuation premise are only relevant when measuring the fair value of nonfinancial assets and prohibits the grouping of financial instruments for purposes of determining their fair values when the unit of account is specified in other guidance. The amendment became effective for the Company on January 2, 2012 and did not have a material impact on its financial statements.

In June 2011, the FASB amended its disclosure guidance related to the presentation of comprehensive income. This amendment eliminates the option to report other comprehensive income and its components in the statement of changes in equity and requires presentation of reclassification adjustments on the face of the income statement. In December, 2011, the FASB further amended its guidance to defer changes related to the presentation of reclassification adjustments indefinitely as a result of concerns raised by stakeholders that the new presentation requirements would be difficult for preparers and add unnecessary complexity to financial statements. The amendment (other than the portion regarding the presentation of reclassification adjustments which, as noted above, has been deferred indefinitely) became effective for the Company on January 2, 2012 and did not have any impact on its financial position. However, the Company now reports other comprehensive income and its components in a separate statement of comprehensive income for all presented periods.

In September 2011, the FASB amended its goodwill guidance by providing entities an option to use a qualitative approach to test goodwill for impairment. An entity will be able to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If it is concluded that the fair value is less than the carrying value, it is necessary to perform the currently prescribed two step goodwill impairment test. Otherwise, the two-step goodwill impairment test is not required. The amendment became effective for the Company on January 2, 2012 and did not have a material impact on its financial statements.

In December 2011, the FASB and International Accounting Standards Board ("IASB") issued common disclosure requirements that are intended to enhance comparability between financial statements prepared in accordance with U.S. GAAP and those prepared in accordance with International Financial Reporting Standards ("IFRS"). This new guidance is applicable to companies that have financial instruments or derivatives that are either offset in the balance sheet (presented on a net basis) or subject to an enforceable master netting arrangement or similar arrangement. The requirement does not change the existing offsetting eligibility criteria or the permitted balance sheet presentation for those instruments that meet the eligibility criteria. However, once this disclosure requirement becomes effective, companies will also be required to disclose information about financial instruments and derivatives instruments that have been offset and related arrangements and to provide both net (offset amounts) and gross information in the notes to the financial statements for relevant assets and liabilities that are offset. The disclosure requirement becomes effective retrospectively in the first quarter of the Company's fiscal year 2013. The Company does not expect that the requirement will have a material impact on its financial position, results of operations or cash flows as it is disclosure only in nature.

### **Note 2. TRANSACTIONS WITH TOTAL AND TOTAL S.A.**

On April 28, 2011, the Company and Total entered into a Tender Offer Agreement (the "Tender Offer Agreement"), pursuant to which, on May 3, 2011, Total commenced a cash tender offer to acquire up to 60% of the Company's outstanding shares of former class A common stock and up to 60% of the Company's outstanding shares of former class B common stock (the "Tender Offer") at a price of \$23.25 per share for each class. The offer expired on June 14, 2011 and Total accepted for payment on June 21, 2011 a total of 34,756,682 shares of the Company's former class A common stock and 25,220,000 shares of the Company's former class B common stock, representing 60% of each class of its outstanding common stock as of June 13, 2011, for a total cost of approximately \$1.4 billion.

On December 23, 2011, the Company entered into a Stock Purchase Agreement with Total, under which it agreed to acquire 100% of the equity interest of Tenesol from Total for \$165.4 million in cash. The Tenesol acquisition was consummated on January 31, 2012 (see Note 3). Contemporaneously with the execution of the Tenesol Stock Purchase Agreement, the Company entered into a Private Placement Agreement with Total, under which Total agreed to purchase, and the Company agreed to issue and sell, 18.6 million shares of the Company's common stock for a purchase price of \$8.80 per share, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date. The sale was completed contemporaneously with the closing of the Tenesol acquisition.

### *Credit Support Agreement*

In connection with the Tender Offer, the Company and Total S.A. entered into a Credit Support Agreement (the "Credit Support Agreement") under which Total S.A. agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to the Company in support of certain Company businesses and other permitted purposes. Total S.A. will guarantee the payment to the applicable issuing bank of the Company's obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. The Credit Support Agreement became effective on June 28, 2011 (the "CSA Effective Date"). Under the Credit Support Agreement, at any time from the CSA Effective Date until the fifth anniversary of the CSA Effective Date, the Company may request that Total S.A. provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. Total S.A. is required to issue and enter into the Guaranty requested by the Company, subject to certain terms and conditions that may be waived by Total S.A., and subject to certain other conditions.

In consideration for the commitments of Total S.A., under the Credit Support Agreement, the Company is required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a Guaranty and was outstanding for all or part of the preceding calendar quarter. The Company is also required to reimburse Total S.A. for payments made under any Guaranty and certain expenses of Total S.A., plus interest on both. In the years ended December 30, 2012 and January 1, 2012, the Company incurred guaranty fees of \$6.9 million and \$2.2 million, respectively, to Total S.A.

The Company has agreed to undertake certain actions, including, but not limited to, ensuring that the payment obligations of the Company to Total S.A. rank at least equal in right of payment with all of the Company's other present and future indebtedness, other than certain permitted secured indebtedness. The Company has also agreed to refrain from taking certain actions, including refraining from making any equity distributions so long as it has any outstanding repayment obligation to Total S.A. resulting from a draw on a guaranteed letter of credit.

The Credit Support Agreement will terminate following the fifth anniversary of the CSA Effective Date, after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder.

#### *Affiliation Agreement*

In connection with the Tender Offer, the Company and Total entered into an Affiliation Agreement that governs the relationship between Total and the Company following the close of the Tender Offer (the "Affiliation Agreement"). Until the expiration of a standstill period (the "Standstill Period"), Total, Total S.A., any of their respective affiliates and certain other related parties (the "Total Group") may not effect, seek, or enter into discussions with any third-party regarding any transaction that would result in the Total Group beneficially owning shares of the Company in excess of certain thresholds, or request the Company or the Company's independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group. The standstill provisions of the Affiliation Agreement do not apply to securities issued in connection with the Liquidity Support Agreement described below.

The Affiliation Agreement imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of the outstanding voting power of the Company and imposes certain limitations on the Total Group's ability to transfer 40% or more of outstanding shares or voting power of the Company to a single person or group that is not a direct or indirect subsidiary of Total S.A. During the Standstill Period, no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to the Company's Board of Directors.

The Affiliation Agreement provides Total with the right to maintain its percentage ownership in connection with any new securities issued by the Company, and Total may also purchase shares on the open market or in private transactions with disinterested stockholders, subject in each case to certain restrictions.

In accordance with the terms of the Affiliation Agreement, on July 1, 2011, the Company's Board of Directors expanded the size of the Board of Directors to eleven members and elected six nominees from Total as directors, following which the Board of Directors was composed of the Chief Executive Officer of the Company (who also serves as the chairman of the Company's Board of Directors), four existing non-Total designated members of the Company's Board of Directors, and six directors designated by Total. Directors designated by Total also serve on certain committees of the Company's Board of Directors. On the first anniversary of the consummation of the Tender Offer on June 21, 2012, the size of the Company's Board of Directors was reduced to nine members and one non-Total designated director and one director designated by Total resigned from the Company's Board of Directors. If the Total Group's ownership percentage of Company common stock declines, the number of members of the Company's Board of Directors that Total is entitled to nominate to the Company's Board of Directors will be further reduced as set forth in the Affiliation Agreement.

The Affiliation Agreement also imposes certain restrictions with respect to the Company's and the Company's Board of Directors' ability to take certain actions, including specifying certain actions that require approval by the directors other than the directors appointed by Total and other actions that require stockholder approval by Total.

#### *Affiliation Agreement Guaranty*

Total S.A. has entered into a guaranty (the "Affiliation Agreement Guaranty") pursuant to which Total S.A. unconditionally guarantees the full and prompt payment of Total S.A.'s, Total's and each of Total S.A.'s direct and indirect subsidiaries' payment obligations under the Affiliation Agreement and the full and prompt performance of Total S.A.'s, Total's and each of Total S.A.'s direct and indirect subsidiaries' representations, warranties, covenants, duties, and agreements contained in the Affiliation Agreement.

#### *Research & Collaboration Agreement*

In connection with the Tender Offer, Total and the Company have entered into a Research & Collaboration Agreement (the "R&D Agreement") that establishes a framework under which the parties engage in long-term research and development collaboration ("R&D Collaboration"). The R&D Collaboration encompasses a number of different projects ("R&D Projects"), with a focus on advancing technology in the area of photovoltaics. The primary purpose of the R&D Collaboration is to: (i) maintain and expand the Company's technology position in the crystalline silicon domain; (ii) ensure the Company's industrial competitiveness; and (iii) guarantee a sustainable position for both the Company and Total to be best-in-class industry players.

The R&D Agreement enables a joint committee (the "R&D Strategic Committee") to identify, plan and manage the R&D Collaboration. Due to the impracticability of anticipating and establishing all of the legal and business terms that are and will be applicable to the R&D Collaboration or to each R&D Project, the R&D Agreement sets forth broad principles applicable to the parties' potential R&D Collaboration, and the R&D Collaboration Committee establishes the particular terms governing each particular R&D Project consistent with the terms set forth in the R&D Agreement.

#### *Registration Rights Agreement*

In connection with the Tender Offer, Total and the Company entered into a customary registration rights agreement (the "Registration Rights Agreement") related to Total's ownership of Company shares. The Registration Rights Agreement provides Total with shelf registration rights, subject to certain customary exceptions, and up to two demand registration rights in any 12-month period, also subject to certain customary exceptions. Total also has certain rights to participate in any registrations of securities initiated by the Company. The Company will generally pay all costs and expenses incurred by the Company and Total in connection with any shelf or demand registration (other than selling expenses incurred by Total). The Company and Total have also agreed to certain indemnification rights. The Registration Rights Agreement terminates on the first date on which: (i) the shares held by Total constitute less than 5% of the then-outstanding common stock; (ii) all securities held by Total may be immediately resold pursuant to Rule 144 promulgated under the Securities and Exchange Act of 1934 (the "Exchange Act") during any 90-day period without any volume limitation or other restriction; or (iii) the Company ceases to be subject to the reporting requirements of the Exchange Act.

#### *Stockholder Rights Plan*

On April 28, 2011, prior to the execution of the Tender Offer Agreement, the Company entered into an amendment (the "Rights Agreement Amendment") to the Rights Agreement, dated August 12, 2008, by and between the Company and Computershare Trust Company, N.A., as Rights Agent (the "Rights Agreement"), in order to, among other things, render the rights therein inapplicable to each of: (i) the approval, execution or delivery of the Tender Offer Agreement; (ii) the commencement or consummation of the Tender Offer; (iii) the consummation of the other transactions contemplated by the Tender Offer Agreement and the related agreements; and (iv) the public or other announcement of any of the foregoing.

On June 14, 2011, the Company entered into a second amendment to the Rights Agreement (the "Second Rights Agreement Amendment"), in order to, among other things, exempt Total, Total S.A. and certain of their affiliates and certain members of a group of which they may become members from the definition of "Acquiring Person" such that the rights issuable pursuant to the Rights Agreement will not become issuable in connection with the completion of the Tender Offer.

#### *By-laws Amendment*

On June 14, 2011, the Board of Directors approved the amendment of the Company's By-laws (the "By-laws"). The changes are required under the Affiliation Agreement. The amendments: (i) allow any member of the Total Group to call a

meeting of stockholders for the sole purpose of considering and voting on a proposal to effect a Terra Merger (as defined in the Affiliation Agreement) or a Transferee Merger (as defined in the Affiliation Agreement); (ii) provide that the number of directors of the Board shall be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board at any regular or special meeting; (iii) require, prior to the termination of the Affiliation Agreement, a majority of independent directors' approval to amend the By-laws so long as Total, together with Total S.A.'s subsidiaries collectively own at least 30% of the voting securities of the Company as well as require, prior to the termination of the Affiliation Agreement, Total's written consent during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement) to amend the By-laws; and (iv) make certain other conforming changes to the By-laws. In addition, in November 2011, the By-laws were amended to remove restrictions prohibiting stockholder consents in writing.

#### *Liquidity Support Agreement with Total S.A.*

The Company is party to an agreement with a customer to construct the California Valley Solar Ranch, a solar park. Part of the debt financing necessary for the customer to pay for the construction of this solar park is being provided by the Federal Financing Bank in reliance on a guarantee of repayment provided by the Department of Energy (the "DOE") under a loan guarantee program. On February 28, 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of \$600.0 million ("Liquidity Support Facility"). Total S.A. is required to provide liquidity support to the Company under the facility, and the Company is required to accept such liquidity support from Total S.A., if either the Company's actual or projected unrestricted cash, cash equivalents, and unused borrowing capacity are reduced below \$100.0 million, or the Company fails to satisfy any financial covenant under its indebtedness. In either such event, subject to a \$600.0 million aggregate limit, Total S.A. is required to provide the Company with sufficient liquidity support to increase the amount of its unrestricted cash, cash equivalents and unused borrowing capacity to above \$100.0 million, and to restore compliance with its financial covenants. On December 24, 2012, Total S.A. agreed to guarantee the Company's revolving credit facility with Credit Agricole, which reduced the capacity available under the Liquidity Support Facility by \$275.0 million. The Liquidity Support Facility is available until the completion of the solar park, expected to be completed before the end of fiscal 2013, and, under certain conditions, up to December 31, 2016, at which time all outstanding guarantees will expire and all outstanding debt under the facility will become due (except for the Total S.A. guarantee of the Credit Agricole facility). The use of the Liquidity Support Facility is not limited to direct obligations related to the solar park, and is available for general corporate purposes, but the Company has agreed to conduct its operations, and use any proceeds from such facility in ways that minimize the likelihood of Total S.A. being required to provide further support. In connection with the Liquidity Support Agreement, the Company also entered into a Compensation and Funding Agreement with Total S.A., and a Private Placement Agreement and a Revolving Credit and Convertible Loan Agreement with Total, which implement the terms of the Liquidity Support Agreement and Compensation Funding Agreement.

#### *Compensation and Funding Agreement*

In connection with the Liquidity Support Agreement, on February 28, 2012, the Company entered into a Compensation and Funding Agreement (the "Compensation and Funding Agreement") with Total S.A., pursuant to which, among other things, the Company and Total S.A. established the parameters for the terms of the Liquidity Support Facility and any liquidity injections that may be required to be provided by Total S.A. to the Company pursuant to the Liquidity Support Agreement. The Company has agreed in the Compensation and Funding Agreement to use commercially reasonable efforts to assist Total S.A. in the performance of its obligations under the Liquidity Support Agreement and to conduct, and to act in good faith in conducting, its affairs in a manner such that Total S.A.'s obligation under the Liquidity Support Agreement to provide liquidity injections will not be triggered or, if triggered, will be minimized. The Company has also agreed to use any cash provided under the facility in such a way as to minimize the need for further liquidity support. The Compensation and Funding Agreement required the Company to issue, in consideration for Total S.A.'s agreement to provide the Liquidity Support Facility, a warrant ("the Upfront Warrant") to Total that is exercisable to purchase a number of shares of the Company's common stock equal to \$75.0 million, divided by the volume-weighted average price for the Company's common stock for the 30 trading-day period ending on the trading day immediately preceding the date of the calculation. The Upfront Warrant will be exercisable at any time for seven years after its issuance, provided that, so long as at least \$25.0 million of the Company's convertible debt remains outstanding, such exercise will not cause "any person," including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the "beneficial owner" (as such terms are defined in Rule 13d-3 and Rule 13d-5 under the Securities and Exchange Act of 1934, as amended), of more than 74.99% of the voting power of the Company's common stock at such time, a circumstance which would trigger the repurchase or conversion of the Company's existing convertible debt. On February 28, 2012, the Company issued to Total the Upfront Warrant to purchase 9,531,677 shares of the Company's common stock with an exercise price of \$7.8685, subject to adjustment for customary anti-dilution and other events.



Liquidity support may be provided by Total S.A. or through its affiliates in the form of revolving non-convertible debt, convertible debt, equity, guarantees of Company indebtedness or other forms of liquidity support agreed to by the Company, depending on the amount outstanding under the facility immediately prior to provision of the applicable support among other factors. The Company is required to compensate Total S.A. for any liquidity support actually provided, and the form and amount of such compensation depends on the form and amount of support provided, with the amount of compensation generally increasing with the amount of support provided over time. Such compensation is to be provided in a variety of forms including guarantee fees, warrants to purchase common stock, interest on amounts borrowed, and discounts on equity issued.

During the term of the Compensation and Funding Agreement, the Company will make certain cash payments to Total S.A. within 30 days after the end of each calendar quarter during for the term of the agreement as follows: (i) quarterly payment of a commitment fee in an amount equal to 0.25% of the unused portion of the \$600.0 million Liquidity Support Facility as of the end of such quarter; and (ii) quarterly payment of a guarantee fee in an amount equal to 2.75% per annum of the average amount of the Company's indebtedness that is guaranteed by Total S.A. pursuant to any guaranty issued in accordance with the terms of the Compensation and Funding Agreement during such quarter. Any payment obligations of the Company to Total S.A. under the Compensation and Funding Agreement that are not paid when due shall accrue interest until paid in full at a rate equal to 6-month U.S. LIBOR as in effect from time to time plus 5.00% per annum.

On December 24, 2012 Total S.A. issued a guarantee for the Company's obligations under the September 2011 revolving credit facility with Credit Agricole. The issuance of the guaranty reduces the capacity available under the Liquidity Support Facility from \$600.0 million to \$325.0 million. The Company is required to pay Total S.A. an annual guarantee fee of 2.75% of the guaranteed amount under the Credit Agricole facility. The guarantee reduced interest rates payable under, and removed certain financial and restrictive covenants in the Credit Agricole facility (see Note 12).

In the year ended December 30, 2012, the Company incurred commitment fees of \$4.9 million to Total S.A.

#### *Master Agreement*

On December 23, 2011, the Company also entered into a Master Agreement with Total, under which the Company and Total agreed to a framework of transactions related to the Tenesol Acquisition and Private Placement Agreement. Additionally, Total has agreed to pursue several negotiations on additional agreements related to directly investing in the Company's R&D program over a multi-year period, purchase of modules and develop a multi-megawatt project using the Company's products. The Company and Total amended the Master Agreement on February 20, 2013 to clarify that the development of the multi-megawatt project using the Company's products shall mean development of up to 10 C-7 Tracker demonstration projects at a total cost to Total of not more than \$2.5 million provided agreements for such projects are entered into before December 31, 2013.

### **Note 3. TRANSFER OF ENTITIES UNDER COMMON CONTROL**

#### **Tenesol**

On January 31, 2012, the Company completed its acquisition of Tenesol, a global solar provider headquartered in La Tour de Salvagny, France, and formerly wholly-owned subsidiary of Total, for \$165.4 million in cash in exchange for 100% of the equity of Tenesol from Total pursuant to a stock purchase agreement entered into on December 23, 2011. Tenesol is engaged in the business of devising, designing, manufacturing, installing, and managing solar power production and consumption systems for farms, industrial and service sector buildings, solar power plants and private homes.

As Tenesol and the Company were under the common control of Total as of the January 31, 2012 acquisition date, the acquisition is treated as a transfer of an entity under common control and represents a change in the reporting entity. As a result, the Company has retrospectively adjusted its historical financial statements to reflect the transfer beginning on October 10, 2011, the first date in which Total had common control of both the Company and Tenesol, and to include the results of operations in the Company's Consolidated Statement of Operations since October 10, 2011. The Company recorded the transfer of Tenesol's assets and liabilities at their historical carrying value in Total's financial statements in accordance with U.S. GAAP, and the net assets transferred were recorded as an equity contribution from Total to the Company as of October 10, 2011. The subsequent cash payment on January 31, 2012 as described above was treated as a cash distribution to Total. In addition, a transaction between Total and Tenesol on January 23, 2012 resulted in an additional equity contribution from Total to the Company in the fiscal quarter ending January 1, 2012, and an additional cash distribution to Total totaling \$12.9 million in the fiscal quarter ending April 1, 2012. In the fourth quarter of fiscal 2012, Total returned to the Company \$8.7 million of the



purchase price in accordance with the purchase price adjustment mechanism in the purchase agreement, which was treated as an equity contribution from Total.

The Consolidated Balance Sheets, Consolidated Statements of Operations and Consolidated Statement of Comprehensive Loss of the Company as of and for the twelve months ended January 1, 2012 as reported previously and as adjusted in this report are as follows:

	<b>As of</b>	
	<b>January 1, 2012</b>	
	<b>As Adjusted for the Change in Reporting Entity</b>	<b>As Previously Reported in the 2011 Annual Report on Form 10- K</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 725,618	\$ 657,934
Restricted cash and cash equivalents, current portion	52,279	52,279
Accounts receivable, net	438,633	390,262
Costs and estimated earnings in excess of billings	54,854	54,854
Inventories	445,501	397,262
Advances to suppliers, current portion	43,143	43,143
Project assets - plants and land, current portion	24,243	24,243
Prepaid expenses and other current assets	502,879	482,691
Total current assets	2,287,150	2,102,668
Restricted cash and cash equivalents, net of current portion	27,276	27,276
Restricted long-term marketable securities	9,145	9,145
Property, plant and equipment, net	628,769	607,456
Project assets - plants and land, net of current portion	34,614	34,614
Goodwill	47,077	35,990
Other intangible assets, net	23,900	4,848
Advances to suppliers, net of current portion	284,378	278,996
Other long-term assets	176,821	174,204
Total assets	\$ 3,519,130	\$ 3,275,197
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 441,655	\$ 416,615
Accrued liabilities	249,404	234,688
Billings in excess of costs and estimated earnings	170,828	170,828
Short-term debt	2,122	—
Convertible debt, current portion	196,710	196,710
Customer advances, current portion	48,073	46,139
Total current liabilities	1,108,792	1,064,980
Long-term debt	364,273	355,000
Convertible debt, net of current portion	423,268	423,268
Customer advances, net of current portion	181,946	181,947
Other long-term liabilities	166,126	152,492
Total liabilities	2,244,405	2,177,687
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of January 1, 2012	—	—
Common stock, \$0.001 par value, 367,500,000 shares authorized; 101,851,290 shares issued, and 100,475,533 shares outstanding as of January 1, 2012	100	100
Additional paid-in capital	1,845,965	1,657,474
Accumulated deficit	(550,065)	(540,187)
Accumulated other comprehensive income	7,142	8,540
Treasury stock, at cost; 1,375,757 shares of common stock as of January 1, 2012	(28,417)	(28,417)
Total stockholders' equity	1,274,725	1,097,510
Total liabilities and stockholders' equity	\$ 3,519,130	\$ 3,275,197



(In thousands)	Year Ended	
	January 1, 2012	
	As Adjusted for the Change in Reporting Entity	As Previously Reported in the 2011 Annual Report on Form 10- K
Revenue	\$ 2,374,376	\$ 2,312,494
Cost of revenue	2,148,158	2,084,290
Gross margin	226,218	228,204
Operating expenses:		
Research and development	57,775	57,775
Sales, general and administrative	331,380	319,719
Goodwill impairment	309,457	309,457
Other intangible asset impairment	40,301	40,301
Restructuring charges	21,403	21,403
Total operating expenses	760,316	748,655
Operating loss	(534,098)	(520,451)
Other expense, net:		
Interest income	2,337	2,054
Interest expense	(67,253)	(67,022)
Gain on change in equity interest in unconsolidated investee	322	322
Gain on sale of equity interest in unconsolidated investee	5,937	5,937
Gain on mark-to-market derivatives	343	343
Other, net	(10,120)	(8,946)
Other expense, net	(68,434)	(67,312)
Loss before income taxes and equity in earnings of unconsolidated investees	(602,532)	(587,763)
Provision for income taxes	(17,208)	(22,099)
Equity in losses of unconsolidated investees	6,003	6,003
Net loss	\$ (613,737)	\$ (603,859)
Net loss per share of common stock:		
Basic and diluted	\$ (6.28)	\$ (6.18)
Weighted-average shares:		
Basic and diluted	97,724	97,724

(In thousands)	Year Ended	
	January 1, 2012	
	As Adjusted for the Change in Reporting Entity	As Previously Reported in the 2011 Annual Report on Form 10- K
Total comprehensive loss	\$ (610,235)	\$ (598,959)

#### Note 4. BUSINESS COMBINATIONS

## SunRay Malta Holdings Limited ("SunRay")

In fiscal 2010, the Company completed its acquisition of SunRay, a European solar power plant developer company organized under the laws of Malta, under which the Company purchased all the issued share capital of SunRay for \$296.1 million. As a result, SunRay became a subsidiary of the Company and the results of operations of SunRay have been included in the Consolidated Statement of Operations of the Company since March 26, 2010. As part of the acquisition, the Company acquired SunRay's project pipeline of solar photovoltaic projects in Europe and Israel, in various stages of development. SunRay's power plant development and project finance teams consisted of approximately 70 employees at the date of acquisition.

### Note 5. SALE OF DISCONTINUED OPERATIONS

In connection with the acquisition of SunRay in fiscal 2010, the Company acquired a European project company, Cassiopea PV S.r.l ("Cassiopea"), which operated a previously completed 20 MW solar power plant in Montalto di Castro, Italy. In the period in which an asset of the Company is classified as held-for-sale, it is required to present for all periods the related assets, liabilities and results of operations associated with that asset as discontinued operations. On August 5, 2010, the Company sold the assets and liabilities of Cassiopea. Therefore, Cassiopea's results of operations were classified as "Income from discontinued operations, net of taxes" in the Consolidated Statement of Operations for year ended January 2, 2011.

Results of operations related to Cassiopea for the year ended January 2, 2011 were as follows:

(In thousands)	Year ended January 2, 2011
Utility and power plants revenue	\$ 11,081
Gross margin	11,081
Income from discontinued operations before sale of business unit	5,862
Gain on sale of business unit	11,399
Income before income taxes	17,261
Income from discontinued operations, net of taxes	11,841

### Note 6. GOODWILL AND OTHER INTANGIBLE ASSETS

#### Goodwill

The following table presents the changes in the carrying amount of goodwill under the Company's reportable business segments:

(In thousands)	Americas	EMEA (1)	APAC	Total
As of January 2, 2011	\$ 185,266	\$ 157,017	\$ 2,987	\$ 345,270
Goodwill arising from the transfer of entities under common control	—	11,087	—	11,087
Goodwill impairment (2)	(149,276)	(157,267)	(2,914)	(309,457)
Translation adjustment	—	250	(73)	177
As of January 1, 2012	35,990	11,087	—	47,077
Goodwill impairment (2)	(35,990)	(10,744)	—	(46,734)
Translation adjustment	—	(343)	—	(343)
As of December 30, 2012	\$ —	\$ —	\$ —	\$ —

- (1) As adjusted to reflect the balances of Tenesol beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).
- (2) Impairment amounts in the above table reflect the Company's cumulative-to-date goodwill impairments.

Goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. A two-step process is used to test for goodwill impairment. The first step is to determine if there is an indication of impairment by comparing the estimated fair value of each reporting unit to its carrying value, including existing goodwill. Goodwill is considered impaired if the carrying value of a reporting unit exceeds the estimated fair value. Upon an indication of impairment, a second step is performed to determine the amount of the impairment by comparing the implied fair value of the reporting unit's goodwill with its carrying value.

The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at the Company's reporting unit level. Management determined that the Americas Segment, the EMEA Segment, and the APAC Segment are the reporting units. In estimating the fair value of the reporting units, the Company makes estimates and judgments about its future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards. The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted revenue, gross margin, operating income, working capital cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of the Company's reporting units are also compared to its external market capitalization to determine the appropriateness of its assumptions and adjusted, if appropriate. These assumptions took into account the current industry environment and its impact on the Company's business.

Based on the impairment test as of September 30, 2012, the Company determined that the carrying value of the Americas and EMEA reporting units exceeded their fair value. As a result, the Company performed the second step of the impairment analysis for the two reporting units discussed above. The Company's calculation of the implied fair value of goodwill included significant assumptions for, among others, the fair values of recognized assets and liabilities and of unrecognized intangible assets, all of which require significant judgment by management. The Company calculated that the implied fair value of goodwill for the two reporting units was zero and therefore recorded a goodwill impairment loss of \$46.7 million, representing all of the goodwill associated with these reporting units. Based on the impairment test performed as of October 2, 2011, the Company recorded a goodwill impairment loss of \$309.5 million related to the EMEA reporting unit.

## Intangible Assets

The following tables present details of the Company's acquired other intangible assets:

(In thousands)	Gross	Accumulated Amortization	Net
<b>As of December 30, 2012</b>			
Patents, trade names and purchased technology	\$ 49,892	\$ (49,892)	\$ —
Purchased in-process research and development	1,000	(361)	639
Customer relationships and other	28,426	(28,321)	105
	<u>\$ 79,318</u>	<u>\$ (78,574)</u>	<u>\$ 744</u>
<b>As of January 1, 2012 (3)</b>			
Patents, trade names and purchased technology	\$ 52,992	\$ (50,280)	\$ 2,712
Purchased in-process research and development	1,000	(195)	805
Customer relationships and other	45,910	(25,527)	20,383
	<u>\$ 99,902</u>	<u>\$ (76,002)</u>	<u>\$ 23,900</u>

(3) As adjusted to reflect the balances of Tenesol beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

All of the Company's acquired other intangible assets are subject to amortization. Aggregate amortization expense for other intangible assets totaled \$9.1 million, \$23.4 million, and \$38.5 million in fiscal 2012, 2011, and 2010, respectively.

The Company reviews intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. During the third quarter of fiscal 2012, the Company determined that the carrying value of certain intangible assets in Europe were no longer recoverable based on a discrete evaluation of the nature of the intangible assets, incorporating the effect of declines in regional operating results. As a result, the Company recognized an impairment loss of \$12.8 million on its Consolidated Statement of Operations for the year ended December 30, 2012.

During the third quarter of fiscal 2011, the Company determined the carrying value of certain intangible assets related to strategic acquisitions of EPC and O&M project pipelines in Europe were no longer recoverable and recognized an impairment loss of \$40.3 million on its Consolidated Statement of Operations for the year ended January 1, 2012. The Company determined that the carrying value of the intangible assets was not recoverable as the carrying value of the asset group which contained the intangible assets exceeded the undiscounted cash flows of the asset group for a period of time commensurate with the remaining useful life of the primary asset of the group plus a salvage value of the asset group at the end of this period. The impairment loss was calculated by comparing the fair value of the intangible assets to their carrying value. In calculating the fair value of the intangible assets, the Company utilized discounted cash flow assumptions related to the acquired EPC and O&M project pipelines in Europe. The significant decline in fair value of the intangible assets was primarily attributable to the change in government incentives in Europe.

As of December 30, 2012, the estimated future amortization expense related to other intangible assets is as follows:

<b>(In thousands)</b>	<b>Amount</b>
Year	
2013	\$ 272
2014	167
2015	166
2016	139
	<u>\$ 744</u>

#### **Note 7. BALANCE SHEET COMPONENTS**

<b>(In thousands)</b>	<b>As of</b>	
	<b>December 30, 2012</b>	<b>January 1, 2012</b>
Accounts receivable, net:		
Accounts receivable, gross (1)	\$ 429,977	\$ 468,320
Less: allowance for doubtful accounts	(26,773)	(21,039)
Less: allowance for sales returns	(5,054)	(8,648)
	<u>\$ 398,150</u>	<u>\$ 438,633</u>

- (1) Includes short-term finance receivables associated with solar power systems leased of \$4.5 million and \$0.3 million as of December 30, 2012 and January 1, 2012, respectively.

<b>(In thousands)</b>	<b>Balance at Beginning of Period</b>	<b>Charges (Releases) to Expenses / Revenues</b>	<b>Deductions</b>	<b>Balance at End of Period</b>
Allowance for doubtful accounts:				
Year ended December 30, 2012	\$ 21,039	\$ 8,898	\$ (3,164)	\$ 26,773
Year ended January 1, 2012	5,967	18,398	(3,326)	21,039
Year ended January 2, 2011	2,298	11,405	(7,736)	5,967
Allowance for sales returns:				
Year ended December 30, 2012	8,648	(3,594)	—	5,054
Year ended January 1, 2012	2,387	6,261	—	8,648
Year ended January 2, 2011	1,908	2,160	(1,681)	2,387
Valuation allowance for deferred tax assets (2):				
Year ended December 30, 2012	129,946	52,376	—	182,322
Year ended January 1, 2012	4,644	125,302	—	129,946
Year ended January 2, 2011	42,163	(37,519)	—	4,644

- (2) The above table reflects adjustments to the valuation allowance for prior years, which did not have a material impact on the financial statements as there was a corresponding adjustment to the Company's gross deferred tax assets.

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Inventories:		
Raw materials	\$ 89,331	\$ 78,050
Work-in-process	50,627	79,397
Finished goods	151,428	288,054
	<u>\$ 291,386</u>	<u>\$ 445,501</u>
Prepaid expenses and other current assets:		
VAT receivables, current portion	\$ 97,041	\$ 68,993
Foreign currency derivatives	1,275	34,422
Income tax receivable	1,615	19,541
Deferred project costs	305,980	163,366
Deferred costs for solar power systems to be leased	31,419	5,310
Other receivables (3)	103,025	146,135
Other prepaid expenses	25,230	29,993
Other current assets	47,468	20,006
	<u>\$ 613,053</u>	<u>\$ 487,766</u>
(3) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Notes 10 and 11).		
Project assets - plants and land:		
Project assets — plants	\$ 61,862	\$ 31,469
Project assets — land	21,645	27,388
	<u>\$ 83,507</u>	<u>\$ 58,857</u>
Project assets - plants and land, current portion	\$ 75,911	\$ 24,243
Project assets - plants and land, net of current portion	\$ 7,596	\$ 34,614
Property, plant and equipment, net:		
Land and buildings	\$ 20,109	\$ 13,912
Leasehold improvements	221,378	244,913
Manufacturing equipment (4)	531,289	625,019
Computer equipment	75,438	69,694
Solar power systems	12,501	11,148
Solar power systems leased	163,003	7,483
Furniture and fixtures	8,178	7,172
Solar power systems to be leased	89,423	15,113
Construction-in-process	34,110	46,762
	<u>1,155,429</u>	<u>1,041,216</u>
Less: accumulated depreciation (5)	<u>(380,520)</u>	<u>(397,334)</u>
	<u>\$ 774,909</u>	<u>\$ 643,882</u>

(4) The Company's mortgage loan agreement with International Finance Corporation ("IFC") is collateralized by certain manufacturing equipment with a net book value of \$152.9 million and \$196.6 million as of December 30, 2012 and January 1, 2012, respectively. The Company also provided security for advance payments received from a third party in fiscal 2008 in the form of collateralized manufacturing equipment with a net book value of \$16.5 million and \$21.1 million as of December 30, 2012 and January 1, 2012, respectively.

(5) Total depreciation expense was \$108.7 million, \$107.1 million, and \$102.2 million in fiscal 2012, 2011, and 2010, respectively.



(In thousands)	As of	
	December 30, 2012	January 1, 2012
Property, plant and equipment, net by geography (6):		
Philippines	\$ 367,708	\$ 490,074
United States	343,710	108,549
Mexico	32,409	21,686
Europe	29,292	20,830
Other	1,790	2,743
	<u>\$ 774,909</u>	<u>\$ 643,882</u>

(6) Property, plant and equipment, net are based on the physical location of the assets.

The below table presents the cash and non-cash interest expense capitalized to property, plant and equipment and project assets during fiscal 2012, 2011 and 2010, respectively.

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Interest expense:			
Interest cost incurred	\$ (88,738)	\$ (72,505)	\$ (65,324)
Cash interest cost capitalized - property, plant and equipment	1,142	1,503	565
Non-cash interest cost capitalized - property, plant and equipment	520	942	774
Cash interest cost capitalized - project assets - plant and land	1,703	1,326	3,526
Non-cash interest cost capitalized - project assets - plant and land	1,253	1,481	5,183
Interest expense	<u>\$ (84,120)</u>	<u>\$ (67,253)</u>	<u>\$ (55,276)</u>

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Other long-term assets:		
Equity method investments	\$ 111,516	\$ 129,929
Bond hedge derivative	2,327	840
Cost method investments	14,918	4,918
VAT receivables, net of current portion	—	6,020
Long-term financing receivables	67,742	5,326
Long-term debt issuance costs	38,185	10,734
Other	41,375	19,054
	<u>\$ 276,063</u>	<u>\$ 176,821</u>

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Accrued liabilities:		
VAT payables	\$ 2,049	\$ 47,034
Foreign currency derivatives	4,891	14,935
Short-term warranty reserves	9,054	15,034
Interest payable	9,672	7,288
Deferred revenue	32,507	48,115
Employee compensation and employee benefits	40,750	35,375
Restructuring reserve	29,477	6,324
Short-term residential lease financing	25,153	—
Other	93,819	75,299
	<u>\$ 247,372</u>	<u>\$ 249,404</u>
Other long-term liabilities:		
Embedded conversion option derivatives	\$ 2,327	\$ 844
Long-term warranty reserves	107,803	79,289
Deferred revenue	128,936	31,988
Unrecognized tax benefits	35,022	29,256
Long-term residential lease financing	11,411	—
Other	50,120	24,749
	<u>\$ 335,619</u>	<u>\$ 166,126</u>
Accumulated other comprehensive income (loss):		
Cumulative translation adjustment	\$ (2,319)	\$ (1,360)
Net unrealized gain on derivatives	(243)	10,473
Deferred taxes	41	(1,971)
	<u>\$ (2,521)</u>	<u>\$ 7,142</u>

#### *Solar Power Systems Leased and to be Leased*

The Company leases solar systems to residential customers under both operating and sales-type leases. As of December 30, 2012 and January 2, 2012, solar power systems leased out under operating leases, presented in Property, plant and equipment in the Company's Consolidated Balance Sheets was \$163.0 million and \$7.5 million, respectively, and solar power systems to be leased under operating leases, presented in Property, plant and equipment in the Company's Consolidated Balance Sheets was \$89.4 million and \$15.1 million, respectively. As of December 30, 2012, financing receivables for sales-type leases, presented in Accounts receivable, net and Other long-term assets in the Company's Consolidated Balance Sheets was \$4.5 million and \$67.7 million, respectively. As of January 1, 2012, financing receivables for sales-type leases, presented in Accounts receivable, net and Other long-term assets in the Company's Consolidated Balance Sheets was \$0.3 million and \$5.3 million, respectively. Amounts recognized in the Company's Consolidated Statement of Operations are not significant in any year presented.

During the year, the Company has entered into two facilities under which solar systems are financed with third-party investors. Under the terms of the programs the parties make upfront payments to SunPower, which the Company recognizes as a non-recourse liability that will be reduced over the specified term of the program as customer receivables and government incentives are received by the third party investors. As the non-recourse liability is reduced over time, the Company makes a corresponding reduction in customer and government incentive receivables on its balance sheet. Under this approach, for both operating and sales-type leases the Company continues to account for the arrangements with its customers in the Consolidated Financial Statements.

As of December 30, 2012, the remaining liability to the third-party investors, presented in Accrued liabilities and Other long-term liabilities on the Company's Consolidated Balance Sheets, was \$36.6 million. As of December 30, 2012, the Company has pledged solar assets with an aggregate book value of \$280.8 million to the third-party investors as security for its obligations under the contractual arrangements.

## Note 8. FAIR VALUE MEASUREMENTS

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement (observable inputs are the preferred basis of valuation):

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.
- Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

### Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company measures certain assets and liabilities at fair value on a recurring basis. There were no transfers between fair value measurement levels during the years ended December 30, 2012 or January 1, 2012, respectively. The Company did not have any assets or liabilities measured at fair value on a recurring basis requiring Level 3 inputs as of December 30, 2012 or January 1, 2012.

The following table summarizes the Company's assets and liabilities measured and recorded at fair value on a recurring basis as of December 30, 2012 and January 1, 2012, respectively:

(In thousands)	December 30, 2012			January 1, 2012		
	Total	Level 1	Level 2	Total	Level 1	Level 2
<b>Assets</b>						
Cash and cash equivalents:						
Money market funds (1)	\$ 117,254	\$ 117,254	\$ —	\$ 187,538	\$ 187,538	\$ —
Prepaid expenses and other current assets:						
Foreign currency derivatives (Note 13)	1,275	—	1,275	34,422	—	34,422
Other long-term assets:						
Debt derivatives (Note 12)	2,327	—	2,327	840	—	840
<b>Total assets</b>	<b>\$ 120,856</b>	<b>\$ 117,254</b>	<b>\$ 3,602</b>	<b>\$ 222,800</b>	<b>\$ 187,538</b>	<b>\$ 35,262</b>
<b>Liabilities</b>						
Accrued liabilities:						
Foreign currency derivatives (Note 13)	\$ 4,891	\$ —	\$ 4,891	\$ 14,935	\$ —	\$ 14,935
Other long-term liabilities:						
Debt derivatives (Note 12)	2,327	—	2,327	844	—	844
<b>Total liabilities</b>	<b>\$ 7,218</b>	<b>\$ —</b>	<b>\$ 7,218</b>	<b>\$ 15,779</b>	<b>\$ —</b>	<b>\$ 15,779</b>

- (1) The Company's cash equivalents consist of money market fund instruments which are classified as available-for-sale and within Level 1 of the fair value hierarchy because they are valued using quoted market prices for identical instruments in active markets.

Other financial instruments, including the Company's accounts receivable, accounts payable and accrued liabilities, are carried at cost, which generally approximates fair value due to the short-term nature of these instruments.

### Debt Derivatives

The 4.50% Bond Hedge (as defined in Note 12) and the embedded cash conversion option within the 4.50% debentures (as defined in Note 12) are classified as derivative instruments that require mark-to-market treatment with changes in fair value reported in the Company's Consolidated Statements of Operations. The fair values of these derivative instruments were determined utilizing the following Level 1 and Level 2 inputs:

	As of (1)	
	December 30, 2012	January 1, 2012
Stock price	\$ 5.49	\$ 6.23
Exercise price	\$ 22.53	\$ 22.53
Interest rate	0.40%	0.84%
Stock volatility	59.9%	44.0%
Credit risk adjustment	1.07%	1.93%
Maturity date	February 18, 2015	February 18, 2015

(1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at \$22.53. The Company utilized a Black-Scholes valuation model to value the 4.50% Bond Hedge and embedded cash conversion option. The underlying input assumptions were determined as follows:

- (i) Stock price. The closing price of the Company's common stock on the last trading day of the quarter.
- (ii) Exercise price. The exercise price of the 4.50% Bond Hedge and the embedded cash conversion option.
- (iii) Interest rate. The Treasury Strip rate associated with the life of the 4.50% Bond Hedge and the embedded cash conversion option.
- (iv) Stock volatility. The volatility of the Company's common stock over the life of the 4.50% Bond Hedge and the embedded cash conversion option.
- (v) Credit risk adjustment. Represents the weighted average of the credit default swap rate of the counterparties.

#### ***Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis***

The Company measures certain investments and non-financial assets (including project assets, property, plant and equipment, and other intangible assets) at fair value on a non-recurring basis in periods after initial measurement in circumstances when the fair value of such asset is impaired below its recorded cost. Information regarding the Company's goodwill and other intangible asset balances are disclosed in Note 6.

#### ***Debt Securities***

The Company's debt securities consist of Philippine government bonds, classified as held-to-maturity, which are maintained as collateral for present and future business transactions within the country. These bonds have maturity dates of up to 5 years with a carrying value of \$10.9 million as of December 30, 2012 and \$9.1 million as of January 1, 2012, which are classified as "Restricted long-term marketable securities" on the Company's Consolidated Balance Sheets. The Company records such held-to-maturity investments at amortized cost based on its ability and intent to hold the securities until maturity. The Company monitors for changes in circumstances and events that would impact its ability and intent to hold such securities until the recorded amortized costs are recovered. The Company incurred no other-than-temporary impairment loss in the year ended December 30, 2012. The debt securities were categorized in Level 2 of the fair value hierarchy.

#### ***Equity and Cost Method Investments***

The Company's equity and cost method investments in non-consolidated entities are comprised of convertible promissory notes, common and preferred stock. The Company monitors these investments, which are included in "Other long-term assets" in its Consolidated Balance Sheets, for impairment and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include Level 2 and Level 3 measurements such as the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices, and declines in operations of the issuer. As of December 30, 2012 and January 1, 2012, the Company had \$111.5 million and \$129.9 million, respectively, in investments accounted for under the equity method and \$14.9 million and \$4.9 million, respectively, in investments accounted for under the cost method (see Note 11).

#### **Note 9. RESTRUCTURING**

### **October 2012 Restructuring Plan**

On October 12, 2012, the Company's Board of Directors approved a reorganization (the "October 2012 Plan") to accelerate operating cost reduction and improve overall operating efficiency. In connection with the October 2012 Plan, which is expected to be completed within the twelve months following approval, the Company expects to eliminate approximately 900 positions primarily in the Philippines, representing approximately 15% of the Company's global workforce. As a result, the Company expects to record restructuring charges totaling \$33.0 million to \$40.0 million, related to all segments. Such charges are composed of severance benefits, lease and related termination costs, and other associated costs, \$30.2 million of which was recorded in the fourth quarter of fiscal 2012. The Company expects greater than 90% of these charges to be cash.

### **April 2012 Restructuring Plan**

As a result of the Company's continued cost reduction progress at its Fab 2 and its joint venture Fab 3 manufacturing facilities, on April 13, 2012, the Company's Board of Directors approved a restructuring plan (the "April 2012 Plan") to consolidate the Company's Philippine manufacturing operations into Fab 2 and begin repurposing Fab 1 in the second quarter of 2012. The Company expects to recognize restructuring charges up to \$63.0 million, related to all segments, in the twelve months following the approval and implementation of the April 2012 Plan. The Company expects greater than 80% of these charges to be non-cash.

### **December 2011 Restructuring Plan**

To accelerate operating cost reduction and improve overall operating efficiency, in December 2011, the Company implemented a company-wide restructuring program (the "December 2011 Plan"). The December 2011 Plan eliminated approximately 2% of the Company's global workforce. Restructuring activities associated with the December 2011 Plan were substantially completed as of December 30, 2012.

### **June 2011 Restructuring Plan**

In response to reductions in European government incentives, which had a significant impact on the global solar market, on June 13, 2011, the Company's Board of Directors approved a restructuring plan (the "June 2011 Plan") to realign the Company's resources. The June 2011 Plan eliminated approximately 2% of the Company's global workforce, in addition to the consolidation or closure of certain facilities in Europe. Restructuring activities associated with the June 2011 Plan were substantially completed as of December 30, 2012.

The following table summarizes the restructuring charges recognized in the Company's Consolidated Statements of Operations:

	Year Ended			Cumulative To Date
	December 30, 2012	January 1, 2012	January 2, 2011	
October 2012 Plan:				
Severance and benefits	\$ 29,053	\$ —	\$ —	\$ 29,053
Lease and related termination costs	714	—	—	714
Other costs	460	—	—	460
	<u>30,227</u>	<u>—</u>	<u>—</u>	<u>30,227</u>
April 2012 Plan:				
Non-cash impairment charges	56,299	—	—	56,299
Other costs	5,080	—	—	5,080
	<u>61,379</u>	<u>—</u>	<u>—</u>	<u>61,379</u>
December 2011 Plan:				
Non-cash impairment charges	3,854	—	—	3,854
Severance and benefits	1,505	7,305	—	8,810
Lease and related termination costs	2,249	—	—	2,249
Other costs	338	172	—	510
	<u>7,946</u>	<u>7,477</u>	<u>—</u>	<u>15,423</u>
June 2011 Plan:				
Severance and benefits	(160)	11,186	—	11,026
Lease and related termination costs	1,269	688	—	1,957
Other costs	162	2,052	—	2,214
	<u>1,271</u>	<u>13,926</u>	<u>—</u>	<u>15,197</u>
Total restructuring charges	<u>\$ 100,823</u>	<u>\$ 21,403</u>	<u>\$ —</u>	<u>\$ 122,226</u>

The following table summarizes the restructuring reserve activity during the year ended December 30, 2012:

(In thousands)	Year ended			
	January 1, 2012	Charges (Benefits)	Payments	December 30, 2012
October 2012 Plan:				
Severance and benefits	\$ —	\$ 29,053	\$ (4,614)	\$ 24,439
Lease and related termination costs	—	714	—	714
Other costs (1) (2)	—	460	(102)	358
April 2012 Plan:				
Other costs (1) (2)	—	5,080	(3,749)	1,331
December 2011 Plan:				
Severance and benefits	3,344	1,505	(4,789)	60
Lease and related termination costs	—	2,249	(941)	1,308
Other costs (1) (2)	24	338	(362)	—
June 2011 Plan:				
Severance and benefits (3)	2,204	(160)	(2,044)	—
Lease and related termination costs	688	1,269	(829)	1,128
Other costs (1)	64	162	(87)	139
Total restructuring liabilities	\$ 6,324	\$ 40,670	\$ (17,517)	\$ 29,477

- (1) Other costs primarily represent associated legal services and costs associated with the decommissioning of Fab 1 assets.
- (2) The reserve balance excludes non-cash impairment charges incurred in connection with the April 2012 Plan and December 2011 Plan during the year ended December 30, 2012.
- (3) The June 2011 Plan reserve balance as of January 1, 2012 excludes \$1.4 million of charges associated with the accelerated vesting of promissory notes, in accordance with the terms of each agreement, previously issued as consideration for an acquisition completed in the first quarter of fiscal 2010. The \$1.4 million charge is separately recorded in "Accrued liabilities" on the Company's Consolidated Balance Sheet as of January 1, 2012, and was fully paid during the first quarter of fiscal 2012.

#### Note 10. COMMITMENTS AND CONTINGENCIES

##### Lease Commitments

The Company leases its corporate headquarters in San Jose, California and its Richmond, California facility under non-cancellable operating leases from unaffiliated third parties. The Company also has various other lease arrangements, including its European headquarters located in Geneva, Switzerland as well as sales and support offices throughout the United States and Europe including locations in Austin, Texas and La Tour de Salvagny, France. In August 2011, the Company entered into a non-cancellable operating lease agreement for its solar module facility in Mexicali, Mexico from an unaffiliated third party.

The Company has additionally entered into sale-leaseback arrangements under which sixteen solar power systems have been sold to unaffiliated third parties and subsequently leased back under operating leases over minimum lease terms of up to 20 years. In concluding the sale-leaseback arrangements should be classified as operating leases, the Company determined the systems under the sale-leaseback arrangements were not integral equipment as defined under the accounting guidance for such transactions. Separately, the Company entered into power purchase agreements ("PPAs") with end customers, who host the leased solar power systems and buy the electricity directly from the Company under PPAs with a duration of up to 20 years. At the end of each lease term, the Company has the option to purchase the systems at fair value or may be required remove the systems and return them to the unaffiliated third parties. The deferred profit on the sale of the systems is recognized over the term of the lease.

The Company additionally leases certain buildings, machinery and equipment under capital leases for terms up to 12 years.

Future minimum obligations under all non-cancellable leases as of December 30, 2012 are as follows:

(In thousands)	Capital Lease Amount	Operating Lease Amount
Year		
2013	\$ 2,064	\$ 24,737
2014	1,423	18,216
2015	1,219	16,816
2016	971	16,226
2017	925	13,543
Thereafter	2,391	87,561
	<u>\$ 8,993</u>	<u>\$ 177,099</u>

#### Purchase Commitments

The Company purchases raw materials for inventory and manufacturing equipment from a variety of vendors. During the normal course of business, in order to manage manufacturing lead times and help assure adequate supply, the Company enters into agreements with contract manufacturers and suppliers that either allow them to procure goods and services based on specifications defined by the Company, or that establish parameters defining the Company's requirements. In certain instances, these agreements allow the Company the option to cancel, reschedule or adjust the Company's requirements based on its business needs prior to firm orders being placed. Consequently, only a portion of the Company's disclosed purchase commitments arising from these agreements are firm, non-cancellable, and unconditional commitments.

The Company also has agreements with several suppliers, including some of its non-consolidated investees, for the procurement of polysilicon, ingots, wafers, solar cells, solar panels, and Solar Renewable Energy Credits ("SRECs") which specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and provide for certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that the Company terminates the arrangements.

As of December 30, 2012, total obligations related to non-cancellable purchase orders totaled \$0.3 billion and long-term supply agreements with suppliers totaled \$2.1 billion. Of the total future purchase commitments of \$2.4 billion as of December 30, 2012, \$109.5 million are for commitments to related parties. Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of December 30, 2012 are as follows:

(In thousands)	Amount
Year	
2013	\$ 621,304
2014	364,713
2015	366,629
2016	331,397
2017	195,026
Thereafter	517,095
	<u>\$ 2,396,164</u>

The Company has tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross future purchase obligations of the Company and are not reduced by tolling agreements and non-cancellable SREC sales arrangements. Total future purchase commitments as of December 30, 2012 would be reduced by \$305.9 million had the Company's obligations under such agreements been disclosed using net cash outflows.

The Company expects that all obligations related to non-cancellable purchase orders for manufacturing equipment will be recovered through future cash flows of the solar cell manufacturing lines and solar panel assembly lines when such long-lived assets are placed in service. Factors considered important that could result in an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets, and significant negative industry or economic trends. Obligations related to non-cancellable purchase orders for inventories match current and forecasted sales orders that will consume these ordered materials and actual consumption of these ordered materials are compared to expected demand regularly. The Company anticipates total obligations related to long-



term supply agreements for inventories will be recovered because quantities are less than management's expected demand for its solar power products. The terms of the long-term supply agreements are reviewed by management and the Company assesses the need for any accruals for estimated losses on adverse purchase commitments, such as lower of cost or market value adjustments that will not be recovered by future sales prices, forfeiture of advanced deposits and liquidated damages, as necessary.

## Advances to Suppliers

As noted above, the Company has entered into agreements with various polysilicon, ingot, wafer, solar cell, and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. During the year ended December 30, 2012, the Company paid advances totaling \$43.8 million, in accordance with the terms of existing long-term supply agreements. As of December 30, 2012 and January 1, 2012, advances to suppliers totaled \$351.4 million and \$327.5 million, respectively, the current portion of which is \$50.3 million and \$43.1 million, respectively. Two suppliers accounted for 76% and 23% of total advances to suppliers as of December 30, 2012, and 74% and 20% as of January 1, 2012.

The Company's future prepayment obligations related to these agreements as of December 30, 2012 are as follows:

(In thousands)	Amount
Year	
2013	\$ 81,627
2014	65,791
	<u>\$ 147,418</u>

## Advances from Customers

In November 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Company related to such polysilicon, which prepayments will then be made by the Company to the third-party supplier. Prepayments paid by AUOSP to the Company in fiscal 2012 and 2011 were \$70.0 million and \$30.0 million, respectively. Beginning in the first quarter of fiscal 2011 and continuing through 2020, these advance payments will be applied as a credit against AUOSP's polysilicon purchases from the Company. Such polysilicon is used by AUOSP to manufacture solar cells which are sold to the Company on a "cost-plus" basis. As of December 30, 2012 and January 1, 2012, the outstanding advance was \$190.1 million and \$126.5 million, respectively, of which \$8.8 million and \$5.4 million, respectively, has been classified in short-term customer advances and \$181.3 million and \$121.1 million, respectively, in long-term customer advances in the Consolidated Balance Sheet, based on projected product shipment dates.

In August 2007, the Company entered into an agreement with a third party to supply polysilicon. Under the polysilicon agreement, the Company received advances of \$40.0 million in each of fiscal 2008 and 2007 from this third party. Beginning in the first quarter of fiscal 2010, these advance payments are applied as a credit against the third party's polysilicon purchases from the Company. Such polysilicon is used by the third party to manufacture ingots, and potentially wafers, which can be sold to the Company or other customers. As of December 30, 2012 and January 1, 2012, the outstanding advance was \$56.1 million and \$64.1 million, respectively, of which \$8.1 million and \$8.1 million, respectively, has been classified in short-term customer advances and \$48.0 million and \$56.0 million, respectively, in long-term customer advances in the Consolidated Balance Sheet, based on projected product shipment dates. The Company provided security for the advances in the form of collateralized manufacturing equipment with a net book value of \$16.5 million and \$21.1 million as of December 30, 2012 and January 1, 2012, respectively. As of December 30, 2012 and January 1, 2012, the Company also had \$32.0 million and \$36.0 million, respectively, of letters of credit issued by Deutsche Bank and zero and \$7.5 million restricted cash held in escrow, respectively (see Notes 7 and 12).

The Company has also entered into other agreements with customers who have made advance payments for solar power products. These advances will be applied as shipments of product occur or upon completion of certain project milestones. As of December 30, 2012 and January 1, 2012, such customers had made advances of \$49.5 million and \$39.4 million, respectively, in the aggregate.

The estimated utilization of advances from customers as of December 30, 2012 is as follows:

(In thousands)	Amount
Year	
2013	\$ 59,648
2014	28,799
2015	26,387
2016	30,713
2017	35,039
Thereafter	115,144
	<u>\$ 295,730</u>

## Product Warranties

The Company generally warrants or guarantees the performance of the solar panels that it manufactures at certain levels of power output for 25 years. In addition, the Company passes through to customers long-term warranties from OEMs of certain system components, such as inverters. Warranties of 25 years from solar panels suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, the Company generally warrants its workmanship on installed systems for periods ranging up to 10 years. The Company maintains reserves to cover the expected costs that could result from these warranties. The Company's expected costs are generally in the form of product replacement or repair. Warranty reserves are based on the Company's best estimate of such costs and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations.

Provisions for warranty reserves charged to cost of revenue were \$29.8 million, \$37.9 million and \$23.4 million in the year ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Balance at the beginning of the period (1)	\$ 94,323	\$ 63,562	\$ 46,475
Accruals for warranties issued during the period	29,833	37,927	23,362
Settlements made during the period	(6,984)	(7,166)	(6,275)
Balance at the end of the period	<u>\$ 117,172</u>	<u>\$ 94,323</u>	<u>\$ 63,562</u>

(1) As adjusted to reflect the balances of Tenesol beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

## Contingent Obligations

Projects often require the Company to undertake obligations including: (i) system output performance guarantees; (ii) system maintenance; (iii) penalty payments or customer termination rights if the system the Company is constructing is not commissioned within specified timeframes or other milestones are not achieved; and (iv) system put-rights whereby the Company could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods of up to two years. Historically the systems have performed significantly above the performance guarantee thresholds, and there have been no cases in which the Company had to buy back a system.

## Future Financing Commitments

The Company is required to provide certain funding under the joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO") and another financing agreement with a third party, subject to certain conditions (see Note 11).

The Company's future financing obligations related to these agreements as of December 30, 2012 are as follows:

(In thousands)	Amount
Year	
2013	\$ 150,208
2014	96,770
	<u>\$ 246,978</u>

### Liabilities Associated with Uncertain Tax Positions

Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement, if any, would be made for its liabilities associated with uncertain tax positions in other long-term liabilities. Total liabilities associated with uncertain tax positions were \$35.0 million and \$29.3 million as of December 30, 2012 and January 1, 2012, respectively, and are included in "Other long-term liabilities" in the Company's Consolidated Balance Sheets as they are not expected to be paid within the next twelve months (see Note 14).

### Indemnifications

The Company is a party to a variety of agreements under which it may be obligated to indemnify the other party with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which the Company customarily agrees to hold the other party harmless against losses arising from a breach of warranties, representations and covenants related to such matters as title to assets sold, negligent acts, damage to property, validity of certain intellectual property rights, non-infringement of third-party rights, and certain tax related matters. In each of these circumstances, payment by the Company is typically subject to the other party making a claim to the Company under the procedures specified in the particular contract. These procedures usually allow the Company to challenge the other party's claims or, in case of breach of intellectual property representations or covenants, to control the defense or settlement of any third party claims brought against the other party. Further, the Company's obligations under these agreements may be limited in terms of activity (typically to replace or correct the products or terminate the agreement with a refund to the other party), duration and/or amounts. In some instances, the Company may have recourse against third parties and/or insurance covering certain payments made by the Company.

### Legal Matters

Three securities class action lawsuits were filed against the Company and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired the Company's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as *In re SunPower Securities Litigation*, Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning the Company's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and sections 11 and 15 of the Securities Act of 1933. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010. The court dismissed the consolidated complaint with leave to amend on March 1, 2011. An amended complaint was filed on April 18, 2011. The amended complaint added two former employees of the Company as defendants. Defendants filed motions to dismiss the amended complaint on May 23, 2011. The motions to dismiss the amended complaint were heard by the court on August 11, 2011. On December 19, 2011, the court granted in part and denied in part the motions to dismiss, dismissing the claims brought pursuant to sections 11 and 15 of the Securities Act of 1933 and the claims brought against the two newly added former employees. On December 14, 2012, the Company announced that it reached an agreement in principle to settle the consolidated securities class action lawsuit for \$19.7 million. The Company recorded a charge in its fiscal fourth quarter of 2012 in the same amount which is further classified within "Accrued liabilities" on the Company's Consolidated Balance Sheets as of December 30, 2012. On February 1, 2013, the parties filed a stipulation of settlement and a motion for preliminary approval of the settlement. The motion is noticed to be heard on March 14, 2013. The settlement is subject to certain conditions, including final approval by the court after members of the proposed settlement class receive notice and an opportunity to be heard. Until the conditions to the settlement have been satisfied, there can be no assurance that the settlement will become final. If the settlement does not become final, the Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters.

Derivative actions purporting to be brought on the Company's behalf have also been filed in state and federal courts against several of the Company's current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as *In re SunPower Corp. S'holder*

Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs filed a consolidated amended complaint on March 5, 2012. The federal derivative complaints were consolidated as In re SunPower Corp. S'holder Derivative Litig., Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The federal complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Plaintiffs filed a consolidated complaint on May 13, 2011. A Delaware state derivative case, Brenner v. Albrecht, et al., C.A. No. 6514-VCP (Del Ch.), was filed on May 23, 2011 in the Delaware Court of Chancery. The complaint asserts state-law claims for breach of fiduciary duty and contribution and indemnification, and seeks an unspecified amount of damages. The Company intends to oppose all the derivative plaintiffs' efforts to pursue this litigation on the Company's behalf. Defendants moved to stay or dismiss the Delaware derivative action on July 5, 2011. The motion to stay was heard by the court on October 27, 2011, and on January 27, 2012 the court granted the Company's motion and stayed the case indefinitely subject to the plaintiffs seeking to lift the stay under specified conditions. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

The Company is also a party to various other litigation matters and claims that arise from time to time in the ordinary course of its business. While the Company believes that the ultimate outcome of such matters will not have a material adverse effect on the Company, their outcomes are not determinable and negative outcomes may adversely affect the Company's financial position, liquidity or results of operations.

#### **Note 11. EQUITY METHOD INVESTMENTS**

The Company accounts for its equity interests in its unconsolidated investees as described below under the equity method of accounting as it has the ability to exercise significant influence, but does not own a majority equity interest in, or otherwise control, the investees. As of December 30, 2012 and January 1, 2012, the Company's carrying value of its equity method investments totaled \$111.5 million and \$129.9 million, respectively, and is classified as "Other long-term assets" in its Consolidated Balance Sheets. The Company's share of its earnings (loss) from equity method investments is reflected as "Equity in earnings (loss) of unconsolidated investees" in its Consolidated Statement of Operations.

The Company reviews its equity investments for events or other factors which may indicate an other-than-temporary decline in value. During the second quarter of fiscal 2012 the Company recorded a \$6.9 million impairment charge to "Other, net" in the Consolidated Statement of Operations as it determined current market and operating conditions indicated an inability to recover the carrying amount of one of its investments.

#### *Related Party Transactions with Equity Method Investees:*

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Accounts receivable	\$ 17,847	\$ 74,396
Accounts payable	63,469	109,700
Other long-term assets:		
Long-term note receivable	1,040	—

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Payments made to equity method investees for products/services	\$ 519,132	\$ 350,158	\$ 87,153

#### **Equity Investment in Huaxia CPV (Inner Mongolia) Power Co., Ltd. ("CCPV")**

In December 2012, the Company entered into an agreement with Tianjin Zhonghuan Semiconductor Co. Ltd. ("TZS"), Inner Mongolia Power Group Co. Ltd. ("IMP") and Hohhot Jinqiao City Development Company Co., Ltd. ("HJCD") to form CCPV, a jointly owned entity to manufacture and deploy the Company's C-7 Tracker concentrator technology in Inner Mongolia and other regions in China. Huaxia CPV will be based in Hohhot, Inner Mongolia. Under the terms of the agreement, the Company will invest RMB 100,000,000 (or approximately \$15.9 million based on the exchange rate as of

December 30, 2012), for a 25% equity ownership in CCPV, with the investment to be made over a period of two years subsequent to the establishment of the entity. The establishment of the entity is subject to approval of the PRC government. No contributions have been made to date.

### **Equity Investment in Diamond Energy Pty Ltd. ("Diamond Energy")**

In October 2012, the Company made a \$3.0 million equity investment in Diamond Energy, an alternative energy project developer and clean electricity retailer headquartered in Melbourne, Australia, in exchange for a 25% equity ownership. The Company additionally provided Diamond Energy \$1.0 million under a five year convertible note agreement. The Company will lend an additional \$1.0 million under the convertible note agreement during fiscal 2013 and will receive interest of 1% per annum on the amounts lent to Diamond Energy, to be paid upon conversion or maturity.

The Company has concluded that it is not the primary beneficiary of Diamond Energy since, although the Company is obligated to absorb losses and has the right to receive benefits, the Company alone does not have the power to direct the activities of Diamond that most significantly impact its economic performance. The Company accounts for its investment in Diamond using the equity method since the Company is able to exercise significant influence over Diamond due to its board position.

### **Equity Investment and Joint Venture with AUOSP**

In fiscal 2010, the Company, AUO and AU Optronics Corporation, the ultimate parent company of AUO ("AUO Taiwan") formed the joint venture AUOSP (formerly SunPower Malaysia Manufacturing Sdn. Bhd, a wholly owned subsidiary of the Company). The Company and AUO each own 50% of the joint venture, AUOSP. AUOSP owns a solar cell manufacturing facility ("FAB 3") in Malaysia and manufactures solar cells and sells them on a "cost-plus" basis to the Company and AUO.

In connection with the joint venture agreement, the Company and AUO also entered into licensing and joint development, supply, and other ancillary transaction agreements. Through the licensing agreement, the Company and AUO licensed to AUOSP, on a non-exclusive, royalty-free basis, certain background intellectual property related to solar cell manufacturing (in the case of the Company), and manufacturing processes (in the case of AUO). Under the seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, the percentage of AUOSP's total annual output allocated on a monthly basis to the Company, which the Company is committed to purchase, ranged from 95% in the fourth quarter of fiscal 2010 to 80% in fiscal year 2013 and thereafter. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. As required under the joint venture agreement, in fiscal 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Company related to such polysilicon, which prepayment will then be made by the Company to the third-party supplier.

The Company and AUO are not permitted to transfer any of AUOSP's shares held by them, except to each other and to their direct or indirect wholly-owned subsidiaries. In the joint venture agreement, the Company and AUO agreed to each contribute additional amounts through 2014 amounting to \$241.0 million, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, the Company or AUO requests additional equity financing to AUOSP, then the Company and AUO will each be required to make additional cash contributions of up to \$50.0 million in the aggregate (See Note 10).

The Company has concluded that it is not the primary beneficiary of AUOSP since, although the Company and AUO are both obligated to absorb losses or have the right to receive benefits, the Company alone does not have the power to direct the activities of AUOSP that most significantly impact its economic performance. In making this determination the Company considered the shared power arrangement, including equal board governance for significant decisions, elective appointment, and the fact that both parties contribute to the activities that most significantly impact the joint venture's economic performance. The Company accounts for its investment in AUOSP using the equity method as a result of the shared power arrangement. As of December 30, 2012, the Company's maximum exposure to loss as a result of its involvement with AUOSP is limited to the carrying value of its investment.

As a result of the shared power arrangement established upon the formation of the joint venture, the Company deconsolidated AUOSP in the third quarter of fiscal 2010 and subsequently accounts for its 50% retained investment under the equity method. In fiscal 2010, the Company recognized a non-cash gain of \$36.8 million classified as "Gain on deconsolidation of consolidated subsidiary" in the Consolidated Statement of Operations as a result of deconsolidating the carrying value of AUOSP as of July 5, 2010 and recording the fair value of its retained investment in the entity.

## **Equity Investment in First Philec Solar Corporation ("First Philec Solar")**

In fiscal 2007, the Company and First Philippine Electric Corporation ("First Philec") formed First Philec Solar, a jointly owned entity to provide wafer slicing services of silicon ingots to the Company in the Philippines. The Company supplied to First Philec Solar silicon ingots and technology required for slicing silicon. Once manufactured, the Company purchased the completed silicon wafers from First Philec Solar under a six-year wafering supply and sales agreement, which the Company terminated in the third quarter of fiscal 2012. There is no obligation or expectation for the Company to provide additional funding to First Philec Solar.

The Company has concluded that it is not the primary beneficiary of First Philec Solar since, although the Company and First Philec are both obligated to absorb losses or have the right to receive benefits from First Philec Solar, such variable interests held by the Company do not empower it to direct the activities that most significantly impact First Philec Solar's economic performance. In reaching this determination, the Company considered the significant control exercised by First Philec over the joint venture's Board of Directors, management and daily operations. The Company accounts for its investment in First Philec Solar using the equity method since the Company is able to exercise significant influence over First Philec Solar due to its board positions.

## **Equity Investment in Woongjin Energy Co., Ltd ("Woongjin Energy")**

In fiscal 2006, the Company and Woongjin Holdings Co., Ltd. ("Woongjin") formed Woongjin Energy, a jointly owned entity to manufacture monocrystalline silicon ingots in Korea. The Company may supply polysilicon, services, and technical support required for silicon ingot manufacturing to Woongjin Energy. Once manufactured, the Company may purchase the silicon ingots from Woongjin Energy under a nine-year agreement through 2016. There is no obligation or expectation for the Company to provide additional funding to Woongjin Energy.

During fiscal 2010, Woongjin Energy completed its initial public offering ("IPO") and the sale of 15.9 million new shares of common stock. The Company did not participate in the common stock issuance and its percentage of ownership was subsequently diluted. As a result of the IPO, the Company concluded that Woongjin Energy was no longer a variable interest entity. In fiscal 2010, the Company recognized a non-cash gain of \$28.3 million classified within "Gain on change in equity interest in unconsolidated investees" due to its equity interest in Woongjin Energy being diluted as a result of the issuance of additional equity to other investees.

During fiscal 2011, the Company sold 15.5 million shares of Woongjin Energy on the open market, reducing the Company's percentage equity ownership in Woongjin Energy from 31% to 6%. In fiscal 2011, the Company recognized a cash gain of \$5.9 million classified as "Gain on sale of equity interest in unconsolidated investee" in the Company's Consolidated Statement of Operations as a result of the share sale. As of January 1, 2012, the Company held 3.9 million shares of Woongjin Energy. During the first quarter of fiscal 2012, the Company sold its remaining shares of Woongjin Energy on the open market for total proceeds which equaled the remaining investment carrying balance. As a result, the Company's percentage equity ownership and investment carrying balance was reduced to zero.

The Company accounted for its former investment in Woongjin Energy using the equity method as the Company was able to exercise significant influence over Woongjin Energy due to its board position and its consumption of a significant portion of their output.

## **Note 12. DEBT AND CREDIT SOURCES**

The following table summarizes the Company's outstanding debt as of December 30, 2012 and the related maturity dates:

(In thousands)	Face Value	Payments Due by Period						
		2013	2014	2015	2016	2017	Beyond 2017	
Convertible debt:								
4.50% debentures	\$ 250,000	\$ —	\$ —	\$ 250,000	\$ —	\$ —	\$ —	
4.75% debentures	230,000	—	230,000	—	—	—	—	
0.75% debentures	79	—	—	79	—	—	—	
IFC mortgage loan	75,000	12,500	15,000	15,000	15,000	15,000	2,500	
CEDA loan	30,000	—	—	—	—	—	30,000	
Credit Agricole revolving credit facility	275,000	—	275,000	—	—	—	—	
Other debt (1)	1,368	134	78	84	44	—	1,028	
	\$ 861,447	\$ 12,634	\$ 520,078	\$ 265,163	\$ 15,044	\$ 15,000	\$ 33,528	

- (1) The balance of Other debt excludes payments related to capital leases which are disclosed in Note 10. "Commitments and Contingencies" to these consolidated financial statements.

## Convertible Debt

The following table summarizes the Company's outstanding convertible debt:

(In thousands)	December 30, 2012			January 1, 2012		
	Carrying Value	Face Value	Fair Value (1)	Carrying Value	Face Value	Fair Value (1)
Convertible debt:						
4.50% debentures	\$ 208,550	\$ 250,000	\$ 228,750	\$ 193,189	\$ 250,000	\$ 205,905
4.75% debentures	230,000	230,000	218,960	230,000	230,000	200,967
1.25% debentures	—	—	—	196,710	198,608	197,615
0.75% debentures	79	79	79	79	79	79
	<u>\$ 438,629</u>	<u>\$ 480,079</u>	<u>\$ 447,789</u>	<u>\$ 619,978</u>	<u>\$ 678,687</u>	<u>\$ 604,566</u>

- (1) The fair value of the convertible debt was determined using Level 1 inputs based on quarterly market prices as reported by an independent pricing source.

### 4.50% Debentures

In fiscal 2010, the Company issued \$250.0 million in principal amount of its 4.50% senior cash convertible debentures ("4.50% debentures"). Interest is payable semi-annually, on March 15 and September 15 of each year, at a rate of 4.50% per annum which commenced on September 15, 2010. The 4.50% debentures mature on March 15, 2015 unless repurchased or converted in accordance with their terms prior to such date.

The 4.50% debentures are convertible only into cash, and not into shares of the Company's common stock (or any other securities). Prior to December 15, 2014, if the weighted average price of the Company's common stock is more than 130% of the then current conversion price for at least 20 out of 30 consecutive trade days in the last month of the fiscal quarter, then holders of the 4.50% debentures have the right to convert the debentures any day in the following fiscal quarter and, thereafter, they will be convertible at any time, based on an initial conversion price of \$22.53 per share of the Company's common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, the Company will deliver an amount of cash calculated by reference to the price of its common stock over the applicable observation period. The Company may not redeem the 4.50% debentures prior to maturity. Holders may also require the Company to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable.



The embedded cash conversion option within the 4.50% debentures and the \$30.0 million over-allotment option related to the 4.50% debentures are derivative instruments that are required to be separated from the 4.50% debentures and accounted for separately as derivative instruments (derivative liabilities) with changes in fair value reported in the Company's Consolidated Statements of Operations until such transactions settle or expire. The initial fair value liability of the embedded cash conversion option and over-allotment option were classified within "Other long-term liabilities" and simultaneously reduced the carrying value of "Convertible debt, net of current portion" in the Company's Consolidated Balance Sheet. On April 5, 2010, the initial purchasers of the 4.50% debentures exercised the \$30.0 million over-allotment option in full.

During fiscal 2012 and 2011, the Company recognized a non-cash gain of \$1.6 million and \$34.0 million, respectively, recorded in "Gain on mark-to-market derivatives" in the Company's Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option. In fiscal 2010, the Company recognized a non-cash gain of \$45.2 million in "Gain on mark-to-market derivatives" in the Company's Consolidated Statement of Operations related to the change in the fair value of the embedded cash conversion option and the over-allotment option.

In fiscal 2012, 2011 and 2010, the Company recognized \$15.2 million, \$13.4 million, and \$7.4 million in non-cash interest expense, respectively, related to the amortization of the debt discount on the 4.50% debentures. As of December 30, 2012 the remaining periods over which the unamortized debt discount will be recognized is as follows:

<b>(In thousands)</b>	<b>Debt Discount</b>
2013	\$ 17,340
2014	19,748
2015	4,362
	<u>\$ 41,450</u>

### ***Call Spread Overlay with Respect to 4.50% Debentures ("CSO2015")***

Concurrent with the issuance of the 4.50% debentures, the Company entered into privately negotiated convertible debenture hedge transactions (collectively, the "4.50% Bond Hedge") and warrant transactions (collectively, the "4.50% Warrants" and together with the 4.50% Bond Hedge, the "CSO2015"), with certain of the initial purchasers of the 4.50% cash convertible debentures or their affiliates. The CSO2015 transactions represent a call spread overlay with respect to the 4.50% debentures, whereby the cost of the 4.50% Bond Hedge purchased by the Company to cover the cash outlay upon conversion of the debentures is reduced by the sales prices of the 4.50% Warrants. Assuming full performance by the counterparties (and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures), the transactions effectively reduce the Company's potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

Under the terms of the 4.50% Bond Hedge, the Company bought from affiliates of certain of the initial purchasers options to acquire, at an exercise price of \$22.53 per share, subject to customary adjustments for anti-dilution and other events, cash in an amount equal to the market value of up to 11.1 million shares of the Company's common stock. Under the terms of the original 4.50% Warrants the Company sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, at an exercise price of \$27.03 per share, subject to customary adjustments for anti-dilution and other events, cash in an amount equal to the market value of up to 11.1 million shares of the Company's common stock. On December 23, 2010, the Company amended and restated the original 4.50% Warrants so that the holders would, upon exercise, no longer receive cash but instead would acquire up to 11.1 million shares of the Company's common stock. Each 4.50% Bond Hedge and 4.50% Warrant transaction is a separate transaction, entered into by the Company with each counterparty, and is not part of the terms of the 4.50% debentures. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, the Company and the counter parties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00.

The 4.50% Bond Hedge, which is indexed to the Company's common stock, is a derivative instrument that requires mark-to-market accounting treatment due to the cash settlement features until such transactions settle or expire. The original 4.50% Warrants was a derivative instrument that required mark-to-market accounting until their amendment on December 23, 2010. The initial fair value of the 4.50% Bond Hedge and the original 4.50% Warrants was classified as "Other long-term assets" in the Company's Consolidated Balance Sheets.

During the years ended December 30, 2012 and January 1, 2012, the Company recognized a non-cash loss of \$1.6 million and \$34.0 million, respectively, in ""Gain on mark-to-market derivatives" in the Company's Consolidated Statement of

Operations" in the Company's Consolidated Statement of Operations related to the change in fair value of the 4.50% Bond Hedge. In fiscal 2010, the Company recognized a non-cash loss of \$9.4 million in "Gain on mark-to-market derivatives" in the Company's Consolidated Statement of Operations related to the net change in the fair value of the 4.50% Bond Hedge and the original 4.50% Warrants.

#### **4.75% Debentures**

In May 2009, the Company issued \$230.0 million in principal amount of its 4.75% senior convertible debentures ("4.75% debentures"). Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of the Company's common stock at a conversion price equal to \$26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as described in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require the Company to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

#### ***Call Spread Overlay with Respect to the 4.75% Debentures ("CSO2014")***

Concurrent with the issuance of the 4.75% debentures, the Company entered into certain convertible debenture hedge transactions (the "4.75% Bond Hedge") and warrant transactions (the "4.75% Warrants") with affiliates of certain of the underwriters of the 4.75% debentures (the "CSO2014"), whereby the cost of the 4.75% Bond Hedges purchased by the Company to cover the potential share outlays upon conversion of the debentures is reduced by the sales prices of the 4.75% Warrants. The CSO2014 are not subject to mark-to-market accounting treatment since they may only be settled by issuance of the Company's common stock.

The 4.75% Bond Hedge allows the Company to purchase up to 8.7 million shares of the Company's common stock. The 4.75% Bond Hedge will be settled on a net share basis. Each 4.75% Bond Hedge and 4.75% Warrant is a separate transaction, entered into by the Company with each counterparty, and is not part of the terms of the 4.75% debentures. Holders of the 4.75% debentures do not have any rights with respect to the 4.75% Bond Hedges and 4.75% Warrants. The exercise prices of the 4.75% Bond Hedge are \$26.40 per share of the Company's common stock, subject to customary adjustment for anti-dilution and other events.

Under the 4.75% Warrants, the Company sold warrants to acquire up to 8.7 million shares of the Company's common stock at an exercise price of \$38.50 per share of the Company's common stock, subject to adjustment for certain anti-dilution and other events. The 4.75% Warrants expire in 2014. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, the Company and the counterparties to the 4.75% Warrants agreed to reduce the exercise price of the 4.75% Warrants from \$38.50 to \$26.40, which is no longer above the conversion price of the 4.75% debentures.

#### **1.25% Debentures**

In fiscal 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures and received net proceeds of \$194.0 million. During the fourth quarter of fiscal 2008, the Company received notices for the conversion of \$1.4 million in principal amount of the 1.25% debentures which it settled for \$1.2 million in cash and 1,000 shares of common stock. As of January 1, 2012, an aggregate principal amount of \$198.6 million of the 1.25% debentures remained issued and outstanding. The 1.25% debentures had a maturity date of February 15, 2027 unless repurchased or converted in accordance with their terms prior to such date. Holders had the option to require the Company to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if the Company experiences certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. In addition, the Company could redeem some or all of the 1.25% debentures on or after February 15, 2012. Accordingly, the Company classified the 1.25% debentures as short-term liabilities in the Consolidated Balance Sheets as of January 1, 2012. On February 16, 2012, based upon the exercise of the holders' put rights, the Company repurchased \$198.6 million in principal amount of the 1.25% debentures at a cash price of \$199.8 million, representing 100% of the principal amount of the 1.25% debentures plus accrued and unpaid interest. None of the 1.25% debentures remained issued and outstanding after the repurchase.

#### ***July 2007 Share Lending Arrangement***

Concurrent with the offering of the 0.75% debentures, the Company lent 1.8 million shares of its former class A common stock to CSI, an affiliate of Credit Suisse Securities (USA) LLC ("Credit Suisse"), one of the underwriters of the 0.75% debentures. The loaned shares were to be used to facilitate the establishment by investors in the 1.25% debentures and 0.75% debentures of hedged positions in the Company's common stock. The Company did not receive any proceeds from these offerings of former class A common stock, but received a nominal lending fee of \$0.001 per share for each share of common stock that is loaned under the share lending agreements described below.

Share loans under the share lending agreement terminate and the borrowed shares must be returned to the Company under the following circumstances: (i) CSI may terminate all or any portion of a loan at any time; (ii) the Company may terminate any or all of the outstanding loans upon a default by CSI under the share lending agreement, including a breach by CSI of any of its representations and warranties, covenants or agreements under the share lending agreement, or the bankruptcy or administrative proceeding of CSI; or (iii) if the Company enters into a merger or similar business combination transaction with an unaffiliated third party (as defined in the agreement). In addition, CSI has agreed to return to the Company any borrowed shares in its possession on the date anticipated to be five business days before the closing of certain merger or similar business combinations described in the share lending agreement. Except in limited circumstances, any such shares returned to the Company cannot be re-borrowed. Any shares loaned to CSI are considered issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares have all of the rights of a holder of the Company's outstanding shares, including the right to vote the shares on all matters submitted to a vote of the Company's stockholders and the right to receive any dividends or other distributions that the Company may pay or make on its outstanding shares of common stock. However, CSI agreed that it will not participate in shareholder voting matters and further agreed to pay to the Company an amount equal to any dividends or other distributions that the Company pays on the borrowed shares.

While the share lending agreement does not require cash payment upon return of the shares, physical settlement is required (i.e., the loaned shares must be returned at the end of the arrangement). In view of this share return provision and other contractual undertakings of CSI in the share lending agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, historically the loaned shares were not considered issued and outstanding for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share.

As of January 1, 2012, the fair value of the 1.8 million outstanding loaned shares of common stock was \$11.2 million. In connection with the Company's repurchase of 100% of the principal amount of the 1.25% debentures, on February 23, 2012, the 1.8 million shares of the Company's common stock lent to CSI were returned and the share lending agreement was thereby terminated.

## **Other Debt and Credit Sources**

### ***Mortgage Loan Agreement with IFC***

On May 6, 2010, the Company entered into a mortgage loan agreement with IFC. Under the loan agreement, the Company may borrow up to \$75.0 million during the first two years, and shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. On October 3, 2012, IFC granted a temporary waiver of a financial covenant for the fourth quarter of fiscal 2012 through the fourth quarter of fiscal 2013. Subsequent to the waiver, the Company is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings through January 5, 2013; interest of LIBOR plus 4.25% per annum on outstanding borrowings from January 6, 2013 through September 30, 2013; interest of LIBOR plus 5% per annum on outstanding borrowings from October 1, 2013 through January 5, 2014; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. If we utilize the waiver for the fourth quarter of 2013, the 2013 rates would continue to apply in 2014. If the Company does not need to utilize the waiver, it is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; a front-end fee of 1% on the principal amount of borrowings at the time of borrowing; and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. The Company may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. The Company has pledged certain assets as collateral supporting its repayment obligations. Additionally, in accordance with the terms of the agreement, the Company is required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date. As of December 30, 2012 and January 1, 2012, the Company had restricted cash and cash equivalents of \$6.4 million and \$1.3 million, respectively, related to the IFC debt service reserve.

The Company's outstanding borrowings under the mortgage loan agreement with IFC on its Consolidated Balance Sheets are as follows:

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Short-term debt	\$ 12,500	\$ —
Long-term debt	62,500	75,000
	<u>\$ 75,000</u>	<u>\$ 75,000</u>

#### *Loan Agreement with California Enterprise Development Authority ("CEDA")*

On December 29, 2010, the Company borrowed the proceeds of the \$30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. The Company's obligations under the loan agreement are contained in a promissory note dated December 29, 2010 issued by the Company to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds initially bore interest at a variable interest rate (determined weekly), but in June 2011, at the Company's option, were converted into fixed-rate bonds at 8.50% per annum (which include covenants of, and other restrictions on the Company). Additionally, in accordance with the terms of the loan agreement, the Company is required to keep all loan proceeds on deposit with Wells Fargo, the trustee, until funds are withdrawn by it for use in relation to the design and leasehold improvements of its new corporate headquarters in San Jose, California. As of December 30, 2012 and January 1, 2012, the Company had restricted cash and cash equivalents of \$3.0 million and \$10.0 million, respectively, for design and leasehold improvements and debt service reserves under the CEDA loan agreement.

Concurrently with the execution of the loan agreement and the issuance of the Bonds by CEDA, the Company entered into a reimbursement agreement with Barclays Capital Inc. ("Barclays") pursuant to which the Company caused Barclays to deliver to Wells Fargo a direct-pay irrevocable letter of credit in the amount of \$30.4 million (an amount equal to the principal amount of the Bonds plus 38 days' interest thereon). The letter of credit permitted Wells Fargo to draw funds to pay the Company's obligations to pay principal and interest on the Bonds and, in the event the Bonds are redeemed or tendered for purchase, the redemption price or purchase price thereof. Under the reimbursement agreement, the Company deposited \$31.8 million in a sequestered account with Barclays, subject to an account control agreement, which funds collateralized the letter of credit pursuant to a cash collateral account pledge agreement entered into by the Company and Barclays on December 29, 2010.

On June 1, 2011, the Bonds were converted to bear interest at a fixed rate of 8.50% to maturity and the holders' rights to tender the Bonds prior to their stated maturity was removed. Following the conversion of the Bonds to a fixed rate instrument on June 1, 2011 (for which the letter of credit is no longer required), Barclays returned \$31.8 million of the deposit, plus the remaining unspent funds and interest earnings, to the Company. In addition, the letter of credit terminated on June 16, 2011, and the Company's obligations under the reimbursement agreement, the cash collateral account pledge agreement and the related account control agreement were thereby terminated.

The Company's outstanding borrowings under the loan agreement with CEDA on its Consolidated Balance Sheets is as follows:

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Long-term debt	\$ 30,000	\$ 30,000

#### *September 2011 Revolving Credit Facility with Credit Agricole*

On September 27, 2011, the Company entered into a revolving credit agreement with Credit Agricole, as administrative agent, and certain financial institutions, under which the Company may borrow up to \$275.0 million until September 27, 2013. Amounts borrowed may be repaid and reborrowed until September 27, 2013.

On December 24, 2012, the Company amended the facility to reflect Total S.A.'s guarantee of its obligations under the facility. The facility amendment extended the maturity date to January 31, 2014, reduced interest rates payable and removed certain financial and restrictive covenants. Subsequent to the amendment, the Company is required to pay interest on outstanding borrowings of (a) with respect to any LIBOR loan, 0.6% plus the LIBOR divided by a percentage equal to one

minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; and (b) with respect to any alternative base loan, 0.25% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBOR plus 1%; and a commitment fee equal to 0.06% per annum on funds available for borrowing and not borrowed.

The Company's outstanding borrowings under the revolving credit facility with Credit Agricole on its Consolidated Balance Sheets is as follows:

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Long-term debt	\$ 275,000	\$ 250,000

#### ***Liquidity Support Agreement with Total S.A.***

On February 28, 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances (see Note 2). As of December 30, 2012, \$325.0 million remained available to the Company under the facility.

#### ***Other Debt***

Other debt is comprised of non-recourse project loans related to Tenesol established in 2003 and 2008 which are scheduled to mature through 2028 and totaled \$1.1 million and \$1.2 million as of December 30, 2012 and January 1, 2012, respectively. Also, the Company's sublessor has made improvements to one of the Company's operating leases, reimbursable by the Company at monthly installments over the remaining lease term. The outstanding balance of the loan as of December 30, 2012 is \$0.3 million.

On November 9, 2011, the Company entered into a short-term construction loan agreement with a third party financial institution under which the Company may obtain non-recourse financing up to \$31.4 million to facilitate the development of an 18 MW utility and power plant project under construction in California. The Company was required to pay interest of LIBOR plus 2.50% per annum. In the second and third quarters of fiscal 2012 the Company received funds under the construction loan agreement totaling \$27.6 million, which was fully repaid on October 23, 2012.

The Company's outstanding project loans on its Consolidated Balance Sheets are as follows:

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Short-term debt	\$ 134	\$ —
Long-term debt	1,234	1,240
	<u>\$ 1,368</u>	<u>\$ 1,240</u>

#### ***August 2011 Letter of Credit Facility with Deutsche Bank***

On August 9, 2011, the Company entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions, which was amended on December 20, 2011. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement. The letter of credit facility provides for the issuance, upon request by the Company, of letters of credit by the issuing banks thereunder in order to support certain obligations of the Company, in an aggregate amount not to exceed (a) \$725.0 million until December 31, 2012; and (b) \$771.0 million for the period from January 1, 2013 through December 31, 2013. Aggregate letter of credit amounts may be increased upon the agreement of the parties but, otherwise, may not exceed (i) \$878.0 million for the period from January 1, 2014 through December 31, 2014; (ii) \$936.0 million for the period from January 1, 2015 through December 31, 2015; and (iii) \$1.0 billion for the period from January 1, 2016 through June 28, 2016. Each letter of credit issued under the letter of credit facility must have an expiration date no later than the second anniversary of the issuance of that letter of credit, provided that up to 15% of the outstanding value of the letters of credit may have an expiration date of between two and three years from the date of issuance.

As of December 30, 2012 and January 1, 2012, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled \$725.3 million and \$710.8 million, respectively.

***September 2011 Letter of Credit Facility with Deutsche Bank Trust***

On September 27, 2011, the Company entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by the Company, of letters of credit to support obligations of the Company in an aggregate amount not to exceed \$200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and the Company has entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of December 30, 2012 and January 1, 2012, letters of credit issued under the Deutsche Bank Trust facility amounted to \$17.5 million and \$51.3 million, respectively, which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

***Revolving Credit Facility with Société Générale, Milan Branch ("Société Générale")***

In fiscal 2010, the Company entered into a revolving credit facility with Société Générale under which the Company could borrow up to €75.0 million from Société Générale. On May 25, 2011 the Company entered into an amendment of its revolving credit facility with Société Générale which extended the maturity date to November 23, 2011. Under the amended facility the Company was able to borrow up to €75.0 million of which amounts borrowed could be repaid and reborrowed until October 23, 2011. The Company was required to pay interest on outstanding borrowings of (1) EURIBOR plus 3.25% per annum for advances outstanding before May 26, 2011, and (2) EURIBOR plus 2.70% for advances outstanding on May 26, 2011 or thereafter; a front-end fee of 0.50% on the available borrowing; and a commitment fee of 1% per annum on funds available for borrowing and not borrowed.

On September 27, 2011, the Company repaid €75.0 million, or approximately \$107.7 million based on the exchange rate as of that date, of outstanding borrowings plus fees, using proceeds received from the September 2011 revolving credit facility with Credit Agricole described above, and terminated the facility.

***April 2010 Letter of Credit Facility with Deutsche Bank AG New York Branch ("Deutsche Bank")***

In fiscal 2010, the Company and certain subsidiaries of the Company entered into a letter of credit facility with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. The letter of credit facility provided for the issuance, upon request by the Company, of letters of credit by the issuing bank in order to support obligations of the Company. On May 27, 2011, the Company received an additional \$25.0 million commitment from a financial institution under the Deutsche Bank letter of credit facility, which increased the aggregate amount of letters of credit that may be issued under the facility from \$375.0 million to \$400.0 million.

On August 9, 2011, the Company terminated its April 2010 letter of credit facility agreement with Deutsche Bank subsequent to the establishment of the August 2011 letter of credit facility agreement, as described above. All outstanding letters of credit under the April 2010 letter of credit facility were transferred to the August 2011 letter of credit facility and \$197.8 million in collateral as of August 9, 2011 was released to the Company.

***October 2010 Collateralized Revolving Credit Facility with Union Bank***

On October 29, 2010, the Company entered into a revolving credit facility with Union Bank. Until the maturity date of October 28, 2011, the Company was able to borrow up to \$70.0 million under the revolving credit facility. Amounts borrowed could be repaid and reborrowed until October 28, 2011. As collateral under the revolving credit facility, the Company pledged its holding of 19.4 million shares of common stock of Woongjin Energy to Union Bank.

The Company was required to pay interest on outstanding borrowings of, at its option, (1) LIBOR plus 2.75% or (2) 1.75% plus a base rate equal to the highest of (a) the federal funds rate plus 1.5%, (b) Union Bank's prime rate as announced from time to time, or (c) LIBOR plus 1.0%, per annum; a front-end fee of 0.40% on the available borrowing; and a commitment fee of 0.25% per annum on funds available for borrowing and not borrowed.

The Company repaid \$70.0 million of outstanding borrowings plus fees in the second quarter of fiscal 2011. On June 20, 2011, the Company terminated the facility and the pledge on all shares of Woongjin Energy held by the Company.

### July 2011 Uncollateralized Revolving Credit Facility with Union Bank

On July 18, 2011, the Company entered into a Credit Agreement with Union Bank under which the Company was able to borrow up to \$50.0 million from Union Bank until October 28, 2011. Amounts borrowed could be repaid and reborrowed until October 28, 2011. All outstanding amounts under the facility were due and payable on October 31, 2011. On July 18, 2011, the Company drew down \$50.0 million under the credit facility.

The Company was required to pay interest on outstanding borrowings of (1) LIBOR plus 2.75%, or (2) 1.75% plus a base rate equal to the higher of (a) the federal funds rate plus 0.50%, or (b) Union Bank's reference rate as announced from time to time; a front-end fee of 0.15% on the total amount available for borrowing; and a commitment fee of 0.50% per annum, calculated on a daily basis, on funds available for borrowing and not borrowed.

On September 27, 2011, the Company repaid \$50.0 million of outstanding borrowings plus fees, using proceeds received from the July 2011 revolving credit facility with Credit Agricole described above, and terminated the facility.

### Note 13. FOREIGN CURRENCY DERIVATIVES

The Company has non-U.S. subsidiaries that operate and sell the Company's products in various global markets, primarily in Europe. As a result, the Company is exposed to risks associated with changes in foreign currency exchange rates. It is the Company's policy to use various techniques, including entering into foreign currency derivative instruments, to manage the exposures associated with forecasted revenues, purchases of foreign sourced equipment and non-U.S. dollar denominated monetary assets and liabilities. The Company does not enter into foreign currency derivative financial instruments for speculative or trading purposes.

The Company is required to recognize derivative instruments as either assets or liabilities at fair value in its Balance Sheets. It is the Company's policy to present all derivative fair value amounts gross on its Consolidated Balance Sheets regardless of legal right of offset. The Company utilizes mid-market pricing to calculate the fair value of its option and forward contracts based on market volatilities, spot and forward rates, interest rates, and credit default swaps rates from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of December 30, 2012 and January 1, 2012, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	December 30, 2012	January 1, 2012
Assets	Prepaid expenses and other current assets		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		\$ 519	\$ 5,550
Foreign currency forward exchange contracts		—	47
		<u>\$ 519</u>	<u>\$ 5,597</u>
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		\$ 25	\$ 5,080
Foreign currency forward exchange contracts		731	23,745
		<u>\$ 756</u>	<u>\$ 28,825</u>
Liabilities	Accrued liabilities		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		\$ 387	\$ —
Foreign currency forward exchange contracts		23	105
		<u>\$ 410</u>	<u>\$ 105</u>
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		\$ 26	\$ —
Foreign currency forward exchange contracts		4,455	14,830
		<u>\$ 4,481</u>	<u>\$ 14,830</u>



Valuations are based on quoted prices in markets that are not active or for which all significant inputs are observable, directly or indirectly. The selection of a particular technique to value an over-the-counter ("OTC") foreign currency derivative depends upon the contractual term of, and specific risks inherent with, the instrument as well as the availability of pricing information in the market. The Company generally uses similar techniques to value similar instruments. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. For OTC foreign currency derivatives that trade in liquid markets, such as generic forward and option contracts, inputs can generally be verified and selections do not involve significant management judgment.

The following table summarizes the amount of unrealized gain or loss recognized in "Accumulated other comprehensive income (loss)" ("OCI") in "Stockholders' equity" in the Consolidated Balance Sheets:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Derivatives designated as cash flow hedges:			
Unrealized gain (loss) recognized in OCI (effective portion)	\$ (1,720)	\$ (32,224)	\$ 56,755
Less: Loss (gain) reclassified from OCI to revenue (effective portion)	(8,996)	30,456	(46,109)
Less: Loss reclassified from OCI to other, net (1)	—	1,593	—
Add: Loss reclassified from OCI to cost of revenue (effective portion)	—	—	12,478
Net gain (loss) on derivatives	<u>\$ (10,716)</u>	<u>\$ (175)</u>	<u>\$ 23,124</u>

- (1) During 2011, the Company reclassified from OCI to "Other, net" a net loss of \$1.6 million relating to transactions previously designated as effective cash flow hedges as the related forecasted transactions did not occur or were concluded probable not to occur in the hedge period or within the additional two month time period thereafter.

The following table summarizes the amount of gain or loss recognized in "Other, net" in the Consolidated Statements of Operations in the years ended December 30, 2012, January 1, 2012, and January 2, 2011:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Derivatives designated as cash flow hedges:			
Loss recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing) (1)	\$ (1,853)	\$ (18,235)	\$ (25,659)
Derivatives not designated as hedging instruments:			
Gain (loss) recognized in "Other, net"	\$ 3,126	\$ (3,972)	\$ 36,607

- (1) The amount of loss recognized related to the ineffective portion of derivatives was insignificant. This amount also includes a net loss of \$1.6 million reclassified from OCI to "Other, net" in the year ended January 1, 2012 relating to transactions previously designated as effective cash flow hedges as the related forecasted transactions did not occur or were concluded probable not to occur in the hedge period or within the additional two month time period thereafter.

## Foreign Currency Exchange Risk

### Designated Derivatives Hedging Cash Flow Exposure

The Company's subsidiaries have had and will continue to have material cash flows, including revenues and expenses, which are denominated in currencies other than their functional currencies. The Company's cash flow exposure primarily relates to anticipated third party foreign currency revenues and expenses. Changes in exchange rates between the Company's subsidiaries' functional currencies and other currencies in which it transacts will cause fluctuations in margin, cash flow expectations, and cash flows realized or settled. Accordingly, the Company enters into derivative contracts to hedge the value of a portion of these forecasted cash flows and to protect financial performance.

As of December 30, 2012, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of \$71.0 million and \$26.4 million, respectively. The maturity dates of the outstanding contracts as of December 30, 2012 range from January 2013 to September 2013. As of January 1, 2012, the Company had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of \$67.2 million and \$38.8 million, respectively. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of one year or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges are reclassified into revenue when third party revenue is recognized in the Consolidated Statements of Operations.

The Company expects to reclassify the majority of its net gains or losses related to these option and forward contracts that are included in accumulated other comprehensive gain as of December 30, 2012 to revenue in the next 12 months. The Company uses the spot to spot method to measure the effectiveness of its cash flow hedges. Under this method for each reporting period, the change in fair value of the forward contracts attributable to the changes in spot exchange rates (the effective portion) is reported in accumulated other comprehensive income (loss) on its consolidated balance sheet and the remaining change in fair value of the forward contract (the excluded and the ineffective portions, if any) is recognized in other income (expense), net, in its Consolidated Statement of Operations. The premium paid or time value of an option whose strike price is equal to or greater than the market price on the date of purchase is recorded as an asset in the Consolidated Balance Sheets. Thereafter, any change in value related to time value is included in "Other, net" in the Consolidated Statements of Operations.

Under hedge accounting rules for foreign currency derivatives, the Company reflects mark-to-market gains and losses on its hedged transactions in accumulated other comprehensive income (loss) rather than current earnings until the hedged transactions occur. However, if the Company determines that the anticipated hedged transactions are probable not to occur, it must immediately reclassify any cumulative market gains and losses into its Consolidated Statement of Operations. During the year ended December 30, 2012, the Company determined that all its anticipated hedged transactions were probable to occur.

### ***Non-Designated Derivatives Hedging Transaction Exposure***

Other derivatives not designated as hedging instruments consist of forward contracts used to hedge re-measurement of foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, and payables to third parties. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts, which are originally designated as cash flow hedges, and de-designates them upon recognition of the anticipated transaction to protect resulting non-functional currency monetary assets. These forward contracts as well as additional forward contracts are entered into to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts that are not designated as hedging instruments at fair value with the related gains or losses recorded in "Other, net" in the Consolidated Statements of Operations. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of December 30, 2012, the Company held option contracts and forward contracts with an aggregate notional value of zero and \$121.8 million, respectively, to hedge balance sheet exposure. These forward contracts have maturities of three month or less. The Company held option and forward contracts with an aggregate notional value of \$63.2 million and \$162.0 million, respectively, as of January 1, 2012, to hedge balance sheet exposure.

### **Credit Risk**

The Company's option and forward contracts do not contain any credit-risk-related contingent features. The Company is exposed to credit losses in the event of nonperformance by the counterparties of its option and forward contracts. The Company enters into derivative contracts with high-quality financial institutions and limits the amount of credit exposure to any single counterparty. In addition, the derivative contracts are limited to a time period of less than one year and the Company continuously evaluates the credit standing of its counterparties.

### **Note 14. INCOME TAXES**

The geographic distribution of income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees and the components of provision for income taxes are summarized below:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Geographic distribution of income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees:			
U.S. loss	\$ (140,432)	\$ (431,185)	\$ (33,795)
Non-U.S. income (loss)	(189,231)	(171,347)	217,208
Income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees	<u>\$ (329,663)</u>	<u>\$ (602,532)</u>	<u>\$ 183,413</u>
Provision for income taxes:			
Current tax benefit (expense)			
Federal	\$ —	\$ (3,105)	\$ (1,490)
State	(805)	(317)	2,683
Foreign	(28,183)	(14,112)	(25,067)
Total current tax expense	<u>\$ (28,988)</u>	<u>\$ (17,534)</u>	<u>\$ (23,874)</u>
Deferred tax benefit			
Federal	—	—	—
State	—	—	—
Foreign	7,146	326	499
Total deferred tax benefit	<u>7,146</u>	<u>326</u>	<u>499</u>
Provision for income taxes	<u>\$ (21,842)</u>	<u>\$ (17,208)</u>	<u>\$ (23,375)</u>

The provision for income taxes differs from the amounts obtained by applying the statutory U.S. federal tax rate to income before taxes as shown below:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Statutory rate	35%	35%	35%
Tax benefit (expense) at U.S. statutory rate	\$ 115,382	\$ 210,886	\$ (64,195)
Foreign rate differential	(82,017)	(73,757)	48,051
State income taxes, net of benefit	(805)	(317)	3,349
Goodwill impairment	(12,596)	(52,247)	—
Share lending arrangement	—	—	8,400
Total investment related costs	—	(2,878)	—
Tax credits (research and development/investment tax credit)	939	4,409	642
Deferred taxes not benefitted	(53,075)	(99,703)	(19,184)
Lehman settlement	17,726	—	—
Other, net	(7,396)	(3,601)	(438)
Total	<u>\$ (21,842)</u>	<u>\$ (17,208)</u>	<u>\$ (23,375)</u>

(In thousands)	As of	
	December 30, 2012	January 1, 2012
Deferred tax assets:		
Net operating loss carryforwards	\$ 118,738	\$ 68,080
Research and development credit and California manufacturing credit carryforwards	11,372	10,413
Reserves and accruals	114,125	64,482
Synthetic debt	31,921	60,772
Stock-based compensation stock deductions	13,147	10,320
Total deferred tax asset	289,303	214,067
Valuation allowance	(182,322)	(129,946)
Total deferred tax asset, net of valuation allowance	106,981	84,121
Deferred tax liabilities:		
Foreign currency derivatives unrealized gains	42	(1,971)
Other intangible assets and accruals	(32,464)	(52,938)
Equity interest in Woongjin Energy	—	(8,830)
Fixed asset basis difference	(67,473)	(20,442)
Total deferred tax liabilities	(99,895)	(84,181)
Net deferred tax liability	\$ 7,086	\$ (60)

As of December 30, 2012, the Company had federal net operating loss carryforwards of \$395.9 million for tax purposes, of which \$13.9 million relate to stock deductions and \$115.1 million relate to debt issuance, both of which will benefit equity when realized. These federal net operating loss carryforwards will expire at various dates from 2030 to 2032. As of December 30, 2012, the Company had California state net operating loss carryforwards of approximately \$227.3 million for tax purposes, of which \$20.1 million relate to stock deductions and \$76.0 million relate to debt issuance, both of which will benefit equity when realized. These California net operating loss carryforwards will expire at various dates from 2015 to 2032. The Company also had credit carryforwards of approximately \$13.8 million for federal tax purposes and \$7.9 million for state tax purposes. These federal credit carryforwards will expire at various dates from 2017 to 2031, and the California credit carryforwards do not expire. The Company's ability to utilize a portion of the net operating loss and credit carryforwards is dependent upon the Company being able to generate taxable income in future periods and may be limited due to restrictions imposed on utilization of net operating loss and credit carryforwards under federal and state laws upon a change in ownership, such as the transaction with Cypress.

The Company is subject to tax holidays in the Philippines where it manufactures its solar power products. Tax holidays in the Philippines reduce the Company's tax rate to 0% from 30%. Tax savings associated with the Philippines tax holidays were approximately \$27.3 million, \$3.9 million, and \$11.8 million in fiscal 2012, 2011, and 2010, respectively, which provided a diluted net income (loss) per share benefit of \$0.22, \$0.04, and \$0.11, respectively.

The Company has a tax ruling in Switzerland where it sells its solar power products. The ruling in Switzerland reduces the Company's tax rate to 11.5% from approximately 24.2%. Tax savings associated with this ruling was approximately \$1.8 million, \$2.3 million, and \$1.6 million in fiscal 2012, 2011, and 2010, respectively, which provided a diluted net income (loss) per share benefit of \$0.02, \$0.02, and \$0.02 in fiscal 2012, 2011, and 2010, respectively. This current tax ruling expires at the end of 2015.

As of December 30, 2012, the Company's foreign subsidiaries have accumulated undistributed earnings of approximately \$83.3 million that are intended to be indefinitely reinvested outside the United States and, accordingly, no provision for U.S. federal and state tax has been made for the distribution of these earnings. At December 30, 2012, the amount of the unrecognized deferred tax liability on the indefinitely reinvested earnings was \$33.3 million.

## Valuation Allowance

The Company's valuation allowance is related to deferred tax assets in the United States and France, and was determined by assessing both positive and negative evidence. When determining whether it is more likely than not that deferred assets are recoverable, with such assessment being required on a jurisdiction by jurisdiction basis, management believes that sufficient uncertainty exists with regard to the realizability of these assets such that a valuation allowance is necessary. Factors considered

in providing a valuation allowance include the lack of a significant history of consistent profits, the lack of consistent profitability in the solar industry, and the lack of carryback capacity to realize these assets, and other factors. Based on the absence of sufficient positive objective evidence, management is unable to assert that it is more likely than not that the Company will generate sufficient taxable income to realize these remaining net deferred tax assets. Should the Company achieve a certain level of profitability in the future, it may be in a position to reverse the valuation allowance which would result in a non-cash income statement benefit. The change in valuation allowance for fiscal 2012, 2011, and 2010 was \$52.4 million, \$125.3 million, and \$37.5 million, respectively.

## Unrecognized Tax Benefits

Current accounting guidance contains a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

A reconciliation of the beginning and ending amounts of unrecognized tax benefits during fiscal 2012, 2011, and 2010 is as follows:

(In thousands)	Year Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Balance, beginning of year	\$ 33,565	\$ 23,649	\$ 13,660
Additions for tax positions related to the current year	708	2,535	5,319
Additions for tax positions from prior years	32,493	7,381	5,092
Reductions for tax positions from prior years/statute of limitations expirations	(2,684)	—	(422)
Foreign exchange (gain) loss	(1,150)	—	—
Balance at the end of the period	<u>\$ 62,932</u>	<u>\$ 33,565</u>	<u>\$ 23,649</u>

As of December 30, 2012, the Company had net unrecognized tax benefits of \$62.9 million, \$32.7 million of which would result in a reduction of the Company's effective tax rate.

Management believes that events that could occur in the next 12 months and cause a change in unrecognized tax benefits include, but are not limited to, the following:

- commencement, continuation or completion of examinations of the Company's tax returns by the U.S. or foreign taxing authorities; and
- expiration of statutes of limitation on the Company's tax returns.

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Uncertainties include, but are not limited to, the impact of legislative, regulatory and judicial developments, transfer pricing and the application of withholding taxes. Management regularly assesses the Company's tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. Management determined that an estimate of the range of reasonably possible change in the amounts of unrecognized tax benefits within the next 12 months cannot be made.

## Classification of Interest and Penalties

The Company accrues interest and penalties on tax contingencies which are classified as "Provision for income taxes" in the Consolidated Statements of Operations. Accrued interest as of December 30, 2012 and January 1, 2012 was approximately \$3.0 million and \$1.9 million, respectively. Accrued penalties were not material for any of the periods presented.

## Tax Years and Examination

The Company files tax returns in each jurisdiction in which it is registered to do business. In the U.S. and many of the state jurisdictions, and in many foreign countries in which the Company files tax returns, a statute of limitations period exists. After a statute of limitations period expires, the respective tax authorities may no longer assess additional income tax for the

expired period. Similarly, the Company is no longer eligible to file claims for refund for any tax that it may have overpaid. The following table summarizes the Company's major tax jurisdictions and the tax years that remain subject to examination by these jurisdictions as of December 30, 2012:

<b>Tax Jurisdictions</b>	<b>Tax Years</b>
United States	2007 and onward
California	2005 and onward
Switzerland	2009 and onward
Philippines	2006 and onward
France	2010 and onward
Italy	2009 and onward

Additionally, the 2005 U.S. corporate tax return and 2004 and prior California tax returns are not open for assessment. The tax authorities can adjust net operating loss and research and development carryovers that were generated.

The Italian and French federal authorities are currently examining the Company's 2009/2010 and 2010 federal income tax returns, respectively. The Company does not expect the examination to result in a material assessment outside of existing reserves. If a material assessment in excess of current reserves results, the amount that the assessment exceeds current reserves will be a current period charge to earnings.

## **Note 15. PREFERRED STOCK AND COMMON STOCK**

### **Preferred Stock**

At December 30, 2012, the Company was authorized to issue approximately 10.0 million shares of \$0.001 par value preferred stock. As of December 30, 2012 and January 1, 2012, the Company had no preferred stock issued and outstanding.

In fiscal 2008, the Company entered into a rights agreement with Computershare Trust Company, N.A., as rights agents, which provided for the issuance of shares of Series A Junior Participating Preferred Stock to holders of the Company's former class A common stock, and the issuance of shares of Series B Junior Participating Preferred Stock to holders of its former class B common stock, in certain circumstances defined therein. On November 16, 2011, the Company amended the rights agreement as a result of the Company's reclassification of its former class A common stock and former class B common stock into a single class of common stock, as described below. Under the amended rights agreement each of the former class A and former class B Rights became a "Right" to purchase Series A Junior Participating Preferred Stock of the Company.

### **Common Stock**

On November 15, 2011, the Company's stockholders approved the reclassification of all outstanding former class A common stock and former class B common stock into a single class of common stock. The reclassification was effective November 16, 2011 upon which each share of the Company's outstanding former class A common stock and former class B common stock automatically reclassified as, and became one share of, a new single class of common stock having the same voting powers, rights and qualifications, limitations and restrictions as the former Class A common stock.

In connection with the reclassification, the Company entered into four new supplemental indentures on November 16, 2011, covering the Company's 4.50%, debentures, 4.75% debentures, 1.25% debentures and 0.75% debentures (see Note 12).

#### *Voting Rights - Common Stock*

Prior to the November 16, 2011 reclassification, holders of shares of former class B common stock were entitled to cast eight votes per share on any matters subject to a stockholder vote, and holders of share of former class A common stock were entitled to cast one vote per share. As a result of the reclassifications, all common stock holders are entitled to one vote per share on all matters submitted to be voted on by the Company's stockholders, subject to the preferences applicable to any preferred stock outstanding.

#### *Dividends - Common Stock*

All common stock holders are entitled to receive equal per share dividends when and if declared by the Board of Directors, subject to the preferences applicable to any preferred stock outstanding. The Company's credit facilities place

restrictions on the Company and its subsidiaries' ability to pay cash dividends. Additionally, the 1.25% debentures and 0.75% debentures, as amended by the associated November 16, 2011 supplemental indentures, allow the holders to convert their bonds into the Company's common stock if the Company declares a dividend that on a per share basis exceeds 10% of its common stock's market price.

As of December 30, 2012, common stock consisted of the following:

(In thousands, except share data)	December 30, 2012	January 1, 2012
Common stock, \$0.001 par value, 367,500,000 shares authorized; 123,315,990 shares issued, and 119,234,280 outstanding as of December 30, 2012; 101,851,290 shares issued, and 100,475,533 shares outstanding as of January 1, 2012	\$ 119	\$ 100

#### Shares Reserved for Future Issuance

The Company had shares of common stock reserved for future issuance as follows:

(In thousands)	December 30, 2012	January 1, 2012
Equity compensation plans	3,566	3,293

#### Note 16. NET INCOME (LOSS) PER SHARE OF COMMON STOCK

The Company calculates net income (loss) per share by dividing earnings allocated to common stockholders by the weighted average number of common shares outstanding for the period. The Company's outstanding unvested restricted stock awards are considered participating securities as they may participate in dividends, if declared, even though the awards are not vested. As participating securities, the unvested restricted stock awards are allocated a proportionate share of net income, but excluded from the basic weighted average shares. No allocation is generally made to other participating securities in the case of a net loss per share.

Prior to the November 15, 2011 reclassification, the Company had two classes of outstanding stock, class A and class B common stock. The Company therefore calculated its net income (loss) per share prior to the fourth quarter of fiscal 2011 under the two-class method. In applying the two-class method, earnings are allocated to both classes of common stock and other participating securities based on their respective weighted average shares outstanding during the period. Under the two-class method, basic weighted average shares was computed using the weighted average of the combined former class A and former class B common stock outstanding. Class A and class B common stock were considered equivalent securities for purposes of the earnings per share calculation because the holders of each class are legally entitled to equal per share distributions whether through dividends or in liquidation.

Diluted weighted average shares is computed using basic weighted average shares plus any potentially dilutive securities outstanding during the period using the if-converted method and treasury-stock-type method, except when their effect is anti-dilutive. The Company uses income from continuing operations as the control number in determining whether potential common shares are dilutive or anti-dilutive in the period it reports a discontinued operation (see Note 5). Potentially dilutive securities include stock options, restricted stock units, senior convertible debentures, amended warrants associated with the CSO2015, and the Upfront Warrants held by Total. As a result of the net loss from continuing operations for the years ended December 30, 2012 and January 1, 2012 there is no dilutive impact to the net loss per share calculation for the period.

The following table presents the calculation of basic and diluted net loss per share:



(In thousands, except per share amounts)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
<b>Basic net income (loss) per share:</b>			
<b>Numerator</b>			
Income (loss) from continuing operations	\$ (352,020)	\$ (613,737)	\$ 166,883
Less: undistributed earnings allocated to unvested restricted stock awards (1)	—	—	(258)
Income (loss) from continuing operations available to common stockholders	<u>\$ (352,020)</u>	<u>\$ (613,737)</u>	<u>\$ 166,625</u>
<b>Denominator</b>			
Basic weighted-average common shares	<u>117,093</u>	<u>97,724</u>	<u>95,660</u>
Basic net income (loss) per share from continuing operations	\$ (3.01)	\$ (6.28)	\$ 1.74
Basic net income (loss) per share from discontinued operations	—	—	0.13
Basic net income (loss) per share	<u>\$ (3.01)</u>	<u>\$ (6.28)</u>	<u>\$ 1.87</u>
<b>Diluted net income (loss) per share:</b>			
<b>Numerator</b>			
Income (loss) from continuing operations	\$ (352,020)	\$ (613,737)	\$ 166,883
Add: Interest expense incurred on 4.75% debentures, net of tax	—	—	6,664
Less: undistributed earnings allocated to unvested restricted stock awards (1)	—	—	(242)
Income (loss) from continuing operations available to common stockholders	<u>\$ (352,020)</u>	<u>\$ (613,737)</u>	<u>\$ 173,305</u>
<b>Denominator</b>			
Basic weighted-average common shares	117,093	97,724	95,660
Effect of dilutive securities:			
Stock options	—	—	990
Restricted stock units	—	—	336
4.75% debentures	—	—	8,712
Diluted weighted-average common shares	<u>117,093</u>	<u>97,724</u>	<u>105,698</u>
Diluted net income (loss) per share from continuing operations	\$ (3.01)	\$ (6.28)	\$ 1.64
Diluted net income (loss) per share from discontinued operations	—	—	0.11
Diluted net income (loss) per share	<u>\$ (3.01)</u>	<u>\$ (6.28)</u>	<u>\$ 1.75</u>

(1) Losses are not allocated to unvested restricted stock awards because such awards do not contain an obligation to participate in losses.

Holders of the Company's 4.75% debentures may convert the debentures into shares of the Company's common stock, at the applicable conversion rate, at any time on or prior to maturity. The 4.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. During fiscal 2012, 2011 and 2010, there were zero, zero, and \$8.7 million dilutive potential common shares under the 4.75% debentures, respectively.

Holders of the Company's 1.25% debentures (prior to their repurchase on February 16, 2012) and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's common stock at the applicable conversion rate, at any time on or prior to maturity. The 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-

type method. The Company's average stock price during fiscal 2012, 2011 and 2010 did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the debentures.

Holders of the Company's 4.50% debentures may, under certain circumstances at their option, convert the debentures into cash, and not into shares of the Company's common stock (or any other securities). Therefore, the 4.50% debentures are excluded from the net income per share calculation.

Holders of the amended and restated Warrants under the CSO2015, upon exercise of the 4.50% Warrants, may acquire up to 11.1 million shares of the Company's common stock at an exercise price of \$27.03. In the third quarter of fiscal 2011, as a result of the Total Tender Offer, the Company and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00 (see Note 12). If the market price per share of the Company's common stock for the period exceeds the established strike price, the 4.50% Warrants will have a dilutive effect on its diluted net income per share using the treasury-stock-type method.

The Upfront Warrants, issued on February 28, 2012, allow Total to acquire up to 9,531,677 shares of the Company's common stock at an exercise price of \$7.8685. If the market price per share of the Company's common stock for the period exceeds the established strike price, the Upfront Warrants will have a dilutive effect on its diluted net income per share using the treasury-stock-type method.

The following is a summary of outstanding anti-dilutive potential common stock which was excluded from income per diluted share in the following periods:

(In thousands)	As of		
	December 30, 2012 (1)	January 1, 2012 (1)	January 2, 2011
Stock options	320	425	309
Restricted stock units	4,435	4,943	2,803
Warrants (under the CSO2015)	*	*	*
Upfront Warrants (held by Total)	**	n/a	n/a
4.75% debentures	8,712	8,712	***
1.25% debentures	n/a	*	*
0.75% debentures	*	*	*

(1) As a result of the net loss per share for the years ended December 30, 2012 and January 1, 2012, the inclusion of all potentially dilutive stock options, restricted stock units, and common shares under the 4.75% debentures would be anti-dilutive. Therefore, those stock options, restricted stock units and shares were excluded from the computation of the weighted-average shares for diluted net loss per share for such period.

\* The Company's average stock price during fiscal 2012, 2011 and 2010 did not exceed the conversion price for the amended warrants (under the CSO2015), 1.25% debentures and 0.75% debentures and those instruments were thus non-dilutive in such periods.

\*\* The Upfront Warrants were issued in the first quarter of fiscal 2012. The Company's stock price as of the last business day in fiscal 2012 did not exceed the exercise price of the Upfront Warrants.

\*\*\* In fiscal 2010, the 4.75% debentures were dilutive under the if-converted method.

## Note 17. STOCK-BASED COMPENSATION

The following table summarizes the consolidated stock-based compensation expense by line item in the Consolidated Statements of Operations:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Cost of Americas revenue	\$ 6,181	\$ 5,974	\$ 4,415
Cost of EMEA revenue	3,851	6,183	10,074
Cost of APAC revenue	1,578	1,030	1,240
Research and development	5,005	6,166	7,555
Sales, general and administrative	25,824	25,772	31,088
Restructuring charges	—	1,611	—
Total stock-based compensation expense	<u>\$ 42,439</u>	<u>\$ 46,736</u>	<u>\$ 54,372</u>

The following table summarizes the consolidated stock-based compensation expense by type of awards:

(In thousands)	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Employee stock options	\$ 649	\$ 1,658	\$ 1,960
Restricted stock awards and units	40,996	45,223	52,481
Change in stock-based compensation capitalized in inventory	794	(145)	(69)
Total stock-based compensation expense	<u>\$ 42,439</u>	<u>\$ 46,736</u>	<u>\$ 54,372</u>

As of December 30, 2012, the total unrecognized stock-based compensation related to outstanding restricted stock units was \$41.7 million, which the Company expects to recognize over a weighted-average period of 1.7 years. There was no unrecognized stock-based compensation related to stock options as of December 30, 2012.

## Equity Incentive Programs

### *Stock-based Incentive Plans*

The Company has three stock incentive plans: the 1996 Stock Plan ("1996 Plan"), the Third Amended and Restated 2005 SunPower Corporation Stock Incentive Plan ("2005 Plan") and the PowerLight Corporation Common Stock Option and Common Stock Purchase Plan ("PowerLight Plan"). The PowerLight Plan was assumed by the Company by way of the acquisition of PowerLight in fiscal 2007. Under the terms of all three plans, the Company may issue incentive or non-statutory stock options or stock purchase rights to directors, employees and consultants to purchase common stock. The 2005 Plan was adopted by the Company's Board of Directors in August 2005, and was approved by shareholders in November 2005. The 2005 Plan replaced the 1996 Plan and allows not only for the grant of options, but also for the grant of stock appreciation rights, restricted stock grants, restricted stock units and other equity rights. The 2005 Plan also allows for tax withholding obligations related to stock option exercises or restricted stock awards to be satisfied through the retention of shares otherwise released upon vesting. The PowerLight Plan was adopted by PowerLight's Board of Directors in October 2000.

In May 2008, the Company's stockholders approved an automatic annual increase available for grant under the 2005 Plan, beginning in fiscal 2009. The automatic annual increase is equal to the lower of three percent of the outstanding shares of all classes of the Company's common stock measured on the last day of the immediately preceding fiscal quarter, 6.0 million shares, or such other number of shares as determined by the Company's Board of Directors. As of December 30, 2012, approximately 7.1 million shares were available for grant under the 2005 Plan after including the automatic annual increase of approximately 3.6 million shares. No new awards are being granted under the 1996 Plan or the PowerLight Plan.

Incentive stock options may be granted at no less than the fair value of the common stock on the date of grant. Non-statutory stock options and stock purchase rights may be granted at no less than 85% of the fair value of the common stock at the date of grant. The options and rights become exercisable when and as determined by the Company's Board of Directors, although these terms generally do not exceed ten years for stock options. Under the 1996 and 2005 Plans, the options typically vest over five years with a one-year cliff and monthly vesting thereafter. Under the PowerLight Plan, the options typically vest over five years with yearly cliff vesting. Under the 2005 Plan, the restricted stock grants and restricted stock units typically vest in three equal installments annually over three years.

The majority of shares issued are net of the minimum statutory withholding requirements that the Company pays on behalf of its employees. During fiscal 2012, 2011, and 2010, the Company withheld 905,953 shares, 784,427 shares, and 235,911 shares, respectively, to satisfy the employees' tax obligations. The Company pays such withholding requirements in cash to the appropriate taxing authorities. Shares withheld are treated as common stock repurchases for accounting and disclosure purposes and reduce the number of shares outstanding upon vesting.

#### *Other Employee Benefit Plans:*

The Company has a statutory pension plan covering its employees in the Philippines. The Company accrues for the unfunded portion of the obligation of which the outstanding liability of this pension plan was \$3.3 million and 1.5 million as of December 30, 2012 and January 1, 2012, respectively.

The Company maintains a 401(k) Savings Plan covering eligible domestic employees. During fiscal 2012, 2011, and 2010, the Company contributed \$0.7 million, \$0.7 million, and \$0.6 million, respectively, to the plan.

## Stock Options

The following table summarizes the Company's stock option activities:

	Outstanding Stock Options			
	Shares (in thousands)	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of January 3, 2010	1,899	\$ 10.62		
Exercised	(303)	2.86		
Forfeited	(101)	17.76		
Outstanding as of January 2, 2011	1,495	11.71		
Exercised	(993)	4.09		
Forfeited	(18)	30.53		
Outstanding as of January 1, 2012	484	26.62		
Exercised	(20)	2.59		
Forfeited	(70)	24.17		
Outstanding and exercisable as of December 30, 2012	394	\$ 28.27	3.51	\$ 310

The intrinsic value of options exercised in fiscal 2012, 2011, and 2010 were \$0.1 million, \$16.4 million, and \$3.0 million, respectively. There were no stock options granted in fiscal 2012, 2011, and 2010.

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of \$5.49 at December 30, 2012, which would have been received by the option holders had all option holders exercised their options as of that date. The total number of in-the-money options exercisable was 0.1 million shares as of December 30, 2012.

The following table summarizes the Company's non-vested stock options and restricted stock activities thereafter:

	Stock Options		Restricted Stock Awards and Units	
	Shares (in thousands)	Weighted-Average Exercise Price Per Share	Shares (in thousands)	Weighted-Average Grant Date Fair Value Per Share (1)
Outstanding as of January 3, 2010	343	\$ 28.52	2,736	\$ 40.33
Granted	—	—	5,251	13.43
Vested (2)	(131)	23.05	(734)	33.53
Forfeited	(101)	17.76	(1,141)	38.60
Outstanding as of January 2, 2011	111	44.85	6,112	18.36
Granted	—	—	5,349	11.79
Vested (2)	(50)	47.09	(2,255)	22.32
Forfeited	(18)	30.53	(1,836)	14.86
Outstanding as of January 1, 2012	43	48.33	7,370	13.25
Granted	—	—	5,638	5.93
Vested (2)	(30)	57.79	(2,844)	13.94
Forfeited	(13)	24.72	(1,588)	11.52
Outstanding as of December 30, 2012	—	\$ —	8,576	\$ 8.53

- (1) The Company estimates the fair value of its restricted stock awards and units at its stock price on the grant date.
- (2) Restricted stock awards and units vested include shares withheld on behalf of employees to satisfy the minimum statutory tax withholding requirements.

#### **Note 18. SEGMENT INFORMATION**

In December 2011, the Company announced a reorganization to align its business and cost structure to a regional focus in order to support the needs of its customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, the Company changed its segment reporting from its UPP Segment and R&C Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. The Company's President and Chief Executive Officer, as the CODM, has organized the Company, manages resource allocations and measures performance of the Company's activities among these three regional segments.

The CODM assesses the performance of the three regional segments using information about their revenue and gross margin after certain adjustments to reflect the substance of the revenue transactions for certain utility and power plant projects, and adding back certain non-cash expenses such as amortization of other intangible assets, stock-based compensation expense, loss on change in European government incentives, restructuring charges, accelerated depreciation associated with the Company's manufacturing step reduction program, and interest expense. In addition, the CODM assesses the performance of the segments after adding back the results of discontinued operations to revenue and gross margin. The CODM does not review asset information by segment. The following tables present revenue by segment, cost of revenue by segment and gross margin by segment, revenue by geography and revenue by significant customer. Revenue is based on the destination of the shipments. Historical results have been recast under the new segmentation.

(In thousands):	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Revenue			
Americas	\$ 1,696,348	\$ 1,266,347	\$ 632,053
EMEA	489,484	924,337	1,526,480
APAC	231,669	183,692	60,697
Total Revenue	2,417,501	2,374,376	2,219,230
Cost of revenue			
Americas	1,415,417	1,131,771	502,780
EMEA	559,993	868,330	1,159,115
APAC	195,693	148,057	47,442
Total cost of revenue	2,171,103	2,148,158	1,709,337
Gross margin	\$ 246,398	\$ 226,218	\$ 509,893
	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Revenue by region (in thousands):			
Americas (as reviewed by CODM)	\$ 1,901,159	\$ 1,452,770	\$ 632,053
Utility and power plant projects	(204,811)	(186,423)	—
Americas	<u>\$ 1,696,348</u>	<u>\$ 1,266,347</u>	<u>\$ 632,053</u>
EMEA (as reviewed by CODM)	\$ 489,291	\$ 923,688	\$ 1,537,561
Change in European government incentives	193	649	—
Revenue earned from discontinued operations	—	—	(11,081)
EMEA	<u>\$ 489,484</u>	<u>\$ 924,337</u>	<u>\$ 1,526,480</u>
APAC	<u>\$ 231,669</u>	<u>\$ 183,692</u>	<u>\$ 60,697</u>

	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
<b>Cost of revenue by region (in thousands):</b>			
Americas (as reviewed by CODM)	\$ 1,486,554	\$ 1,250,471	\$ 487,050
Utility and power plant projects	(97,648)	(147,037)	—
Amortization of intangible assets	167	404	9,513
Stock-based compensation expense	6,181	5,974	4,415
Acquisition and integration costs	14	—	—
Change in European government incentives	4,029	20,765	—
Charges on manufacturing step reduction program	8,095	—	—
Non-recurring idle equipment impairment	7,001	—	—
Non-cash interest expense	1,024	1,194	1,802
Americas	<u>\$ 1,415,417</u>	<u>\$ 1,131,771</u>	<u>\$ 502,780</u>
EMEA (as reviewed by CODM)	\$ 543,823	\$ 827,858	\$ 1,143,543
Amortization of intangible assets	2,341	858	759
Stock-based compensation expense	3,851	6,183	10,074
Acquisition and integration costs	6	—	—
Change in European government incentives	3,364	32,283	—
Charges on manufacturing step reduction program	3,667	—	—
Non-recurring idle equipment impairment	2,415	—	—
Non-cash interest expense	526	1,148	4,739
EMEA	<u>\$ 559,993</u>	<u>\$ 868,330</u>	<u>\$ 1,159,115</u>
APAC (as reviewed by CODM)	\$ 187,748	\$ 144,138	\$ 45,703
Amortization of intangible assets	—	—	134
Stock-based compensation expense	1,578	1,030	1,239
Acquisition and integration costs	2	—	—
Change in European government incentives	1,476	2,667	—
Charges on manufacturing step reduction program	2,150	—	—
Non-recurring idle equipment impairment	2,447	—	—
Non-cash interest expense	292	222	366
APAC	<u>\$ 195,693</u>	<u>\$ 148,057</u>	<u>\$ 47,442</u>
	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
<b>Gross margin by region:</b>			
Americas (as reviewed by CODM)	22 %	14%	23%
EMEA (as reviewed by CODM)	(11)%	10%	26%
APAC (as reviewed by CODM)	19 %	22%	25%
Americas	17 %	11%	20%
EMEA	(14)%	6%	24%
APAC	16 %	19%	22%



	Year ended		
	December 30, 2012	January 1, 2012	January 2, 2011
<b>Depreciation by region (in thousands):</b>			
Americas	\$ 59,120	\$ 50,352	\$ 28,362
EMEA	33,047	47,896	66,568
APAC	16,489	8,852	7,262

(As a percentage of total revenue)		Year ended		
		December 30, 2012	January 1, 2012	January 2, 2011
<b>Significant Customers:</b>	<b>Business Segment</b>			
NRG Solar, Inc.	Americas	35%	*	*
Customer B	EMEA	*	*	12%

\* denotes less than 10% during the period

## SELECTED UNAUDITED QUARTERLY FINANCIAL DATA

### Consolidated Statements of Operations

(In thousands, except per share data)		Three Months Ended			
		December 30, 2012	September 30, 2012	July 1, 2012	April 1, 2012
<b>Fiscal 2012:</b>					
Revenue	\$	678,525	\$ 648,948	\$ 595,897	\$ 494,131
Gross margin		46,877	80,773	73,500	45,248
Net loss		(144,771)	(48,538)	(84,181)	(74,530)
Net loss per share of common stock:					
Basic and diluted	\$	(1.22)	\$ (0.41)	\$ (0.71)	\$ (0.67)

(In thousands, except per share data)		Three Months Ended			
		January 1, 2012 (1)	October 2, 2011	July 3, 2011	April 3, 2011
<b>Fiscal 2011:</b>					
Revenue	\$	625,276	\$ 705,427	\$ 592,255	\$ 451,418
Gross margin		42,278	76,124	19,294	88,522
Net loss		(92,960)	(370,784)	(147,872)	(2,121)
Net loss per share of common stock:					
Basic and diluted	\$	(0.94)	\$ (3.77)	\$ (1.51)	\$ (0.02)

- (1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

### ITEM 9: CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

None.

## **ITEM 9A: CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

We maintain "disclosure controls and procedures," as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to provide reasonable assurance that information required to be disclosed in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management is required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure control and procedure also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 30, 2012 at a reasonable assurance level.

### **Management's Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Management conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria described in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 30, 2012 based on the criteria described in Internal Control-Integrated Framework issued by COSO. Management reviewed the results of its assessment with our Audit Committee.

The effectiveness of the Company's internal control over financial reporting as of December 30, 2012 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included in Item 8 of this Annual Report on Form 10-K.

### **Changes in Internal Control over Financial Reporting**

We regularly review our system of internal control over financial reporting and make changes to our processes and systems to improve controls and increase efficiency, while ensuring that we maintain an effective internal control environment. Changes may include such activities as implementing new, more efficient systems, consolidating activities, and migrating processes.

There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B: OTHER INFORMATION**

None.

## **PART III**

Certain information required by Part III is omitted from this Annual Report on Form 10-K. We intend to file a definitive Proxy Statement pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and certain information included therein is incorporated herein by reference.

### **ITEM 10. *DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE***

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2013 annual meeting of stockholders.

We have adopted a code of ethics, entitled Code of Business Conduct and Ethics, that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer, and principal accounting officer. We have made it available, free of charge, on our website at [www.sunpowercorp.com](http://www.sunpowercorp.com), and if we amend it or grant any waiver under it that applies to our principal executive officer, principal financial officer, or principal accounting officer, we will promptly post that amendment or waiver on our website as well.

### **ITEM 11: *EXECUTIVE COMPENSATION***

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2013 annual meeting of stockholders.

### **ITEM 12: *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS***

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2013 annual meeting of stockholders.

### **ITEM 13: *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE***

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2013 annual meeting of stockholders.

### **ITEM 14: *PRINCIPAL ACCOUNTANT FEES AND SERVICES***

Information appearing under this Item is incorporated herein by reference to the similarly named section in our proxy statement for the 2013 annual meeting of stockholders.

## PART IV

### ITEM 15: EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as a part of this Annual Report on Form 10-K:

1. *Financial Statements:*

	<b>Page</b>
Reports of Ernst & Young LLP, Independent Registered Public Accounting Firm	<a href="#">81</a>
Report of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm	<a href="#">83</a>
Consolidated Balance Sheets	<a href="#">84</a>
Consolidated Statements of Operations	<a href="#">85</a>
Consolidated Statements of Comprehensive Income (Loss)	<a href="#">86</a>
Consolidated Statements of Stockholders' Equity	<a href="#">87</a>
Consolidated Statements of Cash Flows	<a href="#">88</a>
Notes to Consolidated Financial Statements	<a href="#">89</a>

2. *Financial Statement Schedule:*

All financial statement schedules are omitted as the required information is inapplicable or the information is presented in the Consolidated Financial Statements or Notes to Consolidated Financial Statements under Item 8 of this Annual Report on Form 10-K.

3. *Exhibits:*

### EXHIBIT INDEX

Exhibit Number	Description
2.1	Stock Purchase Agreement, dated December 23, 2011, by and among SunPower Corporation, Total Gas & Power USA, SAS, and Total Energie Développement SAS (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011).
3.1	Restated Certificate of Incorporation of SunPower Corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011).
3.2	Amended and Restated By-Laws of SunPower Corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 7, 2012).
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
4.2	Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 8, 2007).
4.3	Form of Second Supplemental Indenture, by and between SunPower Corporation and Wells Fargo Bank, National Association (incorporated by reference to Exhibit 4.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
4.4	Third Supplemental Indenture, dated May 4, 2009, by and between SunPower Corporation and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by SunPower Corporation on May 6, 2009).
4.5	Fourth Supplemental Indenture, dated April 1, 2010, by and between SunPower Corporation and Wells Fargo, National Association as Trustee (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 6, 2010).
4.6	Sixth Supplemental Indenture, dated November 16, 2011, by and between SunPower Corporation and Wells Fargo Bank, National Association as Trustee (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011).

4.7	Seventh Supplemental Indenture, dated November 16, 2011, by and between SunPower Corporation and Wells Fargo Bank, National Association as Trustee (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011).
4.8	Eighth Supplemental Indenture, dated November 16, 2011, by and between SunPower Corporation and Wells Fargo Bank, National Association as Trustee (incorporated by reference to Exhibit 4.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011).
4.9	Amended and Restated Rights Agreement, dated November 16, 2011, by and between SunPower Corporation and Computershare Trust Company, N.A., as Rights Agent, including the form of Certificate of Designation of Series A Junior Participating Preferred Stock, the forms of Right Certificates, and the Summary of Rights attached thereto as Exhibits A, B, and C, respectively (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on November 16, 2011).
4.10	Certificate of Designation of Series A Junior Participating Preferred Stock of SunPower Corporation (incorporated by reference to Exhibit 4.6 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2011).
4.11	Amendment No. 1, dated May 10, 2012, to the Amended and Restated Rights Agreement, dated as of November 16, 2011, by and between the SunPower Corporation and Computershare Trust Company, N.A., as rights agent (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 10, 2012).
10.1	Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.2	Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.3	Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.4	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.5	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.6	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.7	Convertible Debenture Hedge Transaction Confirmation, dated March 25, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 29, 2010).
10.8	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.9	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.10	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.11	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.12	Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).

10.13	Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.14	Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.6 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009).
10.15	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.16	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.17	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.18	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.19	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.20	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.7 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.21	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.22	Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2010).
10.23†	Warrant Adjustment Notice, dated August 26, 2011, from Wachovia Bank, National Association, regarding Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).
10.24	Warrant Adjustment Notice, dated August 30, 2011, from Deutsche Bank AG, London Branch, regarding (1) Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch; (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch; and (3) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).
10.25†	Warrant Adjustment Notice, dated August 31, 2011, from Credit Suisse International, regarding (1) Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International; (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International; and (3) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).
10.26	Warrant Adjustment Notice, dated September 21, 2011, from Bank of America, N.A., regarding (1) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A.; and (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.7 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).
10.27	Warrant Adjustment Notice, dated September 21, 2011, from Barclays Bank PLC, regarding (1) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC; and (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.8 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).



10.28	Tender Offer Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.29	Amendment to Tender Offer Agreement, dated June 7, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 2.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011).
10.30	Tender Offer Agreement Guaranty, dated April 28, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 99.4 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.31	Credit Support Agreement, dated April 28, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 99.5 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.32	Amendment to Credit Support Agreement, dated June 7, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011).
10.33	Second Amendment to Credit Support Agreement, dated December 12, 2011, by and between Total S.A. and SunPower Corporation (incorporated by reference to Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011).
10.34	Third Amendment to Credit Support Agreement, dated December 14, 2012, by and between SunPower Corporation and Total S.A.
10.35	Affiliation Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.6 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.36	Amendment to Affiliation Agreement, dated June 7, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011).
10.37	Second Amendment to Affiliation Agreement, dated December 23, 2011, by and between Total G&P and SunPower Corporation (incorporated by reference to Exhibit 10.4 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011).
10.38	Amendment No. 3 to Affiliation Agreement, dated February 28, 2012, by and between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.91 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.39	Amendment No. 4 to Affiliation Agreement, dated August 10, 2012, by and between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2012).
10.40	Affiliation Agreement Guaranty, dated April 28, 2011, between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 99.7 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.41	Research & Collaboration Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.8 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.42	Amendment to Research & Collaboration Agreement, dated June 7, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.3 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 7, 2011).
10.43	Registration Rights Agreement, dated April 28, 2011, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 99.9 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 12, 2011).
10.44	Private Placement Agreement, dated December 23, 2011, by and between Total Gas & Power USA, SAS and SunPower Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011).
10.45	Master Agreement, dated December 23, 2011, by and among SunPower Corporation, Total Gas & Power USA, SAS, and Total S.A. (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011).
10.46^	SunPower Corporation 1996 Stock Plan and form of agreements there under (incorporated by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.47^	SunPower Corporation 2005 Stock Unit Plan (incorporated by reference to Exhibit 10.28 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005).

10.48^	Third Amended and Restated SunPower Corporation 2005 Stock Incentive Plan and forms of agreements there under (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on November 17, 2011).
10.49^	PowerLight Corporation Common Stock Option and Common Stock Purchase Plan (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.50^	Form of PowerLight Corporation Incentive/Non-Qualified Stock Option, Market Standoff and Stock Restriction Agreement (Employees) (incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.51^	Outside Director Compensation Policy, as amended on June 15, 2011 (incorporated by reference to Exhibit 10.17 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2011).
10.52^	Form of Employment Agreement for Executive Officers (incorporated by reference to Exhibit 10.16 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 19, 2010).
10.53^	SunPower Corporation Management Career Transition Plan (incorporated by reference to Exhibit 10.17 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 19, 2010).
10.54^*	SunPower Corporation Executive Quarterly Key Initiative Bonus Plan (amended and restated February 19, 2013).
10.55^	SunPower Corporation Annual Executive Bonus Plan (incorporated by reference to Exhibit 10.19 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 19, 2010).
10.56^	Form of Indemnification Agreement for Directors and Officers (incorporated by reference to Exhibit 10.55 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.57^	Form of Retention Agreement, dated May 20, 2011, by and between SunPower Corporation and certain executive officers (incorporated by reference to Exhibit 10.13 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2011).
10.58^	Amended and Restated Employment Agreement, dated December 23, 2011, by and between SunPower Corporation and Dennis Arriola (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 23, 2011).
10.59^	Amended and Restated Employment Agreement, dated October 27, 2011, by and between SunPower Corporation and Bruce Ledesma (incorporated by reference to Exhibit 10.58 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.60†	Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation (incorporated by reference to Exhibit 10.13 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.61	Guarantee Agreement, dated May 6, 2010, by and between SunPower Corporation and International Finance Corporation (incorporated by reference to Exhibit 10.14 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).
10.62	Amendment No. 1 to Loan Agreement, dated November 2, 2010, by and between SunPower Philippines Manufacturing Ltd. and International Finance Corporation (incorporated by reference to Exhibit 10.42 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 28, 2011).
10.63*	Mortgage Supplement No. 1, dated November 3, 2010, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation.
10.64*	Mortgage Supplement No. 2, dated October 9, 2012, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation.
10.65	Loan Agreement, dated December 1, 2010, by and among California Enterprise Development Authority and SunPower Corporation, relating to \$30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (incorporated by reference to Exhibit 10.50 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 28, 2011).

First Supplement to Loan Agreement, dated June 1, 2011, by and between California Enterprise Development Authority and SunPower Corporation, relating to \$30,000,000 California Enterprise Development Authority Tax Exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (incorporated by reference to Exhibit 10.16 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2011).

10.66

Letter of Credit Facility Agreement, dated August 9, 2011, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).

10.67†

First Amendment to Letter of Credit Facility Agreement, dated December 20, 2011, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.65 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).

10.68†

Second Amendment to Letter of Credit Facility Agreement, dated December 19, 2012, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch.

10.69\*

Revolving Credit Agreement, dated September 27, 2011, by and among SunPower Corporation, Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto (incorporated by reference to Exhibit 10.9 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).

10.70

First Amendment to Revolving Credit Agreement, dated December 21, 2011, by and among SunPower Corporation, Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto (incorporated by reference to Exhibit 10.67 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).

10.71

Second Amendment to Revolving Credit Agreement, dated June 29, 2012, by and among SunPower Corporation and Credit Agricole Corporate and Investment Bank, as administrative agent for the Lenders (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 9, 2012).

10.72

Third Amendment to Revolving Credit Agreement, dated December 24, 2012 by and among SunPower Corporation and Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto.

10.73\*

Continuing Agreement for Standby Letters of Credit and Demand Guarantees, dated September 27, 2011, by and among SunPower Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.10 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).

10.74

Security Agreement, dated September 27, 2011, by and among SunPower Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch (incorporated by reference to Exhibit 10.11 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 10, 2011).

10.75

Joint Venture Agreement, dated May 27, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.15 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 13, 2010).

10.76†

Amendment No. 1 to Joint Venture Agreement, dated June 29, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).

10.77

Amendment No. 2 to Joint Venture Agreement, dated July 5, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).

10.78

Supply Agreement, dated July 5, 2010, by and among AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.), SunPower Systems, Sarl and AU Optronics Singapore Pte. Ltd. (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).

10.79†

License and Technology Agreement, dated July 5, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd. and AUO SunPower Sdn. Bhd. (formerly known as SunPower Malaysia Manufacturing Sdn. Bhd.) (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2010).

10.80

10.81	Tax Sharing Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.82	Amendment No. 1 to Tax Sharing Agreement, dated August 12, 2008, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
10.83	Liquidity Support Agreement, dated February 28, 2012, by and among SunPower Corporation, Total S.A. and the U.S. Department of Energy, acting by and through the Secretary of Energy (incorporated by reference to Exhibit 10.89 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.84	Compensation and Funding Agreement, dated February 28, 2012, by and between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.90 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.85	Amendment No. 1 to Compensation and Funding Agreement, dated August 10, 2012, by and between SunPower Corporation and Total S.A. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2012).
10.86	Warrant to Purchase Common Stock, dated February 28, 2012, issued to Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.92 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.87†	Revolving Credit and Convertible Loan Agreement, dated February 28, 2012, by and between Total Gas & Power USA, SAS and SunPower Corporation (incorporated by reference to Exhibit 10.93 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.88	Private Placement Agreement, dated February 28, 2012, by and between Total Gas & Power USA, SAS and SunPower Corporation (incorporated by reference to Exhibit 10.94 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.89	Form of Warrant to Purchase Common Stock, issued by SunPower Corporation to Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.95 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.90	Form of Guarantee from Total S.A. and Bank (incorporated by reference to Exhibit 10.96 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.91	Form of Convertible Term Loan Note, issued by SunPower Corporation to Holder (incorporated by reference to Exhibit 10.97 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.92	Revolving Loan Note, dated February 28, 2012, issued by SunPower Corporation to Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.98 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.93	Form of Terms Agreement, between SunPower Corporation and Total Gas & Power USA, SAS (incorporated by reference to Exhibit 10.99 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012).
10.94*	Waiver Letter, dated October 3, 2012, from the International Finance Corporation.
10.95†	Engineering, Procurement and Construction Agreement, dated September 30, 2011 by and between High Plains Ranch II, LLC and SunPower Corporation, Systems (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 2, 2012).
10.96*†	Engineering, Procurement and Construction Agreement (Antelope Valley Solar Project 308.97MW at the Delivery Point), dated December 28, 2012, by and between SunPower Corporation, Systems and Solar Star California XIX, LLC.
10.97*†	Engineering, Procurement and Construction Agreement (Antelope Valley Solar Project 270.18 MW at the Delivery Point), dated December 28, 2012, by and between SunPower Corporation, Systems and Solar Star California XX, LLC.
10.98*	Amendment No. 1 to Master Agreement, dated February 20, 2013, by and among SunPower Corporation, Total Gas & Power U.S.A. SAS and Total S.A.
21.1*	List of Subsidiaries.
23.1*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney.
31.1*	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).

31.2*	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1*	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*+	XBRL Instance Document.
101.SCH*+	XBRL Taxonomy Schema Document.
101.CAL*+	XBRL Taxonomy Calculation Linkbase Document.
101.LAB*+	XBRL Taxonomy Label Linkbase Document.
101.PRE*+	XBRL Taxonomy Presentation Linkbase Document.
101.DEF*+	XBRL Taxonomy Definition Linkbase Document.

Exhibits marked with a carrot (^) are director and officer compensatory arrangements.

Exhibits marked with an asterisk (\*) are filed herewith.

Exhibits marked with an extended cross (†) are subject to a request for confidential treatment filed with the Securities and Exchange Commission.

Exhibits marked with a cross (+) are XBRL (Extensible Business Reporting Language) information furnished and not filed herewith, are not a part of a registration statement or Prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, are deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise are not subject to liability under these sections.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereto duly authorized.

**SUNPOWER CORPORATION**

Dated: February 22, 2013

By: /s/ CHARLES D. BOYNTON

**Charles D. Boynton**  
**Executive Vice President and**  
**Chief Financial Officer**

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/S/ THOMAS H. WERNER</u> Thomas H. Werner	President, Chief Executive Officer and Director (Principal Executive Officer)	February 22, 2013
<u>/S/ CHARLES D. BOYNTON</u> Charles D. Boynton	Executive Vice President and Chief Financial Officer (Principal Accounting Officer)	February 22, 2013
<u>/S/ ERIC BRANDERIZ</u> Eric Branderiz	Senior Vice President, Corporate Controller and Principal Accounting Officer (Principal Accounting Officer)	February 22, 2013
<u>*</u> Arnaud Chaperon	Director	February 22, 2013
<u>*</u> Bernard Clement	Director	February 22, 2013
<u>*</u> Denis Giorno	Director	February 22, 2013
<u>*</u> Thomas R. McDaniel	Director	February 22, 2013
<u>*</u> Jerome Schmitt	Director	February 22, 2013
<u>*</u> Humbert de Wendel	Director	February 22, 2013
<u>*</u> Patrick Wood III	Director	February 22, 2013

\*By: /S/ CHARLES D. BOYNTON  
Charles D. Boynton  
Power of Attorney

## Index to Exhibits

Exhibit Number	Description
10.34*	Third Amendment to Credit Support Agreement, dated December 14, 2012, by and between SunPower Corporation and Total S.A.
10.54 <sup>^</sup> *	SunPower Corporation Executive Quarterly Key Initiative Bonus Plan (amended and restated February 19, 2013).
10.63*	Mortgage Supplement No. 1, dated November 3, 2010, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation.
10.64*	Mortgage Supplement No. 2, dated October 9, 2012, by and between SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation.
10.69*	Second Amendment to Letter of Credit Facility Agreement, dated December 19, 2012, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch.
10.73*	Third Amendment to Revolving Credit Agreement, dated December 24, 2012, by and among SunPower Corporation and Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto.
10.94*	Waiver Letter, dated October 3, 2012, from the International Finance Corporation
10.96*†	Engineering, Procurement and Construction Agreement (Antelope Valley Solar Project 308.97MW at the Delivery Point), dated December 28, 2012, by and between SunPower Corporation, Systems and Solar Star California XIX, LLC.
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### THIRD AMENDMENT TO CREDIT SUPPORT AGREEMENT

This Third Amendment (this “**Amendment**”) to the Credit Support Agreement, dated as of April 28, 2011, as amended by that Amendment to Credit Support Agreement, dated as of June 7, 2011 and that Second Amendment to Credit Support Agreement, dated December 12, 2011 (as so amended and as further as amended, modified, supplemented, extended or restated from time to time, the “**Credit Support Agreement**”), by and between Total S.A., a *société anonyme* organized under the laws of the Republic of France (the “**Guarantor**”), and SunPower Corporation, a Delaware corporation (the “**Company**”), is made and entered into as of December 14, 2012 by and between the Guarantor and the Company. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given to them in the Credit Support Agreement.

#### WITNESSETH

WHEREAS, the Guarantor and the Company desire to amend certain terms of the Credit Support Agreement to support the Company's performance of construction services related to the CVSR Project.

NOW, THEREFORE, in consideration of the foregoing premises and the matters set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound, the Guarantor and the Company hereby agree as follows:

1. **Amendment to Credit Support Agreement.** Section 2(b)(iv) of the Credit Support Agreement is hereby amended and restated in its entirety to read as follows:

“(iv) such Proposed Facility does not permit the issuance of L/Cs for any obligations of the Company or a Wholly-Owned Subsidiary other than (A) performance guarantees (for a period of up to two (2) years after completion of the applicable project) and completion guarantees (until completion of the applicable project) of the Company or such Wholly-Owned Subsidiary with respect to engineering, procurement and construction services provided in connection with the Company's UPP and LComm businesses (including replacing unguaranteed L/Cs in existence as of the Effective Date for such purposes with new L/Cs to be issued under such Proposed Facility), (B) performance guarantees for engineered hardware packages not including engineering, procurement and construction services for UPP projects for a period of up to two (2) years after completion of the applicable project, (C) the Other Permitted Purposes for a period of up to two (2) years, (D) certain purchase, repayment and tax indemnity obligations of the Company or a Wholly-Owned Subsidiary existing as of the Effective Date supported by no more than three (3) L/Cs (of which two (2) L/Cs in an aggregate face amount of €10,675,609 relate to the Montalto Project and one (1) L/C in a face amount of \$40,000,000 relates to the NorSun Supply Agreement) (which existing L/Cs will be replaced by L/Cs issued pursuant to a Guaranteed Facility with an expiration date no later than the fifth anniversary of the Effective Date); and, (E) until January 15, 2015, letters of credit or demand guarantees that relate to the California Valley Solar Ranch project of the Company, issued pursuant to that certain Continuing Agreement for Standby Letters of Credit and Demand Guarantees, dated as of



September 27, 2011, by and among the Company, SunPower Corporation, Systems, Deutsche Bank AG New York Branch and Deutsche Bank Trust Company Americas in an aggregate face amount outstanding at any time not to exceed \$224,359,381; provided, that, notwithstanding anything to the contrary in this Section 2(b)(iv), the Company will be permitted to have outstanding at any one time during the period described in Section 2(b)(iii) letters of credit for the purposes described in clauses (A) and (B) above with a period of between two (2) and three (3) years and for an aggregate initial face amount of up to fifteen per cent (15%) of the then-applicable Maximum L/C Amount;"

2. **Agreement.** All references to the "Agreement" set forth in the Credit Support Agreement shall be deemed to be references to the Credit Support Agreement as amended by this Amendment.

3. **Headings.** The headings set forth in this Amendment are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Amendment or any term or provision hereof.

4. **Confirmation of the Credit Support Agreement.** Other than as expressly modified pursuant to this Amendment, all provisions of the Credit Support Agreement remain unmodified and in full force and effect. The applicable provisions of Section 10 of the Credit Support Agreement shall apply to this Amendment *mutatis mutandis*.

[Execution page follows.]

IN WITNESS WHEREOF, the Borrower and the Guarantor have caused this Amendment to be executed by their respective duly authorized officers as of the date first written above.

**SUNPOWER CORPORATION,  
as the Company**

By: /s/ Thomas H. Werner

Name: Thomas H. Werner

Title: Chief Executive Officer

**TOTAL S.A.,  
as the Guarantor**

By: /s/ Patrick de la Chevadière

Name: Patrick de la Chevadière

Title: Chief Financial Officer

*[Signature Page to Third Amendment to Credit Support Agreement]*

**SUNPOWER CORPORATION**  
**EXECUTIVE QUARTERLY**  
**KEY INITIATIVE BONUS PLAN**  
*(Amended and Restated February 19, 2012)*

**Article 1- Executive KI Plan Objective**

- 1.1 The objective of this Executive Quarterly Key Initiative Bonus Plan (“Executive KI Plan”) is to provide incentives to key employees of SunPower Corporation and its subsidiaries (collectively, the “Company”) based on the Company's profit before tax, quarterly company milestones and an individual's performance against set individual key initiatives (“KIs”). The Executive KI Plan shall be administered by the Compensation Committee appointed by the Board of Directors of SunPower Corporation.

**Article 2- Effective Date**

- 2.1 This quarterly program will be effective as of January 1, 2013. “Plan Periods” under the Executive KI Plan will correspond to the fiscal quarters of the Company.

**Article 3- Eligibility for Executive KI Plan Participation**

- 3.1 All executive officers of the Company, as well as any other key employees approved by the Compensation Committee of the Board of Directors, shall participate in the Executive KI Plan. Participation will generally be limited to the CEO and executive direct reports.

**Article 4- Target Bonus Percentages and Calculations**

- 4.1 Executive KI Target Bonus Percentages. Each Executive KI Plan participant will be allocated a KI target bonus expressed as a percentage of his or her base salary. KI target bonus percentages are set by the Compensation Committee. The Compensation Committee may, in its discretion, set maximum caps on the payout amount for KI bonuses. The Compensation Committee may delegate establishing KI target bonus percentages to officers of the Company; provided that executive officer KI target bonus percentages must be approved by the Compensation Committee.
- 4.2 Executive KI Plan Components.
- (i) Quarterly KI Score. At the start of each quarter the participant will formulate with his or her supervisor a list of key initiatives for such quarter. Each initiative will be allocated a certain number of points, and the quarterly scorecard shall total 100 points. Following each quarter the participant's supervisor will score the participant's achievement of key initiatives (expressed as a percentage).

- (ii) Company Milestone Score. With respect to each quarter the Board of Directors will establish quarterly company milestones for such quarter. Each company milestone will be allocated a certain number of points. Following each quarter, the executive officers of the Company will score the achievement of company milestones (expressed as a percentage).
- (iii) PBT Score. At the start of the quarter the executive officers will establish an internal profit before tax financial target for the Company ("Target PBT"), including minimum and maximum PBT levels for the quarter. Following the quarter, the actual profit before tax will be determined ("Actual PBT"), including minimum and maximum PBT levels for the quarter. Following the quarter, the actual profit before tax will be determined ("Actual PBT").

4.3 Quarterly bonuses under this Executive KI Plan are based on a combination of (a) the participant's number of points achieved on his or her key initiative scorecard for the quarter (expressed as a percentage), (b) the percentage of company milestones achieved for the quarter and (c) the Actual PBT for such quarter. In particular, the bonus payout is calculated as follows:

- (i) For each quarter:
  - a. If the company milestone score is equal to or less than 60%, no KI bonus will be calculated for the quarter.
  - b. If the company milestone score is greater than 60% and equal to or less than 80%, KI bonus for the quarter will be multiplied by a factor of 50%.
  - c. If the company milestone score is greater than 80%, KI bonus for the quarter will be multiplied by a factor of 100%.
- (ii) The PBT factor is calculated as follows:
  - a. If the Actual PBT is less than minimum performance level, no KI bonus payout will be made for that quarter.
  - b. If the Actual PBT is equal to or greater than the minimum but less than the Target PBT, KI bonus will be paid if the milestone condition is met as set forth above.
  - c. If the Actual PBT is between the Target PBT and the maximum performance level, and the milestone condition is met as set forth above is met, KI bonus will be multiplied by an adjustment factor between 100% and 125%, based on a straight-line proration between target and the maximum achievement. Note that adjustment factor will be above 100% only if Actual PBT result is greater than zero.

For example, Actual PBT is between the minimum and Target PBT performance levels:

Company milestone score is greater than 80%: if an individual has a \$100,000 base salary, 20% KI target bonus and a KI score of 80%, he/she would receive a quarterly bonus of  $100,000 \times \frac{1}{4} \times 20\% \times 80\%$ .

Company milestone score is greater than 60% and equal to or less than 80%: if an individual has a \$100,000 base salary, 20% KI target

bonus and a KI score of 80%, he/she would receive a quarterly bonus of  $(100,000 \times \frac{1}{4} \times 20\% \times 80\%) \times 50\%$ .

- d. When the quarterly KI bonus is prorated and paid above 100%, it is subject to a maximum cap of 125%. The Board reserves the right to reduce payments above 100% of target, should the sum of payments above target for all eligible employees become a material portion of the Actual PBT achieved by the Company.

#### **Article 5- Effect of Base Salary on Target Bonus Adjustments.**

- 5.1 Payout calculations under the Executive KI Plan will be based on the plan participant's base salary at the end of the quarter being measured.
- 5.2 In the event a participant's KI target bonus percentage is changed during the quarter, the participant's KI payout for the quarter shall be based on the KI target bonus in effect at the end of that quarter.

#### **Article 6- KI Achievement**

- 6.1 KI attainment for the completed quarter and proposed KI for the next quarter are reviewed at the end of each quarter no later than the third Friday of the first month of the quarter.
- 6.2 In setting KIs, a 0% threshold may be defined for each KI. This threshold, which could be timing and/or deliverable-based, is a point at which a KI score starts to be earned. If a participant does not reach/complete the minimum threshold, such KI will be scored 0% (zero). Progress beyond the threshold earns the participant a pro-rated score up to 110%. The score for a particular KI item cannot exceed 110%. Scoring greater than 100% for a KI item is usually limited to numeric or quantitative goals.
- 6.3 The Chief Executive Officer's quarterly KI score is the actual company milestone score for such quarter.

#### **Article 7- Eligibility for Payment**

- 7.1 Employment: To be eligible for any portion of the bonus payment, the participant must be employed by the Company at the scheduled payment date. A participant who terminates employment prior to the payment date will be ineligible for any and all bonuses not yet paid, except as otherwise provided in this article or any separate agreement approved by the Compensation Committee.
- 7.2 New Hires: New Hires shall be eligible to participate in the bonus program starting the first complete month of work, i.e. if they start the first business day of the month, they will be eligible to participate that month; otherwise, they will begin participation the following month.

- 7.3 Disability: If a participant is unable to perform the essential functions of his or her job with or without a reasonable accommodation and is eligible to receive disability benefits under the standards used by the Company's disability benefit plan, the participant will receive a bonus calculated as follows: the quarter in which the disability begins will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. If/when the participant returns from disability leave, participation will be handled as outlined in section 7.2 above.
- 7.4 Retirement: If a participant retires, i.e. permanent termination of employment with the Company in accordance with the Company's retirement policies, the participant will receive a bonus calculated as follows: the quarter in which the retirement begins will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. Thereafter, quarterly participation ceases.
- 7.5 Death: If a participant dies, awards will be paid to the beneficiary designated by the participant or, if no such designation has been made, to the persons entitled thereto as determined by a court of competent jurisdiction. The bonus will be calculated as follows: the quarter in which death occurred will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. Thereafter, quarterly participation ceases.
- 7.6 Lay-off: If a participant is terminated by lay-off during a Plan Period, the quarter in which the lay-off occurred will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. Thereafter, quarterly participation ceases.
- 7.7 No bonus will be paid to employees who are terminated for cause.
- 7.8 All qualified bonus payments including future scheduled payments pursuant to Sections 7.3, 7.4, 7.5, and 7.6 will be paid in a lump sum.
- 7.9 The Chief Executive Officer reserves the right to reduce the bonus award of a participant on a pro-rata basis to reflect a participant's leave of absence during the applicable Plan Period.

#### **Article 8- Miscellaneous**

- 8.1 Unless as defined in article 8.4, no right or interest in this Executive KI Plan is transferable or assignable except by will or laws of descent and distribution.
- 8.2 Participation in this Executive KI Plan does not guarantee any right to continued employment with the Company.
- 8.3 Participation in the Executive KI Plan in a particular Plan Period is not a guarantee to participate in subsequent Plan Periods.

- 8.4 Management reserves the right to discontinue participation of any participant in this Executive KI Plan, at any time, and for whatever reasons.
- 8.5 This Executive KI Plan is unfunded and the Company does not intend to set up a sinking fund. Consequently, payments arising out of bonus earned shall be paid out of the Company's general assets. Accounts recognized by the Company for book purposes are not an indication of funds set aside for payment. Executive KI Plan participants are considered as general creditors of the Company and the obligation of the Company is purely contractual and is not secured by any particular Company asset.
- 8.6 The provision of this Executive KI Plan shall not limit the ability of the Compensation Committee (or its designees) to modify said Executive KI Plan, or adopt such other plans on matters of compensation, bonus or incentive, which in its own judgment it deems proper, at any time.



## MORTGAGE SUPPLEMENT

### Mortgage Supplement No. 1

This Mortgage Supplement No. 1 (the “**Supplement**”), is entered into by and among **SunPower Philippines Manufacturing Ltd.**, a foreign corporation duly licensed to do business under the laws of the Philippines with office address at 100 Trade Avenue, Phase 4, Special Economic Zone, Laguna Technopark, Biñan Laguna (“**SPML**”), **SPML Land, Inc.**, a corporation organized and existing under the laws of the Philippines with principal address at 100 East Main Ave., LTI Biñan Laguna (“**SPML Land**” or, together with SPML, the “**Mortgagors**”, or, individually, each the “**Mortgagor**”); and the **International Finance Corporation**, an international organization established by the Articles of Agreement among its member countries including the Republic of Philippines (“**IFC**” or the “**Mortgagee**”).

WHEREAS, the Mortgagors and Mortgagee have executed and registered a Mortgage Agreement dated as of 6 May 2010 (the “**Mortgage Agreement**”), to secure the Obligations of the Mortgagors referred to in such agreement;

WHEREAS, the Mortgage Agreement provides that the Mortgagors and Mortgagee shall execute and register Mortgage Supplements for the purposes stated therein; and

WHEREAS, in fulfillment of the continuing obligation of the Mortgagors under the Mortgage Agreement, Loan Agreement, and Financing Documents each of the Mortgagors desires to execute this Mortgage Supplement with the Mortgagee.

NOW, THEREFORE, the parties hereto agree as follows:

1. Unless otherwise defined in this Mortgage Supplement, (i) capitalized terms shall have the meanings set forth in the Loan Agreement and the Mortgage Agreement unless the context otherwise requires, and (ii) the principles of construction set forth in the Loan Agreement and the Mortgage Agreement shall apply.
2. The Mortgagors hereby confirm that (i) certain of the Assets identified and described as Future Real Assets in the Mortgage Agreement have come into existence and/or have been acquired in ownership by a Mortgagor as of the date hereof (those certain assets to be herein called the “New Assets”), and (ii) the New Assets are now identified and more fully described in Schedule A to this Mortgage Supplement.
3. The Mortgagors hereby acknowledge and agree (i) that the Real Estate Mortgage has been granted, created, established, and constituted on the New Assets in favor of Mortgagee and (ii) that such Real Estate Mortgage are subject to the same provisions, terms, and conditions of the Mortgage Agreement as are applicable to the Mortgage on the Present Real Assets thereunder, as fully and completely for all legal intents and purposes as if owned by the relevant Mortgagor on the date of execution of the Mortgage Agreement.

4. The parties hereto confirm that the New Assets serve as security for payment of the Obligations to the extent of the amount stated in Section 2.01(d) (***Creation of Real Estate Mortgage***) of the Mortgage Agreement, including interests, fees, and charges that may be due thereon.
5. Each of the Mortgagors undertakes, at Mortgagors' cost and expense, to register this Mortgage Supplement with the appropriate Registry of Deeds and, where necessary, other appropriate government agencies, in the Philippines in accordance with the Mortgage Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to execute and deliver this Supplement as of November 3, 2010.

**SunPower Philippines Manufacturing Ltd.**

By: /s/ Suzanne Mondoneda

Name: Suzanne Mondoneda

Title: Assistant Secretary

**SPML Land, Inc.**

By: /s/ Nereo Mella

Name: Nereo Mella

Title: Director and Corporate Secretary

**International Finance Corporation**

By: /s/ Jesse O. Ang

Name: Jess O. Ang

Title: Resident Representative

Signed in the presence of

\_\_\_\_\_

## ACKNOWLEDGMENT AND CERTIFICATION OF OATH

REPUBLIC OF THE PHILIPPINES )

REPUBLIC OF THE PHILIPPINES ) S.S.

BINAN LAGUNA

BEFORE ME, a Notary Public for and in the above jurisdiction this 3 day of November 2010 personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name	Community Tax Certificate No. & Passport No.	Issued at/on
<b>SunPower Philippines Manufacturing Ltd.</b>		Sep 18, 2006
represented by: Suzanne Mondoneda		
<b>SPML Land, Inc.</b>		Sep 30, 2010
represented by: Nereo Mella		

personally known to me or identified by me through competent evidence of identity to be the same person[s] who presented to me and signed in my presence this Mortgage Supplement No. 1 consisting of 5 pages, including this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

This Mortgage Supplement No. 1 relates to the Mortgage Agreement dated as of 6 May 2010 among the same parties and consists of 5 pages, including the pages of this Acknowledgment and Schedule A attached hereto, and is signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 3 day of November, 2010 at Binan City, Philippines.

Doc. No. 405	[Notarial Stamp]
Page No. 82	
Book No. IV	
Series of 2010.	[Notarial Stamp]

## ACKNOWLEDGMENT AND CERTIFICATION OF OATH

REPUBLIC OF THE PHILIPPINES )

TAGUIG CITY ) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this 8th day of November personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name	Community Tax Certificate No. & Passport No.	Issued at/on
<b>International Finance Corporation</b>		Jan. 14, 2010
represented by: JESSE O. ANG		DFA Manila

personally known to me or identified by me through competent evidence of identity to be the same person[s] who presented to me and signed in my presence this Mortgage Supplement No. 1 consisting of 5 pages, including this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

This Mortgage Supplement No. 1 relates to the Mortgage Agreement dated as of 6 May 2010 among the same parties and consists of 5 pages, including the pages of this Acknowledgment and Schedule A attached hereto, and is signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 8th day of November, 2010 at TAGUIGCITY, Philippines.

Doc. No. 283  
Page No. 55  
Book No. 1  
Series of 2010.

[Notarial Stamp]

## **Schedule A**

1. The Lease Rights of SPML over the Premises under the Contract of Lease between SPML and SPML Land effective as of 1 September 2010 executed on 12 October 2010 (Doc. No. 361, Page No. 34, Book No. IV, Series of 2010 of Notary Public Edgardo M. Salandanan for Biñan, Laguna).

## MORTGAGE SUPPLEMENT

## Mortgage Supplement No. 2

This Mortgage Supplement No. 2 (the “**Supplement**”), is entered into by and among **SunPower Philippines Manufacturing Ltd.**, a foreign corporation duly licensed to do business under the laws of the Philippines with office address at 100 Trade Avenue, Phase 4, Special Economic Zone, Laguna Technopark, Biñan Laguna (“**SPML**”), **SPML Land, Inc.**, a corporation organized and existing under the laws of the Philippines with principal address at 100 East Main Ave., LTI Biñan Laguna (“**SPML Land**” or, together with SPML, the “**Mortgagors**”, or, individually, each the “**Mortgagor**”); and the **International Finance Corporation**, an international organization established by the Articles of Agreement among its member countries including the Republic of Philippines (“**IFC**” or the “**Mortgagee**”).

WHEREAS, the Mortgagors and Mortgagee have executed and registered a Mortgage Agreement dated as of 6 May 2010 (the “**Mortgage Agreement**”), to secure the Obligations of the Mortgagors referred to in such agreement;

WHEREAS, the Mortgage Agreement provides that the Mortgagors and Mortgagee shall execute and register Mortgage Supplements for the purposes stated therein; and

WHEREAS, in fulfillment of the continuing obligation of the Mortgagors under the Mortgage Agreement, Loan Agreement, and Financing Documents each of the Mortgagors desires to execute this Mortgage Supplement with the Mortgagee.

NOW, THEREFORE, the parties hereto agree as follows:

1. Unless otherwise defined in this Mortgage Supplement, (i) capitalized terms shall have the meanings set forth in the Loan Agreement and the Mortgage Agreement unless the context otherwise requires, and (ii) the principles of construction set forth in the Loan Agreement and the Mortgage Agreement shall apply.
2. The Mortgagors hereby confirm that (i) certain of the Assets identified and described as Future Real Assets in the Mortgage Agreement have come into existence and/or have been acquired in ownership by a Mortgagor as of the date hereof (those certain assets to be herein called the “New Assets”), and (ii) the New Assets are now identified and more fully described in Schedule A to this Mortgage Supplement.
3. The Mortgagors hereby acknowledge and agree (i) that the Real Estate Mortgage has been granted, created, established, and constituted on the New Assets in favor of Mortgagee and (ii) that such Real Estate Mortgage are subject to the same provisions, terms, and conditions of the Mortgage Agreement as are applicable to the Mortgage on the Present Real Assets thereunder, as fully and completely for all legal intents and purposes as if owned by the relevant Mortgagor on the date of execution of the Mortgage Agreement.

4. The parties hereto confirm that the New Assets serve as security for payment of the Obligations to the extent of the amount stated in Section 2.01(d) (***Creation of Real Estate Mortgage***) of the Mortgage Agreement, including interests, fees, and charges that may be due thereon.
5. Each of the Mortgagors undertakes, at Mortgagors' cost and expense, to register this Mortgage Supplement with the appropriate Registry of Deeds and, where necessary, other appropriate government agencies, in the Philippines in accordance with the Mortgage Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to execute and deliver this Supplement as of \_\_\_\_\_.

**SunPower Philippines Manufacturing Ltd.**

By: /s/ Jascha Ortmanns

Name: Jascha Ortmanns

Title: Vice President - Operations

**SPML Land, Inc.**

By: /s/ Michelle Ramos

Name: Michelle Ramos

Title: Treasurer/CFO

**International Finance Corporation**

By: /s/ Jesse O. Ang

Name: Jess O. Ang

Title: Resident Representative

Signed in the presence of

\_\_\_\_\_

## ACKNOWLEDGMENT AND CERTIFICATION OF OATH

REPUBLIC OF THE PHILIPPINES )  
Taguig City ) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this \_\_\_\_ day of OCT 05 2012 personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name

Passport No.

Issued at/on

**SunPower Philippines Manufacturing Ltd.**

represented by:

Jascha Ortmanns

Singapore/June 06, 2010

**SPML Land, Inc.**

represented by:

Michelle Ramos

Manila / March 05, 2010

personally known to me or identified by me through competent evidence of identity to be the same persons who presented to me and signed in my presence this Mortgage Supplement No. 2 consisting of \_\_\_\_ pages, including this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

This Mortgage Supplement No. 2 relates to the Mortgage Agreement dated as of 6 May 2010 among the same parties and consists of \_\_\_\_ pages, including the pages of this Acknowledgment and Schedule A attached hereto, and is signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_ day of OCT 05 2012, 2012 at Taguig City, Philippines.

Doc. No. 255

Page No. 50

[Notarial Seal]

Book No. II

Series of 2012.



## ACKNOWLEDGMENT AND CERTIFICATION OF OATH

REPUBLIC OF THE PHILIPPINES )  
CITY OF MANILA ) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this **OCT 09 2012** day of \_\_\_\_\_ personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name

Passport No.

Issued at/on

**International Finance Corporation**

represented by:

Jesse O. Ang

1/14/10 DFA Manila

personally known to me or identified by me through competent evidence of identity to be the same persons who presented to me and signed in my presence this Mortgage Supplement No. 2 consisting of \_\_\_\_ pages, including this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

This Mortgage Supplement No. 2 relates to the Mortgage Agreement dated as of 6 May 2010 among the same parties and consists of \_\_\_\_ pages, including the pages of this Acknowledgment and Schedule A attached hereto, and is signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_ day of **OCT 09 2012**, 2012 at **CITY OF MANILA**, Philippines.

Doc. No. 75

Page No. 15

Book No. 44

Series of 2012.

[Notarial Seal]

## **Schedule A**

1. The Lease Rights of SPML over the Premises under the Amendment No. 1 to Lease Agreement (Fab 2 Site) between SPML and SPML Land effective as of 1 September 2010 executed on 6 July 2012 (Doc. No. 173, Page No. 36, Book No. VIII, Series of 2012 of Notary Public Atty. Ma. Fatima Ungson-Liu for Biñan, Laguna).

## SECOND AMENDMENT TO LETTER OF CREDIT FACILITY AGREEMENT

This Second Amendment to Letter of Credit Facility Agreement (this “Amendment”), is entered into as of December 19, 2012 (the “Amendment Effective Date”), by and among SunPower Corporation, a Delaware corporation (the “Company”), SunPower Corporation, Systems, a Delaware corporation (the “Subsidiary Applicant” and, together with the Company, the “Credit Parties” and individually, each a “Credit Party”), Total S.A., a société anonyme organized under the laws of the Republic of France (the “Parent Guarantor”), Deutsche Bank AG New York Branch, as issuing bank and as administrative agent for the Banks (as defined below) (in such capacity, the “Administrative Agent”), and the Required Banks (as defined below).

### BACKGROUND

A. The Credit Parties and the Parent Guarantor entered into that certain Letter of Credit Facility Agreement, dated as of August 9, 2011 (as amended, modified, supplemented, extended or restated from time to time, the “Credit Agreement”), with the Administrative Agent and the several financial institutions from time to time a party thereto (the “Banks”). Each capitalized term used herein, that is not defined herein, shall have the meaning ascribed thereto in the Credit Agreement.

B. The Credit Parties, Deutsche Bank AG New York Branch and Deutsche Bank Trust Company Americas entered into that certain Continuing Agreement for Standby Letters of Credit and Demand Guarantees, dated as of September 27, 2011, providing for the issuance of letters of credit or demand guarantees at the request of each Credit Party (each, a “CVSR LOC”).

C. The Credit Parties have requested that the Administrative Agent, the Required Banks and the Parent Guarantor amend the Credit Agreement to revise the definition of “Permitted LOCs”.

D. Although the Administrative Agent, the Parent Guarantor and those certain Banks defined as “Required Banks” under the Credit Agreement (the “Required Banks”) are under no obligation to do so, the Administrative Agent, the Parent Guarantor and the Required Banks are willing to amend the Credit Agreement in accordance with the terms, and subject to the conditions, set forth herein.

### AGREEMENT

The parties to this Amendment, intending to be legally bound, hereby agree as follows pursuant to Section 8.01 of the Credit Agreement:

1. Incorporation of Recitals. Each of the above recitals is incorporated herein as true and correct and is relied upon by the Administrative Agent and each Required Bank in agreeing to the terms of this Amendment.
2. Amendment to Credit Agreement. The definition of “Permitted LOCs” in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Permitted LOCs” means LOCs that are classified as a performance standby letters of credit by the Board of Governors of the Federal Reserve System or by the Office of the Comptroller of the Currency of the United States and constitute (a) performance guarantees (for a period of up to two (2) years after completion of the applicable project) and completion guarantees (until completion of the applicable project) of the Company or such Wholly-Owned Subsidiary with

respect to engineering, procurement and construction services provided in connection with the Company's UPP and LComm businesses (including replacing Existing LOCs), (b) performance guarantees for engineered hardware packages not including engineering, procurement and construction services for UPP projects for a period of up to two (2) years after completion of the applicable project, (c) the Other Permitted Purposes for a period of up to two (2) years, (d) certain purchase, repayment and tax indemnity obligations of the Company or a Wholly-Owned Subsidiary existing as of the Closing Date supported by no more than three (3) LOCs (of which two (2) LOCs in an aggregate face amount of €10,675,609 relate to the Montalto Project and one (1) LOC in a face amount of \$40,000,000 relates to the NorSun Supply Agreement) (which Existing LOCs will be replaced by LOCs issued under this Agreement), (e) for the period beginning on -the Amendment Effective Date and ending on January 1, 2015, CVSR LOCs in an aggregate face amount outstanding at any time not to exceed \$224,359,381, and (f) the Existing LOCs; provided, that, notwithstanding anything to the contrary in this definition but subject to the other terms and conditions of this Agreement, the Company will be permitted to have LOCs outstanding at any one time until the Termination Date for the purposes described in clauses (a) and (b) above with an expiry of between two (2) and three (3) years from the date of issuance thereof and for an aggregate initial face amount of up to fifteen per cent (15%) of the then-applicable Maximum LOC.”

3. Confirmation of Guaranty. The Parent Guarantor ratifies and reaffirms its obligations under the Parent Guaranty and each and every term, condition, and provision of the Parent Guaranty. The Parent Guarantor further represents and warrants that it has no defenses or claims against the Administrative Agent or any Bank that would or might affect the enforceability of the Parent Guaranty and that the Parent Guaranty remains in full force and effect.

4. Ratification and Confirmation of Loan Documents. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not alter, modify, amend, or in any way affect any of the terms, conditions, obligations, covenants, or agreements contained in the Credit Agreement or any other Loan Document, and shall not shall not operate as a waiver of any right, power, or remedy of the Administrative Agent or any Bank under the Credit Agreement or any other Loan Document. Except as expressly set forth herein, the Credit Agreement and all other instruments, documents and agreements entered into in connection with the Credit Agreement and each other Loan Document shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed by each Credit Party in all respects.

5. Representations and Warranties. The Parent Guarantor and each Credit Party hereby represents and warrants that:

- a. the representations and warranties contained in each Loan Document to which the Parent Guarantor or such Credit Party is a party are true and correct in all material respects on and as of the date hereof;
- b. no Block Notice is in effect; and
- c. no Event of Default, or event or condition that would constitute an Event of Default described in Section 6.01(a), Section 6.01(f), or Section 6.01(g) of the Credit Agreement but for the requirement that notice be given or time elapse or both, has occurred and is continuing or would result immediately after giving effect to this Amendment and the transactions contemplated hereby.

6. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or e-mail (in a pdf or similar file) shall be as effective as delivery of an original executed counterpart of this Amendment.

7. Effect on Loan Documents. From and after the Amendment Effective Date, all references in any Loan Document to the Credit Agreement or any other Loan Document shall be deemed to be references to the Credit Agreement or such other Loan Document as amended by this Amendment and as the same may be further amended, supplemented or otherwise modified from time to time. This Amendment shall constitute a Loan Document for all purposes under the Credit Agreement and the other Loan Documents.

8. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Company, the Subsidiary Applicant, the Parent Guarantor, the Administrative Agent and the Required Banks have caused this Amendment to be executed as of the date first written above.

The “Company”

SUNPOWER CORPORATION

By: /s/ Charles Boynton

Name: Charles Boynton

Title: Chief Financial officer

The “Subsidiary Applicant”

SUNPOWER CORPORATION,  
SYSTEMS

By: /s/ Charles Boynton

Name: Charles Boynton

Title: Chief Financial officer

The “Parent Guarantor”

TOTAL, S.A.

By: /s/ Patrick de la Chevardièrè

Name: Patrick de la Chevardièrè

Title: Chief Financial Officer

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*

The “Administrative Agent”, the  
“Issuing Bank”, and a “Bank”

DEUTSCHE BANK AG NEW YORK  
BRANCH, individually, as  
Administrative Agent, and as Issuing  
Bank

By: /s/ Jack Leong  
Name: Jack Leong  
Title: Director

By: /s/ Robert Lofaro  
Name: Robert Lofaro  
Title: Director

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*

BANCO SANTANDER, S.A., NEW  
YORK BRANCH, as a Bank

By: /s/ Rita Walz-Cuccioli

Name: Rita Walz-Cuccioli

Executive Director

Banco Santander, S.A., New

Title: York Branch

By: /s/ Terence Corcoran

Name: Terence Corcoran

Senior Vice President

Banco Santander, S.A., New

Title: York Branch

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*



CREDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK, as a Bank

By: /s/ Page Dillehunt

Name: Page Dillehunt

Title: Managing Director

By: /s/ Michael Willis

Name: Michael Willis

Title: Managing Director

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*

HSBC BANK USA, NATIONAL  
ASSOCIATION, as a Bank

By: /s/ Christopher M. Samms

Name: Christopher M. Samms

Title: Senior Vice President, #9426

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*

LLOYDS TSB BANK PLC, as a Bank

By: /s/ Stephen Giacolone

Name: Stephen Giacolone

Title: Assistant Vice President - G011

By: /s/ Dennis McClellan

Name: Dennis McClellan

Title: Assistant Vice President - M040

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*

THE BANK OF TOKYO -  
MITSUBISHI  
UFJ, LTD, PARIS BRANCH, as a Bank

By: /s/ Ko TAKIGAWA

Name: Ko TAKIGAWA

Title: General Manager

*[Signature Page to Second Amendment to Letter of Credit Facility Agreement]*

**THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT**

This Third Amendment to Revolving Credit Agreement (this “Amendment”), is entered into as of December 24, 2012, by and among SunPower Corporation, a Delaware corporation (the “Borrower”), Credit Agricole Corporate and Investment Bank, as administrative agent for the Lenders (in such capacity, the “Agent”), and the Lenders listed on the signature pages hereof.

**RECITALS**

A. The Borrower, the Agent and certain financial institutions (the “Lenders”) are parties to that certain Revolving Credit Agreement, dated as of September 27, 2011 and amended as of December 21, 2011 (as amended pursuant to a First Amendment to Revolving Credit Agreement dated as of December 21, 2011, a Second Amendment to Revolving Credit Agreement dated as of June 29, 2012 and this Amendment and as it may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), pursuant to which the Lenders have provided a revolving credit facility to the Borrower. Each capitalized term used herein, that is not defined herein, shall have the meaning ascribed thereto in the Credit Agreement.

B. The Borrower has notified the Agent and the Lenders that (i) Total S.A. has agreed to guarantee the obligations of the Borrower under the Credit Agreement, and (ii) it wishes to amend the Credit Agreement as set forth below, but otherwise have the Credit Agreement remain in full force and effect.

C. The Lenders signatory hereto are willing to amend the Credit Agreement, in accordance with the terms, and subject to the conditions, set forth herein.

**AGREEMENT**

The parties to this Amendment, intending to be legally bound, hereby agree as follows:

1. Incorporation of Recitals. Each of the above recitals is incorporated herein as true and correct and is relied upon by the Agent and each Lender signatory hereto in agreeing to the terms of this Amendment.

2. Amendments to Credit Agreement.

a. New Recital. The following is hereby added at the end of the second paragraph of the Recitals:

“The obligations of the Borrower under this Agreement are guaranteed by Total S.A. pursuant to the Parent Guaranty (as hereinafter defined).”

b. Amendment of Defined Terms. The following defined terms in Section 1.01 of the Credit Agreement are hereby amended and restated in their entirety to read as follows:

““Applicable Rate” means (i) for any day on or before the Third Amendment Effective Date, (a) with respect to any LIBO Rate Loan, 1.50%, (b) with respect to any ABR Loan, 0.50%, and (c) with respect to the Commitment Fees, 0.25%, and (ii) for any day after the Third Amendment Effective Date, (a) with respect to any LIBO Rate Loan, 0.60 %, (b) with respect to any ABR Loan, 0.25 %, and (c) with respect to the Commitment Fees, 0.06 %.”

““GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States of America, (a) except as otherwise expressly provided in this Agreement, as in effect as of the Closing Date, and (b) with respect to all financial statements and reports required to be delivered under the Loan Documents, as in effect from time to time.”

““Loan Documents” means this Agreement, the Parent Guaranty, each Fee Letter and any promissory notes issued pursuant to this Agreement. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto.”

““Required Class Lenders” means at any time, in respect of any Class, Lenders that have Loans outstanding and unused Revolving Credit Commitments of such Class representing more than 50% of the sum of all Loans outstanding and unused Revolving Credit Commitments of such Class; provided that the Loans and unused Revolving Credit Commitments of any Defaulting Lender shall be disregarded in the determination of the Required Class Lenders at any time.”

““Revolving Credit Maturity Date” means January 31, 2014.”

c. Deletion of Defined Terms. The defined terms “Capital Lease Obligations,” “Change in Control,” “Change in Control Amendment,” “Change in Control Amendment Date,” “EBITDA,” “Exiting Lender,” “Financial Indebtedness,” “Material Indebtedness,” “Material Subsidiary,” “Permitted Encumbrances,” “Project Indebtedness,” “Review Period,” “Substitute Basis” and “Tech Credit Agreement” in Section 1.01 of the Credit Agreement are hereby deleted in their entirety.

d. New Defined Terms. The following defined terms are hereby added, in alphabetical order, to Section 1.01 of the Credit Agreement:

““Parent Guarantor” means Total S.A., a société anonyme organized under the laws of the Republic of France.”

““Parent Guaranty” means the Guaranty executed by the Parent Guarantor in favor of the Agent and substantially in the form attached hereto as Exhibit I.”

“Third Amendment” means the Third Amendment to Revolving Credit Agreement dated as of December 24, 2012 by and among the Borrower, the Agent and the Lenders listed on the signature pages thereof.

“Third Amendment Effective Date” has the meaning assigned to the term “Effective Date” in the Third Amendment.

e. Amendment of Accounting Terms. The last sentence of Section 1.05 is hereby deleted in its entirety.

f. Amendment of Commitment Reduction and Termination Provisions. Section 2.06 is hereby amended and restated in its entirety to read as follows:

“(a) The Revolving Credit Commitments shall automatically terminate on the Revolving Credit Maturity Date.

(b) Upon at least three Business Days' prior irrevocable written or fax notice (or telephonic notice promptly confirmed by written notice) to the Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Revolving Credit Commitments; provided, however, that (i) each partial reduction of the Revolving Credit Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$1,000,000, and (ii) the Total Revolving Credit Commitment shall not be reduced to an amount that is less than the Aggregate Revolving Credit Exposure at the time.

(c) Each reduction in the Revolving Credit Commitments hereunder shall be made ratably among the Lenders in accordance with their respective Revolving Credit Commitments. The Borrower shall pay to the Agent for the account of the applicable Lenders, on the date of termination of the Revolving Credit Commitments, all accrued and unpaid Commitment Fees relating to the same but excluding the date of such termination.”

g. Amendment of Optional Prepayment of Revolving Loans. Clause (b) of Section 2.08 is hereby amended by deleting the proviso in the fourth sentence thereof in its entirety.

h. Amendment of Mandatory Prepayment of Revolving Loans. Clause (b) of Section 2.09 is hereby amended by deleting the parenthetical therein in its entirety.

i. Amendment of Tax Refunds. Clause (g) of Section 2.15 is hereby amended and restated in its entirety to read as follows:

“(g) If the Agent or a Lender determines, in its reasonable discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or the Parent Guarantor or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15 or the Parent Guarantor has paid additional amounts pursuant to the Parent Guaranty,

it shall reimburse to the Borrower or the Parent Guarantor, as the case may be, such amount as the Agent or such Lender determines to be the proportion (but not more than 100%) of such refund as will leave the Agent or such Lender (after that reimbursement) in no better or worse position in respect of the worldwide liability for Taxes or Other Taxes of the Agent, or such Lender (including in each case its Affiliates) than it would have been if no such indemnity had been required under this Section. This Section shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower, the Parent Guarantor or any other Person.”

j. Amendment of Mitigation Obligations and Replacement of Lenders. Clause (b) of Section 2.17 is hereby amended by deleting the words “or an Exiting Lender”.

k. Amendment of Increase in Commitments. Clauses (a) and (b) of Section 2.19 are hereby amended and restated in their entirety to read as follows:

“(a) The Borrower may, by written notice to the Agent from time to time, request Incremental Revolving Credit Commitments and/or Other Revolving Credit Commitments in an aggregate amount not to exceed the Incremental Revolving Credit Amount from one or more Incremental Lenders, which may include any existing Lender (each of which shall be entitled to agree or decline to participate in its sole discretion); provided that (i) each Incremental Lender, if not already a Lender hereunder, shall be subject to the approval of the Agent (which approval shall not be unreasonably withheld) and (ii) in no event shall any Incremental Revolving Credit Commitments or Other Revolving Credit Commitments become effective if the effectiveness of such commitments would cause the aggregate amount of Revolving Credit Commitments and Other Revolving Credit Commitments to exceed the principal amount of the Loans guaranteed by the Parent Guarantor pursuant to the Parent Guaranty. Such notice shall set forth (i) the amount of the Incremental Revolving Credit Commitments or Other Revolving Credit Commitments being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$10,000,000 or equal to the remaining Incremental Revolving Credit Amount), (ii) the date on which such Incremental Revolving Credit Commitments or Other Revolving Credit Commitments are requested to become effective (which shall not be less than 10 Business Days nor more than 60 days after the date of such notice, unless otherwise agreed to by the Agent) and (iii) whether the Borrower is requesting Incremental Revolving Credit Commitments or commitments to make revolving loans with terms different from the Revolving Loans (“Other Revolving Loans”).”

“(b) The Borrower may seek Incremental Revolving Credit Commitments and/or Other Revolving Credit Commitments from existing Lenders (each of which shall be entitled to agree or decline to participate in its sole discretion) and, subject to the approval of the Agent (which approval shall not be unreasonably withheld), additional banks, financial institutions and other institutional lenders who will become Incremental Lenders in connection therewith. The Borrower and each Incremental Lender shall execute and deliver to the Agent an Incremental Revolving Credit Assumption



Agreement and such other documentation as the Agent shall reasonably specify to evidence the Incremental Revolving Credit Commitment or the Other Revolving Credit Commitments, as applicable, of such Incremental Lender. Each Incremental Revolving Credit Assumption Agreement shall specify the terms of the Incremental Revolving Loans or Other Revolving Loans to be made thereunder; provided that, without the prior written consent of all Lenders, (i) the final maturity of any Other Revolving Loans shall be no earlier than the Revolving Credit Maturity Date and (ii) the aggregate amount of Revolving Credit Commitments and Other Revolving Credit Commitments shall not at any time exceed the principal amount of the Loans guaranteed by the Parent Guarantor pursuant to the Parent Guaranty.”

l. Deletion of Change in Control. Section 2.20 is hereby deleted in its entirety.

m. Amendment of Requirement of Financial Officer Certificate. Clause (c) of Section 5.01 is hereby amended and restated in its entirety to read as follows:

“(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit C certifying that no Event of Default has occurred and, if an Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto;”

n. Deletion of Financial Covenant. Section 5.02 is hereby deleted in its entirety and replaced to read as follows:

“[RESERVED]”

o. Deletion of Minimum Consolidated Liquidity. Section 5.12 is hereby deleted in its entirety and replaced to read as follows:

“[RESERVED]”

p. Deletion of Limitation on Liens. Article VI is hereby deleted in its entirety and replaced to read as follows:

“[RESERVED]”

q. Amendment of Noncompliance Default. Clause (d) of Article VII is hereby amended and restated in its entirety to read as follows:

“(d) the Borrower shall fail to perform or observe any term, covenant, or agreement contained herein on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Agent or the Required Lenders, except where such default cannot be reasonably cured within 30 days but can be cured within 60 days, the Borrower has (i) during such 30-day period commenced and is diligently proceeding to cure the same and

(ii) such default is cured within 60 days after the earlier of becoming aware of such failure and receipt of notice to the Borrower from the Agent or the Required Lenders specifying such failure;”

r. Amendment of Cross Default. Clause (e) of Article VII is hereby amended and restated in its entirety to read as follows:

“(e) the Parent Guarantor shall fail to pay (i) any indebtedness for borrowed money pursuant to a loan agreement, or (ii) any noncontingent payment obligation pursuant to a letter of credit agreement, in either case individually or in the aggregate, in excess of \$200,000,000, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness or obligation, provided, however, that a written waiver of such failure by the Person to whom such indebtedness or obligation is owed shall be a written waiver of the Event of Default resulting pursuant to this clause (e) from such failure; or the maturity of such indebtedness or obligation is accelerated, provided, however, that a written waiver of such failure by the Person to whom such indebtedness or obligation is owed shall be a written waiver of the Event of Default resulting pursuant to this clause (e) from such failure;”

s. Amendment of Involuntary Insolvency Default. Clause (f) of Article VII is hereby amended and restated in its entirety to read as follows:

“(f) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Parent Guarantor or the Borrower in an involuntary case or proceeding under any applicable United States federal, state, or foreign bankruptcy, insolvency, reorganization, or other similar law or (ii) a decree or order adjudging the Parent Guarantor or the Borrower bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable United States federal, state, or foreign law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Parent Guarantor or the Borrower, or ordering the winding up or liquidation of the affairs of the Parent Guarantor or the Borrower, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;”

t. Amendment of Voluntary Insolvency Default. Clause (g) of Article VII is hereby amended and restated in its entirety to read as follows:

“(g) the commencement by the Parent Guarantor or the Borrower of a voluntary case or proceeding under any applicable United States federal, state, or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Parent Guarantor or the Borrower to the entry of a decree or order for relief in respect of the Parent Guarantor or the Borrower in an involuntary case or proceeding under any applicable United States federal, state, or foreign bankruptcy, insolvency, reorganization,

or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by the Parent Guarantor or the Borrower of a petition or answer or consent seeking reorganization or relief under any applicable United States federal, state, or foreign law, or the consent by the Parent Guarantor or the Borrower to the filing of such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or similar official of the Borrower or of any substantial part of the property of, or the making by the Parent Guarantor or the Borrower of an assignment for the benefit of creditors, or the admission by the Parent Guarantor or the Borrower in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Parent Guarantor or the Borrower in furtherance of any such action;”

u. Amendment of Judgment Default. Clause (h) of Article VII is hereby amended and restated in its entirety to read as follows:

“(h) failure by the Borrower to pay final non-appealable judgments, which (i) remain unpaid, undischarged and unstayed for a period of more than sixty (60) days after such judgment becomes final, and (ii) would have a Material Adverse Effect;”

v. Deletion of Financial Covenant Default and Addition of Guaranty Repudiation Default. Clause (j) of Article VII is hereby amended and restated in its entirety to read as follows:

“(j) the Parent Guarantor shall repudiate, or assert the unenforceability of the Parent Guaranty, or the Parent Guaranty shall for any reason not be in full force and effect;”

w. Deletion of Equity Cure. The last two paragraphs of Article VII are hereby deleted in their entirety.

x. Amendment of Waivers; Amendments. Section 9.02(b) is hereby amended and restated in its entirety to read as follows:

“(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, provided that the Borrower and the Agent may enter into an amendment to effect the provisions of Section 2.19(b) upon the effectiveness of any Incremental Revolving Credit Assumption Agreement, or (ii) in the case of any other Loan Document (other than any such amendment to effectuate any modification thereto expressly contemplated by the terms of such other Loan Documents), pursuant to an agreement or agreements in writing entered into by the Agent and the Borrower, with the consent of the Required Lenders; provided that no such agreement shall (A) increase the Revolving Credit Commitment of any Lender without the written consent of such Lender; it being understood that the waiver of any Event of Default or mandatory prepayment shall not constitute an increase of any Revolving Credit Commitment of any Lender, (B) reduce or forgive the principal amount of any Loan or reduce the rate of interest thereon,

or reduce or forgive any interest or fees (including any prepayment fees) payable hereunder, without the written consent of each Lender directly affected thereby, (C) postpone any scheduled date of payment of the principal amount of any Loan, or any date for the payment of any interest, Fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Credit Commitment, without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary to amend the provisions of Section 2.11(c) providing for the default rate of interest, or to waive any obligations of the Borrower to pay interest at such default rate, (D) change Sections 2.08(b), 2.16(b) or 2.16(e) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender, (E) change any of the provisions of this Section 9.02, the definition of "Required Lenders", the definition of "Required Class Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (F) release the Parent Guarantor from any of its obligations under the Parent Guaranty, or (G) waive any conditions precedent set out in Article IV in respect of any Credit Event without the written consent of each Lender; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent. The Agent may without the consent of any Lender also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Notwithstanding the foregoing, with the consent of the Borrower and the Required Lenders, this Agreement (including Sections 2.08(b), 2.16(b) and 2.16(e)) may be amended (x) to allow the Borrower to prepay Revolving Loans on a non-pro rata basis in connection with offers made to all the Lenders pursuant to procedures approved by the Agent and (y) to allow the Borrower to make loan modification offers to all the Lenders that, if accepted, would (A) allow the maturity and scheduled amortization of the Revolving Loans of the accepting Lenders to be extended, (B) increase the Applicable Rates and/or Fees payable with respect to the Revolving Loans and Revolving Credit Commitments of the accepting Lenders and (C) treat the modified Revolving Loans and Revolving Credit Commitments of the accepting Lenders as a new class of Revolving Loans and Revolving Credit Commitments for all purposes under this Agreement."

y. Amendment of Participation Rights. Clause (c)(i) of Section 9.04 is hereby amended and restated in its entirety to read as follows:

"(c)(i) Any Lender may sell participations to one or more commercial banks, savings banks or other financial institutions or, with the consent of the Borrower (so long as no Event of Default is outstanding and continuing), other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment or the Revolving Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, (D) no such Participant shall be a

“creditor” as defined in Regulation T or a “foreign branch of a broker-dealer” within the meaning of Regulation X, and (E) neither the Borrower nor any of its Affiliates shall be a Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c) (ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. Each Lender that sells a participation, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a register for the recordation of the names and addresses of each Participant and the principal amounts of, and stated interest on, each participant's interest in the Revolving Loans or other obligations under this Agreement (the “Participant Register”). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender may treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary.”

z. Deletion of Right of Setoff. Section 9.08 is hereby deleted in its entirety and replaced to read as follows:

“[RESERVED]”

aa. Deletion of Schedule. Schedule 2 to the Credit Agreement is hereby deleted in its entirety.

3. Representations and Warranties. The Borrower hereby represents and warrants, as of the date of this Amendment, for the benefit of the Agent and each Lender, that:

a. The representations and warranties set forth in Article III of the Credit Agreement and in each other Loan Document are true and correct in all material respects with the same effect as though made on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

b. The execution and delivery of this Amendment has been duly authorized by all necessary organizational action of the Borrower. This Amendment has been duly executed and delivered by the Borrower and is a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity;

c. The transactions contemplated by this Amendment (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, except to the extent that any such failure to obtain such consent or approval or to take any such action, would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Requirement of Law applicable to the Borrower, (c) will not violate or result in a default under any other material indenture, agreement or other instrument binding upon the Borrower its assets, or give rise to a right thereunder to require any payment to be made by the Borrower, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower; and

d. No Event of Default, or event or condition that would constitute an Event of Default but for the requirement that notice be given or time elapse or both, has occurred and is continuing.

4. Ratification and Confirmation of Loan Documents. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not alter, modify, amend, or in any way affect any of the terms, conditions, obligations, covenants, or agreements contained in the Credit Agreement or any other Loan Document, and shall not operate as a waiver of any right, power, or remedy of the Agent or any Lender under the Credit Agreement or any other Loan Document. Except as expressly set forth herein, the Credit Agreement, all promissory notes and all other instruments, documents and agreements entered into in connection with the Credit Agreement and each other Loan Document shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed by the Borrower in all respects.

5. Effectiveness. This Amendment shall become effective on the date first written above (the “Effective Date”) only upon satisfaction of the following conditions precedent on or prior to such date unless otherwise waived in writing by the Required Lenders:

a. The Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Amendment signed on behalf of such party or (ii) written evidence satisfactory to the Agent (which may include facsimile or .pdf transmission of a signed signature page of this Amendment) that such party has signed a counterpart of this Amendment.

b. The Agent (or its counsel) shall have received from the Parent Guarantor either (a) a counterpart of the Parent Guaranty signed on behalf of the Parent Guarantor or (b) written evidence satisfactory to the Agent (which may include facsimile or .pdf transmission of a signed signature page of the Parent Guaranty) that the Parent Guarantor has signed a counterpart of the Parent Guaranty.

c. The representations and warranties of the Borrower set forth herein shall be true and correct in all material respects as of the Effective Date.

d. No Event of Default, or event or condition that would constitute an Event of Default but for the requirement that notice be given or time elapse or both, shall be continuing as of the Effective Date.

e. The Agent shall have received written opinions (addressed to the Agent and the Lenders and dated the Effective Date) of counsel to the Borrower with regard to matters of New York and Delaware law, and of in-house counsel to the Parent Guarantor with regard to matters of French law, in each case in form and substance reasonably satisfactory to the Agent.

f. The Agent shall have received (i) an officer's certificate from the Borrower, dated the Effective Date, certifying that (A) attached thereto are true, complete and correct copies of the certificate of incorporation and bylaws of the Borrower, (B) attached thereto is a true, complete and correct copy of the resolutions duly adopted by the Borrower authorizing the execution, delivery and performance of this Amendment and that such resolutions have not been amended, modified, revoked or rescinded, and (C) the Borrower is able to pay its debts as they become due and that no action has been taken by the Borrower, its directors or officers in contemplation of the liquidation or dissolution of the Borrower as of the Effective Date, and (ii) a good standing certificate for the Borrower dated the Effective Date or a recent date prior to the Effective Date satisfactory to the Agent from the Borrower's jurisdiction of organization.

g. The Agent shall have received signature and incumbency certificates of the officers of the Borrower executing this Amendment, each dated as of the Effective Date.

h. The Agent and the Lenders shall have received from the Borrower all fees required to be paid on or before the Effective Date, including an amendment fee paid to the Agent for the account of each Lender that delivers a signed counterpart of this Amendment to the Agent no later than 2:00 p.m. (New York time) on December 21, 2012 on a pro rata basis in accordance with such Lenders' Revolving Credit Commitments as of the Effective Date, in an amount equal to 0.02% of such Lenders' Revolving Credit Commitments as of the Effective Date.

6. Waiver. The Lenders listed on the signature pages hereto, constituting the Required Lenders, hereby waive any Event of Default (if any) arising or having arisen solely as a result of those covenants in the Credit Agreement which are being deleted pursuant to this Amendment.

7. Termination of Comfort Letter. The Lenders listed on the signature pages hereto, constituting the Required Lenders, hereby consent to the termination of the comfort letter dated September 27, 2011 from Total S.A. to the Agent and the Lenders and confirm that such letter may not be relied upon from and after the Effective Date.

8. Miscellaneous. The Borrower acknowledges and agrees that the representations and warranties set forth herein are material inducements to the Agent and the Lenders to deliver this Amendment. This Amendment shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, and their respective permitted successors and assigns. This Amendment is a Loan Document. Henceforth, this Amendment and the Credit Agreement shall be read together as one document and the Credit Agreement shall be modified accordingly. No course of dealing on the part of the Agent, the Lenders or any of their respective officers, nor any failure or delay in the exercise of any right by the Agent or the Lenders, shall operate as a waiver thereof, and any single or partial exercise of any such right shall not preclude any later exercise of any such right. The failure at any time to require strict performance by the Borrower of any

provision of the Loan Documents shall not affect any right of the Agent or the Lenders thereafter to demand strict compliance and performance. Any suspension or waiver of a right must be in writing signed by an officer of the Agent, and or the Lenders, as applicable. No other person or entity, other than the Agent and the Lenders, shall be entitled to claim any right or benefit hereunder, including, without limitation, the status of a third party beneficiary hereunder. This Amendment shall be governed by and construed in accordance with the laws of the State of New York without reference to conflicts of law rules. If any provision of this Amendment or any of the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed therefrom, and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been a part thereof. This Amendment may be executed in any number of counterparts, including by electronic or facsimile transmission, each of which when so delivered shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

*[Remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the Borrower, the Agent and the Lenders signatory hereto have caused this Amendment to be executed as of the date first written above.

SUNPOWER CORPORATION

By: /s/ Charles Boynton

Name: Charles Boynton

Title: Chief Financial Officer

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT

CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK, individually and as  
Agent

By: /s/ Michael D. Willis

Name: Michael D. Willis

Title: Managing Director

By: /s/ Dianne Scott

Name: Dianne Scott

Title: Managing Director

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT

CITICORP NORTH AMERICA, INC.,  
as a Lender

By: /s/ Anita J. Brickell

Name: Anita J. Brickell

Title: Vice President

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT

HSBC BANK USA, NATIONAL  
ASSOCIATION, as a Lender

By: /s/ Courtney Wright

Name: Courtney Wright

Vice President

Multinationale

Title: #19791

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT

LLOYDS TSB BANK PLC, as a Lender

By: /s/ Stephen Giacolone

Name: Stephen Giacolone

Title: Assistant Vice President - G011

By: /s/ Julia R. Franklin

Name: Julia R. Franklin

Vice President

Title: F014

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT

ROYAL BANK OF SCOTLAND, plc  
as a Lender

By: /s/ Tyler J. McCarthy

Name: Tyler J. McCarthy

Title: Director

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT

SOVEREIGN BANK, N.A. as a Lender

By: /s/ William Maag

Name: William Maag

Title: Senior Vice President

THIRD AMENDMENT TO REVOLVING CREDIT AGREEMENT



October 3, 2012  
 SunPower Philippines Manufacturing Ltd.  
 c/o SunPower Corporation  
 Attn: Treasurer  
 77 Rio Robles  
 San Jose, CA 95134

SunPower Corporation  
 Attn: Treasurer  
 (with copy to General Counsel)  
 77 Rio Robles  
 San Jose, CA 95134

SPML Land, Inc.  
 Attn: Chief Financial Officer  
 100 East Avenue, LTI Binan, Laguna

Dear Sirs,

**PHILIPPINES: SunPower Philippines Manufacturing Ltd. (the “Borrower”) and  
 SunPower Corporation (the “Guarantor”)  
 Waiver and Amendment Letter - Guarantee Agreement and Loan Agreement  
 - Investment No. 27807**

1. Reference is made to (i) the Mortgage Loan Agreement dated May 6, 2010 (the “Mortgage Loan Agreement”) among the Borrower, SPML Land, Inc. and International Finance Corporation (“IFC”) as amended by Amendment No. 1 to Loan Agreement dated November 2, 2010, (ii) the Guarantee Agreement dated May 6, 2010 between the Guarantor and IFC (the “Guarantee Agreement”) and (iii) the amendment-request letter dated February 16, 2012 from the Guarantor to IFC.

2. Unless otherwise defined in this letter, terms defined in the Mortgage Loan Agreement and the Guarantee Agreement shall have the respective meanings ascribed thereto when used in this letter.

3. IFC hereby grants a temporary waiver covering the period from and including the fourth fiscal quarter 2012 (quarter ending January 6, 2013) up to and including the fourth fiscal quarter 2013 (quarter ending January 5, 2014) of Section 6.01(f)(iii) of the Guarantee Agreement, solely as it applies with respect to the Guarantor's compliance with the Prospective Debt Service Coverage ratio covenant. The waiver is granted subject to the following conditions: (i) the Guarantor would otherwise be in breach of Section 6.01(f)(iii) at the end of Guarantor's

Pennsylvania Ave., N.W. Washington, D.C. 20433 USA Phone: (202) 473-1000 . Facsimile: (202) 477-6391



fourth fiscal quarter 2012 were it not for the waiver granted herein, and (ii) that the interest rate Spread under the Loan Agreement shall be increased as set forth in paragraph 4 below. If condition (i) of the immediately preceding sentence does not occur - i.e., the Guarantor is not in breach of Section 6.01(f)(iii) as of the measurement date for the fourth fiscal quarter 2012 (without regard to the waiver granted herein), this letter shall be voided and be of no force and effect, and the increased interest rate Spread in paragraph 4 below shall not be applied to the Loan Agreement.

4. In consideration of the benefits to the Borrower arising from the waivers granted to the Guarantor herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower, the Borrower and IFC hereby agree that the Spread for the Interest Rate under the Loan Agreement during the periods specified below shall be as follows (afterwhich the Spread shall revert to its original amount of three per cent (3%) per annum :

	<u>Spread</u>
From January 6, 2013 to September 30, 2013	4.25% per annum
From October 1, 2013 to January 5, 2014	5.00% per annum

5. The Borrower hereby represents and warrants as follows:

(a) The execution and delivery by the Borrower of this letter, and the performance of the transactions contemplated by this letter and by the Loan Agreement, as amended by this letter, are within its corporate powers, have been duly authorized by all necessary applicable corporate action, and will not conflict with or result in a breach of any of the material terms, conditions or provisions of, or constitute a default or require any consent that has not been obtained under, any indenture, mortgage, agreement or other instrument or arrangement to which it is a party or by which it is bound, or violate any of the terms or provisions of its organizational documents or any Authorization, judgment, decree or order or any statute, rule or regulation applicable to it;

(b) No Authorization or approval or other action by, and no notice to or filing with, any Authority is required for the due execution, delivery and performance by the Borrower of this letter, or for the performance by the Borrower of the Loan Agreement, as amended hereby.

(c) This letter has been duly executed and delivered by the Borrower, and this letter and the Loan Agreement, as amended hereby, each constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with the terms hereof and thereof, respectively.

6. This letter, the amendment or the waiver granted herein does not operate as a waiver or amendment of any provision of the Mortgage Loan Agreement, the Guarantee Agreement or any other Transaction Document other than those specified above, and the Mortgage Loan Agreement, the Guarantee Agreement and other Transaction Documents remain in full force and effect. Except as otherwise specified above, it does not in any way waive, prejudice or impair IFC's rights under the Mortgage Loan Agreement, the Guarantee Agreement and the other Transaction Documents, nor shall this letter or the waiver or amendment herein be used for any other purpose. No other consent, amendment or waiver is hereby given or made. For the avoidance of doubt, Section 4.01(n) of the Loan Agreement, Section 3.1(b) of the Debt Service Reserve Account Agreement and related provisions shall take into account the increased interest amounts payable as a result of the changes to the Spread set forth in paragraph 4 of this letter.

7. This letter is a Transaction Document.

8. This letter shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

9. This letter may be executed in counterparts each of which when taken together, shall constitute one and the same instrument.

10. Please acknowledge your agreement with the terms and conditions of this letter by signing where indicated below and returning two (2) fully executed originals to IFC.

Sincerely,

INTERNATIONAL FINANCE CORPORATION

By: /s/ Jesse O. Ang

Name: Jesse O. Ang

Title: Resident Representative, Philippines

Accepted and Agreed:

SUNPOWER CORPORATION

By: /s/ Chuck Boynton

Name: Chuck Boynton

Title: CFO

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By: /s/ Chuck Boynton

Name: Chuck Boynton

Title: SVP & CFO

SPML LAND, INC.

By: /s/ Michelle M. Ramos

Name: Michelle M. Ramos

Title: Treasurer / CFO

**CONFIDENTIAL TREATMENT REQUESTED**

**CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN  
SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION**

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

**(Antelope Valley Solar Project 308.97 MW at the Delivery Point)**

Dated as of December 28, 2012

By and between

**SOLAR STAR CALIFORNIA XIX, LLC**

And

**SUNPOWER CORPORATION, SYSTEMS**

**Contractor's License No. 890895**

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## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT, dated as of December 28, 2012 (this "Agreement"), is entered into by and between SOLAR STAR CALIFORNIA XIX, LLC, a Delaware limited liability company ("Owner"), and SunPower Corporation, Systems, a corporation formed under the laws of the State of Delaware ("Contractor"). Owner and Contractor are each hereinafter sometimes referred to as a "Party," and collectively as the "Parties."

### RECITALS

**WHEREAS**, on December 28, 2012, AVSP 1A, LLC, a Delaware limited liability company, and AVSP 1B, LLC, a Delaware limited liability company, collectively as purchasers ("Purchasers") and Contractor and SunPower Corporation, a Delaware corporation, collectively as sellers ("Sellers") entered into that certain Membership Interest Purchase and Sale Agreement (the "MIPA") that set forth the terms and conditions pursuant to which Purchasers would acquire one hundred percent (100%) of the membership interests of Owner;

**WHEREAS**, on December 28, 2012, AVSP 2A, LLC, a Delaware limited liability company and AVSP 2B, LLC, a Delaware limited liability company, collectively as purchasers (the "AVSP 2 Purchasers") and Sellers also entered into that certain Membership Interest Purchase and Sale Agreement that set forth the terms and conditions pursuant to which the AVSP 2 Purchasers would acquire one hundred percent (100%) of the membership interests of Solar Star California XX, LLC from Sellers;

**WHEREAS**, Owner intends to develop a 308.97 MW at the Delivery Point (approximately 318 MW nameplate capacity) solar photovoltaic power plant located in Kern and Los Angeles Counties, California (the "Facility") described in and including all of the components set forth in Exhibit 3 (the "Technical Specifications"), on the real property more fully described in Exhibit 2 (the "Site");

**WHEREAS**, Solar Star California XX, LLC intends to develop a 270.18 MW at the Delivery Point (approximately 279 MW nameplate capacity) solar photovoltaic power plant located in Kern County, California (the "AVSP 2 Facility");

**WHEREAS**, Contractor designs, engineers, supplies, constructs and installs photovoltaic systems such as the Facility on a turn-key basis, to make available electrical energy to a transmission interconnection facility;

**WHEREAS**, Owner desires to engage Contractor to design, engineer, supply, construct, install, test and commission the Facility at the Site and perform all other Work under this Agreement (the "Project") and Contractor desires to carry out such work or services, all as further defined by and in accordance with the terms and conditions set forth in this Agreement;

**WHEREAS**, Owner and Contractor have entered into that certain Management, Operation and Maintenance Agreement dated as of the date hereof (as the same may be modified, amended or supplemented from time to time in accordance with the terms thereof, the

“O&M Agreement”), whereby Contractor, in its role as operations and maintenance vendor (the “O&M Provider”), will provide certain operating and maintenance services for the Facility in accordance with the terms and conditions set forth therein; and

**WHEREAS**, Contractor and Solar Star California XX, LLC have separately entered into that certain Engineering, Procurement and Construction Agreement and that certain Management, Operation and Maintenance Agreement, each dated as of the date hereof with respect to the AVSP 2 Facility.

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1.**

### **CONTRACT INTERPRETATION AND EFFECTIVENESS**

**1.1 Rules of interpretation.** Unless the context requires otherwise: (a) unless the context clearly intends to the contrary, the singular includes the plural and vice versa, (b) terms defined in a given number, tense or form shall have the corresponding meanings when used with initial capitals in another number, tense or form, (c) unless otherwise stated, words in Exhibits 1, 3, 7, 16, 22, 23, 26 and 27 which have well known technical or construction industry meanings are used in accordance with such recognized meanings, (d) the words “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation” and unless otherwise specified shall not be deemed limited by the specific enumeration of items, (e) unless otherwise specified, references to “Sections”, “Schedules” and “Exhibits” are to sections, schedules and exhibits to this Agreement, (f) the words “herein”, “hereof”, “hereto”, “hereinafter” “hereunder” and other terms of like import refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (g) a reference to a Person in this Agreement or any other agreement or document shall include such Person's successors and permitted assigns, (h) references to this Agreement include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time, (i) without adversely impacting Contractor's remedies regarding a Change In Law, references to Applicable Law or Applicable Permit are references to the Applicable Law or Applicable Permit, as applicable, as now or at any time hereafter may be in effect, together with all amendments and supplements thereto and any Applicable Law or Applicable Permit substituted for or superseding such statute or regulation, (j) without adversely impacting the rights of either Party with respect to the amendment, restatement or replacement of any agreement under which such Party shall be liable hereunder, references to agreements, certificates, documents and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements, certificates or instruments that are duly entered into and effective against the parties thereto or their successors and permitted assigns, (k) a reference to a Governmental Authority includes an entity or officer that or who succeeds to substantially the same functions as performed by such Governmental Authority as of the date hereof, (l) “shall” and “will” mean “must” and have equal force and effect and express an obligation, (m) this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by

virtue of the authorship of any provision in this Agreement, (n) the word “or” in this Agreement is disjunctive but not necessarily exclusive, (o) references in this Agreement to time periods in terms of a certain number of Days mean calendar Days unless expressly stated herein to be Business Days, (p) headings used in this Agreement are for ease of reference only and shall not be taken into account in the interpretation or construction of the provisions of this Agreement, and (q) the words “dollar”, “dollars” or “money” and the symbol “\$” each mean United States Dollars.

**1.2 Defined terms.** Unless otherwise stated in this Agreement, capitalized terms used in this Agreement have the following meanings:

“Abandons” means, other than in the event of a Force Majeure Event or an Excusable Event, Contractor abandons, ceases to perform the Work or leaves the Site for a period longer than four (4) continuous months.

“AAA” means the American Arbitration Association.

“Acceptable Letter of Credit” means, at any time on or after the Effective Date, an irrevocable standby letter of credit substantially in the form attached hereto as Exhibit 32, issued at such time by a Qualified Financial Institution of which Owner is the beneficiary that: (a) has a stated expiration date of not earlier than three hundred sixty-four (364) Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof, (b) automatically renews or permits Owner, on the signature of an authorized representative, to draw on sight all or any portion of the stated amount if not renewed (or replaced by Contractor with another Acceptable Letter of Credit) on or prior to the \*\*\* prior to the stated expiration date, (c) \*\*\*, (d) the principal office of such issuing bank, the location for the submittal of documents required for draws under such letter of credit and the location for disbursements under such letter of credit being New York, New York or such other location as may be mutually agreed in writing by Contractor and Owner, (e) is payable in Dollars in immediately available funds, (f) is governed by the International Standby Practices (ISP 98), and, to the extent not governed by the foregoing, the laws of the State of the New York and (g) is drawable upon issuance of a drawing certificate signed by an authorized representative of Owner.

“Acceptance” has the meaning set forth in Section 15.4.

“Action” has the meaning set forth in Section 14.3(e).

“Actual Tax Basis” means, with respect to a Block, the tax basis as determined in the Basis Determination as to such Block.

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“Affiliate” means, when used with reference to a specified Person, any Person directly or indirectly Controlling, Controlled by, or under common Control with the specified Person.

“Alternative Proposal” means any proposal or offer made by any Person or group of Persons for (a) the direct or indirect acquisition in a single transaction or series of related

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transactions of any significant portion of the Project or its assets, or (b) the direct or indirect acquisition by any Person of any of the membership interests of Owner or any other entity that owns the Project or any significant portion of its assets but expressly excluding any sale or transfer of ownership interests of Contractor or any direct or indirect parent company thereof.

“Agreement” has the meaning set forth in the preamble, including all Exhibits hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

“Applicable Codes” means codes, standards or criteria, such as the National Electric Code and those codes, standards or criteria promulgated by the American Society of Mechanical Engineers, Underwriters Laboratories and Institute of Electrical and Electronics Engineers, and other recognized standards institutions, which are generally recognized as applicable to the Work or the Facility.

“Applicable Laws” means, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority, including Environmental Laws.

“Applicable Permits” means each and every national, regional and local license, authorization, consent, ruling, exemption, variance, order, judgment, certification, filing, recording, permit or other approval with or of any Governmental Authority, including each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of, in connection with or related to the Work or the design, construction or operation of the Facility, including those set forth on Exhibits 6A and 6B.

“Applicable Tax Basis” means for each Block the lesser of (a) the tax basis of such Block as reflected in Exhibit 25 and (b) the Actual Tax Basis.

“Application for Payment” means an application for payment in the form attached hereto as Exhibit 10.

“Arbitration Rules” has the meaning set forth in Section 28.2(b).

“Availability Test” means the test to determine the availability of the Block as described in Exhibit 16A.

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“AVSP 2 Facility” has the meaning set forth in the Recitals.

“AVSP 2 Purchasers” has the meaning set forth in the Recitals.

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“Basis Determination” means the actual tax basis (or as applicable the actual EITC eligible tax basis) of any Block as Owner and Contractor shall reasonably agree, or if they are unable to agree as determined by \*\*\* (so long as they are not the accounting firm used by either Party) or another independent nationally recognized accounting firm selected by Owner and reasonably acceptable to Contractor. Such accounting firm shall be provided financial and engineering records as they shall reasonably request from Owner, Contractor or their respective Affiliates, subject to customary confidentiality arrangements. Absent manifest error, the determination of such accounting firm shall be final and binding. The payment of the fees and expenses of such accounting firm shall be divided equally between Owner and Contractor.

“Block” means a delineated group of Modules and applicable connected inverters, trackers, mounting structures, interconnecting equipment and other Equipment directly supporting the operation of and energy generation output by such Modules.

“Block Actual Maximum EITCs” means for each Block the lesser of the (a) maximum amount of EITCs for which such Block could have been capable of qualifying, assuming (i) that each Block achieved Block Substantial Completion on its actual Block Substantial Completion Date and (ii) Block Substantial Completion is equivalent to Placed in Service for each applicable Block, and (b) \*\*\* of the Applicable Tax Basis of such Block.

“Block Capacity Liquidated Damages” has the meaning set forth in Section 17.3.

“Block Delay Liquidated Damages” has the meaning set forth in Section 17.1(a).

“Block Maximum EITCs” means for each Block the lesser of the (a) maximum amount of EITCs for which such Block could have been capable of qualifying, assuming (i) that each Block achieved Block Substantial Completion by its Guaranteed Block Substantial Completion Date (as in effect on the Effective Date and without giving effect to any extensions thereof under this Agreement) and (ii) Block Substantial Completion is equivalent to Placed in Service for each applicable Block, and (b) \*\*\* of the Applicable Tax Basis of such Block.

“Block Measured Capacity” means, with respect to a Block, the aggregate electrical capacity of the Modules comprising such Block, as measured pursuant to the provisions of Exhibit 16A.

“Block Substantial Completion” has the meaning set forth in Section 16.2.

“Block Substantial Completion Date” has the meaning set forth in Section 16.3.

“Business Day” means a Day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for business in the State of California.

“CAISO” means the California Independent System Operator Corporation.

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“CAISO Tariff” means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

“Call Right” has the meaning set forth in the MIPA.

“Capacity LD Amount” means the amount of Development Security that SCE has the right to retain under the PPA associated with the reduction in capacity.

“Capacity Shortfall” has the meaning set forth in Exhibit 16A.

“Capacity Test” means, with respect to each Block, the test and commissioning of such Block as described in Exhibit 16A.

“Capacity Test Certificate” means the certificate in the form of Exhibit 17 to be issued by Contractor after completion of a Capacity Test.

“Certificate of Block Substantial Completion” means a certificate delivered by Contractor pursuant to Section 16.3 and substantially in the form attached as Exhibit 19.

“Certificate of Facility Substantial Completion” means a certificate delivered by Contractor pursuant to Section 16.5 and substantially in the form attached as Exhibit 20.

“Certificate of Final Completion” means a certificate delivered by Contractor pursuant to Section 18.2 and substantially in the form attached as Exhibit 21.

“Change in Law” means the enactment, adoption, promulgation, modification (including a written or oral change in interpretation by a Governmental Authority) or repeal of any Applicable Law or Applicable Permit after the Effective Date that has or will have an adverse effect on Contractor's costs and/or schedule for performing the Work; provided, however, that no Change in Law pursuant to this Agreement shall arise by reason of (a) any national, federal, state or provincial income Tax law (or any other Tax law based on income), (b) any federal law imposing a custom, duty, levy, impost, fee, royalty or similar charge for which Contractor is responsible hereunder with respect to the importation of Facility Equipment from outside of the United States, (c) a labor wage law or other Applicable Law that affects Contractor's or its Subcontractor's costs of employment, (d) a change of law outside of the United States of America, including any change in law that affects the cost of goods, manufacturing, shipping or other transportation of any Facility Equipment and (e) the final enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date.

“Change in Project Agreement” means any amendment, restatement or replacement after the Effective Date, of the following agreements: Interconnection Agreement, PPA, any agreement relating to the Real Property Rights, or any other agreement or document to which Owner is or becomes a party and under which Contractor has any obligation to comply with (directly or indirectly) hereunder; provided, however, that Contractor shall be required to comply with the amendments, restatements or replacements to the agreements or documents contemplated in the MIPA, in Section 1 or Section 2 of Exhibit 26 or in Section 3.34 without a

Change Order or other cost or schedule relief and such amendments, restatements or replacements shall not be considered Changes in Project Agreements.

“Change in Tax Law” means, after the Effective Date (a) any change in or amendment to the Code or another applicable federal income tax statute other than a reduction in an income tax rate of less than \*\*\*, (b) \*\*\*, (c) the issuance of \*\*\* final Treasury Regulations, (d) \*\*\*, (e) any change in the interpretation of the Code or Treasury Regulations by a decision, judgment, or opinion of the United States Tax Court, United States District Court that would have had jurisdiction over Purchaser, United States Court of Appeals or United States Supreme Court, or (f) \*\*\*.

“Change Order” means a written document signed by Owner and Contractor or otherwise placed into effect under Article 10, authorizing an addition, deletion or revision to the Work, an adjustment of the Contract Price or Construction Schedule, and/or any other obligation of Owner or Contractor under this Agreement, which document is issued after execution of this Agreement.

“Claim Notice” has the meaning set forth in Section 24.5.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Operation Deadline” has the meaning set forth in the PPA.

“Confidential Information” has the meaning set forth in Section 25.1.

“Construction Equipment” means all equipment, machinery, tools, consumables, temporary structures or other items as may be required for Contractor to complete the Work but which will not become a permanent part of the Facility.

“Construction Schedule” means the schedule based on and consistent with the provisions set forth in Exhibit 4A and Exhibit 4B attached hereto for the prosecution of the Work by Contractor for the Project (including the achievement of the Guaranteed Facility Substantial Completion Date and the Guaranteed Final Completion Date), created in accordance with Section 3.11 and as updated from time to time pursuant to the terms of this Agreement.

“Contract Documents” means this Agreement, the exhibits and schedules hereto, and Contractor Submittals.

“Contract Price” means the sum of \*\*\*, as the same may be modified from time to time in accordance with the terms of this Agreement.

“Contractor” has the meaning set forth in the preamble.

“Contractor Acquired Permits” means those Applicable Permits to be acquired by Contractor and designated on Exhibit 6A and any other Applicable Permits, other than Owner Acquired Permits.

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“Contractor Critical Path Items” means those items that are designated as “Contractor Critical Path Items” in the Construction Schedule.

“Contractor Event of Default” has the meaning set forth in Section 20.1.

“Contractor Lien” means any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, charge or encumbrance on the Work, the Facility Equipment, the Project, the Site or any part thereof directly or indirectly created, incurred, assumed or suffered to be created by Contractor Party (other than in accordance with any other Project Transaction Document), any Subcontractor, any Supplier, or any of their respective employees, laborers or materialman.

“Contractor Party” or “Contractor Parties” means each of Contractor, SunPower Corporation, and any of their respective present and future subsidiaries and Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns.

“Contractor Performance Security” means a corporate guaranty from SunPower Corporation, in the form attached hereto as Exhibit 11.

“Contractor Submittals” means the drawings, specifications, plans, calculations, model, designs and other deliverables described in Exhibit 7.

“Contractor's Insurance” has the meaning set forth in Section 23.1, as further described in Part I of Exhibit 15.

“Contractor's Representative” means the individual designated by Contractor in such capacity set forth on Exhibit 5 in accordance with Section 5.2.

“Control” means (including with correlative meaning the terms “Controlled”, “Controls” and “Controlled by”), as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Cumulative MW” means, as of the date of determination, the aggregate Block Measured Capacities of all the Blocks that have achieved Block Substantial Completion.

“DAS System” means the data acquisition system installed by Contractor in the Facility, as more specifically described in Exhibit 3 under “SCADA System”.

“Day” means calendar Day unless it is specified that it means a Business Day.

“Defect Warranty” has the meaning given in Section 21.3(a).

“Defect Warranty Period” has the meaning given in Section 21.4(a).

“Delay Response Plan” has the meaning set forth in Section 3.22.

“Delivery Point” means the point of interconnection at the Whirlwind Substation, identified as Q407, as set forth in the single-line diagram in Exhibit 1.

“Depreciation Benefit” means the most accelerated depreciation available under Sections 167 and 168 of the Code, assuming the utilization of the shortest available recovery period, the most accelerated depreciation method available, the half-year convention and a full first taxable year (however, in no event shall the depreciation be more accelerated than \*\*\* declining balance depreciation (without application of Section 168(k) of the Code or any successor thereto). The recovery periods applicable to each Block shall be determined using the depreciation class percentage allocations derived from costs by class divided by the total costs for each Block listed on Exhibit 25. In determining the Depreciation Benefit, a \*\*\* tax rate shall be applied. Further, in accordance with Section 50(c) of the Code tax basis for purposes of calculating depreciation shall be deemed to be reduced by \*\*\* of the Maximum EITCs.

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“Development Security” has the meaning set forth in the PPA.

“Direct Costs” means the costs that are incurred by Contractor as a result of the event requiring the Change Order for the following items: (a) payroll wages paid for labor in the direct employ of Contractor at the Site; (b) cost of materials and permanent equipment; (c) payments made by Contractor to Subcontractors; (d) rental charges of machinery and equipment for the Work; (e) permit fees; (f) costs of mobilization and/or demobilization; (g) associated standard indirect field costs; and (h) associated engineering costs, if any, directly related to Work implemented under the Change Order.

“Disclosing Party” has the meaning set forth in Section 25.1.

“Dispute” has the meaning set forth in Section 28.1.

“Dispute Initiator” has the meaning set forth in Section 3.11(b).

“Dollar” and “\$” means the lawful currency of the United States of America.

“Effective Date” has the meaning set forth in Section 1.9.

“EITC” means the tax credit for energy property described in Section 48(a)(3)(A)(i) of the Code.

“EITC Applicable Percentage” means \*\*\* with respect to any Block; provided, however, with respect to any Block if its Block Substantial Completion Date is after December 31, 2016, then with respect to such Block it shall be the \*\*\* of (a) \*\*\* and (b) the federal investment tax credit (or successor thereto) percentage for utility scale solar available under then Applicable Law for such Block.

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“EITC Timing Determinate” means the time value difference between when each Block Maximum EITC was contemplated to be reflected in Owner's estimated tax payments in accordance with the definition of Block Maximum EITC and the tax basis (by category) as reflected in Exhibit 25 and when Block Actual Maximum EITCs for each Block is deemed to be reflected in Owner's estimated tax payments. It is determined assuming Owner will pay its estimated taxes based on the annualized income installment method of Section 6655(e)(2) of the Code (using the annualization periods set forth in Sections 6655(e)(2)(A) and (B) of the Code)), and using as the interest rate the Wall Street Journal “prime rate” as of the first Business Day preceding the date of such first estimated tax installment payment.

“Eligible SunPower Competitor” means \*\*\*.

“Emergency” means an event occurring at the Site or any adjoining property that poses actual or imminent risk of serious personal injury to any Person or material physical damage to the Project requiring, in the good faith determination of Contractor, immediate preventative or remedial action.

“Environmental Laws” means any federal, state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment and human health, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601, et seq.; the Clean Air Act, 42 U.S.C. 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; and any other law that governs: (a) the existence, removal, or remediation of Hazardous Materials on real property; (b) the emission, discharge, release, or control of Hazardous Materials into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Materials.

“Equipment” means, collectively, Construction Equipment and Facility Equipment.

“Equity Contribution Agreement” means an equity contribution agreement from MEHC, in the form attached hereto as Exhibit 12.

“Event of Default” means either a Contractor Event of Default or an Owner Event of Default, as the context may require.

“Excluded Site Condition” means (a) the presence at the Site of Hazardous Materials or (b) any other characteristic of or condition affecting the Site (including the existence of archaeological artifacts or features) which was not disclosed in the \*\*\* with respect to the Site.

“Excusable Event” means \*\*\*.

“Expected EITCs” means for any Block the amount of EITCs available for such Block using the EITC Applicable Percentage multiplied by such Block's Applicable Tax Basis. Further, it shall be assumed that Block Substantial Completion is equivalent to Placed in Service for each Block.

“Facility” has the meaning set forth in the Recitals.

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“Facility Capacity” means, with respect to the Facility, the sum of the Final Test Results of all of the Blocks, pursuant to the provisions of Exhibit 16A.

“Facility Delay Liquidated Damages” has the meaning set forth in Section 17.2.

“Facility Demonstration Test” has the meaning set forth in Exhibit 16D.

“Facility Equipment” means all equipment, fixtures, materials, supplies, devices, machinery, tools, parts, components, instruments, appliances and other items that are required to complete the Facility that will become a permanent part of the Facility \*\*\*, whether provided by Contractor or any Subcontractor, and all special tools required to operate and maintain the Facility.

“Facility Substantial Completion” has the meaning set forth in Section 16.4.

“Facility Substantial Completion Date” has the meaning set forth in Section 16.5.

“Final Capacity Liquidated Damages” has the meaning set forth in Section 17.5(a).

“Final Completion” means satisfaction or waiver of all of the conditions for completion of the Facility as set forth in Section 18.1.

“Final Completion Date” means the actual date on which the Facility has achieved Final Completion in accordance with Section 18.2.

“Final Test Results” means with respect to a Capacity Test, the final results of such Capacity Test after accounting for the uncertainty calculation more particularly described in Exhibit 16A.

“Financing Parties” means any and all lenders, security holders, note or bond holders, lien holders, investors, equity providers, holders of indentures, security agreements, mortgages, deeds of trust, pledge agreements and providers of swap agreements, interest rate hedging agreements, letters of credit and other documents evidencing, securing or otherwise relating to the construction, interim or long-term financing or refinancing of the Project or a portfolio of projects including the Project, and their successors and permitted assigns, and any trustees or agents acting on their behalf. The term “Financing Party” includes, for the avoidance of doubt, any Person or Persons that own the Project and lease the Project to Owner or an Affiliate of Owner, as applicable, under a lease, sale leaseback or synthetic lease structure.

“Force Majeure Event” means, when used in connection with the performance of a Party's obligations under this Agreement, any act, condition or event which renders said Party unable to comply totally or partially with its obligations under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect thereof on its ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has

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been unable to overcome and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(i) Without limiting the meaning of but subject to the preceding sentence, the following events constitute Force Majeure Events to the extent that they render a Party unable to comply totally or partially with its obligations under this Agreement:

- (A) \*\*\*
- (B) \*\*\*
- (C) \*\*\*
- (D) \*\*\*
- (E) \*\*\*
- (F) \*\*\*
- (G) \*\*\*
- (H) \*\*\*

(ii) Notwithstanding anything to the contrary in this definition, the term Force Majeure Event shall not be based on or include any of the following:

- (A) \*\*\*
- (B) \*\*\*
- (C) \*\*\*
- (D) \*\*\*
- (E) \*\*\*
- (F) \*\*\*
- (G) \*\*\*
- (H) \*\*\*
- (I) \*\*\*
- (J) \*\*\*
- (K) \*\*\*

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“Full Notice to Proceed” means a written notice from Owner to proceed with the Work under this Agreement.

“Full NTP Conditions” means those items set forth under Section 1 of on Exhibit 26.

“Functional Test” means the test to determine the functionality of the Project and equipment and components incorporated therein, as described in Exhibit 27.

“Governmental Authority” means any national, federal, state, regional, province, town, city, county, local or municipal government, whether domestic or foreign or other administrative, regulatory or judicial body of any of the foregoing and all agencies, authorities, departments, instrumentalities, courts and other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing.

“Guaranteed Block On-line Schedule” means the schedule attached hereto as Exhibit 4B.

“Guaranteed Block Substantial Completion Date” means, with respect to each Block, the applicable block substantial completion date therefor, as set forth in Exhibit 4B.

“Guaranteed Capacity” means, with respect to a Block or the Facility, the MW values set forth in Exhibit 16B.

“Guaranteed Facility Substantial Completion Date” means, with respect to the Facility, the guaranteed facility substantial completion date as set forth in Exhibit 4B.

“Guaranteed Final Completion Date” has the meaning set forth in Section 18.1, as may be extended only in accordance with the express terms of this Agreement.

“Hazardous Materials” means (a) any regulated substance, hazardous constituent, hazardous materials, hazardous wastes, hazardous substances, toxic wastes, radioactive substance, contaminant, pollutant, toxic pollutant, pesticide, solid wastes, and toxic substances as those or similar terms are defined under any Environmental Laws; (b) any friable asbestos or friable asbestos-containing material; (c) polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids; (d) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof; and (e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or contaminant that, whether by its nature or its use, is subject to regulation or giving rise to liability under any Environmental Laws.

“Indemnifying Party” means, with respect to an indemnification obligation under this Agreement, the Party providing such indemnification.

“Indemnitee” means an Owner Party or a Contractor Party, as the context may require, being indemnified pursuant to Section 24.5.

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“Independent Engineer” means any independent engineer or engineering firm designated under Section 31.9.

“Independent Third Party Engineer” means any of the following: \*\*\*, in each case to the extent that they are not working for Owner or Contractor with respect to the Project, or such other independent third party engineer mutually agreed upon by the Parties.

“Industry Standards” means those standards of design, engineering, construction, workmanship, care and diligence and those practices, methods and acts that would be implemented and normally practiced or followed by prudent solar engineering, construction, and installation firms in the design, engineering, procurement, installation, construction, testing and commissioning (and operation associated therewith) of utility-scale photovoltaic facilities in the western United States and otherwise performing services of a similar nature in the jurisdiction in which the Work will be performed and in accordance with which practices, methods and acts, in the exercise of prudent and responsible professional judgment by those experienced in the industry in light of the facts known (or that reasonably should have been known) at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, good engineering design practices, safety, reliability, Applicable Codes, Applicable Laws, and Applicable Permits. Solely with respect to Section 21.5(a), “Industry Standards” shall mean those standards of care and diligence normally practiced by entities that operate and maintain photovoltaic power plants. Industry Standards is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts.

“Insolvency Event” with respect to a Person means such Person becomes insolvent, or institutes or has instituted against it a case under Title 11 of the United States Code, is unable to pay its debts as they mature or makes a general assignment for the benefit of its creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of insolvency.

“Intellectual Property Claim” means an allegation, claim or legal action asserted by a third party against an Owner Party alleging unauthorized use, misappropriation, infringement, or other violation of such third party's Intellectual Property Rights arising from (a) Owner Party's use of the Licensed Technology to the extent used in accordance with the license granted pursuant to Section 14.2 or (b) Contractor's performance (or that of its Affiliates or Subcontractors) under this Agreement asserted against Owner that (i) concerns any Facility Equipment or other goods, materials, supplies, items or services provided by Contractor (or its Affiliates or Subcontractors) under this Agreement, (ii) is based upon or arises out of the performance of the Work by Contractor (or its Affiliates or Subcontractors), including the use of any tools or other implements of construction by Contractor (or its Affiliates or Subcontractors) or (iii) is based upon or arises out of the design or construction of any item by Contractor (or its Affiliates or Subcontractors) under this Agreement or the use, or operation, of any item according to directions embodied in Contractor's (or its Affiliates' or Subcontractors') Contractor Submittals, or any revision thereof, prepared or provided by Contractor.

“Intellectual Property Rights” means all intellectual property rights throughout the world, including all rights in patents and inventions (whether or not patentable); registered and

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unregistered copyrights, database rights, semiconductor mask work rights; proprietary rights trade secrets, know-how and confidential information; provided, however, that “Intellectual Property Rights” shall not include trademarks, service marks, corporate names, trade names, domain names, logos, slogans, symbols or other similar designations of source or origin, or any rights with respect thereto.

“Interconnection Agreement” means that certain Large Generator Interconnection Agreement by and between Owner, SCE and CAISO dated as of November 8, 2011, as amended, restated or modified from time to time.

“IRS” means the Internal Revenue Service.

“Key Personnel” means the Persons identified in Exhibit 5.

“L/C Amount” means the aggregate face amount of all Acceptable Letters of Credit required by Exhibit 31.

“Late Block” has the meaning set forth in Section 17.1(a).

“Licensed Technology” has the meaning set forth in Section 14.1.

“Limited Notice to Proceed” means a written notice from Owner to proceed with the Work set forth on Exhibit 26.

“LNTP Payment” means the limited notice to proceed payment set forth in the Payment Schedule.

“Losses” means \*\*\*.

\*\*\*

“Major Facility Equipment Warranties” has the meaning set forth in Section 21.6(c)(i).

“Major Subcontractor” means \*\*\*.

\*\*\*

\*\*\*

“Maximum EITCs” means the sum of Block Maximum EITCs.

“MEHC” means MidAmerican Energy Holdings Company, an Iowa corporation.

“Milestone Payment” means a discrete portion of the Contract Price payable in accordance with Section 8.1(a) upon achievement of the milestone corresponding to such payment in the Payment Schedule.

“Milestone Schedule” means the schedule attached hereto as Exhibit 4A.

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“Minimum Capacity Level” means (a) with respect to a Block, \*\*\* of the Guaranteed Capacity of such Block (as adjusted for uncertainty in accordance with Exhibit 16A) and (b) with respect to the Facility, the aggregate of the Capacity Test values for all Blocks equals at least \*\*\* of the Guaranteed Capacity of the Facility, in each case, as calculated in accordance with Exhibit 16A.

“Minimum Irradiance Criteria” has the meaning set forth in Exhibit 16A.

“Minor Subcontractor” means any Person, other than a Major Subcontractor, that, directly or indirectly, and of any tier (other than Contractor but including any Affiliate of Contractor) supplies any items or performs any portion of the Work in furtherance of Contractor's obligations under this Agreement.

“MIPA” has the meaning set forth in the Recitals.

“Module Warranty” has the meaning set forth in Section 21.7.

“Modules” means solar photovoltaic modules with an expected electrical output of 435 watts of electric power (expressed as DC).

“Monthly Progress Report” means a progress report prepared by Contractor setting forth the detail required in Exhibit 8A.

“MW” means 1,000,000 watts of electric power (expressed as AC).

“No Shop Period” has the meaning set forth in Section 1.11(c).

“Non-Excusable Event” means (a) the negligence or willful misconduct of any Contractor Party or any Subcontractor in connection with any Project Transaction Document; (b) the failure of any Contractor Party (directly or through any Subcontractor) to comply with any of its obligations or a breach under any Project Transaction Document which failure or breach is not otherwise excused so long as such failure or breach has not otherwise been remedied, in accordance with such Project Transaction Document); and (c) \*\*\*.

“Notice of Dispute” has the meaning set forth in Section 28.1.

“NTP Date” means the date on which the Full Notice to Proceed is delivered by Owner.

“NTP Payment” means the notice to proceed payment set forth in the Payment Schedule.

“O&M Agreement” has the meaning set forth in the Recitals.

“O&M Provider” has the meaning set forth in the Recitals.

“Owner” has the meaning set forth in the preamble.

“Owner Acquired Permits” means those Applicable Permits to be acquired by Owner and designated on Exhibit 6B.

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“Owner-Caused Delay” means \*\*\*.

“Owner Event of Default” has the meaning set forth in Section 20.3.

“Owner Improvement” means any modification to, improvement to or derivative work based upon the Licensed Technology, Block or Facility Equipment or any Intellectual Property Right in any of the foregoing that is created, developed, discovered or reduced to practice, directly or indirectly in whole or in part by an Owner Party.

“Owner Inspection Parties” has the meaning set forth in Section 6.1.

“Owner Party” or “Owner Parties” means Owner and its present and future subsidiaries and Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns.

“Owner Taxes” means (a) any and all Taxes imposed under Applicable Law in respect of the income or gross income of Owner, the direct or indirect owners of beneficial interests in Owner and the Affiliates of the foregoing and (b) Property Taxes imposed under Applicable Law on Owner in respect of the Site or the Facility.

“Owner's Engineer” means any engineering firm or firms or other engineer or engineers selected and designated by Owner, who may be an employee of an Owner Party but who shall not be a SunPower Competitor.

“Owner's Insurance” has the meaning set forth in Section 23.2, as further described in Part II of Exhibit 15.

“Owner's Representative” means the individual designated by Owner in accordance with Section 5.1.

“Party” and “Parties” have the meanings set forth in the preamble.

\*\*\*

“Payment Schedule” means the Payment Schedule attached hereto as Exhibit 9 setting forth the Milestone Payments and the corresponding milestones required to be achieved.

“Performance Criteria” or “Performance Criterion” means the relevant performance criteria for the Facility identified in Exhibit 16B.

“Performance Guaranty Agreement” has the meaning set forth in Section 21.7.

“Permit Expenses” means the actual costs payable to a Governmental Authority and all other reasonable third-party costs and expenses incurred in connection with the application for and issuance of an Applicable Permit.

“Person” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization, limited liability company or any other entity or

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organization, including any Governmental Authority. A Person shall include any officer, director, member, manager, employee or agent of such Person.

“Placed in Service” means “placed in service” for purposes of Sections 48 and 168 of the Code.

“PPA” means that certain Renewable Power Purchase and Sale Agreement, dated as of December 30, 2010, with SCE, as amended by Amendment No. 1 to the Renewable Power Purchase and Sale Agreement between the Company and SCE, dated as of February 15, 2011, as further amended, restated or modified from time to time.

“PPA Progress Report” means a written progress report prepared by Contractor and in a form substantially consistent with the requirements of the PPA, and as otherwise agreed upon by the Parties, acting reasonably.

“Project” has the meaning set forth in the Recitals.

“Project Labor Agreement” means that certain Project Labor Agreement for the Antelope Valley Solar Project among Contractor and \*\*\*.

“Project Punch List” has the meaning set forth in Section 16.6(c).

“Project Transaction Documents” means this Agreement, the Contractor Performance Security, the Module Warranty, the Performance Guaranty Agreement, the Acceptable Letters of Credit, the MIPA, the SunPower Guaranty (as defined in the O&M Agreement) and the O&M Agreement.

“Property Tax” means any real or personal property, or any ad valorem Taxes related to the Site, the Facility, the Facility Equipment, or any other property that will be incorporated into the Project.

“Proposed Project Punch List” has the meaning set forth in Section 16.6(c).

“Proposed Punch List” has the meaning set forth in Section 16.6(a).

“Punch List” has the meaning set forth in Section 16.6(a).

“Punch List Amount” means the cost or estimated cost to complete any Punch List Item as approved by the Parties in connection with the approval of the Proposed Punch List or Proposed Project Punch List in accordance with Section 16.6, as applicable.

“Punch List Estimate” means Contractor's cost estimate for completing the Punch List Items.

“Punch List Holdback” means an amount equal to \*\*\* of the Punch List Amount for each Punch List Item.

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“Punch List Items” means those finishing items with respect to a Block or the Facility, as applicable, that (a) consistent with Industry Standards does not affect the operability, reliability, safety, or mechanical, civil or electrical integrity of the Block or the Facility, (b) Owner or Contractor identifies as requiring completion or containing defects, and (c) the completion of which will not adversely effect, the performance of the Block or Facility, so long as such Block or Facility is nonetheless ready for commercial operations in a safe and continuous manner and in accordance with Applicable Law and Applicable Permits.

“Purchasers” has the meaning set forth in the Recitals.

“Qualified Financial Institution” means (a) a single bank or financial institution the long term senior unsecured debt obligations of which are rated no less than \*\*\* by S&P and \*\*\* by Moody's, or if a such single bank or financial institution is not available or will not issue a letter of credit with a stated amount equal to the amount required by Exhibit 31, then (b) two (2) banks or financial institutions the long term senior unsecured debt obligations of which each are rated no less than \*\*\* by S&P and \*\*\* by Moody's; \*\*\*.

“Quitclaim Side Letter” has the meaning set forth in Section 3.34(b).

“Real Property Rights” means, (a) those rights with respect to land to be obtained by closing on the exercised options as set forth on Exhibit 4A, as well as (b) all other rights in or to real property necessary to perform the Work and to develop, construct, complete, operate, maintain and access the Project and the Site, including those rights set forth in deeds, leases, option agreements, co-tenancy and shared facility agreements, Applicable Permits, easements, licenses, private rights-of-way agreements and crossing agreements that exist as of the Effective Date, including as set forth on Exhibit 2, or that are obtained after the Effective Date by Contractor pursuant to its obligations under Exhibit 26.

“Receiving Party” has the meaning set forth in Section 25.1.

“Reimbursement Amount” means an amount equal to \*\*\*.

“Release” means the release, discharge, deposit, injection, dumping, spilling, leaking or placing of any Hazardous Material into the environment so that such Hazardous Material or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters under Applicable Law and Applicable Permits.

“Representative” has the meaning set forth in Section 1.11(c).

“Required Manuals” means the manuals, instructions and training aids, whether created by Contractor, Subcontractor or Supplier, reasonably necessary for the safe and efficient operation, maintenance and shut down of the Facility as set forth on Exhibit 7.

“Retainage” means an amount equal to \*\*\* of the amount payable pursuant to each Milestone Payment (other than the payment to be made in connection with Final Completion).

“Right of First Offer” has the meaning set forth in Exhibit 29.

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“SCE” means Southern California Edison Company, a California corporation.

“SCE Deed” has the meaning set forth in Section 3.34(a).

“SCE Interconnection Facilities” means the interconnection infrastructure which SCE is obligated to provide, as set forth in the Interconnection Agreement.

“Scheduled MWs” means, as of the date of determination, the number of MW scheduled to have been completed by the Blocks that have achieved Block Substantial Completion in accordance with Exhibit 4B.

“Scope of Work” means the scope of the work to be performed by Contractor under this Agreement, as further described in Exhibit 1.

“Sellers” has the meaning set forth in the Recitals.

“Side Letter” means that certain letter from SunPower Corporation to MEHC regarding a \*\*\* dated on or prior to Effective Date in accordance with Section 2.7(l) of the MIPA.

“Site” has the meaning set forth in the Recitals.

“Site Condition” has the meaning set forth in Section 3.25.

“Site Substations” means the \*\*\* substations which will be constructed on the Site.

“Spare Parts” means the spare parts provided by Contractor to Owner in accordance with Exhibit 30.

“Start-up and Commissioning” means the energization and Functional Testing of the relevant Block, including verifying Block completeness as received from Contractor's construction team and readiness for operations and testing of such Block.

“Subcontractors” means Major Subcontractors and Minor Subcontractors.

“Successfully Run” means, (a) with respect to a Capacity Test, that the applicable Capacity Test was completed in accordance with the applicable procedures, conditions and requirements for the proper performance of such test as set forth in Exhibit 16A and (b) with respect to a Functional Test, that the Functional Test was completed in accordance with the provisions of Exhibit 27 and demonstrated that the Block being tested is capable of producing AC electricity.

“SunPower Competitors” means \*\*\*.

“Suppliers” means those Equipment suppliers with which Contractor or Subcontractor contracts in furtherance of Contractor's obligations under this Agreement.

“Survival Period” has the meaning set forth in Section 24.8.

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“Taxes” means any and all taxes, charges, duties, imposts, levies and withholdings imposed by any Governmental Authority, including sales tax, use tax, income tax, withholding taxes, corporation tax, franchise taxes, margin tax, capital gains tax, capital transfer tax, inheritance tax, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and any interest, penalty, fine or other amount due in connection therewith, excluding in all cases Permit Expenses.

“Tax Law Price Reduction” has the meaning set forth in Section 20.8(a).

“Termination Payment” means (a) with respect to (x) Owner's termination for Contractor's failure to satisfy the Full NTP Conditions on or prior to \*\*\* in accordance with Section 1.11(b) or (y) either Party's termination for failure to satisfy the condition set forth in Part B of Section 1 of Exhibit 26, an amount equal to \*\*\*; (b) with respect to a termination by Contractor for an Owner Event of Default in accordance with Section 20.5, an amount equal to \*\*\*; (c) with respect to a termination by Contractor for a Change in Law in accordance with Section 11.4(c)(i), an amount equal to the sum of (i) \*\*\* plus (ii) the Reimbursement Amount; (d) with respect to a termination by Contractor for an extended Force Majeure Event in accordance with Section 20.7, an amount equal to \*\*\* and (e) with respect to a termination by Owner for a Change in Tax Law in accordance with Section 20.8, \*\*\*.

“Technical Specifications” has the meaning set forth in the Recitals.

“Threshold” has the meaning set forth in Section 11.4(c)(ii).

“Title Company” means \*\*\*.

“Treasury Regulations” means final and temporary (assuming such are in effect at the relevant time) income tax regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations) by other final and temporary (assuming such are in effect at the relevant time) income tax regulations.

“Warranty” means, as applicable, the Defect Warranty \*\*\*.

“Warranty Period” means, as applicable, the Defect Warranty Period \*\*\*.

“Water Banking Activities” means above and below grade water banking activities permitted to be conducted by \*\*\*.

“Water Banking Design Deadline” means \*\*\* (as such date may be extended in accordance with Section 3.33(a)), unless the Parties mutually agree to extend such date.

\*\*\*

“Water Supply Agreement” means Option Agreement, dated as of October 10, 2012, by Homer LLC and Solar Star California XIX, LLC.

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“Weekly Progress Report” means a weekly progress report prepared by Contractor setting forth the detail required in Exhibit 8B.

“Work” means all obligations, duties, and responsibilities assigned to or undertaken by Contractor under this Agreement, as further described in Exhibit 1 and Exhibit 26, with respect to the Project, including any of the foregoing obligations performed prior to the Effective Date, which shall be deemed to be Work performed by Contractor under this Agreement, notwithstanding the fact that it was performed in whole or in part prior to the Effective Date.

**1.3 Order of precedence.** In the event of a conflict or inconsistency between any of the Contract Documents forming part of this Agreement, the following order of precedence shall apply: (a) any duly executed amendment or Change Order to this Agreement (and between them, the most recently executed amendment or Change Order shall take precedence); (b) this Agreement (to the extent not superseded by a subsequent amendment); (c) Exhibits 1, 16, 3, 7, 27 and 23 to this Agreement in the order indicated; (d) the Exhibits to this Agreement not otherwise specified in subclause (c) above; and (e) any other Contract Documents not previously noted.

**1.4 Entire agreement.** This Agreement and the Exhibits attached hereto constitute the complete and entire Agreement between the Parties with respect to the engineering, procurement, construction, testing and commissioning of the Project and supersedes any previous communications, negotiations, representations or agreements, whether oral or in writing, with respect to the subject matter addressed herein. NO PRIOR COURSE OF DEALING BETWEEN THE PARTIES SHALL FORM PART OF, OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF, THIS AGREEMENT. For the avoidance of doubt, this Agreement shall not supersede the O&M Agreement, the Module Warranty, the Performance Guaranty Agreement or any other Project Transaction Document, which shall remain in full force and effect.

**1.5 No agency.** The Parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party (except and solely to the extent expressly provided in this Agreement pursuant to which Owner appoints Contractor as Owner's agent). Nothing in this Agreement shall be construed to give either Party any right, power or authority to enter into any agreement or undertaking for, or act as an agent or representative of, or otherwise bind, the other Party. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

**1.6 Invalidity.** Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but, to the extent permitted by law, if for any reason any provision which is not essential to the effectuation of the basic purpose of this Agreement is determined to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. Any such invalid, illegal or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid, illegal or

unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, illegal or unenforceable the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, illegality or unenforceability and to restore this Agreement as near as possible to its original intent and effect.

**1.7 Binding effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and on their respective permitted successors, heirs and assigns.

**1.8 Counterparts.** This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute one and the same instrument. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile, .pdf or emailed signatures, which shall be deemed to be an original and shall be as effective for all purposes as delivery of a manually executed counterpart.

**1.9 Effective date.** The effective date (the “Effective Date”) of this Agreement is the date when this Agreement has been signed by both Parties and the “Closing” under the MIPA shall have occurred.

**1.10 Time is of the Essence.** To the extent that there is not a specific time period specified in this Agreement, time is of the essence with respect to a Party's performance of its obligations under this Agreement.

**1.11 Notice to Proceed.**

(a) Limited Notice to Proceed. On the Effective Date, Owner shall be deemed to have authorized Contractor to commence and complete the Work set forth in Exhibit 26 in Contractor's sole and absolute discretion; provided, however, that (i) until the NTP Date, Owner's sole and exclusive obligation with respect to Contractor's performance of such Work shall be the payment of the LNTP Payment and (ii) Contractor hereby waives its rights to exercise any other rights or remedies that may be available to Contractor as a result of the performance of such Work. Contractor shall promptly notify Owner following the completion of any Work set forth in Exhibit 26 as well as the satisfaction or failure to satisfy any of the Full NTP Conditions.

(b) Full Notice to Proceed. Subject to Section 20.8 or other earlier termination of this Agreement in accordance with Article 20, Owner shall submit the Full Notice to Proceed within three (3) Business Days following satisfaction by Contractor (or with respect Part B of Section 1 of Exhibit 26, agreement by Owner that the condition has been satisfied) of the Full NTP Conditions; provided that if the Full NTP Conditions have not been satisfied by \*\*\* (which date shall not be extended for any reason), then Owner has the option to either terminate this Agreement or to deliver the Full Notice to Proceed. If Owner elects to terminate this Agreement:

(i) Contractor shall pay to Owner the applicable Termination Payment within \*\*\* of Owner providing notice of the Termination Payment amount;

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(ii) Upon payment by Contractor to Owner of the applicable Termination Payment, Sellers shall have the option to exercise the Call Right in accordance with Section 2.9 of the MIPA;

(iii) if Sellers do not exercise the Call Right in accordance with Section 2.9 of the MIPA at Owner's request, Contractor shall promptly and in any event within \*\*\* return the Site to a substantially similar condition as of the date of this Agreement at Contractor's sole expense;

(iv) except with respect a termination in accordance with Section 20.9, for a period of (A) \*\*\* after the expiration of the No Shop Period or (B) if Contractor or any of its Affiliates shall have breached the obligations set forth in Section 1.11(c), a period of \*\*\* after the expiration of the No Shop Period, Purchasers shall have a Right of First Refusal (as defined in Exhibit 16 of the MIPA) with respect to the acquisition of the membership interests of Owner as set forth in Section 2.10 of the MIPA;

(v) if Contractor or any of its Affiliates breaches its obligations under 1.11(b)(iv) or 1.11(c), including with respect to Purchasers' exercise of any Right of First Refusal as set forth in Section 2.10 of the MIPA, Sellers shall pay to Purchasers an amount equal to \*\*\* within \*\*\* of such breach, which payment shall be in addition to the applicable Termination Payment, and Purchasers may also pursue injunctive relief;

(vi) other than the applicable Termination Payment, the amounts set forth in Section 1.11(b)(v) (as applicable) and Owner's or Purchasers' right to injunctive relief for Contractor's breach of its obligations under and pursuant to Section 1.11(b)(iv) or 1.11(b)(v) or the MIPA and obligations that expressly survive the termination of this Agreement in accordance with Section 30.1, including any indemnification obligations (provided that Owner cannot make any indemnity claim pursuant to Section 24.1(c)), neither Contractor nor Owner shall be liable to the other under this Agreement for, nor shall a court or arbitrator assess, any losses or damages (whether consequential or otherwise), whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, or losses of use, profits, business opportunity, reputation or financing, or rights to indemnities or liquidated damages, all of which are waived by the Parties. The Parties' remedies under this Section 1.11(b) shall be each Party's sole and exclusive compensation and remedy if this Agreement is terminated in accordance with this Section 1.11(b).

(c) No Shop. During the period beginning on the Effective Date and continuing until the earlier of (i) the NTP Date and (ii) the termination of this Agreement in accordance with Section 20.9, and, if this Agreement has been terminated in accordance with Section 1.11(b) due to Contractor's failure to satisfy the conditions set forth in Part A of Section 1 of Exhibit 26, for a period of \*\*\* after the termination of this Agreement (the "No Shop Period"), Contractor agrees that neither it nor any of its Affiliates, directors, officers, employees, or other agents or representatives

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(including any investment banking, legal or accounting firm retained by any of them, and any individual member or employee thereof) (each such Person a “Representative”) shall, and that it shall direct its and their respective representatives not to, directly or indirectly, (i) solicit, initiate or knowingly facilitate or encourage any inquiry with respect to, or the making, submission or announcement of, any Alternative Proposal, (ii) participate in any negotiations or substantive discussions regarding an Alternative Proposal with, or furnish any non-public information or access to its properties, books, records or personnel to, any person that has made or, to Contractor's knowledge, is considering making an Alternative Proposal, (iii) continue, resume or engage in discussions regarding an Alternative Proposal with any person that has made or, to Contractor's knowledge, is considering making an Alternative Proposal, except to notify such person as to the existence of the provisions of this Section 1.11(c), (iv) approve, endorse, cooperate with or recommend any Alternative Proposal, (v) enter into any letter of intent or agreement in principle or any agreement or understanding, oral or written, providing for any Alternative Proposal, or (vi) otherwise cooperate with, or assist or participate in, or knowingly facilitate or encourage any effort or attempt by any Person (other than Owner) with respect to, or which would reasonably be expected to result in, an Alternative Proposal. Contractor shall promptly inform its Representatives, and shall cause its Affiliates and other Representatives promptly to inform their respective representatives, of the obligations under this Section 1.11(c). During the No Shop Period, Contractor shall notify Owner immediately if any inquiries, proposals or offers related to an Alternative Proposal are received by, any information or data is requested from, or any negotiations or discussions related to an Alternative Proposal are sought to be initiated or continued with, Contractor or any of its Affiliates or any of their respective directors, officers, employees and Affiliates or, to Contractor's Knowledge, any other representative, and such notice shall include copies of any letters, proposals or other communications received, as well as the details of such Alternative Proposal. Notwithstanding anything herein to the contrary, this Section 1.11(c) shall not apply after the date of termination in accordance with Section 20.9.

(d) Delay. For the avoidance of doubt, any delay in the performance of the Work set forth in Exhibit 26 or the satisfaction of the Full NTP Conditions shall not be an Owner-Caused Delay or Excusable Event and Contractor shall not be entitled to any schedule or cost relief associated therewith.

(e) Survival. The obligations under Section 1.11 shall survive any termination of this Agreement.

## ARTICLE 2.

### REPRESENTATIONS AND WARRANTIES

**2.1 Representations and Warranties of Contractor.** Contractor represents and warrants to Owner that as of Effective Date and as of the NTP Date:

(a) Organization, Standing and Qualification. Contractor is a corporation,

duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has full power to execute, deliver and perform its obligations hereunder to own, lease and operate its properties and to engage in the business it presently conducts and contemplates conducting under this Agreement, and is and will be duly licensed or qualified and in good standing under the laws of the state in which the Site is located and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to execute and deliver this Agreement or perform its obligations hereunder.

(b) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(c) No Conflict. The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with or cause a default under any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents, (ii) violate or conflict with any Applicable Law or (iii) subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Agreement.

(d) Government Approvals. Other than with respect to the Applicable Permits, neither the execution nor delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority. Contractor represents and warrants that all Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect or Contractor has no knowledge of any reason that any Contractor Acquired Permit cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit Contractor to timely commence and prosecute the Work to completion in accordance with the terms and conditions of this Agreement.

(e) No Suits; Proceedings. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge after due inquiry, threatened against it before any court, arbitrator or Governmental Authority that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

(f) Business Practices. Neither Contractor nor any Subcontractor, or their respective employees, officers, representatives, or other agents of Contractor have made

or will make any payment or have given or will give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor is in compliance with the requirements set forth in Section 3.29.

(g) Licenses. All Persons who will perform any portion of the Work have or will have all business and professional certifications and licenses if and as required by the terms and conditions of this Agreement, Applicable Codes, Applicable Law and Applicable Permits to perform such portion of the Work under this Agreement and Contractor has no knowledge of any reason that any such certifications and licenses cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit such Persons to timely commence and prosecute any portion of the Work to completion in accordance with the terms and conditions of this Agreement.

(h) \*\*\*

(i) Intellectual Property. Contractor owns or has the right to use, or will be able to secure from its Affiliates or Subcontractors the right to use, all Intellectual Property Rights necessary to perform the Work without infringing on the rights of others and to enable Owner to use the Intellectual Property Rights in connection with the ownership, operation, use, maintenance, modification, altering, commissioning, de-commissioning, disposal of or removal of the Project without infringement on the rights of others. The Licensed Technology (and the use thereof to the extent used in accordance with the license granted under Section 14.2) do not and shall not infringe, or cause the infringement of, the Intellectual Property Rights of a third party. Notwithstanding the foregoing, Contractor makes no representation or warranty with respect to any Owner Improvement, except to the extent of Owner Improvements made at the direction of Contractor or in accordance with instructions or designs provided by Contractor, in which case such Owner Improvements shall be deemed to be included in the Licensed Technology for the purposes of this Section 2.1(i).

**2.2 Representations and Warranties of Owner.** Owner represents and warrants to Contractor that as of the Effective Date and as of the NTP Date (provided that the representation and warranty in Section 2.2(d) shall only be made as of the NTP Date):

(a) Organization, Standing and Qualification. Owner is a limited liability company, duly formed, validly existing, and in good standing under the laws of Delaware, and has the full power to execute, deliver and perform its obligations hereunder and engage in the business it presently conducts and contemplates conducting under this Agreement, and Owner is and will be duly licensed or qualified and in good standing under the laws of the state in which the Site is located and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

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(b) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(c) No Conflict. The execution, delivery and performance by Owner of this Agreement will not violate or conflict with or cause a default under any Applicable Law or any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.

(d) No Suits; Proceedings. Solely with respect to the period between the Effective Date and the NTP Date, there are no actions, suits, proceedings, patent or license infringements or investigations that have commenced or, to Owner's knowledge after due inquiry, threatened during such period against it before any court, arbitrator or Governmental Authority that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Owner or in any impairment of Owner's ability to perform its obligations under this Agreement.

(e) Funds. Owner has or will have available all the funds necessary to pay Contractor the Contract Price, and any other amount owing to Contractor under this Agreement, at the times when such amounts become payable under this Agreement.

### ARTICLE 3.

#### CONTRACTOR'S OBLIGATIONS

**3.1 Performance of Work.** Subject to payment of the Contract Price pursuant to Article 7 and Article 8, Contractor shall diligently, duly and properly perform and complete the Work in accordance with the Scope of Work and the terms of this Agreement in order to construct the Facility according to the Construction Schedule, Milestone Schedule and Guaranteed Block On-line Schedule, place it into operation in conformance with the Contract Documents and the Technical Specifications, and achieve Final Completion of the Project. Contractor acknowledges and agrees that it is obligated to perform the Work on a "turnkey basis" which constitutes a fixed-price (subject to the terms hereof) obligation to engineer, design, procure, construct, test and commission the Project in accordance with the terms and conditions of this Agreement. Where this Agreement describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work reasonably inferred or required to complete the Work in accordance with this Agreement. Except as otherwise expressly specified herein, Contractor shall provide all facilities and services required for a complete photovoltaic solar power plant facility, including all balance-of-system facilities set forth in the Scope of Work and the Technical Specifications, for the Contract Price. Information provided by Owner to Contractor prior to the Effective Date for use by Contractor in the performance of the Work shall not form the basis of any claim by Contractor for relief hereunder based on an Owner-Caused Delay or otherwise.

**3.2 Scope of Work.** Contractor shall perform the Scope of Work to the extent necessary (a) for the proper execution and completion of the Work under this Agreement; (b) to supervise and direct the Work in a safe manner and perform all Work in accordance with this Agreement, Applicable Law, Applicable Permits and Industry Standards; (c) to achieve Final Completion of the Facility; and (d) to place the Facility into operation in conformance with the Contract Documents and the Technical Specifications and such that the Facility is in compliance with the PPA and the Interconnection Agreement, Industry Standards, Applicable Codes, Applicable Laws and Applicable Permits. Contractor shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under this Agreement. To that end, Contractor may, in its sole discretion, accelerate the Work and cause milestones to be completed prior to the scheduled date therefor in the Construction Schedule; provided that Owner shall have no obligation to pay, any Application for Payment in amounts in excess of the maximum cumulative payment schedule set forth in Exhibit 9. Contractor will receive input from Owner and will take such input under advisement.

**3.3 Properly Licensed; Sufficient Qualified Personnel.** Contractor shall use, and shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or Applicable Permits to enable such persons to perform work forming part of the Work.

**3.4 Utilities.** As part of the Work, \*\*\* shall arrange and pay for construction power and water (including all water used for dust control), and the installation of construction telecommunication lines and utilities, but only to the extent necessary for Contractor to perform its Work hereunder and pay when due all such utility usage charges. For all permanent utilities, \*\*\* shall arrange and pay prior to the Block Substantial Completion Date with respect to each applicable Block and the Facility Substantial Completion Date with respect to the Facility as a whole, and \*\*\* shall pay with respect to each Block after the applicable Block Substantial Completion Date and after the Facility Substantial Completion Date with respect to the Facility as a whole, for all permanent utilities in addition to the Contract Price, such as backfeed power, permanent water and power (i.e. for operations and maintenance facilities), permanent telecommunication lines, grid telemetry, and infrastructure necessary (including internet access) to transmit data gathered by the DAS System, until the Block Substantial Completion date with respect to each Block and the Facility Substantial Completion Date with respect to the Facility as a whole. After the applicable Block Substantial Completion Date with respect to each applicable Block and after the Facility Substantial Completion Date with respect to the Facility, \*\*\* shall arrange and pay for all utilities. With respect to such costs prior to the Facility Substantial Completion Date, the costs shall be reasonably allocated as between Owner and Contractor based on the Blocks that have achieved Block Substantial Completion Date. Contractor shall bear no responsibility for, nor bear any related damages to outages of any utilities affecting plant production after the Facility Substantial Completion Date, except to the extent caused by any Contractor Party's or Subcontractor's negligence or willful misconduct.

**3.5 Contract Documents.** Contractor shall deliver to Owner all Contract Documents as and when required pursuant to the terms of this Agreement.

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**3.6 Record-Keeping.** All drawings, plans and specifications provided as part of Contractor Submittals shall be kept by Contractor in an organized fashion for reference by Owner during the performance by Contractor of the Work. Contractor shall also maintain at the Site at least one (1) copy of all Contractor Submittals, change orders and other modifications.

**3.7 Materials and Equipment.** As part of the Work, Contractor shall procure all Facility Equipment and shall provide or cause to be provided, at its own expense, all Construction Equipment, machinery, tools, consumables, temporary structures or other items as may be required for Contractor to complete the Work. Contractor shall not incorporate any Facility Equipment that (a) constitutes “prototype” equipment pursuant to the risk ratings standards customarily employed by the commercial insurance industry and (b) on account of being deemed “prototype” equipment, would not be insurable under the insurance policies to be obtained by the Parties pursuant to Article 23.

**3.8 Compliance and Cooperation With EITC Requirements, Applicable Laws, Applicable Permits Applicable Codes and Industry Standards.** Whether or not expressly set forth in any specific section or Exhibit, Contractor shall comply with all Applicable Laws, Applicable Permits, Applicable Codes and Industry Standards in the course of performing the Work and, other than with respect to Owner's obligations under this Agreement, cause the Project to comply with all Applicable Laws and Applicable Permits prior to the Block Substantial Completion Date with respect to each Block and prior to the Facility Substantial Completion Date with respect to the Facility. Contractor shall provide to Owner such information, reports, and documents and take such other actions as may be reasonably requested by Owner to assist Owner in performing its notification and submittal responsibilities as set forth in any Applicable Permit, including as set forth in Section 3.24, and in connection with its claiming of EITCs with respect to the Project.

**3.9 Contractor Acquired Permits; Other Approvals.** Subject to Owner's obligation to provide reasonably requested assistance in accordance with Section 4.4(a), Contractor shall obtain and maintain in full force and effect, and file on a timely basis any documents required to obtain and maintain in full force and effect, the Contractor Acquired Permits. Contractor shall also be responsible for obtaining and maintaining in Contractor's or Owner's name in connection with the Work, as applicable, all construction permits, transportation permits, crossing rights with respect to electrical distribution lines, cable TV lines, drain tiles, rural water lines, telecommunication lines, and other licenses and, with respect to rights-of-way, those necessary to build the Project. \*\*\* Additionally, Contractor shall provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit.

**3.10 Spare Parts.** Contractor shall provide to Owner prior to each Block Substantial Completion Date, the proportionate share (based on aggregate Block capacity) of Spare Parts. Any additional spare parts required by Owner hereunder and not included on Exhibit 30 shall be at Owner's sole cost and expense.

**3.11 Construction Schedule; Progress Reports; Meetings.**

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(a) Within \*\*\* after the Effective Date, Contractor shall deliver to Owner the Construction Schedule, which shall be (i) a Gantt chart developed using either Primavera or Microsoft Project and (ii) consistent with Exhibit 4A and Exhibit 4B. The Construction Schedule shall contain milestones and include details to support all major engineering, procurement, construction, commissioning and testing activities of the Project. The Construction Schedule shall form the basis for progress reporting through the course of the performance of the Work. The Contractor Critical Path Items set forth in the Construction Schedule shall be subject to Owner's approval, such approval not to be unreasonably withheld or delayed; provided, that Owner's comments on the Contractor Critical Path Items must be provided to Contractor within \*\*\* of Owner's receipt of the Construction Schedule; provided, further, milestones consistent with Exhibit 4A and Exhibit 4B shall be deemed to be approved.

(b) Should the Parties disagree with respect to Owner's comments on the Critical Path Items, the Parties will submit the dispute to an Independent Third Party Engineer for expedited dispute resolution pursuant to this Section 3.11(b). The Parties shall negotiate in good faith to select an Independent Third Party Engineer. If the Parties cannot agree within \*\*\* then the Party initiating the dispute (the "Dispute Initiator") shall send notice to the other Party including two potential independent engineers set forth in the definition of "Independent Third Party Engineer". The other Party shall then have \*\*\* after receipt of such notice to select an Independent Third Party Engineer from such two (2) potential independent engineers identified in such notice. If the other Party does not make a selection within such \*\*\* period, the Dispute Initiator shall select an Independent Third Party Engineer from such two (2) potential independent engineers identified in such notice. The Parties shall formalize their positions regarding the dispute in writing within \*\*\* of Contractor providing notice to Owner of its disagreement with a comment provided by Owner in accordance with Section 3.11(a) and submit such positions to the Independent Third Party Engineer. The Parties and the Independent Third Party Engineer shall meet within \*\*\* of the Independent Third Party Engineer's receipt of the materials referenced in the immediately preceding sentence, at the Site, and the Independent Third Party Engineer shall issue a binding ruling that both Parties will obey within \*\*\* thereof. The Party that will pay for the Independent Third Party Engineer and all costs related thereto shall be the losing Party, as determined by the Independent Third Party Engineer.

(c) The Construction Schedule shall represent a practical plan to achieve the completion of the Work in accordance with Exhibit 4A and Exhibit 4B. The Construction Schedule will be a \*\*\* detailed schedule.

(d) The Milestone Schedule and Construction Schedule shall meet the following requirements: (i) all schedules, other than the Milestone Schedule, must be suitable for monitoring the progress of the Work, (ii) all schedules must provide necessary data about the timing for Owner decisions and all Owner milestones, and the Construction Schedule shall set forth all milestones for Contractor Deliverables required in connection with Block Substantial Completion and (iii) all schedules must be in sufficient detail to demonstrate adequate planning for and orderly completion of the Work.

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(e) Contractor shall prepare and submit to Owner (i) a PPA Progress Report, which shall be submitted to Owner no later than \*\*\* after the close of each month, (ii) through the Final Completion Date, Monthly Progress Reports (which shall include a summary of any material deviations from the prior Construction Schedule and the reasons for such deviation) on the sooner of (x) delivery of an Application for Payment and (y) \*\*\* after the end of each \*\*\* and (iii) through the Facility Substantial Completion Date, Weekly Progress Reports delivered on a weekly basis. If reasonably requested by Owner, Contractor's Project Manager (or his/her designee) shall attend scheduled meetings between representatives of Owner and SCE (in its capacity as "Buyer" under the PPA) to review such PPA Progress Reports and discuss construction progress. Each PPA Progress Report shall identify the relevant milestones under the PPA and indicate whether they have been met or are on target to be met. In addition, Owner or any Affiliate of Owner (other than a SunPower Competitor) shall be entitled to attend and participate in operations meetings convened by Contractor at least \*\*\* on the Site and other regularly scheduled meetings with respect to the progress and performance Project.

**3.12 Transportation.** Contractor shall provide transportation and shipping with respect to all Equipment hereunder and shall be responsible for all necessary Applicable Permits and documentation relating thereto. All transportation and shipping services, including quality assurance, shipping, loading, unloading, customs clearance (and payment of any customs duties in connection therewith), receiving, and any required storage and claims shall be included in the Contract Price.

**3.13 Security.** Other than the portion of the Site and the portion of the Equipment solely comprising a Block that has achieved Block Substantial Completion Date, Contractor shall be responsible for the proper security and protection of the Site and all Equipment and materials furnished by Contractor and the Work performed until Facility Substantial Completion. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner.

**3.14 Safety; Quality Assurance.** Contractor shall take all reasonably necessary precautions for the safety of its employees, and Subcontractors and Suppliers on the relevant part of the Site where the Facility is located and to prevent accidents or injury to individuals or damage to third party property, on, about, or adjacent to the premises where the Work is being performed. Contractor shall provide to its employees, at its own expense, safety equipment required to protect against injuries during the performance of the Work and shall provide (or cause to be provided) appropriate safety training. Contractor and Owner hereby agree that the safety plan attached hereto as Exhibit 22 shall be implemented by Contractor to secure the Project during the execution of the Work. Contractor shall notify all Persons accessing the Site of the safety plan, which shall apply to all individuals accessing the Site and performing Work on the Site on behalf of Contractor or any Subcontractor. Contractor and Owner further agree that the quality assurance plan attached hereto as Exhibit 23 shall be implemented by Contractor. During the performance of the Work, Contractor shall be responsible for the oversight of all Persons at the Site, other than Owner and its Affiliates and representatives and subcontractors and the Owner Inspection Parties, and for the performance of

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the Work in accordance with the safety plan and with all Applicable Laws governing occupational health and safety, Applicable Permits and Industry Standards.

**3.15 Clean-up.** Contractor shall keep the part of the Site where the Facility is to be located and surrounding areas reasonably free from accumulation of debris, waste materials or rubbish caused by the Work, and as a condition of Final Completion or as soon as practicable after termination of this Agreement by Owner, all of Contractor's and Subcontractors' personnel shall have left the Site and Contractor shall remove from the part of the Site where the Facility is located and surrounding areas all debris, waste materials, rubbish, tools, Construction Equipment, machinery and surplus materials arising from or due to the Work (other than Contractor's or O&M Provider's personnel, materials and equipment required or utilized for the performance of such Person's respective obligations under this Agreement, the Module Warranty, the Performance Guaranty Agreement and/or the O&M Agreement, as applicable).

**3.16 Suppliers and Subcontractors.**

(a) Set forth in Exhibit 24 is a schedule of Qualified Major Subcontractors who, notwithstanding anything to the contrary herein, Contractor shall be entitled to engage in furtherance of Contractor's obligations under this Agreement without the consent of Owner. Contractor shall notify Owner of any proposed additional Major Subcontractors or replacements thereof with whom Contractor anticipates engaging. Owner shall have the right to review and approve such engagement, such approval not to be unreasonably withheld or delayed. Contractor shall update and amend Exhibit 24 by notice to Owner from time to time as necessary to reflect approved additions or changes thereto.

(b) No Subcontractor or purchase order issued by such Subcontractor shall bind or purport to bind Owner, but each purchase order, agreement or subcontract with a Supplier or a Major Subcontractor shall provide that the Supplier or Major Subcontractor, as applicable, expressly agrees, upon Owner's request if this Agreement is terminated, to the assignment of such purchase order, agreement or subcontract to Owner, at Owner's request, the Financing Parties or a successor EPC contractor to Contractor.

(c) The use by Contractor of any Subcontractor shall not (i) constitute any approval of the Work undertaken by any such Person, (ii) relieve Contractor of its duties, responsibilities, obligations or liabilities hereunder, (iii) relieve Contractor of its responsibility for the performance of any work rendered by any such Subcontractor or (iv) create any relationship between Owner, on the one hand, and any Subcontractor, on the other hand, or cause Owner to have any responsibility for the actions or payment of such Person. As between Owner and Contractor, Contractor shall be solely responsible for the acts, omissions or defaults of its Subcontractors and any other Persons for which Contractor or any such Subcontractor is responsible (with the acts, omissions and defaults of its Subcontractors being attributable to it).

(d) \*\*\*

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(e) Until the Facility Substantial Completion Date, Contractor shall furnish Owner with (i) reports received from the Subcontractors or Contractor relating to recall notices, defect notices or other similar product communications and (ii) such information with respect to the Major Subcontractors as Owner may reasonably request, in each case related to the Facility Equipment.

**3.17 Insurance.** Contractor shall obtain and maintain insurance required in accordance with Article 23 and Exhibit 15.

**3.18 Contractor's Personnel.** Contractor shall appoint Contractor's Key Personnel in accordance with Section 5.2.

**3.19 Hazardous Materials.** Contractor shall comply with the provisions of Article 12 with respect to Hazardous Materials as part of and in connection with the Work.

**3.20 Contractor Performance Security.** Contractor shall provide to Owner and maintain the Contractor Performance Security in accordance with Section 8.8 and shall provide to Owner and maintain the Acceptable Letters of Credit \*\*\* as and when required in accordance with by Exhibit 31. Contractor shall also promptly, and in any event within \*\*\*, provide Owner with notice of any of the following events \*\*\* that would give rise to a requirement of Contractor under Item 4 of Exhibit 31 to provide a \*\*\* Acceptable Letter of Credit in the aggregate for the Facility and the AVSP 2 Facility: \*\*\*.

**3.21 Business Practices.** Contractor shall not make any payment or give anything of value to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder.

**3.22 Delay Response Plan.** If, at any time during the performance of the Work, the updated, detailed schedule reflecting actual progress to date included in a Monthly Progress Report delivered under Section 3.11 shows that the critical path of the Work is delayed such that Facility Substantial Completion will occur later than the Guaranteed Facility Substantial Completion Date, Contractor shall prepare and submit to Owner within \*\*\* a plan which specifies in reasonable detail the actions to be taken by Contractor and the associated schedule to explain and display how Contractor intends to recover from such delay (the "Delay Response Plan"). The corrective actions described in the Delay Response Plan that Contractor proposes to undertake with respect to the Work (a) shall be undertaken at Contractor's sole cost and expense and (b) will be designed and intended to recover the schedule for the Project as promptly as reasonably practicable. Contractor shall promptly and diligently perform the Work in accordance with the Delay Response Plan until the Work is progressing in compliance with the Construction Schedule and the critical path of the Work. Unless set forth in a Change Order executed by the Parties, the implementation of any Delay Response Plan shall not change the Guaranteed Block Substantial Completion Dates, the Guaranteed Facility Substantial Completion Date or the Guaranteed Final Completion Date.

**3.23 Project Labor Agreement; Employees.**

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(a) Contractor shall comply in all material respects with the terms and conditions of the Project Labor Agreement; provided, however that Contractor is solely responsible for such compliance, and the Project Labor Agreement and compliance thereunder is not an obligation of Owner and does not excuse Contractor from, or entitle Contractor to any schedule or cost relief with respect to, its performance of Work and other obligations under this Agreement.

(b) Immediately after receiving a request by Owner, subject to Contractor's obligations under the Project Labor Agreement, Contractor shall remove from the Site, and from any performance of the Work, and cause any Subcontractor to remove from the Site and from any performance of the Work, as soon as reasonably practicable, any Person performing the Work (including any Key Personnel) who is creating a risk of bodily harm or injury to themselves or others or whose actions create a risk of material property damage.

(c) Subject to Contractor's obligations under the Project Labor Agreement, Contractor shall also remove, and cause its Subcontractors and agents to remove, any employee, agent or other Person engaged in the performance of the Work for Contractor (including any Key Personnel) or such Subcontractor, as the case may be, whose off-Site conduct violates any Applicable Laws or Applicable Permits. If a Person is harming or having a negative effect on the perception of the Project or Owner's relationship with the surrounding community based on two or more documented incidents, Owner may provide notice to Contractor and Contractor and Owner will meet to discuss an appropriate response. If the Parties cannot otherwise agree, subject to Contractor's obligations under the Project Labor Agreement, Contractor shall remove and cause its Subcontractors and agents to remove such Person.

**3.24 Notification.** To the extent not prohibited by Applicable Law, with respect to the Project, provide Owner, promptly and in any event within \*\*\* (or such other time period set forth below) following (a) Contractor's actual knowledge of its occurrence or (b) receipt of the relevant documentation, with written:

(i) Notification of all events requiring the submission by Contractor of a report to any Governmental Authority pursuant to the Occupational Safety and Health Act;

(ii) Notifications and copies of all citations by Governmental Authorities concerning accidents or safety violations at the Site and, within \*\*\* of such written notice, a follow up report containing a description of any steps Contractor is taking and proposes to take, if any, with respect to such accident or safety violations;

(iii) Notifications and copies of all written communication to or from any Governmental Authority, relating to any breach or violation or alleged breach or violation of any Applicable Law, any Applicable Permit, Applicable Codes or any provision of the PPA or the Interconnection Agreement;

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(iv) Updates of status of communications with insurance companies related to claims with respect to an accident, incident or occurrence at the Site or in the performance of Work;

(v) Notifications and copies of any actions, suits, proceedings, patent or license infringements, or investigations pending or threatened against it at law or in equity before any court or before any Governmental Authority (whether or not covered by insurance) that (A) if determined adversely to Contractor would have a material adverse effect on Contractor's ability to perform its obligations under this Agreement or (B) relates to the Project; and

(vi) Notifications within (A)(x) \*\*\* after Contractor has actual knowledge of any accident related to the Work that has a material and adverse impact on the environment or on human health (including any accident resulting in the loss of life) and (y) within \*\*\* after Contractor has actual knowledge of any recordable, lost-time injury related to the Work and (B) \*\*\* thereafter, a report describing such accident or injury, the impact of such accident or injury and the remedial efforts required and (as and when taken) implemented with respect thereto.

### **3.25 Site Conditions. \*\*\***

**3.26 Other Reports and Quality Control Documents.** Contractor shall provide Owner with other reports and quality control documentation relating to the Work, the Blocks, Facility Equipment, the Facility and the Subcontractors as Owner may reasonably request.

**3.27 Construction Methods.** Contractor shall make itself available to discuss and shall promptly respond to any reasonable questions from Owner, Owner's Engineer, the Financing Parties or the Independent Engineer regarding construction methods or procedures used during construction of the Project.

**3.28 Cooperation; Access.** Contractor shall, and shall cause the other Contractor Parties and any Subcontractor and their respective hired personnel to, cooperate with Owner and its contractors and other hired personnel in coordinating the work of Owner's contractors and personnel who may be working at the Site with the Work being performed by any Contractor Party or Subcontractor at the Site. Contractor shall take reasonable efforts to accomplish any necessary modification, repairs or additional work with respect to a Block after the Block Substantial Completion Date of such Block or the Facility after Facility Substantial Completion with minimal interference with commercial operation of the Facility or any portion thereof and that reductions in and shut-downs of all or part of the Facility's operations will be required only when necessary, taking into consideration the length of the proposed reduction or shut-down, and Owner's obligations and liabilities under the PPA. Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off-peak hours, nights, weekends and holiday.

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**3.29 Business Ethics.** Contractor, its employees, agents, representatives and Subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in the conduct of Work for Owner. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all Applicable Laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, the United States Foreign Corrupt Practices Act and Owner's Code of Business Conduct (attached as Exhibit L to the O&M Agreement). Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Contractor's compliance with this Section 3.29. Owner shall be permitted to audit such records as reasonably necessary to confirm Contractor's compliance with this Section 3.29. Contractor shall immediately provide notice to Owner of any facts, circumstances or allegations that constitute or might constitute a breach of this Section 3.29 and shall cooperate with Owner's subsequent investigation of such matters.

**3.30 Real Property Rights.**

(a) Compliance with Real Property Rights. Contractor shall comply with the terms of the Real Property Rights.

(b) Access to Site. \*\*\* Contractor shall be responsible to ensure that the access to the Site is sufficient to permit cranes and other operating and rigging equipment that will be used in the performance of the Work, if any, freedom to maneuver on or about the Site.

(c) \*\*\*

(d) Construction Real Property Rights. \*\*\* Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving Real Property Rights or one or more owners or occupiers of land so situated as to potentially result in a situation that would reasonably be expected to have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems.

(e) Crop Damages and Other Damage from Construction. Contractor shall be required to reimburse Owner for any payment Owner is required to make to any other party to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work, including any crop damages.

(f) \*\*\*

3.31 \*\*\*

3.32 \*\*\*

3.33 \*\*\*

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- (a) \*\*\*
- (b) \*\*\*
- (c) \*\*\*
- (d) \*\*\*
- (e) \*\*\*
- (f) \*\*\*

### 3.34 Quitclaim.

(a) Contractor shall arrange at its sole cost and expense for SCE to execute a quitclaim deed or similar instrument, in a form reasonably satisfactory to Owner provided that any provision that deviates from the Quitclaim Side Letter shall be satisfactory to Owner in Owner's sole discretion, that quitclaims and extinguishes that certain deed dated as of October 4, 1946 and recorded on November 16, 1946 in Book 1373, Page 395 in the Official Records of Kern County, California (the "SCE Deed"). Contractor shall also be responsible for the costs and expenses associated with AVWS's execution of new easement deeds or similar instruments, in forms reasonably satisfactory to Owner provided that any provision that deviates from the Quitclaim Side Letter shall be satisfactory to Owner in Owner's sole discretion, to convey to SCE perpetual easements for electrical line and related purposes on and over the portions of the AVSP property located in \*\*\* described in Exhibit B to the agreement set forth as item 4i of Part 1-A of Schedule 3.1(l) of the MIPA.

- (b) \*\*\*
- (c) \*\*\*

## ARTICLE 4.

### OWNER'S OBLIGATIONS

**4.1 Access.** From the Effective Date until the Facility Substantial Completion Date, Owner shall provide Contractor with access to the Site (which access, with respect to the land to be obtained by closing of the exercised options as set forth on Exhibit 4A, shall be no earlier than the later to occur of (a) the applicable closing dates for closing on the exercised options as set forth on Exhibit 4A and (b) the termination date of any third-party possessory interests in the Site as set forth in those certain executed written agreements and estoppel certificates delivered pursuant to Section 2.7(x) of the MIPA and entered into prior to the Effective Date, as such dates are indicated in Exhibit 4A) as suitable and necessary for Contractor to complete the Work and perform its obligations in accordance with this Agreement; provided, however, that Contractor shall not interfere with the operation of a Block by Owner or the O&M Provider after the Block Substantial Completion Date of such Block. From the Facility Substantial Completion Date until the Final Completion Date, Owner shall provide

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Contractor with reasonable access to the Site as suitable and necessary for Contractor to complete the Punch List Items. Owner shall also provide Contractor with reasonable access to the Site after the Final Completion Date for purposes of inspection and photography (consistent with Section 22.3), and access to the DAS System (consistent with Section 25.2). Owner shall provide reasonable access to the Site for Contractor to complete work in connection with the Warranties. Notwithstanding the foregoing, any failure by or inability of Owner to provide Contractor access due to Contractor's failure to comply with the Real Property Rights or otherwise with the terms of this Agreement shall not be considered a breach by Owner. \*\*\*

**4.2 Compliance with Laws and Permits.** Owner shall at all times fully comply with Applicable Laws and Applicable Permits. Subject to Contractor's obligations to provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit (at no out of pocket cost to Owner) in accordance with Section 3.9, Owner shall obtain and maintain in full force and effect all Owner Acquired Permits.

**4.3 Full Notice to Proceed.** Owner will issue the Full Notice to Proceed subject to and in accordance with Section 1.11.

**4.4 Owner Exclusive Obligations.** The following items are expressly excluded from Contractor's Scope of Work and are the exclusive responsibility of Owner:

(a) Subject to Section 3.30 and Contractor's obligation to provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit (at no out of pocket cost to Owner) in accordance with Section 3.9, Owner shall obtain every Owner Acquired Permit and, at Contractor's written request, Owner shall cooperate with and provide reasonably requested assistance to Contractor as necessary to assist Contractor in (i) obtaining the Contractor Acquired Permits, (ii) in connection with Contractor's interactions with Los Angeles and Kern Counties and any other applicable Governmental Authorities with respect to the Applicable Permits, (iii) in connection with interactions with SCE and CAISO with respect to the Interconnection Agreement for Contractor to perform the Work; (iv) with respect to enforcing Owner's rights under and with respect to any Real Property Rights, and (v) with respect to enforcing Owner's rights under and with respect to the Water Supply Agreement, and will take such actions as may be reasonably requested by Contractor in connection therewith; provided that Contractor shall reimburse Owner for any reasonable out-of-pocket costs that Owner incurs in providing such assistance;

(b) Subject to Section 7.1, Article 8 and Article 10, Owner shall pay all out-of-pocket Taxes, fees, levies and other costs associated with obtaining the Owner Acquired Permits, including for on-Site inspections by any Governmental Authority in connection therewith;

(c) Owner shall pay in a timely manner as required by Applicable Law any and all Owner Taxes, or in the event such Owner Taxes are paid by Contractor or any Subcontractor, Owner shall promptly reimburse Contractor for same;

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(d) Owner shall maintain any solar easements or other protections and restrictions on areas near and adjacent to the Site to protect the unobstructed passage of sunlight to all areas of the Site in accordance with their terms to the extent that such are in effect as of the Effective Date;

(e) Owner shall select and employ its own personnel for purposes of attending any tests, meetings, training, or orientation required or anticipated by this Agreement;

(f) Owner shall secure and pay for the operation and maintenance of the Facility and shall not require and Contractor shall not be obligated to perform any such services under this Agreement;

(g) Subject to Section 12.2 and Part B.2 of Exhibit 1, Owner shall be responsible for any environmental remediation of the Site which may be required by any Governmental Authority, Applicable Law or Applicable Permit as a condition to the construction or operation of the Facility on the Site; provided that Owner is not responsible if environmental remediation is required because of actions or inactions taken by Contractor Party or any Subcontractors;

(h) Owner shall complete, or cause to be completed, the SCE Interconnection Facilities, including all functional testing for the same by the date set forth on the Milestone Schedule\*\*\*;

(i) Owner shall perform Owner's obligations set forth in Sections L, M or N of Exhibit 1; and

(j) Owner shall solely be responsible for employing operating and maintenance personnel who will commence to perform operation and maintenance work with respect to each Block immediately after such Block has achieved Block Substantial Completion; provided, however, Contractor agrees that for so long as O&M Provider is providing the operation and maintenance work, this obligation shall be deemed satisfied.

In connection with Owner's obligations under this Agreement, Owner shall be entitled to hire any third party quality consultants to advise Owner concerning the quality control and performance of the Facility; provided that such consultants shall not interfere with Contractor's performance of the Work and shall not be SunPower Competitors.

**4.5 Owner's Representative.** Owner shall appoint an Owner's Representative in accordance with Section 5.1.

**4.6 Insurance.** Owner shall obtain and maintain insurance required in accordance with Article 23 and Exhibit 15.

**4.7 Owner Payment Security.** Owner shall provide to Contractor and maintain the Equity Contribution Agreement in accordance with Section 8.9.

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**4.8 Cooperation.** Owner shall, and shall cause its contractors and their respective hired personnel to, cooperate with Contractor and Subcontractors in coordinating the work of Owner's contractors and personnel who are working at or near the Site with the Work being performed by any Contractor Party or Subcontractor at or near the Site. Subject to Owner's rights hereunder, Owner shall not allow its, or its Affiliates' or any other separate consultants', contractors', or other hired personnel's, operations and activities on the Site to interfere with the performance of the Work by Contractor.

**4.9 Extensions to Commercial Operation Deadline\*\*\*.**

(a) Following receipt of notice from Contractor that is reasonably detailed to allow Owner to seek, and delivered sufficiently in advance of any deadlines for seeking, extensions of the Commercial Operation Deadline under the PPA with respect to Force Majeure Events (as defined under the PPA), Owner, as seller under the PPA, shall diligently prosecute any and all material extensions of the Commercial Operation Deadline under the PPA with respect to Force Majeure Events (as defined under the PPA) to the extent permitted thereunder; provided, however, that, for the avoidance of doubt, Owner shall not be required to exercise its right under Section 3.06(c) of the PPA except in accordance with the immediately succeeding sentence. \*\*\*

(b) \*\*\*

**4.10 Enforcement and Termination of Leases.** Owner shall enforce all material terms of any lease or other agreement set forth on Exhibit 2 that is in effect on the Effective Date, or that later becomes effective, by which any Person other than Owner has a right to use, occupy or possess any portion of the Site, including enforcing the expiration of any such lease or other agreement and using commercially reasonable efforts to cause the lessee or occupant to vacate the leased premises immediately following such expiration, which shall include instituting an eviction action if required to cause any holdover lessee or occupant to vacate the leased premises. If such lease or other agreement is terminable by Owner upon notice to the lessee or occupant, Owner shall deliver notice of termination of such lease or other agreement promptly after written request from Contractor, and shall thereafter enforce the expiration of such lease or other agreement pursuant to the provisions of this Section 4.10. \*\*\*

4.11 \*\*\*

**ARTICLE 5.**

**REPRESENTATIVES; KEY PERSONNEL**

**5.1 Owner's Representative.** Owner designates, and Contractor agrees to accept, \*\*\* as Owner's Representative for all matters relating to this Agreement and Contractor's performance of the Work (except as otherwise stated in this Agreement). The acts and omissions of Owner's Representative with respect to this Agreement are deemed to be the acts and omissions of Owner and shall be fully binding upon Owner. Owner may, upon written notice to Contractor pursuant to Article 27, change the designated Owner's Representative.

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**5.2 Contractor's Key Personnel.** Contractor designates, and Owner accepts, those individuals set forth on Exhibit 5 for all matters relating to Contractor's performance under this Agreement. Contractor's Representative shall have full responsibility for the prosecution and scheduling of the Work and any issues relating to this Agreement. If Contractor elects to replace Key Personnel, it shall do so promptly. Owner shall have the right to approve any such replacement Key Personnel, provided, however, that such approval shall not be unreasonably withheld or delayed. The actions taken by Contractor's Representative are deemed to be the acts of Contractor.

**5.3 Power to Bind.** The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of each Party, as applicable, under this Agreement.

**5.4 Notices.** Notwithstanding Sections 5.1, 5.2, and 5.3, all amendments to this Agreement, Change Orders, notices and other communications between Contractor and Owner contemplated herein shall be delivered in writing and otherwise in accordance with Article 27.

## ARTICLE 6.

### INSPECTION

**6.1 Inspection.** Owner, its Affiliates, its representatives (including Owner's Engineer), any Financing Party, its representatives (including any Independent Engineer), SCE (in its capacity as "Buyer" under the PPA) and CAISO (in its capacity as party to the Interconnection Agreement), in each case, except to the extent that any such party is a SunPower Competitor (other than an Eligible SunPower Competitor) (collectively, "Owner Inspection Parties"), shall have the right to reasonably observe and inspect any item of Facility Equipment at the Site, including to witness functional tests of the Facility Equipment and the Functional Tests for each Block, and the material, design, engineering, service, workmanship or any other portion of the Work at the Site; provided that (a) such observations and inspections shall be arranged at reasonable times and with reasonable advance notice to Contractor and (b) Owner has granted such Person access to the Site and Work for such purpose. Notwithstanding the foregoing, any personnel of such Owner Inspection Parties that have completed Contractor's safety training and worker environmental training may observe and inspect the Work at the Site, including to witness functional tests of the Facility Equipment and the Functional Tests for each Block, at any time subject to compliance with the safety plan attached hereto as Exhibit 22.

6.2 \*\*\*

## ARTICLE 7.

### CONTRACT PRICE

**7.1 Contract Price.** As full compensation for the Work and all of Contractor's obligations hereunder, Owner shall pay to Contractor, and Contractor agrees to accept as full compensation for the Work, the Contract Price. The Contract Price shall be

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adjusted only as expressly provided under the terms of this Agreement \*\*\*. The Contract Price shall be paid by Owner to Contractor in accordance with the terms of Article 8.

## ARTICLE 8.

### PAYMENT PROCESS & PERFORMANCE SECURITY

#### 8.1 Payments.

(a) Owner shall (i) on the Effective Date, pay the LNTP Payment (less the Retainage), (ii) on the later of (A) the NTP Date and (B) \*\*\*, pay (x) the NTP Payment (less the Retainage) and (y) the undisputed amounts (less the Retainage) under any Applications for Payment delivered to Owner \*\*\* or more prior to the NTP Date, (iii) on the date that the undisputed amounts (less the Retainage) set forth in the first Application for Payment submitted to Owner following the NTP Date are due to be paid, pay the undisputed amounts (less the Retainage) under any Applications for Payment delivered within \*\*\* of the NTP Date and (iv) pay the remaining Contract Price as Milestone Payments less the Retainage, in accordance with the Payment Schedule to the extent that Contractor has achieved the milestone corresponding to such payment as set forth on the Payment Schedule. Each Milestone Payment shall be due and payable only to the extent it is supported by the completion of the applicable milestone set forth in the Payment Schedule for the payment of such Milestone Payment. Subject to and in accordance with any mutually agreed upon Change Order, in no circumstance shall Owner have an obligation to pay any Application for Payment in amounts in excess of the maximum cumulative payment schedule set forth in Exhibit 9.

(b) Within \*\*\* after the acceptance of the Certificate of Facility Substantial Completion, Owner shall release to Contractor the Retainage applicable to all amounts invoiced less an amount equal to the Punch List Holdback of the Punch List Amount for all Punch List Items that have not been completed at such time pursuant to the terms hereof. On the Final Completion Date, concurrent with the payment for the Final Completion, Owner shall release to Contractor all remaining Retainage (including any Punch List Holdbacks) then held by Owner. Any interest accruing on the Retainage shall accrue for the account of Owner and not Contractor,

(c) If Contractor fails to perform (i) any Block Punch List Item within \*\*\* after the Block Substantial Completion Date for such Block completed and transferred to Owner upon the Block Substantial Completion Date of such Block or (ii) any Punch List Item on the Project Punch List within \*\*\* after the Facility Substantial Completion Date, Owner may elect by written notice to Contractor to retain the Punch List Holdback applicable to such Punch List Item and complete such Punch List Item itself. Upon Owner making such election, Contractor's obligation to perform such Punch List Item shall be deemed satisfied.

**8.2 Milestone Assessment.** Contractor and Owner shall periodically, and in any event at least once each month, review the Work completed and assess

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the progress of on-Site Work completed and completion of the relevant milestone. Owner's Engineer and any Independent Engineer may be present during such review and assessment of the Work.

**8.3 Application for Payment.** Contractor shall deliver the Application for Payment to Owner by the \*\*\* of each month for the milestones completed and progress in the Work for the prior month (including Punch List Items), including during the period prior to the NTP Date; provided, that the Application for Payment in respect of Block Substantial Completion and Facility Substantial Completion shall be delivered when required under Section 16.3 and Section 16.5, respectively. Each Application for Payment shall be reasonably detailed and shall be accompanied by reasonable supporting documentation evidencing the achievement of the milestone pursuant to the schedule of values set forth in Exhibit 9 for which the Milestone Payment is being requested, shall be accompanied by lien waivers required to be delivered otherwise pursuant to Section 8.4 and shall be sent by facsimile with confirmation of receipt, and Owner shall be deemed to have received such Application for Payment and the documentation supporting achievement of the relevant milestone on the same date of delivery by Contractor if delivered prior to 5:00 pm Pacific Standard Time; provided, that if such date of delivery is not a Business Day or is delivered after 5:00 pm Pacific Standard Time, then the date of delivery shall be the immediately following Business Day. Owner shall make all payments of undisputed amounts when they become due, but in any event, no later than thirty (30) Days after delivery of the Application for Payment; provided that the payments in respect of any Application for Payment delivered prior to the NTP Date shall be made in accordance with Section 8.1(a) and with respect to Block Substantial Completion and Facility Substantial Completion shall be due within \*\*\* after Owner's acceptance of the Certificate of Block Substantial Completion or Certificate of Facility Substantial Completion, as applicable. If Owner disputes a portion of an Application for Payment, Owner shall notify Contractor of such Dispute promptly and in any event within \*\*\* after receipt of such Application for Payment and shall pay to Contractor the undisputed portion in accordance with this Section 8.3. If such dispute is resolved within \*\*\* after delivery of the Application for Payment, Owner shall make payment of such resolved amounts within \*\*\* after delivery of the Application for Payment. Contractor shall be responsible for paying or ensuring the payment of all Subcontractors in connection with the Work completed by the Subcontractors in accordance with the terms of such subcontracts.

**8.4 Lien Releases.** Contractor shall submit with each Application for Payment a conditional partial lien release in the form set forth in Exhibit 13A for the amount requested in the current Application for Payment\*\*\* in respect of work performed or materials delivered on the Site during the period covered by such Application for Payment. Both Contractor and its Major Subcontractors shall provide Owner a conditional final lien release in the form set forth in Exhibit 13B as a condition precedent to payment by Owner of the final Application for Payment. In addition to the lien releases described in this Section 8.4, Contractor shall deliver to the Title Company, as and when required by the Title Company in order to issue title insurance to any Financing Party and to provide an endorsement thereto with respect to mechanic's liens pending disbursement coverage, (a) Contractor's sworn statement and (b) a mechanic's lien subordination agreement, each executed by Contractor and in form and substance acceptable to the Title Company.

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**8.5 Release of Liability.** \*\*\*

**8.6 Overdue Payments.** Overdue payment obligations of either Party hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the lesser of (a) the rate published by the *Wall Street Journal* as the “prime rate” on the Business Day preceding the date on which such interest begins to accrue plus \*\*\* and (b) the maximum rate allowed under Applicable Law.

**8.7 Disputed Payments.** Failure by Owner to pay any invoiced amount disputed in good faith and until such dispute has been resolved in accordance with Article 28 shall not alleviate, diminish, modify or excuse the performance of Contractor or relieve Contractor's obligations to perform hereunder, subject to the provisions of such Article 28. Contractor's acceptance of any payment, and Owner's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts expeditiously and in any case in accordance with the provisions of Article 28. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If an Application for Payment was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner with respect to such invoice are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor, at the interest rate set forth in Section 8.6, from the date on which the interest on such payment was originally due under Section 8.3 until the date such payment is actually received by Contractor. If amounts disputed in good faith that have been paid by Owner are later resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such payment at the interest rate set forth in Section 8.6, from the date on which the payment was originally made by Owner until such refunded payment is received by Owner. If amounts disputed in good faith by Owner are later resolved in favor of Contractor, Owner shall make such disputed payment and pay interest on such disputed payment at the interest rate set forth in Section 8.6, from the date on which the payment was due until such payment is received by Contractor.

**8.8 Performance Security.** Contractor shall maintain the Contractor Performance Security in full force and effect in accordance with the terms thereof.

**8.9 Payment Security.** On the Effective Date, Owner shall deliver to Contractor the Equity Contribution Agreement. The Equity Contribution Agreement shall remain in full force and effect in accordance with its terms.

**8.10 Additional Withholding.** If Contractor fails to obtain and maintain the credit support requirements set forth in Exhibit 31 as and when required pursuant to the terms thereof, Owner shall be entitled to withhold amounts otherwise payable hereunder in an aggregate amount not to exceed (a) the face amount of any Acceptable Letters of Credit required by Exhibit 31 until such Acceptable Letters of Credit are posted by Contractor and/or (b) \*\*\*. Owner shall pay any such amounts withheld pursuant to this Section 8.10 within \*\*\* of (a) Owner's receipt of such Acceptable Letter of Credit or (b) \*\*\*.

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## ARTICLE 9.

### TAXES

**9.1 Taxes.** The Contract Price includes any and all Taxes imposed under Applicable Law on Contractor, the Subcontractors, the Work, the construction or sale of Facility Equipment to Owner or installation of the Project, except for Owner Taxes. In addition to the Contract Price, Owner assumes exclusive liability for and shall pay before delinquency all Owner Taxes. Contractor and Owner agree to cooperate with each other to minimize the Tax liability of both Parties to the extent legally permissible and commercially reasonable for such Party. Contractor shall provide Owner with such assistance as may be reasonably requested by Owner in demonstrating eligibility for exemptions or exclusions from such Taxes (and any other Tax exemptions) to the relevant Governmental Authority; provided that Owner shall reimburse Contractor for any out-of-pocket costs that Contractor incurs in providing such assistance. Contractor shall, in accordance with Applicable Law, timely administer and timely pay all Taxes that are included in the Contract Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and furnish copies of such information and reports (other than information specifically pertaining to Contractor's income and profit) to Owner as reasonably requested by Owner and within \*\*\* after any request from Owner, Contractor shall provide Owner with any other information regarding allocation of quantities, descriptions, and costs of property provided by Contractor and installed as part of the Project that is necessary in connection with the preparation of Owner's tax returns or as a result of an audit by a taxing authority. This clause will survive the expiration or termination of this Agreement.

## ARTICLE 10.

### CHANGES AND EXTRA WORK

#### 10.1 Owner Requested Change Order.

(a) Owner agrees that it will not request or direct changes in the Work or the Facility which (i) reduces Contractor's Scope of Work or (ii) materially alters the Technical Specifications, in each case, without Contractor's prior written consent, such consent not to be unreasonably withheld or delayed.

(b) Subject to Section 10.1(a), without invalidating this Agreement, Owner may request changes in the Work or the Facility that are reasonably consistent with the Scope of the Work under this Agreement and are technically feasible. Owner shall request such changes in the Work or Facility by delivering a written Change Order request to Contractor. As soon as practicable after receipt of a Change Order request, Contractor shall prepare and forward to Owner in writing: (i) a quotation for the price for the extra or changed Work and change to the Payment Schedule (if applicable); (ii) an estimate of any required adjustment to the Construction Schedule; (iii) any adjustment to Performance Criteria; and (iv) an estimate of any impact of the proposed change on any Applicable Permit, warranty and any other term or condition of this Agreement. The Parties shall negotiate in good faith to determine the adjustment to the

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Contract Price for Change Orders contemplated by this Section 10.1(b). If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 10.1(b), then the adjustment to the Contract Price may be determined in accordance with Exhibit 18 but only if the Parties so agree. If the Parties do not agree either (i) to a fixed price Change Order, or (ii) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 18, then Owner may nonetheless direct Contractor to proceed with the Work that is the subject of the Change Order, and Contractor shall be paid its Direct Costs as reasonably incurred in performing the Change Order plus a markup of \*\*\*. Contractor shall submit Applications for Payment no more frequently than monthly with respect to Contractor's Direct Costs in accordance with the preceding sentence and Owner shall be obligated to pay such undisputed amounts within \*\*\* after Owner's receipt of Contractor's Application for Payment.

**10.2 Contractor Requested Change Order.** Contractor may propose a Change Order to Owner if the proposed changes improve the Facility or are otherwise advisable for the Work. Any such proposed Change Order shall not affect the obligation of Contractor to perform the Work and to deliver the Facility in accordance with this Agreement unless and until Owner executes a Change Order pursuant to Section 10.6. If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 10.2, then the adjustment to the Contract Price may be determined in accordance with Exhibit 18 but only if the Parties so agree. If the Parties do not agree either (a) to a fixed price Change Order or (b) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 18, then no Change Order shall be executed. If Contractor proceeds with a proposed change in the Work pursuant to this Section 10.2 without receiving the consent of Owner, Contractor shall be responsible for the removal of any such work if a Change Order request is not subsequently approved by Owner; provided, however, that in the event of any Emergency affecting the safety of persons or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss.

**10.3 Mandatory Change Order.** Contractor shall be entitled to an adjustment in the Contract Price as set forth in this Agreement and an adjustment in the Construction Schedule (including to any Guaranteed Block Substantial Completion Date, Guaranteed Facility Substantial Completion Date or Guaranteed Final Completion Date) as set forth below upon the occurrence of any of the following events: \*\*\*.

**10.4 Limitation on Change Orders.** Changes Orders shall be limited to changes requested by Owner in accordance with Section 10.1, changes requested by Contractor and mutually agreed to by the Parties in accordance with Section 10.2 and in connection with mandatory Change Orders in accordance with Section 10.3. \*\*\*

**10.5 Determining Change Order.** Any adjustment of the Construction Schedule pursuant to a Change Order shall be determined in accordance with Section 10.3. Any adjustment of the Contract Price shall include all costs to Contractor associated with the performance of the extra Work or changes or a reduction of the Contract Price based on savings to Contractor associated with the changes, as applicable. Adjustments in Contract Price shall be determined in accordance with Sections 10.1, 10.2, and 10.3, as applicable, as well as Article 11.

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**10.6 Change Order Must Be in Writing.** Except as otherwise provided in Section 10.3, no change or extra Work shall be valid and effective unless it is in writing in the form of a Change Order signed by the representatives of both Parties that includes a description of the amount of any adjustment of the Contract Price and any adjustment to the Construction Schedule, Payment Schedule or Performance Criteria due to the change.

## **ARTICLE 11.**

### **FORCE MAJEURE EVENT; EXCUSABLE EVENT; CHANGE IN LAW**

**11.1 Certain Events.** No failure or omission to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim against a Party, or be deemed to be a breach or an Event of Default under this Agreement, if such failure or omission shall be caused by or arise out of a Force Majeure Event or an Excusable Event; provided that the Party claiming relief complies with the provisions of Article 11. Notwithstanding anything to the contrary in the foregoing, the obligation to pay money in a timely manner in accordance with the terms hereof shall not be subject to the Force Majeure Event or Excusable Event provisions hereof.

**11.2 Notice of Force Majeure Event and Excusable Event.** If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Excusable Event (in the case of Contractor), the Party claiming relief shall endeavor to provide notice within \*\*\* of when the Force Majeure Event or Excusable Event first prevents or delays performance under this Agreement with oral notice to Contractor's Representative or Owner's Representative, as applicable, of any delay or anticipated delay in the claiming Party's performance of this Agreement due to such Force Majeure Event or Excusable Event, including a description of the event including reasonable details (to the extent available and known to the claiming Party, at such time) regarding the underlying facts and conditions pursuant to which such Party is claiming a Force Majeure or Excusable Event and the anticipated length of the delay. After such oral notice, the claiming Party shall deliver written notice as soon as practicable, but in any event not later than \*\*\* after the claiming Party becomes aware of the delay or anticipated delay describing in detail the particulars of the occurrence giving rise to the claim, including what date the Party claiming relief became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of its obligations, and any action being taken to avoid or minimize its effect (the "Delay Notice"). The Party claiming relief due to a Force Majeure Event shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event or an Excusable Event promptly after such information becomes available to such Party.

**11.3 Force Majeure Event and Excusable Event Conditions.** Upon the occurrence of a Force Majeure Event or an Excusable Event, the suspension of, or impact on, performance due to such Force Majeure Event or Excusable Event shall be of no greater scope and no longer duration than is required by such event (taking into account the obligations affected thereby). In addition, the claiming Party shall exercise reasonable efforts to (a) minimize and mitigate the effects of any delay caused by, and costs arising from said Force Majeure Event or Excusable Event (b) to continue to perform its obligations hereunder not

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affected by such event and (c) to correct or cure the effect of such event. When the Party claiming relief due to such Force Majeure Event or Excusable event is able to resume performance of its affected obligations, such Party shall provide prompt notice to the other Party to that effect and promptly resume performance of all of its obligations under this Agreement.

#### **11.4 Contractor's Remedies.**

(a) Force Majeure Event. As Contractor's remedy for the occurrence of a Force Majeure Event, and provided that Contractor has otherwise materially complied with the applicable obligations it may have under Section 11.2 and Section 11.3, if a Force Majeure Event occurs, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3.

(b) Excusable Event. As Contractor's remedy for the occurrence of an Excusable Event, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, if an Excusable Event occurs, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by the sum of (i) the actual and reasonably substantiated Direct Costs incurred by Contractor as a direct result of such Excusable Event plus (ii) \*\*\* of the amount calculated in subclause (i).

(c) Changes in Law.

(i) Upon the occurrence of a Change in Law after the Effective Date and prior to the NTP Date which, individually or in the aggregate, has or is reasonably expected to have a material adverse effect on Contractor's ability to perform its obligations under this Agreement or a material increase in Contractor's expected costs for performing hereunder, Contractor may propose a Change Order to Owner for cost and/or schedule relief in connection with Contractor's compliance with such Change in Law. \*\*\* The obligations of this Section 11.4(c)(i) shall survive any termination of this Agreement.

(ii) As Contractor's remedy for the occurrence of a Change in Law after the NTP Date, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, \*\*\*.

(d) Changes in Project Agreement. As Contractor's remedy for the occurrence of a Change in Project Agreement, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by the sum of (i) the actual and reasonably substantiated Direct Costs incurred by Contractor as a direct result of such Change in Project Agreement plus (ii) \*\*\* of the amount calculated in subclause (i).

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(e) Changes Orders. Upon the occurrence of an event that entitles Contractor to relief under this Section 11.4, and subject to Contractor's compliance with the applicable provisions of this Article 11 and Article 10 in all material respects, Contractor and Owner shall prepare a Change Order in accordance with Article 10.

(f) \*\*\*

## ARTICLE 12.

### HAZARDOUS MATERIALS

**12.1 Use by Contractor.** Contractor shall minimize and manage the use of Hazardous Materials in the performance of its obligations under this Agreement and shall not and shall not permit any of the Subcontractors, directly or indirectly, to cause any Release in, on or under the Project, the Site or the adjacent area except to the extent required for the performance of the Work, in such case, in accordance with Applicable Laws and Applicable Permits (including the performance of investigatory, monitoring, or other remedial work upon the Project, the Site or adjacent areas to the extent reasonably necessary to comply with Applicable Laws and Applicable Permits).

**12.2 Remediation by Contractor.** Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by Applicable Laws and Applicable Permits in connection with any Release, disposal or the presence of Hazardous Materials, where existing prior to the Effective Date or brought onto or generated at the Site by any Contractor Party or Subcontractor or to the extent any such Release is caused by the negligent acts or omissions of any Contractor Party or Subcontractor, except to the extent such Release is caused by Owner, its Affiliates, or any third party (other than any Contractor Party or Subcontractor) after the Effective Date. Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws and Applicable Permits relating to the use, transportation, storage, handling or presence of Hazardous Materials, or any Release, by any Contractor Party, Subcontractor or any Person acting on its or their behalf or under its or their control of any such Hazardous Materials brought onto or generated at the Site by any Contractor Party or Subcontractor, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work.

**12.3 Hazardous Materials File.** During the performance of the Work, Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Materials used in connection with the Work hereunder, or used by or on behalf of any Contractor Party or Subcontractor at the Site and shall promptly deliver any updates to such file which are issued to Owner.

**12.4 Notice of Hazardous Materials.** If Contractor discovers, encounters or is notified of any Release or exposure to Hazardous Materials at the Site:

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(a) Contractor shall promptly notify Owner thereof and stop work in and restrict access to the area containing such Hazardous Materials as required by Applicable Law or Applicable Permits;

(b) if any Contractor Party or Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall, as promptly as reasonably practicable, remove such Hazardous Materials from the Site and remediate the Site to the extent required by all Applicable Laws and Applicable Permits in each case at Contractor's sole cost and expense, except where such materials were Released by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor (but only after the Effective Date); and

(c) if any Contractor Party or any Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay or costs incurred by Contractor as a result of the existence of such Hazardous Materials, except where such materials were Released by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor (but only after the Effective Date).

**12.5 Hazardous Materials Disposal System.** Contractor shall arrange and contract with contractors (who are appropriately licensed and insured) for the transportation from the Site, management or disposal in accordance with Applicable Law and Applicable Permits, of Hazardous Materials generated by or produced in connection with Contractor's performance of the Work. To the extent required by Applicable Law or Applicable Permits, Contractor shall (a) prepare and maintain accurate and complete documentation of all Hazardous Materials used by Contractor or Contractor Parties at the Site in connection with the Project, and of the disposal of any such materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site and (b) prepare and deliver all required notifications and reports to Governmental Authorities in connection with the presence of Hazardous Materials at the Site that were brought onto the Site or generated by any Contractor Party or Subcontractor. Contractor shall comply with Owner's reasonable requirements and procedures with respect to the disposal of such Hazardous Materials.

**12.6 Scope of Contractor Environmental Indemnification.** Contractor hereby specifically agrees to indemnify, defend and hold Owner and the Owner Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including all reasonable consulting, engineering, attorneys' or other professional fees), whether or not involving damage to the Project or the Site that they may incur or suffer by reason of:

(a) any use of or introduction of Hazardous Materials to the Site by any Contractor Party or Subcontractor in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such

Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;

(b) any Release in connection with the performance of the Work by Contractor or any of its Subcontractors (except as provided in Section 12.7);

(c) any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by any Contractor Party or any Subcontractor;

(d) any action reasonably necessary to abate or remediate Hazardous Materials described in paragraph (a) above, or prevent a violation or threatened violation of any Environmental Law by any Contractor Party or Subcontractor; and

(e) any action required by Contractor to mitigate a situation created by the violation of any Applicable Law or Applicable Permit by any Contractor Party or Subcontractor.

**12.7 Scope of Owner Environmental Indemnification.** Owner hereby specifically agrees to indemnify, defend and hold Contractor and Contractor Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including, all reasonable consulting, engineering, attorneys' or other professional fees), whether or not involving damage to the Project or the Site that they may incur or suffer by reason of:

(a) any Hazardous Materials present or used, brought upon, transported, stored, kept, discharged, or spilled by Owner or any Owner Party in, on, under or from the Site after the Effective Date including any Release by Owner or its Affiliates, in accordance with the terms of this Agreement and all Applicable Laws;

(b) any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by Owner; and

(c) any action reasonably necessary to abate or remediate Hazardous Materials described in paragraphs (a) or (b) above, or to prevent a violation or threatened violation of any Environmental Law by Owner.

## **ARTICLE 13.**

### **TITLE AND RISK OF LOSS**

**13.1 Equipment - Risk of Loss Before Block Substantial Completion.** From the Effective Date and until the Block Substantial Completion Date of each Block, subject to the provisions of this Article 13, Contractor has care, custody and control of all Facility Equipment and other items that become part of a Block and

shall exercise due care with respect thereto and assumes the risk of loss and full responsibility for the cost of replacing or repairing any damage to the relevant Block and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased for permanent installation in or for use during construction of such Block.

**13.2 Equipment - Risk of Loss After Block Substantial Completion.** Owner shall take complete possession and control and shall assume and shall bear the risk of loss and full responsibility in respect of a Block completed and transferred to Owner upon the Block Substantial Completion Date of such Block after the Block Substantial Completion Date of such Block or the earlier termination of this Agreement, unless the loss or damage to such Block is (a) caused by any Contractor Party, Subcontractor or other Person over whom Contractor has control or (b) a defect covered by the Warranties provided by Contractor under this Agreement. Upon Owner's written request, if any component of the Block is lost or damaged for whatever reason after the Block Substantial Completion Date, then, upon Owner's written request, Contractor shall restore or rebuild any such loss or damage and complete the Work in accordance with this Agreement at the sole cost and expense of Owner, unless such loss or damage is (i) caused by any Contractor Party or Subcontractor or other Person over whom Contractor has control or (ii) a defect covered by the Warranties provided by Contractor under this Agreement, in which case Contractor shall restore or rebuild any such loss or damage at its cost.

**13.3 Owner Caused Damage.** Notwithstanding any other provision of this Agreement but subject to Owner's rights to coverage under the Builder's Risk Insurance in accordance with Exhibit 15, Owner shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to the Facility and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or Owner for permanent installation in or for use during construction of the Facility to the extent that such damage is caused by the negligence or willful misconduct of Owner, its agents, employees, representatives, consultants or other contractors.

#### **13.4 Title.**

(a) To the extent Owner's payments to Contractor are made in accordance with this Agreement, Contractor warrants good title, free and clear of all Contractor Liens, to all Work, Facility Equipment and other items furnished by Contractor or any of the Subcontractors that become part of the Project.

(b) Title to the Facility, and to any discrete and identifiable item or series of Facility Equipment, shall pass to Owner upon the earliest to occur of (i) \*\*\*, (ii) receipt by Contractor of payment (less any Retainage) in full therefor, (iii) Facility Substantial Completion, (iv) \*\*\*, and (v) with respect to any applicable Facility Equipment, \*\*\*.

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## ARTICLE 14.

### INTELLECTUAL PROPERTY

**14.1 Drawings, Designs, and Specifications.** Drawings, designs, specifications and Confidential Information contained within, accompanying or arising from the Work, including those in electronic form, in each case prepared by Contractor (or its Affiliates or Subcontractors) and delivered to Owner (the “Licensed Technology”) shall be considered instruments of service and are for use by Owner, its contractors, agents and employees solely with respect to the Project in accordance with the license granted under Section 14.2. As between the Parties, Contractor (or its Affiliates or Subcontractors) shall be deemed the authors and owners of the Licensed Technology and, subject to Section 14.2, shall retain all common law, statutory and other reserved rights, including copyrights in the Licensed Technology.

**14.2 License.** All Intellectual Property Rights contained within, accompanying or arising from the Licensed Technology are and shall be solely owned by Contractor and are not being sold to Owner, but rather are being licensed in accordance with the terms and conditions of this Agreement. Effective upon the passage of title to any Block or Equipment, as applicable, to Owner, Contractor hereby grants to Owner a fully paid-up, perpetual, irrevocable, non-exclusive, royalty-free right and license to use (a) the Licensed Technology to the extent reasonably necessary (i) to complete or enable the use of the Work, all Contract Documents and all such items and materials provided by Contractor and (ii) in connection with the design, construction, ownership, use, operation, maintenance, repair, modification, alternation, commissioning, de-commissioning, disposal or removal of the Facility or any subsystem or component thereof in connection with the Project, including the right to reproduce, prepare derivative works based on and distribute such Work, Contract Documents and such drawings, designs, specifications, and other works of authorship provided by Contractor (or its Affiliates or Subcontractors) and (b) the Owner Improvements in connection with the design, construction, ownership, use, operation, maintenance, repair, modification, alternation, commissioning, de-commissioning, disposal or removal of any other facility owned or leased by Owner or its Affiliates. The license granted under this Section 14.2 is subject to the requirements and limitations set forth in Section 14.3 but does allow Owner to provide the Licensed Technology to its contractors in connection with use in relation to the Project. Except as set forth in this Section 14.2, no other license in the Licensed Technology is granted pursuant to this Agreement. To the extent that exercise of the foregoing license rights requires use or disclosure of Contractor's Confidential Information, such use or disclosure shall be subject to the terms and conditions set forth in Article 25.

#### **14.3 Limitations.**

(a) No Copies. Except as otherwise permitted by this Agreement, and except for Contractor Submittals and all other construction documents, commissioning and test reports and results delivered to Owner for Owner review during construction, commissioning and testing of the Facility, Owner shall not make any copies of the Licensed Technology without first obtaining express written permission from Contractor, except that Owner may make copies of the Licensed Technology in order to share the Licensed Technology or portions thereof with an Owner Party, its contractors

or any Financing Party to the extent the Owner Party, contractor or Financing Party needs to know such information with respect to the Project. Such Owner Party, contractor or Financing Party, as applicable, shall be informed of the confidential nature of the Licensed Technology and be bound by confidentiality obligations of a like nature to those contained in this Agreement. Any party receiving Licensed Technology shall be responsible for any breach of this Agreement by any of its representatives or Affiliates.

(b) Proprietary Notices. Owner shall not remove or alter, or knowingly permit to be removed or altered, any proprietary notices that appear on or with the Licensed Technology.

(c) No Reverse Engineering, Etc. Except as otherwise permitted by this Agreement, Owner shall not display, distribute, decompile, reverse engineer, decrypt, extract or disassemble any software or firmware in any Blocks, Equipment or Modules to source code form.

(d) Improvements.

(i) If any Owner Party, directly or indirectly, alone or jointly with others, creates, develops, discovers, invents or reduces to practice any Owner Improvement, such Owner Party shall promptly disclose the same to Contractor.

(ii) Owner, on behalf of itself and all Owner Parties agrees to assign, and Owner hereby does assign, to Contractor, its successors and assigns, effective automatically as and when Owner Improvements are created, developed, discovered, invented or reduced to practice, each and every Owner Improvement, together with the right to seek protection by obtaining patent rights therefor and to claim all rights or priority thereunder, and the same shall become and remain Contractor property whether or not such protection is sought. Owner shall (and shall cause Owner Parties to), upon Contractor's request and at Contractor's expense, give Contractor and its attorneys all reasonable assistance in connection with the preparation and prosecution of any patent applications and shall cause to be executed all assignments or other instruments or documents as reasonably necessary or appropriate to perfect the ownership of Contractor in the Owner Improvements.

(iii) If and only if, and to the extent, Applicable Law mandates that Owner own, or if Owner does in fact own, any Owner Improvements, notwithstanding the terms of this Agreement, Owner hereby grants to Contractor and its Affiliates an exclusive, perpetual, worldwide, royalty-free license to use and sublicense others to use such Owner Improvements.

(e) Enforcement. Each Party shall notify the other Party promptly in writing of any suspected infringement by a third party of the Licensed Technology or any of the Intellectual Property Rights therein or any other Intellectual Property Rights related to the Work, the Blocks or the Facility Equipment. Contractor shall have the exclusive

right to enforce and defend the rights appurtenant to the Licensed Technology or such other Intellectual Property Rights in Contractor's sole discretion and shall have the sole right of control of any such enforcement action or proceeding it elects to initiate (an "Action"), at Contractor's sole cost and expense (provided, however that Contractor shall not consent to the entry of any judgment or enter into any settlement of any such Action in the event such judgment or settlement imposes any liability, restriction or obligation on Owner without Owner's prior written consent, which shall not be unreasonably withheld, conditioned or delayed). Owner shall provide on Contractor's written request all reasonable assistance in preparing and advancing such Action and Contractor shall reimburse Owner's reasonable out-of-pocket costs incurred in doing so. Owner shall have the right to be represented in connection with such Action by its own legal counsel, at its own expense; provided, however, that such legal counsel shall act only in an advisory capacity. Contractor may retain any monetary damages or other compensation or recovery awarded to it in any such Action.

(f) Assignment. The grant of rights and licenses to Owner in Section 14.2 and this Section 14.3(f) shall be assignable to other Persons solely pursuant to all terms and conditions controlling such assignment in Article 26.

(g) Reservation of Rights. Notwithstanding anything to the contrary in this Agreement, neither Party shall be prohibited from utilizing any general knowledge, skills, experience, ideas or concepts retained in the unaided memory of an individual acquired during the term of this Agreement.

**14.4 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 2.1(i), THE LICENSED TECHNOLOGY IS PROVIDED AND LICENSED HEREUNDER "AS IS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY CONTRACTOR.

## ARTICLE 15.

### START-UP, COMMISSIONING & TESTING

**15.1 Start-up and Commissioning.** Contractor shall conduct the Start-up and Commissioning of each Block in accordance with the Start-up and Commissioning requirements set forth in Exhibits 3 and 27.

**15.2 Functional Test and Capacity Tests.** Contractor shall conduct Functional Tests for each Block in accordance with Exhibit 27 and when Contractor believes that a Block can satisfy the Minimum Capacity Level, Contractor shall conduct the Capacity Test with respect to each Block in accordance with Exhibit 16A. Contractor must submit a test report for each Functional Test and Capacity Test within \*\*\* after the completion thereof, which test report shall include a summary of the Functional Test or Capacity Test, as the case may be, and the results for such test. Owner and Contractor will negotiate in good faith to agree upon testing procedures that comply with the protocols set forth in Exhibit 27.

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**15.3 Capacity Test Notice.** Contractor shall provide Owner with at least \*\*\* prior written notice of the commencement of each such test, in order to permit Owner's Representative to arrange attendance at such Capacity Test. Contractor shall give Owner Representative at least \*\*\* advance notice of the re-performance of any Capacity Test. Owner's Representative, and any Owner Inspection Party (excluding SunPower Competitors) notified to Contractor by Owner in writing prior to the date of the test shall be entitled to attend and observe each Capacity Test and each re-performance thereof.

**15.4 Capacity Test Acceptance.** Contractor shall, as soon as practicable following the completion of a Capacity Test in which the Final Test Results reveal that the Minimum Capacity Level for such Block has been achieved, submit to Owner's Representative a Capacity Test Certificate, signed by Contractor's Representative and attaching the Final Test Results performed pursuant to Exhibit 16A. Subject to this Section 15.4, Owner shall, within \*\*\* after Owner's receipt of a Capacity Test Certificate from Contractor, either: (a) approve the Capacity Test results by countersigning and delivering to Contractor the fully executed Capacity Test Certificate (which shall be deemed effective on the date the Capacity Test Certificate was delivered); or (b) give Contractor written notice stating that Owner rejects the Capacity Test results and describing the non-conformity on which the rejection is based. A Capacity Test Certificate signed by Owner is deemed conclusive evidence that such Block has met the Minimum Capacity Level required under this Agreement ("Acceptance"). Acceptance of the Capacity Test for a Block shall not affect any rights Owner may have under a Warranty for a Block, any Facility Equipment or the Facility pursuant to Article 21. If Owner fails to respond within such \*\*\* period, then Acceptance for such Block shall be deemed to have occurred as of the date that the Capacity Test Certificate was delivered to Owner and Owner shall execute and deliver the relevant Capacity Test Certificate.

**15.5 Capacity Test Rejection.** If the Final Test Results reveal that the relevant Block fails to meet the Minimum Capacity Level for such Block, Contractor shall repeat the respective Capacity Test as many times as necessary until the Minimum Capacity Level has been met. Contractor shall take all corrective actions so that such Block successfully completes the Capacity Test and meets the Minimum Capacity Level, without prejudice to Owner's rights and remedies under this Agreement. If the Final Test Results reveal that the relevant Block has satisfied the Minimum Capacity Level but not the Guaranteed Capacity (as adjusted for uncertainty in accordance with Exhibit 16A), Contractor may elect to perform additional Work (if it deems necessary) and repeat the Capacity Test. Any such additional Work shall be performed in compliance with the requirements of this Agreement, including that such Work is in compliance with the PPA. Prior to commencing any such additional Work, Contractor shall provide to Owner a detailed plan and schedule to perform such additional Work and shall not commence any such additional Work without Owner's consent, not to be unreasonably withheld. There shall not be a limit to the number of times the Capacity Test may be repeated pursuant to the previous sentence \*\*\*.

**15.6 Right to Use Temporary Equipment.** If any Block or the Facility experiences a single point failure (i.e., a main transformer failure) prior to or during a Capacity Test, Contractor may use temporary equipment which must remain in place until a permanent replacement can be installed; provided that such temporary equipment is approved by Owner (such approval not to be unreasonably withheld and in any event within \*\*\* of such

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request for approval) and complies with all Applicable Laws, Applicable Permits, Project Transaction Documents, Governmental Authorities and the PPA and such temporary equipment is not expected to have any adverse effect on the safe and reliable construction of the Block or Project. All costs to install and remove the temporary equipment shall be to Contractor's account.

15.7 \*\*\*

(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

## ARTICLE 16.

### BLOCK SUBSTANTIAL COMPLETION; FACILITY SUBSTANTIAL COMPLETION

**16.1 Generally.** Subject to Article 17, Contractor shall perform the Work in accordance with the Construction Schedule, as may be amended from time to time in accordance with the terms of this Agreement, so as to achieve Block Substantial Completion for each Block by the Guaranteed Block Substantial Completion Dates, Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date and Final Completion by the Guaranteed Final Completion Date.

**16.2 Block Substantial Completion Defined.** Subject to Section 16.3, "Block Substantial Completion" shall, with respect to a Block, occur when all of the following conditions have been achieved:

(a) the design, engineering, procurement and construction of such Block has been completed in accordance with this Agreement except for Punch List Items and the Block has been commissioned and a Functional Test has been Successfully Run in respect of such Block and such Block is ready to commence commercial operation;

(b) the Block is electrically interconnected to and has been synchronized with, and is capable of transmitting electric energy to, the Delivery Point in accordance with the Interconnection Agreement and the PPA and all testing and obligations under the PPA required as a condition to such delivery of energy under the PPA, including testing required by CAISO for delivery of electricity from such Block has been satisfactorily completed;

(c) a Capacity Test pursuant to Exhibit 16A has been Successfully Run in respect of such Block and Contractor has provided to Owner, and Owner has accepted, a Capacity Test Certificate evidencing that the Minimum Capacity Level for such Block has been achieved;

(d) the Block is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person)

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in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;

(e) Owner has received all Contractor Submittals (if any) as required to be delivered by the Block Substantial Completion Date for such Block;

(f) Contractor and Owner have agreed to the Punch List Items for such Block and Contractor has completed all Work on such Block other than the remaining Punch List Items; and

(g) Contractor has delivered the notice of Block Substantial Completion of such Block to Owner pursuant to Section 16.3.

**16.3 Notice and Certificate of Block Substantial Completion.** When Contractor considers that a Block has achieved Block Substantial Completion in accordance with Section 16.2, Contractor shall deliver to Owner a Certificate of Block Substantial Completion signed by Contractor, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 16.2 and the corresponding Application for Payment. Contractor shall provide Owner with a Punch List Estimate at such time. Upon receipt of a Certificate of Block Substantial Completion from Contractor together with supporting documentation, Owner shall promptly take steps to confirm whether Block Substantial Completion has been achieved and as soon as practicable, but in no event later than \*\*\* from the date of receipt of Contractor's notice, Owner shall either issue Contractor: (a) a countersignature to the Certificate of Block Substantial Completion, signed by Owner's Representative and stating that the relevant Block Substantial Completion Date is the date on which Contractor delivered the Certificate of Block Substantial Completion under this Section 16.3 or (b) a written notice stating why Owner does not consider that Block Substantial Completion for such Block has been achieved. The "Block Substantial Completion Date" for such Block shall be the Day on which the last of the conditions of Section 16.2 was satisfied or, in the discretion of Owner, waived; provided, however, except in the event Owner rejects a Certificate of Block Substantial Completion and any dispute arising from such rejection is resolved in favor of Contractor or Owner does not respond and the Block Substantial Completion is deemed to have occurred, with respect to the transfer of risk of loss, care, custody and control for purposes of Article 13, such date shall be the date of Owner's countersignature to the Certificate of Block Substantial Completion or the date of deemed acceptance, as applicable. If Owner fails to respond within such \*\*\* period, then Block Substantial Completion for such Block shall be deemed to have occurred as of the date that the Certificate of Substantial Completion was delivered to Owner. If Contractor receives a notice under subparagraph (b) above, Contractor shall take the necessary steps to achieve Block Substantial Completion for such Block and the procedures set forth under this Section 16.3 shall be repeated until such time as the Certificate of Block Substantial Completion for such Block has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

**16.4 Facility Substantial Completion Defined.** Subject to Section 16.5, "Facility Substantial Completion" means (excepting the completion of Punch List Items):

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- (a) each Block has achieved Block Substantial Completion and the Project as a whole is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;
- (b) installation of minimum of \*\*\* MW of inverters as determined by aggregating the nameplate of inverters;
- (c) the Facility is operational and can demonstrate that it evacuates power at the Delivery Point pursuant to the Facility Demonstration Test performed in accordance with Exhibit 16D;
- (d) the most recent Functional Test has been Successfully Run in respect of the Facility and the Facility is ready to commence commercial operation;
- (e) the Guaranteed Capacity for the Facility has been achieved, or if not, the Facility Capacity is greater than the Minimum Capacity Level of the Facility and Contractor has paid the applicable Final Capacity Liquidated Damages;
- (f) each of the requirements to achieve "Commercial Operation" under the PPA shall have been satisfied, except those requirements that are Owner's obligations set forth in Sections L, M or N of Exhibit 1;
- (g) Contractor and Owner have agreed upon the list of Punch List Items;
- (h) Owner has received all Contractor Submittals as required to be delivered by the Facility Substantial Completion Date in accordance with Exhibit 7;
- (i) all construction and post-construction submittals required by the Contractor Acquired Permits for the Project have been submitted to the appropriate Governmental Authorities;
- (j) all Certificates of Block Substantial Completion have been received by and approved or deemed approved by Owner;
- (k) \*\*\*
- (l) the Facility has successfully completed the Installed DC Rating Survey in accordance with Exhibit 16C; and
- (m) Contractor has delivered the notice of Facility Substantial Completion to Owner pursuant to Section 16.5.

**16.5 Notice and Certificate of Facility Substantial Completion.** When Contractor considers that Facility Substantial Completion has been achieved in accordance with Section 16.4, Contractor shall deliver to Owner a Certificate of Facility Substantial

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Completion signed by Contractor, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 16.4 and the corresponding Application for Payment. Contractor shall provide Owner with a Punch List Estimate at such time. Upon receipt of a Certificate of Facility Substantial Completion from Contractor together with supporting documentation, Owner shall promptly take steps to confirm whether Facility Substantial Completion has been achieved and as soon as practicable, but in no event later than \*\*\* from the date of receipt of Contractor's notice, Owner shall either issue Contractor: (a) a countersignature to the Certificate of Facility Substantial Completion, signed by Owner's Representative and stating that the Facility Substantial Completion Date is the date on which Contractor delivered the Certificate of Facility Substantial Completion to Owner under this Section 16.5; or (b) a written notice stating why Owner does not consider that Facility Substantial Completion has been achieved. The "Facility Substantial Completion Date" for the Facility shall be the Day after the date on which the last of the conditions of Section 16.4 was satisfied or, in the discretion of Owner, waived; provided, however, except in the event Owner rejects a Certificate of Facility Substantial Completion and any dispute arising from such rejection is resolved in favor of Contractor or Owner does not respond and the Facility Substantial Completion Date is deemed to have occurred, with respect to the transfer of risk of loss, care, custody and control for purposes of Article 13, such date shall be the date of Owner's countersignature to the Certificate of Facility Substantial Completion or the date of deemed acceptance, as applicable. If Owner fails to respond within such \*\*\* period, then such delay shall constitute an Owner-Caused Delay. If Contractor receives a notice under subparagraph (b) above, Contractor shall take the necessary steps to achieve Facility Substantial Completion and the procedures set forth under this Section 16.5 shall be repeated until such time as the Certificate of Facility Substantial Completion has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

#### **16.6 Punch List.**

(a) Creation of Punch Lists. Owner and Contractor shall agree upon the relevant Punch List Items to be completed by Contractor. Contractor and Owner shall jointly walk-down the Block and confer together as to the items which should be included on the finalized punch list. Contractor shall then reflect the result of such joint walk down and deliver the same to Owner for its review and approval, which submitted list shall be explicitly designated as the "Proposed Punch List" for the applicable Block. The Proposed Punch List shall include only Punch List Items for such Block, and shall include a Punch List Estimate for the completion or repair of each such Punch List Item and Contractor's estimated schedule for completion therefor. If Owner does not deliver any changes to the Proposed Punch List to Contractor within the later of (i) \*\*\* after Contractor's submission to Owner of such Proposed Punch List and (ii) and (b) \*\*\* after the date of the joint walk-down, such delay shall constitute an Owner-Caused Delay. The Proposed Punch List that is ultimately approved for a Block shall be referred to as the "Punch List" for such Block. If the Punch List for a Block is not finalized by the Block Substantial Completion Date for such Block, the Proposed Punch List as modified by Owner shall be deemed the Punch List for such Block for all purposes hereunder until the Parties resolve such dispute and otherwise finalize the

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Punch List for such Block. Contractor shall note on such Punch List the items under dispute.

(b) Completion of Punch Lists. Contractor shall proceed promptly to complete and correct the Punch List Items relating to the relevant Block or the Facility, as applicable, no later than \*\*\* after the relevant Block Substantial Completion Date or Facility Substantial Completion Date, as applicable. On a monthly basis after the Block Substantial Completion of a Block, Contractor shall prepare a punch list for such Block to include the date(s) that items listed on such Punch List are completed by Contractor and accepted by Owner. Notwithstanding any of the foregoing, the items listed on such Punch List shall not be considered complete until Owner shall have inspected such Punch List Items and acknowledged, by notation on the updated Punch Lists, that such item of Work is complete. If Owner does not so inspect and deliver such notations on the updated Punch Lists to Contractor (or dispute completion of the applicable items of Work if not accepted) within \*\*\* after Contractor submits the updated Punch List containing such Punch List Item to Owner, and Contractor has actually completed and corrected any Punch List Item listed on such Punch List, such failure by Owner shall constitute an Owner-Caused Delay. Contractor shall use best efforts to complete the Punch List Items in such a manner as to prevent any loss of power production to the Facility and Contractor shall not curtail or interrupt operation of the Project without Owner consent. Contractor will be responsible for all costs incurred during the completion of the Punch List Items.

(c) Creation of Project Punch List. Owner and Contractor shall agree upon the relevant Punch List Items to be completed by Contractor. Contractor and Owner shall jointly walk-down the Project and confer together as to the items which should be included on the finalized punch list for the Project. Contractor shall prepare a punch list for the Project to reflect the result of such joint walk down and deliver the same to Owner for its review and approval, which submitted list shall be explicitly designated as the “Proposed Project Punch List” and shall set forth all Work remaining to be completed after the Facility Substantial Completion Date. The Proposed Project Punch List may only contain Punch List Items, and shall include a Punch List Estimate for the completion or repair of each such Punch List Item and Contractor's estimated schedule for completion therefor. If Owner does not approve the Proposed Project Punch List or deliver any changes to the Proposed Project Punch List to Contractor within \*\*\* after the later to occur of (a) Contractor's submission to Owner of such Proposed Project Punch List, and (b) \*\*\* after the date of the joint walk-down, then such failure shall constitute an Owner-Caused Delay. The Proposed Project Punch List that is ultimately approved by Owner for the Project shall be referred to as the “Project Punch List”. If the Project Punch List is not finalized by the Facility Substantial Completion Date, the Proposed Project Punch List as modified by Owner shall be deemed the Project Punch List for all purposes hereunder until the Parties resolve such dispute and otherwise finalize the Project Punch List. Contractor shall note on such Project Punch List the items under dispute. Contractor shall use best efforts to complete the Punch List Items in such a manner as to prevent any loss of power production to the Facility and Contractor shall not curtail or interrupt operation of the Project without Owner consent.

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Contractor will be responsible for all costs incurred during the completion of the Punch List Items.

## ARTICLE 17.

### STAGES OF COMPLETION; DELAY AND CAPACITY LIQUIDATED DAMAGES; EITC AND DEPRECIATION LOSS

#### 17.1 Block Delay Liquidated Damages.

(a) If Contractor has not achieved Block Substantial Completion of a Block by the Guaranteed Block Substantial Completion Date for such Block (a "Late Block") for reasons not excused under the terms of this Agreement, then Contractor shall pay to Owner delay liquidated damages ("Block Delay Liquidated Damages") equal to, for each Day after the Guaranteed Block Substantial Completion Date for such Late Block, \*\*\*; provided that any amounts that Contractor is obligated to pay to Owner under this Section 17.1 are subject to the limitations set forth in Section 17.1(b) and Article 29. \*\*\* Block Delay Liquidated Damages shall cease to accrue upon the earlier to occur of (i) the Block Substantial Completion Date for such Block and (ii) the Guaranteed Facility Substantial Completion Date. After taking into account the set-off against the bonus payable under Section 17.1(b) in accordance with Section 17.4, any amount Contractor is obligated to pay to Owner under this Section 17.1(a) shall be due and payable within \*\*\* after Contractor's receipt of Owner's invoice submitted not more frequently than monthly following the Guaranteed Block Substantial Completion Date of the Late Block.

(b) Contractor shall be entitled to a bonus payment equal to, for each Day, \*\*\*. Contractor shall not be entitled to any bonus under this Section 17.1(b) after the earlier of (i) Facility Substantial Completion or (ii) the Guaranteed Facility Substantial Completion Date. After taking into account the set-off against Block Delay Liquidated Damages and/or Block Capacity Liquidated Damages in accordance with Section 17.4, any amount Owner is obligated to pay to Contractor under this Section 17.1(b) shall be due and payable within \*\*\* after the end of each month.

**17.2 Guaranteed Facility Substantial Completion Delay Liquidated Damages.** If Contractor has not achieved Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date for reasons not excused under the terms of this Agreement, then Contractor shall pay to Owner delay liquidated damages ("Facility Delay Liquidated Damages") equal to, for each Day after the Guaranteed Facility Substantial Completion Date that the Facility has not achieved Facility Substantial Completion, \*\*\*; provided that any amounts that Contractor is obligated to pay to Owner under this Section 17.2 are subject to the limitations set forth in Article 29. Payment of Facility Delay Liquidated Damages shall be made payable within \*\*\* after Contractor's receipt of Owner's invoice.

**17.3 Block Capacity Liquidated Damages.** If after the Block Substantial Completion Date of a Block (if such date is on or after the Guaranteed Block Substantial Completion Date for such Block), the Final Test Results of the most recent Capacity

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Test for such Block demonstrates that the Block meets the Minimum Capacity Level but not the Guaranteed Capacity (adjusted for uncertainty in accordance with Exhibit 16A) for such Block, Contractor shall pay to Owner liquidated damages for such shortfall (“Block Capacity Liquidated Damages”) in an amount equal to, for each Day that the Block Measured Capacity of such Block is below the Guaranteed Capacity (adjusted for uncertainty in accordance with Exhibit 16A) of such Block, \*\*\*; provided that any amounts that Contractor is obligated to pay to Owner under this Section 17.3 are subject to the limitations set forth in Article 29. Block Capacity Liquidated Damages shall cease to accrue upon the earlier to occur of (i) the date on which a Capacity Test for such Block demonstrates that such Block has achieved the Guaranteed Capacity (adjusted for uncertainty in accordance with Exhibit 16A) and (ii) the date that any Final Capacity Liquidated Damages are paid. After taking into account the set-off against the bonus payable under Section 17.1(b) in accordance with Section 17.4, any amount Contractor is obligated to pay to Owner under this Section 17.3 shall be due and payable within \*\*\* after Contractor's receipt of Owner's invoice submitted not more frequently than monthly. Notwithstanding the provisions above in this Section 17.3, Contractor shall not be obligated to pay any such Block Capacity Liquidated Damages with respect to any Day on which the Cumulative MWs exceeds Scheduled MWs for such Day as set forth in Exhibit 4B.

**17.4 Netting.** If any undisputed Block Delay Liquidated Damages are payable pursuant to Section 17.1(a) or any undisputed Block Capacity Liquidated Damages are payable pursuant to Section 17.3, the aggregate amount of undisputed Block Delay Liquidated Damages and undisputed Block Capacity Liquidated Damages payable shall be set-off against the aggregate amount of undisputed bonus payable pursuant to Section 17.1(b) on a pro rata basis, and (a) Contractor shall pay the net amount (if any) of undisputed Block Delay Liquidated Damages and the undisputed Block Capacity Liquidated Damages to Owner in accordance with Section 17.1(a) and Section 17.3, respectively and (b) Owner shall pay the net amount (if any) of undisputed bonus payable pursuant to Section 17.1(b).

#### **17.5 Final Capacity Liquidated Damages.**

(a) Contractor agrees that if based on the results of the Facility Capacity calculation performed in accordance with Exhibit 16A, the Facility shall have failed to achieve the Guaranteed Capacity, Contractor shall pay to Owner upon Facility Substantial Completion an amount equal to \*\*\* (the “Final Capacity Liquidated Damages”).

(b) In the event Contractor has paid Final Capacity Liquidated Damages pursuant to Section 17.5(a), and, following additional Capacity Tests conducted in compliance with the provisions set forth in Section 15.5, if the Facility Capacity calculation resulting from the last of such additional Capacity Tests (i) reduces the Capacity Shortfall, Owner shall reimburse Contractor the corresponding amount of Final Capacity Liquidated Damages resulting from such reduction or (ii) increases the Capacity Shortfall, Contractor shall pay to Owner additional Final Capacity Liquidated Damages calculated in accordance with Section 17.5(a).

(c) Amounts payable by Contractor to Owner pursuant to Section 17.5(b) may be set off by Owner against the payment due for Final Completion on the final

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Application for Payment. Any amounts that Contractor is obligated to pay to Owner under Sections 17.5(a) or 17.5(b) are subject to the limitations set forth in Article 29. After Contractor's payment of Final Capacity Liquidated Damages, Contractor shall have no further obligation to try to achieve, and no further liability to Owner for failure to achieve, the Guaranteed Capacity.

**17.6 Liquidated Damages Reasonable.** The Parties agree that the extent and amount of loss or damage to Owner as result of Contractor's failure (a) to achieve Block Substantial Completion by the Guaranteed Block Substantial Completion Date of a Block, (b) to achieve Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date and (c) to achieve the Guaranteed Capacity for a Block or the Facility is impractical and difficult to determine with certainty. The Parties agree that such liquidated damages are a genuine pre-estimate of the damages suffered by Owner by reason of Contractor's failure to achieve or cause the Project to satisfy, obtain or achieve each Guaranteed Block Substantial Completion Date, the Guaranteed Facility Substantial Completion Date or the Guaranteed Capacity for a Block or the Facility and are not intended as a penalty. \*\*\* the amounts payable by Contractor to Owner under this Article 17 shall be Contractor's sole and exclusive liability to Owner, and Owner's sole and exclusive remedy, with respect to Contractor's failure (i) to achieve Block Substantial Completion of a Block by its Guaranteed Block Substantial Completion Date, (ii) to achieve Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date or (iii) to achieve the Guaranteed Capacity for a Block or the Facility. If Contractor fails to pay any Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages or Final Capacity Liquidated Damages owing under this Article 17, Owner may deduct the amount thereof from any payment due, or that may become due, to Contractor under this Agreement or if no payment is due, may invoice Contractor for such amount. Nothing in this Article 17 shall be construed as relieving Contractor of its obligation to achieve Facility Substantial Completion.

**17.7 Energy and Revenues of the Project.** Any energy or revenues generated by the Project at any time, including during the performance of any testing, shall be solely for the benefit of Owner. This Section 17.7 shall not limit Contractor's right to receive any bonus in accordance with Section 17.1(b).

**17.8 EITC and Depreciation Loss.**

(a) The Parties acknowledge that the Contract Price reflects, in part, the value to Owner of certain tax benefits (as specified below) and to obtain those tax benefits in accordance with the expected schedule for the construction and completion of the Project.

(b) If any Block is not completed in accordance with the Guaranteed Block On-line Schedule (as in effect on the Effective Date) for any reason other than, subject to Section 17.8(f), an Owner-Caused Delay, an Excusable Event, a Force Majeure Event (but only with respect to subclause (ii) below) or an Owner Event of Default, then Contractor shall pay Owner, as a Contract Price adjustment and not as a penalty, the following amounts:

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(i) an amount equal to \*\*\*, and

(ii) an amount for each Block equal to the equivalent of interest (using the Wall Street Journal “prime rate” as of the dates specified below as an annual rate, compounded annually) on the following amounts, determined as follows: \*\*\*. For the avoidance of doubt, there is to be no “double counting” of the interest factors calculated under Sections 17.8(b)(ii)(A) and 17.8(b)(ii)(C) with respect to EITCs, and in the event the interest factor determined under Section 17.8(b)(ii)(A) includes with respect to the reduced EITCs reimbursed under Section 17.8(b)(i) a portion of the time value captured under Section 17.8(b)(ii)(B) with respect to the deferral of EITCs, then the amount due under Section 17.8(b)(ii)(B) shall be reduced by the amount of such overlap.

(c) Any Contract Price adjustment required by Section 17.8(b), shall be paid within \*\*\* of Owner providing Contractor a written request setting forth the calculations in reasonable detail.

(d) Within \*\*\* of receipt of such request, Contractor may request that \*\*\* (so long as they are not the accounting firm used by either Party) or another nationally recognized independent accounting firm selected by Owner and reasonably acceptable to Contractor verify the calculation. The fees and expenses of such accounting firm shall be borne by Contractor; provided, however, if the accounting firm determines that Owner's calculations were overstated by more than five (5) percent, then Owner shall pay (or, if applicable, reimburse Contractor) for such fees and expenses. Absent manifest error, the determination of such accounting firm shall be final and binding upon the parties.

(e) The calculation of any amount due pursuant to Section 17.8(b) is intended to be hypothetical. Therefore, the amount shall not be altered based on (i) Owner's actual federal income tax posture or liability, (ii) any audit or adjustment by the Internal Revenue Service, (iii) any transfer, merger, sale, reorganization, lease, financing or other transaction entered into by Owner or any Affiliate thereof, (iv) any tax election made by Owner or any Affiliate thereof, (v) any penalties or interest payable to any tax authority, and (vi) all state tax items shall be disregarded.

(f) \*\*\*

**17.9 Enforceability.** The Parties explicitly agree and intend that the provisions of this Article 17 shall be fully enforceable by any court exercising jurisdiction over any dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available under law or equity relating to the enforceability of the liquidated damages provisions set forth in this Article 17 on the grounds that such liquidated damages provisions should not be enforced as constituting a penalty or a forfeiture.

**INITIALS:** Owner: \_\_\_\_\_ Contractor: \_\_\_\_\_

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## ARTICLE 18.

### FINAL COMPLETION

**18.1 Generally.** Contractor shall achieve Final Completion of the Facility by the earlier of (a) \*\*\* after the Facility Substantial Completion Date and (b) \*\*\* (the “Guaranteed Final Completion Date”); provided that Contractor shall have an \*\*\* cure period if Final Completion is not achieved. Subject to Section 18.2 and 18.3, Final Completion of the Facility means that all of the following conditions have been met:

- (a) Facility Substantial Completion has occurred;
- (b) the performance of the Work for the Facility is complete, including all Punch List Items or pursuant to Section 8.1(c), Owner has withheld any remaining Punch List Holdback to complete any items on the Project Punch List not completed by Contractor in accordance with the terms hereof;
- (c) Contractor has delivered all Contractor Submittals, including the final record as-built drawings;
- (d) Contractor has paid all bills from its Subcontractors related to the Project that are not in dispute;
- (e) no Contractor Liens shall be outstanding against the Project and Owner shall have received all required final lien waivers under Section 8.4;
- (f) Contractor has complied with its clean-up obligations pursuant to Section 3.15;
- (g) Contractor has paid all Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages and Final Capacity Liquidated Damages, if any, to the extent required in accordance with this Agreement;
- (h) \*\*\*; and
- (i) Contractor shall have delivered the notice of Final Completion to Owner pursuant to Section 18.2.

**18.2 Certificate of Final Completion.** When Contractor considers that the Facility has achieved Final Completion in accordance with Section 18.1, it shall deliver to Owner a Certificate of Final Completion signed by Contractor, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 18.1. Upon receipt of the Certificate of Final Completion from Contractor together with supporting documentation, Owner shall promptly, but in no event later than \*\*\* from the date of receipt of Contractor's notice, either issue Contractor: (a) a countersignature to the Certificate of Final Completion, signed by Owner's Representative and stating that the Final Completion Date for the Facility is the date on which Contractor gave its notice to Owner under this Section 18.2; or

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(b) a written notice stating why Owner does not consider that Final Completion of the Facility has been achieved.

**18.3 Failure to Achieve Final Completion.** If Owner fails to issue a Certificate of Final Completion pursuant to Section 18.2(a) or a written notice under Section 18.2(b) above within \*\*\* after receipt of Contractor's notice under Section 18.2, Final Completion shall be deemed to have been achieved as of the date Contractor gave its notice to Owner under Section 18.2. If Contractor receives a notice under Section 18.2(b) above, Contractor shall take the necessary steps to achieve Final Completion of the Facility at Contractor's cost. Upon completion of such corrective action, Contractor shall provide a new notice of Final Completion to Owner for approval and the procedures set forth under Sections 18.2 and 18.3 shall be repeated until such time as the Certificate of Final Completion has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

## ARTICLE 19.

### SUSPENSION OF THE WORK

**19.1 Suspension for Non-Payment.** Contractor may, upon \*\*\* prior written notice to Owner, suspend the Work temporarily if Owner fails to pay any undisputed amount due and owing to Contractor hereunder by the date payment is due pursuant to Article 8. Contractor may not suspend the Work if Owner pays the amount owed within the \*\*\* after its receipt of a notice of suspension under this Section 19.1. Contractor's entitlement to suspend the Work under this Section 19.1 is separate from and in addition to its entitlement to terminate this Agreement for non-payment pursuant to Section 20.3(a).

**19.2 Contractor Suspension.** Owner may, upon \*\*\* prior written notice to Contractor, direct Contractor to suspend its performance of all or any portion of the Work; provided that no prior written notice shall be required if such suspension is due to an imminent threat of material injury or damage to Persons or property or is the result of a material injury or damage to Persons or property or as otherwise required by Applicable Law. Upon the commencement of the suspension, Contractor shall stop the performance of the suspended Work except as may be necessary to carry out the suspension and protect and preserve the Work completed prior to the suspension. Contractor shall thereafter resume any suspended Work as soon as is practicable (taking into account the length of the suspension) after receipt of a written direction from Owner to resume the Work.

**19.3 Extended Owner Suspension.** With respect to suspensions for which Owner fails to allow or direct Contractor to resume the Work within \*\*\* after the date of suspension under Section 19.1 or Section 19.2, Owner shall pay Contractor, without duplication to the payment of amounts payable in connection with a Change Order or otherwise, within \*\*\* after receipt of each invoice (which invoices shall be submitted on a monthly basis during the applicable suspension period for Contractor's incremental costs incurred with respect to such suspension), in each case to the extent actually and demonstrably incurred during the suspension period that are documented by Contractor to the reasonable satisfaction of Owner, to the extent attributable to the suspension, that are: (a) Direct Costs, (b) costs associated with the

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repair, replacement or refurbishment of any of the Equipment in accordance with Industry Standards, (c) costs incurred for the purpose of safeguarding or storing the Work and the Equipment at the point of fabrication, in transit, or at the Site in accordance with Industry Standards and the recommendations of the applicable manufacturers, (d) costs for required rescheduling of the Work, (e) for personnel, Subcontractors or rented Equipment, the payments for which, with Owner's prior written concurrence, are continued during the suspension period, (f) costs for extending applicable warranties for Facility Equipment and (g) costs otherwise incurred solely due to suspension of the Work.

**19.4 Resumption of Work After Suspension.** After the resumption of the performance of the Work, Contractor shall, after due notice to Owner, examine the Work affected by the suspension. Subject to Contractor's right to request a Change Order in accordance with Section 10.3 for cost and/or schedule relief for same, Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Subject to Section 19.5, as Contractor's remedy for same, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by Contractor's incremental Direct Costs incurred by reason of the suspension, as a direct result of such suspension plus a mark-up of \*\*\*, such adjustments to be set forth in a Change Order and added to the Contract Price.

**19.5 Costs and Schedule Relief for Contractor-Caused Suspension.** Notwithstanding anything to the contrary, Contractor shall bear its own costs incurred due to a suspension by Owner pursuant to Section 19.2 and Section 19.3 where such suspension is necessitated by a breach of this Agreement by Contractor due to any act or omission by any Contractor Party or Subcontractor and shall not be entitled to a change to the Construction Schedule or an extension of time to the Guaranteed Block Substantial Completion Dates, Guaranteed Facility Substantial Completion Date or Guaranteed Final Completion Date.

## ARTICLE 20.

### DEFAULTS AND REMEDIES

**20.1 Contractor Events of Default.** Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a "Contractor Event of Default"):

(a) Contractor fails to pay any amount due and owing to Owner under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of \*\*\* or more after receipt of notice from Owner stating that if Contractor does not pay such amount Owner may terminate in accordance with Section 20.2; or

(b) an Insolvency Event occurs with respect to Contractor or, while the Contractor Performance Security is required to be in place, SunPower Corporation; or

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(c) Contractor fails to maintain any insurance coverages required of it in accordance with Article 23 and Contractor fails to remedy such breach within \*\*\* after the date on which Contractor first receives a notice from Owner with respect thereto; or

(d) Contractor assigns or transfers this Agreement or any right or interest herein except in accordance with Article 26; or

(e) Contractor fails to obtain and maintain the credit support requirements set forth in Exhibit 31 as and when required pursuant to the terms thereof; provided, however, that if Contractor fails to deliver the Acceptable Letter of Credit \*\*\* as and when required by Exhibit 31, Owner may withhold additional amounts in accordance with Section 8.10; or

(f) \*\*\*; or

(g) except as a result of an Owner Event of Default, a Force Majeure Event, an Excusable Event or such other event for which Contractor is entitled to schedule relief under Section 10.3 or during the pendency of a suspension under Section 19.3, Contractor Abandons the Work and Contractor fails to remedy such breach within \*\*\* after receipt of notice from Owner; or

(h) Contractor violates in any material respect any of the provisions of this Agreement not otherwise addressed in this Section 20.1 (except for Sections 17.1 and 17.2, the exclusive remedy for which is provided in Article 17), which violation remains uncured for \*\*\* following Contractor's receipt of written notice thereof from Owner; provided, that if such violation is capable of cure but cannot reasonably be cured within such \*\*\* period, then Contractor's right to cure shall extend beyond such \*\*\* period for so long as Contractor is diligently attempting to cure such violation; or

(i) a representation or warranty made by Contractor in or pursuant to this Agreement was false or misleading in any material respect as of the date on which it was made and has not been cured within \*\*\* after Contractor receives a notice from Owner with respect thereto; provided that such \*\*\* limit shall be extended if: (i) such failure is reasonably capable of cure and curing such failure reasonably requires more than \*\*\*; and (ii) Contractor commences such cure within such \*\*\* period and diligently prosecutes and completes such cure within \*\*\* thereafter, in each case, after the date on which Contractor receives a Notice from Owner with respect thereto; or

(j) SunPower Corporation defaults in the performance of its obligations under Contractor Performance Security or Contractor Performance Security ceases to be in full force and effect as required by Section 8.8 and, in either case, Contractor has failed to deliver a comparable replacement therefor within \*\*\* after such failure; or

(k) if SCE terminates the PPA or CAISO terminates the Interconnection Agreement from an event of default or termination right thereunder resulting from (a) the negligence or willful misconduct of any Contractor Party or any Subcontractor in connection with this Agreement or (b) the failure of any Contractor Party or any

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Subcontractor to comply with any of its obligations or a breach under this Agreement; or

(l) Contractor fails to comply with the requirements of Section 3.29; or

(m) SunPower Corporation is in breach of or default under the Side Letter.

**20.2 Owner Rights and Remedies.** If a Contractor Event of Default occurs, subject to Article 29 and without permitting double recovery, Owner shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:

(a) Owner may terminate this Agreement by giving notice of such termination to Contractor and, upon such termination:

(i) Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner (without recourse to Contractor) such of Contractor's subcontracts or purchase orders as Owner may request (in which case Contractor shall execute all assignments or other reasonable documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to effect such assumption by Owner), and shall license, in the manner provided herein, to Owner all Intellectual Property Rights (to the extent not previously licensed in accordance with the terms hereof) of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work (and solely in connection with the Project), shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may reasonably direct, and Owner may take possession of any or all Contract Documents necessary for completion of the Work (whether or not such Contract Documents are complete);

(ii) \*\*\*; and

(iii) if Owner terminates this Agreement, Owner may seek damages as provided in Section 20.5 or as otherwise provided.

(b) Subject to a final determination of the amount of damages owing to Owner and to any deductions or offsets to which Owner is entitled under Section 20.2 (g), Owner shall pay Contractor the outstanding portion of the Contract Price due for all Work performed and Facility Equipment supplied by Contractor up to and including the date of termination;

(c) Contractor shall turn over to Owner all Facility Equipment and other materials paid for by Owner;

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- (d) Owner may proceed against the Contractor Performance Security in accordance with its terms;
- (e) Owner may draw any of the Acceptable Letters of Credit or letters of credit in accordance with its terms;
- (f) Subject to the dispute resolution procedures set forth in Article 28, Owner may seek equitable relief solely to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement;
- (g) Any Block Delay Liquidated Damages or Facility Delay Liquidated Damages incurred by Contractor accruing as of the date of termination shall immediately cease to accrue; provided that Owner shall have the remedies in Article 17 for any delays or performance shortfalls to the extent caused by or attributable to Contractor;
- (h) Owner may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement;
- (i) Subject to the dispute resolution procedures set forth in Article 28 and without permitting double recovery, Owner may seek actual damages subject to the limitations of liability set out in this Agreement;
- (j) Owner may pursue remedies in accordance with Section 20.6;
- (k) Without limiting Contractor's right to assert any defenses with respect to such payment, Owner may make such payments, acting reasonably, that Contractor is failing to pay in connection with the relevant Contractor Event of Default and either offset the cost of such payment against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts to Owner;
- (l) \*\*\*;
- (m) \*\*\*; and
- (n) \*\*\*

**20.3 Owner Event of Default.** Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an “Owner Event of Default”):

- (a) Owner fails to pay any amount of the Contract Price owing under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of \*\*\* after Owner has received a notice of such payment default from Contractor stating that if Owner does not pay such amount Contractor may terminate in accordance with Section 20.4; or

(b) An Insolvency Event occurs with respect to Owner or, while the Equity Contribution Agreement is required to be in place, MEHC; or

(c) Owner fails to maintain any insurance coverages required of it in accordance with Article 23 and Owner fails to remedy such breach within \*\*\* after the date on which Owner first receives a notice from Contractor with respect thereto; or

(d) Owner violates in any material respect any of the provisions of this Agreement not otherwise addressed in this Section 20.3, which violation remains uncured for \*\*\* following Owner's receipt of written notice thereof from Contractor; provided, that if such violation is capable of cure but cannot reasonably be cured within such \*\*\* period, then Owner's right to cure shall extend beyond such \*\*\* period for so long as Owner is diligently attempting to cure such violation; or

(e) Owner assigns or transfers this Agreement or any right or interest herein except in accordance with Article 26; or

(f) \*\*\*

**20.4 Contractor Rights and Remedie.** If an Owner Event of Default occurs, subject to Article 29 and Section 20.5 and without permitting double recovery, Contractor shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Contractor hereunder:

(a) Contractor may terminate this Agreement upon providing notice of such termination to Owner;

(b) Contractor shall be compensated by Owner for any and all amounts due and owing from Owner under this Agreement;

(c) \*\*\*

(d) Subject to the dispute resolution procedures set forth in Article 28, Contractor may seek equitable relief to preserve its rights during the pendency of any dispute or to enforce its rights under this Agreement;

(e) Contractor may suspend the Work by giving notice of such suspension to Owner concurrently with or at any time after Contractor gives Owner notice described in Section 20.3(a);

(f) Contractor may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement;

(g) Contractor may pursue remedies in accordance with Section 20.6.

#### **20.5 Termination Payment.**

(a) Upon termination for an Owner Event of Default, as Contractor's sole and exclusive remedy for compensation arising out of the Owner Event of Default permitting termination of this Agreement:

(i) Owner shall pay to Contractor all amounts due to Contractor through the effective date upon which the termination occurred as set forth on the Payment Schedule, plus amounts in payment of partially completed milestones in the Construction Schedule;

(ii) Owner shall, on the date that is \*\*\* after Owner's receipt of an Application for Payment therefor, pay the applicable Termination Payment due to Contractor;

(iii) \*\*\*

(b) \*\*\*

(c) The obligations of this Section 20.5 shall survive the termination of this Agreement.

**20.6 Termination Right Not Exclusive.** Subject to Section 20.5(a) and Section 20.7, a Party's right to terminate this Agreement pursuant to this Article 20 is in addition to, and without derogation from, any other rights and remedies such Party may have against the other Party under this Agreement or any Applicable Law, and each Party expressly reserves all such rights and remedies it may have against the other Party, whether in contract, tort or otherwise.

#### **20.7 Termination Events for Extended Force Majeure.**

(a) In addition to the other rights and remedies set forth in this Article 20, in the event that a Force Majeure Event has occurred and has persisted for a period in excess of \*\*\* and such Force Majeure Event adversely affects a significant portion of the Work, Contractor may elect to terminate this Agreement upon providing notice of such termination to Owner.

(b) \*\*\*.

(c) All obligations that expressly survive the termination of this Agreement in accordance with Section 30.1, including any indemnification obligations (provided that Owner cannot make any indemnity claim pursuant to Section 24.1(c)), shall survive a termination pursuant to this Section 20.7. For the avoidance of doubt, Contractor will have no obligations or liability under Section 17.8 after termination of this Agreement pursuant to this Section 20.7.

(d) The obligations under this Section 20.7 shall survive any termination of this Agreement.

20.8 \*\*\*

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(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

(d) \*\*\*

20.9 \*\*\*

(a) \*\*\*

(b) \*\*\*

**20.10 Contractor Conduct.** Upon issuance of a notice of termination pursuant to this Article 20, Contractor shall: (a) cease operations as directed by Owner in the notice; (b) take action necessary, or that Owner may reasonably direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in such notice, or except as expressly requested by Owner or under Section 20.2(a)(i), terminate all existing subcontracts and purchase orders that are terminable without premium, penalty or termination charges and enter into no further subcontracts and purchase orders with respect to the Work or the Project.

## **ARTICLE 21. WARRANTIES**

**21.1 Sole Warranty.** Except as set forth in Section 2.1 and Section 13.4(a), (a) the Warranties provided in this Article 21 shall be Contractor's sole warranty with respect to the Work and the Facility and (b) Contractor does not make (and hereby expressly disclaims) any other warranties of any kind whatsoever.

**21.2 No Liens or Encumbrances.** To the extent Owner's payments to Contractor are fully made in accordance with this Agreement, Contractor warrants that title to all Work, materials and Facility Equipment provided by Contractor and its Subcontractors and Suppliers hereunder shall pass to Owner free and clear of all Contractor Liens. Contractor shall diligently pursue the removal and discharge of any lien filings relating to Contractor Liens.

**21.3 Defect Warranty.** Contractor warrants to Owner:

(a) Defect Warranty. That a Block, all Facility Equipment furnished by Contractor and any of the Subcontractors and other Work, including installation shall, upon the Block Substantial Completion Date for such Block: (i) be free from defects in materials, construction, fabrication and workmanship; (ii) be new and unused (except for use as part of the Facility); (iii) be of good quality and in good condition and (iv) conform to the applicable requirements of the Scope of Work in effect as of (x) prior to the Facility Substantial Completion Date, the applicable Block Substantial Completion Date and (y) after the Facility Substantial

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Completion Date, the Facility Substantial Completion Date (collectively, the “Defect Warranty”). For the avoidance of doubt, the Defect Warranty shall not include the Modules, defects of which are covered by the Module Warranty.

(b) \*\*\*

#### **21.4 Warranty Period.**

(a) Defect Warranty Period. With respect to any Block (and any Facility Equipment furnished by Contractor and any of the Subcontractors and all other Work including installation services, by the Block Substantial Completion Date of such Block), the Defect Warranty shall commence on the Block Substantial Completion Date of such Block and end on the later to occur of (i) the \*\*\* anniversary of the relevant Block Substantial Completion Date and (ii) \*\*\* after the Facility Substantial Completion Date (such period, the “Defect Warranty Period”) and Contractor shall have no liability under the Defect Warranty for any Defect Warranty claims submitted by Owner from and after the expiration of the Defect Warranty Period; provided that a claim may be made by Owner within \*\*\* after the end of a Defect Warranty Period for a matter which arose within such Defect Warranty Period; provided, further, however, that the Defect Warranty Period for any item or part required to be re-performed, repaired, corrected or replaced following discovery of a defect during the applicable Defect Warranty Period shall continue until the end of the later of (A) the expiration of such Defect Warranty Period and (B) \*\*\* from the date of completion of such repair, re-performance, correction or replacement.

(b) \*\*\*

(c) Warranty Claims. With respect to warranty claims under Section 21.4(a) or Section 21.4(b) Contractor shall be liable to Owner in connection with such defects prior to the end of the applicable Warranty Period so long as Owner complies with its notice obligations under this Article 21.

**21.5 Exclusions.** The Defect Warranty \*\*\* shall not apply to damage to or failure of any Work or Facility Equipment to the extent such damage or failure is caused by the following, provided that in no event shall the breach or fault of a Contractor Party, including O&M Provider, be the basis of an exclusion from the Defect Warranty \*\*\*:

(a) a failure by Owner or its representatives, agents or contractors (other than O&M Provider under the O&M Agreement) to maintain such Work or Facility Equipment in accordance with Industry Standards or in accordance with the recommendations set forth in the Required Manuals;

(b) operation of such Work or Facility Equipment by Owner or its representatives, agents or contractors (other than O&M Provider under the O&M Agreement) in excess of or outside of the operating parameters or specifications for such Work or Facility Equipment as set forth in the Required Manuals;

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(c) any repairs, adjustments, alterations, replacements or maintenance that may be required as a result of normal wear and tear; provided, however, that this exclusion shall not operate to limit any warranties or guarantees set forth in the O&M Agreement, the Module Warranty or the Performance Guaranty Agreement;

(d) (i) a Force Majeure Event or (ii) \*\*\*;

(e) to the extent arising out of or resulting from a specific written direction of Owner relating to the Work and/or the Facility which Contractor has followed, provided that any such defect or deficiency is not the result of Contractor's or any Supplier's or Subcontractor's (or of any of their respective personnel's, subcontractors' or agents') failure to properly implement the Work in accordance with this Agreement and Contractor notified Owner that following such direction would affect the applicable Defect Warranty \*\*\*;

(f) damage caused by rodents, insects, other animals, or plant life that are atypical of the Site; or

(g) any modifications or enhancement to the Facility, or alterations, repairs or replacements performed by Owner or any Owner contractor after the relevant Block Substantial Completion not executed in accordance with the Required Manuals, Applicable Law or Industry Practices to the extent that Contractor has not provided prior written approval (and Owner agrees to reimburse Contractor for its reasonable costs incurred in reviewing and analyzing any request for such an approval).

#### **21.6 Correction of Defects.**

(a) Notice of Warranty Claim. If, during the applicable Warranty Period or within \*\*\* thereafter, Owner provides notice to Contractor within a reasonable period after discovery that the applicable portion of the Facility has manifested a defect during the Defect Warranty Period \*\*\*, then Contractor as promptly as practicable, but in no event later than \*\*\* following receipt of such notice, shall inspect such claimed warranty defect or nonconformance, and at Contractor's own cost and expense as promptly as practicable refinish, repair or replace, at its option, such non-conforming or defective part of the Facility or Work and resulting property damage to the Project caused by such defective Work. Contractor shall pay the cost of removing any defective component, the costs of shipping and installation of replacement parts in respect of a defect, and the cost of re-performing, repairing, replacing or testing such item as shall be necessary to cause conformance with the Defect Warranty \*\*\*. The timing of the work to be completed with respect to any such remediation or repair shall be subject to Owner's approval. Such remediation or repair shall be considered complete when the applicable defect has been corrected by the affected equipment or parts being restored to Technical Specifications and the other requirements of this Agreement and the Contract Documents, and compliance with Applicable Laws, Industry Standards and Applicable Permits. Notwithstanding the foregoing, if the Facility shall fail to satisfy the applicable Warranty during the applicable Warranty Period, and such failure endangers human health or property or materially and

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adversely affects the operation of the Facility, Contractor shall correct the failure as soon as is practicable or, if Contractor does not so correct such failure, Owner shall be permitted to correct such failure at Contractor's sole cost pursuant to Section 21.6(b). For the purposes of this Section 21.6(a), manifestation of a defect shall include failure to function and physical damage.

(b) Failure of Contractor to Perform Warranty Work. If after Block Substantial Completion, Contractor does not use its reasonable efforts to proceed to complete the applicable Warranty work, or cause any relevant Subcontractor or Supplier to proceed to complete the Warranty work, required to satisfy any Warranty claim properly asserted under the terms of this Article 21 in accordance with the terms hereof, Owner shall, after giving Contractor notice of Owner's intent to perform the remedial Warranty work itself at least \*\*\* prior to Owner's commencement of any such remedial Warranty work, have the right to perform the necessary Warranty work to remedy the Warranty claim, or have third parties perform the necessary Warranty work and Contractor shall bear the reasonable costs thereof. If Contractor (or the relevant Subcontractor or Supplier) implements a plan to diligently perform the Warranty work to satisfy such Warranty claim during such \*\*\* period, and thereafter diligently prosecutes the execution of such plan, Owner shall not perform, or cause any third party to perform, such Warranty work. If a defect or other nonconformance to the applicable Warranty arises during the applicable Warranty Period and such defect or nonconformance occurs under circumstances where there is an immediate need for repairs due to the endangerment of human health or property, Owner may perform such Warranty work for Contractor's account; provided, however, that upon completion of such work, Owner shall provide Contractor notice of, and an opportunity to inspect, such Warranty work. Within \*\*\* after receiving the notice referenced in the preceding sentence, Contractor shall inspect such work performed by Owner and either (i) ratify Owner's work or (ii) elect to repair or otherwise correct Owner's work. In the event that Contractor elects to proceed pursuant to sub-clause (ii), Contractor shall complete such work, as necessary under the circumstances, with reasonable promptness. If Owner performs or causes third parties to perform such Warranty work as set forth above, Owner shall provide reasonable access to Contractor to the Facility to observe Owner's and its Affiliates' or any third party's performance of the Warranty work. The performance of Warranty work, either performed by Owner or performed by third parties engaged by Owner which was performed in accordance with the applicable provisions of this Agreement related to such Warranty work that Contractor, had it performed the Warranty work itself, would have observed to comply with this Agreement, shall be deemed covered by the Warranties, and Contractor shall reimburse Owner for all reasonable costs, charges and expenses incurred by Owner in connection therewith plus \*\*\*.

(c) Enforcement by Owner.

(i) Major Facility Equipment Warranties. Contractor shall obtain or has obtained warranties for the Equipment supplied by the Major Subcontractors (other than the Modules) (the "Major Facility Equipment Warranties"). Upon

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Owner's request, Contractor shall deliver to Owner copies of any Major Facility Equipment Warranty.

(ii) Assignment. All Major Facility Equipment Warranties shall be assignable to Owner. If a Contractor Event of Default exists and this Agreement has been terminated in accordance with Article 20, or otherwise at the end of each Defect Warranty Period, Contractor shall assign to Owner (unless previously assigned), or otherwise hold in trust on behalf of Owner until such assignment shall occur, at the request and direction of Owner, all unexpired Major Facility Equipment Warranties, subject to the terms and conditions of any such warranties; provided that, notwithstanding such assignment, Contractor shall be entitled to enforce each such warranty to the exclusion of Owner through the earlier of the termination of this Agreement in accordance with Article 20 and the end of the applicable Defect Warranty Period. Notwithstanding the foregoing, Contractor shall not be obligated to assign any claims of Contractor with respect to any Major Subcontractor then or thereafter existing so long as Contractor is performing its obligations under this Article 21. At Owner's request, Contractor shall deliver to Owner, at the end of each Defect Warranty Period (unless previously provided), copies of all subcontracts containing such Major Facility Equipment Warranties with appropriate redactions of the financial and other terms thereof unrelated to the warranties assigned.

**21.7 Module Warranty and Performance Guaranty Agreement.** Contractor shall issue (or shall cause an Affiliate thereof to issue) warranties for the Modules in accordance with the SunPower Limited Product and Power Warranty for PV Modules attached as Exhibit 14 (the "Module Warranty") and shall guarantee the performance of the Modules in accordance with the Performance Guaranty Agreement attached as Exhibit 28 (the "Performance Guaranty Agreement"). No claim under the Module Warranty or Performance Guaranty Agreement shall be invalidated due to the acts or omissions of Contractor or its Subcontractors.

**21.8 Limitations On Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN SECTION 2.1 and Section 13.4(a), AND THIS ARTICLE 21, CONTRACTOR DOES NOT MAKE ANY EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. THE REMEDIES PROVIDED FOR IN THIS ARTICLE 21 WITH RESPECT TO ANY WORK WHICH FAILS TO SATISFY THE DEFECT WARRANTY DURING THE APPLICABLE DEFECT WARRANTY PERIOD \*\*\* SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF OWNER AS A RESULT OF SUCH FAILURE. This Section 21.8 does not operate to limit any warranties or guarantees set forth in the O&M Agreement, the Module Warranty or the Performance Guaranty Agreement.

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## ARTICLE 22.

### PUBLICITY

**22.1 Signage.** Subject to the prior approval of Owner, which shall not be unreasonably withheld, Contractor shall have the right to erect signage at a prominent location on the Site indicating Contractor's role as designer and builder of the Facility. Contractor's name may remain on such signage from the Effective Date until the \*\*\*. Any such signage shall comply with Applicable Laws and Owner/lessor requirements and shall not interfere with the operation of the Facility.

**22.2 Press Releases.** Subject to Section 25.1, as applicable, the Parties shall jointly agree upon the necessity and content of any press release in connection with the matters contemplated by this Agreement. Contractor shall coordinate with Owner with respect to, and provide Owner advance copies of the text of, any proposed announcement or publication that may include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors, Suppliers or advisors of Contractor, in each case, who agree to keep such information confidential. A Party shall not disseminate any such announcement or publication without the other Party's consent, not to be unreasonably withheld.

### **22.3 Contractor's Continued Access to Information and the Site.**

(a) Notwithstanding anything to the contrary in this Section 22.3, Contractor shall have the right to utilize general information about the Project, including photographs, in its promotional materials and public statements. All Contractor usage of general information about the Project, including promotional materials, public statements or photographs, must indicate that Owner is the owner of the Project and cannot disparage the Project or operation of it or Owner or any of its Affiliates.

(b) So long as this Agreement has not been terminated for a Contractor Event of Default, through the Final Completion Date, Contractor shall request access to the Facility by telephone or email to Owner not less than \*\*\* prior to any desired visit to the Site and after the Final Completion Date, all requests for Contractor's access to the Site for any tours made by Contractor shall be subject to Owner's consent, not to be unreasonably withheld. Owner shall have the right to join on any tours by Contractor, including those tours with media, political and community members.

(c) Contractor shall require all Contractor personnel and guests admitted to the Site to observe all applicable safety and security standards. Contractor shall provide a copy of any photographs, video, or other promotional material to Owner for review and approval prior to release. Owner may utilize photographs and video of the completed Project (or any completed portion thereof) in connection with public statements, for promotional purposes or otherwise.

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## ARTICLE 23.

### INSURANCE

**23.1 Contractor's Insurance.** Contractor shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part I of Exhibit 15 ("Contractor's Insurance"). Unless otherwise specified in Exhibit 15, Contractor's Insurance shall commence no later than the Effective Date and shall remain in full force and effect at all times from commencement of the Work until Final Completion, unless required for a longer or shorter period in accordance with Exhibit 15.

**23.2 Owner's Insurance.** Owner shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part II of Exhibit 15 ("Owner's Insurance"). Owner's Insurance shall commence on the Effective Date and shall remain in full force and effect at all times until the expiration of the last Warranty Period, unless required for a longer or shorter period in accordance with Exhibit 15. Subject to the prior agreement of the Parties and the affected insurers, Owner's Insurance may be included, at Owner's cost and responsibility, under one or more policies of Contractor's Insurance.

**23.3 Ratings.** All policies of insurances required or otherwise contemplated under this Agreement shall be provided by insurance companies having an A.M. Best Insurance Reports rating of \*\*\* or better, and shall otherwise be in accordance with the requirements of this Article 23 and Exhibit 15.

**23.4 Policy Requirements.** Contractor's Commercial General Liability and Worker's Compensation insurance policies shall: (a) provide for a waiver of subrogation rights against Owner and all Owner Parties and Financing Parties, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy; and (b) list Owner and the Owner Parties as "additional insured" with respect to liability arising out of or in connection with the Work by or on behalf of Contractor, excluding any contributory liability of Owner or any Owner Parties.

**23.5 No Limitation and Release.** Unless otherwise expressly provided in this Agreement, the insurance policy limits set forth in Exhibit 15 shall not be construed to limit the liability of the insured Party under this Agreement. Notwithstanding the foregoing sentence, each Party releases and waives any and all rights of recovery against the other Party and all of its Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters that the other Party may otherwise have or acquire in, or from, or in any way connected with, any loss covered by policies of insurance maintained or required to be maintained by that Party pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**23.6 Reduction or Ceasing to be Maintained.** If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the other Party in respect of any default that

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arises as a result of such failure) the other Party may at its option take out and maintain the insurance required hereby and, in such event, (a) Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor, or (b) Owner shall promptly reimburse Contractor for the premium of any such replacement insurance, as applicable.

**23.7 Expiration.** With respect to any insurance carried by Contractor which may expire before the date specified in Section 23.1, Contractor shall, at least \*\*\* prior to the relevant policy renewal date, submit to Owner certificates of insurance, insurer binders or other satisfactory evidence that coverage required by this Article 23 has been renewed.

## **ARTICLE 24.**

### **INDEMNITY**

**24.1 Contractor Indemnity.** Contractor shall indemnify, hold harmless and defend Owner and all Owner Parties from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable during the performance of the Work or from performing or from a failure to perform any of its obligations under this Agreement, or any curative action under any Warranty following performance of the Work;

(b) all Losses associated with a take of a protected species if any are found on the Site during the performance of the Work;

(c) all Losses, \*\*\*, under the PPA or Interconnection Agreement (including liquidated damages) attributable to a Non-Excusable Event and, subject to the provisions of Section 24.6, if SCE terminates the PPA for any reason resulting from Contractor's failure to achieve the Facility Substantial Completion Date by the Commercial Operation Deadline\*\*\*;

(d) Losses sustained by Owner as a result of Contractor's breach of Section 3.29;

(e) all Losses incurred by Owner as a result of a claim under the Project Labor Agreement against Owner arising from the construction of the Project and performance of the Work;

(f) all Losses that directly arise out of or result from all claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanics lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by

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any Owner Party in discharging any Contractor Lien, except to the extent of a breach by Owner in relation to any obligation it has to make a payment under this Agreement;

(g) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of the Subcontractors, regardless of negligence of Owner or any Owner Party contributing to such Losses;

(h) all Losses arising from third-party claims, including by Subcontractors and for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Contractor or any of the Subcontractors to comply with the terms and conditions of Applicable Laws during their performance of the Work;

(i) all fines or penalties issued by any Governmental Authority that directly arise out of or result from the failure of the Project (or any portion thereof), as designed, constructed and completed by Contractor or any Subcontractor, to be capable of operating in compliance with all Applicable Laws or the conditions or provisions of all Applicable Permits (to the extent the Applicable Permits relate to the Work), in each case, as in effect as of the Facility Substantial Completion Date;

(j) any and all fines, penalties or assessments issued by any Governmental Authority that Owner may incur as a result of executing any applications to any such Governmental Authority at Contractor's request;

(k) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Contractor to pay, as and when due, all Taxes (other than Owner Taxes), fees or charges of any kind imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;

(l) all Losses arising from claims by any Governmental Authority claiming Taxes (other than Owner Taxes) based on gross receipts or on income of Contractor, any of the Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of the Subcontractors, or any of their respective agents or employees under this Agreement;

(m) all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Contractor, a Subcontractor or any of their respective agents or employees to comply with any Applicable Permit, except where such non-compliance is excused pursuant to the terms of this Agreement;

(n) all Losses arising from claims by the counterparties to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work, including any crop damages;

(o) all Losses, including claims for property damage, personal injury or bodily injury or death, whether or not involving damage to the Project or the Site, that arise out of or result from:

(i) the use of Hazardous Materials by Contractor or any of its Subcontractors in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;

(ii) any Release in connection with the performance of the Work by Contractor or any of its Subcontractors (except as provided in Section 24.2(e)); or

(iii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor or any of its Subcontractors with respect to Hazardous Materials in connection with the performance of the Work.

(p) \*\*\*; and

(q) all Losses incurred by or payments made by Owner that are the Contractor's responsibility under Section 3.34.

**24.2 Owner Indemnity.** Owner shall indemnify, hold harmless and defend Contractor and all Contractor Parties from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) during the performance by Owner or any Affiliate, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable, of their obligations or from a failure to perform any of their obligations under this Agreement;

(b) all Losses arising from third-party claims, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Owner to comply with the terms and conditions of Applicable Laws;

(c) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay, as and when due, all Owner Taxes for which Owner is obligated to pay pursuant to the terms of this Agreement;

(d) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Owner, regardless of negligence of any Contractor Party or Subcontractor contributing to such Losses;

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(e) all Losses, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from:

(i) the presence or existence of Hazardous Materials at the Site brought onto or generated at the Site by Owner after the Effective Date; or

(ii) any Release by Owner or its Affiliates, where such Hazardous Materials were brought onto the Site by Contractor or any Subcontractor in accordance with the terms of this Agreement and all Applicable Laws;

(f) any and all fines, penalties or assessments issued by any Governmental Authority that Contractor may incur as a result of executing any applications to any such Governmental Authority at Owner's request; and

(g) all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Owner, or any of its contractors, agents or employees, to comply with any Owner Acquired Permit, except where such non-compliance is excused pursuant to the terms of this Agreement.

#### **24.3 Patent Infringement and Other Indemnification Rights.**

(a) Contractor shall defend, indemnify, and hold harmless the Owner Parties against all Losses arising from any Intellectual Property Claim. If Owner provides notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, awarded against Owner. In addition to the indemnity set forth above, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of a final, non-appealable judgment of a court of competent jurisdiction or as a result of injunctive relief provided by a court of competent jurisdiction, Contractor shall use its best efforts to have such injunction removed at no cost to Owner; and Contractor shall, at its own expense and without impairing the performance requirements set forth in this Agreement: (a) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, Facility Equipment or other Work; (b) if the obligation set forth in subclause (a) is not commercially feasible, modify the infringing service, Facility Equipment or other Work with service, Facility Equipment or other Work, as applicable, with substantially the same performance, quality and expected life, so that the same becomes non-infringing; or (c) if the obligations set forth in subclauses (a) and (b) are not commercially feasible, replace the infringing service, Facility Equipment or other Work with non-infringing service, Facility Equipment or other Work, as applicable, of comparable functionality and quality; provided that in no case shall Contractor take any action which adversely affects Owner's continued use and enjoyment of the applicable service, Facility Equipment, or other Work without the prior written consent of Owner.

(b) Notwithstanding anything set forth in Section 24.3(a) to the contrary, Contractor shall have no indemnity obligations under Section 24.3(a) for any



Intellectual Property Claim to the extent arising from or in connection with (i) any modification of the Work by Owner or any third party (other than O&M Provider or any other Contractor Party or any Subcontractor) of the Work, the Facility, any Block, Module, Equipment or other goods, materials, supplies, items or services provided by Contractor (or any of its Affiliates or Subcontractors) that was not, in either case, authorized by Contractor, O&M Provider, any other Contractor Party or any Subcontractor or (ii) Owner's material variation from Contractor's recommended written procedures for using the Work (unless otherwise authorized by Contractor, O&M Provider, any other Contracting Party or any Subcontractor).

(c) Owner's acceptance of the supplied materials and equipment or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder.

**24.4 Environmental Indemnification.** The scope of Contractor's and Owner's indemnification obligations with respect to environmental matters are addressed in Section 24.1(o), Sections 12.6 and 12.7.

**24.5 Right to Defend.** If any claim is brought against a Party, then the other Party shall be entitled to participate in, and, unless a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnatee in accordance with this Section 24.5. An Indemnatee shall provide Notice to the Indemnifying Party, within \*\*\* after receiving Notice of the commencement of any legal action or of any claims or threatened claims against such Indemnatee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 24 or any other provision of this Agreement providing for an indemnity (such notice, a "Claim Notice"). The Indemnatee's failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the Indemnifying Party only by the amount of damages attributable and prejudicial to such failure or tardiness, but shall not otherwise relieve the Indemnifying Party from any liability that it may have under this Agreement. If the Indemnifying Party assumes the defense, the Indemnatee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnatee unless the Indemnifying Party agrees otherwise; provided that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnatee and the Indemnifying Party, the Indemnifying Party requires that the same counsel represent both the Indemnatee and the Indemnifying Party, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnatee shall have the right to retain its own counsel at the cost and expense of the Indemnifying Party. If the Indemnifying Party does not assume the defense of the Indemnatee, does not diligently prosecute such defense, or if a conflict precludes counsel for Indemnifying Party from providing the defense, then the Indemnatee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys' fees of the Indemnatee's counsel, reasonable costs of investigation, court costs and other costs of suit, arbitration, dispute resolution or other proceeding, and any reasonable amount determined to be owed by Indemnatee pursuant to such claim, shall be borne by the Indemnifying Party, provided that the Indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense and the Indemnifying

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Party shall reimburse the Indemnitee on a monthly basis for such costs and expenses. Subject to all of the foregoing provisions of this Section 24.5 as between the Parties, the Indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 23 as to which it has assumed the defense; provided that to the extent the Indemnifying Party, in relation to such insurer, controls settlement: (a) such settlement shall include a dismissal of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and (b) the Indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld or delayed; provided further that except as provided in the preceding sentence concerning the Indemnifying Party's failure to assume or to diligently prosecute the defense of any claim, no Indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the Indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnitee reasonably believes that the matter in question involves potential criminal liability against such Indemnitee. Other than as provided in this Section 24.5, Indemnifying Party shall not settle any claim without the prior written approval of the Indemnitee, which approval shall not be unreasonably withheld, delayed or conditioned. The Indemnitee shall provide reasonable assistance to the Indemnifying Party when the Indemnifying Party so requests, at the Indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the Indemnifying Party with regard to the defense or indemnity obligations.

**24.6 Defense to Indemnification Obligations. \*\*\***

**24.7 Comparative Fault.** Except as expressly provided to the contrary herein, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Losses attributable to such Party's fault.

**24.8 Survival of Indemnity Obligations.** The indemnities set forth in Section 1.11 and this Article 24 shall survive the Final Completion Date or the earlier termination of this Agreement for a period (the "Survival Period") expiring \*\*\* following the Final Completion Date or said termination, whichever first occurs; provided that (i) with respect to indemnities arising out of or related to the Warranties, the indemnities shall survive for a period of \*\*\* after the last Day of the applicable Warranty Period; (ii) indemnities arising out of or related to environmental matters (including as set forth in Article 12) shall survive for a period expiring \*\*\* following the Final Completion Date or the earlier termination of this Agreement, whichever first occurs; (iii) the indemnities set forth in Section 24.1(p), Section 24.1(q) and Section 24.3, shall survive for a period expiring \*\*\* following the Final Completion Date or the earlier termination of this Agreement; and (iv) indemnities arising out of or related to Tax shall survive for a period equal to the later of \*\*\* following the Final Completion Date and the applicable statute of limitations plus \*\*\*. All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such applicable Survival Period. If any Claim Notice is made within such Survival Period, then the indemnifying period with respect to all claims identified in such Claim Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims.

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For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of this Article 24 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.

## ARTICLE 25.

### CONFIDENTIALITY

**25.1 Dissemination of Confidential Information.** Neither Party (the “Receiving Party”) shall (1) use for any purpose other than (i) performing its obligations under this Agreement or (ii) within the scope of the license and rights granted pursuant to Section 14.2 or (2) divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. “Confidential Information” means proprietary information concerning the business operations or assets of Owner or Contractor (as the case may be) and their respective Affiliates, and may include, this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party without an obligation of confidentiality known to the Receiving Party and that is not disclosed in breach of an obligation to keep such information confidential; (d) information approved for public release by express prior written consent of an authorized officer of Disclosing Party or (e) information independently developed by the Receiving Party without use of the information provided by the Receiving Party or in breach of this Article 25. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary but subject to the last sentence of this Section 25.1, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, but only to the extent, that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Laws and prior to making or permitting any such disclosure, Receiving Party shall, to the extent legally permitted, provide Disclosing Party with prompt Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance if requested) may seek a protective order or other appropriate remedy, (ii) as otherwise required by Applicable Law, (iii) as required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to any power purchaser, transmission provider, or an Owner contractor or

prospective contractor (or advisors retained on their behalf) or their successors and permitted assigns, the Financing Parties, Independent Engineer, Owner's Engineer and its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall, to the extent legally permitted, give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure and it shall make such disclosure only to the extent that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Law.

**25.2 DAS System Information.** Notwithstanding any other provision of this Article 25, Contractor, SunPower Corporation and any Affiliate of SunPower Corporation shall have the right to remotely access the DAS System installed by Contractor in the Facility in order to collect all plant data for its own uses to the end of the Warranty Period. Information shall not be distributed outside of SunPower Corporation with the express written consent of Owner.

**25.3 Return of Confidential Information.**

(a) Except for Confidential Information necessary for Contractor to perform the Work and its obligations under this Agreement or as necessary for Owner in connection with the construction, operation or maintenance, use, modification, repair, disposal, removal or alteration of the Project, and subject to and in accordance with, Section 14.2 at any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy (as determined by Receiving Party) (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information and all other documents in Receiving Party possession that contain any such Confidential Information; provided that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies and may retain such Confidential Information if required by Applicable Law; and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

(b) Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to Confidential Information until the date that is \*\*\* after the earlier of (i) the Final Completion Date or (ii) the termination of this Agreement.

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## ARTICLE 26.

### ASSIGNMENT

**26.1 Prohibition on Assignment.** Except as set forth in Section 26.2, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion.

**26.2 Exceptions.** Notwithstanding the foregoing, (a) Owner shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to the Financing Parties by way of security for the performance of obligations to such Financing Parties without the consent of Contractor who, subject to any consent entered into by Contractor with the Financing Parties, may further assign such rights, title and interest under this Agreement upon exercise of remedies by a Financing Party following a default by Owner under the financing agreements entered into between Owner and the Financing Parties and (b) each Party shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in connection with a merger or acquisition of substantially all of the assets of a Party, subject to the \*\*\*, as applicable, and continued validity thereof. Contractor shall execute any consent and agreement or similar documents with respect to such an assignment described in subclause (a) as the Financing Parties may reasonably request and acknowledges that such consent and agreement or similar document (which shall be reasonably acceptable to Contractor) may, among other things, require Contractor to give the Financing Parties notice of, and an opportunity to cure, any breach of this Agreement by Owner. Contractor shall reasonably cooperate with Owner in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the Financing Parties; provided, however, that Contractor shall not be obligated without a Change Order under Section 11.4(b) to accept any undertaking imposed by any Financing Party which Contractor reasonably believes will have an actual and demonstrable increase in Contractor's costs and/or schedule. Contractor shall, at Owner's cost and subject to the confidentiality provisions set forth in Article 25, make available to the Financing Parties and other Persons involved in the financing or refinancing of the Facility who have a need-to-know (e.g., counsel to a lender or any such other Person, Governmental Authority, underwriters, rating agencies, independent reviewers and feasibility consultants) such information in the control of Contractor (including financial information concerning Contractor) as may reasonably be requested by Owner on behalf of the Financing Parties or the Financing Parties' engineer with respect to financing of the Project or the Facility. Contractor further agrees that, in connection with the financing or refinancing of the Facility, Contractor shall, at the request and expense of Owner, provide an opinion of counsel as to the enforceability against Contractor of this Agreement until expiration of the last Warranty Period. Any authorized assignment of this Agreement by either Party shall relieve such Party of its obligations hereunder at such time as the authorized successor agrees in writing to be bound by such assigning Party's obligations hereunder. Any purported assignment of this Agreement in violation of this Section 26.2 shall be null and void and shall be ineffective to relieve either Party of its obligations hereunder.

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**26.3 Indemnitees; Successors and Assigns.** Upon any assignment by either Party hereunder, with respect to indemnification obligations, the definition of “Owner Party” or “Contractor Party”, as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and permitted assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each Party.

## ARTICLE 27.

### NOTICES

**27.1 Notices.** Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and: (a) hand-delivered; (b) delivered by a reputable overnight courier service requiring signature for receipt; (c) mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (d) sent by facsimile as evidenced by a printed confirmation from the sender's facsimile machine. Notices given pursuant to this Section 27.1 shall be addressed as follows to:

Owner            Solar Star California XIX, LLC  
                     c/o MidAmerican Renewables, LLC  
                     1850 N. Central  
                     Suite #1025  
                     Phoenix, Arizona 85004  
                     \*\*\*  
                     \*\*\*

With a copy to (which shall not constitute notice):  
                     Solar Star California XIX, LLC  
                     c/o MidAmerican Renewables, LLC  
                     1850 N. Central  
                     Suite #1025  
                     Phoenix, Arizona 85004  
                     \*\*\*  
                     \*\*\*

Contractor:    SunPower Corporation, Systems  
                     1414 Harbour Way, South  
                     Richmond, California 94804 USA  
                     \*\*\*  
                     \*\*\*

A Party, the Financing Parties or the Independent Engineer, by giving notice as provided in this Section 27.1 may, as to itself, change any of the details for the service of notice hereunder or designate a reasonable number of additional “with a copy to” recipients.

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**27.2 Effective Time.** Any notice or notification given personally, through overnight mail or through certified letter shall be deemed to have been received on delivery, any notice given by express courier service shall be deemed to have been received the next Business Day after the same shall have been delivered to the relevant courier, and any notice given by facsimile transmission shall be deemed to have been received on the date of delivery together with confirmation if delivered prior to 5:00 pm Pacific Standard Time; provided, that if such date of delivery is not a Business Day or is delivered after 5:00 pm Pacific Standard Time, then the date of delivery shall be the immediately following Business Day.

## **ARTICLE 28.**

### **DISPUTE RESOLUTION; GOVERNING LAW**

**28.1 Good faith negotiations.** In the event that any question, dispute, difference or claim arises out of or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), which either Party has notified to the other Party in a written notice stating that it is a “Notice of Dispute”, senior management personnel from both Contractor and Owner shall attempt to resolve the Dispute for a minimum period of \*\*\* following issuance of the Notice of Dispute, and such attempt shall include at least one in-person meeting between senior management personnel from both Contractor and Owner, each of whom has the authority to finally settle the Dispute on behalf of that Party. If the Dispute is not resolved by negotiation, the provisions of Sections 28.2 and 28.3 below shall apply.

#### **28.2 Optional Arbitration.**

(a) Any Dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement or pursuant to Section 28.1 above, may proceed to court pursuant to Section 28.3 unless the Parties mutually agree in writing to resolve such Dispute by arbitration as provided herein.

(b) If the Parties elect to pursue arbitration, upon the expiration of the \*\*\* negotiation period set forth in Section 28.1, either Party may submit such Dispute to arbitration by providing a written demand for arbitration to the other Party, and such arbitration shall be conducted in accordance with the Rules of the AAA for the Resolution of Construction Industry Disputes (the “Arbitration Rules”) in effect on the date that the submitting Party gives notice of its demand for arbitration under this Section 28.2. The arbitration shall be conducted at a location as agreed by the Parties, or if the Parties cannot so agree, the arbitration shall be conducted in the county and state where the Site is located. Unless otherwise agreed by the Parties, discovery shall be conducted in accordance with the Federal Rules of Civil Procedure and the Parties shall be entitled to submit expert testimony or written documentation in the arbitration proceeding. The decision of the arbitrator(s) shall be final and binding upon Owner and Contractor and shall be set forth in a reasoned opinion, and any award may be enforced by Owner or Contractor, as applicable, in any court of competent jurisdiction. Any award of the arbitrator(s) shall include interest from the date of any damages incurred for breach of this Agreement, and from the date of the award until paid in full, at a rate

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equal to the lesser of (i) the rate published by the *Wall Street Journal* as the “prime rate” on the Business Day preceding the date on which such interest begins to accrue plus \*\*\* and (ii) the maximum rate allowed under Applicable Law. Each of Owner and Contractor shall bear its own cost of preparing and presenting its case; however, the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the Dispute. The fees and expenses of the arbitrator(s), and other similar expenses, shall initially be shared equally by Owner and Contractor, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator(s) shall be instructed to establish procedures such that a decision can be rendered within \*\*\* after the appointment of the arbitrator(s).

(c) Appointment of Arbitrator(s). All arbitrators appointed to hear a Dispute pursuant to paragraph (i) or paragraph (ii) below shall have significant construction contract resolution experience and experience and understanding of the contemporary solar photovoltaic power industry and photovoltaic systems.

(i) Where the amount in dispute does not exceed \*\*\* the Dispute shall be heard by a single neutral arbitrator agreed by the Parties. If the Parties cannot agree on a single neutral arbitrator within \*\*\* after the written demand for arbitration is provided, then the arbitrator shall be selected pursuant to the Arbitration Rules.

(ii) Where the amount in dispute is at least \*\*\*, the Dispute shall be heard by a panel of three (3) arbitrators selected as follows. Each Party shall select one neutral arbitrator to sit on the panel. The arbitrators selected by the Parties shall in turn nominate a third neutral arbitrator from a list of arbitrators mutually satisfactory to the Parties.

(d) Arbitrator Confidentiality Obligation. The Parties shall ensure that any arbitrator appointed to act under this Article 28 will agree to be bound to comply with the provisions of Article 25 with respect to the terms of this Agreement and any information obtained during the course of the arbitration proceedings.

**28.3 Governing Law/Litigation/Choice of Forum/Waiver of Jury Trial.** THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY OF ITS CONFLICT LAW PROVISIONS THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. SUBJECT TO THE OTHER PROVISIONS OF THIS ARTICLE 28 AND THE ARBITRATION OPTION DESCRIBED IN SECTION 28.2, FOR PURPOSES OF RESOLVING ANY DISPUTE ARISING UNDER THIS AGREEMENT, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES FEDERAL DISTRICT COURTS LOCATED IN NEW YORK, NEW YORK, OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE STATE COURTS OF THE STATE OF NEW YORK. EACH PARTY HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE VENUE OF SUCH ACTION, SUIT OR PROCEEDING IN SUCH COURT OR THAT SUCH SUIT, ACTION OR PROCEEDING IN SUCH COURT WAS

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BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEASE OR CLAIM THE SAME. EACH PARTY FURTHER AGREES THAT SUCH COURT SHALL HAVE IN *PERSONAM* JURISDICTION OVER EACH OF THEM WITH RESPECT TO ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING. THE PARTIES SUBMIT TO THE JURISDICTION OF SAID COURT AND WAIVE ANY DEFENSE OF *FORUM NON CONVENIENS*. THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

**28.4 Work to Continue.** During the pendency of any dispute proceedings, as required under the terms of this Agreement, Owner shall continue to make undisputed payments and each Party shall continue to perform its obligations under this Agreement.

## ARTICLE 29.

### LIMITATION OF LIABILITY

**29.1 Consequential Damages.** Neither Contractor nor Owner shall be liable to the other for, nor shall a court or arbitrator assess, any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including losses of use, profits, business opportunity, reputation or financing, subject to the following exclusions which constitute amounts which shall not be deemed to be limited or waived by the foregoing restriction: (a) Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages, Final Capacity Liquidated Damages or amounts payable pursuant to Section 17.8; (b) claims made by, damages incurred by, or amounts payable pursuant to an indemnity given hereunder; (c) damages arising out of a breach of Article 25 by either Party; (d) amounts payable pursuant to the indemnity obligations of either Party under Section 24.3; (e) damages set forth in Sections 20.2(l) and 20.2(m) and (f) all Termination Payments.

**29.2 Overall Limitation of Liability.** Notwithstanding any other provision of this Agreement, (a) Contractor's maximum liability for the aggregate of Block Delay Liquidated Damages, Facility Delay Liquidated Damages and Block Capacity Liquidated Damages shall not exceed \*\*\* of the Contract Price, (b) Contractor's maximum liability for Final Capacity Liquidated Damages shall not exceed \*\*\* of the Contract Price, (c) Contractor's cumulative maximum liability for liquidated damages described in subclauses (a) and (b) above, under this Agreement shall not exceed \*\*\* of the Contract Price and (d) Contractor's cumulative maximum liability to Owner under this Agreement shall not exceed (i) for the period through the Facility Substantial Completion Date with respect to any claim arising on or before the Facility Substantial Completion Date (even if actually claimed or ultimately resolved or due after the Facility Substantial Completion Date), \*\*\* of the Contract Price and (ii) for the period after the Facility Substantial Completion Date with respect to any claim arising after the Facility Substantial Completion Date, \*\*\* of the Contract Price. The foregoing limitation of liability shall not apply with respect to claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given hereunder or claims arising out of Contractor's fraud or

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willful misconduct. To the extent any provision of this Agreement establishes a lower limit of liability of a Party with respect to a particular component or type of liability, such lower limit of liability shall control with respect to the relevant component or type of liability. \*\*\* Notwithstanding anything herein to the contrary, no liabilities of Contractor to Owner covered by insurance carried by Contractor pursuant to Article 23 (except deductibles paid by Contractor) shall be included in Contractor's aggregate liability for the purposes of determining the limit on Contractor's liability to Owner pursuant to this Agreement.

## **ARTICLE 30.**

### **SURVIVAL**

**30.1 Survival.** The provisions within the Articles with the following titles shall survive termination of this Agreement: Contract Interpretation and Effectiveness, Taxes, Force Majeure, Intellectual Property, Hazardous Materials, Indemnity, Warranty, Suspension of the Work, Termination, Confidentiality and Publicity, Assignment, Dispute Resolution, Limitation of Liability, Miscellaneous and any other provision which expressly or by implication survives termination.

## **ARTICLE 31.**

### **MISCELLANEOUS**

**31.1 Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect (including economic effect).

**31.2 Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (except as expressly set forth herein).

**31.3 Further Assurances.** Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the Facility by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.

**31.4 No Waiver.** A Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 31.5.

**31.5 Amendments in Writing.** Without limiting any provision of Article 10 with respect to mandatory Change Orders, no oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.

**31.6 Books and Record; Retention.** Contractor agrees to retain for a period of \*\*\* from the Final Completion Date all material records relating to its performance of the Work or Contractor's warranty obligations herein.

**31.7 Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing Party shall be entitled to be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with such action or proceeding.

**31.8 Inspection, Review and Approval.** Notwithstanding Owner's inspection, review, monitoring, observation, acknowledgement, comment or Owner's approval of any items reviewed, inspected, monitored or observed in accordance with this Agreement, neither Owner nor any of its representatives or agents reviewing such items, including the Owner's Engineer, shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work in accordance with this Agreement. Owner's or its representative's inspection, review, monitoring, observation, acknowledgement, comment or approval of any items shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor. Unless otherwise expressly provided herein, Owner shall not unreasonably delay its review of any item submitted by Contractor for review or approval for review or approval; provided, however, the foregoing shall not be used to decrease any express time limitation for such review or approval set forth herein. Any review, inspection, monitoring or observation by Owner or its representatives in accordance with this Agreement shall not constitute any approval of the Work undertaken by such Person, cause Owner to have any responsibility for the actions, the Work or payment of such Person (other than in respect of Owner's obligations to pay Contractor in accordance with Article 7) or to be deemed to be in an employer-employee relationship with Contractor or any Subcontractor, or in any way relieve Contractor of its responsibilities and obligations under this Agreement or be deemed to be acceptance by Owner with respect to such Work.

**31.9 Independent Engineer.** Contractor acknowledges that the Independent Engineer will be engaged by Owner for the purpose of providing to Financing Parties a neutral, third party overview of the Work. The Independent Engineer shall provide Financing Parties with independent opinions and determinations, arrived at reasonably and in good faith, with respect to: (a) the status of the Work; (b) the performance of the Project and equipment and the Functional Tests and Capacity Tests and the results and procedures related

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

thereto; (c) invoices submitted by Contractor; (d) Contractor's quality control procedures for the Work and major components thereof; and (e) the approval of Change Orders. Owner undertakes that it will use reasonable efforts to ensure that the Independent Engineer gives its countersignature or indicates that it is not willing to do so in relation to the relevant matter within the time specified in this Agreement for Owner to respond in relation to such matter; provided that any such unwillingness on the part of the Independent Engineer shall not affect or limit Owner's obligations hereunder. The Independent Engineer may, at its option, attend any meetings between Owner and Contractor related to the progress of the Project and shall approve all Contractor's Applications for Payments prior to any payment being made by Owner thereunder; provided that any failure by the Independent Engineer to approve a Contractor's Application for Payment shall not affect or limit Owner's obligations hereunder. Notwithstanding anything else to the contrary contained herein, the Independent Engineer shall have no right to direct Contractor or any portion of the Work or to make any Change Order. Contractor shall maintain a complete, accurate and up-to-date log of all Change Orders and, upon request of the Independent Engineer, shall furnish copies of such log to the Independent Engineer. Contractor shall afford the Independent Engineer the same rights as Owner with respect to access to the Site; provided that Owner shall be liable for any failure by the Independent Engineer to maintain the confidentiality of Confidential Information as required by Article 25.

**31.10 Financing Matters.** In connection with any collateral assignment by Owner of its rights, title and interest under this Agreement to any Financing Party in accordance with Section 26.2, Contractor shall execute and deliver any usual and customary consent in accordance with Section 26.2 and use commercially reasonable efforts to cause Major Subcontractors to execute subordination agreements; provided, however, that Contractor shall not be obligated without a Change Order to accept any undertaking imposed by any Financing Party which Contractor reasonably believes will increase its obligations under this Agreement, whether such increased obligations be technical, economic, schedule or otherwise. Contractor agrees to make available, or to use commercially reasonable efforts to cause its Subcontractors to make available, to the Financing Parties and the Independent Engineer, subject to an appropriate confidentiality agreement, independent reviewers, feasibility consultants, and other financial institutions or parties involved in the financing process, such information in the control of Contractor, its Affiliates and Subcontractors (including financial information concerning Contractor, its Affiliates and the Subcontractors) as may be reasonably requested by Owner. Contractor acknowledges that the Financing Parties and the Independent Engineer may monitor, inspect and review the Work as permitted by Article 6.

**31.11 Set-Off.** Owner may at any time, but shall be under no obligation to, set-off any and all undisputed sums due from Owner or its Affiliates that are party to the Project Transaction Documents against any and all undisputed sums due to any such parties from Contractor or its Affiliates that are party to the Project Transaction Documents. Contractor may at any time, but shall be under no obligation to, set-off any and all undisputed sums due from Contractor or its Affiliates that are party to the Project Transaction Documents against any and all undisputed sums due to any such parties from, Owner or its Affiliates that are party to the Project Transaction Documents.

**31.12 Fees and Expenses.** Except as specifically set forth herein, each Party shall be responsible for any legal fees and expenses, financial advisory fees, accountant fees and any other fees and expenses incurred by such Party in connection with the negotiation, preparation and enforcement of this Agreement and the transactions contemplated hereby.

**31.13 Related Contracts.** Services and work performed at any time by Contractor or its Affiliates under the Module Warranty, the Performance Guaranty Agreement or the O&M Agreement shall not constitute Work hereunder. Owner shall use reasonable efforts to make claims against Contractor under the appropriate contract (this Agreement, the Module Warranty, the Contractor Performance Security, the Performance Guaranty Agreement or the O&M Agreement). Notwithstanding the foregoing, Contractor shall not contend that it is not liable for any claim of Owner under or arising out of this Agreement on the grounds that the loss or damage suffered by Owner was caused by an act or omission or the failure to comply with the terms of the other Project Transaction Documents by Contractor, its Affiliates or any other Person for which Contractor or its Affiliates are responsible (including subcontractors), and Contractor irrevocably waives any such defense in any Dispute. Contractor shall inform Owner if it believes that Owner made a claim under the wrong Project Transaction Document. If Contractor and Owner do not agree that such claim should have been made under a different Project Transaction Document, Contractor and Owner shall resolve any such dispute regarding which Project Transaction Document a claim should have been made under by submitting such dispute to dispute resolution in accordance with Article 28.

**31.14 Audit Rights.** With respect to any Change Order which adjusts the Contract Price by compensating Contractor on a reimbursable cost or time and materials basis, Contractor shall maintain, in accordance with Industry Standards and generally accepted accounting principles consistently applied, records and books of account as may be necessary for substantiation of all Contractor claims for additional compensation or Change Orders. Owner, Owner's Engineer, the Financing Parties (except for any Financing Party that is a SunPower Competitor other than an Eligible SunPower Competitor), if any, and their authorized representatives shall be entitled to inspect and audit such records and books of account during normal business hours and upon reasonable advanced notice during the course of the Work and for a period of \*\*\* after Final Completion (or such longer period, where required by Applicable Law); provided, however, that the purpose of any such audit shall be only for verification of such costs, and Contractor shall not be required to keep records of or provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs. Contractor shall retain all such records and books of account for a period of at least \*\*\* after the Final Completion Date (or such longer period, where required by Applicable Law). Contractor shall use commercially reasonable efforts to cause all Major Subcontractors engaged in connection with the Work or the performance by Contractor of its warranty obligations herein to retain for the same period all their records relating to the Work for the same purposes and subject to the same limitations set forth in this Section 31.14. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner's Engineer, and their respective officers, directors, members, managers, employees and agents in connection with any such audit, subject to the provisions of Article 25. If, as a result of any audit conducted pursuant to this Section 31.14, the results of such audit indicate that Contractor received more or less than the amount to which it

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

was entitled under this Agreement, either Owner shall pay the additional amount owed to Contractor or Contractor shall refund any overpayment to Owner, as applicable, in either case within \*\*\* of a written request therefor. Owner shall be responsible for all costs and expenses of such audit unless a significant overpayment by Owner is discovered, in which case Contractor shall be responsible for such costs and expenses.

**[THE SIGNATURE PAGES IMMEDIATELY FOLLOW]**

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**Solar Star California XIX, LLC**

SunPower Corporation, Systems, its Managing Member

By: /s/ Charles D. Boynton

Charles D. Boynton

Chief Financial Officer

**SUNPOWER CORPORATION, SYSTEMS**

By: /s/ Howard Wenger

Howard Wenger

President and Chief Executive Officer

**EXHIBIT 1**  
**AVSP 1**  
**Scope of Work**

\*\*\*

[15 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1-1

AVSP I EPC Contract  
Exhibit 1 - Scope of Work



**Exhibit 1 - Appendix A  
Drawings**

\*\*\*

[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix A-1

AVSP I EPC Contract  
Exhibit 1 - Appendix A - Drawings

**EXHIBIT 1 - APPENDIX B**  
**Conditional Use Permit - Division of Responsibility Table**

[illegible]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix B-1

**AVSP I EPC Contract**  
**Exhibit 1 - Appendix B - CUP Responsibility Table**







MM Condition Number	Task Summary	Deadline	Area of Responsibility
***	***		***
***	***		***
***	***		***
***	***		***
***	***		***
***	***		***

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix B-5

AVSP I EPC Contract  
Exhibit 1 - Appendix B - CUP Responsibility Table

**Exhibit 1 - Appendix C**  
**Geotechnical Report**

\*\*\*

[586 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix C-1

AVSP I EPC Contract  
Exhibit 1 - Appendix C - Geotechnical Report

**Exhibit 1 - Appendix D  
Revegetation Plan**

\*\*\*

[33 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix D-1

AVSP I EPC Contract  
Exhibit 1 - Appendix D - Revegetation Plan



**Exhibit 1 - Appendix E**

**Operator Personnel Training Program**

\*\*\*

[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix E-1

AVSP I EPC Contract  
Exhibit 1 - Appendix E - Operator Personnel Training Program

## APPENDIX F

### **Contractor and Owner Obligations under the Power Purchase Agreement**

[illegible]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix F-1

**AVSP I EPC Contract**  
**Exhibit 1 - Appendix F - PPA Obligations**



**EXHIBIT 1 - APPENDIX G**  
**Contractor and Owner Obligations under the Interconnection Agreement**

[illegible]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix G-1

**AVSP I EPC Contract**  
**Exhibit 1 - Appendix G - LGIA Obligations**

Exhibit 2

AVSP1

Site Description

Real property in the Counties of Kern and Los Angeles, State of California, described as follows:

**Tract 1: Intentionally deleted.**

**Tract 2: Intentionally deleted.**

**Tract 3: AVWS/Original Property**

PARCEL 1:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 422 OF OFFICIAL RECORDS.

APN: 261-196-02-00-7 (PORTION)

PARCEL 2:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 429 OF OFFICIAL RECORDS.

APN: 261-196-02-00-7 (PORTION)

PARCEL 3:

THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

Exhibit 2-1

AVSP I EPC Contract  
Exhibit 2 - Site Description

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 422 OF OFFICIAL RECORDS.

APN: 261-196-02-00-7 (PORTION)

**Tract 4: AVWS/Original Property**

THE SOUTH HALF OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 429 OF OFFICIAL RECORDS.

APN: 261-196-03-00-0

**Tract 5: AVWS/Original Property**

THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 3/4THS OF ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS RESERVED IN THE DEED FROM DANIEL WALTER KLEINHANS, JR. AND AGNES G. KLEINHANS, HUSBAND AND WIFE, RECORDED JULY 15, 1965 IN BOOK 3857, PAGE 713 OF OFFICIAL RECORDS.

APN: 261-196-04-00-3

**Tract 6: AVWS/Original Property**

PARCEL A:

THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL

Exhibit 2-2

AVSP I EPC Contract  
Exhibit 2 - Site Description

PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING AND RESERVING AN UNDIVIDED ONE-HALF OF ANY AND ALL GROUNDWATER RIGHTS ASSOCIATED WITH THE PROPERTY THAT MAY BE FINALLY DETERMINED OR ADJUDICATED IN THE COORDINATION PROCEEDING KNOWN AS THE “ANTELOPE VALLEY GROUNDWATER CASES”, BEING JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408(3), AS RESERVED IN DEED RECORDED NOVEMBER 5, 2007 AS INSTRUMENT NO. 0207220993 OF OFFICIAL RECORDS.

PARCEL B:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY OVER THE NORTHERLY 18 FEET OF THE NORTH HALF OF SECTION 32, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, FOR THE SOLE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING, AND IF NECESSARY, REPLACING, AN UNDERGROUND WATER PIPELINE AS GRANTED IN DEED RECORDED NOVEMBER 24, 1976, IN BOOK 4992 PAGE 712 OF OFFICIAL RECORDS.

APN: 359-041-17-00-4

**Tract 7: AVWS/Original Property**

LOTS 1 AND 2 OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT THE SOUTH 30 FEET THEREOF.

APN: 359-041-18-00-7

**Tract 8: AVWS/Original Property**

THE EAST HALF OF THE LOTS 1 AND 2 IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, AND DESCRIBED AS PARCEL 2 IN CONDITIONAL CERTIFICATE OF COMPLIANCE, RECORDED SEPTEMBER 12, 2011 AS INSTRUMENT NO. 20111234624 OF OFFICIAL RECORDS.

Exhibit 2-3

AVSP I EPC Contract  
Exhibit 2 - Site Description

APN: 3258-001-028 and 3258-001-029

**Tract 9: Intentionally deleted.**

**Tract 10: AVWS/New Property**

THE NORTH HALF OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING AND RESERVING AN UNDIVIDED ONE-HALF OF ANY AND ALL GROUNDWATER RIGHTS ASSOCIATED WITH THE PROPERTY THAT MAY BE FINALLY DETERMINED OR ADJUDICATED IN THE COORDINATION PROCEEDING KNOWN AS THE "ANTELOPE VALLEY GROUNDWATER CASES", BEING JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408(3), AS RESERVED IN DEED RECORDED NOVEMBER 5, 2007 AS INSTRUMENT NO. 0207220991 OF OFFICIAL RECORDS.

APN: 261-196-09-00-8

**Tract 10A: Co-Tenancy Easement Deed**

AN EASEMENT FOR TRANSMISSION LINE PURPOSES OVER, UNDER AND ACROSS A PORTION OF THE NORTH ONE-HALF OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, COUNTY OF KERN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 25, THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID SECTION 25, S. 89°49'02" E., 120.02 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTHERLY AND PARALLEL WITH THE WESTERLY LINE OF SAID SECTION 25, S. 00°58'25" E., 414.07 FEET TO A POINT THAT LIES 100.00 FEET AT RIGHT ANGLES TO SAID NORTHEASTERLY LINE OF THAT EASEMENT TO SOUTHERN CALIFORNIA EDISON; THENCE SOUTHEASTERLY AND PARALLEL TO SAID NORTHEASTERLY LINE, S. 33°41'31" E., 1149.94 FEET; THENCE S.55°52'10" W., 100.00 FEET TO SAID NORTHEASTERLY LINE OF THAT EASEMENT TO SOUTHERN CALIFORNIA EDISON; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE, N. 33°41'31" W., 1217.06 FEET TO THE WESTERLY LINE OF SAID SECTION 25, THENCE NORTHERLY ALONG SAID WESTERLY LINE OF SAID SECTION 25, N. 00°58'25" W., 414.72 FEET TO THE POINT OF BEGINNING.

APN: 261-196-09-00-8 (PORTION)

**Tract 11: Bujulian/Original Property**

Exhibit 2-4

AVSP I EPC Contract  
Exhibit 2 - Site Description



THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-196-10-00-0

**Tract 12: Intentionally deleted.**

**Tract 13: Dennis/ Sub Option Agreement**

THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 4.

APN: 3261-001-002

**Tract 14: Intentionally deleted.**

**Tract 15: Intentionally deleted.**

**Tract 16: Intentionally deleted.**

**Tract 17: Intentionally deleted.**

**Tract 18: Intentionally deleted.**

**Tract 19: Intentionally deleted.**

**Tract 20: Hemmerling/Sub Option Agreement**

PARCEL 1:

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHERLY 32.98 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST

Exhibit 2-5

AVSP I EPC Contract  
Exhibit 2 - Site Description

QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

APN: 3258-001-001

PARCEL 2:

THE WEST 80 ACRES OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856, AND DESCRIBED AS PARCEL 3 IN CONDITIONAL CERTIFICATE OF COMPLIANCE, RECORDED SEPTEMBER 12, 2011 AS INSTRUMENT NO. 20111234624 OF OFFICIAL RECORDS.

APN: 3258-001-038

PARCEL 3:

THE EAST ONE-HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL ON FEBRUARY 19, 1856.

APN: 3261-001-003

PARCEL 4:

THE EAST 2.025 ACRES OF THE SOUTH 4.05 ACRES OF LOT 2 OF THE SOUTHWEST QUARTER OF SECTION 6 TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THE SOUTHERLY 50 FEET OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, AS SET ASIDE BY THE COUNTY OF LOS ANGELES FOR PUBLIC ROAD AND HIGHWAY PURPOSES IN RESOLUTION RECORDED AUGUST 4, 1971 AS INSTRUMENT 3742, OF OFFICIAL RECORDS.

APN: 3258-001-025

**Tract 21: Intentionally deleted.**

**Tract 22: Maritorena/Sub Option Agreement**

Exhibit 2-6

AVSP I EPC Contract  
Exhibit 2 - Site Description

PARCEL 1:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF FRACTIONAL SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AND DESCRIBED AS PARCEL 4 IN CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 4, 1986, IN BOOK 5933, PAGE 2332, AS INSTRUMENT NO. 056865 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM 50% OF ALL OIL AND MINERAL INTEREST IN SUBJECT PROPERTY, BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, AND WITHOUT THE RIGHT OF SURFACE ENTRY AS RESERVED BY RECA CORPORATION IN DEED RECORDED DECEMBER 5, 1986 IN BOOK 5944, PAGE 2051 OF OFFICIAL RECORDS.

APN: 359-041-29-00-9

PARCEL 2:

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF FRACTIONAL SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AND DESCRIBED AS PARCEL 2 IN CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 4, 1986, IN BOOK 5933, PAGE 2332, AS INSTRUMENT NO. 056865 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM 50% OF ALL OIL AND MINERAL INTEREST IN SUBJECT PROPERTY, BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND AND WITHOUT THE RIGHT OF SURFACE ENTRY AS RESERVED BY RECA CORPORATION IN DEED RECORDED DECEMBER 5, 1986 IN BOOK 5944, PAGE 2048, OFFICIAL RECORDS.

APN: 359-041-31-00-4

PARCEL 3:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF FRACTIONAL SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AND DESCRIBED AS PARCEL 3 IN CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 4, 1986, IN BOOK 5933, PAGE 2332, AS INSTRUMENT NO. 056865 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM 50% OF ALL OIL AND MINERAL INTEREST IN SUBJECT PROPERTY, BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, AND WITHOUT THE RIGHT OF SURFACE ENTRY AS RESERVED BY RECA

Exhibit 2-7

AVSP I EPC Contract  
Exhibit 2 - Site Description

CORPORATION IN DEED RECORDED DECEMBER 5, 1986 IN BOOK 5944, PAGE 2044 OF OFFICIAL RECORDS.

APN: 359-041-32-00-7

PARCEL 4:

THE NORTHEAST ONE-QUARTER AND THE SOUTH ONE-HALF OF SECTION 5, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL, FEBRUARY 19, 1856.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND WITHIN ANY PUBLIC ROADS EXISTING ON OR BEFORE JANUARY 19, 1923.

EXCEPTING THEREFROM ALL RIGHTS, TITLE AND INTEREST IN AND TO FIFTY (50%) PERCENT OF ALL OIL, MINERAL, GAS AND OTHER HYDROCARBON SUBSTANCES BELOW A DEPTH OF 500 FEET UNDER THE PROPERTY, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN A DEED RECORDED DECEMBER 27, 1988 AS INSTRUMENT NO. 88-2059369 OFFICIAL RECORDS.

SAID PROPERTY BEING DESCRIBED AS PARCEL 1 IN A CERTIFICATE OF COMPLIANCE RCOC 2011 00017 RECORDED JULY 18, 2011 AS INSTRUMENT NO. 20110959155 OF OFFICIAL RECORDS OF SAID LOS ANGELES COUNTY.

APN: 3258-001-031

PARCEL 5:

THE NORTHWEST ONE-QUARTER OF SECTION 5, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL, FEBRUARY 19, 1856.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND WITHIN ANY PUBLIC ROADS EXISTING ON OR BEFORE JANUARY 19, 1923.

EXCEPTING THEREFROM ALL RIGHTS, TITLE AND INTEREST IN AND TO FIFTY (50%) PERCENT OF ALL OIL, MINERAL, GAS AND OTHER HYDROCARBON SUBSTANCES BELOW A DEPTH OF 500 FEET UNDER THE PROPERTY, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN A DEED RECORDED DECEMBER 27, 1988 AS INSTRUMENT NO. 88-2059371 OFFICIAL RECORDS.

Exhibit 2-8

AVSP I EPC Contract  
Exhibit 2 - Site Description

SAID PROPERTY BEING DESCRIBED AS PARCEL 2 IN A CERTIFICATE OF COMPLIANCE RCOC 2011 00017  
RECORDED JULY 18, 2011 AS INSTRUMENT NO. 20110959155 OF OFFICIAL RECORDS OF SAID LOS ANGELES  
COUNTY.

APN: 3258-001-030

**Tract 23: Intentionally deleted.**

**Tract 24: Reca/Sub Option Agreement**

LOT 1 IN THE NORTHEAST ONE-QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN  
BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE  
OFFICIAL PLAT OF SAID LAND, AND DESCRIBED AS PARCEL 4 IN CONDITIONAL CERTIFICATE OF COMPLIANCE,  
RECORDED SEPTEMBER 12, 2011 AS INSTRUMENT NO. 20111234624 OF OFFICIAL RECORDS.

APN: 3258-001-040

**Tract 25: Sandhu/Fee Option Agreement**

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF FRACTIONAL SECTION 31, TOWNSHIP 9 NORTH,  
RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY  
OF KERN, STATE OF CALIFORNIA, AND DESCRIBED AS PARCEL 1 IN CERTIFICATE OF COMPLIANCE RECORDED  
NOVEMBER 4, 1986, IN BOOK 5933,  
PAGE 2332, AS INSTRUMENT NO. 056865, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM 50% OF OIL AND MINERAL INTEREST BELOW A DEPTH OF 500 FEET FROM THE  
SURFACE OF SAID LAND, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED BY RECA CORPORATION, IN  
DEED RECORDED DECEMBER 5, 1986 IN BOOK 5944, PAGE 2046 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR  
OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE  
STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED  
DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-041-30-00-1

**Tract 26: Intentionally deleted.**

Exhibit 2-9

AVSP I EPC Contract  
Exhibit 2 - Site Description

**Tract 27: Webster- O'Neil/Sub Option Agreement**

THE EAST 40.45 ACRES OF LOT 2 IN THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND DESCRIBED AS PARCEL 1 IN CONDITIONAL CERTIFICATE OF COMPLIANCE, RECORDED SEPTEMBER 12, 2011 AS INSTRUMENT NO. 20111234624 OF OFFICIAL RECORDS.

APN: 3258-001-024

**Tract 28: Wilson/Sub Option Agreement**

LOTS 1 AND 2 OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

APN: 3261-001-004

**Tract 29: Intentionally deleted.****Tract 30: Willow Springs Gen-Tie Easement**

AN EASEMENT FOR TRANSMISSION LINE AND INCIDENTAL PURPOSES BEING OVER, UNDER OR ACROSS A PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS MORE PARTICULARLY DESCRIBED IN PARCEL 1A AND PARCEL 2A, AS FOLLOWS:

PARCEL 1A: GEN-TIE WILLOW SPRINGS

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 24, THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89° 37' 45" EAST, 55.02 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED, THENCE NORTH 00° 58' 32" WEST, 1631.56 FEET; THENCE SOUTH 89° 01' 35" WEST, 55.00 FEET; THENCE NORTH 00° 58' 32" WEST, 20.00 FEET; THENCE NORTH 89° 01' 35" EAST, 55.00 FEET; THENCE NORTH 00° 58' 32" WEST, 45.24 FEET, THENCE NORTH 82° 35' 58" WEST, 55.59 FEET; THENCE NORTH 00° 58' 32" WEST, 101.08 FEET; THENCE SOUTH 82° 35' 58" EAST, 55.59 FEET; THENCE NORTH 00° 58' 32" WEST, 786.17 FEET; THENCE SOUTH 89° 37' 45" EAST, 100.03 FEET; THENCE SOUTH 00° 58' 32" EAST, 2585.71 FEET; THENCE NORTH 89° 37' 45" WEST, 100.04 TO THE POINT OF BEGINNING.

PARCEL 1B: **Intentionally deleted.**

Exhibit 2-10

AVSP I EPC Contract  
Exhibit 2 - Site Description

PARCEL 2A: TEMPORARY CONSTRUCTION WILLOW SPRINGS

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 24, THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION, BEARING NORTH 00° 58' 32" WEST, 1630.27 FEET; THENCE NORTH 89° 01' 35" EAST, 55.00 FEET; THENCE SOUTH 00° 58' 32" EAST, 1631.56 FEET; THENCE NORTH 89° 37' 45" WEST, 55.02 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED LAND, COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 24, THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION, BEARING NORTH 00° 58' 32" WEST, 1650.27 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; THENCE NORTH 00° 58' 32" WEST, 53.34 FEET; THENCE SOUTH 82° 35' 58" EAST. 55.59 FEET; THENCE SOUTH 00° 58' 32" EAST, 45.24 FEET; THENCE SOUTH 89° 01' 35" WEST, 55.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED LAND, COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 24, THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION, BEARING NORTH 00° 58' 32" WEST, 1804.68 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; THENCE NORTH 00° 58' 32" WEST, 780.32 FEET; THENCE SOUTH 89° 37' 45" EAST 55.02 FEET; THENCE SOUTH 00° 58' 32" EAST, 786.17 FEET; THENCE NORTH 82° 35' 58" WEST 55.59 FEET TO THE POINT OF BEGINNING.

PARCEL 2B: **Intentionally deleted.**

APN: 261-260-20-00-7, 261-260-22-00-3 and 261-260-23-00-6 (PORTION)

**Tract 31: Tallman Gen-Tie Easement**

PARCEL 1A: GEN-TIE TALLMAN

A 100 FOOT EASEMENT FOR TRANSMISSION LINE PURPOSES OVER UNDER AND ACROSS THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JULY 07, 2011 AS INSTRUMENT NO. 0211086405, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 100 FEET OF THE WEST 155 FEET OF THE NORTH HALF OF THE NORTH

Exhibit 2-11

AVSP I EPC Contract  
Exhibit 2 - Site Description

HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLATS THEREOF.

PARCEL 1B: ACCESS TALLMAN

AN EASEMENT FOR ACCESS OVER UNDER AND ACROSS THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JULY 07, 2011 AS INSTRUMENT NO. 0211086405, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 155 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLATS THEREOF.

APN: 261-120-01-00-1 (PORTION)

**Tract 32: Campbell Gen-Tie Easement**

PARCEL 1A: GEN-TIE CAMPBELL

A 100 FOOT EASEMENT FOR TRANSMISSION LINE PURPOSES OVER UNDER AND ACROSS THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076178, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 100 FEET OF THE WEST 155 FEET OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF.

Exhibit 2-12

AVSP I EPC Contract  
Exhibit 2 - Site Description



PARCEL 1B: ACCESS CAMPBELL

AN EASEMENT FOR ACCESS PURPOSES OVER UNDER AND ACROSS THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076178, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 155 FEET OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF.

APN: 261-120-09-00-5 (PORTION)

**Tract 33: Way Gen-Tie Easement**

PARCEL 1A: GEN-TIE WAY

AN EASEMENT FOR TRANSMISSION LINE PURPOSES OVER UNDER AND ACROSS A PORTION OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076181, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 100 FEET OF THE WEST 155 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856, ACCORDING TO THE OFFICIAL PLATS THEREOF.

PARCEL 1B: ACCESS

Exhibit 2-13

AVSP I EPC Contract  
Exhibit 2 - Site Description

AN EASEMENT FOR ACCESS OVER UNDER AND ACROSS A PORTION OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076181, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 155 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856, ACCORDING TO THE OFFICIAL PLATS THEREOF.

APN: 261-120-05-00-3 AND 261-120-06-00-6 (PORTION)

**Tract 34: Blaire Gen-Tie Easement**

PARCEL 1A: GEN-TIE BLAIRE

AN EASEMENT FOR TRANSMISSION LINE PURPOSES OVER UNDER AND ACROSS A PORTION OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JUNE 13, 2011, AS INSTRUMENT NO. 0211076182, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 100 FEET OF THE WEST 155 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856, ACCORDING TO THE OFFICIAL PLATS THEREOF.

PARCEL 1B: ACCESS BLAIRE

Exhibit 2-14

AVSP I EPC Contract  
Exhibit 2 - Site Description

AN EASEMENT FOR ACCESS OVER UNDER AND ACROSS A PORTION OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED JUNE 13, 2011, AS INSTRUMENT NO. 0211076182, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 155 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856, ACCORDING TO THE OFFICIAL PLATS THEREOF.

APN: 261-120-07-00-9 (PORTION)

**Tract 35: Lin Gen-Tie Easement**

PARCEL 1A: GEN-TIE LIN

AN EASEMENT FOR TRANSMISSION LINE PURPOSES OVER UNDER AND ACROSS A PORTION OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM FIRST SOLAR DEVELOPMENT, INC., A DELAWARE CORPORATION TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED AUGUST 16, 2011 AS INSTRUMENT NO. 000211103861, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EASTERN 125 FEET OF THE WESTERN 155 FEET OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE KERN COUNTY OFFICIAL RECORDS.

PARCEL 2B: ACCESS LIN

AN EASEMENT FOR ACCESS PURPOSES OVER UNDER AND ACROSS A PORTION OF

Exhibit 2-15

AVSP I EPC Contract  
Exhibit 2 - Site Description

THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM FIRST SOLAR DEVELOPMENT, INC., A DELAWARE CORPORATION TO WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND AV SOLAR RANCH 1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED AUGUST 16, 2011 AS INSTRUMENT NO. 000211103861, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 155 FEET OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE KERN COUNTY OFFICIAL RECORDS.

APN: 261-120-08-00-2 (PORTION)

**Tract 36: AVWS Gen-Tie Easement**

THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

APN: 261-196-11-00-3

**Tract 37: Intentionally deleted.**

**Tract 38: Intentionally deleted.**

**Tract 39: Intentionally deleted.**

**Tract 40: Intentionally deleted.**

**Tract 41: Intentionally deleted.**

**Tract 42: Intentionally deleted.**

**Tract 43: Intentionally deleted.**

**Tract 44: Intentionally deleted.**

**Tract 45: Nolan**

THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEASTERLY QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL.

APN: 3258-001-011

**Tract 46: Intentionally deleted.**

**Tract 47: Intentionally deleted.**

**Tract 48: Intentionally deleted.**

Exhibit 2-17

AVSP I EPC Contract  
Exhibit 2 - Site Description

### **EXHIBIT 3**

#### **Technical Specifications- AVSP1**

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[17 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 3-1

AVSP I EPC Contract  
Exhibit 3 - Technical Specifications

## **Exhibit 3 - Appendix A**

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[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 3 - Appendix A-1

AVSP I EPC Contract  
Exhibit 3 - Appendix A - \*\*\*

**Exhibit 3 - Appendix B  
Reserved**

Exhibit 3 - Appendix B-1

AVSP I EPC Contract  
Exhibit 3 - Appendix B - Reserved



**Exhibit 3 - Appendix C**  
**Well Locations**

\*\*\*

[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 3 - Appendix C-1

AVSP I EPC Contract  
Exhibit 3 - Appendix C - Well Locations

**Exhibit 4A**  
**AVSP 1 Milestone Schedule**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 4A-1

AVSP I EPC Contract  
Exhibit 4A - Milestone Schedule

**Exhibit 4B**  
**Guaranteed MW block On-Line Schedule**

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[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 4B-1

AVSP I EPC Contract  
Exhibit 4B - Guaranteed MW block On-Line Schedule

**EXHIBIT 4C**  
**Baseline PV Module Delivery Schedule - AVSP I and AVSP II**

The following is the agreed upon baseline PV module delivery schedule referenced in Exhibit 31 of the Agreement which shall be used to determine Contractor's compliance with the accelerated PV module delivery obligations under this Agreement and Exhibit 31.

Period	PV Modules Delivered AVSP I, MWdc	PV Modules Delivered AVSP II, MWdc	Total PV Modules Delivered, MWdc	Quarter % PV Modules Delivered	Total % PV Modules Delivered
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
Total	***	***	***	***	***

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 4C-1

AVSP I EPC Contract  
Exhibit 4C - Baseline PV Module Delivery Schedule

**EXHIBIT 5**  
**Key Personnel**

Contractor shall staff the Project with the listed Key Personnel as defined in Section 5.2 of this Agreement. Changes to the individuals identified in this Exhibit 5 will be subject to the requirements of Section 5.2 of this Agreement.

Title	Contractor Key Personnel Assigned
Contractor's Representative - AVSP I	***
Project Director - AVSP I	***
Site Director - AVSP I	***
Engineering Manager - AVSP I	***
Environmental Permit Manager - AVSP I	***
Safety Manager - AVSP I	***
Commissioning/Testing Manager - AVSP I	***

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Exhibit 5-1

AVSP I EPC Contract  
Exhibit 5 - Key Personnel

**AVSP I**

**EXHIBIT 6A**

**Contractor Acquired Permits**

	<b>Permit</b>	<b>Applicable Agency</b>
1.	Resolution Approving Modification to Conditional Use Permit No. 201000071 (to increase maximum allowable construction water use)	Los Angeles County
2.	Franchise Agreement for Electrical Transmission	Los Angeles County
3.	Low Impact Development (LID) Plan Approval	Los Angeles County
4.	Encroachment Permits	Kern County and Los Angeles County
5.	Air Emissions Significance Determination	Antelope Valley Air Quality Management District and Los Angeles County
6.	Site Closure Letter	Los Angeles County Fire Department, Certified Unified Program Agency
7.	Soil Management Plan	Los Angeles County Fire Department, Certified Unified Program Agency
8.	Demolition Hazardous Building Materials Assessment and Management Program	Los Angeles County Fire Department, Certified Unified Program Agency
9.	Site Plan Review	Los Angeles County
10.	Satisfaction of Mitigation Land Requirements	Kern County and Los Angeles County
11.	Landscaping Plan Approval	Kern County and Los Angeles County

Exhibit 6A-1

**AVSP I EPC Contract  
Exhibit 6A - Contractor Acquired Permits**

12.	Pre-Construction Surveys for Migratory Birds and Raptors, Burrowing Owl, American Badger and Desert Kit Fox, Active Bat Maternity Roosts, Coast Horned Lizard and Silvery Legless Lizard and Desert Tortoise	Kern County and Los Angeles County
13.	Decommissioning Plan	Kern County and Los Angeles County
14.	Authorization to Modify Tree Planting Requirements	Los Angeles County
15.	Dedication of Alternative Energy Corridor	Kern County
16.	Construction Traffic Control Plan	Kern County; Los Angeles County; CalTrans District 6; CalTrans District 7
17.	Approval of Solar Panel Support/Foundation Structures	Kern County
18.	Street Plan Approval	Los Angeles County
19.	Agreement for Street Improvements	Los Angeles County
20.	260' Wide Flood Channel Crossing	Los Angeles County
21.	Fugitive Dust Emissions Control Plan	Eastern Kern County Air Pollution Control District
22.	Dust Control Plan	Antelope Valley Air Quality Management District
23.	Drainage Plan	Kern County
24.	Water Supply and Sewage Disposal Plan	Kern County
25.	LA County Landowner Affidavits	Los Angeles County
26.	Memorandum of Understanding and Agreement for Performance of Zoning Ordinance and Mitigation Measures as Environmental Restrictions	Kern County
27.	Covenant and Agreement	Los Angeles County

Exhibit 6A-2

AVSP I EPC Contract  
Exhibit 6A - Contractor Acquired Permits

28.	Fire Safety Plan (during construction)	Kern and Los Angeles County Fire Departments
29.	Hazardous Waste Identification Number (during construction)	US Environmental Protection Agency
30.	Oil Spill Prevention Control and Countermeasure Plan (during construction)	US Environmental Protection Agency
31.	General Permit for Discharge of Storm Water Associated with Construction Activities (during construction)	State Water Resources Control Board
32.	Septic System Permits (if not a part of building permits)	Kern County
33.	Grading Permit	Kern County and Los Angeles County
34.	Building/Construction Permits	Kern County and Los Angeles County
35.	Archaeological Research Design and Treatment Plan waiver	Kern County Planning and Community Development Department

Exhibit 6A-3

AVSP I EPC Contract  
Exhibit 6A - Contractor Acquired Permits



**EXHIBIT 6B****Owner Acquired Permits**

	<b>Permit</b>	<b>Applicable Agency</b>
1.	Final Environmental Impact Report (SCH# 2010031022) for the Antelope Valley Solar Project (approved August 2, 2011; NOD filed August 24, 2011)	Kern County Board of Supervisors
2.	Water Supply Assessment (approved August 2, 2011)	Kern County Board of Supervisors
3.	Resolution No. 2011-193 approving Specific Plan Amendment Case Nos. 17, 2 and 3 (Map Nos. 232, 232-23 and 233) (approved August 2, 2011)	Kern County Board of Supervisors
4.	Resolution No. 2011-194 approving amendments to Zoning Map Nos. 232 and 232-23 (Zone Change Case Nos. 34 and 5) (approved August 2, 2011)	Kern County Board of Supervisors
5.	Ordinance No. G-8179 amending Zoning Map No. 232 (Zone Change Case No. 34) (approved August 2, 2011)	Kern County Board of Supervisors
6.	Ordinance No. G-8180 amending Zoning Map No. 232-23 (Zone Change Case No. 5) (approved August 2, 2011)	Kern County Board of Supervisors
7.	Resolution No. 2011-195 approving Tentative Cancellation of Williamson Act Contracts (approved August 2, 2011; corrected September 4, 2012)	Kern County Board of Supervisors
8.	Resolution No. 2011-196 approving Conditional Use Permit Nos. 28, 2 and 8 (Map Nos. 232, 232-23 and 233) (approved August 2, 2011)	Kern County Board of Supervisors
9.	Addendum to the Environmental Impact Report for the Antelope Valley Solar Project (approved October 19, 2011)	Los Angeles County Board of Supervisors

Exhibit 6B-1

AVSP I EPC Contract  
Exhibit 6B -Owner Acquired Permits

10.	Conditional Use Permit No. 201000071 (Project No. R2010-00808-(5)) (approved October 19, 2011)	Los Angeles County Board of Supervisors
11.	Addendum to the Environmental Impact Report for the Antelope Valley Solar Project (approved March 13, 2012; NOD filed March 22, 2012)	Kern County Board of Supervisors
12.	Resolution No. 2012-036 approving amendments to Zoning Map No. 233 (Zone Change Case No. 15) (approved March 13, 2012)	Kern County Board of Supervisors
13.	Ordinance No. G-8262 amending Zoning Map No. 233 (Zone Change Case No. 15) (approved March 13, 2012)	Kern County Board of Supervisors
14.	Resolution No. 2012-037 approving Modification to Conditional Use Permit Nos. 28 and 8 (Map Nos. 232 and 233) (approved March 13, 2012)	Kern County Board of Supervisors
15.	Certificate of Cancellation of Williamson Act Contract (approved September 20, 2012)	Kern County Board of Supervisors
16.	Hazardous Waste Identification Number (during operations)	US Environmental Protection Agency
17.	Oil Spill Prevention Control and Countermeasure Plan (during operations)	US Environmental Protection Agency
18.	Industrial Storm Water General Permit Order 97-03-DWQ (General Industrial Permit) (during operations) (if required)	Lahontan Regional Water Quality Control Board (LRWQCB)
19.	Water Quality Certification (during operations) (if required)	Lahontan Regional Water Quality Control Board (LRWQCB)
20.	Fire Safety Plan (during operations)	Kern and Los Angeles County Fire Departments
21.	Raven Management Plan consultation (during operations)	U.S. Fish & Wildlife Service
22.	Market-Based Rate Authorization under Section 205 of the Federal Power Act	FERC

Exhibit 6B-2

## EXHIBIT 7

### CONTRACTOR SUBMITTALS & PROJECT DOCUMENTATION

#### I. GENERAL SCOPE

---

- 1.1** Exhibit 7 lists the documentation to be provided by Contractor to Owner. In order to facilitate the Owner's right to review Contractor Submittals in accordance with the terms of this Agreement, Contractor shall provide such documentation in accordance with the submission requirements set forth in this Exhibit 7. Transmittals for all submittals are to clearly indicate Owner's name, Contractor's project number, Owner's project number, how they are being sent, and the reason for the submittal. The transmittal should include a clear, concise description of all documents enclosed. Documentation by drawing number, revision number, document or drawing title, and date should be indicated, if applicable. Distributions to other parties are to be shown on the face of the transmittal.
- 1.2** Contractor Submittals identified below will be transferred electronically to Owner via Contractor's document management system, E-Builder. Contractor will send to Owner, through E-builder, an email with a hyperlink to an online server where Owner may download documents for its review from E-Builder. Electronically transmitted documents are submitted as portable document format (\*.pdf) files. Documents that cannot be transmitted electronically shall be submitted to Owner as hard copy via overnight mail. The date of the email notification or the date indicated on the delivery receipt for overnight mail shall be the contractual delivery date for the Contractor Submittals.
- 1.3** Contractor shall submit to Owner for information all Contractor Submittals and modified Contractor Submittals. All documents prepared by Contractor shall be in English and shall bear the Project name AVSP I and a full title block containing a unique identification number, revision number, source and type of document and descriptive title. Each document shall clearly indicate the applicable status of the document (e.g. Preliminary, for Information, for Review, for Permit, for Bid, for Bid Addendum, for Construction, Design Bulletin, and Record Drawing incorporating all as-built comments) as well as the revision date. Contractor shall make reasonable efforts to obtain subcontractor submittals that follow these same guidelines.
- 1.4** Contractor shall make reasonable efforts that project drawings be prepared in such a way that photo-reduction to 11"x17" size shall result in a legible and useable drawing. Particular attention shall be paid in this respect to selection of fonts. A scale bar shall be included to permit use following photo-reduction on drawings where where scaling is applicable.
- 1.5** Where possible, and for Contractor Submittals generated after the Effective Date, one electronic copy of Contractor and Subcontractor generated drawings and documents (the list of such drawings and documents to be determined by Owner after consultation with Contractor) shall be issued to Owner for review before the

Exhibit 7-1

procurement, fabrication or construction of any particular aspect of the Work is commenced.

- 1.5.1 The measurement system shall be US customary units for all construction and permit drawings.
  - 1.5.2 Vendor drawings for electrical equipment shall be US customary units or SI units. Vendor drawings shall clearly identify unit system.
  - 1.5.3 **Drawings:** Copies shall be submitted in electronic form (portable document format (\*.pdf). All final drawings/document submittals that are reasonably likely to require updating over the life of the Project shall additionally be submitted in AutoCad to facilitate such future updates by Owner.
  - 1.5.4 **Documents:** one electronic copy shall be provided in portable document format (\*.pdf) files for written text such as letters, specifications, procedures, calculations (not including Subcontractor proprietary calculations), manuals, lists, etc.
  - 1.5.5 **Drawings and Documents:** Contractor shall make reasonable efforts to secure electronically formatted drawings and documents from all Subcontractors. When electronic formatting as noted in Sections 1.5.3 and 1.5.4, is not obtainable due to Subcontractor policies or procedures then Contractor shall have such materials scanned and submitted in portable document format (\*.pdf).
- 1.6 Subcontractor drawings and documentation shall also be submitted electronically to Owner as described above. Owner may make comments to Contractor on Subcontractor drawings and documents if items are found not to be in compliance with the requirements of this Agreement. Owner's review period shall be \*\*\* for procurement specifications, \*\*\* for all other Contractor Submittals. Owner will reasonably cooperate with Contractor to expedite reviews as necessary. Any document not returned to Contractor in the allowable period shall be deemed accepted with no comment or approved if submitted for approval. If Owner and Contractor shall not agree as to whether Contractor is in compliance with the requirements of this Agreement, this dispute shall be resolved in accordance with Article 28.

## II. DESIGN REVIEW BY OWNER

---

- 2.1 Owner and Contractor agree to participate in an accelerated Design Review prior to contract Effective Date. Owner and Contractor agree to accelerated resolution of Design Review comments.
- 2.2 The purpose of the Design Review is to afford Owner the opportunity to ensure that Contractor's design and final

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Exhibit 7-2

AVSP I EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

selection of Equipment is in accordance with this Agreement.

- 2.3 The Design Review will consist of Owner review of the permit documents Contractor has submitted to Kern and Los Angeles counties for approval.
- 2.4 Design Review shall not commence without Owner or Owner's representative.
- 2.5 The Design Review shall be held at Contractor facilities in Richmond, California.
- 2.6 All Design Review participants shall pay their own travel, lodging and other expenses.
- 2.7 Contractor and Owner shall provide access to all relevant technical subject matter experts during the Design Review.
- 2.8 Design Review Documents will consist of the permitting and supporting documents, which include but are not limited to:
  - 2.8.1 Array layout with major equipment locations
    - 2.8.1.1 Control Point Schedule with equipment names and locations for PCS stations, motors and controllers, and MDAS tower locations in solar fields.
  - 2.8.2 Electrical Design Documents
    - 2.8.2.1 Physical Drawings showing all equipment locations, conduit interfaces, and trenching.
    - 2.8.2.2 AC single line(s)
    - 2.8.2.3 DC single line(s)
    - 2.8.2.4 Schematic and Wiring Diagrams
    - 2.8.2.5 Grounding Diagrams
    - 2.8.2.6 Preliminary PCS layout
    - 2.8.2.7 Cable Schedule (if not contained on one-line diagrams)
  - 2.8.3 Preliminary grading plan
  - 2.8.4 Preliminary storm water plan

Exhibit 7-3

## 2.8.5 Structural Design Documents

2.8.7.1 Drawings of all equipment foundations showing all equipment outline requirements including anchor bolts that are to be used in the design of the foundations

2.8.7.2 Structural calculations detailing design criteria, equipment loads, and material selection

## 2.8.6 SCADA, Instrumentation, and Controls Design Documents

2.8.6.1 Communication block diagrams for substations and solar fields

2.8.6.2 Fiber Termination Details

2.8.6.3 SCP (SCADA Control Panel) DI Wiring Diagram

2.8.6.4 MDAS Schematics and Instrumentation Diagrams

2.8.6.5 SCADA Server Termination Details & Schematic

[2.8.6.6 Flow block diagrams and State machine diagrams

## 2.8.7 Site logistics plan

## 2.8.8 Specification list

## 2.8.9 Installation specification

## 2.8.10 Purchase specifications for:

2.8.10.1 AC Station (includes inverter)

2.8.10.2 34.5 kV collection system switchgear

2.8.10.3 Medium voltage cable

2.8.11 Electrical and structural calculations and studies required for permit (not including Subcontractor proprietary calculations)

2.8.12 Substation grounding calculations to support sizing

**2.9** Contractor shall provide the supporting information upon which the Project design is based, including, but not limited to the results of survey, geotechnical report and addenda, and manufacturers' data.

**2.10** During the Design Review, Owner may make comments to drawings and documents if items are found not to be in compliance

Exhibit 7-4

with the requirements of this Agreement. Contractor shall be obligated to resolve any such compliance issues in a timely manner and resubmit to Owner the Contractor drawings and documents reflecting such resolutions.

### **III. DELIVERABLES**

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- 3.1** All other drawings or data listed herein or requested by Owner and provided by Contractor may be considered for information and record purposes. Owner may comment on such drawings and data to ensure compliance with the Agreement.
- 3.2** For Owner's records, Contractor shall develop and submit a comprehensive documentation/design package to Owner consisting of, but not limited to, the documents and drawings as prescribed in this Section III. The Design Review and Owner's review are covered in Section II.

#### **3.2.1 Comprehensive Project documentation submittal schedule**

#### **3.2.2 Drawings:**

- Site plan/arrangement
- Site grading and drainage
- Site restoration and finishing
- Soil stabilization, erosion, and sediment control
- Foundation plans and details
- Structural plans, details, and elevations
- General plant arrangement, building arrangement, and hazardous area location (if any) drawings; and civil, and steel standard drawings
- Array layout
- Electrical/Instrument diagrams including electrical one-line, substation electrical three-line, and instrument diagrams
- Power and control wiring, including AC and DC systems. Details showing protection against galvanic corrosion, if applicable. (i.e. Aluminum to copper transition)
- AC Station drawings
- String wiring diagrams

Exhibit 7-5

### Grounding plans

- Relay tripping and control schematics and/or logic diagrams
- Control system logic diagrams
- SCADA system configuration drawings/diagrams
- Fencing plan
- All drawings issued/used for construction
- Record drawings (including as-built comments) shall be submitted in AutoCad format no later than date set forth in Exhibit 1. All drawings submitted to Owner by Contractor shall be updated to reflect on-site changes and will be marked “Record Drawings”.

### **3.2.3 Other Required Documentation:**

- Operations and maintenance manuals with respect to each Block shall be submitted no later than the date set forth in the Table Of Contractor Submittals shown at the end of this Exhibit 7. If a piece of equipment was “wholesale” changed out during the construction process for whatever reason the contractor shall provide updated maintenance and technical documentation to account for the change.
- System descriptions
- System turnover packages
- SCADA graphics/configuration guidelines
- Drawings that show equipment, instrument, device and SCADA schematics containing content mutually agreed upon by Owner and Contractor
- Subcontractor drawings, documentation, and manuals required for Owner review
- Schedules, including engineering, procurement, and construction (EPC) activities; integrated AVSP I schedules, and progress reports required pursuant to this Agreement.
- Quality assurance and quality control program manuals
- Project Health and Safety Plan attached as Exhibit 22 to this Agreement
- Commissioning plan as required under this Agreement

Exhibit 7-6



- Commissioning logs shall be submitted as required under Exhibit [16] to this Agreement
- Performance test procedures/reports as required under the Agreement
- Instructions for handling, storage, and pre-operational maintenance of Facility Equipment
- Site and shop inspection and testing plans or requirements
- Original Equipment Manufacturer's quality assurance (QA) documentation as provided by Manufacturer
- Procurement specifications for all Equipment supplied by Major Subcontractors/ installation areas
- Power transformer data sheets, as applicable
- Instrument data sheets
- Training program and manuals
- Required Manuals
- Contractor / Acquired Permits and Subcontractor permits
- Meeting minutes for Owner/Contractor meetings
- Electrical and structural calculations and studies submitted to permit agencies
- Other non-proprietary engineering calculations applicable to the design and construction of the Project

#### **IV. FINAL DRAWINGS**

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- 4.1** Contractor shall provide Record Drawings for the entire Project, consisting of mechanical, electrical, and civil drawings, general arrangements, instrumentation diagrams, one-line, three-line, schematics, wiring, cable tray, routed conduit, and duct banks, and other drawings as mutually agreed upon by Owner and Contractor. Documents shall be re-drafted as necessary to incorporate final information. Mark-up sketches, referencing, and other field marking techniques are not acceptable as final Record Drawings. Contractor shall prepare “conformed to construction record” of the original drawings or data sheets.

Exhibit 7-7

AVSP I EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

- 4.2 During construction, Contractor shall maintain on file in the field reasonably current as-built redline mark-ups of all drawings and data sheets to agree with actual work undertaken.
- 4.3 Record drawings shall be issued by Contractor as the next sequential revision from previous releases. The revision block shall state Record Drawings. All clouds, revision diamonds, and other interim control marking shall be removed. All information listed as “later” or “hold” shall be completed or deleted. The conformed to construction record drawings shall be clear and readable in full size, and where possible, also in 11”x17” size reduction.
- 4.4 Major Subcontractors' drawings shall be conformed to construction records to reflect actual installed configuration. These Subcontractor drawings shall be in sufficient detail to indicate the kind, size, arrangement, weight of each component, and operation of component materials and devices, the external connections, anchorages, and supports required; the dimensions needed for installation, and correlation with other materials and equipment. Final Subcontractor's drawings shall be bound in the equipment Operation & Maintenance Manuals. One electronic copy, in portable document format (\*.pdf), of the vendor drawings shall be provided.
- 4.5 Contractor shall provide one hard copy set of Record Drawings to Owner, in 12”x18” size.

## **V. LISTS**

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- 5.1 All lists that will be Issued for Record shall be furnished in electronic format.

## **VI. SOFTWARE REQUIREMENTS**

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- 6.1 All final drawings /document submittals that are reasonably likely to require updating over the life of the Project shall additionally be submitted in native electronic format to facilitate such future updates by Owner. Site-specific drawings provided in native format shall include the project master plan, the project single line, and trenching plans. Product-specific drawings will be provided in portable document format (\*.pdf). Where possible, Contractor Submittals lists and manuals shall be provided with electronic search engines to facilitate ease of use, as commercially available.
- 6.2 Where possible, Contractor Submittals lists shall be provided in electronic format such as Microsoft Excel or approved alternative to facilitate integration into Owner's existing applications. Owner will provide Contractor with reasonable formatting information as required.

Exhibit 7-8

Design calculations shall be submitted in PDF format only. Native files shall not be provided.

**6.3** Contractor shall provide final electronic submittals in the following software formats:

Software Function	Software Name
Word processing	Microsoft Word
Lists	Microsoft Excel
Database	Microsoft Access
Drawings	AutoCAD and AutoDesk Civil 3D
Project Schedules	Portable document format (*.pdf) produced from Microsoft Project or Primavera native format
Scannable Material	Portable document format (*.pdf)
SCADA / PLC Programming /	
Configuration	By OEM (subject to IP restrictions)

## **VII. DATA/DRAWINGS REQUIRED AFTER AWARD OF CONTRACT**

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### **7.1 General**

- 7.1.1** For equipment being procured after the Effective Date, Contractor shall submit the specifications for each equipment package for Owner review for compliance with this agreement.
- 7.1.2** Contractor shall facilitate the exchange of information in order to demonstrate to Owner Contractor's plan to meet the schedule requirements of this Agreement.
- 7.1.3** For any drawing or design document developed or significantly updated after the Design Review, Contractor shall submit to Owner for review to fully establish that all parts shall comply with this Agreement. Owner review shall follow guidelines and timelines per agreement. Owner may make comments to drawings and documents if items are found not to be in compliance with the requirements of this Agreement. Contractor shall be obligated to resolve any such compliance issues in a timely manner and resubmit to Owner the Contractor drawings and documents reflecting such resolutions.
- 7.1.4** If Owner review is not completed on drawings covered in 7.1.3 and per this agreement, and should Contractor proceed with manufacture of Facility

Exhibit 7-9

Equipment or construction prior to Owner review of such drawings, Contractor does so at its own risk.

- 7.1.5** Contractor shall be responsible for any discrepancies, errors, or omissions on the drawings supplied by Contractor or Subcontractors.
- 7.1.6** All drawings and data, including changes thereto, shall conform to the requirements of this Agreement.

[Table of Contractor Submittals on following page.]

Exhibit 7-10

AVSP I EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

Document	Timing of First Delivery
Sheet Sets	
—	
Civil Sheet Set	1
- Site Development Plan	
- Monuments and Benchmark Plan	
- Miscellaneous Foundations	
- Road and Driveway sections	
- Demolition Plan	
- Grading, road layout and fencing plans	
- Erosion control plan	
Structural Sheet Set	2
- Operation and Maintenance Building Arrangement and Foundation Concept	
Electrical Sheet Set	1
- Cable Schedule	
- Construction Power One-Line	
- MV One-Line	
- Grounding plan and details	
- Underground cable plans	
- Direct buried cable sections	
- Ductbank Sections	
- 34.5kV Plans & Profiles	
- 34.5kV Assemblies	
- 34.5kV Structure Details	
SCADA Sheet Set	1
- Communication Block Diagram	
- Fiber termination details	
- Fiber route plan	
Substation Sheet Set	1
- Substation Communications Block Diagram	
- Plan arrangement	
- Sections and details	
- Raceway plan and details	
- Grounding plan and details	
- Control enclosure layout	
- 230kV Panels	
- One-Line	
- Foundation plan	
- Structure Loading Diagrams	

Exhibit 7-11

Document	Timing of First Delivery
Transmission Line Sheet Set	1
- 230kV Plans and Profiles	
- 230kV Suspension and Deadend Assemblies	
- OPGW and Shieldwire Assemblies	
- 230kV Structure Details	
- 230kV Transmission Line Foundation Details	
Substation Specifications	
GSU Transformer Spec	1
Structures and Equipment Spec	1
HV Circuit Breaker Spec	1
Control House Spec	1
Transmission Line Specifications	
Tubular Steel Poles Spec	1
Conductor Spec	1
Hardware Spec	1
SCADA System Specifications	
SCADA FRS	1
Facility Controller FRS	1
MDAS Spec	1
Equipment Specifications	
Inverter/Transformer Spec	1
Inverter Manual	3
Inverter Data Sheet	3
Transformer Manual	3
LV Cabinet Spec	1
LV Cabinet Data Sheet	4
SCADA Com. Panel Spec	1
Combiner Box Specification	1
Other Documents	
Operation and Maintenance Building Specifications	2
Design Changes	2
County Approved Construction Permit Packages	2
Plans, Procedures, Programs and Manuals	
Site Commissioning Plan	3
Testing Procedures	3

Exhibit 7-12

<b>Document</b>	<b>Timing of First Delivery</b>
Preliminary Operations and Maintenance Manual	3
Final Operation and Maintenance Manual	4
Record Drawings	4

	<b>TIMING OF DELIVERY</b>
1	***
2	***
3	***
4	***

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Exhibit 7-13

AVSP I EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

**Exhibit 8A**  
**Form of Monthly Report**



**Date, Year**

**Prepared by:**

**Project Monthly Report**

**Project size:** YYY MWac / ZZZ MWdc - T0 Tracker

**Owner:** TBD

**Customer:** TBD

**Project Number:** XXXXXX

**1. Project Overview**

**1.1 Executive Summary**

Project consists of a photovoltaic array of YYYYMWdc of SunPower modules covering approximately XX acres in XXXXX California, United States, owned by XXXXXX. The EPC Agreement was executed on XXXXXXXX. Site Preparation started in XXXXXXXX. Construction activities began on XXXXXXXX, with Interconnection scheduled in XXXXXXXX, and Substantial Completion on XXXXX.

Accomplishments during the past month include the following items:

- Plant substantially complete.
- Substation complete
- Back feed inverters commissioned

Short Term Look-Ahead Activities

- Transformers for SMA Inverters installed by
- Performance Testing scheduled to begin on
- Complete roads and seeding by

**2. Appendices**

- A. Summary of Major Activities Completed This Month
- B. Major Activities Planned in the Next Month
- C. Procurement Status and List
- D. Expediting Status and List
- E. Schedule
- F. Quality Report
- G. Safety Report
- H. Problem Areas and Planned Corrections
- I. Punch List
- J. Pending and Approved Change Orders
- K. Drawing Document Log
- L. Construction Photos
- M. Labor Report
- N. Permits
- O. Invoice and Payment Status
- P. Contract Notifications





**Monthly Report  
for Month 20XX**

**Project #**

Issued:

<b>Month 20XX MONTHLY PROGRESS REPORT</b>	
A.	Summary of Major Activities Completed This Month
B.	Major Activities Planned in the Next Month
C.	Procurement Status and List
D.	Expediting Status List
E.	Schedule
F.	Quality Report
G.	Safety Report
H.	Problem Areas and Planned Corrections
I.	Punch List
J.	Pending and Approved Change Orders
K.	Drawing and Document Submittal Log
L.	Construction Photos
M.	Labor Report
N.	Permits
O.	Invoice and Payment Status
P.	Contract Notification

**EXHIBIT A SUMMARY OF MAJOR ACTIVITIES COMPLETED THIS MONTH**

**(Summary Curves will be attached)**

<b><u>Construction</u></b>	<b><u>Quantity</u></b>	<b><u>Prev Month Total</u></b>	<b><u>Month Total</u></b>	<b><u>Total to Date</u></b>	<b><u>% Complete</u></b>
Pier Installation					
Fence Installation					
Tracker Rows					
Drive Motor Pads					
Install Drive Motors					
Inverter Pads					
DC Wiring Per Invert Pad (Home Run)					
DC Wiring Per Invert Pad (String)					
AC Wiring Per Invert Pad					
Install Inverters/Xmfr					
PV installation*					
Substation Construction					
Commissioning by Pad					
Commissioning AC Collection System					
Commissioning Substation					
Commissioning SCADA, MDAS					
Performance Testing					

EXHIBIT B MAJOR ACTIVITIES PLANNED IN THE NEXT MONTH

Upcoming Activities

Pier Installation

Fence Installation

Tracker Rows

Drive Motor Pads

Install Drive Motors

Inverter Pads

DC Wiring Per Invert Pad

AC Wiring Per Invert Pad

Install Inverters/Xmfr

PV installation

Substation Construction

Commissioning by Area

Performance Testing

Security

Seeding and Mulching

## EXHIBIT C PROCUREMENT STATUS AND LIST

[illegible]

## EXHIBIT D EXPEDITING STATUS AND LIST

[illegible]

EXHIBIT E SCHEDULE
PLEASE SEE ATTACHED P6 SCHEDULE
See attached construction schedule

EXHIBIT F QUALITY REPORT	
TRAINING UPDATE	
INCOMING MATERIAL INSPECTIONS UPDATE	
MECHANICAL CIVIL UPDATE	
NRC UPDATE	
TRAVELLER STATUS	
FINDER FIXER UPDATE	
OTHER ISSUES	



## EXHIBIT G ACCIDENTS AND EVENTS

[illegible]

## EXHIBIT H PROBLEM AREAS AND PLANNED CORRECTIONS

[illegible]

[illegible][illegible]

## EXHIBIT J PENDING AND APPROVED CHANGE ORDERS

[illegible]

## EXHIBIT K DRAWING AND DOCUMENT SUBMITTAL LOG

[illegible]

<b>EXHIBIT L CONSTRUCTION PHOTOS</b>
--------------------------------------

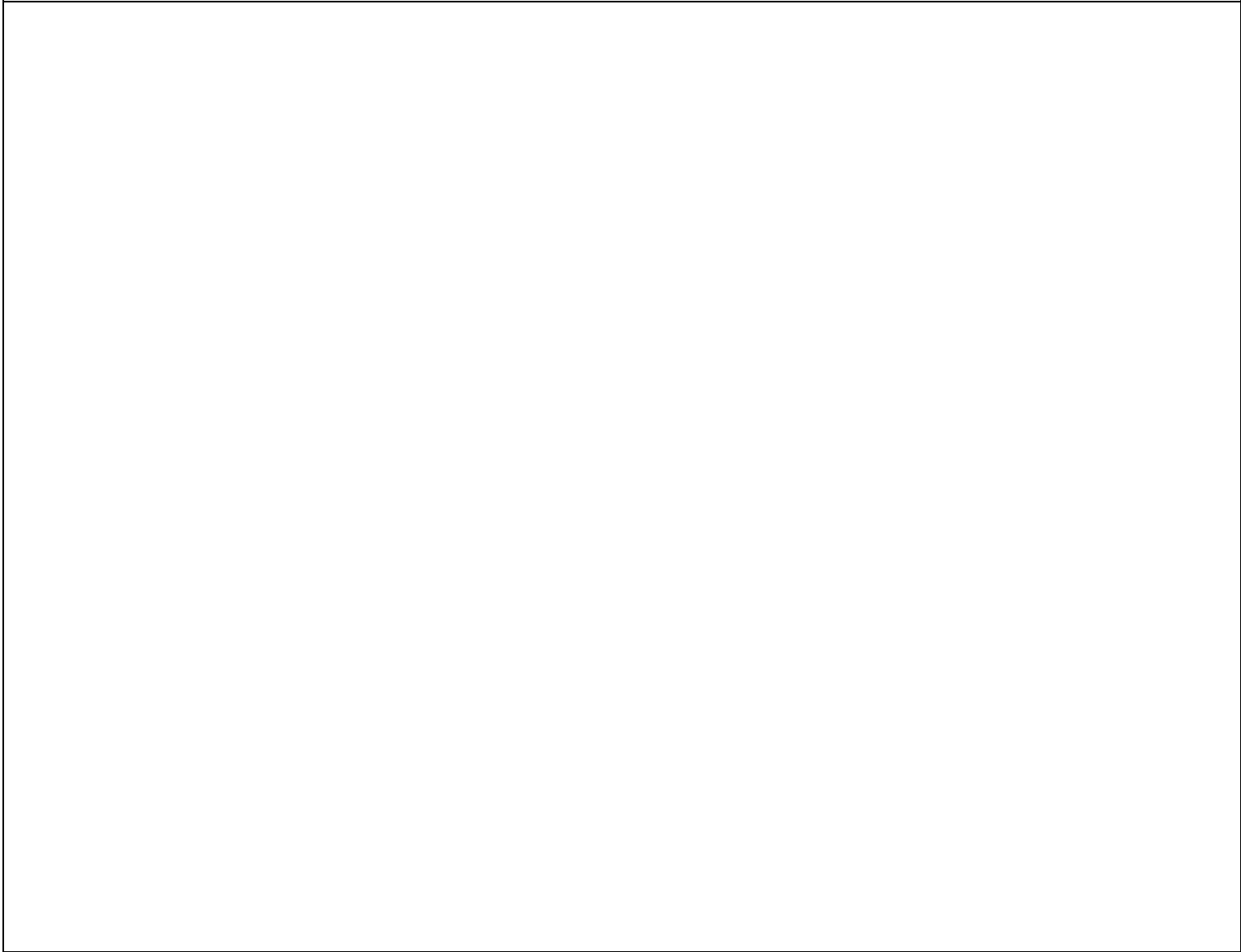


EXHIBIT M LABOR REPORT	
<u>Period</u>	<u>Hours Worked</u>
Total hours worked to date:	

EXHIBIT N CONTRACT PERMITS			
<u>Jurisdiction</u>	<u>Description</u>	<u>Date Submitted</u>	<u>Date Approved</u>



EXHIBIT O INVOICE AND PAYMENT STATUS				
<u>Invoice Number</u>	<u>Date Submitted</u>	<u>Disputed/Undisputed</u>	<u>Date Paid</u>	<u>Method of Payment</u>

EXHIBIT P Contract Notification Log				
<u>Letter Number</u>	<u>Date Submitted</u>	<u>Summary</u>	<u>Response Date</u>	<u>Status</u>

Exhibit 8A-1

## **Form of Weekly Report**

A weekly report shall be submitted to the Owner by noon Tuesday of the following week completed. The report shall include the following:

1. Highlights & Lowlights of Week Completed
2. Focus for upcoming week
3. Safety Stats
  - a. Manhours
  - b. Lost Time
  - c. Recordables
  - d. First Aids
4. Table of Progress Completed aligned to Exhibit 9 Milestones
  - a. Qty completed for Period to Date
  - b. Qty & % of Total Inception to Date
5. Three Week Look Ahead
6. Change Request Log
7. Owner Action Item Log

Exhibit 8B-1

AVSP I EPC Contract  
Exhibit 8B - Form of Weekly Report

**Exhibit 9**  
**Payment Schedule**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 9-1

AVSP I EPC Contract  
Exhibit 9 - Payment Schedule

**EXHIBIT 10**  
**Form of Application for Payment**

To:

Re:

Gentlemen:

Pursuant to Article 8 of the Engineering, Procurement and Construction Agreement, dated as of [\_\_\_\_\_] [\_\_\_\_], 2012, between [\_\_\_\_], and **SunPower Corporation, Systems** (the "Agreement"), we hereby apply for payment in the aggregate amount of \$\_\_\_\_\_ for having completed the Work as particularly set forth in Attachment 1 hereto.

A summary of the amounts to be paid is reflected in the following table:

[EXAMPLE]

	As of Previous Month	For This Month (This Payment Application)	Total After this Application for Payment
Original Contract Price	***	***	***
Contract Price to Date	***	***	***
Cumulative Milestone Payments	***	***	***
Amount of Retainage withheld by Owner		***	
Actual Amount Paid or to be Paid	***	***	***

Contractor hereby certifies as follows:

i. The Work for which payment is sought (a) has been performed to the extent indicated in this Application for Payment and is in accordance with the Agreement and (b) has not been the subject of a previous requisition which has become due and received by Contractor;

ii. Contractor's Insurance is in full force and effect;

iii. Enclosed are the applicable lien releases from Contractor and the Major Subcontractors in accordance with Section 8.4; and

Capitalized terms used herein have the meanings given them in the Agreement.

Very truly yours,

**SunPower Corporation, Systems**

By: \_\_\_\_\_  
Contractor's Representative

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Exhibit 10-1

AVSP I EPC Contract  
Exhibit 10 - Form of Application for Payment

Attachment 1

[Attachment 1 shall include all necessary documentary evidence including the submittal of the completed Work (and the applicable quantities) with dollar values.]

Exhibit 10-2

AVSP I EPC Contract  
Exhibit 10 - Form of Application for Payment

**Exhibit 11**  
**Form of Contractor Performance Security**

\*\*\*

[9 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 11-1

AVSP I EPC Contract  
Exhibit 11 - Form of Contractor Performance Security

**Exhibit 12**  
**Form of Equity Contribution Agreement**

\*\*\*

[16 pages redacted]

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Exhibit 12-1

AVSP I EPC Contract  
Exhibit 12 - Form of Equity Contribution Agreement



## EXHIBIT 13A

### Form of Conditional Waiver and Release on Progress Payment

#### CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

CALIFORNIA CIVIL CODE SECTION 8132

**NOTICE:** THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

#### Identifying Information

Name of Claimant: \_\_\_\_\_  
Name of Customer: \_\_\_\_\_  
Job Location: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Through Date: \_\_\_\_\_

#### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_  
Amount of Check: \$ \_\_\_\_\_  
Check Payable to: \_\_\_\_\_

#### Exceptions

This document does not affect the following:

1. Retentions.
2. Extras for which the claimant has not received payment.
3. The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:  
Date(s) of waiver and release: \_\_\_\_\_  
Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
4. Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover for work not compensated by the payment.

#### Signature

Claimant's Signature: \_\_\_\_\_  
Claimant's Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

Exhibit 13A-1

AVSP EPC Contract  
Exhibit 13A - Form of Conditional Lien Release and Waiver

**EXHIBIT 13A-1**

\*\*\*

[2 pages redacted]

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Exhibit 13A-1-1

AVSP EPC Contract  
Exhibit 13A-1 - \*\*\*

**EXHIBIT 13B**

Form of Conditional Waiver and Release on Final Payment

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

*CALIFORNIA CIVIL CODE SECTION 8136*

**NOTICE:** THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

**Identifying Information**

*Name of Claimant:* \_\_\_\_\_

*Name of Customer:* \_\_\_\_\_

*Job Location:* \_\_\_\_\_

*Owner:* \_\_\_\_\_

**Conditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

*Maker of Check:* \_\_\_\_\_

*Amount of Check: \$* \_\_\_\_\_

*Check Payable to:* \_\_\_\_\_

**Exceptions**

This document does not affect the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

**Signature**

*Claimant's Signature:* \_\_\_\_\_

*Claimant's Title:* \_\_\_\_\_

*Date of Signature:* \_\_\_\_\_

Exhibit 13B-1

AVSP EPC Contract  
Exhibit 13B - Form of Conditional Waiver and Release of Final Payment

**Exhibit 14**  
**Module Warranty**

\*\*\*

[22 pages redacted]

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Exhibit 14-1

AVSP EPC Contract  
Exhibit 14 - Module Warranty

## EXHIBIT 15

### **Insurance Requirements**

#### **PART I: CONTRACTOR'S INSURANCE REQUIREMENTS**

Contractor shall secure and maintain the following insurance coverages:

##### **Commercial General Liability**

Coverage shall insure Contractor's legal liability arising out of all the Work and other activities of the Contractor and Subcontractors, including: premises/operations, products/completed operations, personal injury (with the contractual exclusion removed), explosion, collapse and underground property damage; independent contractors, and contractual liability and be written on an occurrence form. The policy form shall be the most recently approved ISO Commercial General Liability insurance policy, or its equivalent as approved by Owner (which approval shall not be unreasonably withheld or conditioned).

##### **Limits of Liability:**

- \$\*\*\*. General Aggregate (per project)
- \$\*\*\*. Products/Completed Operations Aggregate
- \$\*\*\*. Personal & Advertising Injury Limit
- \$\*\*\*. Per Occurrence

##### **Automobile Liability:**

Automobile Liability insurance in respect of all vehicles used on public highways or in any circumstances such as to be liable for compulsory motor insurance in accordance with Applicable Law of the applicable state that the vehicle will operate. The coverage shall apply for all owned, non-owned and hired vehicles. The policy form shall be the most recently approved ISO Business Automobile Liability insurance policy, or its equivalent as approved by Owner (such approval not to be unreasonably withheld or conditioned). If applicable and not provided by a separate pollution liability policy, the coverage shall include an MCS-90 endorsement and broadened pollution coverage endorsement CA 9948 if hazardous waste transportation or disposal is performed as part of the Work.

Limits of Liability: \$\*\*\* combined single limit each accident

##### **Workers' Compensation/Employers' Liability**

- a) Contractor shall maintain statutory limits for Workers' Compensation Insurance and Occupational Disease Insurance in accordance with state laws and any applicable federal law such as (e.g., FELA, USL&H and Jones Act), during the entire time that any full time persons are employed by them on the Site in connection with the Work. Part-time,

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temporary, or leased employees shall be required to maintain separate Workers Compensation Insurance according to the terms herein.

- b) Contractor shall maintain Employers' Liability Insurance with limits of not less than the following: bodily injury by accident - \$\*\*\* each accident; bodily injury by disease - \$\*\*\* policy limit; bodily injury by disease - \$\*\*\* each employee.

The coverages shall cover all work places involved in this Agreement.

### **Umbrella or Excess Liability**

Umbrella or excess liability coverage in excess of the limits of insurance provided by the Commercial General Liability, Automobile Liability and Employers Liability as shown above, providing coverage on a follow form basis. Coverage is required to be written on an occurrence form. Contractor shall provide notice to Owner if at any time the Contractor's full umbrella/excess limits as required in this Exhibit 15 are not available during the term of this Agreement, and Contractor will purchase additional limits to satisfy the requirements herein if reasonably requested by Owner.

Limits of liability of not less than \$\*\*\* per occurrence limit and \$\*\*\* aggregate.

### **Contractor's Pollution Liability**

Insurance for the Contractor's legal liability for losses caused by pollution conditions that arise from the operations of the Contractor at the Site. Such insurance shall include coverage for:

- (a) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- (b) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- (c) Defense costs associated with (a) and (b) above;
- (d) Coverage written on an occurrence form or claims-made form; however if coverage is written on a claims-made form, Contractor shall be required to maintain such coverage for 3 years following the Facility Substantial Completion Date; and
- (e) Coverage shall also include coverage for disposal and transportation of pollutants, if applicable and not provided by the Automobile Liability insurance. The definition of pollution conditions shall include damage to natural resources damage within the definition of property damage resulting from the Contractor's and Subcontractors' work/operations.

Limits of liability of not less than \$\*\*\* each occurrence and aggregate.

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Exhibit 15-2

AVSP I EPC Contract  
Exhibit 15 - Insurance

## **Professional Liability**

Insurance covering damages arising out of negligent acts, errors, or omissions committed by Contractor in the performance of this Agreement. Contractor shall maintain this policy for a minimum of two (2) years after Final Completion Date or shall arrange for a two year extended discovery (tail) provision if the policy is not renewed if written on a claims-made basis. The intent of this policy is to provide coverage for claims arising out of the performance of services under this Agreement and caused by an error, omission, or act for which the Contractor is held liable. Alternatively, the Contractor shall require that Subcontractors who are required to perform professional engineering, consulting, or design services as it relates to the Work shall carry and maintain such insurance during the course of the Project. Evidence of insurance from design Subcontractors to Owner is required prior to acceptance of this alternative. Contractor need not appear as an insured under the Subcontractor's policy.

Liability limit of not less than \$\*\*\* each claim and in the aggregate.

## **Aircraft Liability**

If applicable, in respect of all aircraft owned, non-owned, hired or chartered for use, if any, and hull and aviation liability shall be arranged.

Limit of liability shall not be less than \$\*\*\* per occurrence-

## **Transit/Ocean Marine Insurance**

Contractor shall maintain transit insurance and, if necessary, property insurance covering all domestic and international air, land and water shipments as well as offsite storage of plant, equipment, machinery and materials not covered by the Builders All Risk (BAR) policy (as further described in this Exhibit 15). Coverage shall commence from the manufacturer's and supplier's location and provide continuous coverage including temporary off-site storage and transit to and from locations requiring equipment fabrication/repairs until reaching the Site. Contractor may satisfy its Transit insurance requirement through its equipment and materials supplier's transit insurance covering imports of plant, equipment, machinery and materials to the Site provided such supplier's insurance meets the requirements for Transit insurance as set forth herein.

a) Cover shall provide all risk with the exception of normal and customary exclusions and include Institute Cargo Clauses (A) plus war plus strike, riot and civil strife, perils and shall include a minimum of \*\*\* of storage on or off the Site. The sum insured with respect to each shipment shall not be less than the value of the largest single shipment. Transit and/or Property coverage to include all voyages (land, water or air) sourced overseas, in Canada and Mexico, if not covered under the BAR policy and attaches from the time of leaving the manufacturers'/suppliers' warehouses (including inland marine), to final Site.

b) Deductibles under the Transit coverage shall not be greater than \$\*\*\* for any one shipment.

c) Contractor shall have obtained such Transit and Property coverage on or prior to the date on which the exposure to the risk covered by the Transit coverage arises.

d) The only permissible cancellation of such Transit insurance is as follows: (i) cancellation on \*\*\* notice for war, strikes, civil commotion, (ii) cancellation on \*\*\* notice for strikes, riots, and civil commotion preventing passage to or from the United States, and (iii) cancellation on \*\*\* notice for non-payment of premium.

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Exhibit 15-3

AVSP I EPC Contract  
Exhibit 15 - Insurance

- e) Coverage to continue during storage until BAR policy is in force.
- f) Coverage shall insure Owner, Financing Parties, and Contractor as insured parties to the extent of their interests under this Agreement.
- g) Contractor will be responsible to schedule and pay for marine cargo surveys required by the Transit/Ocean Marine and will also be responsible to coordinate surveys required of Owner's delay in start-up insurers for equipment specified under the insurance. If Contractor fails to schedule the required surveys, Contractor will be responsible for any reduction in, or loss of, coverage that results from such failure.
- h) \*\*\*

**Builders All- Risk /Delay in Start-Up:**

Builders All Risks (“BAR”) insurance covering loss or damage to each Block or portion thereof during the construction, testing and commissioning periods and until such Block reaches Block Substantial Completion.

- a) The policy will include the interest of Contractor, Subcontractors of any tier (performing work at the Site), Owner and Financing Parties, to the extent of their interest under this Agreement, and is to be on an “all risk” basis subject to normal and customary policy exclusions, terms and conditions and subject to normal and customary sub-limits for similar size solar projects as described below, including earthquake, wind and flood losses.
- b) Coverage shall be written on a replacement cost basis and the limit of liability shall be the full replacement cost of the Work or the property in relation to such Blocks that have begun construction (including any Facility Equipment on the Site but not incorporated into the Project) but have not achieved Block Substantial Completion. The earthquake and flood sub-limit for each shall be not less than \$\*\*\* each occurrence and annual aggregate (or when taken together with the AVSP 2 Facility, \$\*\*\*); provided, that, if Owner purchases or requires Contractor to purchase additional earthquake and flood coverage with higher sub-limits, Contractor shall pay the first \$\*\*\* of the aggregate costs to obtain such additional coverage for both the Facility and the AVSP 2 Facility and Owner shall pay all other costs associated with obtaining and maintaining such additional coverage. Normal and customary sub-limits shall be provided for debris removal, demolition costs, expediting expenses, express freight, air freight and overtime. Inland transit and off-site storage will have sub-limits that satisfy the highest valued shipment or storage location, if not provided by the Transit and Ocean Marine Insurance or other Contractor procured insurance policies.
- c) Any required payment of deductibles for builders all-risk insurance shall be the responsibility of Contractor, provided however that deductibles under the builder's risk insurance shall not exceed \$\*\*\* per occurrence except \*\*\*% of values at the time of loss for California earthquake subject to a minimum of \$\*\*\* and a maximum of \$\*\*\* and \*\*\*% of values at time of loss for high hazard flood zones subject to a minimum of \$\*\*\* and maximum of \$\*\*\*.
- d) Contractor shall have obtained such BAR coverage on or prior to the date on which the exposure to the risk covered by the BAR coverage arises.

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- e) The only permissible cancellation is as follows: (i) \*\*\* for non-payment of premium and (ii) material change in the risk profile of the Project after coverage commences.
- f) Coverage to include 50/50 hidden damage provision. Coverage to include testing coverage and resultant damage from faulty design, materials and workmanship (LEG 2 or equivalent).
- g) Coverage to include a sub-limit of \$\*\*\* each occurrence for damage to existing property of Owner.
- h) Serial defects clause to be agreed by Owner and Financing Parties, if applicable.
- i) Owner and Financing Parties shall be included as additional named insured parties under the policy and Financing Parties will be a loss payee as required.
- i) The policy shall not allow any form of subrogation against Owner, Contractor, Subcontractors of any tier or Financing Parties except for (i) manufacturer or supplier of machinery, equipment or other property, whether named as an insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether express or implied, and (ii) architect or engineer, whether named as an insured or not, for any loss or damage arising out of the performance of professional services in their capacity as such and caused by an error, omission, deficiency or act of the architect or engineer, by any person employed by them or by any others whose acts they are legally liable.
- k) Prior to exposure to property damage for equipment and materials that will become a permanent part of the Project, builders risk coverage will be provided based on a loss limit and sub-limits that are approved by the Owner and Financing Parties.

### **Builders All Risk Delay in Start-Up**

Coverage to cover the financial loss arising from a delay of reaching the Block Substantial Completion Date of the Project caused by insurable damage covered by the Builders All Risk Insurance. Coverage to provide debt service and continuing expenses, or gross earnings on and actual loss sustained basis for a \*\*\* period of indemnity. The coverage shall have a maximum waiting period deductible of \*\*\*.

## **PART II: OWNER'S INSURANCE REQUIREMENTS**

Owner shall secure and maintain the following insurance coverages:

### **(1) Workers' Compensation/Employer's Liability**

- a) Owner shall maintain statutory limits for Worker's Compensation Insurance and Occupational Disease Insurance in accordance with Applicable Law (e.g., FELA, USL&H and Jones Act), during the entire time that any persons are employed by Owner on the Site in connection with the Project.
- b) Owner shall maintain Employer's Liability Insurance with limits of not less than the following: bodily injury by accident - \$\*\*\* each accident; bodily injury by disease - \$\*\*\* policy limit; bodily injury by disease - \$\*\*\* each employee.

The Owner may self insure where permitted by Applicable Law.

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Exhibit 15-5

AVSP I EPC Contract  
Exhibit 15 - Insurance

(2) Liability insurance

Owner shall at all times keep in force the following insurance: Liability insurance for the Owner's legal liability arising out of the Site and owned, non-owned or hired vehicles of the Owner with a limit of not less than \*\*\* (\$\*\*\*) per occurrence and in the annual aggregate. Owner may self-insure where permitted by Applicable Law.

(3) Operational All Risk insurance

Owner shall, from each Block Substantial Completion Date to the Facility Substantial Completion Date, keep in force at all times, Operational All Risk Property insurance covering loss or damage to any such covered Block at loss limit and sub-limits at Owner's discretion and will provide evidence of coverage to Contractor. Contractor will cooperate with Owner and provide Project information as reasonably requested by Owner's operational property insurers including providing probable maximum loss estimate reports for flood and earthquake with respect to the Project then in Contractor's or Affiliates control.

(4) All other insurance required by Applicable Law.

**General Insurance Provisions**

- a) all insurance may be carried through the worldwide insurance programs of Owner or Contractor or their respective Affiliates unless project specific policies are required.
- b) All liability insurance required to be maintained by Contractor (except for workers' compensation/employer's liability and professional liability) shall be endorsed to the effect that Owner, the Owner's Affiliates, Financing Parties shall be included as additional insureds thereon. Commercial General Liability insurance additional insured endorsement shall be ISO Form CG 20 10/CG 2037 or other Owner approved equivalent. Contractor's third party liability policies shall provide for a severability of interest clause and waiver of subrogation will be provided on all Contractor's policies except Professional Liability. Contractor's BAR and Transit policies shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner with regard to the Project. Contractor's other policies shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner with regard to the Project except to the extent the loss is attributable to Owner's fault.
- c) In the event any insurance described herein (including the limits or deductibles thereof), other than insurance required by Applicable Law, shall not be available on commercially reasonable terms in the commercial insurance market for facilities having a similar risk profile, the Parties shall consent to waive the requirement to maintain such insurance to the extent the maintenance thereof is not so available on such terms, but the Parties shall continue to remain obligated to maintain any such insurance up to the level, if any, at which such insurance can be maintained on commercially reasonable terms in the commercial insurance market for facilities with a similar risk profile. This waiver is subject to Financing Parties' approval, provided, however, that if the Financing Parties do not provide such approval, Owner shall cover any premium and any other related out of pocket costs incurred by Contractor to obtain and maintain such insurance.

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Exhibit 15-6

AVSP I EPC Contract  
Exhibit 15 - Insurance

- d) As required by Owner's Financing Parties, Contractor will provide certificates of insurance with its insurance broker's letter of certification prior to close of financing and will include the items shown in e) and f) below.
- e) Loss payable wording for the BAR and Transit/Ocean Marine insurance shall be reasonably acceptable to the Financing Parties, if applicable. Contractor will request its insurer(s) to attach 438 BFU or CP 1218 lender loss payable endorsement, its equivalent or other lender loss payable form approved by Owner's Financing Parties
- f) Non-Vitiation. The BAR and Transit/Ocean Marine insurance required to be maintained and shall insure the interests of the Financing Parties regardless of any breach or violation by the Owner or Contractor, its Affiliates or others acting on their behalf of any warranties, declarations or conditions contained in such policies, any action or inaction, or any foreclosure relating to the Project or any change in ownership of all or any portion of the Project (the foregoing may be accomplished by the use of an approved lender loss payable endorsement or acceptable mortgagee clause or multiple insureds clause).
- g) Unless specified otherwise in this exhibit no insurance shall be canceled with respect to the interest of the Financing Parties without \*\*\* (\*\*\* for nonpayment of premium) prior written notice given to the named insured party and the Financing Parties. Such named insured party shall within \*\*\*, provide such notice to the other Party under this Agreement as the case may be. In the event of cancellation due to nonpayment of premium, the Financing Parties, if any, shall have the right to make payments in order to keep insurance in force.
- h) All insurance required to be maintained in accordance with this exhibit shall be placed with financially sound and reputable insurers having an A.M Best rating of \*\*\* or better and with coverage forms reasonably acceptable to the Owner and if applicable, the Financing Parties.
- i) Contractor shall require Subcontractor's who perform Work at the Site to carry liability insurance (auto, commercial general, and excess/umbrella liability) and workers' compensation/employer's liability insurance in accordance with its usual business practice; provided, however, Contractor shall remain responsible and indemnify the Owner for any claims, lawsuits, losses and expenses included defense costs that exceed any of its Subcontractor's insurance limits or for uninsured claims or losses.
- j) All amounts of insurance coverage under this Agreement are required minimums. Owner and Contractor shall each be solely responsible for determining the appropriate amount of insurance, if any, in excess thereof. The required minimum amounts of insurance shall not operate as limits on recoveries available under this Agreement. Owner and Contractor will be responsible for any deductibles and uninsured losses that apply to their insurance requirements as shown in this exhibit.
- k) Evidence of Insurance. Evidence of insurance required hereunder in the form of certificates of insurance shall be furnished by each Party when required to be delivered no later than the date on which coverage is required to be in effect pursuant to this Exhibit 15, as applicable; provided, however, a draft copy of the BAR and Transit/Ocean Marine insurance (redacting any confidential or proprietary information) shall be provided to the Owner and the Financing Parties as soon as reasonably possible prior to the date such insurance is required to be in effect; and the final copy of such BAR insurance shall be provided promptly after

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Exhibit 15-7

AVSP I EPC Contract  
Exhibit 15 - Insurance

such insurance coverage is bound but not later than \*\*\* after coverage is required to be in effect. Not later than \*\*\* of the date of delivery of the certificates of insurance hereunder or the expiration date of the policy if for a term of more than \*\*\*, and not later than each \*\*\* or policy renewal date thereafter, each Party shall deliver copies of the certificate of insurance of the renewal insurance policies.

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Exhibit 15-8

AVSP I EPC Contract  
Exhibit 15 - Insurance

**EXHIBIT 16A**

**Capacity and Availability Test**

\*\*\*

[13 pages redacted]

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Exhibit 16A-1

AVSP I EPC Contract  
Exhibit 16A - Capacity and Availability Test

## EXHIBIT 16B

### Performance Guarantee

#### **Guaranteed Capacity:**

**The Guaranteed Block Capacity for the Facility is defined as:**

All values are at the Delivery Point

Guaranteed Capacity of each Block is listed in Exhibit 4B.

**The Guaranteed Facility Capacity for the Facility is defined as:**

AVSP 1: \*\*\* MWac at the Delivery Point

AVSP 2: \*\*\* MWac at the Delivery Point

**The Guaranteed Capacity applies under the following guarantee reference conditions (GRC) which is the expected point where the inverter clips at its nameplate rating:**

System is in a new and clean condition

Plane of array irradiance:

AVSP 1: 908 W/m<sup>2</sup>

Ambient temperature: 20C

Cell temperature:

AVSP 1: 46.69°C

Wind speed: 1 m/sec

Inverters operating at a unity power factor set-point.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 16B-1

AVSP I EPC Contract  
Exhibit 16B - Performance Guarantees

Measurement uncertainty to be determined based on \*\*\* and applied to the measured value as a tolerance when calculating the Block Capacity Test values to determine if the Guaranteed Capacity has been achieved.

Non-recoverable degradation applied at a rate of \*\*\* to be applied for purposes of the Module degradation warranty.

**Block Guaranteed Availability:**

**The guaranteed availability for each Block is defined as:**

test period:       \*\*\*

availability guarantee:       \*\*\*

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 16B-2

AVSP I EPC Contract  
Exhibit 16B - Performance Guarantees

## EXHIBIT 16C

### Installed DC Rating Survey.

As per PPA requirements, Contractor shall demonstrate that the Total Installed DC Rating (as defined below) of the Facility is greater or equal to  $AVSP1 = *** \text{ kW}_{PDC}$  per PPA Exhibit B1. “Block Installed DC Rating” means, at any time, the sum of the manufacturer's nameplate ratings of all solar panels installed in a Block, as indicated on the nameplates physically attached to the individual solar panels.

The “Total Installed DC Rating” shall be the sum of the Block Installed DC Rating of each Block turned over to Owner.

Contractor shall cooperate with Owner to demonstrate to SCE the actual Total Installed DC Rating.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 16C-1

AVSP I EPC Contract  
Exhibit 16C - Installed DC Rating Survey



**EXHIBIT 16D**

**Facility Demonstration Test**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 16D-1

AVSP II EPC Contract  
Exhibit 16D - Facility Demonstration Test

## EXHIBIT 17

### **Form of Capacity Test Certificate**

**DATE:** \_\_\_\_\_

1. **SunPower Corporation, Systems** (“Contractor”) has delivered this Capacity Test Certificate completed, except for signature by **Solar Star California XIX, LLC** (“Owner”), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner, dated as of November [\_\_\_], 20[\_\_\_] (the “Agreement”).

2. Contractor certifies and represents to Owner that the following statements are true with respect to Block[s] \_\_\_\_\_ as of the date of delivery hereof to Owner:

- a. The Capacity Test of such Block[s], described in Exhibit 16A of the Agreement, has been conducted, and the Final Test Results demonstrate that the Minimum Capacity Level for such Block[s] [has/have] been achieved according to the criteria set forth in Exhibit 16A of the Agreement.
- b. The Final Test Results of such Block[s], performed pursuant to Exhibit 16A of the Agreement, are attached hereto.

The person signing below is authorized to submit this Capacity Test Certificate to Owner for and on behalf of Contractor.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that the Capacity Test for the Block[s] named above has been completed as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the Block[s], Facility or their respective performance.

**Owner: Solar Star California XIX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Capacity Test Certificate for and on behalf of Owner.

Exhibit 17-1

## EXHIBIT 18

### Disputed Change Order Methodology

Contractor shall develop the adjustment to the Contract Price utilizing the following Contractor Rate Schedule:

<b>CONTRACTOR 2012 RATE SCHEDULE</b>			
<b>Hourly Labor Rates</b>			
<b>Job Title</b>	<b>Normal</b>	<b>Overtime</b>	<b>Holiday</b>
Senior Project Manager	***	***	***
Project Manager	***	***	***
Design Engineer	***	***	***
CAD Operator	***	***	***
EE/Mechanical Engineer	***	***	***
Construction Manager	***	***	***
Administrative Assistant	***	***	***
Principals / Officers / Project Director	***	***	***
<b>Overhead and Profit Mark-up Percent</b>			
Without duplication of any amounts due and owing as Direct Costs under the Agreement:			
<b>Vendor Materials</b>	***		
SunPower Materials	***		
<b>Subcontractor</b>	***		
<b>Labor</b>	***		
Travel Expenses	***		
Other Expenses	***		
	Rates for 2013 and onwards will be adjusted from 2012 prices by CPI (as defined in the O&M Agreement)		
	With X= ***% for forced Changes (Example: Change Orders resulting from		

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 18-1

AVSP I EPC Contract  
Exhibit 18 - Disputed Change Order Methodology

Section 10.1, Section 10.2, Section 10.3, Section 11.4(d) and Section 19.4  
\*\*\*% for all other Change Orders (Example: Change Orders resulting from Section 11.4(b))

Exhibit 18-2

AVSP I EPC Contract  
Exhibit 18 - Disputed Change Order Methodology

## EXHIBIT 19

### **Form of Certificate of Block Substantial Completion**

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** (“Contractor”) has delivered this Certificate of Block Substantial Completion completed, except for signature by **Solar Star California XIX, LLC** (“Owner”), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner dated as of November [\_\_\_\_], 20[\_\_\_\_] (the “Agreement”).

2. Contractor certifies and represents to Owner that the following statements are true with respect to Block[s] \_\_\_\_\_ as of the date of delivery hereof to Owner:

the design, engineering, procurement and construction of such Block[s] [has/have] been completed in accordance with the Agreement except for Punch List Items and the Block has been commissioned and a Functional Test has been Successfully Run in respect of such Block and such Block is ready to commence commercial operation;

the Block[s] [is/are] electrically interconnected to and [has/have] been synchronized with, and [is/are] capable of transmitting electric energy to, the Delivery Point in accordance with the Interconnection Agreement and the PPA and all testing and obligations under the PPA required as a condition to such delivery of energy under the PPA, including testing required by CAISO for delivery of electricity from such Block[s] have been satisfactorily completed;

a Capacity Test pursuant to Exhibit 16A of the Agreement has been Successfully Run in respect of such Block[s] and Contractor has provided to Owner, and Owner has accepted, a Capacity Test Certificate evidencing that the Minimum Capacity Level for such Block[s] has been achieved;

the Block[s] [is/are] capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;

Owner has received all Contractor Submittals (if any) as required to be delivered by the Block Substantial Completion Date for such Block;

Contractor and Owner have agreed to the Punch List Items for the Block[s] and Contractor has completed all Work on such Block[s] other than the remaining Punch List Items; and

Exhibit 19-1

AVSP I EPC Contract  
Exhibit 19 - Form of Certificate of Block Substantial Completion

Contractor has delivered the notice of Block Substantial Completion of such Block[s] to Owner pursuant to Section 16.3 of the Agreement.

The person signing below is authorized to submit this Block Substantial Completion Certificate to Owner for and on behalf of Contractor.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that Block Substantial Completion has been achieved with respect to the Block[s] set forth above. This certificate was received by Owner on the date first written above and is effective as provided in accordance with Section 16.3 of the Agreement. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to such Blocks, the Facility or their respective performance.

**Owner: Solar Star California XIX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Certificate of Block Substantial Completion for and on behalf of Owner.

Exhibit 19-2

AVSP I EPC Contract  
Exhibit 19 - Form of Certificate of Block Substantial Completion

## EXHIBIT 20

### **Form of Certificate of Facility Substantial Completion**

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** (“Contractor”) has delivered this Certificate of Facility Substantial Completion completed, except for signature by **Solar Star California XIX, LLC** (“Owner”), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner dated as of November [\_\_\_\_], 20[\_\_\_\_] (the “Agreement”).

2. Contractor certifies and represents to Owner that the following statements are true with respect to the Facility as of the date of delivery hereof to Owner:

each Block has achieved Block Substantial Completion and the Project as a whole is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;

at least \*\*\* MW of inverters have been installed as determined by aggregating the nameplate of inverters;

the Facility is operational and can demonstrate that it evacuates power at the Delivery Point pursuant to the Facility Demonstration Test performed in accordance with Exhibit 16D of the Agreement;

the most recent Functional Test has been Successfully Run in respect of the Facility and the Facility is ready to commence commercial operation;

the Guaranteed Capacity for the Facility has been achieved, or if not, the Facility Capacity is greater than the Minimum Capacity Level of the Facility and Contractor has paid the applicable Final Capacity Liquidated Damages;

each of the requirements to achieve “Commercial Operation” under the PPA shall have been satisfied, except those requirements that are Owner's obligations set forth in Sections L, M or N of Exhibit 1;

Contractor and Owner have agreed upon the list of Punch List Items;

Owner has received all Contractor Submittals as required to be delivered by the Facility Substantial Completion Date in accordance with Exhibit 7 of the Agreement;

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 20-1

AVSP I EPC Contract  
Exhibit 20 - Form of Certificate of Facility Substantial Completion

all construction and post-construction submittals required by the Contractor Acquired Permits for the Project have been submitted to the appropriate Governmental Authorities;

all Certificates of Block Substantial Completion have been received by and approved or deemed approved by Owner;

\*\*\*;

the Facility has successfully completed the Installed DC Rating Survey in accordance with Exhibit 16C of the Agreement; and

Contractor has delivered the notice of Facility Substantial Completion to Owner pursuant to Section 16.5 of the Agreement.

The person signing below is authorized to submit this Facility Substantial Completion Certificate to Owner for and on behalf of Contractor.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that Facility Substantial Completion has been achieved as set forth herein. This certificate was received by Owner on the date first written above and is effective as provided in Section 16.5 of the Agreement. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the Blocks, the Facility or their respective performance.

**Owner: Solar Star California XIX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Facility Substantial Completion Certificate for and on behalf of Owner.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 20-2

AVSP I EPC Contract  
Exhibit 20 - Form of Certificate of Facility Substantial Completion



## EXHIBIT 21

### **Form of Certificate of Final Completion**

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** ("Contractor") has delivered this Certificate of Final Completion completed, except for signature by **Solar Star California XIX, LLC** ("Owner"), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner dated as of November [\_\_\_\_], 20[\_\_\_\_] (the "Agreement").

2. Contractor certifies and represents to Owner that the following statements are true with respect to the Facility as of the date of delivery hereof to Owner:

Facility Substantial Completion has occurred;

the performance of the Work for the Facility is complete, including all Punch List Items or pursuant to Section 8.1(c) of the Agreement, Owner has withheld any remaining Punch List Holdback to complete any items on the Project Punch List not completed by Contractor in accordance with the terms hereof;

Contractor has delivered all Contractor Submittals, including the final record as-built drawings;

Contractor has paid all bills from its Subcontractors related to the Project that are not in dispute;

no Contractor Liens shall be outstanding against the Project and Owner shall have received all required final lien waivers under Section 8.4 of the Agreement;

Contractor has complied with its clean-up obligations pursuant to Section 3.15 of the Agreement;

Contractor has paid all Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages and Final Capacity Liquidated Damages, if any, to the extent required in accordance with this Agreement;

\*\*\* and

Contractor has delivered the notice of Final Completion to Owner pursuant to Section 18.2 of the Agreement.

The person signing below is authorized to submit this Certificate of Final Completion to Owner for and on behalf of Contractor. By execution of this Certificate of Final Completion,

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 21-1

AVSP I EPC Contract  
Exhibit 21 - Form of Certificate of Final Completion

Owner does not waive any right it may have under the Agreement with respect to the Blocks, the Facility or their respective performance.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that Final Completion has been achieved. This certificate was received by Owner on the date first written above and is effective as of such date.

**Owner: Solar Star California XIX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Final Completion Certificate for and on behalf of Owner.

Exhibit 21-2

**Exhibit 22**  
**Form of Safety Plan**

\*\*\*

[151 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 22-1

AVSP I EPC Contract  
Exhibit 22 - Form of Safety Plan

**Exhibit 23**  
**Form of Quality Assurance and Control Plan**

\*\*\*

[16 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 23-1

AVSP I EPC Contract  
Exhibit 23 - Form of Quality Assurance and Control Plan

EXHIBIT 24

**QUALIFIED MAJOR SUBCONTRACTORS**

Additional suppliers and subcontractor may be added to Exhibit 24 after the Effective Date with prior written consent of the Owner, which such consent shall not be unreasonably withheld.

<i>Inverters</i>	<i>Inverter Step-up transformers</i>	<i>Substation Main Power Transformers</i>	
***	***	***	

<i>Modules</i>	<i>Electrical Installation</i>	<i>Project Control System</i>	<i>Project Substation Design &amp; Construction</i>
***	***	***	***
			***

<i>Site Preparation/Grading</i>	<i>SCADA</i>	<i>Meteorological Stations</i>	
***	***	***	

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 24-1

AVSP I EPC Contract  
Exhibit 24 - Qualified Major Subcontractors

**Exhibit 25**  
**EITC and Depreciation Exhibit**

\*\*\*

[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 25-1

AVSP I EPC Contract  
Exhibit 25 - EITC and Depreciation Exhibit

**EXHIBIT 26**  
**Limited Notice to Proceed Work**

On the Effective Date, Contractor is authorized to commence and to perform the following Work and shall complete such Work in accordance with this Exhibit 26 and the Agreement:

**Section 1. Full NTP Conditions**

**Part A - Full NTP Condition Work**

Contractor shall use commercially reasonable efforts to obtain or complete each of the following items on or before \*\*\*:

(a) \*\*\*

(b) \*\*\*.

**Part B - Additional Full NTP Condition**

It shall also be a condition to Full NTP that Owner, in its sole discretion, has agreed on or before \*\*\*, unless terminated sooner in accordance with Section 20.9, that the Work associated with the engineering, design and construction plans is sufficient to mitigate the Water Banking Risks.

**Section 2. Additional Development Work**

Contractor shall complete each of the following items in the course of the performance of the Work under the Agreement:

\*\*\*

**Section 3. Additional Limited Notice to Proceed Work**

\*\*\*

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 26-1

AVSP I EPC Contract  
Exhibit 26 - Limited Notice to Proceed Work

**EXHIBIT 27**

**COMMISSIONING AND FUNCTIONAL TESTING**

\*\*\*

[3 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 27-1

AVSP I EPC Contract  
Exhibit 27 - Commissioning and Functional Testing



**Exhibit 28**  
**Performance Guaranty Agreement**

\*\*\*

[57 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 28-1

AVSP I EPC Contract  
Exhibit 28 - Performance Guaranty Agreement

**EXHIBIT 29**

**RIGHT OF FIRST OFFER**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 29-1

AVSP EPC Contract  
Exhibit 29 - Right of First Offer

**Exhibit 30**  
**Spare Parts**

\*\*\*

[1 page redacted]

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Exhibit 30-1

AVSP EPC Contract  
Exhibit 30 - Spare Parts

**EXHIBIT 31**  
**Credit Support Requirements**

\*\*\*

[3 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 31-1

AVSP I EPC Contract  
Exhibit 31 - Credit Support Requirements

**EXHIBIT 32**

Form of Acceptable Letter of Credit

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name of Issuing Bank]                      Letter Of Credit No. [\_\_\_\_\_]
[Address of Issuing Bank]                      Irrevocable Standby Letter Of Credit
[City, State of Issuing Bank]

Date of Issue: [\_\_\_\_\_] , 20\_\_                      Stated Expiration Date: [\_\_\_\_\_]

Applicant:                      Stated Amount: USD \$[\_\_\_\_\_]
SunPower Corporation, Systems
1414 Harbour Way South
Richmond, CA 94804

Beneficiaries:
Solar Star California XIX, LLC
c/o MidAmerican Solar, LLC
1850 N. Central Avenue, Suite 1025
Phoenix, Arizona 85004
Attn: President

and

Solar Star California XX, LLC
c/o MidAmerican Solar, LLC
1850 N. Central Avenue, Suite 1025
Phoenix, Arizona 85004
Attn: President

Credit Available With: [\_\_\_\_\_]

Exhibit 32-1

Ladies and Gentlemen:

At the request and for the account of SunPower Corporation, Systems, a Delaware corporation (the "Applicant"), we hereby establish in favor of Solar Star California XIX, LLC and Solar Star California XX, LLC (each individually a "Beneficiary" and collectively, the "Beneficiaries") for the aggregate amount not to exceed [ ] million United States Dollars (\$ ), in connection with (a) the Engineering, Procurement and Construction Agreement dated as of [ ], 2012 (as amended, restated, amended and restated or otherwise modified, the "AVSP 1 EPC Agreement"), by and between the Applicant and Solar Star California XIX, LLC and (b) the Engineering, Procurement and Construction Agreement dated as of [ ], 2012 (as amended, restated, amended and restated or otherwise modified, the "AVSP 2 EPC Agreement"), by and between the Applicant and Solar Star California XX, LLC (the AVSP 1 EPC Agreement and AVSP 2 EPC Agreement are each individually referred to as an "EPC Agreement" and are collectively referred to as the "EPC Agreements"), this Irrevocable Standby Letter of Credit no. [ ] (this "Letter of Credit") expiring on [date not earlier than 364 days from issuance] (the "Stated Expiration Date").

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount (as defined

below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized representative of a Beneficiary completed in the form of Annex 1 hereto (a "Drawing Request"). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an "Automatic Reduction").

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts reinstated pursuant to the terms hereof plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the "Available Amount").

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [ ], referencing this Letter of Credit No. [ ]. In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

Exhibit 32-2

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day (as defined below), payment will be made not later than the close of business, New York City time, on such Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the following Business Day not later than the close of business, New York City time on such following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as is set forth below.

As used in this Letter of Credit, "Business Day," means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to remain closed in the State of New York.

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from a Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the "Early Expiration Date") specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiaries and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than \*\*\* after the date of such notice, with the Beneficiaries remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of \*\*\* each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least \*\*\* prior to any such expiry date we have sent you written notice ( the "Notice of Non-Renewal") by certified mail or overnight hand delivered courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiaries and Applicant in accordance herewith, the Beneficiaries are authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by a Beneficiary's authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiaries prompt notice of same stating the reasons therefor and shall upon receipt of a Beneficiary's instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiaries at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, a Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document,

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 32-3

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the “International Standby Practices 1998” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of New York.

This Letter of Credit is transferable, in its entirety upon presentation to us of a signed transfer certificate in the form of Annex 3 accompanied by this Letter of Credit, in which a Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant.

All Drawing Requests under this Letter of Credit must bear the clause: “Drawn under [***Name of Issuing Bank***], Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_].”

This Letter of Credit shall not be amended except with the written concurrence of [***Name of Issuing Bank***], the Applicant and the Beneficiaries.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[***Name of Issuing Bank***]

Authorized signature

Exhibit 32-4

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit



ANNEX 1  
[Letterhead of a Beneficiary]

Drawn under [insert name of Issuing Bank],  
Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]

DRAWING REQUEST  
[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of a Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$\_\_\_\_\_ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the EPC Agreement applicable to Beneficiary.  
or

B-2) The Letter of Credit will expire within \*\*\* of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicants have failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the EPC Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;  
; and

C) You are directed to make payment of the requested drawing to:

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 32-5

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary]

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

Name:

Title:

cc:

[Applicant name and address]

Exhibit 32-6

ANNEX 2  
NOTICE OF EARLY EXPIRATION  
[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [ ] (the “Letter of Credit”) dated [ ] issued by [Issuing Bank] in favor of [ ] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on \_\_\_\_\_, \_\_\_\_\_ [insert a date which is \*\*\* or more days after the date of this notice of early expiration] (the “Early Expiration Date”).

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[ISSUING BANK]

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

Name:

Title:

cc:

[Applicant name and address]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 32-7

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[*Name of Issuing Bank*], Date: \_\_\_\_\_  
[*Address*]  
[*City, State*]

Attn: Trade Services Department

Re: [*Name of Issuing Bank*], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE \_\_\_\_\_  
ADDRESS OF TRANSFEREE \_\_\_\_\_  
\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP \_\_\_\_\_

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such letter of credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[\_\_\_\_\_] and maximum of \$[\_\_\_\_\_].

**Select one of the following:**

\_\_\_\_ we enclose a cashier's/certified check  
\_\_\_\_ we have wired funds to you through \_\_\_\_\_ bank  
\_\_\_\_ we authorize you to debit our account # \_\_\_\_\_ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

Very truly yours,  
[BENEFICIARY NAME]

\_\_\_\_\_  
Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

\_\_\_\_\_  
(Signature of Authenticating Bank) (Name of Bank)  
\_\_\_\_\_  
(Printed Name/Title) (Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

Exhibit 32-8

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

[Beneficiary name]

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

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

Exhibit 32-9

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

ANNEX 4  
VOLUNTARY REDUCTION REQUEST CERTIFICATE  
[Date]

[insert name of Issuing Bank]  
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [ ] (the “Letter of Credit”) dated [ ] issued by you in favor of [ ] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [ ] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by \$[ ] to \$[ ].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

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

cc:

[Applicant name and address]

Exhibit 32-10

AVSP EPC I Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

**EXHIBIT 33**

**AVSP 1**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 33-1

AVSP EPC I Contract  
Exhibit 33 - \*\*\*

**CONFIDENTIAL TREATMENT REQUESTED**

**CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN  
SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION**

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

**(Antelope Valley Solar Project 270.18 MW at the Delivery Point)**

Dated as of December 28, 2012

By and between

**SOLAR STAR CALIFORNIA XX, LLC**

And

**SUNPOWER CORPORATION, SYSTEMS**

**Contractor's License No. 890895**



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## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT, dated as of December 28, 2012 (this "Agreement"), is entered into by and between SOLAR STAR CALIFORNIA XX, LLC, a Delaware limited liability company ("Owner"), and SunPower Corporation, Systems, a corporation formed under the laws of the State of Delaware ("Contractor"). Owner and Contractor are each hereinafter sometimes referred to as a "Party" and collectively as the "Parties."

### RECITALS

**WHEREAS**, on December 28, 2012, AVSP 2A, LLC, a Delaware limited liability company, and AVSP 2B, LLC, a Delaware limited liability company, collectively as purchasers ("Purchasers") and Contractor and SunPower Corporation, a Delaware corporation, collectively as sellers ("Sellers") entered into that certain Membership Interest Purchase and Sale Agreement (the "MIPA") that set forth the terms and conditions pursuant to which Purchasers would acquire one hundred percent (100%) of the membership interests of Owner;

**WHEREAS**, on December 28, 2012, AVSP 1A, LLC, a Delaware limited liability company, and AVSP 1B, LLC, a Delaware limited liability company, collectively as purchasers (the "AVSP 1 Purchasers") and Sellers also entered into that certain Membership Interest Purchase and Sale Agreement that set forth the terms and conditions pursuant to which the AVSP 1 Purchasers would acquire one hundred percent (100%) of the membership interests of Solar Star California XIX, LLC from Sellers;

**WHEREAS**, Owner intends to develop a 270.18 MW at the Delivery Point (approximately 279 MW nameplate capacity) solar photovoltaic power plant located in Kern County, California (the "Facility") described in and including all of the components set forth in Exhibit 3 (the "Technical Specifications"), on the real property more fully described in Exhibit 2 (the "Site");

**WHEREAS**, Solar Star California XIX, LLC intends to develop a 308.97 MW at the Delivery Point (approximately 318 MW nameplate capacity) solar photovoltaic power plant located in Kern and Los Angeles Counties, California (the "AVSP 1 Facility");

**WHEREAS**, Contractor designs, engineers, supplies, constructs and installs photovoltaic systems such as the Facility on a turn-key basis, to make available electrical energy to a transmission interconnection facility;

**WHEREAS**, Owner desires to engage Contractor to design, engineer, supply, construct, install, test and commission the Facility at the Site and perform all other Work under this Agreement (the "Project") and Contractor desires to carry out such work or services, all as further defined by and in accordance with the terms and conditions set forth in this Agreement;

**WHEREAS**, Owner and Contractor have entered into that certain Management, Operation and Maintenance Agreement dated as of the date hereof (as the same may be modified, amended or supplemented from time to time in accordance with the terms thereof,



(the “O&M Agreement”), whereby Contractor, in its role as operations and maintenance vendor (the “O&M Provider”), will provide certain operating and maintenance services for the Facility in accordance with the terms and conditions set forth therein; and

**WHEREAS**, Contractor and Solar Star California XIX, LLC have separately entered into that certain Engineering, Procurement and Construction Agreement and that certain Management, Operation and Maintenance Agreement, each dated as of the date hereof with respect to the AVSP 1 Facility.

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1.**

### **CONTRACT INTERPRETATION AND EFFECTIVENESS**

**1.1 Rules of interpretation.** Unless the context requires otherwise: (a) unless the context clearly intends to the contrary, the singular includes the plural and vice versa, (b) terms defined in a given number, tense or form shall have the corresponding meanings when used with initial capitals in another number, tense or form, (c) unless otherwise stated, words in Exhibits 1, 3, 7, 16, 22, 23, 26 and 27 which have well known technical or construction industry meanings are used in accordance with such recognized meanings, (d) the words “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation” and unless otherwise specified shall not be deemed limited by the specific enumeration of items, (e) unless otherwise specified, references to “Sections”, “Schedules” and “Exhibits” are to sections, schedules and exhibits to this Agreement, (f) the words “herein”, “hereof”, “hereto”, “hereinafter” “hereunder” and other terms of like import refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (g) a reference to a Person in this Agreement or any other agreement or document shall include such Person's successors and permitted assigns, (h) references to this Agreement include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time, (i) without adversely impacting Contractor's remedies regarding a Change In Law, references to Applicable Law or Applicable Permit are references to the Applicable Law or Applicable Permit, as applicable, as now or at any time hereafter may be in effect, together with all amendments and supplements thereto and any Applicable Law or Applicable Permit substituted for or superseding such statute or regulation, (j) without adversely impacting the rights of either Party with respect to the amendment, restatement or replacement of any agreement under which such Party shall be liable hereunder, references to agreements, certificates, documents and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements, certificates or instruments that are duly entered into and effective against the parties thereto or their successors and permitted assigns, (k) a reference to a Governmental Authority includes an entity or officer that or who succeeds to substantially the same functions as performed by such Governmental Authority as of the date hereof, (l) “shall” and “will” mean “must” and have equal force and effect and express an obligation, (m) this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by

virtue of the authorship of any provision in this Agreement, (n) the word “or” in this Agreement is disjunctive but not necessarily exclusive, (o) references in this Agreement to time periods in terms of a certain number of Days mean calendar Days unless expressly stated herein to be Business Days, (p) headings used in this Agreement are for ease of reference only and shall not be taken into account in the interpretation or construction of the provisions of this Agreement, and (q) the words “dollar”, “dollars” or “money” and the symbol “\$” each mean United States Dollars.

**1.2 Defined terms.** Unless otherwise stated in this Agreement, capitalized terms used in this Agreement have the following meanings:

“Abandons” means, other than in the event of a Force Majeure Event or an Excusable Event, Contractor abandons, ceases to perform the Work or leaves the Site for a period longer than four (4) continuous months.

“AAA” means the American Arbitration Association.

“Acceptable Letter of Credit” means, at any time on or after the Effective Date, an irrevocable standby letter of credit substantially in the form attached hereto as Exhibit 32, issued at such time by a Qualified Financial Institution of which Owner is the beneficiary that: (a) has a stated expiration date of not earlier than three hundred sixty-four (364) Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof, (b) automatically renews or permits Owner, on the signature of an authorized representative, to draw on sight all or any portion of the stated amount if not renewed (or replaced by Contractor with another Acceptable Letter of Credit) on or prior to the \*\*\* prior to the stated expiration date, (c) \*\*\*, (d) the principal office of such issuing bank, the location for the submittal of documents required for draws under such letter of credit and the location for disbursements under such letter of credit being New York, New York or such other location as may be mutually agreed in writing by Contractor and Owner, (e) is payable in Dollars in immediately available funds, (f) is governed by the International Standby Practices (ISP 98), and, to the extent not governed by the foregoing, the laws of the State of the New York and (g) is drawable upon issuance of a drawing certificate signed by an authorized representative of Owner.

“Acceptance” has the meaning set forth in Section 15.4.

“Action” has the meaning set forth in Section 14.3(e).

“Actual Tax Basis” means, with respect to a Block, the tax basis as determined in the Basis Determination as to such Block.

\*\*\*

“Affiliate” means, when used with reference to a specified Person, any Person directly or indirectly Controlling, Controlled by, or under common Control with the specified Person.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

“Agreement” has the meaning set forth in the preamble, including all Exhibits hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

“Applicable Codes” means codes, standards or criteria, such as the National Electric Code and those codes, standards or criteria promulgated by the American Society of Mechanical Engineers, Underwriters Laboratories and Institute of Electrical and Electronics Engineers, and other recognized standards institutions, which are generally recognized as applicable to the Work or the Facility.

“Applicable Laws” means, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority, including Environmental Laws.

“Applicable Permits” means each and every national, regional and local license, authorization, consent, ruling, exemption, variance, order, judgment, certification, filing, recording, permit or other approval with or of any Governmental Authority, including each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of, in connection with or related to the Work or the design, construction or operation of the Facility, including those set forth on Exhibits 6A and 6B.

“Applicable Tax Basis” means for each Block the lesser of (a) the tax basis of such Block as reflected in Exhibit 25 and (b) the Actual Tax Basis.

“Application for Payment” means an application for payment in the form attached hereto as Exhibit 10.

“Arbitration Rules” has the meaning set forth in Section 28.2(b).

“Availability Test” means the test to determine the availability of the Block as described in Exhibit 16A.

\*\*\*

\*\*\*

“AVSP 1 Facility” has the meaning set forth in the Recitals.

“AVSP 1 Purchasers” has the meaning set forth in the Recitals.

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“Basis Determination” means the actual tax basis (or as applicable the actual EITC eligible tax basis) of any Block as Owner and Contractor shall reasonably agree, or if they are unable to agree as determined by \*\*\* (so long as they are not the accounting firm used by either Party) or another independent nationally recognized accounting firm selected by Owner and reasonably acceptable to Contractor. Such accounting firm shall be provided financial and engineering records as they shall reasonably request from Owner, Contractor or their respective Affiliates, subject to customary confidentiality arrangements. Absent manifest error, the determination of such accounting firm shall be final and binding. The payment of the fees and expenses of such accounting firm shall be divided equally between Owner and Contractor.

“Block” means a delineated group of Modules and applicable connected inverters, trackers, mounting structures, interconnecting equipment and other Equipment directly supporting the operation of and energy generation output by such Modules.

“Block Actual Maximum EITCs” means for each Block the lesser of the (a) maximum amount of EITCs for which such Block could have been capable of qualifying, assuming (i) that each Block achieved Block Substantial Completion on its actual Block Substantial Completion Date and (ii) Block Substantial Completion is equivalent to Placed in Service for each applicable Block, and (b) \*\*\* of the Applicable Tax Basis of such Block.

“Block Capacity Liquidated Damages” has the meaning set forth in Section 17.3.

“Block Delay Liquidated Damages” has the meaning set forth in Section 17.1(a).

“Block Maximum EITCs” means for each Block the lesser of the (a) maximum amount of EITCs for which such Block could have been capable of qualifying, assuming (i) that each Block achieved Block Substantial Completion by its Guaranteed Block Substantial Completion Date (as in effect on the Effective Date and without giving effect to any extensions thereof under this Agreement) and (ii) Block Substantial Completion is equivalent to Placed in Service for each applicable Block, and (b) \*\*\* of the Applicable Tax Basis of such Block.

“Block Measured Capacity” means, with respect to a Block, the aggregate electrical capacity of the Modules comprising such Block, as measured pursuant to the provisions of Exhibit 16A.

“Block Substantial Completion” has the meaning set forth in Section 16.2.

“Block Substantial Completion Date” has the meaning set forth in Section 16.3.

“Business Day” means a Day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for business in the State of California.

“CAISO” means the California Independent System Operator Corporation.

“CAISO Tariff” means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

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“Capacity LD Amount” means the amount of Development Security that SCE has the right to retain under the PPA associated with the reduction in capacity.

“Capacity Shortfall” has the meaning set forth in Exhibit 16A.

“Capacity Test” means, with respect to each Block, the test and commissioning of such Block as described in Exhibit 16A.

“Capacity Test Certificate” means the certificate in the form of Exhibit 17 to be issued by Contractor after completion of a Capacity Test.

“Certificate of Block Substantial Completion” means a certificate delivered by Contractor pursuant to Section 16.3 and substantially in the form attached as Exhibit 19.

“Certificate of Facility Substantial Completion” means a certificate delivered by Contractor pursuant to Section 16.5 and substantially in the form attached as Exhibit 20.

“Certificate of Final Completion” means a certificate delivered by Contractor pursuant to Section 18.2 and substantially in the form attached as Exhibit 21.

“Change in Law” means the enactment, adoption, promulgation, modification (including a written or oral change in interpretation by a Governmental Authority) or repeal of any Applicable Law or Applicable Permit after the Effective Date that has or will have an adverse effect on Contractor's costs and/or schedule for performing the Work; provided, however, that no Change in Law pursuant to this Agreement shall arise by reason of (a) any national, federal, state or provincial income Tax law (or any other Tax law based on income), (b) any federal law imposing a custom, duty, levy, impost, fee, royalty or similar charge for which Contractor is responsible hereunder with respect to the importation of Facility Equipment from outside of the United States, (c) a labor wage law or other Applicable Law that affects Contractor's or its Subcontractor's costs of employment, (d) a change of law outside of the United States of America, including any change in law that affects the cost of goods, manufacturing, shipping or other transportation of any Facility Equipment and (e) the final enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date.

“Change in Project Agreement” means any amendment, restatement or replacement, after the Effective Date, of the following agreements: Interconnection Agreement, PPA, any agreement relating to the Real Property Rights, or any other agreement or document to which Owner is or becomes a party and under which Contractor has any obligation to comply with (directly or indirectly) hereunder; provided, however, that Contractor shall be required to comply with the amendments, restatements or replacements to the agreements or documents contemplated in the MIPA or in Exhibit 26 without a Change Order or other cost or schedule relief and such amendments, restatements or replacements shall not be considered Changes in Project Agreements.

“Change in Tax Law” means, after the Effective Date (a) any change in or amendment to the Code or another applicable federal income tax statute other than a reduction in an income tax rate of less than \*\*\*, (b) \*\*\*, (c) the issuance of \*\*\* final Treasury Regulations, (d) \*\*\*, (e) any

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change in the interpretation of the Code or Treasury Regulations by a decision, judgment, or opinion of the United States Tax Court, United States District Court that would have had jurisdiction over Purchaser, United States Court of Appeals or United States Supreme Court, or (f) \*\*\*.

“Change Order” means a written document signed by Owner and Contractor or otherwise placed into effect under Article 10, authorizing an addition, deletion or revision to the Work, an adjustment of the Contract Price or Construction Schedule, and/or any other obligation of Owner or Contractor under this Agreement, which document is issued after execution of this Agreement.

“Claim Notice” has the meaning set forth in Section 24.5.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Operation Deadline” has the meaning set forth in the PPA.

“Confidential Information” has the meaning set forth in Section 25.1.

“Construction Equipment” means all equipment, machinery, tools, consumables, temporary structures or other items as may be required for Contractor to complete the Work but which will not become a permanent part of the Facility.

“Construction Schedule” means the schedule based on and consistent with the provisions set forth in Exhibit 4A and Exhibit 4B attached hereto for the prosecution of the Work by Contractor for the Project (including the achievement of the Guaranteed Facility Substantial Completion Date and the Guaranteed Final Completion Date), created in accordance with Section 3.11 and as updated from time to time pursuant to the terms of this Agreement.

“Contract Documents” means this Agreement, the exhibits and schedules hereto, and Contractor Submittals.

“Contract Price” means the sum of \*\*\*, as the same may be modified from time to time in accordance with the terms of this Agreement.

“Contractor” has the meaning set forth in the preamble.

“Contractor Acquired Permits” means those Applicable Permits to be acquired by Contractor and designated on Exhibit 6A and any other Applicable Permits, other than Owner Acquired Permits.

“Contractor Critical Path Items” means those items that are designated as “Contractor Critical Path Items” in the Construction Schedule.

“Contractor Event of Default” has the meaning set forth in Section 20.1.

“Contractor Lien” means any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, charge or encumbrance on the Work, the Facility

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Equipment, the Project, the Site or any part thereof directly or indirectly created, incurred, assumed or suffered to be created by Contractor Party (other than in accordance with any other Project Transaction Document), any Subcontractor, any Supplier, or any of their respective employees, laborers or materialman.

“Contractor Party” or “Contractor Parties” means each of Contractor, SunPower Corporation, and any of their respective present and future subsidiaries and Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns.

“Contractor Performance Security” means a corporate guaranty from SunPower Corporation, in the form attached hereto as Exhibit 11.

“Contractor Submittals” means the drawings, specifications, plans, calculations, model, designs and other deliverables described in Exhibit 7.

“Contractor's Insurance” has the meaning set forth in Section 23.1, as further described in Part I of Exhibit 15.

“Contractor's Representative” means the individual designated by Contractor in such capacity set forth on Exhibit 5 in accordance with Section 5.2.

“Control” means (including with correlative meaning the terms “Controlled”, “Controls” and “Controlled by”), as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Cumulative MW” means, as of the date of determination, the aggregate Block Measured Capacities of all the Blocks that have achieved Block Substantial Completion.

“DAS System” means the data acquisition system installed by Contractor in the Facility, as more specifically described in Exhibit 3 under “SCADA System”.

“Day” means calendar Day unless it is specified that it means a Business Day.

“Defect Warranty” has the meaning given in Section 21.3(a).

“Defect Warranty Period” has the meaning given in Section 21.4(a).

“Delay Response Plan” has the meaning set forth in Section 3.22.

“Delivery Point” means the point of interconnection at the Whirlwind Substation, identified as Q408, as set forth in the single-line diagram in Exhibit 1.

“Depreciation Benefit” means the most accelerated depreciation available under Sections 167 and 168 of the Code, assuming the utilization of the shortest available recovery period, the most accelerated depreciation method available, the half-year convention and a full first taxable year (however, in no event shall the depreciation be more accelerated than \*\*\* declining balance

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depreciation (without application of Section 168(k) of the Code or any successor thereto). The recovery periods applicable to each Block shall be determined using the depreciation class percentage allocations derived from costs by class divided by the total costs for each Block listed on Exhibit 25. In determining the Depreciation Benefit, a \*\*\* tax rate shall be applied. Further, in accordance with Section 50(c) of the Code tax basis for purposes of calculating depreciation shall be deemed to be reduced by \*\*\* of the Maximum EITCs.

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“Development Security” has the meaning set forth in the PPA.

“Direct Costs” means the costs that are incurred by Contractor as a result of the event requiring the Change Order for the following items: (a) payroll wages paid for labor in the direct employ of Contractor at the Site; (b) cost of materials and permanent equipment; (c) payments made by Contractor to Subcontractors; (d) rental charges of machinery and equipment for the Work; (e) permit fees; (f) costs of mobilization and/or demobilization; (g) associated standard indirect field costs; and (h) associated engineering costs, if any, directly related to Work implemented under the Change Order.

“Disclosing Party” has the meaning set forth in Section 25.1.

“Dispute” has the meaning set forth in Section 28.1.

“Dispute Initiator” has the meaning set forth in Section 3.11(b).

“Dollar” and “\$” means the lawful currency of the United States of America.

“Effective Date” has the meaning set forth in Section 1.9.

“EITC” means the tax credit for energy property described in Section 48(a)(3)(A)(i) of the Code.

“EITC Applicable Percentage” means \*\*\* with respect to any Block; provided, however, with respect to any Block if its Block Substantial Completion Date is after December 31, 2016, then with respect to such Block it shall be the \*\*\* of (a) \*\*\* and (b) the federal investment tax credit (or successor thereto) percentage for utility scale solar available under then Applicable Law for such Block.

“EITC Timing Determinate” means the time value difference between when each Block Maximum EITC was contemplated to be reflected in Owner's estimated tax payments in accordance with the definition of Block Maximum EITC and the tax basis (by category) as reflected in Exhibit 25 and when Block Actual Maximum EITCs for each Block is deemed to be reflected in Owner's estimated tax payments. It is determined assuming Owner will pay its estimated taxes based on the annualized income installment method of Section 6655(e)(2) of the Code (using the annualization periods set forth in Sections 6655(e)(2)(A) and (B) of the Code)),

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and using as the interest rate the Wall Street Journal “prime rate” as of the first Business Day preceding the date of such first estimated tax installment payment.

“Eligible SunPower Competitor” means \*\*\*.

“Emergency” means an event occurring at the Site or any adjoining property that poses actual or imminent risk of serious personal injury to any Person or material physical damage to the Project requiring, in the good faith determination of Contractor, immediate preventative or remedial action.

“Environmental Laws” means any federal, state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment and human health, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601, et seq.; the Clean Air Act, 42 U.S.C. 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; and any other law that governs: (a) the existence, removal, or remediation of Hazardous Materials on real property; (b) the emission, discharge, release, or control of Hazardous Materials into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Materials.

“Equipment” means, collectively, Construction Equipment and Facility Equipment.

“Equity Contribution Agreement” means an equity contribution agreement from MEHC, in the form attached hereto as Exhibit 12.

“Event of Default” means either a Contractor Event of Default or an Owner Event of Default, as the context may require.

“Excluded Site Condition” means (a) the presence at the Site of Hazardous Materials or (b) any other characteristic of or condition affecting the Site (including the existence of archaeological artifacts or features) which was not disclosed in the \*\*\* with respect to the Site.

“Excusable Event” means \*\*\*.

“Expected EITCs” means for any Block the amount of EITCs available for such Block using the EITC Applicable Percentage multiplied by such Block's Applicable Tax Basis. Further, it shall be assumed that Block Substantial Completion is equivalent to Placed in Service for each Block.

“Facility” has the meaning set forth in the Recitals.

“Facility Capacity” means, with respect to the Facility, the sum of the Final Test Results of all of the Blocks, pursuant to the provisions of Exhibit 16A.

“Facility Delay Liquidated Damages” has the meaning set forth in Section 17.2.

“Facility Demonstration Test” has the meaning set forth in Exhibit 16D.

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“Facility Equipment” means all equipment, fixtures, materials, supplies, devices, machinery, tools, parts, components, instruments, appliances and other items that are required to complete the Facility that will become a permanent part of the Facility \*\*\*, whether provided by Contractor or any Subcontractor, and all special tools required to operate and maintain the Facility.

“Facility Substantial Completion” has the meaning set forth in Section 16.4.

“Facility Substantial Completion Date” has the meaning set forth in Section 16.5.

“Final Capacity Liquidated Damages” has the meaning set forth in Section 17.5(a).

“Final Completion” means satisfaction or waiver of all of the conditions for completion of the Facility as set forth in Section 18.1.

“Final Completion Date” means the actual date on which the Facility has achieved Final Completion in accordance with Section 18.2.

“Final Test Results” means with respect to a Capacity Test, the final results of such Capacity Test after accounting for the uncertainty calculation more particularly described in Exhibit 16A.

“Financing Parties” means any and all lenders, security holders, note or bond holders, lien holders, investors, equity providers, holders of indentures, security agreements, mortgages, deeds of trust, pledge agreements and providers of swap agreements, interest rate hedging agreements, letters of credit and other documents evidencing, securing or otherwise relating to the construction, interim or long-term financing or refinancing of the Project or a portfolio of projects including the Project, and their successors and permitted assigns, and any trustees or agents acting on their behalf. The term “Financing Party” includes, for the avoidance of doubt, any Person or Persons that own the Project and lease the Project to Owner or an Affiliate of Owner, as applicable, under a lease, sale leaseback or synthetic lease structure.

“Force Majeure Event” means, when used in connection with the performance of a Party's obligations under this Agreement, any act, condition or event which renders said Party unable to comply totally or partially with its obligations under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect thereof on its ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(i) Without limiting the meaning of but subject to the preceding sentence, the following events constitute Force Majeure Events to the extent that they render a Party unable to comply totally or partially with its obligations under this Agreement:

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- (A) \*\*\*
- (B) \*\*\*
- (C) \*\*\*
- (D) \*\*\*
- (E) \*\*\*
- (F) \*\*\*
- (G) \*\*\*
- (H) \*\*\*

(ii) Notwithstanding anything to the contrary in this definition, the term Force Majeure Event shall not be based on or include any of the following:

- (A) \*\*\*
- (B) \*\*\*
- (C) \*\*\*
- (D) \*\*\*
- (E) \*\*\*
- (F) \*\*\*
- (G) \*\*\*
- (H) \*\*\*
- (I) \*\*\*
- (J) \*\*\*
- (K) \*\*\*
- (L) \*\*\*

“Full Notice to Proceed” means authorization from Owner to proceed with the Work under this Agreement.

“Functional Test” means the test to determine the functionality of the Project and equipment and components incorporated therein, as described in Exhibit 27.

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“Governmental Authority” means any national, federal, state, regional, province, town, city, county, local or municipal government, whether domestic or foreign or other administrative, regulatory or judicial body of any of the foregoing and all agencies, authorities, departments, instrumentalities, courts and other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing.

“Guaranteed Block On-line Schedule” means the schedule attached hereto as Exhibit 4B.

“Guaranteed Block Substantial Completion Date” means, with respect to each Block, the applicable block substantial completion date therefor, as set forth in Exhibit 4B.

“Guaranteed Capacity” means, with respect to a Block or the Facility, the MW values set forth in Exhibit 16B.

“Guaranteed Facility Substantial Completion Date” means, with respect to the Facility, the guaranteed facility substantial completion date as set forth in Exhibit 4B.

“Guaranteed Final Completion Date” has the meaning set forth in Section 18.1, as may be extended only in accordance with the express terms of this Agreement.

“Hazardous Materials” means (a) any regulated substance, hazardous constituent, hazardous materials, hazardous wastes, hazardous substances, toxic wastes, radioactive substance, contaminant, pollutant, toxic pollutant, pesticide, solid wastes, and toxic substances as those or similar terms are defined under any Environmental Laws; (b) any friable asbestos or friable asbestos-containing material; (c) polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids; (d) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof; and (e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or contaminant that, whether by its nature or its use, is subject to regulation or giving rise to liability under any Environmental Laws.

“Indemnifying Party” means, with respect to an indemnification obligation under this Agreement, the Party providing such indemnification.

“Indemnitee” means an Owner Party or a Contractor Party, as the context may require, being indemnified pursuant to Section 24.5.

“Independent Engineer” means any independent engineer or engineering firm designated under Section 31.9.

“Independent Third Party Engineer” means any of the following: \*\*\*, in each case to the extent that they are not working for Owner or Contractor with respect to the Project, or such other independent third party engineer mutually agreed upon by the Parties.

“Industry Standards” means those standards of design, engineering, construction, workmanship, care and diligence and those practices, methods and acts that would be implemented and normally practiced or followed by prudent solar engineering, construction, and installation firms in the design, engineering, procurement, installation, construction, testing and

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commissioning (and operation associated therewith) of utility-scale photovoltaic facilities in the western United States and otherwise performing services of a similar nature in the jurisdiction in which the Work will be performed and in accordance with which practices, methods and acts, in the exercise of prudent and responsible professional judgment by those experienced in the industry in light of the facts known (or that reasonably should have been known) at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, good engineering design practices, safety, reliability, Applicable Codes, Applicable Laws, and Applicable Permits. Solely with respect to Section 21.5(a), “Industry Standards” shall mean those standards of care and diligence normally practiced by entities that operate and maintain photovoltaic power plants. Industry Standards is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts.

“Insolvency Event” with respect to a Person means such Person becomes insolvent, or institutes or has instituted against it a case under Title 11 of the United States Code, is unable to pay its debts as they mature or makes a general assignment for the benefit of its creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of insolvency.

“Intellectual Property Claim” means an allegation, claim or legal action asserted by a third party against an Owner Party alleging unauthorized use, misappropriation, infringement, or other violation of such third party's Intellectual Property Rights arising from (a) Owner Party's use of the Licensed Technology to the extent used in accordance with the license granted pursuant to Section 14.2 or (b) Contractor's performance (or that of its Affiliates or Subcontractors) under this Agreement asserted against Owner that (i) concerns any Facility Equipment or other goods, materials, supplies, items or services provided by Contractor (or its Affiliates or Subcontractors) under this Agreement, (ii) is based upon or arises out of the performance of the Work by Contractor (or its Affiliates or Subcontractors), including the use of any tools or other implements of construction by Contractor (or its Affiliates or Subcontractors) or (iii) is based upon or arises out of the design or construction of any item by Contractor (or its Affiliates or Subcontractors) under this Agreement or the use, or operation, of any item according to directions embodied in Contractor's (or its Affiliates' or Subcontractors') Contractor Submittals, or any revision thereof, prepared or provided by Contractor.

“Intellectual Property Rights” means all intellectual property rights throughout the world, including all rights in patents and inventions (whether or not patentable); registered and unregistered copyrights, database rights, semiconductor mask work rights; proprietary rights trade secrets, know-how and confidential information; provided, however, that “Intellectual Property Rights” shall not include trademarks, service marks, corporate names, trade names, domain names, logos, slogans, symbols or other similar designations of source or origin, or any rights with respect thereto.

“Interconnection Agreement” means that certain Large Generator Interconnection Agreement by and between Owner, SCE and CAISO dated as of November 22, 2011, as amended, restated or modified from time to time.

“IRS” means the Internal Revenue Service.

“Key Personnel” means the Persons identified in Exhibit 5.

“L/C Amount” means the aggregate face amount of all Acceptable Letters of Credit required by Exhibit 31.

“Late Block” has the meaning set forth in Section 17.1(a).

“Licensed Technology” has the meaning set forth in Section 14.1.

“Losses” means \*\*\*.

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“Major Facility Equipment Warranties” has the meaning set forth in Section 21.6(c)(i).

“Major Subcontractor” means \*\*\*.

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“Maximum EITCs” means the sum of Block Maximum EITCs.

“MEHC” means MidAmerican Energy Holdings Company, an Iowa corporation.

“Milestone Payment” means a discrete portion of the Contract Price payable in accordance with Section 8.1(a) upon achievement of the milestone corresponding to such payment in the Payment Schedule.

“Milestone Schedule” means the schedule attached hereto as Exhibit 4A.

“Minimum Capacity Level” means (a) with respect to a Block, \*\*\* of the Guaranteed Capacity of such Block (as adjusted for uncertainty in accordance with Exhibit 16A) and (b) with respect to the Facility, the aggregate of the Capacity Test values for all Blocks equals at least \*\*\* of the Guaranteed Capacity of the Facility, in each case, as calculated in accordance with Exhibit 16A.

“Minimum Irradiance Criteria” has the meaning set forth in Exhibit 16A.

“Minor Subcontractor” means any Person, other than a Major Subcontractor, that, directly or indirectly, and of any tier (other than Contractor but including any Affiliate of Contractor) supplies any items or performs any portion of the Work in furtherance of Contractor's obligations under this Agreement.

“MIPA” has the meaning set forth in the Recitals.

“Module Warranty” has the meaning set forth in Section 21.7.

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“Modules” means solar photovoltaic modules with an expected electrical output of 435 watts of electric power (expressed as DC).

“Monthly Progress Report” means a progress report prepared by Contractor setting forth the detail required in Exhibit 8A.

“MW” means 1,000,000 watts of electric power (expressed as AC).

“Non-Excusable Event” means (a) the negligence or willful misconduct of any Contractor Party or any Subcontractor in connection with any Project Transaction Document; (b) the failure of any Contractor Party (directly or through any Subcontractor) to comply with any of its obligations or a breach under any Project Transaction Document which failure or breach is not otherwise excused so long as such failure or breach has not otherwise been remedied, in accordance with such Project Transaction Document); and (c) \*\*\*.

“Notice of Dispute” has the meaning set forth in Section 28.1.

“NTP Date” means the date on which the Full Notice to Proceed is delivered by Owner.

“NTP Payment” means the notice to proceed payment set forth in the Payment Schedule.

“O&M Agreement” has the meaning set forth in the Recitals.

“O&M Provider” has the meaning set forth in the Recitals.

“Owner” has the meaning set forth in the preamble.

“Owner Acquired Permits” means those Applicable Permits to be acquired by Owner and designated on Exhibit 6B.

“Owner-Caused Delay” means \*\*\*.

“Owner Event of Default” has the meaning set forth in Section 20.3.

“Owner Improvement” means any modification to, improvement to or derivative work based upon the Licensed Technology, Block or Facility Equipment or any Intellectual Property Right in any of the foregoing that is created, developed, discovered or reduced to practice, directly or indirectly in whole or in part by an Owner Party.

“Owner Inspection Parties” has the meaning set forth in Section 6.1.

“Owner Party” or “Owner Parties” means Owner and its present and future subsidiaries and Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns.

“Owner Taxes” means (a) any and all Taxes imposed under Applicable Law in respect of the income or gross income of Owner, the direct or indirect owners of beneficial interests in

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Owner and the Affiliates of the foregoing and (b) Property Taxes imposed under Applicable Law on Owner in respect of the Site or the Facility.

“Owner's Engineer” means any engineering firm or firms or other engineer or engineers selected and designated by Owner, who may be an employee of an Owner Party but who shall not be a SunPower Competitor.

“Owner's Insurance” has the meaning set forth in Section 23.2, as further described in Part II of Exhibit 15.

“Owner's Representative” means the individual designated by Owner in accordance with Section 5.1.

“Party” and “Parties” have the meanings set forth in the preamble.

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“Payment Schedule” means the Payment Schedule attached hereto as Exhibit 9 setting forth the Milestone Payments and the corresponding milestones required to be achieved.

“Performance Criteria” or “Performance Criterion” means the relevant performance criteria for the Facility identified in Exhibit 16B.

“Performance Guaranty Agreement” has the meaning set forth in Section 21.7.

“Permit Expenses” means the actual costs payable to a Governmental Authority and all other reasonable third-party costs and expenses incurred in connection with the application for and issuance of an Applicable Permit.

“Person” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization, limited liability company or any other entity or organization, including any Governmental Authority. A Person shall include any officer, director, member, manager, employee or agent of such Person.

“Placed in Service” means “placed in service” for purposes of Sections 48 and 168 of the Code.

“PPA” means that certain Renewable Power Purchase and Sale Agreement, dated as of January 5, 2011, with SCE, as amended by Amendment No. 1 to the Renewable Power Purchase and Sale Agreement between the Company and SCE, dated as of February 15, 2011, as further amended, restated or modified from time to time.

“PPA Progress Report” means a written progress report prepared by Contractor and in a form substantially consistent with the requirements of the PPA, and as otherwise agreed upon by the Parties, acting reasonably.

“Project” has the meaning set forth in the Recitals.

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“Project Labor Agreement” means that certain Project Labor Agreement for the Antelope Valley Solar Project among Contractor and \*\*\*.

“Project Punch List” has the meaning set forth in Section 16.6(c).

“Project Transaction Documents” means this Agreement, the Contractor Performance Security, the Module Warranty, the Performance Guaranty Agreement, the Acceptable Letters of Credit, the MIPA, the SunPower Guaranty (as defined in the O&M Agreement) and the O&M Agreement.

“Property Tax” means any real or personal property, or any ad valorem Taxes related to the Site, the Facility, the Facility Equipment, or any other property that will be incorporated into the Project.

“Proposed Project Punch List” has the meaning set forth in Section 16.6(c).

“Proposed Punch List” has the meaning set forth in Section 16.6(a).

“Punch List” has the meaning set forth in Section 16.6(a).

“Punch List Amount” means the cost or estimated cost to complete any Punch List Item as approved by the Parties in connection with the approval of the Proposed Punch List or Proposed Project Punch List in accordance with Section 16.6, as applicable.

“Punch List Estimate” means Contractor's cost estimate for completing the Punch List Items.

“Punch List Holdback” means an amount equal to \*\*\* of the Punch List Amount for each Punch List Item.

“Punch List Items” means those finishing items with respect to a Block or the Facility, as applicable, that (a) consistent with Industry Standards does not affect the operability, reliability, safety, or mechanical, civil or electrical integrity of the Block or the Facility, (b) Owner or Contractor identifies as requiring completion or containing defects, and (c) the completion of which will not adversely effect, the performance of the Block or Facility, so long as such Block or Facility is nonetheless ready for commercial operations in a safe and continuous manner and in accordance with Applicable Law and Applicable Permits.

“Purchasers” has the meaning set forth in the Recitals.

“Qualified Financial Institution” means (a) a single bank or financial institution the long term senior unsecured debt obligations of which are rated no less than \*\*\* by S&P and \*\*\* by Moody's, or if a such single bank or financial institution is not available or will not issue a letter of credit with a stated amount equal to the amount required by Exhibit 31, then (b) two (2) banks or financial institutions the long term senior unsecured debt obligations of which each are rated no less than \*\*\* by S&P and \*\*\* by Moody's; \*\*\*.

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“Real Property Rights” means, (a) those rights with respect to land to be obtained by closing on the exercised options as set forth on Exhibit 4A, as well as (b) all other rights in or to real property necessary to perform the Work and to develop, construct, complete, operate, maintain and access the Project and the Site, including those rights set forth in deeds, leases, option agreements, co-tenancy and shared facility agreements, Applicable Permits, easements, licenses, private rights-of-way agreements and crossing agreements that exist as of the Effective Date, including as set forth on Exhibit 2, or that are obtained after the Effective Date by Contractor pursuant to its obligations under Exhibit 26.

“Receiving Party” has the meaning set forth in Section 25.1.

“Reimbursement Amount” means an amount equal to \*\*\*.

“Release” means the release, discharge, deposit, injection, dumping, spilling, leaking or placing of any Hazardous Material into the environment so that such Hazardous Material or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters under Applicable Law and Applicable Permits.

“Required Manuals” means the manuals, instructions and training aids, whether created by Contractor, Subcontractor or Supplier, reasonably necessary for the safe and efficient operation, maintenance and shut down of the Facility as set forth on Exhibit 7.

“Retainage” means an amount equal to \*\*\* of the amount payable pursuant to each Milestone Payment (other than the payment to be made in connection with Final Completion).

“Right of First Offer” has the meaning set forth in Exhibit 29.

“SCE” means Southern California Edison Company, a California corporation.

“SCE Interconnection Facilities” means the interconnection infrastructure which SCE is obligated to provide, as set forth in the Interconnection Agreement.

“Scheduled MWs” means, as of the date of determination, the number of MW scheduled to have been completed by the Blocks that have achieved Block Substantial Completion in accordance with Exhibit 4B.

“Scope of Work” means the scope of the work to be performed by Contractor under this Agreement, as further described in Exhibit 1.

“Sellers” has the meaning set forth in the Recitals.

“Side Letter” means that certain letter from SunPower Corporation to MEHC regarding a \*\*\* dated on or prior to Effective Date in accordance with Section 2.7(l) of the MIPA.

“Site” has the meaning set forth in the Recitals.

“Site Condition” has the meaning set forth in Section 3.25.

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“Site Substations” means the \*\*\* substations which will be constructed on the Site.

“Spare Parts” means the spare parts provided by Contractor to Owner in accordance with Exhibit 30.

“Start-up and Commissioning” means the energization and Functional Testing of the relevant Block, including verifying Block completeness as received from Contractor's construction team and readiness for operations and testing of such Block.

“Subcontractors” means Major Subcontractors and Minor Subcontractors.

“Successfully Run” means, (a) with respect to a Capacity Test, that the applicable Capacity Test was completed in accordance with the applicable procedures, conditions and requirements for the proper performance of such test as set forth in Exhibit 16A and (b) with respect to a Functional Test, that the Functional Test was completed in accordance with the provisions of Exhibit 27 and demonstrated that the Block being tested is capable of producing AC electricity.

“SunPower Competitors” means \*\*\*.

“Suppliers” means those Equipment suppliers with which Contractor or Subcontractor contracts in furtherance of Contractor's obligations under this Agreement.

“Survival Period” has the meaning set forth in Section 24.8.

“Taxes” means any and all taxes, charges, duties, imposts, levies and withholdings imposed by any Governmental Authority, including sales tax, use tax, income tax, withholding taxes, corporation tax, franchise taxes, margin tax, capital gains tax, capital transfer tax, inheritance tax, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and any interest, penalty, fine or other amount due in connection therewith, excluding in all cases Permit Expenses.

“Termination Payment” means (a) with respect to a termination by Contractor for an Owner Event of Default in accordance with Section 20.5, an amount equal to \*\*\*; and (b) with respect to a termination by Contractor for an extended Force Majeure Event in accordance with Section 20.7, an amount equal to \*\*\*.

“Technical Specifications” has the meaning set forth in the Recitals.

“Threshold” has the meaning set forth in Section 11.4(c)(ii).

“Title Company” means \*\*\*.

“Treasury Regulations” means final and temporary (assuming such are in effect at the relevant time) income tax regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations) by

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other final and temporary (assuming such are in effect at the relevant time) income tax regulations.

“Warranty” means, as applicable, the Defect Warranty \*\*\*.

“Warranty Period” means, as applicable, the Defect Warranty Period \*\*\*.

“Water Banking Activities” means above and below grade water banking activities permitted to be conducted by \*\*\*.

\*\*\*

“Water Supply Agreement” means Option Agreement, dated as of October 10, 2012, by Homer LLC and Solar Star California XX, LLC.

“Weekly Progress Report” means a weekly progress report prepared by Contractor setting forth the detail required in Exhibit 8B.

“Work” means all obligations, duties, and responsibilities assigned to or undertaken by Contractor under this Agreement, as further described in Exhibit 1 and Exhibit 26, with respect to the Project, including any of the foregoing obligations performed prior to the Effective Date, which shall be deemed to be Work performed by Contractor under this Agreement, notwithstanding the fact that it was performed in whole or in part prior to the Effective Date.

**1.3 Order of precedence.** In the event of a conflict or inconsistency between any of the Contract Documents forming part of this Agreement, the following order of precedence shall apply: (a) any duly executed amendment or Change Order to this Agreement (and between them, the most recently executed amendment or Change Order shall take precedence); (b) this Agreement (to the extent not superseded by a subsequent amendment); (c) Exhibits 1, 16, 3, 7, 27 and 23 to this Agreement in the order indicated; (d) the Exhibits to this Agreement not otherwise specified in subclause (c) above; and (e) any other Contract Documents not previously noted.

**1.4 Entire agreement.** This Agreement and the Exhibits attached hereto constitute the complete and entire Agreement between the Parties with respect to the engineering, procurement, construction, testing and commissioning of the Project and supersedes any previous communications, negotiations, representations or agreements, whether oral or in writing, with respect to the subject matter addressed herein. NO PRIOR COURSE OF DEALING BETWEEN THE PARTIES SHALL FORM PART OF, OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF, THIS AGREEMENT. For the avoidance of doubt, this Agreement shall not supersede the O&M Agreement, the Module Warranty, the Performance Guaranty Agreement or any other Project Transaction Document, which shall remain in full force and effect.

**1.5 No agency.** The Parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party (except and solely to the extent expressly provided in this Agreement pursuant to which Owner

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appoints Contractor as Owner's agent). Nothing in this Agreement shall be construed to give either Party any right, power or authority to enter into any agreement or undertaking for, or act as an agent or representative of, or otherwise bind, the other Party. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

**1.6 Invalidity.** Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but, to the extent permitted by law, if for any reason any provision which is not essential to the effectuation of the basic purpose of this Agreement is determined to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. Any such invalid, illegal or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid, illegal or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, illegal or unenforceable the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, illegality or unenforceability and to restore this Agreement as near as possible to its original intent and effect.

**1.7 Binding effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and on their respective permitted successors, heirs and assigns.

**1.8 Counterparts.** This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute one and the same instrument. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile, .pdf or emailed signatures, which shall be deemed to be an original and shall be as effective for all purposes as delivery of a manually executed counterpart.

**1.9 Effective date.** The effective date (the "Effective Date") of this Agreement is the date when this Agreement has been signed by both Parties and the "Closing" under the MIPA shall have occurred.

**1.10 Time is of the Essence.** To the extent that there is not a specific time period specified in this Agreement, time is of the essence with respect to a Party's performance of its obligations under this Agreement.

**1.11 Full Notice to Proceed.** On the Effective Date, in lieu of a separately delivered notice, Owner shall be deemed to have issued to Contractor the Full Notice to Proceed.

## ARTICLE 2.

### REPRESENTATIONS AND WARRANTIES

**2.1 Representations and Warranties of Contractor.** Contractor represents and warrants to Owner that as of Effective Date:

(a) Organization, Standing and Qualification. Contractor is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has full power to execute, deliver and perform its obligations hereunder

to own, lease and operate its properties and to engage in the business it presently conducts and contemplates conducting under this Agreement, and is and will be duly licensed or qualified and in good standing under the laws of the state in which the Site is located and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to execute and deliver this Agreement or perform its obligations hereunder.

(b) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(c) No Conflict. The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with or cause a default under any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents, (ii) violate or conflict with any Applicable Law or (iii) subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Agreement.

(d) Government Approvals. Other than with respect to the Applicable Permits, neither the execution nor delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority. Contractor represents and warrants that all Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect or Contractor has no knowledge of any reason that any Contractor Acquired Permit cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit Contractor to timely commence and prosecute the Work to completion in accordance with the terms and conditions of this Agreement.

(e) No Suits; Proceedings. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge after due inquiry, threatened against it before any court, arbitrator or Governmental Authority that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

(f) Business Practices. Neither Contractor nor any Subcontractor, or their respective employees, officers, representatives, or other agents of Contractor have made or will make any payment or have given or will give anything of value, in either case to any government official (including any officer or employee of any Governmental

Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor is in compliance with the requirements set forth in Section 3.29.

(g) Licenses. All Persons who will perform any portion of the Work have or will have all business and professional certifications and licenses if and as required by the terms and conditions of this Agreement, Applicable Codes, Applicable Law and Applicable Permits to perform such portion of the Work under this Agreement and Contractor has no knowledge of any reason that any such certifications and licenses cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit such Persons to timely commence and prosecute any portion of the Work to completion in accordance with the terms and conditions of this Agreement.

(h) \*\*\*

(i) Intellectual Property. Contractor owns or has the right to use, or will be able to secure from its Affiliates or Subcontractors the right to use, all Intellectual Property Rights necessary to perform the Work without infringing on the rights of others and to enable Owner to use the Intellectual Property Rights in connection with the ownership, operation, use, maintenance, modification, altering, commissioning, de-commissioning, disposal of or removal of the Project without infringement on the rights of others. The Licensed Technology (and the use thereof to the extent used in accordance with the license granted under Section 14.2) do not and shall not infringe, or cause the infringement of, the Intellectual Property Rights of a third party. Notwithstanding the foregoing, Contractor makes no representation or warranty with respect to any Owner Improvement, except to the extent of Owner Improvements made at the direction of Contractor or in accordance with instructions or designs provided by Contractor, in which case such Owner Improvements shall be deemed to be included in the Licensed Technology for the purposes of this Section 2.1(i).

**2.2 Representations and Warranties of Owner.** Owner represents and warrants to Contractor that as of the Effective Date:

(a) Organization, Standing and Qualification. Owner is a limited liability company, duly formed, validly existing, and in good standing under the laws of Delaware, and has the full power to execute, deliver and perform its obligations hereunder and engage in the business it presently conducts and contemplates conducting under this Agreement, and Owner is and will be duly licensed or qualified and in good standing under the laws of the state in which the Site is located and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

(b) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of

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Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(c) No Conflict. The execution, delivery and performance by Owner of this Agreement will not violate or conflict with or cause a default under any Applicable Law or any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.

(d) Funds. Owner has or will have available all the funds necessary to pay Contractor the Contract Price, and any other amount owing to Contractor under this Agreement, at the times when such amounts become payable under this Agreement.

### ARTICLE 3.

#### CONTRACTOR'S OBLIGATIONS

**3.1 Performance of Work.** Subject to payment of the Contract Price pursuant to Article 7 and Article 8, Contractor shall diligently, duly and properly perform and complete the Work in accordance with the Scope of Work and the terms of this Agreement in order to construct the Facility according to the Construction Schedule, Milestone Schedule and Guaranteed Block On-line Schedule, place it into operation in conformance with the Contract Documents and the Technical Specifications, and achieve Final Completion of the Project. Contractor acknowledges and agrees that it is obligated to perform the Work on a "turnkey basis" which constitutes a fixed-price (subject to the terms hereof) obligation to engineer, design, procure, construct, test and commission the Project in accordance with the terms and conditions of this Agreement. Where this Agreement describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work reasonably inferred or required to complete the Work in accordance with this Agreement. Except as otherwise expressly specified herein, Contractor shall provide all facilities and services required for a complete photovoltaic solar power plant facility, including all balance-of-system facilities set forth in the Scope of Work and the Technical Specifications, for the Contract Price. Information provided by Owner to Contractor prior to the Effective Date for use by Contractor in the performance of the Work shall not form the basis of any claim by Contractor for relief hereunder based on an Owner-Caused Delay or otherwise.

**3.2 Scope of Work.** Contractor shall perform the Scope of Work to the extent necessary (a) for the proper execution and completion of the Work under this Agreement; (b) to supervise and direct the Work in a safe manner and perform all Work in accordance with this Agreement, Applicable Law, Applicable Permits and Industry Standards; (c) to achieve Final Completion of the Facility; and (d) to place the Facility into operation in conformance with the Contract Documents and the Technical Specifications and such that the Facility is in compliance with the PPA and the Interconnection Agreement, Industry Standards, Applicable Codes, Applicable Laws and Applicable Permits. Contractor shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under this Agreement; provided, however, that Contractor will (i) deliver to Owner on or prior to January 10, 2013 a written design report and hydrology analysis



with respect to the Site documenting subsurface aquifer maximum height to include ground level subsidence associated with the impact of permitted water banking by the grantor consistent with the final AVWS Easement Deed relating to the water banking activities permitted to be conducted by AVWS and/or AVEK under the AVWS Agreements and AVEK Agreements, respectively, and (ii) reflect the findings, conclusions and recommendations of such design report and hydrology analysis in its design of the Facility. To that end, Contractor may, in its sole discretion, accelerate the Work and cause milestones to be completed prior to the scheduled date therefor in the Construction Schedule; provided that Owner shall have no obligation to pay, any Application for Payment in amounts in excess of the maximum cumulative payment schedule set forth in Exhibit 9. Contractor will receive input from Owner and will take such input under advisement.

**3.3 Properly Licensed; Sufficient Qualified Personnel.** Contractor shall use, and shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or Applicable Permits to enable such persons to perform work forming part of the Work.

**3.4 Utilities.** As part of the Work, \*\*\*shall arrange and pay for construction power and water (including all water used for dust control), and the installation of construction telecommunication lines and utilities, but only to the extent necessary for Contractor to perform its Work hereunder and pay when due all such utility usage charges. For all permanent utilities, \*\*\*shall arrange and pay prior to the Block Substantial Completion Date with respect to each applicable Block and the Facility Substantial Completion Date with respect to the Facility as a whole, and \*\*\*shall pay with respect to each Block after the applicable Block Substantial Completion Date and after the Facility Substantial Completion Date with respect to the Facility as a whole, for all permanent utilities in addition to the Contract Price, such as backfeed power, permanent water and power (i.e. for operations and maintenance facilities), permanent telecommunication lines, grid telemetry, and infrastructure necessary (including internet access) to transmit data gathered by the DAS System, until the Block Substantial Completion date with respect to each Block and the Facility Substantial Completion Date with respect to the Facility as a whole. After the applicable Block Substantial Completion Date with respect to each applicable Block and after the Facility Substantial Completion Date with respect to the Facility, \*\*\*shall arrange and pay for all utilities. With respect to such costs prior to the Facility Substantial Completion Date, the costs shall be reasonably allocated as between Owner and Contractor based on the Blocks that have achieved Block Substantial Completion Date. Contractor shall bear no responsibility for, nor bear any related damages to outages of any utilities affecting plant production after the Facility Substantial Completion Date, except to the extent caused by any Contractor Party's or Subcontractor's negligence or willful misconduct.

**3.5 Contract Documents.** Contractor shall deliver to Owner all Contract Documents as and when required pursuant to the terms of this Agreement.

**3.6 Record-Keeping.** All drawings, plans and specifications provided as part of Contractor Submittals shall be kept by Contractor in an organized fashion for reference by Owner during the performance by Contractor of the Work. Contractor shall also maintain at the Site at least one (1) copy of all Contractor Submittals, change orders and other modifications.

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**3.7 Materials and Equipment.** As part of the Work, Contractor shall procure all Facility Equipment and shall provide or cause to be provided, at its own expense, all Construction Equipment, machinery, tools, consumables, temporary structures or other items as may be required for Contractor to complete the Work. Contractor shall not incorporate any Facility Equipment that (a) constitutes “prototype” equipment pursuant to the risk ratings standards customarily employed by the commercial insurance industry and (b) on account of being deemed “prototype” equipment, would not be insurable under the insurance policies to be obtained by the Parties pursuant to Article 23.

**3.8 Compliance and Cooperation With EITC Requirements, Applicable Laws, Applicable Permits Applicable Codes and Industry Standards.** Whether or not expressly set forth in any specific section or Exhibit, Contractor shall comply with all Applicable Laws, Applicable Permits, Applicable Codes and Industry Standards in the course of performing the Work and, other than with respect to Owner's obligations under this Agreement, cause the Project to comply with all Applicable Laws and Applicable Permits prior to the Block Substantial Completion Date with respect to each Block and prior to the Facility Substantial Completion Date with respect to the Facility. Contractor shall provide to Owner such information, reports, and documents and take such other actions as may be reasonably requested by Owner to assist Owner in performing its notification and submittal responsibilities as set forth in any Applicable Permit, including as set forth in Section 3.24, and in connection with its claiming of EITCs with respect to the Project.

**3.9 Contractor Acquired Permits; Other Approvals.** Subject to Owner's obligation to provide reasonably requested assistance in accordance with Section 4.4(a), Contractor shall obtain and maintain in full force and effect, and file on a timely basis any documents required to obtain and maintain in full force and effect, the Contractor Acquired Permits. Contractor shall also be responsible for obtaining and maintaining in Contractor's or Owner's name in connection with the Work, as applicable, all construction permits, transportation permits, crossing rights with respect to electrical distribution lines, cable TV lines, drain tiles, rural water lines, telecommunication lines, and other licenses and, with respect to rights-of-way, those necessary to build the Project. \*\*\* Additionally, Contractor shall provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit.

**3.10 Spare Parts.** Contractor shall provide to Owner prior to each Block Substantial Completion Date, the proportionate share (based on aggregate Block capacity) of Spare Parts. Any additional spare parts required by Owner hereunder and not included on Exhibit 30 shall be at Owner's sole cost and expense.

**3.11 Construction Schedule; Progress Reports; Meetings.**

(a) Within \*\*\* after the Effective Date, Contractor shall deliver to Owner the Construction Schedule, which shall be (i) a Gantt chart developed using either Primavera or Microsoft Project and (ii) consistent with Exhibit 4A and Exhibit 4B. The Construction Schedule shall contain milestones and include details to support all major engineering, procurement, construction, commissioning and testing activities of the Project. The Construction Schedule shall form the basis for progress reporting through the course of the performance of the Work. The Contractor Critical Path Items set forth

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in the Construction Schedule shall be subject to Owner's approval, such approval not to be unreasonably withheld or delayed; provided, that Owner's comments on the Contractor Critical Path Items must be provided to Contractor within \*\*\* of Owner's receipt of the Construction Schedule; provided, further, milestones consistent with Exhibit 4A and Exhibit 4B shall be deemed to be approved.

(b) Should the Parties disagree with respect to Owner's comments on the Critical Path Items, the Parties will submit the dispute to an Independent Third Party Engineer for expedited dispute resolution pursuant to this Section 3.11(b). The Parties shall negotiate in good faith to select an Independent Third Party Engineer. If the Parties cannot agree within \*\*\* then the Party initiating the dispute (the "Dispute Initiator") shall send notice to the other Party including two potential independent engineers set forth in the definition of "Independent Third Party Engineer". The other Party shall then have \*\*\* after receipt of such notice to select an Independent Third Party Engineer from such two (2) potential independent engineers identified in such notice. If the other Party does not make a selection within such \*\*\* period, the Dispute Initiator shall select an Independent Third Party Engineer from such two (2) potential independent engineers identified in such notice. The Parties shall formalize their positions regarding the dispute in writing within \*\*\* of Contractor providing notice to Owner of its disagreement with a comment provided by Owner in accordance with Section 3.11(a) and submit such positions to the Independent Third Party Engineer. The Parties and the Independent Third Party Engineer shall meet within \*\*\* of the Independent Third Party Engineer's receipt of the materials referenced in the immediately preceding sentence, at the Site, and the Independent Third Party Engineer shall issue a binding ruling that both Parties will obey within \*\*\* thereof. The Party that will pay for the Independent Third Party Engineer and all costs related thereto shall be the losing Party, as determined by the Independent Third Party Engineer.

(c) The Construction Schedule shall represent a practical plan to achieve the completion of the Work in accordance with Exhibit 4A and Exhibit 4B. The Construction Schedule will be a \*\*\* detailed schedule.

(d) The Milestone Schedule and Construction Schedule shall meet the following requirements: (i) all schedules, other than the Milestone Schedule, must be suitable for monitoring the progress of the Work, (ii) all schedules must provide necessary data about the timing for Owner decisions and all Owner milestones, and the Construction Schedule shall set forth all milestones for Contractor Deliverables required in connection with Block Substantial Completion and (iii) all schedules must be in sufficient detail to demonstrate adequate planning for and orderly completion of the Work.

(e) Contractor shall prepare and submit to Owner (i) a PPA Progress Report, which shall be submitted to Owner no later than \*\*\* after the close of each month, (ii) through the Final Completion Date, Monthly Progress Reports (which shall include a summary of any material deviations from the prior Construction Schedule and the reasons for such deviation) on the sooner of (x) delivery of an Application for Payment and (y) \*\*\* after the end of each \*\*\* and (iii) through the Facility Substantial

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Completion Date, Weekly Progress Reports delivered on a weekly basis. If reasonably requested by Owner, Contractor's Project Manager (or his/her designee) shall attend scheduled meetings between representatives of Owner and SCE (in its capacity as "Buyer" under the PPA) to review such PPA Progress Reports and discuss construction progress. Each PPA Progress Report shall identify the relevant milestones under the PPA and indicate whether they have been met or are on target to be met. In addition, Owner or any Affiliate of Owner (other than a SunPower Competitor) shall be entitled to attend and participate in operations meetings convened by Contractor at least \*\*\* on the Site and other regularly scheduled meetings with respect to the progress and performance Project.

**3.12 Transportation.** Contractor shall provide transportation and shipping with respect to all Equipment hereunder and shall be responsible for all necessary Applicable Permits and documentation relating thereto. All transportation and shipping services, including quality assurance, shipping, loading, unloading, customs clearance (and payment of any customs duties in connection therewith), receiving, and any required storage and claims shall be included in the Contract Price.

**3.13 Security.** Other than the portion of the Site and the portion of the Equipment solely comprising a Block that has achieved Block Substantial Completion Date, Contractor shall be responsible for the proper security and protection of the Site and all Equipment and materials furnished by Contractor and the Work performed until Facility Substantial Completion. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner.

**3.14 Safety; Quality Assurance.** Contractor shall take all reasonably necessary precautions for the safety of its employees, and Subcontractors and Suppliers on the relevant part of the Site where the Facility is located and to prevent accidents or injury to individuals or damage to third party property, on, about, or adjacent to the premises where the Work is being performed. Contractor shall provide to its employees, at its own expense, safety equipment required to protect against injuries during the performance of the Work and shall provide (or cause to be provided) appropriate safety training. Contractor and Owner hereby agree that the safety plan attached hereto as Exhibit 22 shall be implemented by Contractor to secure the Project during the execution of the Work. Contractor shall notify all Persons accessing the Site of the safety plan, which shall apply to all individuals accessing the Site and performing Work on the Site on behalf of Contractor or any Subcontractor. Contractor and Owner further agree that the quality assurance plan attached hereto as Exhibit 23 shall be implemented by Contractor. During the performance of the Work, Contractor shall be responsible for the oversight of all Persons at the Site, other than Owner and its Affiliates and representatives and subcontractors and the Owner Inspection Parties, and for the performance of the Work in accordance with the safety plan and with all Applicable Laws governing occupational health and safety, Applicable Permits and Industry Standards.

**3.15 Clean-up.** Contractor shall keep the part of the Site where the Facility is to be located and surrounding areas reasonably free from accumulation of debris, waste materials or rubbish caused by the Work, and as a condition of Final Completion or as soon as practicable after termination of this Agreement by Owner, all of Contractor's and Subcontractors' personnel

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shall have left the Site and Contractor shall remove from the part of the Site where the Facility is located and surrounding areas all debris, waste materials, rubbish, tools, Construction Equipment, machinery and surplus materials arising from or due to the Work (other than Contractor's or O&M Provider's personnel, materials and equipment required or utilized for the performance of such Person's respective obligations under this Agreement, the Module Warranty, the Performance Guaranty Agreement and/or the O&M Agreement, as applicable).

### **3.16 Suppliers and Subcontractors.**

(a) Set forth in Exhibit 24 is a schedule of Qualified Major Subcontractors who, notwithstanding anything to the contrary herein, Contractor shall be entitled to engage in furtherance of Contractor's obligations under this Agreement without the consent of Owner. Contractor shall notify Owner of any proposed additional Major Subcontractors or replacements thereof with whom Contractor anticipates engaging. Owner shall have the right to review and approve such engagement, such approval not to be unreasonably withheld or delayed. Contractor shall update and amend Exhibit 24 by notice to Owner from time to time as necessary to reflect approved additions or changes thereto.

(b) No Subcontractor or purchase order issued by such Subcontractor shall bind or purport to bind Owner, but each purchase order, agreement or subcontract with a Supplier or a Major Subcontractor shall provide that the Supplier or Major Subcontractor, as applicable, expressly agrees, upon Owner's request if this Agreement is terminated, to the assignment of such purchase order, agreement or subcontract to Owner, at Owner's request, the Financing Parties or a successor EPC contractor to Contractor.

(c) The use by Contractor of any Subcontractor shall not (i) constitute any approval of the Work undertaken by any such Person, (ii) relieve Contractor of its duties, responsibilities, obligations or liabilities hereunder, (iii) relieve Contractor of its responsibility for the performance of any work rendered by any such Subcontractor or (iv) create any relationship between Owner, on the one hand, and any Subcontractor, on the other hand, or cause Owner to have any responsibility for the actions or payment of such Person. As between Owner and Contractor, Contractor shall be solely responsible for the acts, omissions or defaults of its Subcontractors and any other Persons for which Contractor or any such Subcontractor is responsible (with the acts, omissions and defaults of its Subcontractors being attributable to it).

(d) \*\*\*

(e) Until the Facility Substantial Completion Date, Contractor shall furnish Owner with (i) reports received from the Subcontractors or Contractor relating to recall notices, defect notices or other similar product communications and (ii) such information with respect to the Major Subcontractors as Owner may reasonably request, in each case related to the Facility Equipment.

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**3.17 Insurance.** Contractor shall obtain and maintain insurance required in accordance with Article 23 and Exhibit 15.

**3.18 Contractor's Personnel.** Contractor shall appoint Contractor's Key Personnel in accordance with Section 5.2.

**3.19 Hazardous Materials.** Contractor shall comply with the provisions of Article 12 with respect to Hazardous Materials as part of and in connection with the Work.

**3.20 Contractor Performance Security.** Contractor shall provide to Owner and maintain the Contractor Performance Security in accordance with Section 8.8 and shall provide to Owner and maintain the Acceptable Letters of Credit \*\*\* as and when required in accordance with by Exhibit 31. Contractor shall also promptly, and in any event within \*\*\*, provide Owner with notice of any of the following events \*\*\* that would give rise to a requirement of Contractor under Item 4 of Exhibit 31 to provide a \*\*\* Acceptable Letter of Credit in the aggregate for the Facility and the AVSP 1 Facility: \*\*\*.

**3.21 Business Practices.** Contractor shall not make any payment or give anything of value to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder.

**3.22 Delay Response Plan.** If, at any time during the performance of the Work, the updated, detailed schedule reflecting actual progress to date included in a Monthly Progress Report delivered under Section 3.11 shows that the critical path of the Work is delayed such that Facility Substantial Completion will occur later than the Guaranteed Facility Substantial Completion Date, Contractor shall prepare and submit to Owner within \*\*\* a plan which specifies in reasonable detail the actions to be taken by Contractor and the associated schedule to explain and display how Contractor intends to recover from such delay (the "Delay Response Plan"). The corrective actions described in the Delay Response Plan that Contractor proposes to undertake with respect to the Work (a) shall be undertaken at Contractor's sole cost and expense and (b) will be designed and intended to recover the schedule for the Project as promptly as reasonably practicable. Contractor shall promptly and diligently perform the Work in accordance with the Delay Response Plan until the Work is progressing in compliance with the Construction Schedule and the critical path of the Work. Unless set forth in a Change Order executed by the Parties, the implementation of any Delay Response Plan shall not change the Guaranteed Block Substantial Completion Dates, the Guaranteed Facility Substantial Completion Date or the Guaranteed Final Completion Date.

**3.23 Project Labor Agreement; Employees.**

(a) Contractor shall comply in all material respects with the terms and conditions of the Project Labor Agreement; provided, however that Contractor is solely responsible for such compliance, and the Project Labor Agreement and compliance thereunder is not an obligation of Owner and does not excuse Contractor from, or entitle Contractor to any schedule or cost relief with respect to, its performance of Work and other obligations under this Agreement.

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(b) Immediately after receiving a request by Owner, subject to Contractor's obligations under the Project Labor Agreement, Contractor shall remove from the Site, and from any performance of the Work, and cause any Subcontractor to remove from the Site and from any performance of the Work, as soon as reasonably practicable, any Person performing the Work (including any Key Personnel) who is creating a risk of bodily harm or injury to themselves or others or whose actions create a risk of material property damage.

(c) Subject to Contractor's obligations under the Project Labor Agreement, Contractor shall also remove, and cause its Subcontractors and agents to remove, any employee, agent or other Person engaged in the performance of the Work for Contractor (including any Key Personnel) or such Subcontractor, as the case may be, whose off-Site conduct violates any Applicable Laws or Applicable Permits. If a Person is harming or having a negative effect on the perception of the Project or Owner's relationship with the surrounding community based on two or more documented incidents, Owner may provide notice to Contractor and Contractor and Owner will meet to discuss an appropriate response. If the Parties cannot otherwise agree, subject to Contractor's obligations under the Project Labor Agreement, Contractor shall remove and cause its Subcontractors and agents to remove such Person.

**3.24 Notification.** To the extent not prohibited by Applicable Law, with respect to the Project, provide Owner, promptly and in any event within \*\*\* (or such other time period set forth below) following (a) Contractor's actual knowledge of its occurrence or (b) receipt of the relevant documentation, with written:

(i) Notification of all events requiring the submission by Contractor of a report to any Governmental Authority pursuant to the Occupational Safety and Health Act;

(ii) Notifications and copies of all citations by Governmental Authorities concerning accidents or safety violations at the Site and, within \*\*\* of such written notice, a follow up report containing a description of any steps Contractor is taking and proposes to take, if any, with respect to such accident or safety violations;

(iii) Notifications and copies of all written communication to or from any Governmental Authority, relating to any breach or violation or alleged breach or violation of any Applicable Law, any Applicable Permit, Applicable Codes or any provision of the PPA or the Interconnection Agreement;

(iv) Updates of status of communications with insurance companies related to claims with respect to an accident, incident or occurrence at the Site or in the performance of Work;

(v) Notifications and copies of any actions, suits, proceedings, patent or license infringements, or investigations pending or threatened against it at law

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or in equity before any court or before any Governmental Authority (whether or not covered by insurance) that (A) if determined adversely to Contractor would have a material adverse effect on Contractor's ability to perform its obligations under this Agreement or (B) relates to the Project; and

(vi) Notifications within (A)(x) \*\*\* after Contractor has actual knowledge of any accident related to the Work that has a material and adverse impact on the environment or on human health (including any accident resulting in the loss of life) and (y) within \*\*\* after Contractor has actual knowledge of any recordable, lost-time injury related to the Work and (B) \*\*\* thereafter, a report describing such accident or injury, the impact of such accident or injury and the remedial efforts required and (as and when taken) implemented with respect thereto.

### **3.25 Site Conditions. \*\*\***

**3.26 Other Reports and Quality Control Documents.** Contractor shall provide Owner with other reports and quality control documentation relating to the Work, the Blocks, Facility Equipment, the Facility and the Subcontractors as Owner may reasonably request.

**3.27 Construction Methods.** Contractor shall make itself available to discuss and shall promptly respond to any reasonable questions from Owner, Owner's Engineer, the Financing Parties or the Independent Engineer regarding construction methods or procedures used during construction of the Project.

**3.28 Cooperation; Access.** Contractor shall, and shall cause the other Contractor Parties and any Subcontractor and their respective hired personnel to, cooperate with Owner and its contractors and other hired personnel in coordinating the work of Owner's contractors and personnel who may be working at the Site with the Work being performed by any Contractor Party or Subcontractor at the Site. Contractor shall take reasonable efforts to accomplish any necessary modification, repairs or additional work with respect to a Block after the Block Substantial Completion Date of such Block or the Facility after Facility Substantial Completion with minimal interference with commercial operation of the Facility or any portion thereof and that reductions in and shut-downs of all or part of the Facility's operations will be required only when necessary, taking into consideration the length of the proposed reduction or shut-down, and Owner's obligations and liabilities under the PPA. Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off-peak hours, nights, weekends and holiday.

**3.29 Business Ethics.** Contractor, its employees, agents, representatives and Subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in the conduct of Work for Owner. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all Applicable Laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, the United States Foreign Corrupt Practices Act and Owner's Code of Business Conduct (attached as Exhibit L to the

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O&M Agreement). Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Contractor's compliance with this Section 3.29. Owner shall be permitted to audit such records as reasonably necessary to confirm Contractor's compliance with this Section 3.29. Contractor shall immediately provide notice to Owner of any facts, circumstances or allegations that constitute or might constitute a breach of this Section 3.29 and shall cooperate with Owner's subsequent investigation of such matters.

### 3.30 Real Property Rights.

(a) Compliance with Real Property Rights. Contractor shall comply with the terms of the Real Property Rights.

(b) Access to Site. \*\*\* Contractor shall be responsible to ensure that the access to the Site is sufficient to permit cranes and other operating and rigging equipment that will be used in the performance of the Work, if any, freedom to maneuver on or about the Site.

(c) \*\*\*

(d) Construction Real Property Rights. \*\*\* Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving Real Property Rights or one or more owners or occupiers of land so situated as to potentially result in a situation that would reasonably be expected to have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems.

(e) Crop Damages and Other Damage from Construction. Contractor shall be required to reimburse Owner for any payment Owner is required to make to any other party to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work, including any crop damages.

(f) \*\*\*

3.31 \*\*\*

3.32 \*\*\*

3.33 \*\*\*

(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

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(d) \*\*\*

(e) \*\*\*

## ARTICLE 4.

### OWNER'S OBLIGATIONS

**4.1 Access.** From the Effective Date until the Facility Substantial Completion Date, Owner shall provide Contractor with access to the Site (which access, with respect to the land to be obtained by closing of the exercised options as set forth on Exhibit 4A, shall be no earlier than the later to occur of (a) the applicable closing dates for closing on the exercised options as set forth on Exhibit 4A and (b) the termination date of any third-party possessory interests in the Site as set forth in those certain executed written agreements and estoppel certificates delivered pursuant to Section 2.7(x) of the MIPA and entered into prior to the Effective Date, as such dates are indicated in Exhibit 4A) as suitable and necessary for Contractor to complete the Work and perform its obligations in accordance with this Agreement; provided, however, that Contractor shall not interfere with the operation of a Block by Owner or the O&M Provider after the Block Substantial Completion Date of such Block. From the Facility Substantial Completion Date until the Final Completion Date, Owner shall provide Contractor with reasonable access to the Site as suitable and necessary for Contractor to complete the Punch List Items. Owner shall also provide Contractor with reasonable access to the Site after the Final Completion Date for purposes of inspection and photography (consistent with Section 22.3), and access to the DAS System (consistent with Section 25.2). Owner shall provide reasonable access to the Site for Contractor to complete work in connection with the Warranties. Notwithstanding the foregoing, any failure by or inability of Owner to provide Contractor access due to Contractor's failure to comply with the Real Property Rights or otherwise with the terms of this Agreement shall not be considered a breach by Owner. \*\*\*

**4.2 Compliance with Laws and Permits.** Owner shall at all times fully comply with Applicable Laws and Applicable Permits. Subject to Contractor's obligations to provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit (at no out of pocket cost to Owner) in accordance with Section 3.9, Owner shall obtain and maintain in full force and effect all Owner Acquired Permits.

**4.3 Full Notice to Proceed.** Owner will issue the Full Notice to Proceed subject to and in accordance with Section 1.11.

**4.4 Owner Exclusive Obligations.** The following items are expressly excluded from Contractor's Scope of Work and are the exclusive responsibility of Owner:

- (a) Subject to Section 3.30 and Contractor's obligation to provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit (at no out of pocket cost to Owner) in accordance with Section 3.9, Owner shall obtain every Owner Acquired Permit and, at Contractor's written request, Owner shall

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cooperate with and provide reasonably requested assistance to Contractor as necessary to assist Contractor in (i) obtaining the Contractor Acquired Permits, (ii) in connection with Contractor's interactions with Los Angeles and Kern Counties and any other applicable Governmental Authorities with respect to the Applicable Permits, (iii) in connection with interactions with SCE and CAISO with respect to the Interconnection Agreement for Contractor to perform the Work; (iv) with respect to enforcing Owner's rights under and with respect to any Real Property Rights, and (v) with respect to enforcing Owner's rights under and with respect to the Water Supply Agreement, and will take such actions as may be reasonably requested by Contractor in connection therewith; provided that Contractor shall reimburse Owner for any reasonable out-of-pocket costs that Owner incurs in providing such assistance;

(b) Subject to Section 7.1, Article 8 and Article 10, Owner shall pay all out-of-pocket Taxes, fees, levies and other costs associated with obtaining the Owner Acquired Permits, including for on-Site inspections by any Governmental Authority in connection therewith;

(c) Owner shall pay in a timely manner as required by Applicable Law any and all Owner Taxes, or in the event such Owner Taxes are paid by Contractor or any Subcontractor, Owner shall promptly reimburse Contractor for same;

(d) Owner shall maintain any solar easements or other protections and restrictions on areas near and adjacent to the Site to protect the unobstructed passage of sunlight to all areas of the Site in accordance with their terms to the extent that such are in effect as of the Effective Date;

(e) Owner shall select and employ its own personnel for purposes of attending any tests, meetings, training, or orientation required or anticipated by this Agreement;

(f) Owner shall secure and pay for the operation and maintenance of the Facility and shall not require and Contractor shall not be obligated to perform any such services under this Agreement;

(g) Subject to Section 12.2 and Part B.2 of Exhibit 1, Owner shall be responsible for any environmental remediation of the Site which may be required by any Governmental Authority, Applicable Law or Applicable Permit as a condition to the construction or operation of the Facility on the Site; provided that Owner is not responsible if environmental remediation is required because of actions or inactions taken by Contractor Party or any Subcontractors;

(h) Owner shall complete, or cause to be completed, the SCE Interconnection Facilities, including all functional testing for the same by the date set forth on the Milestone Schedule\*\*\*;

(i) Owner shall perform Owner's obligations set forth in Sections L, M or N of Exhibit 1; and

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(j) Owner shall solely be responsible for employing operating and maintenance personnel who will commence to perform operation and maintenance work with respect to each Block immediately after such Block has achieved Block Substantial Completion; provided, however, Contractor agrees that for so long as O&M Provider is providing the operation and maintenance work, this obligation shall be deemed satisfied.

In connection with Owner's obligations under this Agreement, Owner shall be entitled to hire any third party quality consultants to advise Owner concerning the quality control and performance of the Facility; provided that such consultants shall not interfere with Contractor's performance of the Work and shall not be SunPower Competitors.

**4.5 Owner's Representative.** Owner shall appoint an Owner's Representative in accordance with Section 5.1.

**4.6 Insurance.** Owner shall obtain and maintain insurance required in accordance with Article 23 and Exhibit 15.

**4.7 Owner Payment Security.** Owner shall provide to Contractor and maintain the Equity Contribution Agreement in accordance with Section 8.9.

**4.8 Cooperation.** Owner shall, and shall cause its contractors and their respective hired personnel to, cooperate with Contractor and Subcontractors in coordinating the work of Owner's contractors and personnel who are working at or near the Site with the Work being performed by any Contractor Party or Subcontractor at or near the Site. Subject to Owner's rights hereunder, Owner shall not allow its, or its Affiliates' or any other separate consultants', contractors', or other hired personnel's, operations and activities on the Site to interfere with the performance of the Work by Contractor.

**4.9 Extensions to Commercial Operation Deadline \*\*\*.**

(a) Following receipt of notice from Contractor that is reasonably detailed to allow Owner to seek, and delivered sufficiently in advance of any deadlines for seeking, extensions of the Commercial Operation Deadline under the PPA with respect to Force Majeure Events (as defined under the PPA), Owner, as seller under the PPA, shall diligently prosecute any and all material extensions of the Commercial Operation Deadline under the PPA with respect to Force Majeure Events (as defined under the PPA) to the extent permitted thereunder; provided, however, that, for the avoidance of doubt, Owner shall not be required to exercise its right under Section 3.06(c) of the PPA except in accordance with the immediately succeeding sentence. \*\*\*

(b) \*\*\*

**4.10 Enforcement and Termination of Leases.** Owner shall enforce all material terms of any lease or other agreement set forth on Exhibit 2 that is in effect on the Effective Date, or that later becomes effective, by which any Person other than Owner has a right to use, occupy or possess any portion of the Site, including enforcing the expiration of any such lease or other agreement and using commercially reasonable efforts to cause the lessee or occupant to vacate

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the leased premises immediately following such expiration, which shall include instituting an eviction action if required to cause any holdover lessee or occupant to vacate the leased premises. If such lease or other agreement is terminable by Owner upon notice to the lessee or occupant, Owner shall deliver notice of termination of such lease or other agreement promptly after written request from Contractor, and shall thereafter enforce the expiration of such lease or other agreement pursuant to the provisions of this Section 4.10. \*\*\*

4.11 \*\*\*

## ARTICLE 5.

### REPRESENTATIVES; KEY PERSONNEL

**5.1 Owner's Representative.** Owner designates, and Contractor agrees to accept, \*\*\* as Owner's Representative for all matters relating to this Agreement and Contractor's performance of the Work (except as otherwise stated in this Agreement). The acts and omissions of Owner's Representative with respect to this Agreement are deemed to be the acts and omissions of Owner and shall be fully binding upon Owner. Owner may, upon written notice to Contractor pursuant to Article 27, change the designated Owner's Representative.

**5.2 Contractor's Key Personnel.** Contractor designates, and Owner accepts, those individuals set forth on Exhibit 5 for all matters relating to Contractor's performance under this Agreement. Contractor's Representative shall have full responsibility for the prosecution and scheduling of the Work and any issues relating to this Agreement. If Contractor elects to replace Key Personnel, it shall do so promptly. Owner shall have the right to approve any such replacement Key Personnel, provided, however, that such approval shall not be unreasonably withheld or delayed. The actions taken by Contractor's Representative are deemed to be the acts of Contractor.

**5.3 Power to Bind.** The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of each Party, as applicable, under this Agreement.

**5.4 Notices.** Notwithstanding Sections 5.1, 5.2, and 5.3, all amendments to this Agreement, Change Orders, notices and other communications between Contractor and Owner contemplated herein shall be delivered in writing and otherwise in accordance with Article 27.

## ARTICLE 6.

### INSPECTION

**6.1 Inspection.** Owner, its Affiliates, its representatives (including Owner's Engineer), any Financing Party, its representatives (including any Independent Engineer), SCE (in its capacity as "Buyer" under the PPA) and CAISO (in its capacity as party to the Interconnection Agreement), in each case, except to the extent that any such party is a SunPower Competitor (other than an Eligible SunPower Competitor) (collectively, "Owner Inspection Parties"), shall have the right to reasonably observe and inspect any item of Facility Equipment at the Site,

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including to witness functional tests of the Facility Equipment and the Functional Tests for each Block, and the material, design, engineering, service, workmanship or any other portion of the Work at the Site; provided that (a) such observations and inspections shall be arranged at reasonable times and with reasonable advance notice to Contractor and (b) Owner has granted such Person access to the Site and Work for such purpose. Notwithstanding the foregoing, any personnel of such Owner Inspection Parties that have completed Contractor's safety training and worker environmental training may observe and inspect the Work at the Site, including to witness functional tests of the Facility Equipment and the Functional Tests for each Block, at any time subject to compliance with the safety plan attached hereto as Exhibit 22.

6.2 \*\*\*

## ARTICLE 7.

### CONTRACT PRICE

**7.1 Contract Price.** As full compensation for the Work and all of Contractor's obligations hereunder, Owner shall pay to Contractor, and Contractor agrees to accept as full compensation for the Work, the Contract Price. The Contract Price shall be adjusted only as expressly provided under the terms of this Agreement \*\*\*. The Contract Price shall be paid by Owner to Contractor in accordance with the terms of Article 8.

## ARTICLE 8.

### PAYMENT PROCESS & PERFORMANCE SECURITY

#### 8.1 Payments.

(a) Owner shall (i) on the Effective Date, pay the NTP Payment (less the Retainage), and (ii) pay the remaining Contract Price as Milestone Payments less the Retainage, in accordance with the Payment Schedule to the extent that Contractor has achieved the milestone corresponding to such payment as set forth on the Payment Schedule. Each Milestone Payment shall be due and payable only to the extent it is supported by the completion of the applicable milestone set forth in the Payment Schedule for the payment of such Milestone Payment. Subject to and in accordance with any mutually agreed upon Change Order, in no circumstance shall Owner have an obligation to pay any Application for Payment in amounts in excess of the maximum cumulative payment schedule set forth in Exhibit 9.

(b) Within \*\*\* after the acceptance of the Certificate of Facility Substantial Completion, Owner shall release to Contractor the Retainage applicable to all amounts invoiced less an amount equal to the Punch List Holdback of the Punch List Amount for all Punch List Items that have not been completed at such time pursuant to the terms hereof. On the Final Completion Date, concurrent with the payment for the Final Completion, Owner shall release to Contractor all remaining Retainage (including any Punch List Holdbacks) then held by Owner. Any interest accruing on the Retainage shall accrue for the account of Owner and not Contractor,

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(c) If Contractor fails to perform (i) any Block Punch List Item within \*\*\* after the Block Substantial Completion Date for such Block completed and transferred to Owner upon the Block Substantial Completion Date of such Block or (ii) any Punch List Item on the Project Punch List within \*\*\* after the Facility Substantial Completion Date, Owner may elect by written notice to Contractor to retain the Punch List Holdback applicable to such Punch List Item and complete such Punch List Item itself. Upon Owner making such election, Contractor's obligation to perform such Punch List Item shall be deemed satisfied.

**8.2 Milestone Assessment.** Contractor and Owner shall periodically, and in any event at least once each month, review the Work completed and assess the progress of on-Site Work completed and completion of the relevant milestone. Owner's Engineer and any Independent Engineer may be present during such review and assessment of the Work.

**8.3 Application for Payment.** Contractor shall deliver the Application for Payment to Owner by the \*\*\* of each month for the milestones completed and progress in the Work for the prior month (including Punch List Items), including during the period prior to the NTP Date; provided, that the Application for Payment in respect of Block Substantial Completion and Facility Substantial Completion shall be delivered when required under Section 16.3 and Section 16.5, respectively. Each Application for Payment shall be reasonably detailed and shall be accompanied by reasonable supporting documentation evidencing the achievement of the milestone pursuant to the schedule of values set forth in Exhibit 9 for which the Milestone Payment is being requested, shall be accompanied by lien waivers required to be delivered otherwise pursuant to Section 8.4 and shall be sent by facsimile with confirmation of receipt, and Owner shall be deemed to have received such Application for Payment and the documentation supporting achievement of the relevant milestone on the same date of delivery by Contractor if delivered prior to 5:00 pm Pacific Standard Time; provided, that if such date of delivery is not a Business Day or is delivered after 5:00 pm Pacific Standard Time, then the date of delivery shall be the immediately following Business Day. Owner shall make all payments of undisputed amounts when they become due, but in any event, no later than thirty (30) Days after delivery of the Application for Payment; provided that with respect to Block Substantial Completion and Facility Substantial Completion shall be due within \*\*\* after Owner's acceptance of the Certificate of Block Substantial Completion or Certificate of Facility Substantial Completion, as applicable. If Owner disputes a portion of an Application for Payment, Owner shall notify Contractor of such Dispute promptly and in any event within \*\*\* after receipt of such Application for Payment and shall pay to Contractor the undisputed portion in accordance with this Section 8.3. If such dispute is resolved within \*\*\* after delivery of the Application for Payment, Owner shall make payment of such resolved amounts within \*\*\* after delivery of the Application for Payment. Contractor shall be responsible for paying or ensuring the payment of all Subcontractors in connection with the Work completed by the Subcontractors in accordance with the terms of such subcontracts.

**8.4 Lien Releases.** Contractor shall submit with each Application for Payment a conditional partial lien release in the form set forth in Exhibit 13A for the amount requested in the current Application for Payment\*\*\* in respect of work performed or materials delivered on the Site during the period covered by such Application for Payment. Both Contractor and its Major Subcontractors shall provide Owner a conditional final lien release in the form set forth in

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Exhibit 13B as a condition precedent to payment by Owner of the final Application for Payment. In addition to the lien releases described in this Section 8.4, Contractor shall deliver to the Title Company, as and when required by the Title Company in order to issue title insurance to any Financing Party and to provide an endorsement thereto with respect to mechanic's liens pending disbursement coverage, (a) Contractor's sworn statement and (b) a mechanic's lien subordination agreement, each executed by Contractor and in form and substance acceptable to the Title Company.

**8.5 Release of Liability.** \*\*\*

**8.6 Overdue Payments.** Overdue payment obligations of either Party hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the lesser of (a) the rate published by the *Wall Street Journal* as the "prime rate" on the Business Day preceding the date on which such interest begins to accrue plus \*\*\* and (b) the maximum rate allowed under Applicable Law.

**8.7 Disputed Payments.** Failure by Owner to pay any invoiced amount disputed in good faith and until such dispute has been resolved in accordance with Article 28 shall not alleviate, diminish, modify or excuse the performance of Contractor or relieve Contractor's obligations to perform hereunder, subject to the provisions of such Article 28. Contractor's acceptance of any payment, and Owner's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts expeditiously and in any case in accordance with the provisions of Article 28. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If an Application for Payment was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner with respect to such invoice are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor, at the interest rate set forth in Section 8.6, from the date on which the interest on such payment was originally due under Section 8.3 until the date such payment is actually received by Contractor. If amounts disputed in good faith that have been paid by Owner are later resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such payment at the interest rate set forth in Section 8.6, from the date on which the payment was originally made by Owner until such refunded payment is received by Owner. If amounts disputed in good faith by Owner are later resolved in favor of Contractor, Owner shall make such disputed payment and pay interest on such disputed payment at the interest rate set forth in Section 8.6, from the date on which the payment was due until such payment is received by Contractor.

**8.8 Performance Security.** Contractor shall maintain the Contractor Performance Security in full force and effect in accordance with the terms thereof.

**8.9 Payment Security.** On the Effective Date, Owner shall deliver to Contractor the Equity Contribution Agreement. The Equity Contribution Agreement shall remain in full force and effect in accordance with its terms.

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**8.10 Additional Withholding.** If Contractor fails to obtain and maintain the credit support requirements set forth in Exhibit 31 as and when required pursuant to the terms thereof, Owner shall be entitled to withhold amounts otherwise payable hereunder in an aggregate amount not to exceed (a) the face amount of any Acceptable Letters of Credit required by Exhibit 31 until such Acceptable Letters of Credit are posted by Contractor and/or (b) \*\*\*. Owner shall pay any such amounts withheld pursuant to this Section 8.10 within \*\*\* of (a) Owner's receipt of such Acceptable Letter of Credit or (b) \*\*\*.

## **ARTICLE 9.**

### **TAXES**

**9.1 Taxes.** The Contract Price includes any and all Taxes imposed under Applicable Law on Contractor, the Subcontractors, the Work, the construction or sale of Facility Equipment to Owner or installation of the Project, except for Owner Taxes. In addition to the Contract Price, Owner assumes exclusive liability for and shall pay before delinquency all Owner Taxes. Contractor and Owner agree to cooperate with each other to minimize the Tax liability of both Parties to the extent legally permissible and commercially reasonable for such Party. Contractor shall provide Owner with such assistance as may be reasonably requested by Owner in demonstrating eligibility for exemptions or exclusions from such Taxes (and any other Tax exemptions) to the relevant Governmental Authority; provided that Owner shall reimburse Contractor for any out-of-pocket costs that Contractor incurs in providing such assistance. Contractor shall, in accordance with Applicable Law, timely administer and timely pay all Taxes that are included in the Contract Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and furnish copies of such information and reports (other than information specifically pertaining to Contractor's income and profit) to Owner as reasonably requested by Owner and within \*\*\* after any request from Owner. Contractor shall provide Owner with any other information regarding allocation of quantities, descriptions, and costs of property provided by Contractor and installed as part of the Project that is necessary in connection with the preparation of Owner's tax returns or as a result of an audit by a taxing authority. This clause will survive the expiration or termination of this Agreement.

## **ARTICLE 10.**

### **CHANGES AND EXTRA WORK**

#### **10.1 Owner Requested Change Order.**

(a) Owner agrees that it will not request or direct changes in the Work or the Facility which (i) reduces Contractor's Scope of Work or (ii) materially alters the Technical Specifications, in each case, without Contractor's prior written consent, such consent not to be unreasonably withheld or delayed.

(b) Subject to Section 10.1(a), without invalidating this Agreement, Owner may request changes in the Work or the Facility that are reasonably consistent with the Scope of the Work under this Agreement and are technically feasible. Owner shall

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request such changes in the Work or Facility by delivering a written Change Order request to Contractor. As soon as practicable after receipt of a Change Order request, Contractor shall prepare and forward to Owner in writing: (i) a quotation for the price for the extra or changed Work and change to the Payment Schedule (if applicable); (ii) an estimate of any required adjustment to the Construction Schedule; (iii) any adjustment to Performance Criteria; and (iv) an estimate of any impact of the proposed change on any Applicable Permit, warranty and any other term or condition of this Agreement. The Parties shall negotiate in good faith to determine the adjustment to the Contract Price for Change Orders contemplated by this Section 10.1(b). If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 10.1(b), then the adjustment to the Contract Price may be determined in accordance with Exhibit 18 but only if the Parties so agree. If the Parties do not agree either (i) to a fixed price Change Order, or (ii) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 18, then Owner may nonetheless direct Contractor to proceed with the Work that is the subject of the Change Order, and Contractor shall be paid its Direct Costs as reasonably incurred in performing the Change Order plus a markup of \*\*\*. Contractor shall submit Applications for Payment no more frequently than monthly with respect to Contractor's Direct Costs in accordance with the preceding sentence and Owner shall be obligated to pay such undisputed amounts within \*\*\* after Owner's receipt of Contractor's Application for Payment.

**10.2 Contractor Requested Change Order.** Contractor may propose a Change Order to Owner if the proposed changes improve the Facility or are otherwise advisable for the Work. Any such proposed Change Order shall not affect the obligation of Contractor to perform the Work and to deliver the Facility in accordance with this Agreement unless and until Owner executes a Change Order pursuant to Section 10.6. If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 10.2, then the adjustment to the Contract Price may be determined in accordance with Exhibit 18 but only if the Parties so agree. If the Parties do not agree either (a) to a fixed price Change Order or (b) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 18, then no Change Order shall be executed. If Contractor proceeds with a proposed change in the Work pursuant to this Section 10.2 without receiving the consent of Owner, Contractor shall be responsible for the removal of any such work if a Change Order request is not subsequently approved by Owner; provided, however, that in the event of any Emergency affecting the safety of persons or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss.

**10.3 Mandatory Change Order.** Contractor shall be entitled to an adjustment in the Contract Price as set forth in this Agreement and an adjustment in the Construction Schedule (including to any Guaranteed Block Substantial Completion Date, Guaranteed Facility Substantial Completion Date or Guaranteed Final Completion Date) as set forth below upon the occurrence of any of the following events: \*\*\*.

**10.4 Limitation on Change Orders.** Changes Orders shall be limited to changes requested by Owner in accordance with Section 10.1, changes requested by Contractor and mutually agreed to by the Parties in accordance with Section 10.2 and in connection with mandatory Change Orders in accordance with Section 10.3. \*\*\*

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**10.5 Determining Change Order.** Any adjustment of the Construction Schedule pursuant to a Change Order shall be determined in accordance with Section 10.3. Any adjustment of the Contract Price shall include all costs to Contractor associated with the performance of the extra Work or changes or a reduction of the Contract Price based on savings to Contractor associated with the changes, as applicable. Adjustments in Contract Price shall be determined in accordance with Sections 10.1, 10.2, and 10.3, as applicable, as well as Article 11.

**10.6 Change Order Must Be in Writing.** Except as otherwise provided in Section 10.3, no change or extra Work shall be valid and effective unless it is in writing in the form of a Change Order signed by the representatives of both Parties that includes a description of the amount of any adjustment of the Contract Price and any adjustment to the Construction Schedule, Payment Schedule or Performance Criteria due to the change.

## **ARTICLE 11.**

### **FORCE MAJEURE EVENT; EXCUSABLE EVENT; CHANGE IN LAW**

**11.1 Certain Events.** No failure or omission to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim against a Party, or be deemed to be a breach or an Event of Default under this Agreement, if such failure or omission shall be caused by or arise out of a Force Majeure Event or an Excusable Event; provided that the Party claiming relief complies with the provisions of Article 11. Notwithstanding anything to the contrary in the foregoing, the obligation to pay money in a timely manner in accordance with the terms hereof shall not be subject to the Force Majeure Event or Excusable Event provisions hereof.

**11.2 Notice of Force Majeure Event and Excusable Event.** If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Excusable Event (in the case of Contractor), the Party claiming relief shall endeavor to provide notice within \*\*\* of when the Force Majeure Event or Excusable Event first prevents or delays performance under this Agreement with oral notice to Contractor's Representative or Owner's Representative, as applicable, of any delay or anticipated delay in the claiming Party's performance of this Agreement due to such Force Majeure Event or Excusable Event, including a description of the event including reasonable details (to the extent available and known to the claiming Party, at such time) regarding the underlying facts and conditions pursuant to which such Party is claiming a Force Majeure or Excusable Event and the anticipated length of the delay. After such oral notice, the claiming Party shall deliver written notice as soon as practicable, but in any event not later than \*\*\* after the claiming Party becomes aware of the delay or anticipated delay describing in detail the particulars of the occurrence giving rise to the claim, including what date the Party claiming relief became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of its obligations, and any action being taken to avoid or minimize its effect (the "Delay Notice"). The Party claiming relief due to a Force Majeure Event shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event or an Excusable Event promptly after such information becomes available to such Party.

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**11.3 Force Majeure Event and Excusable Event Conditions.** Upon the occurrence of a Force Majeure Event or an Excusable Event, the suspension of, or impact on, performance due to such Force Majeure Event or Excusable Event shall be of no greater scope and no longer duration than is required by such event (taking into account the obligations affected thereby). In addition, the claiming Party shall exercise reasonable efforts to (a) minimize and mitigate the effects of any delay caused by, and costs arising from said Force Majeure Event or Excusable Event (b) to continue to perform its obligations hereunder not affected by such event and (c) to correct or cure the effect of such event. When the Party claiming relief due to such Force Majeure Event or Excusable event is able to resume performance of its affected obligations, such Party shall provide prompt notice to the other Party to that effect and promptly resume performance of all of its obligations under this Agreement.

**11.4 Contractor's Remedies.**

(a) Force Majeure Event. As Contractor's remedy for the occurrence of a Force Majeure Event, and provided that Contractor has otherwise materially complied with the applicable obligations it may have under Section 11.2 and Section 11.3, if a Force Majeure Event occurs, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3.

(b) Excusable Event. As Contractor's remedy for the occurrence of an Excusable Event, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, if an Excusable Event occurs, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by the sum of (i) the actual and reasonably substantiated Direct Costs incurred by Contractor as a direct result of such Excusable Event plus (ii) \*\*\* of the amount calculated in subclause (i).

(c) Changes in Law.

(i) [Reserved].

(ii) As Contractor's remedy for the occurrence of a Change in Law after the NTP Date, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, \*\*\*.

(d) Changes in Project Agreement. As Contractor's remedy for the occurrence of a Change in Project Agreement, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by the sum of (i) the actual and reasonably substantiated Direct Costs incurred by Contractor as a direct result of such Change in Project Agreement plus (ii) \*\*\* of the amount calculated in subclause (i).

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(e) Changes Orders. Upon the occurrence of an event that entitles Contractor to relief under this Section 11.4, and subject to Contractor's compliance with the applicable provisions of this Article 11 and Article 10 in all material respects, Contractor and Owner shall prepare a Change Order in accordance with Article 10.

(f) \*\*\*

## ARTICLE 12.

### HAZARDOUS MATERIALS

**12.1 Use by Contractor.** Contractor shall minimize and manage the use of Hazardous Materials in the performance of its obligations under this Agreement and shall not and shall not permit any of the Subcontractors, directly or indirectly, to cause any Release in, on or under the Project, the Site or the adjacent area except to the extent required for the performance of the Work, in such case, in accordance with Applicable Laws and Applicable Permits (including the performance of investigatory, monitoring, or other remedial work upon the Project, the Site or adjacent areas to the extent reasonably necessary to comply with Applicable Laws and Applicable Permits).

**12.2 Remediation by Contractor.** Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by Applicable Laws and Applicable Permits in connection with any Release, disposal or the presence of Hazardous Materials, where existing prior to the Effective Date or brought onto or generated at the Site by any Contractor Party or Subcontractor or to the extent any such Release is caused by the negligent acts or omissions of any Contractor Party or Subcontractor, except to the extent such Release is caused by Owner, its Affiliates, or any third party (other than any Contractor Party or Subcontractor) after the Effective Date. Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws and Applicable Permits relating to the use, transportation, storage, handling or presence of Hazardous Materials, or any Release, by any Contractor Party, Subcontractor or any Person acting on its or their behalf or under its or their control of any such Hazardous Materials brought onto or generated at the Site by any Contractor Party or Subcontractor, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work.

**12.3 Hazardous Materials File.** During the performance of the Work, Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Materials used in connection with the Work hereunder, or used by or on behalf of any Contractor Party or Subcontractor at the Site and shall promptly deliver any updates to such file which are issued to Owner.

**12.4 Notice of Hazardous Materials.** If Contractor discovers, encounters or is notified of any Release or exposure to Hazardous Materials at the Site:

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(a) Contractor shall promptly notify Owner thereof and stop work in and restrict access to the area containing such Hazardous Materials as required by Applicable Law or Applicable Permits;

(b) if any Contractor Party or Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall, as promptly as reasonably practicable, remove such Hazardous Materials from the Site and remediate the Site to the extent required by all Applicable Laws and Applicable Permits in each case at Contractor's sole cost and expense, except where such materials were Released by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor (but only after the Effective Date); and

(c) if any Contractor Party or any Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay or costs incurred by Contractor as a result of the existence of such Hazardous Materials, except where such materials were Released by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor (but only after the Effective Date).

**12.5 Hazardous Materials Disposal System.** Contractor shall arrange and contract with contractors (who are appropriately licensed and insured) for the transportation from the Site, management or disposal in accordance with Applicable Law and Applicable Permits, of Hazardous Materials generated by or produced in connection with Contractor's performance of the Work. To the extent required by Applicable Law or Applicable Permits, Contractor shall (a) prepare and maintain accurate and complete documentation of all Hazardous Materials used by Contractor or Contractor Parties at the Site in connection with the Project, and of the disposal of any such materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site and (b) prepare and deliver all required notifications and reports to Governmental Authorities in connection with the presence of Hazardous Materials at the Site that were brought onto the Site or generated by any Contractor Party or Subcontractor. Contractor shall comply with Owner's reasonable requirements and procedures with respect to the disposal of such Hazardous Materials.

**12.6 Scope of Contractor Environmental Indemnification.** Contractor hereby specifically agrees to indemnify, defend and hold Owner and the Owner Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including all reasonable consulting, engineering, attorneys' or other professional fees), whether or not involving damage to the Project or the Site that they may incur or suffer by reason of:

(a) any use of or introduction of Hazardous Materials to the Site by any Contractor Party or Subcontractor in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;

(b) any Release in connection with the performance of the Work by Contractor or any of its Subcontractors (except as provided in Section 12.7);

(c) any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by any Contractor Party or any Subcontractor;

(d) any action reasonably necessary to abate or remediate Hazardous Materials described in paragraph (a) above, or prevent a violation or threatened violation of any Environmental Law by any Contractor Party or Subcontractor; and

(e) any action required by Contractor to mitigate a situation created by the violation of any Applicable Law or Applicable Permit by any Contractor Party or Subcontractor.

**12.7 Scope of Owner Environmental Indemnification.** Owner hereby specifically agrees to indemnify, defend and hold Contractor and Contractor Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including, all reasonable consulting, engineering, attorneys' or other professional fees), whether or not involving damage to the Project or the Site that they may incur or suffer by reason of:

(a) any Hazardous Materials present or used, brought upon, transported, stored, kept, discharged, or spilled by Owner or any Owner Party in, on, under or from the Site after the Effective Date including any Release by Owner or its Affiliates, in accordance with the terms of this Agreement and all Applicable Laws;

(b) any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by Owner; and

(c) any action reasonably necessary to abate or remediate Hazardous Materials described in paragraphs (a) or (b) above, or to prevent a violation or threatened violation of any Environmental Law by Owner.

## **ARTICLE 13.**

### **TITLE AND RISK OF LOSS**

**13.1 Equipment - Risk of Loss Before Block Substantial Completion.** From the Effective Date and until the Block Substantial Completion Date of each Block, subject to the provisions of this Article 13, Contractor has care, custody and control of all Facility Equipment and other items that become part of a Block and shall exercise due care with respect thereto and assumes the risk of loss and full responsibility for the cost of replacing or repairing any damage to the relevant Block and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased for permanent installation in or for use during construction of such Block.

**13.2 Equipment - Risk of Loss After Block Substantial Completion.** Owner shall take complete possession and control and shall assume and shall bear the risk of loss and full responsibility in respect of a Block completed and transferred to Owner upon the Block Substantial Completion Date of such Block after the Block Substantial Completion Date of such Block or the earlier termination of this Agreement, unless the loss or damage to such Block is (a) caused by any Contractor Party, Subcontractor or other Person over whom Contractor has control or (b) a defect covered by the Warranties provided by Contractor under this Agreement. Upon Owner's written request, if any component of the Block is lost or damaged for whatever reason after the Block Substantial Completion Date, then, upon Owner's written request, Contractor shall restore or rebuild any such loss or damage and complete the Work in accordance with this Agreement at the sole cost and expense of Owner, unless such loss or damage is (i) caused by any Contractor Party or Subcontractor or other Person over whom Contractor has control or (ii) a defect covered by the Warranties provided by Contractor under this Agreement, in which case Contractor shall restore or rebuild any such loss or damage at its cost.

**13.3 Owner Caused Damage.** Notwithstanding any other provision of this Agreement but subject to Owner's rights to coverage under the Builder's Risk Insurance in accordance with Exhibit 15, Owner shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to the Facility and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or Owner for permanent installation in or for use during construction of the Facility to the extent that such damage is caused by the negligence or willful misconduct of Owner, its agents, employees, representatives, consultants or other contractors.

**13.4 Title.**

(a) To the extent Owner's payments to Contractor are made in accordance with this Agreement, Contractor warrants good title, free and clear of all Contractor Liens, to all Work, Facility Equipment and other items furnished by Contractor or any of the Subcontractors that become part of the Project.

(b) Title to the Facility, and to any discrete and identifiable item or series of Facility Equipment, shall pass to Owner upon the earliest to occur of (i) \*\*\*, (ii) receipt by Contractor of payment (less any Retainage) in full therefor, (iii) Facility Substantial Completion, (iv) \*\*\*, and (v) with respect to any applicable Facility Equipment, \*\*\*.

**ARTICLE 14.**

**INTELLECTUAL PROPERTY**

**14.1 Drawings, Designs, and Specifications.** Drawings, designs, specifications and Confidential Information contained within, accompanying or arising from the Work, including those in electronic form, in each case prepared by Contractor (or its Affiliates or Subcontractors) and delivered to Owner (the "Licensed Technology") shall be considered instruments of service and are for use by Owner, its contractors, agents and employees solely with respect to the Project in accordance with the license granted under Section 14.2. As between the Parties, Contractor (or its Affiliates or Subcontractors) shall be deemed the authors and owners of the Licensed

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Technology and, subject to Section 14.2, shall retain all common law, statutory and other reserved rights, including copyrights in the Licensed Technology.

**14.2 License.** All Intellectual Property Rights contained within, accompanying or arising from the Licensed Technology are and shall be solely owned by Contractor and are not being sold to Owner, but rather are being licensed in accordance with the terms and conditions of this Agreement. Effective upon the passage of title to any Block or Equipment, as applicable, to Owner, Contractor hereby grants to Owner a fully paid-up, perpetual, irrevocable, non-exclusive, royalty-free right and license to use (a) the Licensed Technology to the extent reasonably necessary (i) to complete or enable the use of the Work, all Contract Documents and all such items and materials provided by Contractor and (ii) in connection with the design, construction, ownership, use, operation, maintenance, repair, modification, alternation, commissioning, de-commissioning, disposal or removal of the Facility or any subsystem or component thereof in connection with the Project, including the right to reproduce, prepare derivative works based on and distribute such Work, Contract Documents and such drawings, designs, specifications, and other works of authorship provided by Contractor (or its Affiliates or Subcontractors) and (b) the Owner Improvements in connection with the design, construction, ownership, use, operation, maintenance, repair, modification, alternation, commissioning, de-commissioning, disposal or removal of any other facility owned or leased by Owner or its Affiliates. The license granted under this Section 14.2 is subject to the requirements and limitations set forth in Section 14.3 but does allow Owner to provide the Licensed Technology to its contractors in connection with use in relation to the Project. Except as set forth in this Section 14.2, no other license in the Licensed Technology is granted pursuant to this Agreement. To the extent that exercise of the foregoing license rights requires use or disclosure of Contractor's Confidential Information, such use or disclosure shall be subject to the terms and conditions set forth in Article 25.

#### **14.3 Limitations.**

(a) No Copies. Except as otherwise permitted by this Agreement, and except for Contractor Submittals and all other construction documents, commissioning and test reports and results delivered to Owner for Owner review during construction, commissioning and testing of the Facility, Owner shall not make any copies of the Licensed Technology without first obtaining express written permission from Contractor, except that Owner may make copies of the Licensed Technology in order to share the Licensed Technology or portions thereof with an Owner Party, its contractors or any Financing Party to the extent the Owner Party, contractor or Financing Party needs to know such information with respect to the Project. Such Owner Party, contractor or Financing Party, as applicable, shall be informed of the confidential nature of the Licensed Technology and be bound by confidentiality obligations of a like nature to those contained in this Agreement. Any party receiving Licensed Technology shall be responsible for any breach of this Agreement by any of its representatives or Affiliates.

(b) Proprietary Notices. Owner shall not remove or alter, or knowingly permit to be removed or altered, any proprietary notices that appear on or with the Licensed Technology.

(c) No Reverse Engineering, Etc. Except as otherwise permitted by this Agreement, Owner shall not display, distribute, decompile, reverse engineer, decrypt, extract or disassemble any software or firmware in any Blocks, Equipment or Modules to source code form.

(d) Improvements.

(i) If any Owner Party, directly or indirectly, alone or jointly with others, creates, develops, discovers, invents or reduces to practice any Owner Improvement, such Owner Party shall promptly disclose the same to Contractor.

(ii) Owner, on behalf of itself and all Owner Parties agrees to assign, and Owner hereby does assign, to Contractor, its successors and assigns, effective automatically as and when Owner Improvements are created, developed, discovered, invented or reduced to practice, each and every Owner Improvement, together with the right to seek protection by obtaining patent rights therefor and to claim all rights or priority thereunder, and the same shall become and remain Contractor property whether or not such protection is sought. Owner shall (and shall cause Owner Parties to), upon Contractor's request and at Contractor's expense, give Contractor and its attorneys all reasonable assistance in connection with the preparation and prosecution of any patent applications and shall cause to be executed all assignments or other instruments or documents as reasonably necessary or appropriate to perfect the ownership of Contractor in the Owner Improvements.

(iii) If and only if, and to the extent, Applicable Law mandates that Owner own, or if Owner does in fact own, any Owner Improvements, notwithstanding the terms of this Agreement, Owner hereby grants to Contractor and its Affiliates an exclusive, perpetual, worldwide, royalty-free license to use and sublicense others to use such Owner Improvements.

(e) Enforcement. Each Party shall notify the other Party promptly in writing of any suspected infringement by a third party of the Licensed Technology or any of the Intellectual Property Rights therein or any other Intellectual Property Rights related to the Work, the Blocks or the Facility Equipment. Contractor shall have the exclusive right to enforce and defend the rights appurtenant to the Licensed Technology or such other Intellectual Property Rights in Contractor's sole discretion and shall have the sole right of control of any such enforcement action or proceeding it elects to initiate (an "Action"), at Contractor's sole cost and expense (provided, however that Contractor shall not consent to the entry of any judgment or enter into any settlement of any such Action in the event such judgment or settlement imposes any liability, restriction or obligation on Owner without Owner's prior written consent, which shall not be unreasonably withheld, conditioned or delayed). Owner shall provide on Contractor's written request all reasonable assistance in preparing and advancing such Action and Contractor shall reimburse Owner's reasonable out-of-pocket costs incurred in doing so. Owner shall have the right to be represented in connection with such Action by its own legal counsel, at its own expense; provided, however, that such legal counsel shall

act only in an advisory capacity. Contractor may retain any monetary damages or other compensation or recovery awarded to it in any such Action.

(f) Assignment. The grant of rights and licenses to Owner in Section 14.2 and this Section 14.3(f) shall be assignable to other Persons solely pursuant to all terms and conditions controlling such assignment in Article 26.

(g) Reservation of Rights. Notwithstanding anything to the contrary in this Agreement, neither Party shall be prohibited from utilizing any general knowledge, skills, experience, ideas or concepts retained in the unaided memory of an individual acquired during the term of this Agreement.

**14.4 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 2.1(i), THE LICENSED TECHNOLOGY IS PROVIDED AND LICENSED HEREUNDER “AS IS” AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY CONTRACTOR.

## ARTICLE 15.

### START-UP, COMMISSIONING & TESTING

**15.1 Start-up and Commissioning.** Contractor shall conduct the Start-up and Commissioning of each Block in accordance with the Start-up and Commissioning requirements set forth in Exhibits 3 and 27.

**15.2 Functional Test and Capacity Tests.** Contractor shall conduct Functional Tests for each Block in accordance with Exhibit 27 and when Contractor believes that a Block can satisfy the Minimum Capacity Level, Contractor shall conduct the Capacity Test with respect to each Block in accordance with Exhibit 16A. Contractor must submit a test report for each Functional Test and Capacity Test within \*\*\* after the completion thereof, which test report shall include a summary of the Functional Test or Capacity Test, as the case may be, and the results for such test. Owner and Contractor will negotiate in good faith to agree upon testing procedures that comply with the protocols set forth in Exhibit 27.

**15.3 Capacity Test Notice.** Contractor shall provide Owner with at least \*\*\* prior written notice of the commencement of each such test, in order to permit Owner's Representative to arrange attendance at such Capacity Test. Contractor shall give Owner Representative at least \*\*\* advance notice of the re-performance of any Capacity Test. Owner's Representative, and any Owner Inspection Party (excluding SunPower Competitors) notified to Contractor by Owner in writing prior to the date of the test shall be entitled to attend and observe each Capacity Test and each re-performance thereof.

**15.4 Capacity Test Acceptance.** Contractor shall, as soon as practicable following the completion of a Capacity Test in which the Final Test Results reveal that the Minimum Capacity Level for such Block has been achieved, submit to Owner's Representative a Capacity Test Certificate, signed by Contractor's Representative and attaching the Final Test Results performed pursuant to Exhibit 16A. Subject to this Section 15.4, Owner shall, within \*\*\* after Owner's

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receipt of a Capacity Test Certificate from Contractor, either: (a) approve the Capacity Test results by countersigning and delivering to Contractor the fully executed Capacity Test Certificate (which shall be deemed effective on the date the Capacity Test Certificate was delivered); or (b) give Contractor written notice stating that Owner rejects the Capacity Test results and describing the non-conformity on which the rejection is based. A Capacity Test Certificate signed by Owner is deemed conclusive evidence that such Block has met the Minimum Capacity Level required under this Agreement (“Acceptance”). Acceptance of the Capacity Test for a Block shall not affect any rights Owner may have under a Warranty for a Block, any Facility Equipment or the Facility pursuant to Article 21. If Owner fails to respond within such \*\*\* period, then Acceptance for such Block shall be deemed to have occurred as of the date that the Capacity Test Certificate was delivered to Owner and Owner shall execute and deliver the relevant Capacity Test Certificate.

**15.5 Capacity Test Rejection.** If the Final Test Results reveal that the relevant Block fails to meet the Minimum Capacity Level for such Block, Contractor shall repeat the respective Capacity Test as many times as necessary until the Minimum Capacity Level has been met. Contractor shall take all corrective actions so that such Block successfully completes the Capacity Test and meets the Minimum Capacity Level, without prejudice to Owner's rights and remedies under this Agreement. If the Final Test Results reveal that the relevant Block has satisfied the Minimum Capacity Level but not the Guaranteed Capacity (as adjusted for uncertainty in accordance with Exhibit 16A), Contractor may elect to perform additional Work (if it deems necessary) and repeat the Capacity Test. Any such additional Work shall be performed in compliance with the requirements of this Agreement, including that such Work is in compliance with the PPA. Prior to commencing any such additional Work, Contractor shall provide to Owner a detailed plan and schedule to perform such additional Work and shall not commence any such additional Work without Owner's consent, not to be unreasonably withheld. There shall not be a limit to the number of times the Capacity Test may be repeated pursuant to the previous sentence \*\*\*.

**15.6 Right to Use Temporary Equipment.** If any Block or the Facility experiences a single point failure (i.e., a main transformer failure) prior to or during a Capacity Test, Contractor may use temporary equipment which must remain in place until a permanent replacement can be installed; provided that such temporary equipment is approved by Owner (such approval not to be unreasonably withheld and in any event within \*\*\* of such request for approval) and complies with all Applicable Laws, Applicable Permits, Project Transaction Documents, Governmental Authorities and the PPA and such temporary equipment is not expected to have any adverse effect on the safe and reliable construction of the Block or Project. All costs to install and remove the temporary equipment shall be to Contractor's account.

15.7 \*\*\*

(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

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## ARTICLE 16.

### BLOCK SUBSTANTIAL COMPLETION; FACILITY SUBSTANTIAL COMPLETION

**16.1 Generally.** Subject to Article 17, Contractor shall perform the Work in accordance with the Construction Schedule, as may be amended from time to time in accordance with the terms of this Agreement, so as to achieve Block Substantial Completion for each Block by the Guaranteed Block Substantial Completion Dates, Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date and Final Completion by the Guaranteed Final Completion Date.

**16.2 Block Substantial Completion Defined.** Subject to Section 16.3, “Block Substantial Completion” shall, with respect to a Block, occur when all of the following conditions have been achieved:

- (a) the design, engineering, procurement and construction of such Block has been completed in accordance with this Agreement except for Punch List Items and the Block has been commissioned and a Functional Test has been Successfully Run in respect of such Block and such Block is ready to commence commercial operation;
- (b) the Block is electrically interconnected to and has been synchronized with, and is capable of transmitting electric energy to, the Delivery Point in accordance with the Interconnection Agreement and the PPA and all testing and obligations under the PPA required as a condition to such delivery of energy under the PPA, including testing required by CAISO for delivery of electricity from such Block has been satisfactorily completed;
- (c) a Capacity Test pursuant to Exhibit 16A has been Successfully Run in respect of such Block and Contractor has provided to Owner, and Owner has accepted, a Capacity Test Certificate evidencing that the Minimum Capacity Level for such Block has been achieved;
- (d) the Block is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;
- (e) Owner has received all Contractor Submittals (if any) as required to be delivered by the Block Substantial Completion Date for such Block;
- (f) Contractor and Owner have agreed to the Punch List Items for such Block and Contractor has completed all Work on such Block other than the remaining Punch List Items; and
- (g) Contractor has delivered the notice of Block Substantial Completion of such Block to Owner pursuant to Section 16.3.

**16.3 Notice and Certificate of Block Substantial Completion.** When Contractor considers that a Block has achieved Block Substantial Completion in accordance with Section 16.2, Contractor shall deliver to Owner a Certificate of Block Substantial Completion signed by Contractor, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 16.2 and the corresponding Application for Payment. Contractor shall provide Owner with a Punch List Estimate at such time. Upon receipt of a Certificate of Block Substantial Completion from Contractor together with supporting documentation, Owner shall promptly take steps to confirm whether Block Substantial Completion has been achieved and as soon as practicable, but in no event later than \*\*\* from the date of receipt of Contractor's notice, Owner shall either issue Contractor: (a) a countersignature to the Certificate of Block Substantial Completion, signed by Owner's Representative and stating that the relevant Block Substantial Completion Date is the date on which Contractor delivered the Certificate of Block Substantial Completion under this Section 16.3 or (b) a written notice stating why Owner does not consider that Block Substantial Completion for such Block has been achieved. The “Block Substantial Completion Date” for such Block shall be the Day on which the last of the conditions of Section 16.2 was satisfied or, in the discretion of Owner, waived; provided, however, except in the event Owner rejects a Certificate of Block Substantial Completion and any dispute arising from such rejection is resolved in favor of Contractor or Owner does not respond and the Block Substantial Completion is deemed to have occurred, with respect to the transfer of risk of loss, care, custody and control for purposes of Article 13, such date shall be the date of Owner's countersignature to the Certificate of Block Substantial Completion or the date of deemed acceptance, as applicable. If Owner fails to respond within such \*\*\* period, then Block Substantial Completion for such Block shall be deemed to have occurred as of the date that the Certificate of Substantial Completion was delivered to Owner. If Contractor receives a notice under subparagraph (b) above, Contractor shall take the necessary steps to achieve Block Substantial Completion for such Block and the procedures set forth under this Section 16.3 shall be repeated until such time as the Certificate of Block Substantial Completion for such Block has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

**16.4 Facility Substantial Completion Defined.** Subject to Section 16.5, “Facility Substantial Completion” means (excepting the completion of Punch List Items):

- (a) each Block has achieved Block Substantial Completion and the Project as a whole is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;
- (b) installation of minimum of \*\*\* MW of inverters as determined by aggregating the nameplate of inverters;
- (c) the Facility is operational and can demonstrate that it evacuates power at the Delivery Point pursuant to the Facility Demonstration Test performed in accordance with Exhibit 16D;

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(d) the most recent Functional Test has been Successfully Run in respect of the Facility and the Facility is ready to commence commercial operation;

(e) the Guaranteed Capacity for the Facility has been achieved, or if not, the Facility Capacity is greater than the Minimum Capacity Level of the Facility and Contractor has paid the applicable Final Capacity Liquidated Damages;

(f) each of the requirements to achieve “Commercial Operation” under the PPA shall have been satisfied, except those requirements that are Owner's obligations set forth in Sections L, M or N of Exhibit 1;

(g) Contractor and Owner have agreed upon the list of Punch List Items;

(h) Owner has received all Contractor Submittals as required to be delivered by the Facility Substantial Completion Date in accordance with Exhibit 7;

(i) all construction and post-construction submittals required by the Contractor Acquired Permits for the Project have been submitted to the appropriate Governmental Authorities;

(j) all Certificates of Block Substantial Completion have been received by and approved or deemed approved by Owner;

(k) \*\*\*

(l) the Facility has successfully completed the Installed DC Rating Survey in accordance with Exhibit 16C; and

(m) Contractor has delivered the notice of Facility Substantial Completion to Owner pursuant to Section 16.5.

**16.5 Notice and Certificate of Facility Substantial Completion.** When Contractor considers that Facility Substantial Completion has been achieved in accordance with Section 16.4, Contractor shall deliver to Owner a Certificate of Facility Substantial Completion signed by Contractor, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 16.4 and the corresponding Application for Payment. Contractor shall provide Owner with a Punch List Estimate at such time. Upon receipt of a Certificate of Facility Substantial Completion from Contractor together with supporting documentation, Owner shall promptly take steps to confirm whether Facility Substantial Completion has been achieved and as soon as practicable, but in no event later than \*\*\* from the date of receipt of Contractor's notice, Owner shall either issue Contractor: (a) a countersignature to the Certificate of Facility Substantial Completion, signed by Owner's Representative and stating that the Facility Substantial Completion Date is the date on which Contractor delivered the Certificate of Facility Substantial Completion to Owner under this Section 16.5; or (b) a written notice stating why Owner does not consider that Facility Substantial Completion has been achieved. The “Facility Substantial Completion Date” for the Facility shall be the Day after the date on which the last of the conditions of Section 16.4 was satisfied or, in the discretion of Owner, waived; provided, however, except in the event Owner rejects a Certificate of Facility Substantial Completion and

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any dispute arising from such rejection is resolved in favor of Contractor or Owner does not respond and the Facility Substantial Completion Date is deemed to have occurred, with respect to the transfer of risk of loss, care, custody and control for purposes of Article 13, such date shall be the date of Owner's countersignature to the Certificate of Facility Substantial Completion or the date of deemed acceptance, as applicable. If Owner fails to respond within such \*\*\* period, then such delay shall constitute an Owner-Caused Delay. If Contractor receives a notice under subparagraph (b) above, Contractor shall take the necessary steps to achieve Facility Substantial Completion and the procedures set forth under this Section 16.5 shall be repeated until such time as the Certificate of Facility Substantial Completion has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

#### **16.6 Punch List.**

(a) Creation of Punch Lists. Owner and Contractor shall agree upon the relevant Punch List Items to be completed by Contractor. Contractor and Owner shall jointly walk-down the Block and confer together as to the items which should be included on the finalized punch list. Contractor shall then reflect the result of such joint walk down and deliver the same to Owner for its review and approval, which submitted list shall be explicitly designated as the “Proposed Punch List” for the applicable Block. The Proposed Punch List shall include only Punch List Items for such Block, and shall include a Punch List Estimate for the completion or repair of each such Punch List Item and Contractor's estimated schedule for completion therefor. If Owner does not deliver any changes to the Proposed Punch List to Contractor within the later of (i) \*\*\* after Contractor's submission to Owner of such Proposed Punch List and (ii) and (b) \*\*\* after the date of the joint walk-down, such delay shall constitute an Owner-Caused Delay. The Proposed Punch List that is ultimately approved for a Block shall be referred to as the “Punch List” for such Block. If the Punch List for a Block is not finalized by the Block Substantial Completion Date for such Block, the Proposed Punch List as modified by Owner shall be deemed the Punch List for such Block for all purposes hereunder until the Parties resolve such dispute and otherwise finalize the Punch List for such Block. Contractor shall note on such Punch List the items under dispute.

(b) Completion of Punch Lists. Contractor shall proceed promptly to complete and correct the Punch List Items relating to the relevant Block or the Facility, as applicable, no later than \*\*\* after the relevant Block Substantial Completion Date or Facility Substantial Completion Date, as applicable. On a monthly basis after the Block Substantial Completion of a Block, Contractor shall prepare a punch list for such Block to include the date(s) that items listed on such Punch List are completed by Contractor and accepted by Owner. Notwithstanding any of the foregoing, the items listed on such Punch List shall not be considered complete until Owner shall have inspected such Punch List Items and acknowledged, by notation on the updated Punch Lists, that such item of Work is complete. If Owner does not so inspect and deliver such notations on the updated Punch Lists to Contractor (or dispute completion of the applicable items of Work if not accepted) within \*\*\* after Contractor submits the updated Punch List containing such Punch List Item to Owner, and Contractor has actually completed and

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corrected any Punch List Item listed on such Punch List, such failure by Owner shall constitute an Owner-Caused Delay. Contractor shall use best efforts to complete the Punch List Items in such a manner as to prevent any loss of power production to the Facility and Contractor shall not curtail or interrupt operation of the Project without Owner consent. Contractor will be responsible for all costs incurred during the completion of the Punch List Items.

(c) Creation of Project Punch List. Owner and Contractor shall agree upon the relevant Punch List Items to be completed by Contractor. Contractor and Owner shall jointly walk-down the Project and confer together as to the items which should be included on the finalized punch list for the Project. Contractor shall prepare a punch list for the Project to reflect the result of such joint walk down and deliver the same to Owner for its review and approval, which submitted list shall be explicitly designated as the “Proposed Project Punch List” and shall set forth all Work remaining to be completed after the Facility Substantial Completion Date. The Proposed Project Punch List may only contain Punch List Items, and shall include a Punch List Estimate for the completion or repair of each such Punch List Item and Contractor's estimated schedule for completion therefor. If Owner does not approve the Proposed Project Punch List or deliver any changes to the Proposed Project Punch List to Contractor within \*\*\* after the later to occur of (a) Contractor's submission to Owner of such Proposed Project Punch List, and (b) \*\*\* after the date of the joint walk-down, then such failure shall constitute an Owner-Caused Delay. The Proposed Project Punch List that is ultimately approved by Owner for the Project shall be referred to as the “Project Punch List”. If the Project Punch List is not finalized by the Facility Substantial Completion Date, the Proposed Project Punch List as modified by Owner shall be deemed the Project Punch List for all purposes hereunder until the Parties resolve such dispute and otherwise finalize the Project Punch List. Contractor shall note on such Project Punch List the items under dispute. Contractor shall use best efforts to complete the Punch List Items in such a manner as to prevent any loss of power production to the Facility and Contractor shall not curtail or interrupt operation of the Project without Owner consent. Contractor will be responsible for all costs incurred during the completion of the Punch List Items.

## ARTICLE 17.

### STAGES OF COMPLETION; DELAY AND CAPACITY LIQUIDATED DAMAGES; EITC AND DEPRECIATION LOSS

#### 17.1 Block Delay Liquidated Damages.

(a) If Contractor has not achieved Block Substantial Completion of a Block by the Guaranteed Block Substantial Completion Date for such Block (a “Late Block”) for reasons not excused under the terms of this Agreement, then Contractor shall pay to Owner delay liquidated damages (“Block Delay Liquidated Damages”) equal to, for each Day after the Guaranteed Block Substantial Completion Date for such Late Block, \*\*\*; provided that any amounts that Contractor is obligated to pay to Owner under this Section 17.1 are subject to the limitations set forth in Section 17.1(b) and Article 29.

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\*\*\* Block Delay Liquidated Damages shall cease to accrue upon the earlier to occur of (i) the Block Substantial Completion Date for such Block and (ii) the Guaranteed Facility Substantial Completion Date. After taking into account the set-off against the bonus payable under Section 17.1(b) in accordance with Section 17.4, any amount Contractor is obligated to pay to Owner under this Section 17.1(a) shall be due and payable within \*\*\* after Contractor's receipt of Owner's invoice submitted not more frequently than monthly following the Guaranteed Block Substantial Completion Date of the Late Block.

(b) Contractor shall be entitled to a bonus payment equal to, for each Day, \*\*\*. Contractor shall not be entitled to any bonus under this Section 17.1(b) after the earlier of (i) Facility Substantial Completion or (ii) the Guaranteed Facility Substantial Completion Date. After taking into account the set-off against Block Delay Liquidated Damages and/or Block Capacity Liquidated Damages in accordance with Section 17.4, any amount Owner is obligated to pay to Contractor under this Section 17.1(b) shall be due and payable within \*\*\* after the end of each month.

**17.2 Guaranteed Facility Substantial Completion Delay Liquidated Damages.** If Contractor has not achieved Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date for reasons not excused under the terms of this Agreement, then Contractor shall pay to Owner delay liquidated damages ("Facility Delay Liquidated Damages") equal to, for each Day after the Guaranteed Facility Substantial Completion Date that the Facility has not achieved Facility Substantial Completion, \*\*\*; provided that any amounts that Contractor is obligated to pay to Owner under this Section 17.2 are subject to the limitations set forth in Article 29. Payment of Facility Delay Liquidated Damages shall be made payable within \*\*\* after Contractor's receipt of Owner's invoice.

**17.3 Block Capacity Liquidated Damages.** If after the Block Substantial Completion Date of a Block (if such date is on or after the Guaranteed Block Substantial Completion Date for such Block), the Final Test Results of the most recent Capacity Test for such Block demonstrates that the Block meets the Minimum Capacity Level but not the Guaranteed Capacity (adjusted for uncertainty in accordance with Exhibit 16A) for such Block, Contractor shall pay to Owner liquidated damages for such shortfall ("Block Capacity Liquidated Damages") in an amount equal to, for each Day that the Block Measured Capacity of such Block is below the Guaranteed Capacity (adjusted for uncertainty in accordance with Exhibit 16A) of such Block, \*\*\*; provided that any amounts that Contractor is obligated to pay to Owner under this Section 17.3 are subject to the limitations set forth in Article 29. Block Capacity Liquidated Damages shall cease to accrue upon the earlier to occur of (i) the date on which a Capacity Test for such Block demonstrates that such Block has achieved the Guaranteed Capacity (adjusted for uncertainty in accordance with Exhibit 16A) and (ii) the date that any Final Capacity Liquidated Damages are paid. After taking into account the set-off against the bonus payable under Section 17.1(b) in accordance with Section 17.4, any amount Contractor is obligated to pay to Owner under this Section 17.3 shall be due and payable within \*\*\* after Contractor's receipt of Owner's invoice submitted not more frequently than monthly. Notwithstanding the provisions above in this Section 17.3, Contractor shall not be obligated to pay any such Block Capacity Liquidated Damages with respect to any Day on which the Cumulative MWs exceeds Scheduled MWs for such Day as set forth in Exhibit 4B.

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**17.4 Netting.** If any undisputed Block Delay Liquidated Damages are payable pursuant to Section 17.1(a) or any undisputed Block Capacity Liquidated Damages are payable pursuant to Section 17.3, the aggregate amount of undisputed Block Delay Liquidated Damages and undisputed Block Capacity Liquidated Damages payable shall be set-off against the aggregate amount of undisputed bonus payable pursuant to Section 17.1(b) on a pro rata basis, and (a) Contractor shall pay the net amount (if any) of undisputed Block Delay Liquidated Damages and the undisputed Block Capacity Liquidated Damages to Owner in accordance with Section 17.1(a) and Section 17.3, respectively and (b) Owner shall pay the net amount (if any) of undisputed bonus payable pursuant to Section 17.1(b).

**17.5 Final Capacity Liquidated Damages.**

(a) Contractor agrees that if based on the results of the Facility Capacity calculation performed in accordance with Exhibit 16A, the Facility shall have failed to achieve the Guaranteed Capacity, Contractor shall pay to Owner upon Facility Substantial Completion an amount equal to \*\*\* (the “Final Capacity Liquidated Damages”).

(b) In the event Contractor has paid Final Capacity Liquidated Damages pursuant to Section 17.5(a), and, following additional Capacity Tests conducted in compliance with the provisions set forth in Section 15.5, if the Facility Capacity calculation resulting from the last of such additional Capacity Tests (i) reduces the Capacity Shortfall, Owner shall reimburse Contractor the corresponding amount of Final Capacity Liquidated Damages resulting from such reduction or (ii) increases the Capacity Shortfall, Contractor shall pay to Owner additional Final Capacity Liquidated Damages calculated in accordance with Section 17.5(a).

(c) Amounts payable by Contractor to Owner pursuant to Section 17.5(b) may be set off by Owner against the payment due for Final Completion on the final Application for Payment. Any amounts that Contractor is obligated to pay to Owner under Sections 17.5(a) or 17.5(b) are subject to the limitations set forth in Article 29. After Contractor's payment of Final Capacity Liquidated Damages, Contractor shall have no further obligation to try to achieve, and no further liability to Owner for failure to achieve, the Guaranteed Capacity.

**17.6 Liquidated Damages Reasonable.** The Parties agree that the extent and amount of loss or damage to Owner as result of Contractor's failure (a) to achieve Block Substantial Completion by the Guaranteed Block Substantial Completion Date of a Block, (b) to achieve Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date and (c) to achieve the Guaranteed Capacity for a Block or the Facility is impractical and difficult to determine with certainty. The Parties agree that such liquidated damages are a genuine pre-estimate of the damages suffered by Owner by reason of Contractor's failure to achieve or cause the Project to satisfy, obtain or achieve each Guaranteed Block Substantial Completion Date, the Guaranteed Facility Substantial Completion Date or the Guaranteed Capacity for a Block or the Facility and are not intended as a penalty. \*\*\* the amounts payable by Contractor to Owner under this Article 17 shall be Contractor's sole and exclusive liability to Owner, and Owner's sole and exclusive remedy, with respect to Contractor's failure (i) to achieve Block Substantial

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Completion of a Block by its Guaranteed Block Substantial Completion Date, (ii) to achieve Facility Substantial Completion by the Guaranteed Facility Substantial Completion Date or (iii) to achieve the Guaranteed Capacity for a Block or the Facility. If Contractor fails to pay any Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages or Final Capacity Liquidated Damages owing under this Article 17, Owner may deduct the amount thereof from any payment due, or that may become due, to Contractor under this Agreement or if no payment is due, may invoice Contractor for such amount. Nothing in this Article 17 shall be construed as relieving Contractor of its obligation to achieve Facility Substantial Completion.

**17.7 Energy and Revenues of the Project.** Any energy or revenues generated by the Project at any time, including during the performance of any testing, shall be solely for the benefit of Owner. This Section 17.7 shall not limit Contractor's right to receive any bonus in accordance with Section 17.1(b).

**17.8 EITC and Depreciation Loss.**

(a) The Parties acknowledge that the Contract Price reflects, in part, the value to Owner of certain tax benefits (as specified below) and to obtain those tax benefits in accordance with the expected schedule for the construction and completion of the Project.

(b) If any Block is not completed in accordance with the Guaranteed Block On-line Schedule (as in effect on the Effective Date) for any reason other than, subject to Section 17.8(f), an Owner-Caused Delay, an Excusable Event, a Force Majeure Event (but only with respect to subclause (ii) below) or an Owner Event of Default, then Contractor shall pay Owner, as a Contract Price adjustment and not as a penalty, the following amounts:

(i) an amount equal to \*\*\*, and

(ii) an amount for each Block equal to the equivalent of interest (using the Wall Street Journal “prime rate” as of the dates specified below as an annual rate, compounded annually) on the following amounts, determined as follows: \*\*\*. For the avoidance of doubt, there is to be no “double counting” of the interest factors calculated under Sections 17.8(b)(ii)(A) and 17.8(b)(ii)(C) with respect to EITCs, and in the event the interest factor determined under Section 17.8(b)(ii)(A) includes with respect to the reduced EITCs reimbursed under Section 17.8(b)(i) a portion of the time value captured under Section 17.8(b)(ii)(B) with respect to the deferral of EITCs, then the amount due under Section 17.8(b)(ii)(B) shall be reduced by the amount of such overlap.

(c) Any Contract Price adjustment required by Section 17.8(b), shall be paid within \*\*\* of Owner providing Contractor a written request setting forth the calculations in reasonable detail.

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(d) Within \*\*\* of receipt of such request, Contractor may request that \*\*\* (so long as they are not the accounting firm used by either Party) or another nationally recognized independent accounting firm selected by Owner and reasonably acceptable to Contractor verify the calculation. The fees and expenses of such accounting firm shall be borne by Contractor; provided, however, if the accounting firm determines that Owner's calculations were overstated by more than five (5) percent, then Owner shall pay (or, if applicable, reimburse Contractor) for such fees and expenses. Absent manifest error, the determination of such accounting firm shall be final and binding upon the parties.

(e) The calculation of any amount due pursuant to Section 17.8(b) is intended to be hypothetical. Therefore, the amount shall not be altered based on (i) Owner's actual federal income tax posture or liability, (ii) any audit or adjustment by the Internal Revenue Service, (iii) any transfer, merger, sale, reorganization, lease, financing or other transaction entered into by Owner or any Affiliate thereof, (iv) any tax election made by Owner or any Affiliate thereof, (v) any penalties or interest payable to any tax authority, and (vi) all state tax items shall be disregarded.

(f) \*\*\*

**17.9 Enforceability.** The Parties explicitly agree and intend that the provisions of this Article 17 shall be fully enforceable by any court exercising jurisdiction over any dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available under law or equity relating to the enforceability of the liquidated damages provisions set forth in this Article 17 on the grounds that such liquidated damages provisions should not be enforced as constituting a penalty or a forfeiture.

INITIALS: Owner: \_\_\_\_\_ Contractor: \_\_\_\_\_

## ARTICLE 18.

### FINAL COMPLETION

**18.1 Generally.** Contractor shall achieve Final Completion of the Facility by the earlier of (a) \*\*\* after the Facility Substantial Completion Date and (b) \*\*\* (the "Guaranteed Final Completion Date"); provided that Contractor shall have an \*\*\* cure period if Final Completion is not achieved. Subject to Section 18.2 and 18.3, Final Completion of the Facility means that all of the following conditions have been met:

(a) Facility Substantial Completion has occurred;

(b) the performance of the Work for the Facility is complete, including all Punch List Items or pursuant to Section 8.1(c), Owner has withheld any remaining Punch List Holdback to complete any items on the Project Punch List not completed by Contractor in accordance with the terms hereof;

(c) Contractor has delivered all Contractor Submittals, including the final record as-built drawings;

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- (d) Contractor has paid all bills from its Subcontractors related to the Project that are not in dispute;
- (e) no Contractor Liens shall be outstanding against the Project and Owner shall have received all required final lien waivers under Section 8.4;
- (f) Contractor has complied with its clean-up obligations pursuant to Section 3.15;
- (g) Contractor has paid all Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages and Final Capacity Liquidated Damages, if any, to the extent required in accordance with this Agreement;
- (h) \*\*\*; and
- (i) Contractor shall have delivered the notice of Final Completion to Owner pursuant to Section 18.2.

**18.2 Certificate of Final Completion.** When Contractor considers that the Facility has achieved Final Completion in accordance with Section 18.1, it shall deliver to Owner a Certificate of Final Completion signed by Contractor, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 18.1. Upon receipt of the Certificate of Final Completion from Contractor together with supporting documentation, Owner shall promptly, but in no event later than \*\*\* from the date of receipt of Contractor's notice, either issue Contractor: (a) a countersignature to the Certificate of Final Completion, signed by Owner's Representative and stating that the Final Completion Date for the Facility is the date on which Contractor gave its notice to Owner under this Section 18.2; or (b) a written notice stating why Owner does not consider that Final Completion of the Facility has been achieved.

**18.3 Failure to Achieve Final Completion.** If Owner fails to issue a Certificate of Final Completion pursuant to Section 18.2(a) or a written notice under Section 18.2(b) above within \*\*\* after receipt of Contractor's notice under Section 18.2, Final Completion shall be deemed to have been achieved as of the date Contractor gave its notice to Owner under Section 18.2. If Contractor receives a notice under Section 18.2(b) above, Contractor shall take the necessary steps to achieve Final Completion of the Facility at Contractor's cost. Upon completion of such corrective action, Contractor shall provide a new notice of Final Completion to Owner for approval and the procedures set forth under Sections 18.2 and 18.3 shall be repeated until such time as the Certificate of Final Completion has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

## ARTICLE 19.

### SUSPENSION OF THE WORK

**19.1 Suspension for Non-Payment.** Contractor may, upon \*\*\* prior written notice to Owner, suspend the Work temporarily if Owner fails to pay any undisputed amount due and owing to Contractor hereunder by the date payment is due pursuant to Article 8. Contractor may not suspend the Work if Owner pays the amount owed within the \*\*\* after its receipt of a notice

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of suspension under this Section 19.1. Contractor's entitlement to suspend the Work under this Section 19.1 is separate from and in addition to its entitlement to terminate this Agreement for non-payment pursuant to Section 20.3(a).

**19.2 Contractor Suspension.** Owner may, upon \*\*\* prior written notice to Contractor, direct Contractor to suspend its performance of all or any portion of the Work; provided that no prior written notice shall be required if such suspension is due to an imminent threat of material injury or damage to Persons or property or is the result of a material injury or damage to Persons or property or as otherwise required by Applicable Law. Upon the commencement of the suspension, Contractor shall stop the performance of the suspended Work except as may be necessary to carry out the suspension and protect and preserve the Work completed prior to the suspension. Contractor shall thereafter resume any suspended Work as soon as is practicable (taking into account the length of the suspension) after receipt of a written direction from Owner to resume the Work.

**19.3 Extended Owner Suspension.** With respect to suspensions for which Owner fails to allow or direct Contractor to resume the Work within \*\*\* after the date of suspension under Section 19.1 or Section 19.2, Owner shall pay Contractor, without duplication to the payment of amounts payable in connection with a Change Order or otherwise, within \*\*\* after receipt of each invoice (which invoices shall be submitted on a monthly basis during the applicable suspension period for Contractor's incremental costs incurred with respect to such suspension), in each case to the extent actually and demonstrably incurred during the suspension period that are documented by Contractor to the reasonable satisfaction of Owner, to the extent attributable to the suspension, that are: (a) Direct Costs, (b) costs associated with the repair, replacement or refurbishment of any of the Equipment in accordance with Industry Standards, (c) costs incurred for the purpose of safeguarding or storing the Work and the Equipment at the point of fabrication, in transit, or at the Site in accordance with Industry Standards and the recommendations of the applicable manufacturers, (d) costs for required rescheduling of the Work, (e) for personnel, Subcontractors or rented Equipment, the payments for which, with Owner's prior written concurrence, are continued during the suspension period, (f) costs for extending applicable warranties for Facility Equipment and (g) costs otherwise incurred solely due to suspension of the Work.

**19.4 Resumption of Work After Suspension.** After the resumption of the performance of the Work, Contractor shall, after due notice to Owner, examine the Work affected by the suspension. Subject to Contractor's right to request a Change Order in accordance with Section 10.3 for cost and/or schedule relief for same, Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Subject to Section 19.5, as Contractor's remedy for same, any extension to the Construction Schedule shall be to the extent set forth in and in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by Contractor's incremental Direct Costs incurred by reason of the suspension, as a direct result of such suspension plus a mark-up of \*\*\*, such adjustments to be set forth in a Change Order and added to the Contract Price.

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**19.5 Costs and Schedule Relief for Contractor-Caused Suspension.** Notwithstanding anything to the contrary, Contractor shall bear its own costs incurred due to a suspension by Owner pursuant to Section 19.2 and Section 19.3 where such suspension is necessitated by a breach of this Agreement by Contractor due to any act or omission by any Contractor Party or Subcontractor and shall not be entitled to a change to the Construction Schedule or an extension of time to the Guaranteed Block Substantial Completion Dates, Guaranteed Facility Substantial Completion Date or Guaranteed Final Completion Date.

## ARTICLE 20.

### DEFAULTS AND REMEDIES

**20.1 Contractor Events of Default.** Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a “Contractor Event of Default”):

(a) Contractor fails to pay any amount due and owing to Owner under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of \*\*\* or more after receipt of notice from Owner stating that if Contractor does not pay such amount Owner may terminate in accordance with Section 20.2; or

(b) an Insolvency Event occurs with respect to Contractor or, while the Contractor Performance Security is required to be in place, SunPower Corporation; or

(c) Contractor fails to maintain any insurance coverages required of it in accordance with Article 23 and Contractor fails to remedy such breach within \*\*\* after the date on which Contractor first receives a notice from Owner with respect thereto; or

(d) Contractor assigns or transfers this Agreement or any right or interest herein except in accordance with Article 26; or

(e) Contractor fails to obtain and maintain the credit support requirements set forth in Exhibit 31 as and when required pursuant to the terms thereof; provided, however, that if Contractor fails to deliver the Acceptable Letter of Credit \*\*\* as and when required by Exhibit 31, Owner may withhold additional amounts in accordance with Section 8.10; or

(f) \*\*\*, or

(g) except as a result of an Owner Event of Default, a Force Majeure Event, an Excusable Event or such other event for which Contractor is entitled to schedule relief under Section 10.3 or during the pendency of a suspension under Section 19.3, Contractor Abandons the Work and Contractor fails to remedy such breach within \*\*\* after receipt of notice from Owner; or

(h) Contractor violates in any material respect any of the provisions of this Agreement not otherwise addressed in this Section 20.1 (except for Sections 17.1 and 17.2, the exclusive remedy for which is provided in Article 17), which violation

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remains uncured for \*\*\* following Contractor's receipt of written notice thereof from Owner; provided, that if such violation is capable of cure but cannot reasonably be cured within such \*\*\* period, then Contractor's right to cure shall extend beyond such \*\*\* period for so long as Contractor is diligently attempting to cure such violation; or

(i) a representation or warranty made by Contractor in or pursuant to this Agreement was false or misleading in any material respect as of the date on which it was made and has not been cured within \*\*\* after Contractor receives a notice from Owner with respect thereto; provided that such \*\*\* limit shall be extended if: (i) such failure is reasonably capable of cure and curing such failure reasonably requires more than \*\*\*; and (ii) Contractor commences such cure within such \*\*\* period and diligently prosecutes and completes such cure within \*\*\* thereafter, in each case, after the date on which Contractor receives a Notice from Owner with respect thereto; or

(j) SunPower Corporation defaults in the performance of its obligations under Contractor Performance Security or Contractor Performance Security ceases to be in full force and effect as required by Section 8.8 and, in either case, Contractor has failed to deliver a comparable replacement therefor within \*\*\* after such failure; or

(k) if SCE terminates the PPA or CAISO terminates the Interconnection Agreement from an event of default or termination right thereunder resulting from (a) the negligence or willful misconduct of any Contractor Party or any Subcontractor in connection with this Agreement or (b) the failure of any Contractor Party or any Subcontractor to comply with any of its obligations or a breach under this Agreement; or

(l) Contractor fails to comply with the requirements of Section 3.29; or

(m) SunPower Corporation is in breach of or default under the Side Letter.

**20.2 Owner Rights and Remedies.** If a Contractor Event of Default occurs, subject to Article 29 and without permitting double recovery, Owner shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:

(a) Owner may terminate this Agreement by giving notice of such termination to Contractor and, upon such termination:

(i) Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner (without recourse to Contractor) such of Contractor's subcontracts or purchase orders as Owner may request (in which case Contractor shall execute all assignments or other reasonable documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to effect such assumption by Owner), and shall license, in the manner provided herein, to Owner all Intellectual Property Rights (to the extent not previously licensed in accordance with the terms hereof) of Contractor related to the Work

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reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work (and solely in connection with the Project), shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may reasonably direct, and Owner may take possession of any or all Contract Documents necessary for completion of the Work (whether or not such Contract Documents are complete);

(ii) \*\*\*; and

(iii) if Owner terminates this Agreement, Owner may seek damages as provided in Section 20.5 or as otherwise provided.

(b) Subject to a final determination of the amount of damages owing to Owner and to any deductions or offsets to which Owner is entitled under Section 20.2 (g), Owner shall pay Contractor the outstanding portion of the Contract Price due for all Work performed and Facility Equipment supplied by Contractor up to and including the date of termination;

(c) Contractor shall turn over to Owner all Facility Equipment and other materials paid for by Owner;

(d) Owner may proceed against the Contractor Performance Security in accordance with its terms;

(e) Owner may draw any of the Acceptable Letters of Credit or letters of credit in accordance with its terms;

(f) Subject to the dispute resolution procedures set forth in Article 28, Owner may seek equitable relief solely to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement;

(g) Any Block Delay Liquidated Damages or Facility Delay Liquidated Damages incurred by Contractor accruing as of the date of termination shall immediately cease to accrue; provided that Owner shall have the remedies in Article 17 for any delays or performance shortfalls to the extent caused by or attributable to Contractor;

(h) Owner may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement;

(i) Subject to the dispute resolution procedures set forth in Article 28 and without permitting double recovery, Owner may seek actual damages subject to the limitations of liability set out in this Agreement;

(j) Owner may pursue remedies in accordance with Section 20.6;

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(k) Without limiting Contractor's right to assert any defenses with respect to such payment, Owner may make such payments, acting reasonably, that Contractor is failing to pay in connection with the relevant Contractor Event of Default and either offset the cost of such payment against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts to Owner;

(l) \*\*\*;

(m) \*\*\*; and

(n) \*\*\*

**20.3 Owner Event of Default.** Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an “Owner Event of Default”):

(a) Owner fails to pay any amount of the Contract Price owing under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of \*\*\* after Owner has received a notice of such payment default from Contractor stating that if Owner does not pay such amount Contractor may terminate in accordance with Section 20.4; or

(b) An Insolvency Event occurs with respect to Owner or, while the Equity Contribution Agreement is required to be in place, MEHC; or

(c) Owner fails to maintain any insurance coverages required of it in accordance with Article 23 and Owner fails to remedy such breach within \*\*\* after the date on which Owner first receives a notice from Contractor with respect thereto; or

(d) Owner violates in any material respect any of the provisions of this Agreement not otherwise addressed in this Section 20.3, which violation remains uncured for \*\*\* following Owner's receipt of written notice thereof from Contractor; provided, that if such violation is capable of cure but cannot reasonably be cured within such \*\*\* period, then Owner's right to cure shall extend beyond such \*\*\* period for so long as Owner is diligently attempting to cure such violation; or

(e) Owner assigns or transfers this Agreement or any right or interest herein except in accordance with Article 26; or

(f) \*\*\*

**20.4 Contractor Rights and Remedies.** If an Owner Event of Default occurs, subject to Article 29 and Section 20.5 and without permitting double recovery, Contractor shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Contractor hereunder:

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- (a) Contractor may terminate this Agreement upon providing notice of such termination to Owner;
- (b) Contractor shall be compensated by Owner for any and all amounts due and owing from Owner under this Agreement;
- (c) \*\*\*
- (d) Subject to the dispute resolution procedures set forth in Article 28, Contractor may seek equitable relief to preserve its rights during the pendency of any dispute or to enforce its rights under this Agreement;
- (e) Contractor may suspend the Work by giving notice of such suspension to Owner concurrently with or at any time after Contractor gives Owner notice described in Section 20.3(a);
- (f) Contractor may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement;
- (g) Contractor may pursue remedies in accordance with Section 20.6.

## **20.5 Termination Payment.**

- (a) Upon termination for an Owner Event of Default, as Contractor's sole and exclusive remedy for compensation arising out of the Owner Event of Default permitting termination of this Agreement:
  - (i) Owner shall pay to Contractor all amounts due to Contractor through the effective date upon which the termination occurred as set forth on the Payment Schedule, plus amounts in payment of partially completed milestones in the Construction Schedule;
  - (ii) Owner shall, on the date that is \*\*\* after Owner's receipt of an Application for Payment therefor, pay the applicable Termination Payment due to Contractor;
  - (iii) \*\*\*
- (b) \*\*\*
- (c) The obligations of this Section 20.5 shall survive the termination of this Agreement.

**20.6 Termination Right Not Exclusive.** Subject to Section 20.5(a) and Section 20.7, a Party's right to terminate this Agreement pursuant to this Article 20 is in addition to, and without derogation from, any other rights and remedies such Party may have against the other Party under this Agreement or any Applicable Law, and each Party expressly reserves all such rights and remedies it may have against the other Party, whether in contract, tort or otherwise.

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## 20.7 Termination Events for Extended Force Majeure.

(a) In addition to the other rights and remedies set forth in this Article 20, in the event that a Force Majeure Event has occurred and has persisted for a period in excess of \*\*\* and such Force Majeure Event adversely affects a significant portion of the Work, Contractor may elect to terminate this Agreement upon providing notice of such termination to Owner.

(b) \*\*\*.

(c) All obligations that expressly survive the termination of this Agreement in accordance with Section 30.1, including any indemnification obligations (provided that Owner cannot make any indemnity claim pursuant to Section 24.1(c)), shall survive a termination pursuant to this Section 20.7. For the avoidance of doubt, Contractor will have no obligations or liability under Section 17.8 after termination of this Agreement pursuant to this Section 20.7.

(d) The obligations under this Section 20.7 shall survive any termination of this Agreement.

**20.8 Contractor Conduct.** Upon issuance of a notice of termination pursuant to this Article 20, Contractor shall: (a) cease operations as directed by Owner in the notice; (b) take action necessary, or that Owner may reasonably direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in such notice, or except as expressly requested by Owner or under Section 20.2(a)(i), terminate all existing subcontracts and purchase orders that are terminable without premium, penalty or termination charges and enter into no further subcontracts and purchase orders with respect to the Work or the Project.

## ARTICLE 21. WARRANTIES

**21.1 Sole Warranty.** Except as set forth in Section 2.1 and Section 13.4(a), (a) the Warranties provided in this Article 21 shall be Contractor's sole warranty with respect to the Work and the Facility and (b) Contractor does not make (and hereby expressly disclaims) any other warranties of any kind whatsoever.

**21.2 No Liens or Encumbrances.** To the extent Owner's payments to Contractor are fully made in accordance with this Agreement, Contractor warrants that title to all Work, materials and Facility Equipment provided by Contractor and its Subcontractors and Suppliers hereunder shall pass to Owner free and clear of all Contractor Liens. Contractor shall diligently pursue the removal and discharge of any lien filings relating to Contractor Liens.

**21.3 Defect Warranty.** Contractor warrants to Owner:

(a) Defect Warranty. That a Block, all Facility Equipment furnished by Contractor and any of the Subcontractors and other Work, including installation shall,

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upon the Block Substantial Completion Date for such Block: (i) be free from defects in materials, construction, fabrication and workmanship; (ii) be new and unused (except for use as part of the Facility); (iii) be of good quality and in good condition and (iv) conform to the applicable requirements of the Scope of Work in effect as of (x) prior to the Facility Substantial Completion Date, the applicable Block Substantial Completion Date and (y) after the Facility Substantial Completion Date, the Facility Substantial Completion Date (collectively, the “Defect Warranty”). For the avoidance of doubt, the Defect Warranty shall not include the Modules, defects of which are covered by the Module Warranty.

(b) \*\*\*

#### **21.4 Warranty Period.**

(a) Defect Warranty Period. With respect to any Block (and any Facility Equipment furnished by Contractor and any of the Subcontractors and all other Work including installation services, by the Block Substantial Completion Date of such Block), the Defect Warranty shall commence on the Block Substantial Completion Date of such Block and end on the later to occur of (i) the \*\*\* anniversary of the relevant Block Substantial Completion Date and (ii) \*\*\* after the Facility Substantial Completion Date (such period, the “Defect Warranty Period”) and Contractor shall have no liability under the Defect Warranty for any Defect Warranty claims submitted by Owner from and after the expiration of the Defect Warranty Period; provided that a claim may be made by Owner within \*\*\* after the end of a Defect Warranty Period for a matter which arose within such Defect Warranty Period; provided, further, however, that the Defect Warranty Period for any item or part required to be re-performed, repaired, corrected or replaced following discovery of a defect during the applicable Defect Warranty Period shall continue until the end of the later of (A) the expiration of such Defect Warranty Period and (B) \*\*\* from the date of completion of such repair, re-performance, correction or replacement.

(b) \*\*\*

(c) Warranty Claims. With respect to warranty claims under Section 21.4(a) or Section 21.4(b) Contractor shall be liable to Owner in connection with such defects prior to the end of the applicable Warranty Period so long as Owner complies with its notice obligations under this Article 21.

**21.5 Exclusions.** The Defect Warranty \*\*\* shall not apply to damage to or failure of any Work or Facility Equipment to the extent such damage or failure is caused by the following, provided that in no event shall the breach or fault of a Contractor Party, including O&M Provider, be the basis of an exclusion from the Defect Warranty \*\*\*:

(a) a failure by Owner or its representatives, agents or contractors (other than O&M Provider under the O&M Agreement) to maintain such Work or Facility Equipment in accordance with Industry Standards or in accordance with the recommendations set forth in the Required Manuals;

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(b) operation of such Work or Facility Equipment by Owner or its representatives, agents or contractors (other than O&M Provider under the O&M Agreement) in excess of or outside of the operating parameters or specifications for such Work or Facility Equipment as set forth in the Required Manuals;

(c) any repairs, adjustments, alterations, replacements or maintenance that may be required as a result of normal wear and tear; provided, however, that this exclusion shall not operate to limit any warranties or guarantees set forth in the O&M Agreement, the Module Warranty or the Performance Guaranty Agreement;

(d) (i) a Force Majeure Event or (ii) \*\*\*;

(e) to the extent arising out of or resulting from a specific written direction of Owner relating to the Work and/or the Facility which Contractor has followed, provided that any such defect or deficiency is not the result of Contractor's or any Supplier's or Subcontractor's (or of any of their respective personnel's, subcontractors' or agents') failure to properly implement the Work in accordance with this Agreement and Contractor notified Owner that following such direction would affect the applicable Defect Warranty \*\*\*;

(f) damage caused by rodents, insects, other animals, or plant life that are atypical of the Site; or

(g) any modifications or enhancement to the Facility, or alterations, repairs or replacements performed by Owner or any Owner contractor after the relevant Block Substantial Completion not executed in accordance with the Required Manuals, Applicable Law or Industry Practices to the extent that Contractor has not provided prior written approval (and Owner agrees to reimburse Contractor for its reasonable costs incurred in reviewing and analyzing any request for such an approval).

#### **21.6 Correction of Defects.**

(a) Notice of Warranty Claim. If, during the applicable Warranty Period or within \*\*\* thereafter, Owner provides notice to Contractor within a reasonable period after discovery that the applicable portion of the Facility has manifested a defect during the Defect Warranty Period \*\*\*, then Contractor as promptly as practicable, but in no event later than \*\*\* following receipt of such notice, shall inspect such claimed warranty defect or nonconformance, and at Contractor's own cost and expense as promptly as practicable refinish, repair or replace, at its option, such non-conforming or defective part of the Facility or Work and resulting property damage to the Project caused by such defective Work. Contractor shall pay the cost of removing any defective component, the costs of shipping and installation of replacement parts in respect of a defect, and the cost of re-performing, repairing, replacing or testing such item as shall be necessary to cause conformance with the Defect Warranty \*\*\*. The timing of the work to be completed with respect to any such remediation or repair shall be subject to Owner's approval. Such remediation or repair shall be considered complete when the applicable defect has been corrected by the affected equipment or

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parts being restored to Technical Specifications and the other requirements of this Agreement and the Contract Documents, and compliance with Applicable Laws, Industry Standards and Applicable Permits. Notwithstanding the foregoing, if the Facility shall fail to satisfy the applicable Warranty during the applicable Warranty Period, and such failure endangers human health or property or materially and adversely affects the operation of the Facility, Contractor shall correct the failure as soon as is practicable or, if Contractor does not so correct such failure, Owner shall be permitted to correct such failure at Contractor's sole cost pursuant to Section 21.6(b). For the purposes of this Section 21.6(a), manifestation of a defect shall include failure to function and physical damage.

(b) Failure of Contractor to Perform Warranty Work. If after Block Substantial Completion, Contractor does not use its reasonable efforts to proceed to complete the applicable Warranty work, or cause any relevant Subcontractor or Supplier to proceed to complete the Warranty work, required to satisfy any Warranty claim properly asserted under the terms of this Article 21 in accordance with the terms hereof, Owner shall, after giving Contractor notice of Owner's intent to perform the remedial Warranty work itself at least \*\*\* prior to Owner's commencement of any such remedial Warranty work, have the right to perform the necessary Warranty work to remedy the Warranty claim, or have third parties perform the necessary Warranty work and Contractor shall bear the reasonable costs thereof. If Contractor (or the relevant Subcontractor or Supplier) implements a plan to diligently perform the Warranty work to satisfy such Warranty claim during such \*\*\* period, and thereafter diligently prosecutes the execution of such plan, Owner shall not perform, or cause any third party to perform, such Warranty work. If a defect or other nonconformance to the applicable Warranty arises during the applicable Warranty Period and such defect or nonconformance occurs under circumstances where there is an immediate need for repairs due to the endangerment of human health or property, Owner may perform such Warranty work for Contractor's account; provided, however, that upon completion of such work, Owner shall provide Contractor notice of, and an opportunity to inspect, such Warranty work. Within \*\*\* after receiving the notice referenced in the preceding sentence, Contractor shall inspect such work performed by Owner and either (i) ratify Owner's work or (ii) elect to repair or otherwise correct Owner's work. In the event that Contractor elects to proceed pursuant to sub-clause (ii), Contractor shall complete such work, as necessary under the circumstances, with reasonable promptness. If Owner performs or causes third parties to perform such Warranty work as set forth above, Owner shall provide reasonable access to Contractor to the Facility to observe Owner's and its Affiliates' or any third party's performance of the Warranty work. The performance of Warranty work, either performed by Owner or performed by third parties engaged by Owner which was performed in accordance with the applicable provisions of this Agreement related to such Warranty work that Contractor, had it performed the Warranty work itself, would have observed to comply with this Agreement, shall be deemed covered by the Warranties, and Contractor shall reimburse Owner for all reasonable costs, charges and expenses incurred by Owner in connection therewith plus \*\*\*.

(c) Enforcement by Owner.

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(i) Major Facility Equipment Warranties. Contractor shall obtain or has obtained warranties for the Equipment supplied by the Major Subcontractors (other than the Modules) (the “Major Facility Equipment Warranties”). Upon Owner's request, Contractor shall deliver to Owner copies of any Major Facility Equipment Warranty.

(ii) Assignment. All Major Facility Equipment Warranties shall be assignable to Owner. If a Contractor Event of Default exists and this Agreement has been terminated in accordance with Article 20, or otherwise at the end of each Defect Warranty Period, Contractor shall assign to Owner (unless previously assigned), or otherwise hold in trust on behalf of Owner until such assignment shall occur, at the request and direction of Owner, all unexpired Major Facility Equipment Warranties, subject to the terms and conditions of any such warranties; provided that, notwithstanding such assignment, Contractor shall be entitled to enforce each such warranty to the exclusion of Owner through the earlier of the termination of this Agreement in accordance with Article 20 and the end of the applicable Defect Warranty Period. Notwithstanding the foregoing, Contractor shall not be obligated to assign any claims of Contractor with respect to any Major Subcontractor then or thereafter existing so long as Contractor is performing its obligations under this Article 21. At Owner's request, Contractor shall deliver to Owner, at the end of each Defect Warranty Period (unless previously provided), copies of all subcontracts containing such Major Facility Equipment Warranties with appropriate redactions of the financial and other terms thereof unrelated to the warranties assigned.

**21.7 Module Warranty and Performance Guaranty Agreement.** Contractor shall issue (or shall cause an Affiliate thereof to issue) warranties for the Modules in accordance with the SunPower Limited Product and Power Warranty for PV Modules attached as Exhibit 14 (the “Module Warranty”) and shall guarantee the performance of the Modules in accordance with the Performance Guaranty Agreement attached as Exhibit 28 (the “Performance Guaranty Agreement”). No claim under the Module Warranty or Performance Guaranty Agreement shall be invalidated due to the acts or omissions of Contractor or its Subcontractors.

**21.8 Limitations On Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN SECTION 2.1 and Section 13.4(a), AND THIS ARTICLE 21, CONTRACTOR DOES NOT MAKE ANY EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. THE REMEDIES PROVIDED FOR IN THIS ARTICLE 21 WITH RESPECT TO ANY WORK WHICH FAILS TO SATISFY THE DEFECT WARRANTY DURING THE APPLICABLE DEFECT WARRANTY PERIOD \*\*\* SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF OWNER AS A RESULT OF SUCH FAILURE. This Section 21.8 does not operate to limit any warranties or guarantees set forth in the O&M Agreement, the Module Warranty or the Performance Guaranty Agreement.

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## ARTICLE 22.

### PUBLICITY

**22.1 Signage.** Subject to the prior approval of Owner, which shall not be unreasonably withheld, Contractor shall have the right to erect signage at a prominent location on the Site indicating Contractor's role as designer and builder of the Facility. Contractor's name may remain on such signage from the Effective Date until the \*\*\*. Any such signage shall comply with Applicable Laws and Owner/lessor requirements and shall not interfere with the operation of the Facility.

**22.2 Press Releases.** Subject to Section 25.1, as applicable, the Parties shall jointly agree upon the necessity and content of any press release in connection with the matters contemplated by this Agreement. Contractor shall coordinate with Owner with respect to, and provide Owner advance copies of the text of, any proposed announcement or publication that may include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors, Suppliers or advisors of Contractor, in each case, who agree to keep such information confidential. A Party shall not disseminate any such announcement or publication without the other Party's consent, not to be unreasonably withheld.

#### **22.3 Contractor's Continued Access to Information and the Site.**

(a) Notwithstanding anything to the contrary in this Section 22.3, Contractor shall have the right to utilize general information about the Project, including photographs, in its promotional materials and public statements. All Contractor usage of general information about the Project, including promotional materials, public statements or photographs, must indicate that Owner is the owner of the Project and cannot disparage the Project or operation of it or Owner or any of its Affiliates.

(b) So long as this Agreement has not been terminated for a Contractor Event of Default, through the Final Completion Date, Contractor shall request access to the Facility by telephone or email to Owner not less than \*\*\* prior to any desired visit to the Site and after the Final Completion Date, all requests for Contractor's access to the Site for any tours made by Contractor shall be subject to Owner's consent, not to be unreasonably withheld. Owner shall have the right to join on any tours by Contractor, including those tours with media, political and community members.

(c) Contractor shall require all Contractor personnel and guests admitted to the Site to observe all applicable safety and security standards. Contractor shall provide a copy of any photographs, video, or other promotional material to Owner for review and approval prior to release. Owner may utilize photographs and video of the completed Project (or any completed portion thereof) in connection with public statements, for promotional purposes or otherwise.

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## ARTICLE 23.

### INSURANCE

**23.1 Contractor's Insurance.** Contractor shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part I of Exhibit 15 ("Contractor's Insurance"). Unless otherwise specified in Exhibit 15, Contractor's Insurance shall commence no later than the Effective Date and shall remain in full force and effect at all times from commencement of the Work until Final Completion, unless required for a longer or shorter period in accordance with Exhibit 15.

**23.2 Owner's Insurance.** Owner shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part II of Exhibit 15 ("Owner's Insurance"). Owner's Insurance shall commence on the Effective Date and shall remain in full force and effect at all times until the expiration of the last Warranty Period, unless required for a longer or shorter period in accordance with Exhibit 15. Subject to the prior agreement of the Parties and the affected insurers, Owner's Insurance may be included, at Owner's cost and responsibility, under one or more policies of Contractor's Insurance.

**23.3 Ratings.** All policies of insurances required or otherwise contemplated under this Agreement shall be provided by insurance companies having an A.M. Best Insurance Reports rating of \*\*\* or better, and shall otherwise be in accordance with the requirements of this Article 23 and Exhibit 15.

**23.4 Policy Requirements.** Contractor's Commercial General Liability and Worker's Compensation insurance policies shall: (a) provide for a waiver of subrogation rights against Owner and all Owner Parties and Financing Parties, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy; and (b) list Owner and the Owner Parties as "additional insured" with respect to liability arising out of or in connection with the Work by or on behalf of Contractor, excluding any contributory liability of Owner or any Owner Parties.

**23.5 No Limitation and Release.** Unless otherwise expressly provided in this Agreement, the insurance policy limits set forth in Exhibit 15 shall not be construed to limit the liability of the insured Party under this Agreement. Notwithstanding the foregoing sentence, each Party releases and waives any and all rights of recovery against the other Party and all of its Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters that the other Party may otherwise have or acquire in, or from, or in any way connected with, any loss covered by policies of insurance maintained or required to be maintained by that Party pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**23.6 Reduction or Ceasing to be Maintained.** If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the other Party in respect of any default that arises as a result of such failure) the other Party may at its option take out and maintain the insurance required hereby and,

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in such event, (a) Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor, or (b) Owner shall promptly reimburse Contractor for the premium of any such replacement insurance, as applicable.

**23.7 Expiration.** With respect to any insurance carried by Contractor which may expire before the date specified in Section 23.1, Contractor shall, at least \*\*\* prior to the relevant policy renewal date, submit to Owner certificates of insurance, insurer binders or other satisfactory evidence that coverage required by this Article 23 has been renewed.

## ARTICLE 24.

### INDEMNITY

**24.1 Contractor Indemnity.** Contractor shall indemnify, hold harmless and defend Owner and all Owner Parties from and against the following:

- (a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable during the performance of the Work or from performing or from a failure to perform any of its obligations under this Agreement, or any curative action under any Warranty following performance of the Work;
- (b) all Losses associated with a take of a protected species if any are found on the Site during the performance of the Work;
- (c) all Losses, \*\*\*, under the PPA or Interconnection Agreement (including liquidated damages) attributable to a Non-Excusable Event and, subject to the provisions of Section 24.6, if SCE terminates the PPA for any reason resulting from Contractor's failure to achieve the Facility Substantial Completion Date by the Commercial Operation Deadline\*\*\*;
- (d) Losses sustained by Owner as a result of Contractor's breach of Section 3.29;
- (e) all Losses incurred by Owner as a result of a claim under the Project Labor Agreement against Owner arising from the construction of the Project and performance of the Work;
- (f) all Losses that directly arise out of or result from all claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanics lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Owner Party in discharging any Contractor Lien, except to the extent of a breach by Owner in relation to any obligation it has to make a payment under this Agreement;

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(g) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of the Subcontractors, regardless of negligence of Owner or any Owner Party contributing to such Losses;

(h) all Losses arising from third-party claims, including by Subcontractors and for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Contractor or any of the Subcontractors to comply with the terms and conditions of Applicable Laws during their performance of the Work;

(i) all fines or penalties issued by any Governmental Authority that directly arise out of or result from the failure of the Project (or any portion thereof), as designed, constructed and completed by Contractor or any Subcontractor, to be capable of operating in compliance with all Applicable Laws or the conditions or provisions of all Applicable Permits (to the extent the Applicable Permits relate to the Work), in each case, as in effect as of the Facility Substantial Completion Date;

(j) any and all fines, penalties or assessments issued by any Governmental Authority that Owner may incur as a result of executing any applications to any such Governmental Authority at Contractor's request;

(k) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Contractor to pay, as and when due, all Taxes (other than Owner Taxes), fees or charges of any kind imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;

(l) all Losses arising from claims by any Governmental Authority claiming Taxes (other than Owner Taxes) based on gross receipts or on income of Contractor, any of the Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of the Subcontractors, or any of their respective agents or employees under this Agreement;

(m) all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Contractor, a Subcontractor or any of their respective agents or employees to comply with any Applicable Permit, except where such non-compliance is excused pursuant to the terms of this Agreement;

(n) all Losses arising from claims by the counterparties to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work, including any crop damages;

(o) all Losses, including claims for property damage, personal injury or bodily injury or death, whether or not involving damage to the Project or the Site, that arise out of or result from:

(i) the use of Hazardous Materials by Contractor or any of its Subcontractors in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;

(ii) any Release in connection with the performance of the Work by Contractor or any of its Subcontractors (except as provided in Section 24.2(e)); or

(iii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor or any of its Subcontractors with respect to Hazardous Materials in connection with the performance of the Work.

(p) \*\*\*

**24.2 Owner Indemnity.** Owner shall indemnify, hold harmless and defend Contractor and all Contractor Parties from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) during the performance by Owner or any Affiliate, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable, of their obligations or from a failure to perform any of their obligations under this Agreement;

(b) all Losses arising from third-party claims, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Owner to comply with the terms and conditions of Applicable Laws;

(c) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay, as and when due, all Owner Taxes for which Owner is obligated to pay pursuant to the terms of this Agreement;

(d) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Owner, regardless of negligence of any Contractor Party or Subcontractor contributing to such Losses;

(e) all Losses, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from:

(i) the presence or existence of Hazardous Materials at the Site brought onto or generated at the Site by Owner after the Effective Date; or

(ii) any Release by Owner or its Affiliates, where such Hazardous Materials were brought onto the Site by Contractor or any Subcontractor in accordance with the terms of this Agreement and all Applicable Laws;

(f) any and all fines, penalties or assessments issued by any Governmental Authority that Contractor may incur as a result of executing any applications to any such Governmental Authority at Owner's request; and

(g) all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Owner, or any of its contractors, agents or employees, to comply with any Owner Acquired Permit, except where such non-compliance is excused pursuant to the terms of this Agreement.

### **24.3 Patent Infringement and Other Indemnification Rights.**

(a) Contractor shall defend, indemnify, and hold harmless the Owner Parties against all Losses arising from any Intellectual Property Claim. If Owner provides notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, awarded against Owner. In addition to the indemnity set forth above, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of a final, non-appealable judgment of a court of competent jurisdiction or as a result of injunctive relief provided by a court of competent jurisdiction, Contractor shall use its best efforts to have such injunction removed at no cost to Owner; and Contractor shall, at its own expense and without impairing the performance requirements set forth in this Agreement: (a) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, Facility Equipment or other Work; (b) if the obligation set forth in subclause (a) is not commercially feasible, modify the infringing service, Facility Equipment or other Work with service, Facility Equipment or other Work, as applicable, with substantially the same performance, quality and expected life, so that the same becomes non-infringing; or (c) if the obligations set forth in subclauses (a) and (b) are not commercially feasible, replace the infringing service, Facility Equipment or other Work with non-infringing service, Facility Equipment or other Work, as applicable, of comparable functionality and quality; provided that in no case shall Contractor take any action which adversely affects Owner's continued use and enjoyment of the applicable service, Facility Equipment, or other Work without the prior written consent of Owner.

(b) Notwithstanding anything set forth in Section 24.3(a) to the contrary, Contractor shall have no indemnity obligations under Section 24.3(a) for any Intellectual Property Claim to the extent arising from or in connection with (i) any modification of the Work by Owner or any third party (other than O&M Provider or any other Contractor Party or any Subcontractor) of the Work, the Facility, any Block, Module, Equipment or other goods, materials, supplies, items or services provided by Contractor (or any of its Affiliates or Subcontractors) that was not, in either case, authorized by Contractor, O&M Provider, any other Contractor Party or any

Subcontractor or (ii) Owner's material variation from Contractor's recommended written procedures for using the Work (unless otherwise authorized by Contractor, O&M Provider, any other Contracting Party or any Subcontractor).

(c) Owner's acceptance of the supplied materials and equipment or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder.

**24.4 Environmental Indemnification.** The scope of Contractor's and Owner's indemnification obligations with respect to environmental matters are addressed in Section 24.1(o), Sections 12.6 and 12.7.

**24.5 Right to Defend.** If any claim is brought against a Party, then the other Party shall be entitled to participate in, and, unless a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnatee in accordance with this Section 24.5. An Indemnatee shall provide Notice to the Indemnifying Party, within \*\*\* after receiving Notice of the commencement of any legal action or of any claims or threatened claims against such Indemnatee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 24 or any other provision of this Agreement providing for an indemnity (such notice, a "Claim Notice"). The Indemnatee's failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the Indemnifying Party only by the amount of damages attributable and prejudicial to such failure or tardiness, but shall not otherwise relieve the Indemnifying Party from any liability that it may have under this Agreement. If the Indemnifying Party assumes the defense, the Indemnatee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnatee unless the Indemnifying Party agrees otherwise; provided that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnatee and the Indemnifying Party, the Indemnifying Party requires that the same counsel represent both the Indemnatee and the Indemnifying Party, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnatee shall have the right to retain its own counsel at the cost and expense of the Indemnifying Party. If the Indemnifying Party does not assume the defense of the Indemnatee, does not diligently prosecute such defense, or if a conflict precludes counsel for Indemnifying Party from providing the defense, then the Indemnatee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys' fees of the Indemnatee's counsel, reasonable costs of investigation, court costs and other costs of suit, arbitration, dispute resolution or other proceeding, and any reasonable amount determined to be owed by Indemnatee pursuant to such claim, shall be borne by the Indemnifying Party, provided that the Indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense and the Indemnifying Party shall reimburse the Indemnatee on a monthly basis for such costs and expenses. Subject to all of the foregoing provisions of this Section 24.5 as between the Parties, the Indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 23 as to which it has assumed the defense; provided that to the extent the Indemnifying Party, in relation to such insurer, controls settlement: (a) such settlement shall include a dismissal of the claim and an explicit release from the party bringing

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such claim or other proceedings of all Indemnitees; and (b) the Indemnifying Party shall not conclude any settlement without the prior approval of the Indemnatee, which approval shall not be unreasonably withheld or delayed; provided further that except as provided in the preceding sentence concerning the Indemnifying Party's failure to assume or to diligently prosecute the defense of any claim, no Indemnatee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the Indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnatee reasonably believes that the matter in question involves potential criminal liability against such Indemnatee. Other than as provided in this Section 24.5, Indemnifying Party shall not settle any claim without the prior written approval of the Indemnatee, which approval shall not be unreasonably withheld, delayed or conditioned. The Indemnatee shall provide reasonable assistance to the Indemnifying Party when the Indemnifying Party so requests, at the Indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the Indemnifying Party with regard to the defense or indemnity obligations.

#### **24.6 Defense to Indemnification Obligations. \*\*\***

**24.7 Comparative Fault.** Except as expressly provided to the contrary herein, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Losses attributable to such Party's fault.

**24.8 Survival of Indemnity Obligations.** The indemnities set forth in this Article 24 shall survive the Final Completion Date or the earlier termination of this Agreement for a period (the "Survival Period") expiring \*\*\* following the Final Completion Date or said termination, whichever first occurs; provided that (i) with respect to indemnities arising out of or related to the Warranties, the indemnities shall survive for a period of \*\*\* after the last Day of the applicable Warranty Period; (ii) indemnities arising out of or related to environmental matters (including as set forth in Article 12) shall survive for a period expiring \*\*\* following the Final Completion Date or the earlier termination of this Agreement, whichever first occurs; (iii) the indemnities set forth in Section 24.1(p) and Section 24.3, shall survive for a period expiring \*\*\* following the Final Completion Date or the earlier termination of this Agreement; and (iv) indemnities arising out of or related to Tax shall survive for a period equal to the later of \*\*\* following the Final Completion Date and the applicable statute of limitations plus \*\*\*. All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such applicable Survival Period. If any Claim Notice is made within such Survival Period, then the indemnifying period with respect to all claims identified in such Claim Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims. For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of this Article 24 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.

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## ARTICLE 25.

### CONFIDENTIALITY

**25.1 Dissemination of Confidential Information.** Neither Party (the “Receiving Party”) shall (1) use for any purpose other than (i) performing its obligations under this Agreement or (ii) within the scope of the license and rights granted pursuant to Section 14.2 or (2) divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. “Confidential Information” means proprietary information concerning the business operations or assets of Owner or Contractor (as the case may be) and their respective Affiliates, and may include, this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party without an obligation of confidentiality known to the Receiving Party and that is not disclosed in breach of an obligation to keep such information confidential; (d) information approved for public release by express prior written consent of an authorized officer of Disclosing Party or (e) information independently developed by the Receiving Party without use of the information provided by the Receiving Party or in breach of this Article 25. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary but subject to the last sentence of this Section 25.1, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, but only to the extent, that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Laws and prior to making or permitting any such disclosure, Receiving Party shall, to the extent legally permitted, provide Disclosing Party with prompt Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance if requested) may seek a protective order or other appropriate remedy, (ii) as otherwise required by Applicable Law, (iii) as required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to any power purchaser, transmission provider, or an Owner contractor or prospective contractor (or advisors retained on their behalf) or their successors and permitted assigns, the Financing Parties, Independent Engineer, Owner's Engineer and its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the

party receiving the Confidential Information is bound by the same or similar confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall, to the extent legally permitted, give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure and it shall make such disclosure only to the extent that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Law.

**25.2 DAS System Information.** Notwithstanding any other provision of this Article 25, Contractor, SunPower Corporation and any Affiliate of SunPower Corporation shall have the right to remotely access the DAS System installed by Contractor in the Facility in order to collect all plant data for its own uses to the end of the Warranty Period. Information shall not be distributed outside of SunPower Corporation with the express written consent of Owner.

### **25.3 Return of Confidential Information.**

(a) Except for Confidential Information necessary for Contractor to perform the Work and its obligations under this Agreement or as necessary for Owner in connection with the construction, operation or maintenance, use, modification, repair, disposal, removal or alteration of the Project, and subject to and in accordance with, Section 14.2 at any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy (as determined by Receiving Party) (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information and all other documents in Receiving Party possession that contain any such Confidential Information; provided that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies and may retain such Confidential Information if required by Applicable Law; and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

(b) Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to Confidential Information until the date that is \*\*\* after the earlier of (i) the Final Completion Date or (ii) the termination of this Agreement.

## **ARTICLE 26.**

### **ASSIGNMENT**

**26.1 Prohibition on Assignment.** Except as set forth in Section 26.2, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion.

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**26.2 Exceptions.** Notwithstanding the foregoing, (a) Owner shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to the Financing Parties by way of security for the performance of obligations to such Financing Parties without the consent of Contractor who, subject to any consent entered into by Contractor with the Financing Parties, may further assign such rights, title and interest under this Agreement upon exercise of remedies by a Financing Party following a default by Owner under the financing agreements entered into between Owner and the Financing Parties and (b) each Party shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in connection with a merger or acquisition of substantially all of the assets of a Party, subject to the \*\*\*, as applicable, and continued validity thereof. Contractor shall execute any consent and agreement or similar documents with respect to such an assignment described in subclause (a) as the Financing Parties may reasonably request and acknowledges that such consent and agreement or similar document (which shall be reasonably acceptable to Contractor) may, among other things, require Contractor to give the Financing Parties notice of, and an opportunity to cure, any breach of this Agreement by Owner. Contractor shall reasonably cooperate with Owner in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the Financing Parties; provided, however, that Contractor shall not be obligated without a Change Order under Section 11.4(b) to accept any undertaking imposed by any Financing Party which Contractor reasonably believes will have an actual and demonstrable increase in Contractor's costs and/or schedule. Contractor shall, at Owner's cost and subject to the confidentiality provisions set forth in Article 25, make available to the Financing Parties and other Persons involved in the financing or refinancing of the Facility who have a need-to-know (e.g., counsel to a lender or any such other Person, Governmental Authority, underwriters, rating agencies, independent reviewers and feasibility consultants) such information in the control of Contractor (including financial information concerning Contractor) as may reasonably be requested by Owner on behalf of the Financing Parties or the Financing Parties' engineer with respect to financing of the Project or the Facility. Contractor further agrees that, in connection with the financing or refinancing of the Facility, Contractor shall, at the request and expense of Owner, provide an opinion of counsel as to the enforceability against Contractor of this Agreement until expiration of the last Warranty Period. Any authorized assignment of this Agreement by either Party shall relieve such Party of its obligations hereunder at such time as the authorized successor agrees in writing to be bound by such assigning Party's obligations hereunder. Any purported assignment of this Agreement in violation of this Section 26.2 shall be null and void and shall be ineffective to relieve either Party of its obligations hereunder.

**26.3 Indemnitees; Successors and Assigns.** Upon any assignment by either Party hereunder, with respect to indemnification obligations, the definition of "Owner Party" or "Contractor Party", as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and permitted assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each Party.

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## ARTICLE 27.

### NOTICES

**27.1 Notices.** Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and: (a) hand-delivered; (b) delivered by a reputable overnight courier service requiring signature for receipt; (c) mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (d) sent by facsimile as evidenced by a printed confirmation from the sender's facsimile machine. Notices given pursuant to this Section 27.1 shall be addressed as follows to:

Owner            Solar Star California XX, LLC  
                     c/o MidAmerican Renewables, LLC  
                     1850 N. Central  
                     Suite #1025  
                     Phoenix, Arizona 85004  
                     \*\*\*  
                     \*\*\*

With a copy to (which shall not constitute notice):

Solar Star California XX, LLC  
c/o MidAmerican Renewables, LLC  
1850 N. Central  
Suite #1025  
Phoenix, Arizona 85004  
\*\*\*  
\*\*\*

Contractor:    SunPower Corporation, Systems  
                     1414 Harbour Way, South  
                     Richmond, California 94804 USA  
                     \*\*\*  
                     \*\*\*

A Party, the Financing Parties or the Independent Engineer, by giving notice as provided in this Section 27.1 may, as to itself, change any of the details for the service of notice hereunder or designate a reasonable number of additional “with a copy to” recipients.

**27.2 Effective Time.** Any notice or notification given personally, through overnight mail or through certified letter shall be deemed to have been received on delivery, any notice given by express courier service shall be deemed to have been received the next Business Day after the same shall have been delivered to the relevant courier, and any notice given by facsimile transmission shall be deemed to have been received on the date of delivery together with confirmation if delivered prior to 5:00 pm Pacific Standard Time; provided, that if such date of

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delivery is not a Business Day or is delivered after 5:00 pm Pacific Standard Time, then the date of delivery shall be the immediately following Business Day.

## ARTICLE 28.

### DISPUTE RESOLUTION; GOVERNING LAW

**28.1 Good faith negotiations.** In the event that any question, dispute, difference or claim arises out of or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), which either Party has notified to the other Party in a written notice stating that it is a “Notice of Dispute”, senior management personnel from both Contractor and Owner shall attempt to resolve the Dispute for a minimum period of \*\*\* following issuance of the Notice of Dispute, and such attempt shall include at least one in-person meeting between senior management personnel from both Contractor and Owner, each of whom has the authority to finally settle the Dispute on behalf of that Party. If the Dispute is not resolved by negotiation, the provisions of Sections 28.2 and 28.3 below shall apply.

#### 28.2 Optional Arbitration.

(a) Any Dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement or pursuant to Section 28.1 above, may proceed to court pursuant to Section 28.3 unless the Parties mutually agree in writing to resolve such Dispute by arbitration as provided herein.

(b) If the Parties elect to pursue arbitration, upon the expiration of the \*\*\* negotiation period set forth in Section 28.1, either Party may submit such Dispute to arbitration by providing a written demand for arbitration to the other Party, and such arbitration shall be conducted in accordance with the Rules of the AAA for the Resolution of Construction Industry Disputes (the “Arbitration Rules”) in effect on the date that the submitting Party gives notice of its demand for arbitration under this Section 28.2. The arbitration shall be conducted at a location as agreed by the Parties, or if the Parties cannot so agree, the arbitration shall be conducted in the county and state where the Site is located. Unless otherwise agreed by the Parties, discovery shall be conducted in accordance with the Federal Rules of Civil Procedure and the Parties shall be entitled to submit expert testimony or written documentation in the arbitration proceeding. The decision of the arbitrator(s) shall be final and binding upon Owner and Contractor and shall be set forth in a reasoned opinion, and any award may be enforced by Owner or Contractor, as applicable, in any court of competent jurisdiction. Any award of the arbitrator(s) shall include interest from the date of any damages incurred for breach of this Agreement, and from the date of the award until paid in full, at a rate equal to the lesser of (i) the rate published by the *Wall Street Journal* as the “prime rate” on the Business Day preceding the date on which such interest begins to accrue plus \*\*\* and (ii) the maximum rate allowed under Applicable Law. Each of Owner and Contractor shall bear its own cost of preparing and presenting its case; however, the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the Dispute. The fees and

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expenses of the arbitrator(s), and other similar expenses, shall initially be shared equally by Owner and Contractor, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator(s) shall be instructed to establish procedures such that a decision can be rendered within \*\*\* after the appointment of the arbitrator(s).

(c) Appointment of Arbitrator(s). All arbitrators appointed to hear a Dispute pursuant to paragraph (i) or paragraph (ii) below shall have significant construction contract resolution experience and experience and understanding of the contemporary solar photovoltaic power industry and photovoltaic systems.

(i) Where the amount in dispute does not exceed \*\*\* the Dispute shall be heard by a single neutral arbitrator agreed by the Parties. If the Parties cannot agree on a single neutral arbitrator within \*\*\* after the written demand for arbitration is provided, then the arbitrator shall be selected pursuant to the Arbitration Rules.

(ii) Where the amount in dispute is at least \*\*\*, the Dispute shall be heard by a panel of three (3) arbitrators selected as follows. Each Party shall select one neutral arbitrator to sit on the panel. The arbitrators selected by the Parties shall in turn nominate a third neutral arbitrator from a list of arbitrators mutually satisfactory to the Parties.

(d) Arbitrator Confidentiality Obligation. The Parties shall ensure that any arbitrator appointed to act under this Article 28 will agree to be bound to comply with the provisions of Article 25 with respect to the terms of this Agreement and any information obtained during the course of the arbitration proceedings.

**28.3 Governing Law/Litigation/Choice of Forum/Waiver of Jury Trial.** THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY OF ITS CONFLICT OF LAW PROVISIONS THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. SUBJECT TO THE OTHER PROVISIONS OF THIS ARTICLE 28 AND THE ARBITRATION OPTION DESCRIBED IN SECTION 28.2, FOR PURPOSES OF RESOLVING ANY DISPUTE ARISING UNDER THIS AGREEMENT, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES FEDERAL DISTRICT COURTS LOCATED IN NEW YORK, NEW YORK, OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE STATE COURTS OF THE STATE OF NEW YORK. EACH PARTY HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE VENUE OF SUCH ACTION, SUIT OR PROCEEDING IN SUCH COURT OR THAT SUCH SUIT, ACTION OR PROCEEDING IN SUCH COURT WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME. EACH PARTY FURTHER AGREES THAT SUCH COURT SHALL HAVE *IN PERSONAM* JURISDICTION OVER EACH OF THEM WITH RESPECT TO ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING. THE PARTIES SUBMIT TO THE JURISDICTION OF SAID COURT AND WAIVE ANY DEFENSE OF *FORUM NON CONVENIENS*. THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY

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WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

**28.4 Work to Continue.** During the pendency of any dispute proceedings, as required under the terms of this Agreement, Owner shall continue to make undisputed payments and each Party shall continue to perform its obligations under this Agreement.

## ARTICLE 29.

### LIMITATION OF LIABILITY

**29.1 Consequential Damages.** Neither Contractor nor Owner shall be liable to the other for, nor shall a court or arbitrator assess, any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including losses of use, profits, business opportunity, reputation or financing, subject to the following exclusions which constitute amounts which shall not be deemed to be limited or waived by the foregoing restriction: (a) Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages, Final Capacity Liquidated Damages or amounts payable pursuant to Section 17.8; (b) claims made by, damages incurred by, or amounts payable pursuant to an indemnity given hereunder; (c) damages arising out of a breach of Article 25 by either Party; (d) amounts payable pursuant to the indemnity obligations of either Party under Section 24.3; (e) damages set forth in Sections 20.2(l) and 20.2(m) and (f) all Termination Payments.

**29.2 Overall Limitation of Liability.** Notwithstanding any other provision of this Agreement, (a) Contractor's maximum liability for the aggregate of Block Delay Liquidated Damages, Facility Delay Liquidated Damages and Block Capacity Liquidated Damages shall not exceed \*\*\* of the Contract Price, (b) Contractor's maximum liability for Final Capacity Liquidated Damages shall not exceed \*\*\* of the Contract Price, (c) Contractor's cumulative maximum liability for liquidated damages described in subclauses (a) and (b) above, under this Agreement shall not exceed \*\*\* of the Contract Price and (d) Contractor's cumulative maximum liability to Owner under this Agreement shall not exceed (i) for the period through the Facility Substantial Completion Date with respect to any claim arising on or before the Facility Substantial Completion Date (even if actually claimed or ultimately resolved or due after the Facility Substantial Completion Date), \*\*\* of the Contract Price and (ii) for the period after the Facility Substantial Completion Date with respect to any claim arising after the Facility Substantial Completion Date, \*\*\* of the Contract Price. The foregoing limitation of liability shall not apply with respect to claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given hereunder or claims arising out of Contractor's fraud or willful misconduct. To the extent any provision of this Agreement establishes a lower limit of liability of a Party with respect to a particular component or type of liability, such lower limit of liability shall control with respect to the relevant component or type of liability. \*\*\* Notwithstanding anything herein to the contrary, no liabilities of Contractor to Owner covered by insurance carried by Contractor pursuant to Article 23 (except deductibles paid by Contractor) shall be included in Contractor's aggregate liability for the purposes of determining the limit on Contractor's liability to Owner pursuant to this Agreement.

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## ARTICLE 30.

### SURVIVAL

**30.1 Survival.** The provisions within the Articles with the following titles shall survive termination of this Agreement: Contract Interpretation and Effectiveness, Taxes, Force Majeure, Intellectual Property, Hazardous Materials, Indemnity, Warranty, Suspension of the Work, Termination, Confidentiality and Publicity, Assignment, Dispute Resolution, Limitation of Liability, Miscellaneous and any other provision which expressly or by implication survives termination.

## ARTICLE 31.

### MISCELLANEOUS

**31.1 Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect (including economic effect).

**31.2 Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (except as expressly set forth herein).

**31.3 Further Assurances.** Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the Facility by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.

**31.4 No Waiver.** A Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 31.5.

**31.5 Amendments in Writing.** Without limiting any provision of Article 10 with respect to mandatory Change Orders, no oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner shall be of any

force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.

**31.6 Books and Record; Retention.** Contractor agrees to retain for a period of \*\*\* from the Final Completion Date all material records relating to its performance of the Work or Contractor's warranty obligations herein.

**31.7 Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing Party shall be entitled to be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with such action or proceeding.

**31.8 Inspection, Review and Approval.** Notwithstanding Owner's inspection, review, monitoring, observation, acknowledgement, comment or Owner's approval of any items reviewed, inspected, monitored or observed in accordance with this Agreement, neither Owner nor any of its representatives or agents reviewing such items, including the Owner's Engineer, shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work in accordance with this Agreement. Owner's or its representative's inspection, review, monitoring, observation, acknowledgement, comment or approval of any items shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor. Unless otherwise expressly provided herein, Owner shall not unreasonably delay its review of any item submitted by Contractor for review or approval for review or approval; provided, however, the foregoing shall not be used to decrease any express time limitation for such review or approval set forth herein. Any review, inspection, monitoring or observation by Owner or its representatives in accordance with this Agreement shall not constitute any approval of the Work undertaken by such Person, cause Owner to have any responsibility for the actions, the Work or payment of such Person (other than in respect of Owner's obligations to pay Contractor in accordance with Article 7) or to be deemed to be in an employer-employee relationship with Contractor or any Subcontractor, or in any way relieve Contractor of its responsibilities and obligations under this Agreement or be deemed to be acceptance by Owner with respect to such Work.

**31.9 Independent Engineer.** Contractor acknowledges that the Independent Engineer will be engaged by Owner for the purpose of providing to Financing Parties a neutral, third party overview of the Work. The Independent Engineer shall provide Financing Parties with independent opinions and determinations, arrived at reasonably and in good faith, with respect to: (a) the status of the Work; (b) the performance of the Project and equipment and the Functional Tests and Capacity Tests and the results and procedures related thereto; (c) invoices submitted by Contractor; (d) Contractor's quality control procedures for the Work and major components thereof; and (e) the approval of Change Orders. Owner undertakes that it will use reasonable efforts to ensure that the Independent Engineer gives its countersignature or indicates that it is not willing to do so in relation to the relevant matter within the time specified in this Agreement for Owner to respond in relation to such matter; provided that any such unwillingness on the part of the Independent Engineer shall not affect or limit Owner's obligations hereunder. The Independent Engineer may, at its option, attend any meetings between Owner and Contractor related to the progress of the Project and shall approve all Contractor's Applications

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

for Payments prior to any payment being made by Owner thereunder; provided that any failure by the Independent Engineer to approve a Contractor's Application for Payment shall not affect or limit Owner's obligations hereunder. Notwithstanding anything else to the contrary contained herein, the Independent Engineer shall have no right to direct Contractor or any portion of the Work or to make any Change Order. Contractor shall maintain a complete, accurate and up-to-date log of all Change Orders and, upon request of the Independent Engineer, shall furnish copies of such log to the Independent Engineer. Contractor shall afford the Independent Engineer the same rights as Owner with respect to access to the Site; provided that Owner shall be liable for any failure by the Independent Engineer to maintain the confidentiality of Confidential Information as required by Article 25.

**31.10 Financing Matters.** In connection with any collateral assignment by Owner of its rights, title and interest under this Agreement to any Financing Party in accordance with Section 26.2, Contractor shall execute and deliver any usual and customary consent in accordance with Section 26.2 and use commercially reasonable efforts to cause Major Subcontractors to execute subordination agreements; provided, however, that Contractor shall not be obligated without a Change Order to accept any undertaking imposed by any Financing Party which Contractor reasonably believes will increase its obligations under this Agreement, whether such increased obligations be technical, economic, schedule or otherwise. Contractor agrees to make available, or to use commercially reasonable efforts to cause its Subcontractors to make available, to the Financing Parties and the Independent Engineer, subject to an appropriate confidentiality agreement, independent reviewers, feasibility consultants, and other financial institutions or parties involved in the financing process, such information in the control of Contractor, its Affiliates and Subcontractors (including financial information concerning Contractor, its Affiliates and the Subcontractors) as may be reasonably requested by Owner. Contractor acknowledges that the Financing Parties and the Independent Engineer may monitor, inspect and review the Work as permitted by Article 6.

**31.11 Set-Off.** Owner may at any time, but shall be under no obligation to, set-off any and all undisputed sums due from Owner or its Affiliates that are party to the Project Transaction Documents against any and all undisputed sums due to any such parties from Contractor or its Affiliates that are party to the Project Transaction Documents. Contractor may at any time, but shall be under no obligation to, set-off any and all undisputed sums due from Contractor or its Affiliates that are party to the Project Transaction Documents against any and all undisputed sums due to any such parties from, Owner or its Affiliates that are party to the Project Transaction Documents.

**31.12 Fees and Expenses.** Except as specifically set forth herein, each Party shall be responsible for any legal fees and expenses, financial advisory fees, accountant fees and any other fees and expenses incurred by such Party in connection with the negotiation, preparation and enforcement of this Agreement and the transactions contemplated hereby.

**31.13 Related Contracts.** Services and work performed at any time by Contractor or its Affiliates under the Module Warranty, the Performance Guaranty Agreement or the O&M Agreement shall not constitute Work hereunder. Owner shall use reasonable efforts to make claims against Contractor under the appropriate contract (this Agreement, the Module Warranty, the Contractor Performance Security, the Performance Guaranty Agreement or the O&M

Agreement). Notwithstanding the foregoing, Contractor shall not contend that it is not liable for any claim of Owner under or arising out of this Agreement on the grounds that the loss or damage suffered by Owner was caused by an act or omission or the failure to comply with the terms of the other Project Transaction Documents by Contractor, its Affiliates or any other Person for which Contractor or its Affiliates are responsible (including subcontractors), and Contractor irrevocably waives any such defense in any Dispute. Contractor shall inform Owner if it believes that Owner made a claim under the wrong Project Transaction Document. If Contractor and Owner do not agree that such claim should have been made under a different Project Transaction Document, Contractor and Owner shall resolve any such dispute regarding which Project Transaction Document a claim should have been made under by submitting such dispute to dispute resolution in accordance with Article 28.

**31.14 Audit Rights.** With respect to any Change Order which adjusts the Contract Price by compensating Contractor on a reimbursable cost or time and materials basis, Contractor shall maintain, in accordance with Industry Standards and generally accepted accounting principles consistently applied, records and books of account as may be necessary for substantiation of all Contractor claims for additional compensation or Change Orders. Owner, Owner's Engineer, the Financing Parties (except for any Financing Party that is a SunPower Competitor other than an Eligible SunPower Competitor), if any, and their authorized representatives shall be entitled to inspect and audit such records and books of account during normal business hours and upon reasonable advanced notice during the course of the Work and for a period of \*\*\* after Final Completion (or such longer period, where required by Applicable Law); provided, however, that the purpose of any such audit shall be only for verification of such costs, and Contractor shall not be required to keep records of or provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs. Contractor shall retain all such records and books of account for a period of at least \*\*\* after the Final Completion Date (or such longer period, where required by Applicable Law). Contractor shall use commercially reasonable efforts to cause all Major Subcontractors engaged in connection with the Work or the performance by Contractor of its warranty obligations herein to retain for the same period all their records relating to the Work for the same purposes and subject to the same limitations set forth in this Section 31.14. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner's Engineer, and their respective officers, directors, members, managers, employees and agents in connection with any such audit, subject to the provisions of Article 25. If, as a result of any audit conducted pursuant to this Section 31.14, the results of such audit indicate that Contractor received more or less than the amount to which it was entitled under this Agreement, either Owner shall pay the additional amount owed to Contractor or Contractor shall refund any overpayment to Owner, as applicable, in either case within \*\*\* of a written request therefor. Owner shall be responsible for all costs and expenses of such audit unless a significant overpayment by Owner is discovered, in which case Contractor shall be responsible for such costs and expenses.

**[THE SIGNATURE PAGES IMMEDIATELY FOLLOW]**

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**SOLAR STAR CALIFORNIA XX, LLC**

By: SunPower Corporation, Systems, its Managing Member

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

Name: Charles D. Boynton

Title: Chief Financial Officer

**SUNPOWER CORPORATION, SYSTEMS**

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

Name: Howard Wenger

Title: President and Chief Executive Officer

**EXHIBIT 1**  
**AVSP 2**  
**Scope of Work**

\*\*\*

[15 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1-1

**AVSP II EPC Contract**  
**Exhibit 1 - Scope of Work**

**Exhibit 1 - Appendix A  
Drawings**

\*\*\*

[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix A-1

AVSP II EPC Contract  
Exhibit 1 - Appendix A - Drawings

**EXHIBIT 1 - APPENDIX B**  
**Conditional Use Permit - Division of Responsibility Table**

[illegible]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix B-1

**AVSP I EPC Contract**  
**Exhibit 1 - Appendix B - CUP Responsibility Table**



MM Condition Number	Task Summary	Deadline	Area of Responsibility
***	***	***	***
***	***		***
***	***		***
***	***		***
***	***		***
***	***		***
***	***	***	***
***	***		***
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\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix B-2

AVSP II EPC Contract  
Exhibit 1 - Appendix B - CUP Responsibility Table

**Exhibit 1 - Appendix C**  
**Geotechnical Report**

\*\*\*

[586 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix C-1

AVSP II EPC Contract  
Exhibit 1 - Appendix C - Geotechnical Report

**Exhibit 1 - Appendix D  
Revegetation Plan**

\*\*\*

[33 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix D-1

AVSP II EPC Contract  
Exhibit 1 - Appendix D - Revegetation Plan

**Exhibit 1 - Appendix E**

**Operator Personnel Training Program**

\*\*\*

[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix E-1

AVSP II EPC Contract  
Exhibit 1 - Appendix E - Operator Personnel Training Program

## **APPENDIX F**

### **Contractor and Owner Obligations under the Power Purchase Agreement**

[illegible]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix F-1

**AVSP II EPC Contract**  
**Exhibit 1 - Appendix F - PPA Obligations**



**EXHIBIT 1 - APPENDIX G**  
**Contractor and Owner Obligations under the Interconnection Agreement**

[illegible]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 1 - Appendix G-1

**AVSP II EPC Contract**  
**Exhibit 1 - Appendix G - LGIA Obligations**

Exhibit 2  
AVSP2  
Site Description

Real property in the Counties of Kern and Los Angeles, State of California, described as follows:

**Tract 1: Alesso/Sub Option Agreement**

PARCEL 1 OF PARCEL MAP 8370 IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED NOVEMBER 30, 1987, IN BOOK 35, PAGE 49 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 359-324-18-00-9

**Tract 2: Alesso/Sub Option Agreement**

PARCEL 3 OF PARCEL MAP 8370 IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED NOVEMBER 30, 1987, IN BOOK 35, PAGE 49 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 359-324-20-00-4

**Tract 3: AVWS/Original Property**

PARCEL 1:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 422 OF OFFICIAL RECORDS.

APN: 261-196-02-00-7 (PORTION)

PARCEL 2:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN,



AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 429 OF OFFICIAL RECORDS.

APN: 261-196-02-00-7 (PORTION)

PARCEL 3:

THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 422 OF OFFICIAL RECORDS.

APN: 261-196-02-00-7 (PORTION)

**Tract 4: AVWS/Original Property**

THE SOUTH HALF OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 20% OF ALL OIL, MINERAL AND NATURAL GAS RIGHTS IN AND UNDER SAID LAND, AS RESERVED IN THE GRANT DEED FROM DANIEL WALTER KLEINHANS, JR., RECORDED NOVEMBER 21, 1957 IN BOOK 2871, PAGE 429 OF OFFICIAL RECORDS.

APN: 261-196-03-00-0

**Tract 5: AVWS/Original Property**

THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPT 3/4THS OF ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS RESERVED IN THE DEED FROM DANIEL WALTER KLEINHANS, JR. AND AGNES G. KLEINHANS, HUSBAND AND WIFE, RECORDED JULY 15, 1965 IN BOOK 3857, PAGE 713 OF OFFICIAL RECORDS.

APN: 261-196-04-00-3

**Tract 6: AVWS/Original Property**

PARCEL A:

THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING AND RESERVING AN UNDIVIDED ONE-HALF OF ANY AND ALL GROUNDWATER RIGHTS ASSOCIATED WITH THE PROPERTY THAT MAY BE FINALLY DETERMINED OR ADJUDICATED IN THE COORDINATION PROCEEDING KNOWN AS THE “ANTELOPE VALLEY GROUNDWATER CASES”, BEING JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408(3), AS RESERVED IN DEED RECORDED NOVEMBER 5, 2007 AS INSTRUMENT NO. 0207220993 OF OFFICIAL RECORDS.

PARCEL B:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY OVER THE NORTHERLY 18 FEET OF THE NORTH HALF OF SECTION 32, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, FOR THE SOLE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING, AND IF NECESSARY, REPLACING, AN UNDERGROUND WATER PIPELINE AS GRANTED IN DEED RECORDED NOVEMBER 24, 1976, IN BOOK 4992 PAGE 712 OF OFFICIAL RECORDS.

APN: 359-041-17-00-4

**Tract 7: AVWS/Original Property**

LOTS 1 AND 2 OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 31, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS PER THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

Exhibit 2-3

AVSP II EPC Contract  
Exhibit 2 - Site Description

EXCEPT THE SOUTH 30 FEET THEREOF.

APN: 359-041-18-00-7

**Tract 8: AVWS/Original Property**

THE EAST HALF OF THE LOTS 1 AND 2 IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, AND DESCRIBED AS PARCEL 2 IN CONDITIONAL CERTIFICATE OF COMPLIANCE, RECORDED SEPTEMBER 12, 2011 AS INSTRUMENT NO. 20111234624 OF OFFICIAL RECORDS.

APN: 3258-001-028 and 3258-001-029

**Tract 9: AVWS/Easement Agreement**

EASEMENT IN GROSS FOR POWER LINE FACILITIES AND ACCESS DRIVEWAY AND INCIDENTAL PURPOSES, PURSUANT TO MEMORANDUM OF EASEMENT AGREEMENT EXECUTED BY AND BETWEEN ANTELOPE VALLEY WATER STORAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED DECEMBER 2, 2010 AS INSTRUMENT NO. 0210166682, AND AS AMENDED BY FIRST AMENDMENT TO PROJECT EASEMENT AGREEMENT AND MEMORANDUM OF EASEMENT AGREEMENT RECORDED MAY 12, 2011, AS INSTRUMENT NO. 0211062327, OF OFFICIAL RECORDS.

PARCEL ONE:

ALONG HOLIDAY AVENUE (BETWEEN 160TH STREET WEST AND 170TH STREET WEST)

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE NORTH 100 FEET OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST OF THE SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA; AND

A STRIP OF LAND, 55 FEET IN WIDTH, DESCRIBED AS THE SOUTH 55 FEET OF THE NORTH 155 FEET OF THE EAST 800 FEET OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST OF THE SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

Exhibit 2-4

AVSP II EPC Contract  
Exhibit 2 - Site Description

APN: 261-196-09-00-8

PARCEL TWO:

ALONG HOLIDAY AVENUE (BETWEEN 150TH STREET WEST AND 160TH STREET WEST)

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE SOUTH 100 FEET OF THE NORTH 155 FEET OF SECTION 30, TOWNSHIP 9 NORTH, RANGE 14 WEST OF THE SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, EXCEPT FOR THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER.

APN: 359-041-01-00-7, 359-041-20-00-2 and 359-041-11-00-6 (PORTION)

**Tract 10: AVWS/New Property**

THE NORTH HALF OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING AND RESERVING AN UNDIVIDED ONE-HALF OF ANY AND ALL GROUNDWATER RIGHTS ASSOCIATED WITH THE PROPERTY THAT MAY BE FINALLY DETERMINED OR ADJUDICATED IN THE COORDINATION PROCEEDING KNOWN AS THE "ANTELOPE VALLEY GROUNDWATER CASES", BEING JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408(3), AS RESERVED IN DEED RECORDED NOVEMBER 5, 2007 AS INSTRUMENT NO. 0207220991 OF OFFICIAL RECORDS.

APN: 261-196-09-00-8

**Tract 10A: Intentionally deleted.**

**Tract 11: Intentionally deleted.**

**Tract 12: Collins/Fee Option Agreement**

PARCEL NO. 4 OF PARCEL MAP NO. 8294, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS FILED OCTOBER 22, 1987 IN BOOK 35, PAGE 17 OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL

Exhibit 2-5

AVSP II EPC Contract  
Exhibit 2 - Site Description

PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-331-19-00-4

**Tract 13: Intentionally deleted.**

**Tract 14: Dickinson/Sub Option Agreement**

THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 9 NORTH OF RANGE 14 WEST OF THE S. B. B. & M., IN THE UNINCORPORATED AREA, OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

APN: 359-321-02-00-1

**Tract 15: Doyle/Fee Option Agreement**

PARCEL 2 OF PARCEL MAP NO. 9211, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 41, PAGE 9 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-331-25-00-1

**Tract 16: eSolar/New Property**

PARCEL 1:

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

Exhibit 2-6

AVSP II EPC Contract  
Exhibit 2 - Site Description

APN: 261-193-02-00-6

PARCEL 2:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-03-00-9

PARCEL 3:

PARCEL 3 OF PARCEL MAP NO. 4818 FILED IN BOOK 22, PAGE 167 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF KERN COUNTY, CALIFORNIA.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-05-00-5

PARCEL 4:

PARCEL 2 OF PARCEL MAP 4818, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 22, PAGE(S) 167, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-06-00-8

PARCEL 5:

Exhibit 2-7

AVSP II EPC Contract  
Exhibit 2 - Site Description

PARCEL 1 OF PARCEL MAP 4818, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 22, PAGE(S) 167, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-07-00-1

PARCEL 6:

PARCEL 1 OF PARCEL MAP NO. 4119, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED JULY 26, 1977 IN BOOK 18 PAGE 185 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND, BUT WITH NO RIGHT OF SURFACE ENTRY, AS SHOWN IN GRANT DEED FROM VIOLA RUTH FRIESEN, SURVIVING TRUSTEE OF THE HERBERT H. AND VIOLA RUTH FRIESEN TRUST DATED JULY 17, 1990, RECORDED MARCH 30, 2007, AS INSTRUMENT NO. 0207070662, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-08-00-4

PARCEL 7:

PARCEL 2 OF PARCEL MAP NO. 4119, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED JULY 26, 1977 IN BOOK 18 PAGE 185 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND, BUT WITH NO RIGHT OF SURFACE ENTRY, AS SHOWN IN GRANT DEED FROM VIOLA RUTH FRIESEN, SURVIVING TRUSTEE OF THE HERBERT H. AND VIOLA RUTH FRIESEN TRUST

Exhibit 2-8

AVSP II EPC Contract  
Exhibit 2 - Site Description

DATED JULY 17, 1990, RECORDED MARCH 30, 2007, AS INSTRUMENT NO. 0207070663, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-09-00-7

PARCEL 8:

PARCEL 3 OF PARCEL MAP NO. 4119, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED JULY 26, 1977 IN BOOK 18 PAGE 185 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND, BUT WITH NO RIGHT OF SURFACE ENTRY, AS SHOWN IN GRANT DEED FROM VIOLA RUTH FRIESEN, SURVIVING TRUSTEE OF THE HERBERT H. AND VIOLA RUTH FRIESEN TRUST DATED JULY 17, 1990, RECORDED MARCH 30, 2007, AS INSTRUMENT NO. 0207070664, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-10-00-9

PARCEL 9:

PARCEL 3 OF PARCEL MAP NO. 1724 AS PER MAP THEREOF RECORDED JANUARY 24, 1974 IN BOOK 8 PAGE 166 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF KERN COUNTY, CALIFORNIA.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-15-00-4

Exhibit 2-9

AVSP II EPC Contract  
Exhibit 2 - Site Description



PARCEL 10:

PARCEL 2 OF PARCEL MAP NO. 1724, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP THEREOF RECORDED JANUARY 24, 1974 IN BOOK 8, PAGE 166 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-17-00-0

PARCEL 11:

PARCEL 1 OF PARCEL MAP NO. 1724 IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP THEREOF RECORDED JANUARY 24, 1974 IN BOOK 8, PAGE 166 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-18-00-3

PARCEL 12:

THE NORTH ONE-HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (NORTH ½ NORTHWEST ¼ SOUTHWEST ¼ SOUTHEAST ¼) OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-20-00-8

Exhibit 2-10

AVSP II EPC Contract  
Exhibit 2 - Site Description

PARCEL 13:

EAST ½ OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THEREOF, AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 24, 1997 DOCUMENT NO. 0197154347.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-25-00-3

PARCEL 14:

WEST ½ OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 24, 1997 DOCUMENT NO. 0197154346.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-26-00-6

PARCEL 15:

THE SOUTH HALF OF THE NORTH HALF OF THE EAST HALF OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-28-00-9

PARCEL 16:

THE NORTH HALF OF THE SOUTH HALF OF THE EAST HALF OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-29-00-2

PARCEL 17:

THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

EXCEPTING AN UNDIVIDED ½ OF ALL OIL, MINERALS, GAS, HYDROCARBON AND ALLIED SUBSTANCES BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, WITHOUT THE RIGHT OF SURFACE ENTRY, AS EXCEPTED AND RESERVED IN DEED FROM GEORGE W. LANE, ET UX, RECORDED AUGUST 21, 1962 IN BOOK 3521 PAGE 100 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-30-00-4

PARCEL 18:

PARCEL 1 OF PARCEL MAP 7128, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER PARCEL MAP FILED APRIL 17, 1984 IN BOOK 30, PAGE 159 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-36-00-2

PARCEL 19:

PARCEL 2 OF PARCEL MAP 7128, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER PARCEL MAP FILED APRIL 17, 1984 IN BOOK 30, PAGE 159 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-37-00-5

PARCEL 20:

PARCEL 3 OF PARCEL MAP NO. 7128, IN THE COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 30, PAGE 159 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-38-00-8

PARCEL 21:

PARCEL 4 OF PARCEL MAP NO. 7128, IN THE COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 30, PAGE 159 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL

Exhibit 2-13

AVSP II EPC Contract  
Exhibit 2 - Site Description

PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-39-00-1

PARCEL 22:

PARCEL 4 OF PARCEL MAP 9347 IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED FEBRUARY 28, 1991 IN BOOK 41, PAGE(S) 141 AND 142, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM 50% OF ALL OIL, MINERALS, GAS, HYDROCARBON AND ALLIED SUB STANCES BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, WITHOUT RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED RECORDED MAY 24, 1961 IN BOOK 3381, PAGE 519 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-45-00-8

PARCEL 23:

PARCEL 3 OF PARCEL MAP 9347 IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED FEBRUARY 28, 1991 IN BOOK 41, PAGE(S) 141 AND 142, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM 50% OF ALL OIL, MINERALS, GAS, HYDROCARBON AND ALLIED SUB STANCES BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, WITHOUT RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED RECORDED MAY 24, 1961 IN BOOK 3381, PAGE 519 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-46-00-1

PARCEL 24:

Exhibit 2-14

AVSP II EPC Contract  
Exhibit 2 - Site Description

PARCEL 2 OF PARCEL MAP 9347 IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED FEBRUARY 28, 1991 IN BOOK 41, PAGE(S) 141 AND 142, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, TOGETHER WITH ALL EASEMENTS AND RIGHTS NECESSARY OR CONVENIENT FOR THE PRODUCTION, STORAGE AND TRANSPORTATION THEREOF AND THE EXPLORATION AND TESTING OF SAID REAL PROPERTY AND ALSO THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM THE SAID REAL PROPERTY IN CONNECTION WITH DRILLING OR MINING OPERATIONS THEREON, RECORDED FEBRUARY 29, 1944 IN BOOK 1186, PAGE 168 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-47-00-4

PARCEL 25:

THE NORTH HALF OF SECTION 35, TOWNSHIP 9 NORTH, RANGE 15 WEST, S.B.B.M., IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-196-08-00-5

PARCEL 26:

THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B)

Exhibit 2-15

AVSP II EPC Contract  
Exhibit 2 - Site Description

THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-22-00-4

PARCEL 27:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-23-00-7

PARCEL 28:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-24-00-0

PARCEL 29:

THE SOUTH ONE-HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (S 1/2 NW 1/4 SW 1/4 SE 1/4) OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B)

Exhibit 2-16

AVSP II EPC Contract  
Exhibit 2 - Site Description

THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-193-19-00-6

PARCEL 30:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL, FEBRUARY 19, 1856.

EXCEPTING THEREFROM ONE HALF OF ALL OIL, MINERALS, GAS, HYDROCARBON AND ALLIED SUBSTANCES BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, WITHOUT RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED RECORDED AUGUST 21, 1962 IN BOOK 3521, PAGE 96 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 261-194-35-00-9

#### **Tract 17: Faber-Wurl/Sub Option Agreement**

PARCELS 1, 3 AND 4 OF PARCEL MAP NO. 9211, IN THE UNINCORPORATED AREA OF KERN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 41 OF PARCEL MAPS, PAGE 9, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 359-331-24-00-8, 359-331-26-00-4 and 359-331-27-00-7

#### **Tract 18: Grimmway/Original Property**

PARCEL A:

PARCELS 1 THROUGH 24, INCLUSIVE, OF PARCEL MAP NO. 7981, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED NOVEMBER 25, 1987 IN BOOK 35 PAGE 43 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Exhibit 2-17

AVSP II EPC Contract  
Exhibit 2 - Site Description



EXCEPTING THE WEST 30 FEET OF PARCELS 1 (EXCEPT THE NORTH 1100 FEET THEREOF), 9, 17 AND 21 AS CONVEYED TO THE ANTELOPE VALLEY-EAST KERN WATER AGENCY IN THE DEEDS RECORDED OCTOBER 3, 1989 IN BOOK 6298, PAGES 1794, 1797 AND 1800 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM SAID LAND WITHIN THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, 50% OF ALL OIL, GAS AND MINERAL RIGHTS, AS RESERVED BY OPAL ERNE, AN UNMARRIED WOMAN, IN DEED RECORDED MARCH 25, 1955 IN BOOK 2395 PAGE 514, OF OFFICIAL RECORDS.

AND ALSO EXCEPTING FROM SAID LAND WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, ALL OF THE OIL, GAS, GOLD, SILVER AND OTHER PRECIOUS METALS, MINERALS AND MINERAL SUBSTANCES IN AND UNDER AND THAT MAY BE PRODUCED FROM SAID LAND TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS AT ALL TIMES FOR THE PURPOSE OF MINING, DRILLING AND EXPLORING SAID LANDS FOR ANY AND ALL OIL, GAS, MINERALS AND MINERAL SUBSTANCES AND REMOVING THE SAME THEREFROM, AS GRANTED TO INDUSTRIAL LESSORS, INC., A NEVADA CORPORATION, IN DEED RECORDED JULY 18, 1956 IN BOOK 2638 PAGE 89, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-011-01-00-8, 359-011-02-00-1, 359-011-03-00-4, 359-011-04-00-7, 359-011-05-00-0, 359-011-06-00-3, 359-011-07-00-6, 359-011-08-00-9, 359-011-09-00-2, 359-011-10-00-4, 359-011-11-00-7, 359-011-12-00-0, 359-011-13-00-3, 359-011-14-00-6, 359-011-15-00-9, 359-011-16-00-2, 359-011-17-00-5, 359-011-18-00-8, 359-011-19-00-1, 359-011-20-00-3, 359-011-21-00-6, 359-011-22-00-9, 359-011-23-00-2 and 359-011-24-00-5

PARCEL B:

PARCEL 2 OF PARCEL MAP WAIVER 17-98, AS SHOWN ON CERTIFICATE OF COMPLIANCE, RECORDED MARCH 3, 1999, AS INSTRUMENT NO. 0199030750, BEING THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, AS SHOWN ON THE OFFICIAL PLAT THEREOF.

Exhibit 2-18

AVSP II EPC Contract  
Exhibit 2 - Site Description

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-020-50-00-6

PARCEL C:

PARCELS 1 THROUGH 12, INCLUSIVE, OF PARCEL MAP 8156, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED DECEMBER 17, 1987 IN BOOK 35, PAGE 53 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE WEST 30 FEET OF PARCELS 3 AND 9, AS CONVEYED TO ANTELOPE VALLEY-EAST KERN WATER AGENCY BY DEED RECORDED OCTOBER 3, 1989 IN BOOK 6298, PAGE 1792 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID LAND, OR THAT MAY BE PRODUCED AND SAVED THEREFROM; PROVIDING, HOWEVER, THAT GRANTORS, THEIR SUCCESSORS AND ASSIGNS, SHALL NOT CONDUCT DRILLING OR OTHER OPERATIONS UPON THE SURFACE OF SAID LAND, BUT NOTHING HEREIN SHALL BE DEEMED TO PREVENT THE EXTRACTING OR CAPTURING OF SAID MINERALS BY DRILLING ON ADJACENT OR NEIGHBORING LAND AND/OR FROM CONDUCTING OPERATIONS UNDER SAID LAND AT A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID LAND SO AS NOT TO DISTURB THE SURFACE THEREOF OR ANY IMPROVEMENTS THEREON, AS RESERVED BY ARMANDO IARUSSI AND EMMA VERA IARUSSI, HUSBAND AND WIFE, IN DEED RECORDED NOVEMBER 30, 1990 IN BOOK 6459, PAGE 1112 OF OFFICIAL RECORDS, AS TO PARCELS 1, 2, 3, 4, 5, 7, 8, 9, 10 AND 11.

ALSO RESERVING TO EMMA VERA IARUSSI, TRUSTEE OF THE ARMANDO IARUSSI AND EMMA VERA IARUSSI FAMILY TRUST DATED MAY 8, 1991 ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID LAND, OR THAT MAY BE PRODUCED AND SAVED THEREFROM; PROVIDING, HOWEVER, THAT EMMA VERA IARUSSI, TRUSTEE OF THE ARMANDO IARUSSI AND EMMA VERA IARUSSI TRUST HER SUCCESSORS AND ASSIGNS, SHALL NOT CONDUCT DRILLING OR OTHER OPERATIONS UPON THE SURFACE OF SAID LAND, BUT NOTHING HEREIN SHALL BE DEEMED TO PREVENT THE EXTRACTING OR CAPTURING OF SAID MINERALS BY DRILLING ON ADJACENT OR NEIGHBORING LAND AND/OR FROM CONDUCTING OPERATIONS UNDER SAID LAND AT A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID LAND SO AS NOT TO DISTURB THE SURFACE THEREOF OR ANY IMPROVEMENTS THEREON, AS RESERVED IN DEED RECORDED MARCH 11, 1998, AS INSTRUMENT NO. 0198030172, OF OFFICIAL

Exhibit 2-19

AVSP II EPC Contract  
Exhibit 2 - Site Description

RECORDS, AS TO PARCELS 1 AND 2; PARCEL 3, EXCEPT THE WEST 30 FEET; PARCELS 4, 6 AND 7; PARCEL 9, EXCEPT THE WEST 30 FEET; AND PARCELS 10 AND 12.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-174-01-00-6, 359-174-02-00-9, 359-174-03-00-2, 359-174-04-00-5, 359-174-05-00-8, 359-174-06-00-1, 359-174-07-00-4, 359-174-08-00-7, 359-174-09-00-0, 359-174-10-00-2, 359-174-11-00-5 and 359-174-12-00-8

PARCEL D:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE RECORD OF SURVEY MAP AS RECORDED MARCH 22, 1961 IN BOOK 8 PAGE 52 OF RECORD OF SURVEYS.

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE NORTH 1° 06' 00" WEST, ALONG THE WEST LINE OF SAID SECTION, 2646.88 FEET TO THE NORTHWEST CORNER OF SAID SECTION; THENCE NORTH 89° 37' 29" EAST ALONG THE NORTH LINE OF SAID SECTION, 75.96 FEET; THENCE SOUTH 0° 22' 31" EAST, 55.00 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 20.00 FEET, A RADIAL LINE TO THE CENTER OF SAID CURVE BEARS SOUTH 0° 22' 31" EAST, THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 43' 35", AN ARC DISTANCE OF 31.67 FEET; THENCE SOUTH 1° 06' 06" EAST, PARALLEL WITH AND 55.00 FEET EAST AS MEASURED AT RIGHT ANGLES TO THE WEST LINE OF SAID SECTION, 2571.65 FEET TO THE SOUTH LINE OF NORTHWEST QUARTER OF SAID SECTION; THENCE SOUTH 89° 39' 05" WEST ALONG SAID SOUTH LINE 55.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-240-04-00-7 (PORTION)

PARCEL E:

Exhibit 2-20

AVSP II EPC Contract  
Exhibit 2 - Site Description

ALL OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, KERN COUNTY, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION; THENCE 89° 39' 05" EAST, ALONG THE NORTHWEST LINE OF SAID SOUTHWEST QUARTER, 2639.00 FEET TO THE CENTER OF SAID SECTION; THENCE SOUTH 1° 04' 21" EAST, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, 2648.38 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE SOUTH 89° 41' 29" WEST, ALONG THE SOUTH LINE OF SAID SECTION, 2637.89 FEET TO THE SOUTHWEST CORNER OF SAID SECTION; THENCE NORTH 1° 05' 50" WEST, ALONG THE WEST LINE OF SAID SECTION, 2646.55 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APNS: 359-240-04-00-7 (PORTION)

### **Tract 19: Harter/Sub Option Agreement**

PARCEL 1:

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THE NORTHERLY 20.00 FEET OF THE SOUTHERLY 50.00 FEET THEREOF.

ALSO EXCEPT THAT PORTION INCLUDED IN PARCEL MAP NO. 2088, FILED APRIL 24, 1975 IN BOOK 13, PAGE 110 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF KERN COUNTY.

APN: 359-175-01-00-3

PARCEL 2:

PARCELS 1, 2 AND 3 IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2088, FILED APRIL 24, 1975 IN BOOK

Exhibit 2-21

AVSP II EPC Contract  
Exhibit 2 - Site Description

13 PAGE 110 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF KERN COUNTY.

EXCEPT THE NORTHERLY 20.00 FEET OF THE SOUTHERLY 50.00 FEET THEREOF.

APN: 359-175-02-00-6,359-175- 03-00-9,359-175-04-00-2

PARCEL 3:

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 359-321-01-00-8

**Tract 20: Intentionally deleted.**

**Tract 21: Kumar/Sub Option Agreement**

PARCEL 4 OF PARCEL MAP 8370, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER PARCEL MAP RECORDED NOVEMBER 30, 1987, IN BOOK 35, PAGE(S) 49 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM 50% OF ALL COAL, OIL, PETROLEUM, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, BUT WITHOUT ANY RIGHTS TO THE GRANTORS, THEIR HEIRS, EXECUTORS OR ASSIGNS, TO ENTER UPON THE SURFACE OF SAID LAND, OR THE SUB-SURFACE THEREOF TO A DEPTH OF 500 FEET, FOR THE PURPOSE OF TAKING THEREFROM ANY SUCH SUBSTANCES MENTIONED HEREIN, AS RESERVED BY LESLIE C. WEAVER AND HAZEL L. WEAVER, HUSBAND AND WIFE, IN DEED DATED JANUARY 27, 1989 AND RECORDED FEBRUARY 13, 1989, IN BOOK 6208, PAGE(S) 1290 AS INSTRUMENT NO. 015620 OF OFFICIAL RECORDS.

APN: 359-324-21-00-7

**Tract 22: Intentionally deleted.**

**Tract 23: Nikkel/Easement Agreement**

AN EASEMENT AND RIGHT OF WAY FOR TRANSMISSION LINE AND INCIDENTAL PURPOSES, OVER, UNDER, ALONG AND ACROSS A STRIP OF LAND, 100 FEET IN

Exhibit 2-22

AVSP II EPC Contract  
Exhibit 2 - Site Description

WIDTH, DESCRIBED AS THE SOUTH 100 FEET OF THE NORTH 155 FEET OF PARCEL 1 OF PARCEL MAP 1028, IN THE UNINCORPORATED AREA, OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP RECORDED AUGUST 14, 1973 IN BOOK 6, PAGE 140 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS IN THE REAL PROPERTY AND RIGHTS RELATED THERETO; PROVIDED THAT GRANTOR AND ITS HEIRS, SUCCESSORS AND ASSIGNS SHALL HAVE NO RIGHT TO ENTER, ACCESS OR USE THE SURFACE OF THE REAL PROPERTY, OR THE SUBSURFACE ABOVE A DEPTH OF 500 FEET FOR ANY REASON, INCLUDING WITHOUT LIMITATION THE INVESTIGATION OR DEVELOPMENT OF OIL, GAS OR MINERAL RIGHTS OR THE EXTRACTION OF OIL, GAS OR MINERALS, AS RESERVED BY CLARENCE NIKKEL, ET AL, IN GRANT DEED RECORDED MARCH 2, 2010, AS INSTRUMENT NO. 0210027026 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-041-07-00-5 (PORTION)

**Tract 24: Intentionally deleted.**

**Tract 25: Intentionally deleted.**

**Tract 26: Sempra/Easement Agreement**

AN EASEMENT AND RIGHT OF WAY FOR POWERLINE AND INCIDENTAL PURPOSES, OVER, UNDER, ALONG AND ACROSS A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE NORTH 100 FEET OF PARCELS 1 THROUGH 8, INCLUSIVE, OF PARCEL MAP 8190, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED SEPTEMBER 30, 1988 IN BOOK 36 PAGE 184 OF MAPS; AND BEING A PORTION OF PARCEL "A" OF DETERMINATION OF MERGER, RECORDED APRIL 5, 2011 AS INSTRUMENT NO. 0211044912 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; AND BEING A PORTION OF SECTION 29, TOWNSHIP 9 NORTH, RANGE 14 WEST OF THE SAN BERNARDINO BASE AND MERIDIAN.

APN: 359-350-01-00-0 (Affects Parcel 1)

359-350-02-00-0 (Affects Parcel 2)

359-350-03-00-0 (Affects Parcel 3)

359-350-04-00-0 (Affects Parcel 4)

Exhibit 2-23

AVSP II EPC Contract  
Exhibit 2 - Site Description

359-350-05-00-0 (Affects Parcel 5)  
359-350-06-00-0 (Affects Parcel 6)  
359-350-07-00-0 (Affects Parcel 7)  
359-350-08-00-0 (Affects Parcel 8)

**Tract 27: Intentionally deleted.**

**Tract 28: Intentionally deleted.**

**Tract 29: Wong/Fee Option Agreement**

PARCEL NO. 2 OF PARCEL MAP NO. 8294, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, FILED OCTOBER 22, 1987 IN BOOK 35, PAGE 17 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A) ANY AND ALL MINERAL RIGHTS APPURTENANT TO THE REAL PROPERTY OR OTHERWISE BENEFITING THE REAL PROPERTY, AND B) THE RIGHT TO DRILL OR EXCAVATE, OR PLACE STRUCTURES ON, THE REAL PROPERTY BELOW A DEPTH OF FIFTY (50) FEET AS RESERVED IN DEED RECORDED DECEMBER \_\_, 2012 AS INSTRUMENT NO. 2012-\_\_\_\_\_ OF OFFICIAL RECORDS.

APN: 359-331-17-00-8

**Tract 30: Willow Springs Gen-Tie Easement**

AN EASEMENT FOR TRANSMISSION LINE AND INCIDENTAL PURPOSES BEING OVER, UNDER OR ACROSS A PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS MORE PARTICULARLY DESCRIBED IN PARCEL 1A AND PARCEL 1B, AS FOLLOWS:

PARCEL 1A: Intentionally deleted.

PARCEL 1B: GEN-TIE WILLOW SPRINGS

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 24, THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89° 37' 45" EAST, 155.03 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED, THENCE NORTH 00° 58' 32" WEST, 1633.91 FEET; THENCE SOUTH 89° 01' 35" WEST, 155.00 FEET; THENCE NORTH 00° 58' 32" WEST, 20.00 FEET; THENCE NORTH 89° 01' 35" EAST, 155.00 FEET; THENCE NORTH 00° 58' 32" WEST, 131.64 FEET, THENCE NORTH 82° 35' 58" WEST, 155.25 FEET; THENCE NORTH 00° 58' 32" WEST, 101.08 FEET; THENCE SOUTH 82° 35' 58" EAST, 155.25 FEET; THENCE NORTH 00° 58' 32" WEST, 699.12 FEET; THENCE SOUTH 89° 37' 45" EAST, 100.03 FEET; THENCE SOUTH

Exhibit 2-24

AVSP II EPC Contract  
Exhibit 2 - Site Description

00° 58' 32" EAST, 2585.71 FEET; THENCE NORTH 89° 37' 45" WEST, 100.04 TO THE POINT OF BEGINNING.

AN EASEMENT FOR ACCESS AND INCIDENTAL PURPOSES BEING OVER, UNDER OR ACROSS A PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS MORE PARTICULARLY DESCRIBED IN PARCEL 2A AND PARCEL 2B, AS FOLLOWS:

PARCEL 2A: Intentionally deleted.

PARCEL 2B: TEMPORARY CONSTRUCTION WILLOW SPRINGS

THE WESTERLY 55 FEET OF THE SOUTHERN MOST 2585 FEET OF THE NORTHWEST QUARTER OF SECTION 24.

EXCEPT THOSE PORTIONS AS DESCRIBED IN PARCEL 1B ABOVE.

APN: 261-260-20-00-7, 261-260-22-00-3 and 261-260-23-00-6 (PORTION)

**Tract 31: Intentionally deleted.**

**Tract 32: Intentionally deleted.**

**Tract 33: Intentionally deleted.**

**Tract 34: Intentionally deleted.**

**Tract 35: Intentionally deleted.**

**Tract 36: AVWS Easement**

THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA.

APN: 261-196-11-00-3

**Tract 37: Intentionally deleted.**

**Tract 38: Intentionally deleted.**

**Tract 39: Intentionally deleted.**



## **Tract 40: Lin/Sempra Gen-Tie Easement**

### **PARCEL 1A: GEN-TIE LIN/SEMPRA**

AN EASEMENT FOR TRANSMISSION LINE PURPOSES OVER UNDER AND ACROSS A PORTION OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM FIRST SOLAR DEVELOPMENT, INC., A DELAWARE CORPORATION TO SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED AUGUST 16, 2011 AS INSTRUMENT NO. 000211103862, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE KERN COUNTY OFFICIAL RECORDS.

### **PARCEL 1B: ACCESS LIN/SEMPRA**

AN EASEMENT FOR ACCESS PURPOSES OVER UNDER AND ACROSS A PORTION OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO BASE MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLATS THEREOF, AS GRANTED FROM FIRST SOLAR DEVELOPMENT, INC., A DELAWARE CORPORATION TO SGS ANTELOPE VALLEY DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND WHIRLWIND SOLAR STAR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THAT CERTAIN GRANT OF POWER LINE AND ACCESS EASEMENT RECORDED AUGUST 16, 2011 AS INSTRUMENT NO. 000211103862, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE KERN COUNTY OFFICIAL RECORDS.

AND

A STRIP OF LAND, 30 FEET IN WIDTH, DESCRIBED AS THE WESTERNMOST 30 FEET OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE KERN COUNTY OFFICIAL RECORDS.

APN: 261-120-08-00-2 (PORTION)

**Tract 41: Tallman Gen-Tie Easement (Semptra)**

PARCEL 1A: GEN-TIE TALLMAN

AN EASEMENT AND RIGHT OF WAY FOR POWER LINE AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS GRANTED BY DOCUMENT RECORDED JULY 7, 2011 AS INSTRUMENT NO. 0211086404 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 261-120-01-00-1

PARCEL 1B: ACCESS TALLMAN

AN EASEMENT AND RIGHT OF WAY FOR PEDESTRIAN AND VEHICULAR INGRESS, EGRESS AND ACCESS AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS GRANTED BY DOCUMENT RECORDED JULY 7, 2011 AS INSTRUMENT NO. 0211086404 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

AND

Exhibit 2-27

AVSP II EPC Contract  
Exhibit 2 - Site Description

A STRIP OF LAND, 55 FEET IN WIDTH, DESCRIBED AS THE WESTERNMOST 55 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 261-120-01-00-1

**Tract 42: Campbell Gen-Tie Easement (Semptra)**

**PARCEL 1A: GEN-TIE CAMPBELL**

AN EASEMENT AND RIGHT OF WAY FOR POWER LINE AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS GRANTED BY DOCUMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076177 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 261-120-09-00-5

**PARCEL 1B: ACCESS CAMPBELL**

AN EASEMENT AND RIGHT OF WAY FOR PEDESTRIAN AND VEHICULAR INGRESS, EGRESS AND ACCESS AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS GRANTED BY DOCUMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076177 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE

COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

AND

A STRIP OF LAND, 55 FEET IN WIDTH, DESCRIBED AS THE WESTERNMOST 55 FEET OF THE WEST HALF OF THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 261-120-09-00-5

**Tract 43: Way Gen-Tie Easement (Semptra)**

PARCEL 1A: GEN-TIE WAY

AN EASEMENT AND RIGHT OF WAY FOR POWER LINE AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

SAID EASEMENT WAS GRANTED BY DOCUMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076180 OF OFFICIAL RECORDS, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

APN: 261-120-05-00-3 and 261-120-06-00-6

PARCEL 1B: ACCESS WAY

Exhibit 2-29

AVSP II EPC Contract  
Exhibit 2 - Site Description

AN EASEMENT AND RIGHT OF WAY FOR PEDESTRIAN AND VEHICULAR INGRESS, EGRESS AND ACCESS AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

SAID EASEMENT WAS GRANTED BY DOCUMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076180 OF OFFICIAL RECORDS, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

AND

A STRIP OF LAND, 55 FEET IN WIDTH, DESCRIBED AS THE WESTERNMOST 55 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

APN: 261-120-05-00-3 and 261-120-06-00-6

**Tract 44: Blaire Gen-Tie Easement (Sempra)**

PARCEL 1A: GEN-TIE BLAIRE

AN EASEMENT AND RIGHT OF WAY FOR POWER LINE AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY SURVEYOR GENERAL FEBRUARY 19, 1856.

Exhibit 2-30

AVSP II EPC Contract  
Exhibit 2 - Site Description

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

SAID EASEMENT WAS GRANTED BY DOCUMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076184 OF OFFICIAL RECORDS, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

APN: 261-120-07-00-9

PARCEL 1B: ACCESS BLAIRE

AN EASEMENT AND RIGHT OF WAY FOR PEDESTRIAN AND VEHICULAR INGRESS, EGRESS AND ACCESS AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

SAID EASEMENT WAS GRANTED BY DOCUMENT RECORDED JUNE 13, 2011 AS INSTRUMENT NO. 0211076184 OF OFFICIAL RECORDS, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 100 FEET IN WIDTH, DESCRIBED AS THE EASTERN 100 FEET OF THE WESTERNMOST 255 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

AND

A STRIP OF LAND, 55 FEET IN WIDTH, DESCRIBED AS THE WESTERNMOST 55 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE

SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 9 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL FEBRUARY 19, 1856.

THE PLAT OF A DEPENDENT RESURVEY OF SAID TOWNSHIP WAS FILED IN THE DISTRICT LAND OFFICE OCTOBER 7, 1936.

APN: 261-120-07-00-9

**Tract 45: Intentionally deleted.**

**Tract 46: Lazaro/Falvo**

Parcel A:

Parcel 1 of Parcel Map 8527, filed November 18, 1987 in Book 35, Page 39 of Parcel Maps in the office of the Kern County recorder, being a division of the North half of the Northeast Quarter of Section 28 Township 9 North, RANGE 14 WEST, San Bernardino Base and Meridian in the unincorporated area of the County of Kern, State of California.

APN: 359-331-02-00-4

Parcel B:

Parcels 1, 2, 3 and 4 of Parcel Map 8665, in the unincorporated area of the County of Kern, State of California as per map filed July 25, 1988 in Book 36, Page 72 of parcel maps, in the office of the county recorder of said county.

APN: 359-331-04-00-0, 359-331-05-00-3, 359-331-10-00-7 AND 359-331-11-00-0

**Tract 47: Intentionally deleted.**

**Tract 48: Antelope Valley-East Kern Water Agency**

PARCEL A (AVEK 2 CROSSING):

REAL PROPERTY IN THE COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 OF PARCEL MAP 2088, FILED APRIL 24, 1975 IN BOOK 13 OF PARCEL MAPS, PAGE 110, IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Exhibit 2-32

AVSP II EPC Contract  
Exhibit 2 - Site Description

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 1, THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL 1, N. 00°05'24" W., 30.00 FEET TO THE SOUTHERLY LINE OF THAT CERTAIN EASEMENT IN FAVOR OF ANTELOPE VALLEY-EAST KERN WATER AGENCY, FILED MAY 5, 1976 IN BOOK 4953, PAGE 1924 OF OFFICIAL RECORDS; THENCE EASTERLY ALONG SAID SOUTHERLY LINE, N. 89°47'11"E., 71.10 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID SOUTHERLY LINE, N. 89°47'11" E., 30.00 FEET; THENCE LEAVING SAID LINE, N. 00°00'03" W., 20.00 FEET TO THE NORTHERLY LINE OF SAID EASEMENT; THENCE WESTERLY ALONG SAID NORTHERLY LINE, S. 89°47'11" W., 30.00 FEET; THENCE LEAVING SAID LINE, S. 00°00'03" E., 20.00 FEET TO THE POINT OF BEGINNING.

APN: 359-175-06-00-0 (PORTION)

PARCEL B (AVEK 3 CROSSING):

REAL PROPERTY IN THE COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID EAST HALF OF THE SOUTHEAST QUARTER, THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EAST HALF OF THE SOUTHEAST QUARTER, N. 00°03'56" W., 30.00 FEET TO THE SOUTHERLY LINE OF THAT CERTAIN EASEMENT IN FAVOR OF ANTELOPE VALLEY-EAST KERN WATER AGENCY, FILED MAY 5, 1976, IN BOOK 4953, PAGE 1924 OF OFFICIAL RECORDS; THENCE WESTERLY ALONG SAID SOUTHERLY LINE, S. 89°47'11"W., 407.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING WESTERLY ALONG SAID SOUTHERLY LINE, S. 89°47'11" W., 40.00 FEET; THENCE LEAVING SAID LINE, N. 00°12'49" W., 20.00 FEET TO THE NORTHERLY LINE OF SAID EASEMENT; THENCE EASTERLY ALONG SAID NORTHERLY LINE, N. 89°47'11" E., 40.00 FEET; THENCE LEAVING SAID LINE, S. 00°12'49" E., 20.00 FEET TO THE POINT OF BEGINNING.

APN: 359-175-01-00-3

PARCEL C (AVEK 4 CROSSING):

REAL PROPERTY IN THE COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 17 OF PARCEL MAP 7981, FILED NOVEMBER 25, 1987, IN BOOK 35 OF PARCEL MAPS, PAGE 43, IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Exhibit 2-33

AVSP II EPC Contract  
Exhibit 2 - Site Description



BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 17, THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL 17, N. 89°43'59" E., 30.00 FEET TO A POINT IN THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF THAT CERTAIN EASEMENT IN FAVOR OF ANTELOPE VALLEY-EAST KERN WATER AGENCY, FILED OCTOBER 3, 1989 IN BOOK 6298, PAGE 1806 OF OFFICIAL RECORDS; THENCE SOUTHERLY ALONG SAID PROLONGATION OF THE EASTERLY LINE, S. 00°59'55" E., 90.00 FEET; THENCE WESTERLY AND PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 17, S. 89°43'59" W., 30.00 FEET TO THE WESTERLY LINE OF SAID PARCEL 17; THENCE NORTHERLY ALONG SAID WESTERLY LINE, N. 00°59'55" W., 90.00 FEET TO THE POINT OF BEGINNING.

APN: 359-011-27-00-0 (PORTION)

PARCEL D (AVEK 5 CROSSING):

REAL PROPERTY IN THE COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 21 OF PARCEL MAP 7981, FILED NOVEMBER 25, 1987, IN BOOK 35 OF PARCEL MAPS, PAGE 43, IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 21, THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL 21, ALSO BEING THE WESTERLY LINE OF THAT CERTAIN EASEMENT IN FAVOR OF ANTELOPE VALLEY-EAST KERN WATER AGENCY, RECORDED OCTOBER 3, 1989 IN BOOK 6289, PAGE 1806 OF OFFICIAL RECORDS, N. 00°59'55" W., 189.09 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY LINE N. 00°59'55" W., 30.00 FEET; THENCE LEAVING SAID LINE N. 90°00'00" E., 30.00 FEET TO THE EASTERLY LINE OF SAID EASEMENT; THENCE SOUTHERLY ALONG SAID EASTERLY LINE, S. 00°59'55" E., 30.00 FEET; THENCE LEAVING SAID LINE N. 90°00'00" W., 30.00 FEET TO THE POINT OF BEGINNING.

APN: 359-011-27-00-0 (PORTION)

PARCEL E (AVEK 6 CROSSING):

REAL PROPERTY IN THE COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 21 OF PARCEL MAP 7981, FILED NOVEMBER 25, 1987, IN BOOK 35 OF PARCEL MAPS, PAGE 43, IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 21, THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL 21, ALSO BEING THE

WESTERLY LINE OF THAT CERTAIN EASEMENT IN FAVOR OF ANTELOPE VALLEY-EAST KERN WATER AGENCY, RECORDED OCTOBER 3, 1989 IN BOOK 6289, PAGE 1806 OF OFFICIAL RECORDS, N. 00°59'55" W., 109.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY LINE N. 00°59'55" W., 40.00 FEET; THENCE LEAVING SAID LINE S. 89°59'57" E., 30.00 FEET TO THE EASTERLY LINE OF SAID EASEMENT; THENCE SOUTHERLY ALONG SAID EASTERLY LINE, S. 00°59'55" E., 40.00 FEET; THENCE LEAVING SAID LINE N. 89°59'57" W., 30.00 FEET TO THE POINT OF BEGINNING.

APN: 359-011-27-00-0 (PORTION)

PARCEL F (AVEK 7 CROSSING):

REAL PROPERTY IN THE COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 9 OF PARCEL MAP 8156, FILED DECEMBER 17, 1987 IN BOOK 35 OF PARCEL MAPS, PAGE 53, IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING IN THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 9, THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL 9, N. 00°06'53" W., 89.69 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY LINE, N. 00°06'53" W., 30.00 FEET; THENCE LEAVING SAID LINE, S. 89°59'57" E., 30.00 FEET TO THE EASTERLY LINE OF THE CONVEYANCE TO ANTELOPE VALLEY-EAST KERN WATER AGENCY, FILED OCTOBER 3, 1989 IN BOOK 6298, PAGE 1792 OF OFFICIAL RECORDS; THENCE SOUTHERLY ALONG SAID EASTERLY LINE, S. 00°06'53" E., 30.00 FEET; THENCE LEAVING SAID LINE, N. 89°59'57" W., 30.00 FEET TO THE POINT OF BEGINNING.

APN: 359-174-14-00-0 (PORTION)

Exhibit 2-35

AVSP II EPC Contract  
Exhibit 2 - Site Description

**EXHIBIT 3**

**Technical Specifications- AVSP2**

\*\*\*

[17 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 3-1

AVSP II EPC Contract  
Exhibit 3 - Technical Specifications

## **Exhibit 3 - Appendix A**

\*\*\*

[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 3 - Appendix A-1

AVSP II EPC Contract  
Exhibit 3 - Appendix A - \*\*\*

**Exhibit 3 - Appendix B  
Reserved**

Exhibit 3 - Appendix B-1

**AVSP II EPC Contract  
Exhibit 3 - Appendix B - Reserved**

**Exhibit 3 - Appendix C**  
**Well Locations**

\*\*\*

[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 3 - Appendix C-1

AVSP II EPC Contract  
Exhibit 3 - Appendix C - Well Locations

**Exhibit 4A**  
**AVSP II Milestone Schedule**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 4A-1

AVSP II EPC Contract  
Exhibit 4A - Milestone Schedule

**Exhibit 4B**  
**Guaranteed MW block On-Line Schedule**

\*\*\*

[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 4B-1

AVSP II EPC Contract  
Exhibit 4B - Guaranteed MW block On-Line Schedule



**EXHIBIT 4C**  
**Baseline PV Module Delivery Schedule - AVSP I and AVSP II**

The following is the agreed upon baseline PV module delivery schedule referenced in Exhibit 31 of the Agreement which shall be used to determine Contractor's compliance with the accelerated PV module delivery obligations under this Agreement and Exhibit 31.

Period	PV Modules Delivered AVSP I, MWdc	PV Modules Delivered AVSP II, MWdc	Total PV Modules Delivered, MWdc	Quarter % PV Modules Delivered	Total % PV Modules Delivered
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
Total	***	***	***	***	***

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 4C-1

AVSP II EPC Contract  
Exhibit 4C - Baseline PV Module Delivery Schedule

**EXHIBIT 5**  
**Key Personnel**

Contractor shall staff the Project with the listed Key Personnel as defined in Section 5.2 of this Agreement. Changes to the individuals identified in this Exhibit 5 will be subject to the requirements of Section 5.2 of this Agreement.

<b>Title</b>	<b>Contractor Key Personnel Assigned</b>
Contractor's Representative - AVSP II	***
Project Director - AVSP II	***
Site Director - AVSP II	***
Engineering Manager - AVSP II	***
Environmental Permit Manager - AVSP II	***
Safety Manager - AVSP II	***
Commissioning/Testing Manager - AVSP II	***

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 5-1

AVSP II EPC Contract  
Exhibit 5 - Key Personnel

**AVSP II**

**EXHIBIT 6A**

**Contractor Acquired Permits**

	<b>Permit</b>	<b>Applicable Agency</b>
1.	Encroachment Permits	Kern County
2.	Vacations of public road and public access easements listed on Schedule 2.7(v) to MIPA	Kern County
3.	Landscaping Plan Approval	Kern County
4.	Pre-Construction Surveys for Migratory Birds and Raptors, Burrowing Owl, American Badger and Desert Kit Fox, Active Bat Maternity Roosts, Coast Horned Lizard and Silvery Legless Lizard and Desert Tortoise	Kern County
5.	Decommissioning Plan	Kern County
6.	Dedication of Alternative Energy Corridor	Kern County
7.	Approval of Solar Panel Support/Foundation Structures	Kern County
8.	Fugitive Dust Emissions Control Plan	Eastern Kern County Air Pollution Control District
9.	Drainage Plan	Kern County
10.	Water Supply and Sewage Disposal Plan	Kern County
11.	Fire Safety Plan (during construction)	Kern County Fire Department
12.	Memorandum of Understanding and Agreement for Performance of Zoning Ordinance and Mitigation Measures as Environmental Restrictions	Kern County
13.	Hazardous Waste Identification Number (during construction)	US Environmental Protection Agency
14.	Oil Spill Prevention Control and Countermeasure Plan (during construction)	US Environmental Protection Agency

Exhibit 6A-1

AVSP II EPC Contract  
Exhibit 6A - Contractor Acquired Permits

	<b>Permit</b>	<b>Applicable Agency</b>
15.	General Permit for Discharge of Storm Water Associated with Construction Activities (during construction)	State Water Resources Control Board
16.	Septic System Permits (if not a part of building permits)	Kern County
17.	Grading Permit	Kern County
18.	Building/Construction Permits	Kern County
19.	Archaeological Research Design and Treatment Plan waiver	Kern County Planning and Community Development Department

Exhibit 6A-2

AVSP II EPC Contract  
Exhibit 6A - Contractor Acquired Permits

## EXHIBIT 6B

### Owner Acquired Permits

	Permit	Applicable Agency
1.	Final Environmental Impact Report (SCH# 2010031022) for the Antelope Valley Solar Project (approved August 2, 2011; NOD filed August 24, 2011)	Kern County Board of Supervisors
2.	Water Supply Assessment (approved August 2, 2011)	Kern County Board of Supervisors
3.	Resolution No. 2011-193 approving Specific Plan Amendment Case Nos. 17, 2 and 3 (Map Nos. 232, 232-23 and 233) (approved August 2, 2011)	Kern County Board of Supervisors
4.	Resolution No. 2011-194 approving amendments to Zoning Map Nos. 232 and 232-23 (Zone Change Case Nos. 34 and 5) (approved August 2, 2011)	Kern County Board of Supervisors
5.	Ordinance No. G-8179 amending Zoning Map No. 232 (Zone Change Case No. 34) (approved August 2, 2011)	Kern County Board of Supervisors
6.	Ordinance No. G-8180 amending Zoning Map No. 232-23 (Zone Change Case No. 5) (approved August 2, 2011)	Kern County Board of Supervisors
7.	Resolution No. 2011-195 approving Tentative Cancellation of Williamson Act Contracts (approved August 2, 2011; corrected September 4, 2012)	Kern County Board of Supervisors
8.	Resolution No. 2011-196 approving Conditional Use Permit Nos. 28, 2 and 8 (Map Nos. 232, 232-23 and 233) (approved August 2, 2011)	Kern County Board of Supervisors
9.	Addendum to the Environmental Impact Report for the Antelope Valley Solar Project (approved March 13, 2012; NOD filed March 22, 2012)	Kern County Board of Supervisors
10.	Resolution No. 2012-036 approving amendments to Zoning Map No. 233 (Zone Change Case No. 15) (approved March 13, 2012)	Kern County Board of Supervisors

Exhibit 6B-1

AVSP II EPC Contract  
Exhibit 6B -Owner Acquired Permits

	<b>Permit</b>	<b>Applicable Agency</b>
11.	Ordinance No. G-8262 amending Zoning Map No. 233 (Zone Change Case No. 15) (approved March 13, 2012)	Kern County Board of Supervisors
12.	Resolution No. 2012-037 approving Modification to Conditional Use Permit Nos. 28 and 8 (Map Nos. 232 and 233) (approved March 13, 2012)	Kern County Board of Supervisors
13.	Certificate of Cancellation of Williamson Act Contract (approved September 20, 2012)	Kern County Board of Supervisors
14.	Hazardous Waste Identification Number (during operations) (if required)	US Environmental Protection Agency
15.	Oil Spill Prevention Control and Countermeasure Plan (during operations) (if required)	US Environmental Protection Agency
16.	Industrial Storm Water General Permit Order 97-03-DWQ (General Industrial Permit) (during operations)	Lahontan Regional Water Quality Control Board (LRWQCB)
17.	Water Quality Certification (during operations)	Lahontan Regional Water Quality Control Board (LRWQCB)
18.	Fire Safety Plan (during operations)	Kern County Fire Department
19.	Raven Management Plan consultation (during operations)	US Fish & Wildlife Service
20.	Market Based Rate Authorization under Section 205 of the Federal Power Act	FERC

Exhibit 6B-2

AVSP II EPC Contract  
Exhibit 6B -Owner Acquired Permits

## EXHIBIT 7

### **CONTRACTOR SUBMITTALS & PROJECT DOCUMENTATION**

#### **I. GENERAL SCOPE**

---

- 1.1** Exhibit 7 lists the documentation to be provided by Contractor to Owner. In order to facilitate the Owner's right to review Contractor Submittals in accordance with the terms of this Agreement, Contractor shall provide such documentation in accordance with the submission requirements set forth in this Exhibit 7. Transmittals for all submittals are to clearly indicate Owner's name, Contractor's project number, Owner's project number, how they are being sent, and the reason for the submittal. The transmittal should include a clear, concise description of all documents enclosed. Documentation by drawing number, revision number, document or drawing title, and date should be indicated, if applicable. Distributions to other parties are to be shown on the face of the transmittal.
- 1.2** Contractor Submittals identified below will be transferred electronically to Owner via Contractor's document management system, E-Builder. Contractor will send to Owner, through E-builder, an email with a hyperlink to an online server where Owner may download documents for its review from E-Builder. Electronically transmitted documents are submitted as portable document format (\*.pdf) files. Documents that cannot be transmitted electronically shall be submitted to Owner as hard copy via overnight mail. The date of the email notification or the date indicated on the delivery receipt for overnight mail shall be the contractual delivery date for the Contractor Submittals.
- 1.3** Contractor shall submit to Owner for information all Contractor Submittals and modified Contractor Submittals. All documents prepared by Contractor shall be in English and shall bear the Project name AVSP II and a full title block containing a unique identification number, revision number, source and type of document and descriptive title. Each document shall clearly indicate the applicable status of the document (e.g. Preliminary, for Information, for Review, for Permit, for Bid, for Bid Addendum, for Construction, Design Bulletin, and Record Drawing incorporating all as-built comments) as well as the revision date. Contractor shall make reasonable efforts to obtain subcontractor submittals that follow these same guidelines.
- 1.4** Contractor shall make reasonable efforts that project drawings be prepared in such a way that photo-reduction to 11"x17" size shall result in a legible and useable drawing. Particular attention shall be paid in this respect to selection of fonts. A scale bar shall be included to permit use following photo-reduction on drawings where where scaling is applicable.
- 1.5** Where possible, and for Contractor Submittals generated after the Effective Date, one electronic copy of Contractor and Subcontractor generated drawings and documents (the list of such drawings and documents to be determined by Owner after

Exhibit 7-1

AVSP II EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

consultation with Contractor) shall be issued to Owner for review before the procurement, fabrication or construction of any particular aspect of the Work is commenced.

- 1.5.1 The measurement system shall be US customary units for all construction and permit drawings.
  - 1.5.2 Vendor drawings for electrical equipment shall be US customary units or SI units. Vendor drawings shall clearly identify unit system.
  - 1.5.3 **Drawings:** Copies shall be submitted in electronic form (portable document format (\*.pdf). All final drawings/document submittals that are reasonably likely to require updating over the life of the Project shall additionally be submitted in AutoCad to facilitate such future updates by Owner.
  - 1.5.4 **Documents:** one electronic copy shall be provided in portable document format (\*.pdf) files for written text such as letters, specifications, procedures, calculations (not including Subcontractor proprietary calculations), manuals, lists, etc.
  - 1.5.5 **Drawings and Documents:** Contractor shall make reasonable efforts to secure electronically formatted drawings and documents from all Subcontractors. When electronic formatting as noted in Sections 1.5.3 and 1.5.4, is not obtainable due to Subcontractor policies or procedures then Contractor shall have such materials scanned and submitted in portable document format (\*.pdf).
- 1.6 Subcontractor drawings and documentation shall also be submitted electronically to Owner as described above. Owner may make comments to Contractor on Subcontractor drawings and documents if items are found not to be in compliance with the requirements of this Agreement. Owner's review period shall be \*\*\* for procurement specifications, \*\*\* for all other Contractor Submittals. Owner will reasonably cooperate with Contractor to expedite reviews as necessary. Any document not returned to Contractor in the allowable period shall be deemed accepted with no comment or approved if submitted for approval. If Owner and Contractor shall not agree as to whether Contractor is in compliance with the requirements of this Agreement, this dispute shall be resolved in accordance with Article 28.

## II. DESIGN REVIEW BY OWNER

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- 2.1 Owner and Contractor agree to participate in an accelerated Design Review prior to contract Effective Date. Owner and Contractor agree to accelerated resolution of Design Review comments.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 7-2

AVSP II EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation



- 2.2 The purpose of the Design Review is to afford Owner the opportunity to ensure that Contractor's design and final selection of Equipment is in accordance with this Agreement.
- 2.3 The Design Review will consist of Owner review of the permit documents Contractor has submitted to Kern and Los Angeles counties for approval.
- 2.4 Design Review shall not commence without Owner or Owner's representative.
- 2.5 The Design Review shall be held at Contractor facilities in Richmond, California.
- 2.6 All Design Review participants shall pay their own travel, lodging and other expenses.
- 2.7 Contractor and Owner shall provide access to all relevant technical subject matter experts during the Design Review.
- 2.8 Design Review Documents will consist of the permitting and supporting documents, which include but are not limited to:
  - 2.8.1 Array layout with major equipment locations
    - 2.8.1.1 Control Point Schedule with equipment names and locations for PCS stations, motors and controllers, and MDAS tower locations in solar fields.
  - 2.8.2 Electrical Design Documents
    - 2.8.2.1 Physical Drawings showing all equipment locations, conduit interfaces, and trenching.
    - 2.8.2.2 AC single line(s)
    - 2.8.2.3 DC single line(s)
    - 2.8.2.4 Schematic and Wiring Diagrams
    - 2.8.2.5 Grounding Diagrams
    - 2.8.2.6 Preliminary PCS layout
    - 2.8.2.7 Cable Schedule (if not contained on one-line diagrams)
  - 2.8.3 Preliminary grading plan
  - 2.8.4 Preliminary storm water plan
  - 2.8.5 Structural Design Documents

Exhibit 7-3

- 2.8.7.1 Drawings of all equipment foundations showing all equipment outline requirements including anchor bolts that are to be used in the design of the foundations
- 2.8.7.2 Structural calculations detailing design criteria, equipment loads, and material selection
- 2.8.6 SCADA, Instrumentation, and Controls Design Documents
  - 2.8.6.1 Communication block diagrams for substations and solar fields
  - 2.8.6.2 Fiber Termination Details
  - 2.8.6.3 SCP (SCADA Control Panel) DI Wiring Diagram
  - 2.8.6.4 MDAS Schematics and Instrumentation Diagrams
  - 2.8.6.5 SCADA Server Termination Details & Schematic
  - [2.8.6.6 Flow block diagrams and State machine diagrams
- 2.8.7 Site logistics plan
- 2.8.8 Specification list
- 2.8.9 Installation specification
- 2.8.10 Purchase specifications for:
  - 2.8.10.1 AC Station (includes inverter)
  - 2.8.10.2 34.5 kV collection system switchgear
  - 2.8.10.3 Medium voltage cable
- 2.8.11 Electrical and structural calculations and studies required for permit (not including Subcontractor proprietary calculations)
- 2.8.12 Substation grounding calculations to support sizing
- 2.9** Contractor shall provide the supporting information upon which the Project design is based, including, but not limited to the results of survey, geotechnical report and addenda, and manufacturers' data.
- 2.10** During the Design Review, Owner may make comments to drawings and documents if items are found not to be in compliance with the requirements of this Agreement. Contractor shall be obligated to resolve any such compliance issues in a timely

Exhibit 7-4

manner and resubmit to Owner the Contractor drawings and documents reflecting such resolutions.

### **III. DELIVERABLES**

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- 3.1** All other drawings or data listed herein or requested by Owner and provided by Contractor may be considered for information and record purposes. Owner may comment on such drawings and data to ensure compliance with the Agreement.
- 3.2** For Owner's records, Contractor shall develop and submit a comprehensive documentation/design package to Owner consisting of, but not limited to, the documents and drawings as prescribed in this Section III. The Design Review and Owner's review are covered in Section II.

#### **3.2.1 Comprehensive Project documentation submittal schedule**

##### **3.2.2 Drawings:**

- Site plan/arrangement
- Site grading and drainage
- Site restoration and finishing
- Soil stabilization, erosion, and sediment control
- Foundation plans and details
- Structural plans, details, and elevations
- General plant arrangement, building arrangement, and hazardous area location (if any) drawings; and civil, and steel standard drawings
- Array layout
- Electrical/Instrument diagrams including electrical one-line, substation electrical three-line, and instrument diagrams
- Power and control wiring, including AC and DC systems. Details showing protection against galvanic corrosion, if applicable. (i.e. Aluminum to copper transition)
- AC Station drawings
- String wiring diagrams
- Grounding plans
- Relay tripping and control schematics and/or logic diagrams
- Control system logic diagrams
- SCADA system configuration drawings/diagrams

Exhibit 7-5

- Fencing plan
- All drawings issued/used for construction
- Record drawings (including as-built comments) shall be submitted in AutoCad format no later than date set forth in Exhibit 1. All drawings submitted to Owner by Contractor shall be updated to reflect on-site changes and will be marked “Record Drawings”.

### **3.2.3 Other Required Documentation:**

- Operations and maintenance manuals with respect to each Block shall be submitted no later than the date set forth in the Table Of Contractor Submittals shown at the end of this Exhibit 7. If a piece of equipment was “wholesale” changed out during the construction process for whatever reason the contractor shall provide updated maintenance and technical documentation to account for the change.
- System descriptions
- System turnover packages
- SCADA graphics/configuration guidelines
- Drawings that show equipment, instrument, device and SCADA schematics containing content mutually agreed upon by Owner and Contractor
- Subcontractor drawings, documentation, and manuals required for Owner review
- Schedules, including engineering, procurement, and construction (EPC) activities; integrated AVSP II schedules, and progress reports required pursuant to this Agreement.
- Quality assurance and quality control program manuals
- Project Health and Safety Plan attached as Exhibit 22 to this Agreement
- Commissioning plan as required under this Agreement
- Commissioning logs shall be submitted as required under Exhibit [16] to this Agreement
- Performance test procedures/reports as required under the Agreement
- Instructions for handling, storage, and pre-operational maintenance of Facility Equipment
- Site and shop inspection and testing plans or requirements
- Original Equipment Manufacturer's quality assurance (QA) documentation as provided by Manufacturer

Exhibit 7-6

- Procurement specifications for all Equipment supplied by Major Subcontractors/ installation areas
- Power transformer data sheets, as applicable
- Instrument data sheets
- Training program and manuals
- Required Manuals
- Contractor / Acquired Permits and Subcontractor permits
- Meeting minutes for Owner/Contractor meetings
- Electrical and structural calculations and studies submitted to permit agencies
- Other non-proprietary engineering calculations applicable to the design and construction of the Project

#### **IV. FINAL DRAWINGS**

---

- 4.1** Contractor shall provide Record Drawings for the entire Project, consisting of mechanical, electrical, and civil drawings, general arrangements, instrumentation diagrams, one-line, three-line, schematics, wiring, cable tray, routed conduit, and duct banks, and other drawings as mutually agreed upon by Owner and Contractor. Documents shall be re-drafted as necessary to incorporate final information. Mark-up sketches, referencing, and other field marking techniques are not acceptable as final Record Drawings. Contractor shall prepare “conformed to construction record” of the original drawings or data sheets.
- 4.2** During construction, Contractor shall maintain on file in the field reasonably current as-built redline mark-ups of all drawings and data sheets to agree with actual work undertaken.
- 4.3** Record drawings shall be issued by Contractor as the next sequential revision from previous releases. The revision block shall state Record Drawings. All clouds, revision diamonds, and other interim control marking shall be removed. All information listed as “later” or “hold” shall be completed or deleted. The conformed to construction record drawings shall be clear and readable in full size, and where possible, also in 11”x17” size reduction.
- 4.4** Major Subcontractors' drawings shall be conformed to construction records to reflect actual installed configuration. These Subcontractor drawings shall be in sufficient detail to indicate the kind, size, arrangement, weight of each component, and operation of component materials and devices, the external connections, anchorages, and supports required; the dimensions needed for installation, and correlation with other materials and equipment. Final Subcontractor's drawings shall be bound in the

Exhibit 7-7

equipment Operation & Maintenance Manuals. One electronic copy, in portable document format (\*.pdf), of the vendor drawings shall be provided.

- 4.5 Contractor shall provide one hard copy set of Record Drawings to Owner, in 12"x18" size.

## V. LISTS

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- 5.1 All lists that will be Issued for Record shall be furnished in electronic format.

## VI. SOFTWARE REQUIREMENTS

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- 6.1 All final drawings /document submittals that are reasonably likely to require updating over the life of the Project shall additionally be submitted in native electronic format to facilitate such future updates by Owner. Site-specific drawings provided in native format shall include the project master plan, the project single line, and trenching plans. Product-specific drawings will be provided in portable document format (\*.pdf). Where possible, Contractor Submittals lists and manuals shall be provided with electronic search engines to facilitate ease of use, as commercially available.
- 6.2 Where possible, Contractor Submittals lists shall be provided in electronic format such as Microsoft Excel or approved alternative to facilitate integration into Owner's existing applications. Owner will provide Contractor with reasonable formatting information as required.

Design calculations shall be submitted in PDF format only. Native files shall not be provided.

- 6.3 Contractor shall provide final electronic submittals in the following software formats:

Software Function	Software Name
Word processing	Microsoft Word
Lists	Microsoft Excel
Database	Microsoft Access
Drawings	AutoCAD and AutoDesk Civil 3D
Project Schedules	Portable document format (*.pdf) produced from Microsoft Project or Primavera native format
Scannable Material	Portable document format (*.pdf)
SCADA / PLC Programming /	

Exhibit 7-8

**VII. DATA/DRAWINGS REQUIRED AFTER AWARD OF CONTRACT**

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**7.1 General**

- 7.1.1** For equipment being procured after the Effective Date, Contractor shall submit the specifications for each equipment package for Owner review for compliance with this agreement.
- 7.1.2** Contractor shall facilitate the exchange of information in order to demonstrate to Owner Contractor's plan to meet the schedule requirements of this Agreement.
- 7.1.3** For any drawing or design document developed or significantly updated after the Design Review, Contractor shall submit to Owner for review to fully establish that all parts shall comply with this Agreement. Owner review shall follow guidelines and timelines per agreement. Owner may make comments to drawings and documents if items are found not to be in compliance with the requirements of this Agreement. Contractor shall be obligated to resolve any such compliance issues in a timely manner and resubmit to Owner the Contractor drawings and documents reflecting such resolutions.
- 7.1.4** If Owner review is not completed on drawings covered in 7.1.3 and per this agreement, and should Contractor proceed with manufacture of Facility Equipment or construction prior to Owner review of such drawings, Contractor does so at its own risk.
- 7.1.5** Contractor shall be responsible for any discrepancies, errors, or omissions on the drawings supplied by Contractor or Subcontractors.
- 7.1.6** All drawings and data, including changes thereto, shall conform to the requirements of this Agreement.

[Table of Contractor Submittals on following page.]

Exhibit 7-9

AVSP II EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

Document	Timing of First Delivery
Sheet Sets	
—	
Civil Sheet Set	1
- Site Development Plan	
- Monuments and Benchmark Plan	
- Miscellaneous Foundations	
- Road and Driveway sections	
- Demolition Plan	
- Grading, road layout and fencing plans	
- Erosion control plan	
Structural Sheet Set	2
- Operation and Maintenance Building Arrangement and Foundation Concept	
Electrical Sheet Set	1
- Cable Schedule	
- Construction Power One-Line	
- MV One-Line	
- Grounding plan and details	
- Underground cable plans	
- Direct buried cable sections	
- Ductbank Sections	
- 34.5kV Plans & Profiles	
- 34.5kV Assemblies	
- 34.5kV Structure Details	
SCADA Sheet Set	1
- Communication Block Diagram	
- Fiber termination details	
- Fiber route plan	
Substation Sheet Set	1
- Substation Communications Block Diagram	
- Plan arrangement	
- Sections and details	
- Raceway plan and details	
- Grounding plan and details	
- Control enclosure layout	
- 230kV Panels	
- One-Line	
- Foundation plan	

Exhibit 7-10



Document	Timing of First Delivery
- Structure Loading Diagrams	
Transmission Line Sheet Set	1
- 230kV Plans and Profiles	
- 230kV Suspension and Deadend Assemblies	
- OPGW and Shieldwire Assemblies	
- 230kV Structure Details	
- 230kV Transmission Line Foundation Details	
Substation Specifications	
GSU Transformer Spec	1
Structures and Equipment Spec	1
HV Circuit Breaker Spec	1
Control House Spec	1
Transmission Line Specifications	
Tubular Steel Poles Spec	1
Conductor Spec	1
Hardware Spec	1
SCADA System Specifications	
SCADA FRS	1
Facility Controller FRS	1
MDAS Spec	1
Equipment Specifications	
Inverter/Transformer Spec	1
Inverter Manual	3
Inverter Data Sheet	3
Transformer Manual	3
LV Cabinet Spec	1
LV Cabinet Data Sheet	4
SCADA Com. Panel Spec	1
Combiner Box Specification	1
Other Documents	
Operation and Maintenance Building Specifications	2
Design Changes	2
County Approved Construction Permit Packages	2
Plans, Procedures, Programs and Manuals	
Site Commissioning Plan	3

Exhibit 7-11

<b>Document</b>	<b>Timing of First Delivery</b>
Testing Procedures	3
Preliminary Operations and Maintenance Manual	3
Final Operation and Maintenance Manual	4
Record Drawings	4

	<b>TIMING OF DELIVERY</b>
1	***
2	***
3	***
4	***

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Exhibit 7-12

AVSP II EPC Contract  
Exhibit 7 - Contractor Submittals & Project Documentation

**Exhibit 8A**  
**Form of Monthly Report**



**Date, Year**

**Prepared by:**

**Project Monthly Report**

**Project size:** YYY MWac / ZZZ MWdc - T0 Tracker

**Owner:** TBD

**Customer:** TBD

**Project Number:** XXXXXX

**1. Project Overview**

**1.1 Executive Summary**

Project consists of a photovoltaic array of YYMWdc of SunPower modules covering approximately XX acres in XXXXX California, United States, owned by XXXXXX. The EPC Agreement was executed on XXXXXXX. Site Preparation started in XXXXXXX. Construction activities began on XXXXXXX, with Interconnection scheduled in XXXXXXX, and Substantial Completion on XXXXX.

Accomplishments during the past month include the following items:

- Plant substantially complete.
- Substation complete
- Back feed inverters commissioned

Short Term Look-Ahead Activities

- Transformers for SMA Inverters installed by
- Performance Testing scheduled to begin on
- Complete roads and seeding by

**2. Appendices**

- A. Summary of Major Activities Completed This Month
- B. Major Activities Planned in the Next Month
- C. Procurement Status and List
- D. Expediting Status and List
- E. Schedule
- F. Quality Report
- G. Safety Report
- H. Problem Areas and Planned Corrections
- I. Punch List
- J. Pending and Approved Change Orders
- K. Drawing Document Log
- L. Construction Photos
- M. Labor Report
- N. Permits
- O. Invoice and Payment Status
- P. Contract Notifications

1414 Harbour Way South  
Richmond, CA 94804 USA

SunPower Energy Systems, Corporation  
[www.sunpowercorp.com](http://www.sunpowercorp.com)

P: 1.510.540.0550  
F: 1.510.540.0552



**Monthly Report  
for Month 20XX**

**Project #**

**Issued:**

<b>Month 20XX MONTHLY PROGRESS REPORT</b>	
A.	Summary of Major Activities Completed This Month
B.	Major Activities Planned in the Next Month
C.	Procurement Status and List
D.	Expediting Status List
E.	Schedule
F.	Quality Report
G.	Safety Report
H.	Problem Areas and Planned Corrections
I.	Punch List
J.	Pending and Approved Change Orders
K.	Drawing and Document Submittal Log
L.	Construction Photos
M.	Labor Report
N.	Permits
O.	Invoice and Payment Status
P.	Contract Notification

EXHIBIT A SUMMARY OF MAJOR ACTIVITIES COMPLETED THIS MONTH					
(Summary Curves will be attached)					
<u>Construction</u>	<u>Quantity</u>	<u>Prev Month Total</u>	<u>Month Total</u>	<u>Total to Date</u>	<u>% Complete</u>
Pier Installation					
Fence Installation					
Tracker Rows					
Drive Motor Pads					
Install Drive Motors					
Inverter Pads					
DC Wiring Per Invert Pad (Home Run)					
DC Wiring Per Invert Pad (String)					
AC Wiring Per Invert Pad					
Install Inverters/Xmfr					
PV installation*					
Substation Construction					
Commissioning by Pad					
Commissioning AC Collection System					
Commissioning Substation					
Commissioning SCADA, MDAS					
Performance Testing					

**EXHIBIT B MAJOR ACTIVITIES PLANNED IN THE NEXT MONTH**

<b><u>Upcoming Activities</u></b>	
Pier Installation	
Fence Installation	
Tracker Rows	
Drive Motor Pads	
Install Drive Motors	
Inverter Pads	
DC Wiring Per Invert Pad	
AC Wiring Per Invert Pad	
Install Inverters/Xmfr	
PV installation	
Substation Construction	
Commissioning by Area	
Performance Testing	
Security	
Seeding and Mulching	

## EXHIBIT C PROCUREMENT STATUS AND LIST

[illegible]



## EXHIBIT D EXPEDITING STATUS AND LIST

[illegible]

EXHIBIT E SCHEDULE
PLEASE SEE ATTACHED P6 SCHEDULE
See attached construction schedule

EXHIBIT F QUALITY REPORT	
TRAINING UPDATE	
INCOMING MATERIAL INSPECTIONS UPDATE	
MECHANICAL CIVIL UPDATE	
NRC UPDATE	
TRAVELLER STATUS	
FINDER FIXER UPDATE	
OTHER ISSUES	

## EXHIBIT G ACCIDENTS AND EVENTS

[illegible]

## EXHIBIT H PROBLEM AREAS AND PLANNED CORRECTIONS

[illegible]

## EXHIBIT I PUNCH LIST

[illegible]

## EXHIBIT J PENDING AND APPROVED CHANGE ORDERS

[illegible]

## EXHIBIT K DRAWING AND DOCUMENT SUBMITTAL LOG

[illegible]



<b>EXHIBIT L CONSTRUCTION PHOTOS</b>

EXHIBIT M LABOR REPORT	
<u>Period</u>	<u>Hours Worked</u>
Total hours worked to date:	

EXHIBIT N CONTRACT PERMITS			
<u>Jurisdiction</u>	<u>Description</u>	<u>Date Submitted</u>	<u>Date Approved</u>

EXHIBIT O INVOICE AND PAYMENT STATUS				
<u>Invoice Number</u>	<u>Date Submitted</u>	<u>Disputed/Undisputed</u>	<u>Date Paid</u>	<u>Method of Payment</u>

EXHIBIT P Contract Notification Log				
<u>Letter Number</u>	<u>Date Submitted</u>	<u>Summary</u>	<u>Response Date</u>	<u>Status</u>

Exhibit 8A-1

AVSP II EPC Contract  
Exhibit 8A - Form of Monthly Report

## **Form of Weekly Report**

A weekly report shall be submitted to the Owner by noon Tuesday of the following week completed. The report shall include the following:

1. Highlights & Lowlights of Week Completed
2. Focus for upcoming week
3. Safety Stats
  - a. Manhours
  - b. Lost Time
  - c. Recordables
  - d. First Aids
4. Table of Progress Completed aligned to Exhibit 9 Milestones
  - a. Qty completed for Period to Date
  - b. Qty & % of Total Inception to Date
5. Three Week Look Ahead
6. Change Request Log
7. Owner Action Item Log

Exhibit 8B-1

AVSP II EPC Contract  
Exhibit 8B - Form of Weekly Report

**Exhibit 9**  
**Payment Schedule**

\*\*\*

[2 pages redacted]

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Exhibit 9-1

AVSP II EPC Contract  
Exhibit 9 - Payment Schedule

**EXHIBIT 10**  
**Form of Application for Payment**

To:

Re:

Gentlemen:

Pursuant to Article 8 of the Engineering, Procurement and Construction Agreement, dated as of [\_\_\_\_\_] [\_\_\_\_], 2012, between [\_\_\_\_\_] and **SunPower Corporation, Systems** (the “Agreement”), we hereby apply for payment in the aggregate amount of \$\_\_\_\_\_ for having completed the Work as particularly set forth in Attachment 1 hereto.

A summary of the amounts to be paid is reflected in the following table:

[EXAMPLE]

	As of Previous Month	For This Month (This Payment Application)	Total After this Application for Payment
Original Contract Price	***	***	***
Contract Price to Date	***	***	***
Cumulative Milestone Payments	***	***	***
Amount of Retainage withheld by Owner		***	
Actual Amount Paid or to be Paid	***	***	***

Contractor hereby certifies as follows:

i. The Work for which payment is sought (a) has been performed to the extent indicated in this Application for Payment and is in accordance with the Agreement and (b) has not been the subject of a previous requisition which has become due and received by Contractor;

ii. Contractor's Insurance is in full force and effect;

iii. Enclosed are the applicable lien releases from Contractor and the Major Subcontractors in accordance with Section 8.4; and

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Exhibit 10-1

AVSP II EPC Contract  
Exhibit 10 - Form of Application for Payment



Capitalized terms used herein have the meanings given them in the Agreement.  
Very truly yours,

**SunPower Corporation, Systems**

By: \_\_\_\_\_  
Contractor's Representative

Exhibit 10-2

AVSP II EPC Contract  
Exhibit 10 - Form of Application for Payment

Attachment 1

[Attachment 1 shall include all necessary documentary evidence including the submittal of the completed Work (and the applicable quantities) with dollar values.]

Exhibit 10-3

AVSP II EPC Contract  
Exhibit 10 - Form of Application for Payment

**Exhibit 11**  
**Form of Contractor Performance Security**

\*\*\*

[9 pages redacted]

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Exhibit 11-1

AVSP II EPC Contract  
Exhibit 11 - Form of Contractor Performance Security

**Exhibit 12**  
**Form of Equity Contribution Agreement**

\*\*\*

[16 pages redacted]

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Exhibit 12-1

AVSP II EPC Contract  
Exhibit 12 - Form of Equity Contribution Agreement

## EXHIBIT 13A

### Form of Conditional Waiver and Release on Progress Payment

#### CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

CALIFORNIA CIVIL CODE SECTION 8132

**NOTICE:** THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

#### Identifying Information

Name of Claimant: \_\_\_\_\_  
Name of Customer: \_\_\_\_\_  
Job Location: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Through Date: \_\_\_\_\_

#### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_  
Amount of Check: \$ \_\_\_\_\_  
Check Payable to: \_\_\_\_\_

#### Exceptions

This document does not affect the following:

1. Retentions.
2. Extras for which the claimant has not received payment.
3. The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:  
Date(s) of waiver and release: \_\_\_\_\_  
Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
4. Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover for work not compensated by the payment.

#### Signature

Claimant's Signature: \_\_\_\_\_  
Claimant's Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

Exhibit 13A-1

AVSP II EPC Contract  
Exhibit 13A - Form of Conditional Lien Release and Waiver

**EXHIBIT 13A-1**

\*\*\*

[2 pages redacted]

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Exhibit 13A-1-1

AVSP II EPC Contract  
Exhibit 13A-1 - \*\*\*

**EXHIBIT 13B**

Form of Conditional Waiver and Release on Final Payment

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

*CALIFORNIA CIVIL CODE SECTION 8136*

**NOTICE:** THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

**Identifying Information**

*Name of Claimant:* \_\_\_\_\_

*Name of Customer:* \_\_\_\_\_

*Job Location:* \_\_\_\_\_

*Owner:* \_\_\_\_\_

**Conditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

*Maker of Check:* \_\_\_\_\_

*Amount of Check: \$* \_\_\_\_\_

*Check Payable to:* \_\_\_\_\_

**Exceptions**

This document does not affect the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

**Signature**

*Claimant's Signature:* \_\_\_\_\_

*Claimant's Title:* \_\_\_\_\_

*Date of Signature:* \_\_\_\_\_

Exhibit 13B-1

AVSP II EPC Contract  
Exhibit 13B - Form of Conditional Waiver and Release of Final Payment

**Exhibit 14**  
**Module Warranty**

\*\*\*

[22 pages redacted]

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Exhibit 14-1

AVSP II EPC Contract  
Exhibit 14 - Module Warranty



## EXHIBIT 15

### Insurance Requirements

#### **PART I: CONTRACTOR'S INSURANCE REQUIREMENTS**

Contractor shall secure and maintain the following insurance coverages:

##### **Commercial General Liability**

Coverage shall insure Contractor's legal liability arising out of all the Work and other activities of the Contractor and Subcontractors, including: premises/operations, products/completed operations, personal injury (with the contractual exclusion removed), explosion, collapse and underground property damage; independent contractors, and contractual liability and be written on an occurrence form. The policy form shall be the most recently approved ISO Commercial General Liability insurance policy, or its equivalent as approved by Owner (which approval shall not be unreasonably withheld or conditioned).

Limits of Liability:

- \$\*\*\*. General Aggregate (per project)
- \$\*\*\*. Products/Completed Operations Aggregate
- \$\*\*\*. Personal & Advertising Injury Limit
- \$\*\*\*. Per Occurrence

##### **Automobile Liability:**

Automobile Liability insurance in respect of all vehicles used on public highways or in any circumstances such as to be liable for compulsory motor insurance in accordance with Applicable Law of the applicable state that the vehicle will operate. The coverage shall apply for all owned, non-owned and hired vehicles. The policy form shall be the most recently approved ISO Business Automobile Liability insurance policy, or its equivalent as approved by Owner (such approval not to be unreasonably withheld or conditioned). If applicable and not provided by a separate pollution liability policy, the coverage shall include an MCS-90 endorsement and broadened pollution coverage endorsement CA 9948 if hazardous waste transportation or disposal is performed as part of the Work.

Limits of Liability: \$\*\*\* combined single limit each accident

##### **Workers' Compensation/Employers' Liability**

- a) Contractor shall maintain statutory limits for Workers' Compensation Insurance and Occupational Disease Insurance in accordance with state laws and any applicable federal law such as (e.g., FELA, USL&H and Jones Act), during the entire time that any full time

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

persons are employed by them on the Site in connection with the Work. Part-time, temporary, or leased employees shall be required to maintain separate Workers Compensation Insurance according to the terms herein.

- b) Contractor shall maintain Employers' Liability Insurance with limits of not less than the following: bodily injury by accident - \$\*\*\* each accident; bodily injury by disease - \$\*\*\* policy limit; bodily injury by disease - \$\*\*\* each employee.

The coverages shall cover all work places involved in this Agreement.

### **Umbrella or Excess Liability**

Umbrella or excess liability coverage in excess of the limits of insurance provided by the Commercial General Liability, Automobile Liability and Employers Liability as shown above, providing coverage on a follow form basis. Coverage is required to be written on an occurrence form. Contractor shall provide notice to Owner if at any time the Contractor's full umbrella/excess limits as required in this Exhibit 15 are not available during the term of this Agreement, and Contractor will purchase additional limits to satisfy the requirements herein if reasonably requested by Owner.

Limits of liability of not less than \$\*\*\* per occurrence limit and \$\*\*\* aggregate.

### **Contractor's Pollution Liability**

Insurance for the Contractor's legal liability for losses caused by pollution conditions that arise from the operations of the Contractor at the Site. Such insurance shall include coverage for:

- (a) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- (b) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- (c) Defense costs associated with (a) and (b) above;
- (d) Coverage written on an occurrence form or claims-made form; however if coverage is written on a claims-made form, Contractor shall be required to maintain such coverage for 3 years following the Facility Substantial Completion Date; and
- (e) Coverage shall also include coverage for disposal and transportation of pollutants, if applicable and not provided by the Automobile Liability insurance. The definition of pollution conditions shall include damage to natural resources damage within the definition of property damage resulting from the Contractor's and Subcontractors' work/operations.

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Exhibit 15-2

AVSP II EPC Contract  
Exhibit 15 - Insurance

Limits of liability of not less than \$\*\*\* each occurrence and aggregate.

### **Professional Liability**

Insurance covering damages arising out of negligent acts, errors, or omissions committed by Contractor in the performance of this Agreement. Contractor shall maintain this policy for a minimum of two (2) years after Final Completion Date or shall arrange for a two year extended discovery (tail) provision if the policy is not renewed if written on a claims-made basis. The intent of this policy is to provide coverage for claims arising out of the performance of services under this Agreement and caused by an error, omission, or act for which the Contractor is held liable. Alternatively, the Contractor shall require that Subcontractors who are required to perform professional engineering, consulting, or design services as it relates to the Work shall carry and maintain such insurance during the course of the Project. Evidence of insurance from design Subcontractors to Owner is required prior to acceptance of this alternative. Contractor need not appear as an insured under the Subcontractor's policy.

Liability limit of not less than \$\*\*\* each claim and in the aggregate.

### **Aircraft Liability**

If applicable, in respect of all aircraft owned, non-owned, hired or chartered for use, if any, and hull and aviation liability shall be arranged.

Limit of liability shall not be less than \$\*\*\* per occurrence:-

### **Transit/Ocean Marine Insurance**

Contractor shall maintain transit insurance and, if necessary, property insurance covering all domestic and international air, land and water shipments as well as offsite storage of plant, equipment, machinery and materials not covered by the Builders All Risk (BAR) policy (as further described in this Exhibit 15). Coverage shall commence from the manufacturer's and supplier's location and provide continuous coverage including temporary off-site storage and transit to and from locations requiring equipment fabrication/repairs until reaching the Site. Contractor may satisfy its Transit insurance requirement through its equipment and materials supplier's transit insurance covering imports of plant, equipment, machinery and materials to the Site provided such supplier's insurance meets the requirements for Transit insurance as set forth herein.

a) Cover shall provide all risk with the exception of normal and customary exclusions and include Institute Cargo Clauses (A) plus war plus strike, riot and civil strife, perils and shall include a minimum of \*\*\* of storage on or off the Site. The sum insured with respect to each shipment shall not be less than the value of the largest single shipment. Transit and/or Property coverage to include all voyages (land, water or air) sourced overseas, in Canada and Mexico, if

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Exhibit 15-3

AVSP II EPC Contract  
Exhibit 15 - Insurance

not covered under the BAR policy and attaches from the time of leaving the manufacturers'/suppliers' warehouses (including inland marine), to final Site.

b) Deductibles under the Transit coverage shall not be greater than \$\*\*\* for any one shipment.

c) Contractor shall have obtained such Transit and Property coverage on or prior to the date on which the exposure to the risk covered by the Transit coverage arises.

d) The only permissible cancellation of such Transit insurance is as follows: (i) cancellation on \*\*\* notice for war, strikes, civil commotion, (ii) cancellation on \*\*\* notice for strikes, riots, and civil commotion preventing passage to or from the United States, and (iii) cancellation on \*\*\* notice for non-payment of premium.

e) Coverage to continue during storage until BAR policy is in force.

f) Coverage shall insure Owner, Financing Parties, and Contractor as insured parties to the extent of their interests under this Agreement.

g) Contractor will be responsible to schedule and pay for marine cargo surveys required by the Transit/Ocean Marine and will also be responsible to coordinate surveys required of Owner's delay in start-up insurers for equipment specified under the insurance. If Contractor fails to schedule the required surveys, Contractor will be responsible for any reduction in, or loss of, coverage that results from such failure.

h) \*\*\*

#### **Builders All- Risk /Delay in Start-Up:**

Builders All Risks (“BAR”) insurance covering loss or damage to each Block or portion thereof during the construction, testing and commissioning periods and until such Block reaches Block Substantial Completion.

a) The policy will include the interest of Contractor, Subcontractors of any tier (performing work at the Site), Owner and Financing Parties, to the extent of their interest under this Agreement, and is to be on an “all risk” basis subject to normal and customary policy exclusions, terms and conditions and subject to normal and customary sub-limits for similar size solar projects as described below, including earthquake, wind and flood losses.

b) Coverage shall be written on a replacement cost basis and the limit of liability shall be the full replacement cost of the Work or the property in relation to such Blocks that have begun construction (including any Facility Equipment on the Site but not incorporated into the Project) but have not achieved Block Substantial Completion. The earthquake and flood sub-limit for each shall be not less than \$\*\*\* each occurrence and annual aggregate (or when taken together with the AVSP 1 Facility, \$\*\*\*); provided, that, if Owner purchases or requires Contractor to purchase additional earthquake and flood coverage with higher sub-limits, Contractor shall pay the first \$\*\*\* of the aggregate costs to obtain such additional

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Exhibit 15-4

AVSP II EPC Contract  
Exhibit 15 - Insurance

coverage for both the Facility and the AVSP 1 Facility and Owner shall pay all other costs associated with obtaining and maintaining such additional coverage. Normal and customary sub-limits shall be provided for debris removal, demolition costs, expediting expenses, express freight, air freight and overtime. Inland transit and off-site storage will have sub-limits that satisfy the highest valued shipment or storage location, if not provided by the Transit and Ocean Marine Insurance or other Contractor procured insurance policies.

- c) Any required payment of deductibles for builders all-risk insurance shall be the responsibility of Contractor, provided however that deductibles under the builder's risk insurance shall not exceed \$\*\*\* per occurrence except \*\*\*% of values at the time of loss for California earthquake subject to a minimum of \$\*\*\* and a maximum of \$\*\*\* and \*\*\*% of values at time of loss for high hazard flood zones subject to a minimum of \$\*\*\* and maximum of \$\*\*\*.
- d) Contractor shall have obtained such BAR coverage on or prior to the date on which the exposure to the risk covered by the BAR coverage arises.
- e) The only permissible cancellation is as follows: (i) \*\*\* for non-payment of premium and (ii) material change in the risk profile of the Project after coverage commences.
- f) Coverage to include 50/50 hidden damage provision. Coverage to include testing coverage and resultant damage from faulty design, materials and workmanship (LEG 2 or equivalent).
- g) Coverage to include a sub-limit of \$\*\*\* each occurrence for damage to existing property of Owner.
- h) Serial defects clause to be agreed by Owner and Financing Parties, if applicable.
- i) Owner and Financing Parties shall be included as additional named insured parties under the policy and Financing Parties will be a loss payee as required.
- j) The policy shall not allow any form of subrogation against Owner, Contractor, Subcontractors of any tier or Financing Parties except for (i) manufacturer or supplier of machinery, equipment or other property, whether named as an insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether express or implied, and (ii) architect or engineer, whether named as an insured or not, for any loss or damage arising out of the performance of professional services in their capacity as such and caused by an error, omission, deficiency or act of the architect or engineer, by any person employed by them or by any others whose acts they are legally liable.
- k) Prior to exposure to property damage for equipment and materials that will become a permanent part of the Project, builders risk coverage will be provided based on a loss limit and sub-limits that are approved by the Owner and Financing Parties.

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Exhibit 15-5

AVSP II EPC Contract  
Exhibit 15 - Insurance

**Builders All Risk Delay in Start-Up** coverage to cover the financial loss arising from a delay of reaching the Block Substantial Completion Date of the Project caused by insurable damage covered by the Builders All Risk Insurance. Coverage to provide debt service and continuing expenses, or gross earnings on and actual loss sustained basis for a \*\*\* period of indemnity. The coverage shall have a maximum waiting period deductible of \*\*\*.

## **PART II: OWNER'S INSURANCE REQUIREMENTS**

Owner shall secure and maintain the following insurance coverages:

### **(1) Workers' Compensation/Employer's Liability**

- a) Owner shall maintain statutory limits for Worker's Compensation Insurance and Occupational Disease Insurance in accordance with Applicable Law (e.g., FELA, USL&H and Jones Act), during the entire time that any persons are employed by Owner on the Site in connection with the Project.
- b) Owner shall maintain Employer's Liability Insurance with limits of not less than the following: bodily injury by accident - \$\*\*\* each accident; bodily injury by disease - \$\*\*\* policy limit; bodily injury by disease - \$\*\*\* each employee.

The Owner may self insure where permitted by Applicable Law.

### **(2) Liability insurance**

Owner shall at all times keep in force the following insurance: Liability insurance for the Owner's legal liability arising out of the Site and owned, non-owned or hired vehicles of the Owner with a limit of not less than \*\*\* (\$\*\*\*) per occurrence and in the annual aggregate. Owner may self-insure where permitted by Applicable Law.

### **(3) Operational All Risk insurance**

Owner shall, from each Block Substantial Completion Date to the Facility Substantial Completion Date, keep in force at all times, Operational All Risk Property insurance covering loss or damage to any such covered Block at loss limit and sub-limits at Owner's discretion and will provide evidence of coverage to Contractor. Contractor will cooperate with Owner and provide Project information as reasonably requested by Owner's operational property insurers including providing probable maximum loss estimate reports for flood and earthquake with respect to the Project then in Contractor's or Affiliates control.

### **(4) All other insurance required by Applicable Law.**

## **General Insurance Provisions**

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- a) all insurance may be carried through the worldwide insurance programs of Owner or Contractor or their respective Affiliates unless project specific policies are required.
- b) All liability insurance required to be maintained by Contractor (except for workers' compensation/employer's liability and professional liability) shall be endorsed to the effect that Owner, the Owner's Affiliates, Financing Parties shall be included as additional insureds thereon. Commercial General Liability insurance additional insured endorsement shall be ISO Form CG 20 10/CG 2037 or other Owner approved equivalent. Contractor's third party liability policies shall provide for a severability of interest clause and waiver of subrogation will be provided on all Contractor's policies except Professional Liability. Contractor's BAR and Transit policies shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner with regard to the Project. Contractor's other policies shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner with regard to the Project except to the extent the loss is attributable to Owner's fault.
- c) In the event any insurance described herein (including the limits or deductibles thereof), other than insurance required by Applicable Law, shall not be available on commercially reasonable terms in the commercial insurance market for facilities having a similar risk profile, the Parties shall consent to waive the requirement to maintain such insurance to the extent the maintenance thereof is not so available on such terms, but the Parties shall continue to remain obligated to maintain any such insurance up to the level, if any, at which such insurance can be maintained on commercially reasonable terms in the commercial insurance market for facilities with a similar risk profile. This waiver is subject to Financing Parties' approval, provided, however, that if the Financing Parties do not provide such approval, Owner shall cover any premium and any other related out of pocket costs incurred by Contractor to obtain and maintain such insurance.
- d) As required by Owner's Financing Parties, Contractor will provide certificates of insurance with its insurance broker's letter of certification prior to close of financing and will include the items shown in e) and f) below.
- e) Loss payable wording for the BAR and Transit/Ocean Marine insurance shall be reasonably acceptable to the Financing Parties, if applicable. Contractor will request its insurer(s) to attach 438 BFU or CP 1218 lender loss payable endorsement, its equivalent or other lender loss payable form approved by Owner's Financing Parties
- f) Non-Vitiation. The BAR and Transit/Ocean Marine insurance required to be maintained and shall insure the interests of the Financing Parties regardless of any breach or violation by the Owner or Contractor, its Affiliates or others acting on their behalf of any warranties, declarations or conditions contained in such policies, any action or inaction, or any foreclosure relating to the Project or any change in ownership of all or any portion of the Project (the foregoing may be accomplished by the use of an approved lender loss payable endorsement or acceptable mortgagee clause or multiple insureds clause).
- g) Unless specified otherwise in this exhibit no insurance shall be canceled with respect to the interest of the Financing Parties without \*\*\* (\*\*\*) for nonpayment of premium) prior written

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Exhibit 15-7

AVSP II EPC Contract  
Exhibit 15 - Insurance

notice given to the named insured party and the Financing Parties. Such named insured party shall within \*\*\*, provide such notice to the other Party under this Agreement as the case may be. In the event of cancellation due to nonpayment of premium, the Financing Parties, if any, shall have the right to make payments in order to keep insurance in force.

- h) All insurance required to be maintained in accordance with this exhibit shall be placed with financially sound and reputable insurers having an A.M Best rating of \*\*\* or better and with coverage forms reasonably acceptable to the Owner and if applicable, the Financing Parties.
- i) Contractor shall require Subcontractor's who perform Work at the Site to carry liability insurance (auto, commercial general, and excess/umbrella liability) and workers' compensation/employer's liability insurance in accordance with its usual business practice; provided, however, Contractor shall remain responsible and indemnify the Owner for any claims, lawsuits, losses and expenses included defense costs that exceed any of its Subcontractor's insurance limits or for uninsured claims or losses.
- j) All amounts of insurance coverage under this Agreement are required minimums. Owner and Contractor shall each be solely responsible for determining the appropriate amount of insurance, if any, in excess thereof. The required minimum amounts of insurance shall not operate as limits on recoveries available under this Agreement. Owner and Contractor will be responsible for any deductibles and uninsured losses that apply to their insurance requirements as shown in this exhibit.
- k) Evidence of Insurance. Evidence of insurance required hereunder in the form of certificates of insurance shall be furnished by each Party when required to be delivered no later than the date on which coverage is required to be in effect pursuant to this Exhibit 15, as applicable; provided, however, a draft copy of the BAR and Transit/Ocean Marine insurance (redacting any confidential or proprietary information) shall be provided to the Owner and the Financing Parties as soon as reasonably possible prior to the date such insurance is required to be in effect; and the final copy of such BAR insurance shall be provided promptly after such insurance coverage is bound but not later than \*\*\* after coverage is required to be in effect. Not later than \*\*\* of the date of delivery of the certificates of insurance hereunder or the expiration date of the policy if for a term of more than \*\*\*, and not later than each \*\*\* or policy renewal date thereafter, each Party shall deliver copies of the certificate of insurance of the renewal insurance policies.

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Exhibit 15-8

AVSP II EPC Contract  
Exhibit 15 - Insurance



**EXHIBIT 16A**

**Capacity and Availability Test**

\*\*\*

[14 pages redacted]

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Exhibit 16A-1

AVSP II EPC Contract  
Exhibit 16A - Capacity and Availability Test

## EXHIBIT 16B

### Performance Guarantee

#### 1. Guaranteed Capacity:

##### 1.1 The Guaranteed Block Capacity for the Facility is defined as:

All values are at the Delivery Point

Guaranteed Capacity of each Block is listed in Exhibit 4B.

##### 1.2 The Guaranteed Facility Capacity for the Facility is defined as:

AVSP 1: \*\*\* MWac at the Delivery Point

AVSP 2: \*\*\* MWac at the Delivery Point

##### 1.3 The Guaranteed Capacity applies under the following guarantee reference conditions (GRC) which is the expected point where the inverter clips at its nameplate rating:

1.3.1 System is in a new and clean condition

1.3.2 Plane of array irradiance:

AVSP 1: 908 W/m<sup>2</sup>

1.3.3 Ambient temperature: 20C

1.3.4 Cell temperature:

AVSP 1: 46.69°C

1.3.5 Wind speed: 1 m/sec

1.3.6 Inverters operating at a unity power factor set-point.

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Exhibit 16B-1

AVSP II EPC Contract  
Exhibit 16B - Performance Guarantees

- 1.3.7 Measurement uncertainty to be determined based on \*\*\* and applied to the measured value as a tolerance when calculating the Block Capacity Test values to determine if the Guaranteed Capacity has been achieved.
- 1.3.7 Non-recoverable degradation applied at a rate of \*\*\* to be applied for purposes of the Module degradation warranty.

## **2. Block Guaranteed Availability:**

### **2.1 The guaranteed availability for each Block is defined as:**

test period: \*\*\*

availability guarantee: \*\*\*

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Exhibit 16B-2

AVSP II EPC Contract  
Exhibit 16B - Performance Guarantees

## EXHIBIT 16C

### Installed DC Rating Survey

As per PPA requirements, Contractor shall demonstrate that the Total Installed DC Rating (as defined below) of the Facility is greater or equal to  $AVSP2 = *** \text{ kW}_{\text{PDC}}$  per PPA Exhibit B1. “Block Installed DC Rating” means, at any time, the sum of the manufacturer's nameplate ratings of all solar panels installed in a Block, as indicated on the nameplates physically attached to the individual solar panels.

The “Total Installed DC Rating” shall be the sum of the Block Installed DC Rating of each Block turned over to Owner.

Contractor shall cooperate with Owner to demonstrate to SCE the actual Total Installed DC Rating.

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Exhibit 16C-1

AVSP II EPC Contract  
Exhibit 16C - Installed DC Rating Survey

**EXHIBIT 16D**

**Facility Demonstration Test**

\*\*\*

[2 pages redacted]

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Exhibit 16D-1

AVSP II EPC Contract  
Exhibit 16D - Facility Demonstration Test

## EXHIBIT 17

### Form of Capacity Test Certificate

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** ("Contractor") has delivered this Capacity Test Certificate completed, except for signature by **Solar Star California XIX, LLC** ("Owner"), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner, dated as of November [\_\_\_], 20[\_\_\_] (the "Agreement").

2. Contractor certifies and represents to Owner that the following statements are true with respect to Block[s] \_\_\_\_\_ as of the date of delivery hereof to Owner:

- a. The Capacity Test of such Block[s], described in Exhibit 16A of the Agreement, has been conducted, and the Final Test Results demonstrate that the Minimum Capacity Level for such Block[s] [has/have] been achieved according to the criteria set forth in Exhibit 16A of the Agreement.
- b. The Final Test Results of such Block[s], performed pursuant to Exhibit 16A of the Agreement, are attached hereto.

The person signing below is authorized to submit this Capacity Test Certificate to Owner for and on behalf of Contractor.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that the Capacity Test for the Block[s] named above has been completed as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the Block[s], Facility or their respective performance.

**Owner: Solar Star California XIX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Capacity Test Certificate for and on behalf of Owner.

Exhibit 17-1

AVSP II EPC Contract  
Exhibit 17 - Form of Capacity Test Completion Certificate

# EXHIBIT 18

## Disputed Change Order Methodology

Contractor shall develop the adjustment to the Contract Price utilizing the following Contractor Rate Schedule:

<b>CONTRACTOR 2012 RATE SCHEDULE</b>			
<b>Hourly Labor Rates</b>			
<b>Job Title</b>	<b>Normal</b>	<b>Overtime</b>	<b>Holiday</b>
Senior Project Manager	***	***	***
Project Manager	***	***	***
Design Engineer	***	***	***
CAD Operator	***	***	***
EE/Mechanical Engineer	***	***	***
Construction Manager	***	***	***
Administrative Assistant	***	***	***
Principals / Officers / Project Director	***	***	***
<b>Overhead and Profit Mark-up Percent</b>			
Without duplication of any amounts due and owing as Direct Costs under the Agreement:			
<b>Vendor Materials</b>	***		
SunPower Materials	***		
<b>Subcontractor</b>	***		
<b>Labor</b>	***		
Travel Expenses	***		
Other Expenses	***		
	Rates for 2013 and onwards will be adjusted from 2012 prices by CPI (as defined in the O&M Agreement)		
	With X=		

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Exhibit 18-1

AVSP II EPC Contract  
Exhibit 18 - Disputed Change Order Methodology

***% for forced Changes (Example: Change Orders resulting from Section 10.1, Section 10.2, Section 10.3, Section 11.4(d) and Section 19.4) ***% for all other Change Orders (Example: Change Orders resulting from Section 11.4(b))
--

Exhibit 18-2

AVSP II EPC Contract  
Exhibit 18 - Disputed Change Order Methodology



## EXHIBIT 19

### Form of Certificate of Block Substantial Completion

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** (“Contractor”) has delivered this Certificate of Block Substantial Completion completed, except for signature by **Solar Star California XX, LLC** (“Owner”), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner dated as of November [\_\_\_\_], 20[\_\_\_\_] (the “Agreement”).
2. Contractor certifies and represents to Owner that the following statements are true with respect to Block[s] \_\_\_\_\_ as of the date of delivery hereof to Owner:
  - (a) the design, engineering, procurement and construction of such Block[s] [has/have] been completed in accordance with the Agreement except for Punch List Items and the Block has been commissioned and a Functional Test has been Successfully Run in respect of such Block and such Block is ready to commence commercial operation;
  - (b) the Block[s] [is/are] electrically interconnected to and [has/have] been synchronized with, and [is/are] capable of transmitting electric energy to, the Delivery Point in accordance with the Interconnection Agreement and the PPA and all testing and obligations under the PPA required as a condition to such delivery of energy under the PPA, including testing required by CAISO for delivery of electricity from such Block[s] have been satisfactorily completed;
  - (c) a Capacity Test pursuant to Exhibit 16A of the Agreement has been Successfully Run in respect of such Block[s] and Contractor has provided to Owner, and Owner has accepted, a Capacity Test Certificate evidencing that the Minimum Capacity Level for such Block[s] has been achieved;
  - (d) the Block[s] [is/are] capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;
  - (e) Owner has received all Contractor Submittals (if any) as required to be delivered by the Block Substantial Completion Date for such Block;
  - (f) Contractor and Owner have agreed to the Punch List Items for the Block[s] and Contractor has completed all Work on such Block[s] other than the remaining Punch List Items; and

Exhibit 19-1

AVSP II EPC Contract  
Exhibit 19 - Form of Certificate of Block Substantial Completion

(g) Contractor has delivered the notice of Block Substantial Completion of such Block[s] to Owner pursuant to Section 16.3 of the Agreement.

The person signing below is authorized to submit this Block Substantial Completion Certificate to Owner for and on behalf of Contractor.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that Block Substantial Completion has been achieved with respect to the Block[s] set forth above. This certificate was received by Owner on the date first written above and is effective as provided in accordance with Section 16.3 of the Agreement. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to such Blocks, the Facility or their respective performance.

**Owner: Solar Star California XX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Certificate of Block Substantial Completion for and on behalf of Owner.

Exhibit 19-2

AVSP II EPC Contract  
Exhibit 19 - Form of Certificate of Block Substantial Completion

## EXHIBIT 20

### Form of Certificate of Facility Substantial Completion

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** (“Contractor”) has delivered this Certificate of Facility Substantial Completion completed, except for signature by **Solar Star California XX, LLC** (“Owner”), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner dated as of November [\_\_\_\_], 20[\_\_\_\_] (the “Agreement”).
2. Contractor certifies and represents to Owner that the following statements are true with respect to the Facility as of the date of delivery hereof to Owner:
  - (a) each Block has achieved Block Substantial Completion and the Project as a whole is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Project or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the PPA, the Interconnection Agreement, manufacturers' recommendations, Industry Standards, the Technical Specifications and the design criteria;
  - (b) at least \*\*\* MW of inverters have been installed as determined by aggregating the nameplate of inverters;
  - (c) the Facility is operational and can demonstrate that it evacuates power at the Delivery Point pursuant to the Facility Demonstration Test performed in accordance with Exhibit 16D of the Agreement;
  - (d) the most recent Functional Test has been Successfully Run in respect of the Facility and the Facility is ready to commence commercial operation;
  - (e) the Guaranteed Capacity for the Facility has been achieved, or if not, the Facility Capacity is greater than the Minimum Capacity Level of the Facility and Contractor has paid the applicable Final Capacity Liquidated Damages;
  - (f) each of the requirements to achieve “Commercial Operation” under the PPA shall have been satisfied, except those requirements that are Owner's obligations set forth in Sections L, M or N of Exhibit 1;
  - (g) Contractor and Owner have agreed upon the list of Punch List Items;
  - (h) Owner has received all Contractor Submittals as required to be delivered by the Facility Substantial Completion Date in accordance with Exhibit 7 of the Agreement;

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 20-1

AVSP II EPC Contract  
Exhibit 20 - Form of Certificate of Facility Substantial Completion

- (i) all construction and post-construction submittals required by the Contractor Acquired Permits for the Project have been submitted to the appropriate Governmental Authorities;
- (j) all Certificates of Block Substantial Completion have been received by and approved or deemed approved by Owner;
- (k) \*\*\*;
- (l) the Facility has successfully completed the Installed DC Rating Survey in accordance with Exhibit 16C of the Agreement; and
- (m) Contractor has delivered the notice of Facility Substantial Completion to Owner pursuant to Section 16.5 of the Agreement.

The person signing below is authorized to submit this Facility Substantial Completion Certificate to Owner for and on behalf of Contractor.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that Facility Substantial Completion has been achieved as set forth herein. This certificate was received by Owner on the date first written above and is effective as provided in Section 16.5 of the Agreement. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the Blocks, the Facility or their respective performance.

**Owner: Solar Star California XX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Facility Substantial Completion Certificate for and on behalf of Owner.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 20-2

AVSP II EPC Contract  
Exhibit 20 - Form of Certificate of Facility Substantial Completion

## EXHIBIT 21

### Form of Certificate of Final Completion

DATE: \_\_\_\_\_

1. **SunPower Corporation, Systems** ("Contractor") has delivered this Certificate of Final Completion completed, except for signature by **Solar Star California XX, LLC** ("Owner"), to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner dated as of November [\_\_\_\_], 20[\_\_\_\_] (the "Agreement").

2. Contractor certifies and represents to Owner that the following statements are true with respect to the Facility as of the date of delivery hereof to Owner:

- (a) Facility Substantial Completion has occurred;
- (b) the performance of the Work for the Facility is complete, including all Punch List Items or pursuant to Section 8.1(c) of the Agreement, Owner has withheld any remaining Punch List Holdback to complete any items on the Project Punch List not completed by Contractor in accordance with the terms hereof;
- (c) Contractor has delivered all Contractor Submittals, including the final record as-built drawings;
- (d) Contractor has paid all bills from its Subcontractors related to the Project that are not in dispute;
- (e) no Contractor Liens shall be outstanding against the Project and Owner shall have received all required final lien waivers under Section 8.4 of the Agreement;
- (f) Contractor has complied with its clean-up obligations pursuant to Section 3.15 of the Agreement;
- (g) Contractor has paid all Block Delay Liquidated Damages, Facility Delay Liquidated Damages, Block Capacity Liquidated Damages and Final Capacity Liquidated Damages, if any, to the extent required in accordance with this Agreement;
- (h) \*\*\* and
- (i) Contractor has delivered the notice of Final Completion to Owner pursuant to Section 18.2 of the Agreement.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 21-1

AVSP II EPC Contract  
Exhibit 21 - Form of Certificate of Final Completion

The person signing below is authorized to submit this Certificate of Final Completion to Owner for and on behalf of Contractor. By execution of this Certificate of Final Completion, Owner does not waive any right it may have under the Agreement with respect to the Blocks, the Facility or their respective performance.

**Contractor: SunPower Corporation, Systems**

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

Name:

Title:

Owner agrees that Final Completion has been achieved. This certificate was received by Owner on the date first written above and is effective as of such date.

**Owner: Solar Star California XX, LLC**

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

Name:

Title:

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

This form shall be signed by the person authorized to sign this Final Completion Certificate for and on behalf of Owner.

Exhibit 21-2

AVSP II EPC Contract  
Exhibit 21 - Form of Certificate of Final Completion

**Exhibit 22**  
**Form of Safety Plan**

\*\*\*

[151 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 22-1

AVSP II EPC Contract  
Exhibit 22 - Form of Safety Plan

**Exhibit 23**  
**Form of Quality Assurance and Control Plan**

\*\*\*

[16 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 23-1

AVSP II EPC Contract  
Exhibit 23 - Form of Quality Assurance and Control Plan



## EXHIBIT 24

### QUALIFIED MAJOR SUBCONTRACTORS

Additional suppliers and subcontractor may be added to Exhibit 24 after the Effective Date with prior written consent of the Owner, which such consent shall not be unreasonably withheld.

<i>Inverters</i>	<i>Inverter Step-up transformers</i>	<i>Substation Main Power Transformers</i>	
***	***	***	

<i>Modules</i>	<i>Electrical Installation</i>	<i>Project Control System</i>	<i>Project Substation Design &amp; Construction</i>
***	***	***	***
			***

<i>Site Preparation/Grading</i>	<i>SCADA</i>	<i>Meteorological Stations</i>	
***	***	***	

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 24-1

AVSP II EPC Contract  
Exhibit 24 - Qualified Major Subcontractors

**Exhibit 25**  
**EITC and Depreciation Exhibit**

\*\*\*

[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 25-1

AVSP II EPC Contract  
Exhibit 25 - EITC and Depreciation Exhibit

## **EXHIBIT 26**

### **Additional Work**

Contractor shall complete each of the following items in the course of the performance of the Work under the Agreement and shall promptly notify Owner following the completion of any item:

\*\*\*

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 26-1

AVSP II EPC Contract  
Exhibit 26 - Additional Work

**EXHIBIT 27**

**COMMISSIONING AND FUNCTIONAL TESTING**

\*\*\*

[4 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 27-1

AVSP II EPC Contract  
Exhibit 27 - Commissioning and Functional Testing

**Exhibit 28**  
**Performance Guaranty Agreement**

\*\*\*

[57 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 28-1

AVSP II EPC Contract  
Exhibit 28 - Performance Guaranty Agreement

**EXHIBIT 29**

**RIGHT OF FIRST OFFER**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 29-1

AVSP II EPC Contract  
Exhibit 29 - Right of First Offer

**Exhibit 30**  
**Spare Parts**

\*\*\*

[1 page redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 30-1

AVSP II EPC Contract  
Exhibit 30 - Spare Parts

**EXHIBIT 31**  
**Credit Support Requirements**

\*\*\*

[3 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 31-1

AVSP II EPC Contract  
Exhibit 31 - Credit Support Requirements



**EXHIBIT 32**

Form of Acceptable Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name of Issuing Bank]  
[Address of Issuing Bank]  
[City, State of Issuing Bank]

Letter Of Credit No. [\_\_\_\_\_]   
Irrevocable Standby Letter Of Credit

Date of Issue: [\_\_\_\_\_] , 20\_\_

Stated Expiration Date: [\_\_\_\_\_]

Applicant:  
SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804

Stated Amount: USD \$[\_\_\_\_\_]

Beneficiaries:  
Solar Star California XIX, LLC  
c/o MidAmerican Solar, LLC  
1850 N. Central Avenue, Suite 1025  
Phoenix, Arizona 85004  
Attn: President

and

Solar Star California XX, LLC  
c/o MidAmerican Solar, LLC  
1850 N. Central Avenue, Suite 1025  
Phoenix, Arizona 85004  
Attn: President

Credit Available With: [\_\_\_\_\_]

Exhibit 32-1

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

Ladies and Gentlemen:

At the request and for the account of SunPower Corporation, Systems, a Delaware corporation (the "Applicant"), we hereby establish in favor of Solar Star California XIX, LLC and Solar Star California XX, LLC (each individually a "Beneficiary" and collectively, the "Beneficiaries") for the aggregate amount not to exceed [ ] million United States Dollars (\$ ), in connection with (a) the Engineering, Procurement and Construction Agreement dated as of [ ], 2012 (as amended, restated, amended and restated or otherwise modified, the "AVSP 1 EPC Agreement"), by and between the Applicant and Solar Star California XIX, LLC and (b) the Engineering, Procurement and Construction Agreement dated as of [ ], 2012 (as amended, restated, amended and restated or otherwise modified, the "AVSP 2 EPC Agreement"), by and between the Applicant and Solar Star California XX, LLC (the AVSP 1 EPC Agreement and AVSP 2 EPC Agreement are each individually referred to as an "EPC Agreement" and are collectively referred to as the "EPC Agreements"), this Irrevocable Standby Letter of Credit no. [ ] (this "Letter of Credit") expiring on [date not earlier than 364 days from issuance] (the "Stated Expiration Date").

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount (as defined

below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized representative of a Beneficiary completed in the form of Annex 1 hereto (a "Drawing Request"). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an "Automatic Reduction").

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts reinstated pursuant to the terms hereof plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the "Available Amount").

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [ ], referencing this Letter of Credit No. [ ]. In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

Exhibit 32-2

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day (as defined below), payment will be made not later than the close of business, New York City time, on such Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the following Business Day not later than the close of business, New York City time on such following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as is set forth below.

As used in this Letter of Credit, "Business Day," means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to remain closed in the State of New York.

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from a Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the "Early Expiration Date") specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiaries and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than \*\*\* after the date of such notice, with the Beneficiaries remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of \*\*\* each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least \*\*\* prior to any such expiry date we have sent you written notice ( the "Notice of Non-Renewal") by certified mail or overnight hand delivered courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiaries and Applicant in accordance herewith, the Beneficiaries are authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by a Beneficiary's authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiaries prompt notice of same stating the reasons therefor and shall upon receipt of a Beneficiary's instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiaries at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, a Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 32-3

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the “International Standby Practices 1998” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of New York.

This Letter of Credit is transferable, in its entirety upon presentation to us of a signed transfer certificate in the form of Annex 3 accompanied by this Letter of Credit, in which a Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant.

All Drawing Requests under this Letter of Credit must bear the clause: “Drawn under [***Name of Issuing Bank***], Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_].”

This Letter of Credit shall not be amended except with the written concurrence of [***Name of Issuing Bank***], the Applicant and the Beneficiaries.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[***Name of Issuing Bank***]

Authorized signature

Exhibit 32-4

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

ANNEX 1  
[Letterhead of a Beneficiary]

Drawn under [insert name of Issuing Bank],  
Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]

DRAWING REQUEST  
[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of a Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$\_\_\_\_\_ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the EPC Agreement applicable to Beneficiary.  
or

B-2) The Letter of Credit will expire within \*\*\* of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicants have failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the EPC Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;  
; and

C) You are directed to make payment of the requested drawing to:

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 32-5

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary]

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

Name:

Title:

cc:

[Applicant name and address]

Exhibit 32-6

ANNEX 2  
NOTICE OF EARLY EXPIRATION  
[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [ ] (the “Letter of Credit”) dated [ ] issued by [Issuing Bank] in favor of [ ] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on \_\_\_\_\_, \_\_\_\_\_ [insert a date which is \*\*\* or more days after the date of this notice of early expiration] (the “Early Expiration Date”).

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[ISSUING BANK]

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

Name:

Title:

cc:

[Applicant name and address]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 32-7

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[*Name of Issuing Bank*], Date: \_\_\_\_\_  
[*Address*]  
[*City, State*]

Attn: Trade Services Department

Re: [*Name of Issuing Bank*], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE \_\_\_\_\_  
ADDRESS OF TRANSFEREE \_\_\_\_\_  
\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP \_\_\_\_\_

(hereinafter, the "transferee") all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such letter of credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[\_\_\_\_\_] and maximum of \$[\_\_\_\_\_].

**Select one of the following:**

\_\_\_\_ we enclose a cashier's/certified check  
\_\_\_\_ we have wired funds to you through \_\_\_\_\_ bank  
\_\_\_\_ we authorize you to debit our account # \_\_\_\_\_ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

Very truly yours,  
[BENEFICIARY NAME]

\_\_\_\_\_  
Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

\_\_\_\_\_  
(Signature of Authenticating Bank) (Name of Bank)  
\_\_\_\_\_  
(Printed Name/Title) (Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

Exhibit 32-8

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit



[Beneficiary name]

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

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

Exhibit 32-9

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

ANNEX 4  
VOLUNTARY REDUCTION REQUEST CERTIFICATE  
[Date]

[insert name of Issuing Bank]  
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [ ] (the “Letter of Credit”) dated [ ] issued by you in favor of [ ] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [ ] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by \$[ ] to \$[ ].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

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

cc:

[Applicant name and address]

Exhibit 32-10

AVSP II EPC Contract  
Exhibit 32 - Form of Acceptable Letter of Credit

**EXHIBIT 33**

**AVSP 2**

\*\*\*

[2 pages redacted]

\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit 33-1

AVSP II EPC Contract  
Exhibit 33 - \*\*\*

## AMENDMENT NO. 1 TO MASTER AGREEMENT

This AMENDMENT NO. 1 dated as of December 20, 2012 to a certain MASTER AGREEMENT, dated as of December 23, 2011 (this “**Agreement**”), is made by and among SunPower Corporation, a Delaware company (“**SunPower**”), Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France (“**Total G&P**”), and Total S.A., a *société anonyme* organized under the laws of the Republic of France (the “**Guarantor**”). Capitalized terms used herein and not otherwise defined herein, shall have the meaning ascribed to such terms in the Master Agreement.

### W I T N E S S E T H:

WHEREAS, by the terms of Clause 1.7(ii) of the Master Agreement, the parties agreed that the affiliated companies of the Guarantor would endeavor to develop a multi megawatt project in a high DNI (e.g. Middle East) country with SunPower's C7 product;

WHEREAS, SunPower and Guarantor have agreed that their common interest in C7 technology project development would be best promoted by the development of a number of small scale demonstration projects each of which would aim to have the effect of demonstrating to potential investors and customers the attractiveness and competitiveness of the C7 technology (each a “C7 Demonstration Project”);

WHEREAS, the parties have agreed to an overall budget of US\$ 2.5 million for the 2013 calendar year corresponding to up to ten (10) C7 Demonstration Projects, representing cumulatively around 2 megawatts of peak power generation capacity;

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound hereby, SunPower, Total G&P and Guarantor hereby agree as follows:

**Section 1 Demonstration Projects.** The parties agree that each project shall have the objective of demonstrating to a potential investor or significant customer, on a demonstration facility scale, the attractiveness and competitiveness of the C7 technology. The parties further agree that the maximum number of such projects shall be ten (10), that the cumulative cost to Total G&P of participating in such C7 Demonstration Projects shall be not more than US\$ 2.5 million, and that the commitments to supply, build and operate shall be entered into in 2013, unless otherwise agreed by the Parties.

**Section 2 Amendments.** Clause 1.7 (ii) of the Master Agreement is hereby amended as follows:

*“(ii) develop up to ten (10) C7 Demonstration Projects representing cumulatively approximately 0,25 megawatts of peak power generation capacity at a total cost to Total G&P of not more than US\$ 2.5 million located in high DNI countries (including the Middle East), provided, however, that the agreements with third parties creating binding commitments to supply, build and operate such C7 Demonstration Projects shall be entered into on or before December 31, 2013, unless*

*otherwise agreed.”*

Clause 3.1 is hereby amended to insert the following new definition:

**““C7 Demonstration Project”** means a small scale solar power generation project using SunPower's C7 technology which aims to have the effect of demonstrating to potential investors and/or significant customers the attractiveness and competitiveness of the C7 technology.”

**Section 3.2 Terms Generally; Interpretation.** Except to the extent that the context otherwise requires, the terms of this Amendment No.1 shall be understood and interpreted in accordance with the Master Agreement.

**Section 3.3 Notices.** All notices and other communications hereunder shall be delivered in accordance with the Master Agreement.

**Section 3.4 Severability.** In the event that any provision of this Amendment No.1, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Amendment No.1 will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such illegal, void or unenforceable provision of this Amendment No.1 with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

**Section 3.5 Entire Agreement.** This Amendment No. 1 and the Master Agreement and the agreements, documents, instruments and certificates among the parties hereto as contemplated by or referred to herein, including the Transaction Documents constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Each party hereto agrees that neither SunPower, on the one hand, nor Total G&P or the Guarantor, on the other hand, makes any representations or warranties, express or implied, whatsoever, including as to the accuracy or completeness of any other information, made (or made available) by itself or any of its Representatives, with respect to, or in connection with, the negotiation, execution or delivery of this Amendment No.1 or the transactions contemplated hereby, notwithstanding the delivery or disclosure to the other or the other's Representatives of any documentation of any other information with respect to any one or more of the foregoing; provided, however, that notwithstanding the foregoing or anything to the contrary set forth in this Amendment No.1, nothing in this Amendment No.1 shall relieve any party hereto for liability arising out of fraud or intentional misrepresentation.

**Section 3.6 Assignment.** Neither this Amendment No. 1 Agreement nor any right, interest or obligation under it may be assigned or delegated by any party to the Master Agreement by operation of law or otherwise without the prior written consent of the other parties to this Amendment No.1 and any attempt to do so will be void.

**Section 3.7 No Third-Party Beneficiaries.** This Amendment No.1 is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Amendment No.1.

**Section 3.8 Governing Law.** This Amendment No.1 shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

**Section 3.9 Specific Performance.** The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Amendment No.1 were not performed in accordance with their specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. It is accordingly agreed that, in addition to any other remedy to which they are entitled at law or in equity, the parties hereto agree that, in the event of any breach or threatened breach by the SunPower, on the one hand, or Total G&P or the Guarantor, on the other hand, of any of their respective covenants or obligations set forth in this Amendment No.1, SunPower, on the one hand, and Total G&P or the Guarantor, on the other hand, shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Amendment No.1 or to enforce compliance with, the covenants and obligations of the other under this Amendment No.1. SunPower, on the one hand, and Total G&P or the Guarantor, on the other hand hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Amendment No.1 by such party (or parties), and to specifically enforce the terms and provisions of this Amendment No.1 to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of such party (or parties) under this Amendment No.1. The parties hereto further agree that (a) by seeking the remedies provided for in this Section 3.9, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Amendment No.1 (including monetary damages) in the event that this Amendment No.1 has been terminated or in the event that the remedies provided for in this Section 3.9 are not available or otherwise are not granted, and (b) nothing set forth in this Section 3.9 shall require any party hereto to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 3.9 prior or as a condition to exercising any termination right (and pursuing damages after such termination), nor shall the commencement of any Legal Proceeding pursuant to this Section 3.9 or anything set forth in this Section 3.9 restrict or limit any party's right to terminate this Amendment No.1 in accordance the express terms set forth herein or pursue any other remedies under this Amendment No.1 that may be available then or thereafter.

**Section 3.10 Other Remedies.** Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

**Section 3.11 Consent to Jurisdiction.** Each of the parties hereto irrevocably consents and submits itself and its properties and assets to the exclusive jurisdiction and venue in any state court within the State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Amendment No.1 or the transactions contemplated hereby, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such Persons and waives and covenants not to assert or plead any objection which such Person might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any Legal Proceedings relating to or arising out of this

Amendment No.1 or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

**Section 3.12    Waiver Of Jury Trial.** EACH OF SUNPOWER, TOTAL G&P AND GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT AS AMENDED BY THIS AMENDMENT NO.1 OR THE ACTIONS OF SUNPOWER, TOTAL G&P OR GUARANTOR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

**Section 3.13    Counterparts.** This Amendment No.1 may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or by electronic delivery in Adobe Portable Document Format or other electronic format based on common standards will be effective as delivery of a manually executed counterpart of this Amendment No.1.

IN WITNESS WHEREOF, the undersigned have caused this Amendment No.1 to be executed by their respective duly authorized officers to be effective as of the date first above written.

**TOTAL GAS & POWER USA, SAS**

By:        /s/ Arnaud Chaperon  
Name:      Arnaud Chaperon  
Title:      President

**TOTAL S.A.**

By:        /s/ Bernard Clement  
Name:      Bernard Clement  
Title:      Senior Vice President, Business Operations, New Energies

**SUNPOWER CORPORATION**

By:        /s/ Thomas H. Werner  
Name:      Thomas H. Werner  
Title:      Chief Executive Officer

## Subsidiaries of SunPower Corporation

Subsidiary Name	Jurisdiction
Pluto Acquisition Company LLC	Delaware
SunPower Corporation Malta Holdings Limited	Malta
SunPower Corporation, Systems	Delaware
SunPower North America, LLC	Delaware
SunPower Philippines Manufacturing Ltd.	Cayman Islands
SunPower Systems Sarl	Switzerland
SunPower Technology Ltd.	Cayman Islands
Tenesol SAS	France

SunPower Corporation does business under the following names

Company	dba
SunPower Corporation	SunPower Solar Corporation (Texas), Inc.
SunPower Corporation	SPWR Solar Corporation
SunPower Corporation	SPWR Solar
SunPower Corporation	SPWR Energy

SunPower Corporation, Systems does business under the following names

Subsidiary	dba
SunPower Corporation, Systems	SunPower Energy Systems (Texas), Inc.
SunPower Corporation, Systems	SunPower Energy Corporation



CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-3 Nos. 333-140198, 333-140272, and 333-153409) of SunPower Corporation, and
- (2) Registration Statement (Form S-8 Nos. 333-130340, 333-140197, 333-142679, 333-150789, 333-172477, 333-178027, and 333-179833) of SunPower Corporation;

of our reports dated February 22, 2013, with respect to the consolidated financial statements of SunPower Corporation and the effectiveness of internal control over financial reporting of SunPower Corporation included in this Annual Report (Form 10-K).

/s/ Ernst & Young LLP

San Jose, California  
February 22, 2013

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-140198, 333-140272, and 333-153409) and Form S-8 (Nos. 333-130340, 333-140197, 333-142679, 333-150789, 333-172477, 333-178027 and 333-179833) of SunPower Corporation of our report dated February 29, 2012, except for the effects of the change in reporting entity due to the transfer of an entity under common control discussed in Note 3 and the change in composition of reportable segments discussed in Note 18 to the consolidated financial statements, as to which the date is February 22, 2013, relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California  
February 22, 2013

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENT: That the undersigned officers and directors of SunPower Corporation do hereby constitute and appoint Thomas H. Werner, Charles D. Boynton, Eric Branderiz, and Lisa Bodensteiner, and any one of them, the lawful attorney and agent or attorneys and agents with power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, or either of them, determine may be necessary or advisable or required to enable SunPower Corporation to comply with the Securities and Exchange Act of 1934, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with its annual report on Form 10-K for the fiscal year ended December 30, 2012 (the "Report"). Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to the Report or amendments or supplements thereto, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated opposite the name.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/S/ THOMAS H. WERNER</u> Thomas H. Werner	President, Chief Executive Officer and Director (Principal Executive Officer)	February 22, 2013
<u>/S/ CHARLES D. BOYNTON</u> Charles D. Boynton	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 22, 2013
<u>/S/ ERIC BRANDERIZ</u> Eric Branderiz	Senior Vice President, Corporate Controller and Principal Accounting Officer (Principal Accounting Officer)	February 22, 2013
<u>/S/ ARNAUD CHAPERON</u> Arnaud Chaperon	Director	February 19, 2013
<u>/S/ BERNARD CLEMENT</u> Bernard Clement	Director	February 19, 2013
<u>/S/ DENIS GIORNO</u> Denis Giorno	Director	February 19, 2013
<u>/S/ THOMAS R. MCDANIEL</u> Thomas R. McDaniel	Director	February 19, 2013
<u>/S/ JEROME SCHMITT</u> Jerome Schmitt	Director	February 22, 2013
<u>/S/ HUMBERT DE WENDEL</u> Humbert de Wendel	Director	February 20, 2013
<u>/S/ PATRICK WOOD III</u> Patrick Wood III	Director	February 19, 2013

## CERTIFICATIONS

I, Thomas H. Werner, certify that:

- 1 I have reviewed this Annual Report on Form 10-K of SunPower Corporation;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

- 5 The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 22, 2013

/S/ THOMAS H. WERNER

Thomas H. Werner

President, Chief Executive Officer and Director  
(Principal Executive Officer)

## CERTIFICATIONS

I, Charles D. Boynton, certify that:

- 1 I have reviewed this Annual Report on Form 10-K of SunPower Corporation;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

- 5 The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 22, 2013

/S/ CHARLES D. BOYNTON

Charles D. Boynton  
Executive Vice President and Chief Financial Officer  
(Principal Executive Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND  
CHIEF FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of SunPower Corporation (the “Company”) on Form 10-K for the period ended December 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of Thomas H. Werner and Charles D. Boynton certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 22, 2013

/S/ THOMAS H. WERNER

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Thomas H. Werner  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

/S/ CHARLES D. BOYNTON

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Charles D. Boynton  
Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure statement.

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