

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

FORM 10-K

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

For the fiscal year ended December 30, 2007

OR

☐ 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 000-51593

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.)

3939 North First Street, 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
Class A Common Stock. \$0.001 par value	NASDAQ Global 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 ☐
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 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 ☒ No ☐
Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K 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. ☐
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 ☒ Accelerated Filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐
(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 ☐ No ☒
The aggregate market value of the voting stock held by non-affiliates of the registrant on July 1, 2007 was \$2.0 billion. Such aggregate market value was computed by reference to the closing price of the common stock as reported on the Nasdaq Global Market on July 1, 2007. For purposes of determining this amount only, the registrant has defined affiliates as including the executive officers and directors of registrant on July 1, 2007.
The total number of outstanding shares of the registrant's class A common stock as of February 22, 2008 was 39,855,258.
The total number of outstanding shares of the registrant's class B common stock as of February 22, 2008 was 44,533,287.

DOCUMENTS INCORPORATED BY REFERENCE

Parts of the registrant's definitive proxy statement for the registrant's Annual Meeting of Stockholders for the fiscal year ended December 30, 2007 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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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, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are statements that do not represent historical facts. We use words such as “may,” “will,” “should,” “could,” “would,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” “continue” 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 our ability to obtain polysilicon ingots or wafers, future financial results, operating results, business strategies, projected costs, products, competitive positions, management’s plans and objectives for future operations, and industry trends. 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 “Item 1A: Risk Factors” and our other filings with the Securities and Exchange Commission 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 quarters or year which ends on the Sunday closest to the calendar month end.

PART I

ITEM 1: BUSINESS

We are a vertically integrated solar products and services company that designs, manufactures and markets high-performance solar electric power technologies. Our solar cells and solar panels are manufactured using proprietary processes and technologies based on more than 15 years of research and development. We believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity, of all the solar cells available for the mass market. Our solar power products are sold through our components business segment, or our components segment. In January 2007, we acquired PowerLight Corporation, or PowerLight, now known as SunPower Corporation, Systems, or SP Systems, which developed, engineered, manufactured and delivered large-scale solar power systems. These activities are now performed by our systems business segment, or our systems segment. Our solar power systems, which generate electric energy, integrate solar cells and panels manufactured by us as well as other suppliers. For more information about financial condition and results of operations of each segment, please see “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Item 8: Financial Statements and Supplementary Data.”

Business Segments Overview

Components segment: Our components segment sells solar power products, including solar cells, solar panels and inverters, which convert sunlight to electricity compatible with the utility network. We believe our solar cells provide the following benefits compared with conventional solar cells:

- superior performance, including the ability to generate up to 50% more power per unit area;
- superior aesthetics, with our uniformly black surface design that eliminates highly visible reflective grid lines and metal interconnect ribbons; and
- efficient use of silicon, a key raw material used in the manufacture of solar cells.

We sell our solar components products to installers and resellers for use in residential and commercial applications where the high efficiency and superior aesthetics of our solar power products provide compelling customer benefits. We also sell products for use in multi-megawatt solar power plant applications. In many situations, we offer a materially 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 commercial solar thin film technologies. We sell our products primarily in Asia, Europe and North America, principally in regions where government incentives have accelerated solar power adoption. In fiscal 2007, 2006 and 2005, components revenue represented approximately 40%, 100% and 100%, respectively, of total revenue.

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We manufacture our solar cells at our manufacturing facilities in the Philippines. We currently operate seven cell manufacturing lines in our solar cell fabrication facilities, with a total rated manufacturing capacity of approximately 214 megawatts per year. By the end of 2008, we plan to operate 12 solar cell manufacturing lines with an aggregate manufacturing capacity of 414 megawatts per year. We plan to begin production as soon as the first quarter of 2010 on the first line of a third solar cell manufacturing facility designed to have an aggregate manufacturing capacity of 500 megawatts per year.

We manufacture our solar panels at our panel manufacturing factory located in the Philippines. Our solar panels are also manufactured for us by a third-party subcontractor in China. We currently operate three solar panel manufacturing lines with a rated manufacturing capacity of 90 megawatts of solar panels per year. In addition, our SunPower branded inverters are manufactured for us by multiple suppliers.

Systems segment: Our systems segment sells solar power systems and system technology directly to system owners. When we sell a solar power system it may include services such as development, engineering, procurement of permits and equipment, construction management, access to financing, monitoring and maintenance. We believe our solar systems provide the following benefits compared with competitors' systems:

- superior performance delivered by maximizing energy delivery and financial return through systems technology design;
- superior systems design to meet customer needs and reduce cost, including non-penetrating, fast-install technology; and
- superior channel breadth and delivery capability including turnkey systems.

Our systems segment is comprised primarily of the business we acquired from SP Systems in January 2007. Our customers include commercial and governmental entities, investors, utilities and production home builders. We work with development, construction, system integration and financing companies to deliver our solar power systems to customers. Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years and are principally designed to be used in large-scale applications with system ratings of typically more than 500 kilowatts. Worldwide, more than 400 SunPower solar power systems are commissioned or in construction, rated in aggregate at more than 300 megawatts of peak capacity. In fiscal 2007, systems revenue represented approximately 60% of total revenue.

We have solar power system projects completed or in the process of being completed in various countries including Germany, Italy, Portugal, South Korea, Spain and the United States. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants. Distributed solar power systems are typically rated at more than 500 kilowatts of capacity to provide a supplemental, distributed source of electricity for a customer's facility. Many customers choose to purchase solar electricity from our systems under a power purchase agreement with a financing company which buys the system from us. For example, we recently completed the construction of an approximately 14 megawatt solar power plant at Nellis Air Force Base in Nevada, which will be operated under a power purchase agreement structure with a financier. In Europe and South Korea, our products and systems are typically purchased by a financing company and operated as a central station solar power plant. These power plants are rated with capacities of approximately one to 20 megawatts, and generate electricity for sale under tariff to private and public utilities.

We manufacture certain of our solar power system products at our manufacturing facilities in California and at other facilities located close to our customers. Some of our solar power system products are also manufactured for us by third-party suppliers.

Our Products and Services

Products Sold Through Our Components Segment

Our solar power products include solar cells and solar panels manufactured using proprietary processes and technologies based on more than 15 years of research and development. We also sell a line of branded inverters.

Solar Cells

Solar cells are semiconductor devices that directly convert sunlight into electricity. Our A-300 solar cell is a silicon solar cell with a specified power value of 3.1 watts and a conversion efficiency of between 20% and 21.5%. Our next generation solar cell delivers 3.3 watts with efficiency of up to 22.7% and started shipping in 2007. 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.

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Solar Panels

Solar panels are solar cells electrically connected together and encapsulated in a weatherproof package. 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 package. 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.

Inverters

Inverters transform direct current, or DC, electricity produced by solar panels into the more common form of alternating current, or AC, electricity. Inverters are used in virtually every on-grid solar power system and typically feed power either directly into the home electrical circuit or into the utility grid. In North America, we sell a line of branded inverters specifically designed for use in residential and commercial systems. Our inverter product line currently includes approximately twelve models spanning a power range of 2.5 to 5.2 kilowatts. Our packaged system designs optimize performance through the appropriate combination of these inverters with our solar panels. Our units are highly efficient, possessing above-average DC to AC conversion efficiency compared to other commercially available units in their class, according to the California Energy Commission. Our inverters are manufactured for us by Xantrex, SMA Technologie AG and PV Powered. Xantrex is a worldwide leader in power electronics with a specialization in solar power conditioning components, while SMA Technologie AG and PV Powered concentrate specifically in the manufacturing of inverters for the solar electric market.

Products Sold Through Our Systems Segment

Our solar electric power system technology integrates solar cells and solar panels to convert sunlight to electricity. Our systems are principally designed to be used in large-scale utility, commercial, public sector and production home applications.

PowerGuard® Roof System

The PowerGuard® Roof System is a roof-mounted solar panel mounting system that delivers reliable, clean electricity while insulating and protecting the roof. PowerGuard® is a proprietary, pre-engineered solar power roofing tile system. Each PowerGuard® tile consists of a solar laminate, lightweight cement substrate and styrofoam base. Designed for quick and easy installation, PowerGuard® tiles fit together with interlocking tongue-and-groove side surfaces. In addition to generating electricity, PowerGuard® roof systems also insulate and protect the roof membrane from ultraviolet rays and thermal degradation. This saves both heating and cooling energy expenses and extends the roof life. The PowerGuard® roof system has been tested and certified by Underwriters Laboratories Inc., or UL, and has received a UL Class B fire rating which we believe facilitates obtaining building permits and inspector approvals.

The PowerGuard® system resists wind uplift without compromising the rooftop's structural integrity. In comparison, conventional solar power systems typically penetrate the roof. Systems that require drilling many holes into rooftops to install and secure solar panels may compromise the integrity of the roof and reduce its life span. To avoid drilling holes, certain other conventional systems add weight for stability against wind and weather, which may exceed weight limits for some commercial buildings' roofs.

PowerGuard® tiles typically weigh approximately four pounds per square foot, which is supported by most commercial rooftops. Our technology integrates this lightweight construction with a patented pressure equalizing design that has been tested to withstand winds of up to 140 mph. PowerGuard® roof systems have been installed in a broad range of climates, including California, Illinois, Hawaii, Massachusetts, Nevada, New Jersey, New York, Canada and Switzerland and a wide variety of building types, from rural single story warehouses to urban high rise structures.

SunPower T-10 Commercial Solar Roof Tiles

SunPower T-10 commercial solar roof tiles are pre-engineered solar panels that tilt at a 10-degree angle to generate up to 10% more annual energy output than traditional flat roof-mounted systems depending on geographic location and local climate conditions. These non-penetrating panels interlock for secure, rapid installation on rooftops without compromising the structural integrity of the roof.

Similar to our PowerGuard® product, the SunPower T-10 commercial roof tile is lightweight, weighing less than four pounds per square foot, and is installed without penetrating the roof surface. Sloped side and rear wind deflectors improve wind performance, allowing T-10 arrays to withstand winds up to 120 miles per hour.

Whereas PowerGuard® performance is optimized in constrained rooftop environments where it contributes to maximum power density, commercial roof tile performance is optimized for larger roofs with less space constraints as well as underutilized tracks of land, such as ground reservoirs.

SunTile® Roof Integrated System for Residential Market

SunTile® is a highly efficient solar power shingle roofing system utilizing our A-300 solar cell technology that is designed to integrate with conventional residential roofing materials. SunTile® solar shingles are designed to replace multiple types of roof panels, including the most common concrete flat, low and high profile “S” tile and composition shingles. We believe that SunTile® is less visible on a roof than conventional solar technology because the solar panel is integrated directly into the roofing material instead of mounted onto the roof. SunTile® has a UL-listed Class A fire rating, which is the highest level of fire rating provided by Underwriters Laboratories Inc. SunTile® is designed to be incorporated by production home builders into the construction of their new homes communities.

Ground Mounted SunPower™ Tracker Systems

We offer several types of ground-mounted solar power systems using our PowerTracker® technology, now referred to as SunPower™ Tracker. SunPower™ Tracker is a single-axis tracking system that automatically pivots solar panels to track the sun’s movement throughout the day. We believe this tracking feature increases the amount of sunlight that is captured and converted into energy by up to 35% 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 kilowatts of solar panels. The 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 kilowatt capacity. The SunPower™ Tracker system can be assembled onsite, and is easily scalable. We have installed ground-mounted systems integrating SunPower™ Tracker in a wide range of geographical markets including Arizona, California, Hawaii, Nevada, New Jersey, Germany, Portugal, Spain and South Korea.

Fixed Tilt and SunPower™ Tracker Systems for Parking Structures

We have developed and patented several 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. In addition, we have incorporated our SunPower™ Tracker technology into certain of our systems for elevated parking structures to provide a differentiated product offering to our customers. We have completed complex parking structure-based systems for clients such as the U.S. Navy, the U.S. Postal Service and Johnson & Johnson.

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. We also offer other architectural products such as day lighting with translucent solar panels.

Client Services Sold Through Our Systems Segment

We provide our customers and partners with a variety of services, including system design, energy efficiency, financial consulting and analysis, construction management and maintenance and monitoring.

System Design

We design solar power systems taking into account the customer’s location, site conditions and energy needs. During the preliminary design phase, we conduct a site audit and building assessment for onsite generation feasibility and identify energy efficiency savings opportunities. We model the performance of a proposed system design taking into account variables such as local weather patterns, utility rates and other relevant factors at the customer’s location. We also identify necessary permits and design our systems to comply with applicable building codes and other regulations.

Financial Consulting and Analysis

We offer financial consulting services to our customers using various financing vehicles and government programs. We assist our customers in developing funding strategies for solar power projects depending on a customer’s size, cash flow and tax status. We have partnered with financial companies and organizations such as Morgan Stanley, GE Commercial Finance and MMA Renewable Ventures (a subsidiary of MuniMae), which provide project development financing and bonding for our customers. To date, we have successfully arranged financing for clients ranging from simple loans and tax-advantaged operating leases to long-term, multi-party power purchase agreements.

Construction Management

We offer general contracting services and employ project managers to oversee all aspects of system installation, including securing necessary permits and approvals. Subcontractors, typically electricians and roofers, usually provide the construction labor, tools and heavy equipment for solar system installation. We have developed relationships with subcontractors in many target markets, and require subcontractors to be licensed, carry appropriate insurance and adhere to the local labor and payroll requirements. Our construction management services include system testing, commissioning and management of utility network interconnection.

Maintenance and Monitoring

We also offer post-installation services in support of our solar power systems, including:

Operations and Maintenance: Our systems have a design life in excess of 25 years. We typically provide our customers with a one-, two-, five- or ten-year parts and workmanship system warranty, after which the customer may extend the period covered by our warranty for an additional fee. We also pass through to customers long-term warranties from the original equipment manufacturers of certain system components. Warranties of 20 to 25 years from solar panel suppliers are standard, while inverters typically carry a two-, five- or ten-year warranty. We offer our customers a series of maintenance services ranging from our Standard Service level to our Plus Service level. Standard Service includes continuous remote monitoring of system performance and 72-hour on-site response to any system problem through a qualified local service technician. Plus Service includes annual preventive maintenance as well as certain forms of system testing.

Monitoring: We have developed our proprietary Data Acquisition System, or DAS, to monitor system performance used in most of the commercial systems we install. The DAS continuously scans the performance of the system and local weather data and stores average data for the past 15 minutes in a data logger. An automated daily algorithm determines if systems are performing per specification, and an automated report is generated for our customer service department, allowing for proactive performance diagnostics and maintenance. Customers can access historical or daily system performance data through our customer website www.sunpowermonitor.com. Our customers often choose to install electronic kiosks for flat-panel displays to track performance information at their facility. We believe these displays enhance our brand and educate the public and prospective customers about solar power.

Energy Efficiency Consulting and Related Services Sold Through Our Systems Segment

In addition to our solar power systems, we provide related Energy Efficiency services designed to increase the total return on investment through an integrated, seamless solution. We provide custom solar power generation and demand side management solutions to minimize facility energy use and demand, improve building operation controls and increase the comfort level of building occupants. Our experienced personnel have completed projects that include:

Heating, ventilation and air conditioning upgrades: reduces energy use, facilitates building operations and improves the comfort level of inhabitants.

Variable frequency drives: reduces energy use by controlling motors installed on pumps, fans, compressors, chillers and boilers to optimize motor performance and reduce load.

Lighting efficiency services: reduces energy use by determining the optimal mix of energy efficient lighting though comprehensive assessment of light levels, spectrum and energy consumption.

Energy management systems: minimizes costs by balancing energy consumption and supply; achieves energy savings through equipment scheduling, automated controls/alarms and performance monitoring.

Building retro commissioning: offers a building “tune-up” to ensure optimal performance, specifically focusing on equipment scheduling and diagnostics, sequence of operations and control set points.

Corporate History

We were incorporated as a California Corporation in 1985 by Dr. Richard Swanson to develop and commercialize high-efficiency photovoltaic solar electric cell technology. Cypress Semiconductor Corporation, or Cypress, made a significant investment in SunPower in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with us in which all of the outstanding minority equity interest of SunPower was retired, giving Cypress 100% ownership of all of our then outstanding shares of capital stock but leaving our unexercised warrants and options outstanding. In November 2005, we reincorporated in Delaware, created two classes of common stock and held the initial public offering, or IPO, of our class A common stock. After completion of our IPO, Cypress held approximately 52.0 million shares of our class B common stock, representing all the outstanding shares of our class B common stock. Shares of our class A common stock trade on the Nasdaq Global Market.

Relationship with Cypress Semiconductor Corporation

On May 4, 2007, Cypress completed the sale of 7.5 million shares of class B common stock in an offering pursuant to Rule 144 of the Securities Act. Such shares converted to 7.5 million shares of class A common stock upon the sale. As of December 30, 2007, including the effect of the sale completed in May 2007, public offerings of class A common stock in June 2006 and July 2007, and issuance of senior convertible debentures in February 2007 and July 2007, Cypress owned approximately 44.5 million shares of class B common stock, which represented approximately 56% of the total outstanding shares of our common stock, or approximately 51% of such shares on a fully diluted basis after taking into account outstanding stock options (or 49% of such shares on a fully diluted basis after taking into account outstanding stock options and shares loaned to underwriters of our convertible indebtedness). Cypress also holds approximately 90% of the voting power of our total outstanding common stock, as our class B common stock has 8 votes per share compared to one vote per share for our class A common stock. Cypress, its successors in interest or its subsidiaries may convert their shares of class B common stock into shares of class A common stock on a one-for-one basis at any time. Cypress announced on October 6, 2006 and reiterated on October 19, 2006 that it was exploring ways in which to allow its stockholders to fully realize the value of its investment in SunPower. Cypress has made public statements since October 19, 2006 that were consistent with these announcements.

We have entered into various agreements with Cypress including a master separation agreement, an employee matters agreement, a tax sharing agreement, a master transition services agreement, a wafer manufacturing agreement, a lease for certain manufacturing assets, an investor rights agreement, and an indemnification and insurance matters agreement. Our lease of a Cypress facility which we use for manufacturing in the Philippines contains an option for us to purchase the facility. See Note 3 of Notes to our Consolidated Financial Statements.

Under the terms of the master transition services agreement, we will pay Cypress for the services provided to us, at Cypress' cost or at the rate negotiated with Cypress for a period of three years following November 22, 2005 or until a change of control, whichever occurs first. Under the terms of our lease agreement, we will pay Cypress a rate equal to the cost to Cypress for the lease of our Philippines facility until the earlier of 10 years after November 22, 2005 or a change of control of our company. Thereafter, we will pay market rate rent for the facility for the remainder of the 15-year lease. Under the terms of the wafer manufacturing agreement, we pay Cypress to make infrared and imaging detector products for us at prices consistent with the then current Cypress transfer pricing, which is equal to the forecasted cost to Cypress to manufacture the wafers for the next three years or until a change of control of our company. See Note 3 of Notes to our Consolidated Financial Statements.

Cypress delivers high-performance, mixed-signal, programmable solutions that provide customers with rapid time-to-market and exceptional system value. Cypress offerings include the PSoC Programmable System-on-Chip, USB controllers, general-purpose programmable clocks and memories. Cypress also offers wired and wireless connectivity solutions that enhance connectivity and performance in multimedia handsets. Cypress serves numerous markets including consumer, computation, data communications, automotive, industrial and solar power. Cypress trades on the NYSE under the ticker symbol "CY."

PowerLight Acquisition

On January 10, 2007, we completed the acquisition of PowerLight Corporation, or PowerLight. PowerLight was incorporated in California on January 25, 1995 to design, manufacture and install grid-connected commercial solar electric products and systems. PowerLight was the earliest system integrator for commercial applications and developed a broad portfolio of patented designs for rooftop, ground-mounted and tracking system technologies. In connection with the acquisition, total purchase consideration and future stock compensation for the transaction was \$334.4 million, consisting of \$120.7 million in cash and \$213.7 million in common stock, restricted stock, stock options and related acquisition costs. In June 2007, we changed PowerLight's name to SunPower Corporation, Systems, to capitalize on our strong name recognition.

Research and Development

We engage in extensive research and development efforts to improve solar cell efficiency, enhance our system segment products and reduce manufacturing cost and complexity. Our research and development organization works closely with our manufacturing facility, our equipment suppliers and our customers to improve our solar cell design and lower cell, panel and system product manufacturing and assembly costs. In addition, we have dedicated employees who work closely with our current and potential suppliers of silicon ingots, 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.

Our research and development expenditures were approximately \$13.6 million, \$9.7 million and \$6.5 million for the years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively. We have government contracts that enable us to more rapidly develop new technologies and pursue additional research opportunities while helping to offset our research and development expense. Payments received under these contracts offset our research and development expense by approximately 21%, 8% and 7% in fiscal 2007, 2006 and 2005, respectively. In the third quarter of 2007, we signed a Solar America Initiative agreement with the U.S. Department of Energy in which we were awarded \$8.5 million in the first budgetary period. Total funding for the three-year effort is estimated to be \$24.7 million. Our cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be \$27.9 million. This contract replaced our three-year cost-sharing research and development project with the National Renewable Energy Laboratory, entered into in March 2005, to fund up to \$3.0 million or half of the project costs to design our next generation solar panels.

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

Manufacturing

We manufacture our solar cells through our subsidiary, SunPower Philippines Manufacturing Limited, in a 215,000 square foot facility located near Manila in the Philippines. This plant began operations in the fall of 2004 where we currently operate four solar cell manufacturing lines, with a total rated manufacturing capacity of approximately 108 megawatts per year. In August 2006, we purchased a 344,000 square foot building in the Philippines. This facility is approximately 20 miles from our existing facility and is being constructed to house up to 12 solar cell manufacturing lines. We recently began operating three manufacturing lines in the new facility, resulting in a total of seven manufacturing lines with an aggregate production capacity of 214 megawatts per year. By the end of 2008, we plan to operate 12 solar cell manufacturing lines with an aggregate manufacturing capacity of 414 megawatts per year. We plan to begin production as soon as the first quarter of 2010 on the first line of a third solar cell manufacturing facility designed to have an aggregate manufacturing capacity of 500 megawatts per year.

We manufacture our solar panels at our panel manufacturing factory located in the Philippines. Our solar panels are also manufactured for us by a third-party subcontractor in China. We currently operate three solar panel manufacturing lines with a rated manufacturing capacity of 90 megawatts of solar panels per year. In addition, our SunPower branded inverters are manufactured for us by multiple suppliers.

The solar cell value chain starts with high purity silicon called polysilicon. Polysilicon is created by refining quartz or sand. Polysilicon is melted and grown into crystalline ingots by companies specializing in ingot growth. We procure silicon ingots from these suppliers on a contractual basis and then slice the ingots into wafers. The ingots are sliced and the wafers are processed into solar cells in our Philippines manufacturing facility. We also purchase wafers and polysilicon from third-party vendors on a purchase order or contract basis.

Over the past 15 years, we have developed a core competency in processing thin silicon wafers. This proprietary semiconductor processing expertise involves specialized equipment and facilities that we believe allow us to process thin wafers while minimizing breakage and accurately controlling the effect of metallic contaminants and other non-desirable process conditions.

We source the balance of system components based on quality, performance and cost considerations using solar cells and solar panels supplied internally as well as from other third-party suppliers. “Balance of system components” are components of a solar power system other than the solar panels, including mounting structures, SunPower™ Tracker, inverters, charge controllers, grid interconnection equipment and other devices depending upon the specific requirements of a particular system and project. We generally assemble proprietary components, such as cementitious coatings and certain adhesive applications, while we purchase generally available components from third-party suppliers.

Certain of our products, such as our PowerGuard® and SunTile® products, are assembled at our or a third-party contractor’s assembly plant prior to shipment to the project location. Other products such as our SunPower™ Tracker and T-10 commercial roof tiles are field assembled with components shipped directly from suppliers. We currently have the capacity to produce up to an aggregate of 20 megawatts of our PowerGuard® and SunTile® products per year, depending on product mix, in our California assembly plant or third-party contractor’s assembly plant.

Supplier Relationships

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. There is currently an industry-wide shortage of polysilicon, an essential raw material in the production of silicon solar cells. We believe that this shortage will continue through 2008, or potentially for a longer period. The price that we paid for polysilicon increased during 2005 through 2007. We expect our average polysilicon prices to decrease in 2008 based on our existing supply arrangements with vendors. For more information about the general availability of polysilicon, ingots and wafers, and our procurement efforts, please see “*Item 1A: Risk Factors*” including “– *The solar power industry is currently experiencing an industry-wide shortage of polysilicon. This shortage poses several risks to our business, including possible constraints on revenue growth and possible decreases in our gross margins and profitability.*”

With respect to supplies for our components segment, we purchase polysilicon, silicon ingots, inverters, solar panels and a balance of system components 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. Many of these agreements include liquidated damages if either party fails to perform. To date, we have experienced minimal shipment delays in ingot and wafer supply under these multi-year supply agreements.

With respect to supplies for our systems segment, we are able to utilize solar panels from various manufacturers depending on power, performance and cost requirements for our construction projects. We historically partnered, and intend to continue to partner, with solar cell and panel manufacturers that offer the most advanced solar panel technologies and the highest quality products, including Evergreen Solar, Inc., Mitsui Comtek Corp., a distributor for Sanyo Electronics Co., Ltd and Q-Cells Aktiengesellschaft.

For suppliers operating under purchase orders, we structure our agreements as firm purchase orders at a predetermined price or non-binding forecasts of our annual or quarterly product needs to our suppliers and then periodically issue purchase orders for specific projects. These suppliers are generally under no legal obligation to supply inverters, solar panels or other components or raw materials to us until they have accepted our purchase orders. We have experienced situations in which pricing terms and quantity commitments under accepted purchase orders were not honored as a result of the polysilicon shortage.

Customers

Components Customers

We currently sell our solar power products to system integrators and original equipment manufacturers, or OEMs. System integrators typically design and sell complete systems that include our solar panels along with other system components. Our system integrators also incorporate inverters we provide for their system offerings. OEMs typically incorporate our A-300 solar cells into specialty solar panels designed for specific applications. We sell our products in countries in Europe, Asia and North America, principally in regions where government incentives have accelerated solar power adoption.

We currently work with a number of customers who have specific expertise and capabilities in a given market segment or geographic region. As we expand our manufacturing capacity, we anticipate developing additional customer relationships in other markets and geographic regions to continue to decrease our customer concentration and dependence. To date, a substantial amount of our components revenue from our solar power products has been generated from two systems integrator customers in Europe, Conergy AG, or Conergy, and Solon AG, or Solon. Conergy accounted for approximately 7%, 25% and 45% of our total revenue in fiscal 2007, 2006 and 2005, respectively. Solon accounted for approximately 9%, 24% and 16% of our total revenue in fiscal 2007, 2006 and 2005, respectively. Before our acquisition of PowerLight, PowerLight accounted for 16% of our total combined revenue in fiscal 2006. International sales comprise the majority of component revenue and represented approximately 64%, 68% and 70% of component revenue in fiscal 2007, 2006 and 2005, respectively. We anticipate that a significant amount of our total revenue will continue to be generated by sales to customers outside the United States. A significant portion of our sales are denominated in Euros. A table providing total revenue by geography for the last three fiscal years is found in Note 18 to Consolidated Financial Statements in “*Item 8: Financial Statements and Supplementary Data.*”

Systems Customers

Our direct and indirect customers include commercial and governmental entities, investors, electric utilities, production home builders and homeowners. We work with construction, system integration and financing companies to deliver our solar power systems to the end-users of electricity. We often work with financing companies that purchase solar power systems from us, and then sell solar electricity generated from these systems under power purchase agreements to end-users. Under power purchase agreements, the end-users pay the 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 up front. Worldwide, more than 400 SunPower solar power systems are commissioned or in construction, rated in aggregate at more than 300 megawatts of peak capacity. In addition, our new homes division and our dealer network have deployed thousands of SunPower rooftop solar systems to residential customers. We have solar power system projects completed or in the process of being completed in various countries including Germany, Italy, Portugal, South Korea, Spain and the United States.

Domestic and international systems sales represented approximately 51% and 49%, respectively, of our systems segment's revenue in fiscal 2007. Installations in Spain, California and Nevada accounted for 46%, 24% and 22%, respectively, of our systems revenue for the year ended December 30, 2007. In January 2007, we completed the installation of a single system in Serpa, Portugal, rated at over eleven megawatts. In December 2007, we completed the construction of an approximately 14 megawatt solar power plant at Nellis Air Force Base in Nevada that currently represents the largest installed solar power project in North America. During fiscal 2007, approximately 60% of our United States systems revenue was derived from public sector projects and the other 40% was derived from the private sector. We have developed long-standing relationships with many of our customers. For the year ended December 30, 2007, an estimated 85% of our systems segment revenues came from pre-existing direct or indirect customers. Our largest systems customers for fiscal 2007 were SolarPack Corporacion Tecnologica, S.L. in Spain and MMA Renewable Ventures (a subsidiary of MuniMae), whose revenue accounted for approximately 18% and 16%, respectively, of our total revenue in fiscal 2007.

Marketing and Sales

We market and sell solar electric power technologies worldwide through a direct sales force. We have direct sales personnel or representatives in Spain, Germany, Italy, Singapore, Switzerland, Korea and the United States. We also partner with certain value-added resellers, or VARs, throughout the world. Approximately 85%, 73% and 98% of our revenue for the years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively, were derived through our direct sales force and sales affiliates, with the remainder from VARs. We provide warranty coverage on systems we sell through our direct sales force, sales affiliates and VARs. To the extent we sell through VARs, we may provide system design and support services while the VARs are responsible for construction, maintenance and service.

Our marketing programs include conferences and technology seminars, sales training, public relations and advertising. Our sales and marketing group works closely with our research and development and manufacturing groups to align our product development roadmap. Our sales and marketing group also coordinates our product launches and ongoing demand and supply planning with our development, operations and sales groups, as well as with our customers, direct sales representatives and distributors. We support our customers through our field application engineering and customer support organizations. Please see Note 18 of Notes to our Consolidated Financial Statements for information regarding our revenue by geographic region.

Backlog

Components Segment: Our solar cell, solar panel and inverter sales within the components segment are typically ordered by customers under standard purchase orders with relatively short delivery lead-times. We have entered into long-term supply agreements with certain customers that contain minimum firm purchase commitments. However, products to be delivered and the related delivery schedules under these long-term contracts are generally subject to revision by our customers. Accordingly, our backlog at any particular date is not necessarily representative of actual sales for any succeeding period and we believe that our backlog is not a meaningful indicator of future component revenue.

Systems Segment: Our systems segment revenue is primarily comprised of engineering, procurement and construction, or EPC, projects which are governed by customer contracts that require us to deliver functioning solar power systems and are generally completed within 6 to 36 months from the date of the contract signing. In addition, our systems segment also derives revenues from sales of certain solar power products and services that are smaller in scope than an EPC project. Our systems segment backlog represents the uncompleted portion of contracted projects and totaled approximately \$521.2 million as of December 30, 2007, of which approximately \$510.2 million is expected to be completed during fiscal 2008. Our systems segment's backlog does not include orders for contracts that do not have readily determinable pricing or which are not considered firm by management, such as contracts in our new homes group that are generally changeable and cancelable at the customer's option.

Our EPC contracts are often cancelable by our customers under certain situations. In addition, systems project revenues 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. Accordingly, our systems segment backlog may not be a meaningful indicator of future systems revenue for any particular period of time.

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 components solar products compete with a large number of competitors in the solar power market, including BP Solar International Inc., Evergreen Solar, Inc., First Solar Inc., Kyocera Corporation, Mitsubishi Electric Corporation, Motech Industries Inc., Q-Cells AG, Sanyo Corporation, Sharp Corporation, SolarWorld AG and Suntech Power Holdings Co., Ltd. Some of our competitors have established a stronger market position than ours and have larger resources and recognition than we have. In addition, universities, research institutions and other companies such as First Solar have brought to market alternative technologies such as thin films and concentrators, which may compete with our technology in certain applications. Furthermore, the solar power market in general competes with other sources of renewable energy and conventional power generation.

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

- power efficiency and performance;
- price;
- aesthetic appearance of solar cells and panels;
- strength of distribution relationships; and
- timeliness of new product introductions.

We believe that we compete favorably with respect to these factors.

We may also face competition from some of our customers which may develop products or technologies internally which are competitive with our products, or which may enter into strategic relationships with or acquire existing solar power product providers.

Our systems solar power products and services also compete against other power generation sources including conventional fossil fuels supplied by utilities, other alternative energy sources such as wind, biomass, concentrated solar power and emerging distributed generation technologies such as micro-turbines, sterling engines and fuel cells. We believe solar power has certain advantages when compared to these other power generating technologies. We believe solar power offers a stable power price compared to utility network power, which typically increases as fossil fuel prices increase. In addition, solar power systems are deployed in many sizes and configurations and do not produce air, water and noise emissions. Most other distributed generation technologies create environmental impacts of some sort. The high up-front cost of solar relative to utility network power, however, is the primary market barrier for on-grid applications.

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. Many of these companies sell our products as well as their own or those of other manufacturers. Our systems segment primary competitors in the United States include BP Solar International, Inc., a subsidiary of BP p.l.c., Conergy Inc., DT Solar, EI Solutions, Inc., GE Energy, a subsidiary of General Electric Corporation, Schott Solar, Inc., Solar Integrated Technologies, Inc., SPG Solar, Inc., Sun Edison LLC, Sunlink Corporation, SunTechnics Installation & Services, Inc., Thompson Technology Industries, Inc. and WorldWater & Power Corporation. Our systems segment primary competitors in Europe include BP Solar, City Solar AG, Conergy (through its subsidiaries AET Alternitive Energie Technik GmbH, SunTechnics Solartechnik GmbH and voltwerk AG), PV-Systemtechnik Gbr, SAG Solarstrom AG, Solon AG and Taufer Solar GmbH. We also compete with several country specific system integrators and large construction companies, such as Fomento de Construcciones y Contratas, Elecnor, S.A. and Iberinco in Spain to name a few. In each country where we enter as an EPC contractor we face new competitors who may have strong prior experience in developing energy projects or generally large scale construction projects. In addition, we will occasionally compete with distributed generation equipment suppliers such as Caterpillar, Inc. and Cummins, Inc.

Competition is intense, and many of our competitors have significantly greater access to financial, technical, manufacturing, marketing, management and other resources than we do. Many also have greater name recognition, a more established distribution network and a larger installed base of customers. In addition, many of our competitors have well-established relationships with our current and potential suppliers, resellers and their customers and have extensive knowledge of our target markets. As a result, our competitors may be able to devote greater resources to the research, development, promotion and sale of their products and respond more quickly to evolving industry standards and changing customer requirements than we can. Consolidation or strategic alliances among our competitors may strengthen these advantages and may provide them greater access to customers or new technologies. We may also face competition from some of our resellers, who may develop products internally that compete with our product and service offerings, or who may enter into strategic relationships with or acquire other existing solar power system providers. To the extent that government funding for research and development grants, customer tax rebates and other programs that promote the use of solar and other renewable forms of energy are limited, we compete for such funds, both directly and indirectly, with other renewable energy providers and customers.

The principal elements of competition in the solar systems market include technical expertise, experience, delivery capabilities, diversity of product offerings, financing structures, marketing and sales, price, product performance, quality and reliability, and technical service and support. We believe that we 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 and greater technical service and support capabilities and financial resources. If we cannot compete successfully in the solar power industry, our operating results and financial condition will be adversely affected.

Intellectual Property

We rely on a combination of patent, copyright, trade secret, trademark and contractual protection to establish and protect our proprietary rights. “SunPower” is our registered trademark in the United States and the European Community for solar cells and panels. We also hold registered trademarks for PowerLight[®], PowerGuard[®], PowerTracker[®] and SunTile[®] in the United States and registered trademarks for PowerLight[®] and PowerGuard[®] in the European Community. We are seeking registration of SunPower[®] marks in a number of foreign jurisdictions where we conduct business. We require our customers to enter into confidentiality and nondisclosure agreements before we disclose any sensitive aspects of our solar cells, technology or business plans, and we typically enter into proprietary information agreements with employees and consultants. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy or otherwise obtain and use our technology. It is difficult to monitor unauthorized use of technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as laws in the United States. In addition, our competitors may independently develop technology similar to ours.

Although we apply for patents to protect our technology, our revenue is not dependent on any particular patent we own. As of December 30, 2007, including the United States and foreign countries, we had 80 issued patents and over 100 patent applications pending across the entire company. We are co-owners of three additional patents with Honda Giken Kogyo Kabushiki Kaisha. Pending patent applications or any future patent application may or may not result in a patent being issued with the scope of the claims we seek, and issued patents may be challenged, invalidated or declared unenforceable. We intend to continue assessing appropriate opportunities for patent protection of those aspects of our technology, designs, and methodologies and processes that we believe provide significant competitive advantages to us, and for licensing opportunities of new technologies relevant to our business. 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 facility.

Our precautions may not prevent misappropriation or infringement of our intellectual property. Third parties could infringe or misappropriate our patents, copyrights, trademarks, trade secrets and other proprietary rights. Our failure or inability to adequately protect our intellectual property could materially harm our business. 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 “– One of our key products, the PowerTracker[®], now referred to as SunPower[™] Tracker, was acquired through an assignment and acquisition of the patents associated with the product from a third-party individual, and if we are unable to continue to use this product, our business, prospects, operating results and financial condition would be materially harmed.” 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 cells or solar system components we currently manufacture and market, which could harm our competitive position and increase our expenses.”

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. Capital cost rebates provide funds to customers based on the cost of size of a customer's solar power system. Performance-based incentives provide funding to a customer based on the energy produced by their solar system. Feed-in tariffs pay customers for solar power system generation based on kilowatt-hours 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 spin backwards. During these periods, the customer "lends" electricity to the grid, retrieving an equal amount of power at a later time. Net metering encourages customers to size their systems to match their electricity consumption over a period of time, for example over a month or a year, rather than limiting solar generation to matching customers' instantaneous electricity use.

In addition to the mechanisms described above, new market development mechanisms to encourage the use of renewable energy sources continue to emerge. For example, several states in the United States have adopted renewable portfolio standards, or RPS, which mandate that a certain portion of electricity delivered to customers come from a set of 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.

Environmental Regulations

We use, generate and discharge toxic, volatile or otherwise hazardous chemicals and wastes in our research and development and manufacturing 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. If we fail to comply with present or future environmental laws and regulations, we could be subject to fines, suspension of production or a cessation of operations. In addition, under some foreign, federal, state and local statutes and regulations, a governmental agency 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 the release or otherwise was not at fault.

We believe that we have all environmental permits necessary to conduct our business and expect to obtain all necessary environmental permits for our new facility. 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.

Employees

As of December 30, 2007, we had approximately 3,530 employees worldwide, including approximately 380 employees located in the United States, 3,110 employees located in the Philippines and 40 employees located in other countries. Of these employees, approximately 3,130 were engaged in manufacturing, 90 employees in construction projects, 10 employees in product assembly, 70 employees in research and development, 150 employees in sales and marketing and 80 employees in general and administrative. None of our employees is covered by a collective bargaining agreement. Some of our services, including certain information technology, legal, tax, treasury and human resources services, are provided by Cypress pursuant to a master transition services agreement between us and Cypress, as further described in Note 3 of Notes to Consolidated Financial Statements. We have never experienced a work stoppage and we believe relations with our employees are good.

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, as soon as reasonably practicable after they are electronically filed or furnished to the Securities and Exchange Commission, or 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, 3939 North First Street, 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

The following discussion of risk factors contains “forward-looking statements” as discussed in “Item 1: Business” and “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations.” These risk factors may be important to understanding any statement in this Annual Report on Form 10-K or elsewhere. The following information should be read in conjunction with “Item 1: Business” and “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the accompanying Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Our operations and financial results are subject to various risks and uncertainties, including those described below, that could adversely affect our business, financial condition, results of operations, cash flows, and trading price of our common stock. Although we believe that we have identified and discussed below the 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 class A common stock.

Risks Related to Our Business

The solar power industry is currently experiencing an industry-wide shortage of polysilicon. This shortage poses several risks to our business, including possible constraints on revenue growth and possible decreases in our gross margins and profitability.

Polysilicon is an essential raw material in our production of solar cells. Polysilicon is created by refining quartz or sand. Polysilicon is melted and grown into crystalline ingots by companies specializing in ingot growth. We procure silicon ingots from these suppliers on a contractual basis and then slice the ingots into wafers. The ingots are sliced and the wafers are processed into solar cells in our Philippines manufacturing facility. We also purchase wafers and polysilicon from third-party vendors.

There is currently an industry-wide shortage of polysilicon, which has resulted in significant price increases. We expect that the average spot price of polysilicon will continue to increase in the near-term. Increases in polysilicon prices have in the past increased our manufacturing costs and may impact our manufacturing costs and net income in the future. Even with these price increases, demand for solar cells has increased, and many of our principal competitors have announced plans to add additional manufacturing capacity. As this manufacturing capacity becomes operational, it may increase the demand for polysilicon in the near-term and further exacerbate the current shortage. Polysilicon is also used in the semiconductor industry generally and any increase in demand from that sector will compound the shortage. The production of polysilicon is capital intensive and adding additional capacity requires significant lead time. While we are aware that several new facilities for the manufacture of polysilicon are under construction, we do not believe that the supply imbalance will be remedied in the near-term. We expect that polysilicon demand will continue to outstrip supply through much of 2008 and potentially for a longer period.

Although we have arrangements with vendors for the supply of what we believe will be an adequate amount of silicon ingots through 2008, our purchase orders are sometimes non-binding in nature. Our estimates regarding our supply needs may not be correct and our purchase orders or our contracts may be cancelled by our suppliers. Additionally, the volume and pricing associated with these purchase orders and contracts may be changed by our suppliers based on market conditions or for other reasons. If our suppliers were to cancel our purchase orders or change the volume or pricing associated with them, we may be unable to meet customer demand for our products, which could cause us to lose customers, market share and revenue. This would have a material negative impact on our business and operating results. If our manufacturing yields decrease significantly, we add manufacturing capacity faster than currently planned or our suppliers cancel or fail to deliver, we may not have made adequate provision for our polysilicon needs for our manufacturing plans through 2008.

In addition, since some of our silicon ingot and wafer arrangements are with suppliers who do not themselves manufacture polysilicon but instead purchase their requirements from other vendors, these suppliers may not be able to obtain sufficient polysilicon to satisfy their contractual obligations to us.

There are a limited number of polysilicon suppliers. Many of our competitors also purchase polysilicon from our suppliers. Some of them also have inter-locking board members with their polysilicon suppliers or have entered into joint ventures or binding supply contracts with their suppliers. Additionally, a substantial amount of our future polysilicon requirements are expected to be sourced by new suppliers that have not yet proven their ability to manufacture large volumes of polysilicon. In some cases we expect that new entrants will provide us with polysilicon, ingots and wafers. The failure of these new entrants to produce adequate supplies of polysilicon, ingots and/or wafers in the quantities and quality we require could adversely affect our ability to grow production volumes and revenues and could also result in a decline in our gross profit margins. Since we have committed to significantly increase our manufacturing output, an inadequate supply of polysilicon would harm us more than it would harm some of our competitors.

Additionally, the steps we have taken to further increase the efficiency of our polysilicon utilization are unproven at volume production levels and may not enable us to realize the cost reductions we anticipate. Given the polysilicon shortage, we believe the efficient use of polysilicon will be critical to our ability to reduce our manufacturing costs. We continue to implement several measures to increase the efficient use of polysilicon in our manufacturing process. For example, we are developing processes to utilize thinner wafers which require less polysilicon and improved wafer-slicing technology to reduce the amount of material lost while slicing wafers, otherwise known as kerf loss. Although we have implemented production using thinner wafers and anticipate further reductions in wafer thickness, these methods may have unforeseen negative consequences on our yields or our solar cell efficiency or reliability once they are put into large-scale commercial production, or they may not enable us to realize the cost reductions we hope to achieve.

Our inability to obtain sufficient polysilicon, ingots or wafers at commercially reasonable prices or at all for any of the foregoing reasons, or otherwise, would adversely affect our ability to meet existing and future customer demand for our products and could cause us to make fewer shipments, lose customers and market share and generate lower than anticipated revenue, thereby seriously harming our business, financial condition and results of operations.

As polysilicon supply increases, the corresponding increase in the global supply of solar cells and panels may cause substantial downward pressure on the prices of SunPower products, resulting in lower revenues and earnings.

The scarcity of polysilicon has resulted in the underutilization of solar panel manufacturing capacity at many competitors or potential competitors to SunPower, particularly in China. As additional polysilicon becomes available over the next 6 to 24 months, we expect solar panel production globally to increase. Decreases in polysilicon pricing and increases in solar panel production could each result in substantial downward pressure on the price of solar cells and panels, including SunPower products. Such price reductions could have a negative impact on our revenue and earnings, and materially adversely affect our business and financial condition.

Long-term, firm commitment supply agreements with polysilicon, ingot or wafer suppliers could result in insufficient or excess inventory or place us at a competitive disadvantage.

We manufacture our solar cells utilizing ingots and wafers manufactured by third parties, which in turn use polysilicon for their manufacturing process. We are seeking to address the current polysilicon shortage by negotiating multi-year, binding contractual commitments directly with polysilicon suppliers, and supplying such polysilicon to third parties which provide us ingots and wafers. Under such polysilicon agreements, we may be required to purchase a specified quantity of polysilicon, ingots or wafers at fixed prices, in some cases subject to upward inflation-related adjustments over a set period of time, which is often a period of several years. We also may be required to make substantial prepayments to these suppliers against future deliveries. For example, in July 2007 we entered into a long-term supply agreement with Hemlock Semiconductor Corporation, or Hemlock, a manufacturer of polysilicon. The agreement requires us to purchase an amount of silicon that is expected to support more than two gigawatts of solar cell production, at fixed prices from 2010 to 2019. We are also required to make prepayments to Hemlock prior to 2010 in the aggregate amount of \$113.2 million in three equal installments. Such prepayments will be used to fund the expansion of Hemlock's polysilicon manufacturing capacity and will be credited against future deliveries of polysilicon to us. The Hemlock agreement, or any other "take or pay" agreement we enter into, allows the supplier to invoice us for the full purchase price of polysilicon we are under contract to purchase each year, whether or not we actually order the required volume. If for any reason we fail to order the required annual volume under the Hemlock or similar agreements, the resulting monetary damages could have a material adverse effect on our business and results of operations.

We do not obtain contracts or commitments from customers for all of the solar panels manufactured with the polysilicon purchased under such firm commitment contracts. Instead, we rely on our long-term internal forecasts to determine the timing of our production schedules and the volume and mix of products to be manufactured, including the estimated quantity of polysilicon, ingots and wafers needed. The level and timing of orders placed by customers may vary for many reasons. As a result, at any particular time, we may have insufficient or excess inventory, which could render us unable to fulfill customer orders or increase our cost of production. In addition, we have negotiated the fixed prices under these supply contracts based on our long-term projections of the future price of polysilicon. If the spot price of polysilicon in future periods is less than the price we have committed to pay either because of new technological developments or any other reason, our cost of production could be comparatively higher than that of competitors who buy polysilicon on the spot market. This would place us at a competitive disadvantage to these competitors, and could materially and adversely affect our business and results of operations.

Long-term contractual commitments also expose us to specific counter-party risk, which can be magnified when dealing with suppliers without a long, stable production and financial history. For example, if one or more of our contractual counterparties is unable or unwilling to provide us with the contracted amount of polysilicon, wafers or ingots, we could be required to attempt to obtain polysilicon in the spot market, which could be unavailable at that time, or only available at prices in excess of our contracted prices. In addition, in the event any such supplier experiences financial difficulties, it may be difficult or impossible, or may require substantial time and expense, for us to recover any or all of our prepayments. Any of the foregoing could materially harm our financial condition and results of operations.

The reduction 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 and economic incentives. Because a majority of our sales are in the on-grid market, the reduction or elimination of government and economic incentives would adversely affect the growth of this market or result in increased price competition, either of which could cause our revenue to decline and harm our financial results.

Today, the cost of solar power exceeds retail electric rates in many locations. As a result, federal, state and local government bodies in many countries, most notably Germany, Japan, Spain, Italy, Portugal, France, South Korea and the United States, have provided incentives in the form of feed-in tariffs, rebates, tax credits and other incentives 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. These government economic incentives could be reduced or eliminated altogether. For example, Spain has been a strong supporter of solar power products and systems and political changes in Spain could result in significant reductions or eliminations of incentives, including the reduction of feed-in tariffs. In the United States, the federal incentive tax credit for solar installations expires in its current form at year-end 2008, and many commercial customers and third-party financiers are increasingly unwilling to purchase solar systems unless this tax credit is extended. Some solar program incentives expire, decline over time, are limited in total funding or require renewal of authority. Net metering and other operational policies in California or other markets could limit the amount of solar power installed there. For the year ended December 30, 2007, approximately 51% and 46% of our systems segment revenue was generated in the United States and Spain, respectively. Reductions in, or eliminations or expirations of, governmental incentives could result in decreased demand for and lower revenue from our products. Changes in the level or structure of a renewable portfolio standard could also result in decreased demand for and lower revenue or revenue growth from our products.

During the year ended December 30, 2007, a significant share of systems segment revenues were derived from sales of solar power systems to companies formed to develop and operate solar power generation facilities. Such companies have been formed by third-party investors with some frequency in the United States, Spain, South Korea, and Portugal, as these investors seek to benefit from government mandated feed-in tariffs and similar legislation. Our business depends in part on the continuing formation of such companies and the potential revenue source they represent. In deciding whether to form and invest in such companies, potential investors weigh a variety of considerations, including their projected return on investment. Such projections are based on current and proposed federal, state and local laws, particularly tax legislation. Expiration of or changes to these laws, including expiration of the U.S. solar incentive tax credit, amendments to existing tax laws or the introduction of new tax laws, tax court rulings as well as changes in interest rates, administrative guidelines, ordinances and similar rules and regulations could result in different tax assessments and may adversely affect an investor's projected return on investment, which could have a material adverse effect on our business and results of operations.

The execution of our growth strategy for our systems segment is dependent upon the continued availability of third-party financing arrangements for our customers.

For many of our projects, our customers have entered into agreements to finance the power systems over an extended period of time based on energy savings generated by our solar power systems, rather than pay the full capital cost of purchasing the solar power systems up front. For these types of projects, many of our customers choose to purchase solar electricity under a power purchase agreement with a financing company that purchases the system from us. In the year ended December 30, 2007, approximately 54% of our systems revenue was derived from sales of systems to financing companies that engage in power purchase agreements with end-users of electricity. Of such systems sales to financing companies that engage in power purchase agreements with end-users of electricity, 52% and 43% of systems sales were derived in the United States and Spain, respectively, in fiscal 2007. These structured finance arrangements are complex and may not be feasible in many situations. In addition, customers opting to finance a solar power system may forgo certain tax advantages associated with an outright purchase on an accelerated basis which may make this alternative less attractive for certain potential customers. If customers are unwilling or unable to finance the cost of our products, or if the parties that have historically provided this financing cease to do so, or only do so on terms that are substantially less favorable for us or these customers, our growth will be adversely affected.

The success of our systems segment will depend in part on the continuing formation of such financing companies and the potential revenue source they represent. In deciding whether to form and invest in such financing companies, potential investors weigh a variety of considerations, including their projected return on investment. Such projections are based on current and proposed federal, state and local laws, particularly tax legislation. Changes to these laws, including amendments to existing tax laws or the introduction of new tax laws, tax court rulings as well as changes in administrative guidelines, ordinances and similar rules and regulations could result in different tax consequences which may adversely affect an investor's projected return on investment, which could have a material adverse effect on our business and results of operations.

MMA Renewable Ventures (a subsidiary of MuniMae, or MMA), is a significant customer of our systems segment, accounting for approximately 16% of our total revenue in fiscal 2007. MMA Renewable Ventures is a financing company that purchases systems from us and engages in power purchase agreements with end-users of electricity. Effective February 6, 2008, the New York Stock Exchange, or NYSE, suspended the trading of the common stock of MMA because MMA announced it will be unable to file its audited 2006 financial statements by March 3, 2008, the deadline imposed by the NYSE. In connection with completing the restatement and filing the Annual Report on Form 10-K for the year ended December 31, 2006, MMA incurred substantial accounting costs. In addition, general economic conditions have led to a severe capital and credit downturn, resulting in a slow-down to at least one element of MMA's business. MMA's management has evaluated their financial situation and determined it is not reasonably likely that the current reduction in net cash generated from operations will negatively impact its ability to remain a going concern. However, in the event MMA Renewable Ventures ceases to be a significant customer of ours or fails to pay us in a timely manner, it could have a material adverse effect on our future results of operations.

We may be unable to achieve our goal of reducing the cost of installed solar systems by 50 percent by 2012, which may negatively impact our ability to sell our products in a competitive environment, resulting in lower revenues, gross margins and earnings.

To reduce the cost of installed solar systems by 50 percent by 2012, as compared against the cost in 2006, we will have to achieve cost savings across the entire value chain from designing to manufacturing to distributing to selling and ultimately to installing solar systems. We have identified specific areas of potential savings and are pursuing targeted goals. However, such cost savings are dependent upon decreasing silicon prices and lowering manufacturing costs. As part of our announced strategy, we have entered into long-term silicon supply agreements to promote an adequate supply of raw material as well as to reduce the overall cost of such raw material. Additionally, we are increasing production capacity at our existing manufacturing facilities while seeking to improve efficiencies. We also expect to develop additional manufacturing capacity. As a result, we expect these improvements will decrease our per unit production costs. However, if we are unsuccessful in our efforts to reduce the cost of installed solar systems by 50 percent by 2012, our revenues, gross margins and earnings may be negatively impacted in the competitive environment and particularly in the event that governmental and fiscal incentives are reduced or an increase in the global supply of solar cells and solar panels causes substantial downward pressure on prices of our products.

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 significantly increase our production capacity between 2008 and 2010. To do so will require successful execution of expanding our existing manufacturing facilities, developing new manufacturing facilities, ensuring delivery of adequate polysilicon and ingots, developing more efficient wafer-slicing methods, maintaining adequate liquidity and financial resources, and continuing to increase our revenues from operations. Expanding our manufacturing facilities or developing 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 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.

Prior to our acquisition, SP Systems experienced significant revenue growth due primarily to the development and market acceptance of its PowerGuard[®] roof system, the acquisition and introduction of its PowerTracker[®] ground and elevated parking systems, its development of other technologies and increasing global interest and demand for renewable energy sources, including solar power generation. As a result, SP Systems increased its revenues in a relatively short period of time. Its annual revenue increased from \$50.9 million in 2003 to \$87.6 million in 2004 to \$107.8 million in 2005 to \$243.4 million in 2006. As a result of our acquisition involving SP Systems, our systems segment revenue for the year ended December 30, 2007 was \$464.2 million. We may not experience similar growth of our total revenue or even similar growth of our systems segment revenue in future periods. Accordingly, investors should not rely on the results of any prior quarterly or annual period as an indication of our future operating performance.

Our recent expansion has placed, and our planned expansion and any other future expansion will continue to place, a significant strain on our management, personnel, systems and resources. We plan to purchase additional equipment to significantly expand our manufacturing capacity and to hire additional employees to support an increase in manufacturing, research and development and our sales and marketing efforts. We had approximately 3,530 full-time employees as of December 30, 2007, and we anticipate that we will need to hire a significant number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. 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. To successfully manage our growth and handle the responsibilities of being a public company, we believe we must effectively:

- hire, train, integrate and manage additional qualified engineers for research and development activities, sales and marketing personnel, and financial and information technology personnel;
- retain key management and augment our management team, particularly if we lose key members;
- continue to enhance our customer resource management and manufacturing management systems;
- implement and improve additional and existing administrative, financial and operations systems, procedures and controls, including the need to update and integrate our financial internal control systems in SP Systems and in our Philippines facility with those of our San Jose, California headquarters;
- expand and upgrade our technological capabilities; and
- manage multiple relationships with our customers, suppliers and other third parties.

We may encounter difficulties in effectively managing the budgeting, forecasting and other process control issues presented by rapid growth. 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.

Since we cannot test our solar panels for the duration of our standard 25-year warranty period, we may be subject to unexpected warranty expense; if we are subject to warranty and product liability claims, such claims could adversely affect our business and results of operations.

The possibility of future product failures could cause us to incur substantial expense to repair or replace defective products. We have agreed to indemnify our customers and our distributors in some circumstances against liability from defects in our solar cells. A successful indemnification claim against us could require us to make significant damage payments, which would negatively affect our financial results.

In our components segment, our current standard product warranty for our solar panels includes a 10-year warranty period for defects in materials and workmanship and a 25-year warranty period for declines in power performance as well as a one-year warranty on the functionality of our solar cells. We believe our warranty periods are consistent with industry practice. Due to the long warranty period and our proprietary technology, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. We have sold solar cells only since late 2004. Any increase in the defect rate of our products would cause us to increase the amount of warranty reserves and have a corresponding negative impact on our results. Although we conduct accelerated testing of our solar cells and have several years of experience with our all back contact cell architecture, our solar panels have not and cannot be tested in an environment simulating the 25-year warranty period. As a result of the foregoing, we may be subject to unexpected warranty expense, which in turn would harm our financial results.

Like other retailers, distributors and manufacturers of products that are used by consumers, we face an inherent risk of exposure to product liability claims in the event that the use of the solar power products into which our solar cells and solar panels are incorporated results in injury. 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 products 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 late 2004 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 have evaluated the potential risks we face and believe that we have appropriate levels of insurance for product liability claims. We rely on our general liability insurance to cover product liability claims and have not obtained separate product liability insurance. However, 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. Our exposure to warranty and product liability claims is expected to increase significantly in connection with our planned expansion into the new home development market.

Warranty and product liability claims may result from defects or quality issues in certain third-party technology and components that our systems segment incorporates into its solar power systems, particularly solar cells and panels, over which it has no control. While its agreements with its suppliers generally include warranties, such provisions may not fully compensate us for any loss associated with third-party claims caused by defects or quality issues in such products. In the event we seek recourse through warranties, we will also be dependent on the creditworthiness and continued existence of these suppliers.

Our current standard warranty for our solar power systems differs by geography and end-customer application and includes either a one, two or five year comprehensive parts and workmanship warranty, after which the customer may typically extend the period covered by its warranty for an additional fee. Due to the warranty period, we bear the risk of extensive warranty claims long after we have completed a project and recognized revenues. Future product failures could cause us to incur substantial expenses to repair or replace defective products. While we generally pass through manufacturer warranties we receive from our suppliers to our customers, we are responsible for repairing or replacing any defective parts during our warranty period, often including those covered by manufacturers' warranties. 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 included in our systems, such as inverters.

Prior to our acquisition of SP Systems, one of SP System’s major panel suppliers at the time, AstroPower, Inc., filed for bankruptcy in February 2004. SP Systems had installed solar systems incorporating over 30,000 AstroPower panels, of which approximately 19,000 panels are still under warranty. The majority of these warranties expire by 2022. While we have not experienced a significant number of warranty or other claims related to the installed AstroPower panels, we may in the future incur significant unreimbursable expenses in connection with the repair or replacement of these panels, which could have a material adverse effect on our business and results of operations. In addition, another major supplier of solar panels notified us of a product defect that may affect a substantial number of panels installed by SP Systems between 2002 and September 2006. If the supplier does not perform its contractual obligations to remediate the defective panels, we will be exposed to those costs it would incur under the warranty with SP Systems’ customers.

The competitive environment in which our systems business operates often requires us to arrange financing for our customer’s projects and/or undertake post-sale customer obligations. If we are unable to arrange adequate financing or if our post-sale customer obligations are more costly than expected, our revenue and financial results could be materially adversely affected.

We arrange third-party financing for most of our end customer’s solar projects that we install through our systems segment. Additionally, we are often required as a condition of financing or at the request of our end customer to undertake certain post-sale obligations such as:

- System output performance guaranties;
- System maintenance;
- Liquidated damage payments or customer termination rights if the system we are constructing is not commissioned within specified timeframes;
- Guaranties of certain minimum residual value of the system at specified future dates; and
- System put-rights whereby we could be required buy-back a customer’s system at fair value on specified future dates.

Such financing arrangements and post-sale 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. Moreover, if we are unable to arrange adequate financing or if our post-sale customer obligations are more costly than expected, our revenue and financial results could be materially adversely affected.

Our systems segment acts as the general contractor for our customers in connection with the installations of our solar power systems and is subject to risks associated with construction, cost overruns, delays and other contingencies tied to performance bonds and letters of credit, which could have a material adverse effect on our business and results of operations.

Our systems segment acts as the general contractor for our customers in connection with the installation of our solar power systems. All essential costs are estimated at the time of entering into the sales 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 other project developers, subcontractors, suppliers and other parties to the project. 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. Should miscalculations in planning a project or defective or late execution occur, we may not achieve our expected margins or cover our costs. Also, some systems customers require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Due to the general performance risk inherent in construction activities, it has become increasingly difficult recently to secure suitable bonding agencies willing to provide performance bonding, and obtaining letters of credit requires adequate collateral because we have not obtained a credit rating. In the event we are unable to obtain bonding or sufficient letters of credit, we will be unable to bid on, or enter into, sales contracts requiring such bonding.

In addition, some of our larger systems customers require that we pay substantial liquidated damages for each day or other period its solar installation 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. In addition, 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. Furthermore, 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. All such risks could have a material adverse effect on our business and results of operations.

A limited number of components customers are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers could have a material adverse effect on us.

Even though our customer base is expected to increase and our revenue streams to diversify, a substantial portion of our net revenues could continue to depend on sales to a limited number of customers. Currently, our largest components segment customers are Conergy and Solon. Conergy and Solon individually accounted for less than 10% of total revenue for the year ended December 30, 2007. However, the loss of sales to either of these customers would have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement or in the event of bankruptcy, and our customers may seek to renegotiate the terms of current agreements or renewals. Most of the solar panels we sell to the European market are sold through our agreement with Conergy, and we may enter into similar agreements in the future.

In November 2007, Conergy announced that it was experiencing a liquidity shortfall. These liquidity issues were subsequently resolved through interim financing from banks. In addition, Conergy is currently undergoing a reorganization which includes changes in the composition of management, discontinuation of certain non-core businesses and headcount reductions. Conergy's management has evaluated their financial situation and determined it is not reasonably likely that the recently experienced shortfall in liquidity and restructuring activities will negatively impact its ability to remain a going concern. However, in the event Conergy ceases to be a significant customer of ours or fails to pay us in a timely manner, it could have a material adverse effect on our future results of operations.

Our operating results will be subject to fluctuations and are inherently unpredictable; if we fail to meet the expectations of securities analysts or investors, our stock price may decline significantly.

Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. It is possible that our operating results in some quarters will be below market expectations. In particular, our systems segment is difficult to forecast and is susceptible to severe fluctuations in financial results. The amount, timing and mix of sales of our systems segment, often for a single medium or large-scale project, may cause severe fluctuations in our revenue and other financial results. Further, our revenue mix of high margin material sales versus lower margin projects in the systems business segment can fluctuate dramatically quarter to quarter, which may adversely affect our revenue and financial results in any given period. Finally, our ability to meet project completion schedules for an individual project and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue, may similarly cause severe fluctuations in our revenue and other financial results. This may cause us to miss analysts' guidance or any future guidance announced by us.

In addition, our quarterly operating results will also be affected by a number of other factors, including:

- the average selling price of our solar cells, solar panels and solar power systems;
- the availability and pricing of raw materials, particularly polysilicon;
- the availability, pricing and timeliness of delivery of raw materials and components, particularly solar panels and balance of systems components, including steel, necessary for our solar power systems to function;
- the rate and cost at which we are able to expand our manufacturing and product assembly capacity to meet customer demand, including costs and timing of adding personnel;
- construction cost overruns, including those associated with the introduction of new products;
- the impact of seasonal variations in demand and/or revenue recognition linked to construction cycles and weather conditions;
- timing, availability and changes in government incentive programs;
- unplanned additional expenses such as manufacturing failures, defects or downtime;
- acquisition and investment related costs;
- unpredictable volume and timing of customer orders, some of which are not fixed by contract but vary on a purchase order basis;
- the loss of one or more key customers or the significant reduction or postponement of orders from these customers;
- geopolitical turmoil within any of the countries in which we operate or sell products;
- foreign currency fluctuations, particularly in the Euro, Philippine peso or South Korean won;
- the effect of currency hedging activities;
- our ability to establish and expand customer relationships;

- changes in our manufacturing costs;
- changes in the relative sales mix of our systems, solar cells and solar panels;
- the availability, pricing and timeliness of delivery of other products, such as inverters and other balance of systems materials necessary for our solar power products to function;
- our ability to successfully develop, introduce and sell new or enhanced solar power products in a timely manner, and the amount and timing of related research and development costs;
- the timing of new product or technology announcements or introductions by our competitors and other developments in the competitive environment;
- the willingness of competing solar cell and panel suppliers to continue product sales to our systems segment;
- increases or decreases in electric rates due to changes in fossil fuel prices or other factors; and
- shipping delays.

We base our planned operating expenses in part on our expectations of future revenue, and a significant portion of our expenses will be 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 analysts' guidance or any guidance announced by us. If we fail to meet or exceed analyst or investor expectations or our own future guidance, even by a small amount, our stock price could decline, perhaps substantially.

Our solar cell production lines are located in our manufacturing facilities in the Philippines, and if we experience interruptions in the operation of these production lines or are unable to add additional production lines, it would likely result in lower revenue and earnings than anticipated.

We currently have seven solar cell manufacturing lines in production which are located at our manufacturing facilities in the Philippines. If our current or future production lines were to experience any problems or downtime, we would be unable to meet our production targets and our business would suffer. If any piece of equipment were to break down or experience downtime, it could cause our production lines to go down. We have started operations in our second solar cell manufacturing facility nearby our existing facility in the Philippines. This expansion has required and will continue to require significant management attention, a significant investment of capital and substantial engineering expenditures and is subject to significant risks including:

- we may experience cost overruns, delays, equipment problems and other operating difficulties;
- we may experience difficulties expanding our processes to larger production capacity;
- our custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed; and
- we are 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.

If we experience any of these or similar difficulties, we may be unable to complete the addition of new production lines on schedule in order to expand our manufacturing facilities and our manufacturing capacity could be substantially constrained. If this were to occur, our per-unit manufacturing costs would increase, we would be unable to increase sales or gross margins as planned and our earnings would likely be materially impaired.

Our systems segment recognizes revenue on a "percentage-of-completion" basis and upon the achievement of contractual milestones and any delay or cancellation of a project could adversely affect our business.

Our systems segment recognizes revenue on a "percentage-of-completion" basis and, as a result, the revenue from this segment is driven by the performance of our contractual obligations, which is generally driven by the timelines of installation of our solar power systems at customer sites. The percentage-of-completion method of accounting for revenue recognition is inherently subjective because it relies on management estimates of total project cost as a basis for recognizing revenue and profit. Accordingly, revenue and profit we have recognized under the percentage-of-completion method are potentially subject to adjustments in subsequent periods based on refinements in estimated costs of project completion that could materially impact our future revenue and profit.

In connection with our acquisition of SP Systems, we do not recognize revenue from intercompany sales by our components segment to our systems segment. Instead, the sale of our solar panels used for construction projects are included in system segment revenues. This could result in unpredictability of revenue and, in the near term, a revenue decrease. As with any project-related business, there is the potential for delays within any particular customer project. Variation of project timelines and estimates may impact our ability to recognize revenue in a particular period. Moreover, incurring penalties involving the return of the contract price to the customer for failure to timely install one project could negatively impact our ability to continue to recognize revenue on a “percentage-of-completion” basis generally for other projects. In addition, certain customer contracts may include payment milestones due at specified points during a project. Because our systems segment usually must invest substantial time and incur significant expense in advance of achieving milestones and the receipt of payment, failure to achieve such milestones could adversely affect our business and results of operations.

We have recently established a captive solar panel assembly factory, and, if this panel manufacturing factory is unable to produce high quality solar panels at commercially reasonable costs, our revenue growth and gross margin could be adversely affected.

We currently run three solar panel assembly lines in the Philippines with 90 megawatts of production capacity. This factory commenced commercial production during the fourth quarter of 2006. Much of the manufacturing equipment and technology in this factory is new and ramping to achieve their full rated capacity. In the event that this factory is unable to ramp production with commercially reasonable yields and competitive production costs, our anticipated revenue growth and gross margin will be adversely affected.

Expansion of our manufacturing capacity has and will continue to increase our fixed costs, which increase may have a negative impact on our financial condition if demand for our products decreases.

We have recently expanded, and plan to continue to expand, our manufacturing facilities. As we build additional manufacturing lines or facilities, our fixed costs will increase. If the demand for our solar power products or our production output decreases, we may not be able to spread a significant amount of our fixed costs over the production volume, thereby increasing our per unit fixed cost, which would have a negative impact on our financial condition and results of operations.

We depend on a third-party subcontractor in China 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.

Historically, we have relied on Jiawei, a third-party subcontractor in China, to assemble a significant portion of our solar cells into solar panels and perform panel testing and to manage packaging, warehousing and shipping of our solar panels. We do not have a long-term agreement with Jiawei and we typically obtain its services based on short-term purchase orders that are generally aligned with timing specified by our customers’ purchase orders and our sales forecasts. If the operations of Jiawei were disrupted or its financial stability impaired, or if it should choose not to devote capacity to our solar panels in a timely manner, our business would suffer as we may be unable to produce finished solar panels on a timely basis. In addition, we supply inventory to Jiawei and we bear the risk of loss, theft or damage to our inventory while it is held in its facilities.

As a result of outsourcing a significant portion of this final step in our production, we face several significant risks, including:

- limited assembly and testing capacity and potentially higher prices;
- limited control over delivery schedules, quality assurance and control, manufacturing yields and production costs; and
- delays resulting from an inability to move production to an alternate provider.

The ability of our subcontractor to perform assembly and test is limited by its available capacity. We do not have a guaranteed level of production capacity with our subcontractor, and our production needs for solar panels may differ from our forecasts provided to Jiawei. Other customers of Jiawei that are larger and better financed than we are, or that have long-term agreements in place, may induce Jiawei to reallocate capacity to them. Any reallocation could impair our ability to secure the supply of solar panels that we need for our customers. In addition, interruptions to the panel manufacturing processes caused by a natural or man-made disaster could result in partial or complete disruption in supply until we are able to shift manufacturing to another facility. It may not be possible to obtain sufficient capacity or comparable production costs at another facility. Migrating our design methodology to a new third-party subcontractor or to a captive panel assembly facility could involve increased costs, resources and development time. Utilizing additional third-party subcontractors 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 existing customers.

If we do not achieve satisfactory yields or quality in manufacturing our solar cells, 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. This often occurs during the production of new products or the installation and start-up of new process technologies or equipment. For example, we recently acquired a building to house our second solar cell manufacturing facility near our existing facility. As we expand our manufacturing capacity and bring additional lines or facilities into production, we may experience lower yields initially as is typical with any new equipment or process. We also expect to experience lower yields as we continue the initial migration of our manufacturing processes to thinner wafers. If we do not achieve planned yields, our product costs could increase, and product availability would decrease resulting in lower revenues than expected.

Additionally, products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells and 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 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 cells or solar panels with errors or defects, including cells or panels of third-party manufacturers, or if there is a perception that such solar cells or solar panels contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed.

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 electricity generation products is heavily influenced by foreign, U.S. federal, state and local government regulations and policies concerning the electric utility industry, 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. In the U.S. and in a number of other countries, these regulations and policies are being modified and may continue to be modified. Customer purchases of, or further investment in the research and development of, alternative energy sources, including solar power technology, could be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our solar power products. For example, without a regulatory mandated exception for solar power systems, utility customers are often charged interconnection or standby fees for putting distributed power generation on the electric utility network. These fees could increase the cost to our customers of using our solar power products and make them less desirable, thereby harming our business, prospects, results of operations and financial condition.

We anticipate that our solar power products and their installation will be subject to oversight and regulation in accordance with national and local ordinances relating to building codes, safety, environmental protection, utility interconnection and metering and related matters. It is difficult to track the requirements of individual states and design equipment to comply with the varying standards. Any new government regulations or utility policies pertaining to our solar power products may result in significant additional expenses to us and our resellers and their customers and, as a result, could cause a significant reduction in demand for our solar power products.

We incurred net losses from inception through 2005 and for the quarter ended July 1, 2007 and we may not be able to generate sufficient revenue and gross margin in the future to achieve or sustain profitability.

We have incurred net losses from inception through 2005 and for the quarter ended July 1, 2007. On December 30, 2007, we had an accumulated deficit of approximately \$22.8 million. To maintain our profitability, we will need to generate and sustain higher revenue while maintaining reasonable cost and expense levels. We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. We may not be able to sustain or increase profitability on a quarterly or an annual basis. If we do not sustain profitability or otherwise meet the expectations of securities analysts or investors, the market price of our common stock will likely decline.

We will continue to be dependent on a limited number of third-party suppliers for key components for our solar systems products during the near-term, which could prevent us from delivering our products to our customers within required timeframes, which could result in installation delays, cancellations, liquidated damages and loss of market share.

In addition to our reliance on a small number of suppliers for its solar cells and panels, we rely on third-party suppliers for key components for our solar power systems, such as inverters that convert the direct current electricity generated by solar panels into alternating current electricity usable by the customer. For the year ended December 30, 2007, one supplier accounted for most of our inverter purchases for domestic projects, two suppliers accounted for most of our inverter purchases for European projects and one supplier accounted for all of the inverter purchases for our Asia projects. In addition, one vendor supplies all of the foam required to manufacture our PowerGuard[®] roof system.

If we fail to develop or maintain our relationships with our limited suppliers, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay, which could prevent us from delivering our products to our customers within required timeframes and we may experience order cancellation 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. The failure of a supplier to supply components in a timely manner, or to supply components that meet our quality, quantity and cost requirements, could impair our ability to manufacture our products or decrease their costs. If we cannot obtain substitute materials 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 installation delays, cancellations, liquidated damages and loss of market share, any of which could have a material adverse effect on our business and results of operations.

We depend on a combination of our own wafer-slicing operations and those of other vendors for the wafer-slicing stage of our manufacturing, and any technical problems, breakdowns, delays or cost increases could significantly delay our manufacturing operations, decrease our output and increase our costs.

We have historically depended on the wafer-slicing operations of third-party vendors to slice a portion of our ingots into wafers. In the year ended December 30, 2007, we sliced approximately 44% of our wafers. In October 2007, we announced our entry into a joint venture agreement to form a new company in the Philippines named First Philec Solar Corporation. This new company was formed to perform wafer-slicing operations for us. If our third-party vendors increase their prices or decrease or discontinue their shipments to us, as a result of equipment malfunctions, competing purchasers or otherwise, and we are unable to obtain substitute wafer-slicing from another vendor on acceptable terms, or increase our own wafer-slicing operations on a timely basis, our sales will decrease, our costs may increase or our business will otherwise be harmed.

We obtain 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 and in our wafer-slicing operations have 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. In addition, we currently obtain the equipment for many of our manufacturing processes from sole suppliers and we obtain our wafer-slicing equipment from one supplier. 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 or wafer-slicing equipment at a time when we are manufacturing commercial quantities of our products, 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 capacity expansion of our manufacturing facility and otherwise disrupt our production schedule or increase our costs of production.

Acquisitions of other companies or investments in joint ventures with other companies could adversely affect our operating results, dilute our stockholders’ equity, or cause us to incur additional debt or assume contingent liabilities.

To increase our business and maintain our competitive position, we may acquire other companies or engage in joint ventures in the future. 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 is involved, which may be necessary to successfully operate and integrate the business;
- problems integrating the acquired operations, personnel, 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 key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining relationships with suppliers and customers of the acquired business, particularly where such customers or suppliers compete with us;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, etc.

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 addition, acquisitions or joint ventures could 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.

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.

For example, as a result of our acquisition of SP Systems, we now directly compete with some of our own suppliers of solar cells and panels. As a result, the acquisition could cause one or more solar cell and panel suppliers to reduce or terminate their business relationship with us. Since the acquisition closed, we have discontinued our purchasing relationship with certain suppliers of panels. Other reductions or terminations, which may be significant, could occur. Any such reductions or terminations could adversely affect our ability to meet customer demand for solar power systems, and materially adversely affect our results of operations and financial condition, which would likely materially adversely affect our results of operations and financial condition. We will use commercially reasonable efforts to replace any lost solar cells or panels with our own inventory to mitigate the impact on us. However, such replacements may not be sufficient to fully address solar supply shortfalls, and in any event could negatively impact our revenue and earnings as we forego selling such inventory to third parties.

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.

For the year ended December 30, 2007, a substantial portion of our sales were made to customers outside of the United States. Historically, we have had significant sales in Germany, Portugal, Spain and South Korea. We currently have seven solar cell production lines in operation, which are located at our manufacturing facilities in the Philippines. In addition, a majority of our assembly functions have historically been conducted by a third-party subcontractor in China. Risks we face in conducting business internationally include:

- multiple, conflicting and changing laws and regulations, export and import restrictions, employment laws, regulatory requirements and other government approvals, permits and licenses;
- difficulties and costs in staffing and managing foreign operations as well as cultural differences;
- difficulties and costs in recruiting and retaining individuals skilled in international business operations;
- increased costs associated with maintaining international marketing efforts;
- potentially adverse tax consequences associated with our permanent establishment of operations in more countries;
- inadequate local infrastructure;
- financial risks, such as longer sales and payment cycles and greater difficulty collecting accounts receivable; and
- political and economic instability, including wars, acts of terrorism, political unrest, boycotts, curtailments of trade and other business restrictions.

We particularly face risks associated with political and economic instability and civil unrest in the Philippines. In addition, in the Asia/Pacific region generally, we face risks associated with spread of the avian flu, tensions between countries in that region, such as political tensions between China and Taiwan, the ongoing discussions with North Korea regarding its nuclear weapons program, potentially reduced protection for intellectual property rights, government-fixed foreign exchange rates, relatively uncertain legal systems and developing telecommunications infrastructures. In addition, some countries in this region, such as China, have adopted laws, regulations and policies which impose additional restrictions on the ability of foreign companies to conduct business in that country or otherwise place them at a competitive disadvantage in relation to domestic companies.

In addition, although base wages are lower in the Philippines than in the United States, wages for our employees in the Philippines are increasing, which could result in increased costs to employ our manufacturing engineers. As of December 30, 2007, approximately 88% of our employees were located in the Philippines. We also are faced with competition in the Philippines for employees, and we expect this competition to increase as additional manufacturing companies enter the market and expand their operations. In particular, there may be limited availability of qualified manufacturing engineers. We have benefited from an excess of supply over demand for college graduates in the field of engineering in the Philippines. If this favorable imbalance changes due to increased competition, it could affect the availability or cost of qualified employees, who are critical to our performance. This could increase our costs and turnover rates.

Currency fluctuations in the Euro, Philippine peso or the South Korean won relative to the U.S. dollar could decrease revenue or increase expenses.

During the year ended December 30, 2007, approximately 64% of our components segment revenue was generated outside the United States. We presently have currency exposure arising from sales, capital equipment purchases, prepayments and customer advances denominated in foreign currencies. A majority of our components segment revenue is denominated in Euros, including fixed price agreements with Conergy and Solon, and a significant portion is denominated in U.S. dollars, while a portion of our components segment costs are incurred and paid in Euros and a smaller portion of our components segment expenses are paid in Philippine pesos and Japanese yen. In addition, our prepayments to Wacker-Chemie AG, a polysilicon supplier, and our customer advances from Solon are denominated in Euros. For the year ended December 30, 2007, approximately 49% of our systems segment revenue was generated outside the U.S., of which 47% was denominated in Euros and a significant portion of its costs are incurred and paid in Euros.

We are exposed to the risk of a decrease in the value of the Euro relative to the U.S. dollar, which would decrease our total revenue. Changes in exchange rates between foreign currencies and the U.S. dollar may adversely affect our operating margins. For example, if these foreign currencies appreciate against the U.S. dollar, it will make it more expensive in terms of U.S. dollars to purchase inventory or pay expenses with foreign currencies. In addition, currency devaluation can result in a loss to us if we hold deposits of that currency as well as make our products, which are usually purchased with U.S. dollars, relatively more expensive than products manufactured locally. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar cells more expensive for international customers, thus potentially leading to a reduction in our sales and profitability. Furthermore, many of our competitors will be 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 currency forward contracts and options. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our total revenue and profitability as a result of foreign currency fluctuations.

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

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary's registrations with the Board of Investments and Philippine Economic Zone Authority, which provide that we pay no income tax in the Philippines for four years under our Board of Investments non-pioneer status and Philippine Economic Zone Authority registrations, and six years under our Board of Investments pioneer status registration. Our current income tax holidays expire in 2010, and we intend to apply for extensions. However, these tax holidays may or may not be extended. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our Philippine Economic Zone Authority 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 of 32%. Fiscal 2007 was the first year for which profitable operations benefitted from the Philippine tax ruling.

Our systems segment sales cycles for projects can be longer than our components segment sales cycle for our solar cells and panels and may require significant upfront investment which may not ultimately result in signing of a sales contract and could have a material adverse effect on our business and results of operations.

Our systems segment sales cycles, which measure the time between its first contact with a customer and the signing of a sales contract for a particular project, vary substantially and average approximately eight months. Sales cycles for our systems segment are lengthy for a number of reasons, including:

- our customers often delay purchasing decisions until their eligibility for an installation rebate is confirmed, which generally takes several months;
- the long time required to secure adequate financing for system purchases on terms acceptable to customers; and
- the customer's review and approval processes for system purchases are lengthy and time consuming.

As a result of these long sales cycles, we must make significant upfront investments of resources in advance of the signing of sales contracts and the receipt of any revenues, most of which are not recognized for several additional months following contract signing. Accordingly, we must focus our limited resources on sales opportunities that we believe we can secure. Our inability to enter into sales contracts with potential customers after we make such an investment could have a material adverse effect on our business and results of operations.

We generally do not have long-term agreements with our customers and accordingly could lose customers without warning.

Our solar cells and solar panel products are generally not sold pursuant to long-term agreements with customers, but instead are sold on a purchase order basis. We typically contract to perform 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 insignificant, 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. This, in addition to the completion and non-repetition of large systems projects, in turn could cause our operating results to fluctuate.

Our systems segment could be adversely affected by seasonal trends and construction cycles.

Our systems segment is subject to significant industry-specific seasonal fluctuations. Its 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 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, to the extent we are successful in implementing our strategy to enter the new home development market, we expect the seasonality of our business and financial results to become more pronounced as sales in this market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

The expansion of our business into the new homebuilder residential market may increase our exposure to certain risks.

Our systems segment has expanded into the residential market by selling our systems to large production homebuilders. As part of this strategy, we developed SunTile®, a product that integrates a solar panel into a roof tile. To date we have focused on large-scale commercial applications and have limited experience serving the new homebuilder residential market.

Our new residential products and services may not gain market acceptance and thus may not otherwise be successful in entering the residential market, which would limit our growth and adversely affect our operating results. Furthermore, the residential construction market has peculiar characteristics that may increase our exposure to certain risks we currently face or expose us to new risks. These risks include increased seasonality, sensitivity to interest rates and other macroeconomic conditions, as well as enhanced legal exposure. In particular, new home developments often result in class action litigation when one or more homes within a development experiences construction problems. Unlike our systems segment commercial business, where we typically act as the general contractor, we will be generally acting as subcontractor to homebuilders overseeing the development projects. In many instances subcontractors may be held liable for work of the homebuilder or other subcontractors. In addition, homebuilders often require onerous indemnification obligations that effectively allocate most of the potential liability from homeowner or class action lawsuits to subcontractors, including us. Insurance policies for residential work have significant limitations on coverage that may render such policies inapplicable to these lawsuits. If we are not successful in entering the new residential construction market, or if as a result of the litigation and indemnification risks associated with such market, we incur significant costs, our business and results of operations could be materially adversely affected.

If we fail to successfully develop and introduce new products and services or increase the efficiency of our products, we will not be able to compete effectively, and our ability to generate revenues will suffer; technological changes in the solar power industry could render our solar power products uncompetitive or obsolete, which could reduce our market share and cause our sales to decline.

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, 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' operating results and financial results.

The solar power market is characterized by continually changing technology requiring improved features, such as increased efficiency and higher power output and improved aesthetics. 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 and changing customer requirements. Technologies developed by others, including thin film solar panels, concentrating solar cells or other solar technologies, may prove more advantageous than ours for the commercialization of solar power products and may render our technology obsolete.

Our failure to further refine our technology and develop and introduce new solar power products could cause our products to become uncompetitive or obsolete, which could reduce our market share and cause our sales to decline. We will need to invest significant financial resources in research and development to maintain our market position, keep pace with technological advances in the solar power industry and effectively compete in the future.

Evaluating our business and future prospects may be difficult due to our limited history in producing and shipping solar cells and solar panels in commercial volumes.

There is limited historical information available about our company upon which investors can base their evaluation of our business and prospects. Although we began to develop and commercialize high-efficiency solar cell technology for use in solar concentrators in 1988 and began shipping product from our pilot manufacturing facility in 2003, we shipped our first commercial A-300 solar cells from our Philippines manufacturing facility in late 2004. Relative to the entire solar industry, we have shipped only a limited number of solar cells and solar panels and have recognized limited revenue. Our future success will require us to continue to scale our Philippines facilities significantly beyond their current capacity. In addition, our business model, technology and ability to achieve satisfactory manufacturing yields at higher volumes are unproven at significant scale. As a result, investors should consider our business and prospects in light of the risks, expenses and challenges that we will face as an early-stage company seeking to develop and manufacture new products in a rapidly growing market.

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

We intend to continue our policy of selectively pursuing contract research, product development and market development programs funded by various agencies of the federal and state governments to complement and enhance our own resources. Funding from government grants is generally recorded as an offset to our research and development expense. During the year ended December 30, 2007, funding from government grants, agreements and contracts offset approximately 21% our total research and development expense, excluding in-process research and development. In addition, in the third quarter of 2007, we signed a Solar America Initiative agreement with the U.S. Department of Energy in which we were awarded \$8.5 million in the first budgetary period. Total funding for the three-year effort is estimated to be \$24.7 million. Our cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be \$27.9 million.

These government agencies may not continue their commitment to programs relevant to our development projects. Moreover, we may not be able to compete successfully to obtain funding through these or other programs. A reduction or discontinuance of these programs or of our participation in these programs would materially increase our research and development expenses, which would adversely affect our profitability and could impair our ability to develop our solar power products and services. In addition, contracts involving government agencies may be terminated or modified at the convenience of the agency. Many of our systems segment government awards also contain royalty provisions that require it to pay certain amounts based on specified formulas. Government awards are subject to audit and governmental agencies may dispute its royalty calculations. Any such dispute could result in fines, increased royalty payments, cancellation of the agreement or other penalties, which could have material adverse effect on our business and results of operations.

Our systems segment government-sponsored research contracts require that we provide regular written technical updates on a monthly, quarterly or annual basis, and, at the conclusion of the research contract, a final report on the results of our technical research. Because these reports are generally available to the public, third parties may obtain some aspects of its sensitive confidential information. Moreover, the failure to provide accurate or complete reports may provide the government with rights to any intellectual property arising from the related research. Funding from government awards also may limit when and how we can deploy our products and services developed under those contracts. For example, government awards may require that the manufacturing of products developed with federal funding be substantially conducted in the United States. In addition, technology and intellectual property that we develop with government funding provides the government with “march-in” rights. March-in rights refer to the right of the government or a government agency to require us to grant a license to the developed technology or products to a responsible applicant or, if it refuses, the government may grant the license itself. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the technology or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give the United States industry preference. In addition, government awards may include a provision providing the government with 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. Additional rights to technical data may be granted to the government in recognition of funding.

Because the markets in which we compete are highly competitive, we may not be able to compete successfully and we may lose or be unable to gain market share.

Our components solar products compete with a large number of competitors in the solar power market, including BP Solar International Inc., Evergreen Solar, Inc., First Solar Inc., Kyocera Corporation, Mitsubishi Electric Corporation, Motech Industries, Inc., Q-Cells AG, Sanyo Corporation, Sharp Corporation, SolarWorld AG and Suntech Power Holdings Co., Ltd. In addition, universities, research institutions and other companies such as First Solar have brought to market alternative technologies such as thin films and concentrators, which may compete with our technology in certain applications. We expect to face increased competition in the future. Further, many of our competitors are developing and are currently producing products based on new solar power technologies that may ultimately have costs similar to, or lower than, our projected costs.

Our systems solar power products and services also compete against other power generation sources including conventional fossil fuels supplied by utilities, other alternative energy sources such as wind, biomass, CSP 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 will face direct competition from a number of companies that manufacture, distribute, or install solar power systems. Many of these companies sell our products as well as their own or those of other manufacturers. Our systems segment primary competitors in the United States include BP Solar International, Inc., a subsidiary of BP p.l.c., Conergy Inc., DT Solar, EI Solutions, Inc., GE Energy, a subsidiary of General Electric Corporation, Schott Solar, Inc., Solar Integrated Technologies, Inc., SPG Solar, Inc., Sun Edison LLC, Sunlink Corporation, SunTechnics Installation & Services, Inc., Thompson Technology Industries, Inc. and WorldWater & Power Corporation. Our systems segment primary competitors in Europe include BP Solar, City Solar AG, Conergy (through its subsidiaries AET Altemitive Energie Technik GmbH, SunTechnics Solartechnik GmbH and voltwerk AG), PV-Systemtechnik Gbr, SAG Solarstrom AG, Solon AG and Taufer Solar GmbH. In addition, we will occasionally compete with distributed generation equipment suppliers such as Caterpillar, Inc. and Cummins, Inc. Other existing and potential competitors in the solar power market include universities and research institutions. We also expect that future competition will include new entrants to the solar power market offering new technological solutions. As we enter new markets and pursue additional applications for our systems products and services, we expect to face increased competition, which may result in price reductions, reduced margins or loss of market share.

Competition is intense, and many of our competitors have significantly greater access to financial, technical, manufacturing, marketing, management and other resources than we do. Many also have greater name recognition, a more established distribution network and a larger installed base of customers. In addition, many of our competitors have well-established relationships with our current and potential suppliers, resellers and their customers and have extensive knowledge of our target markets. As a result, these competitors may be able to devote greater resources to the research, development, promotion and sale of their products and respond more quickly to evolving industry standards and changing customer requirements than we will be able to. Consolidation or strategic alliances among such competitors may strengthen these advantages and may provide them greater access to customers or new technologies. We may also face competition from some of our systems segment resellers, who may develop products internally that compete with our systems product and service offerings, or who may enter into strategic relationships with or acquire other existing solar power system providers. To the extent that government funding for research and development grants, customer tax rebates and other programs that promote the use of solar and other renewable forms of energy are limited, we will compete for such funds, both directly and indirectly, with other renewable energy providers and their customers.

If we cannot compete successfully in the solar power industry, our operating results and financial condition will be adversely affected. Furthermore, we expect competition in systems markets to increase, which could result in lower prices or reduced demand for our systems services and have a material adverse effect on our business and results of operations.

We expect to continue to make significant capital expenditures, particularly in our manufacturing facilities, and if adequate funds are not available or if the covenants in our credit agreements impair our ability to raise capital when needed, our ability to expand our manufacturing capacity and our business will suffer.

We expect to continue to make significant capital expenditures, particularly in our manufacturing facilities, including, for example, through building purchases or long-term leases. We anticipate that our expenses will increase substantially in the foreseeable future as we expand our manufacturing operations, hire additional personnel, pay more or make advance payments for raw material, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, and continue our research and development efforts with respect to our products and manufacturing technologies. We expect total capital expenditures between approximately \$250.0 million and \$300.0 million in 2008 as we continue to increase our solar cell and solar panel manufacturing capacity. These expenditures would be greater if we decide to bring capacity on line more rapidly. We believe that our current cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo Bank, N.A., or Wells Fargo, and/or potential availability of future sources of funding will be sufficient to fund our capital and operating expenditures over the next 12 months. However, if our financial results or operating plans change from our current assumptions, or if the holders of our outstanding convertible debentures elect to convert the debentures, we may not have sufficient resources to support our business plan. For more information on our credit agreement with Wells

Fargo and our outstanding convertible debentures, please see “*Debt and Credit Sources*” and “*Liquidity*” within “*Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations*.” 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. We may also issue equity securities in the future to suppliers of raw materials in order to secure adequate materials to satisfy our production needs. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Cypress Semiconductor Corporation, which retains voting control over us, may be unwilling to permit us to engage in dilutive financing events for tax-related or other reasons. Additional debt would result in increased expenses and could require us to abide by covenants that would restrict our operations. Our credit facilities contain customary covenants and defaults, including, among others, limitations on dividends, incurrence of indebtedness and liens and mergers and acquisitions and may restrict our operating flexibility. If adequate funds are not available on acceptable terms, our ability to fund our operations, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts or otherwise respond to competitive pressures would be significantly impaired. See also “*Risk Factors - We currently have a significant amount of debt outstanding. Our substantial indebtedness, along with our 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 debentures and our other debt.*”

The demand for products requiring significant initial capital expenditures such as our solar power products and services are affected by general economic conditions, such as increasing interest rates that may decrease the return on investment for certain customers or investors in projects, which could decrease demand for our systems products and services and which could have a material adverse effect on our business and results of operations.

The United States and international economies have recently experienced a period of slow economic growth. A sustained economic recovery is uncertain. In particular, terrorist acts and similar events, continued turmoil in the Middle East or war in general could contribute to a slowdown of the market demand for products that require significant initial capital expenditures, including demand for solar cells and solar power systems and new residential and commercial buildings. If the economic recovery slows down as a result of the recent economic, political and social turmoil, or if there are further terrorist attacks in the United States or elsewhere, we may experience decreases in the demand for our solar power products, which may harm our operating results.

We have benefited from historically low interest rates in recent years, as these rates have made it more attractive for our customers to use debt financing to purchase our solar power systems. Interest rates have fluctuated recently and may eventually continue to rise, which will likely increase the cost of financing these systems and may reduce an operating company’s profits and investors’ expected returns on investment. This risk is becoming more significant to our systems segment, which is placing increasing reliance upon direct sales to financial institutions which sell electricity to end customers under a power purchase agreement. This sales model is highly sensitive to interest rate fluctuations and the availability of liquidity, and would be adversely affected by increases in interest rates or liquidity constraints. Rising interest rates may also make certain alternative investments more attractive to investors, and therefore lead to a decline in demand for our solar power systems, which could have a material adverse effect on our business and results of operations.

One of our key products, the PowerTracker[®], now referred to as SunPower[™] Tracker, was acquired through an assignment and acquisition of the patents associated with the product from a third-party individual, and if we are unable to continue to use this product, our business, prospects, operating results and financial condition would be materially harmed.

In September 2002 and subsequently amended in December 2005, PowerLight entered into a Technology Assignment and Services Agreement and other ancillary agreements with Jefferson Shingleton and MaxTracker Services, LLC, a New York limited liability company controlled by Mr. Shingleton. These agreements form the basis for its intellectual property rights in its PowerTracker[®] products. Under such agreements, as later amended, Mr. Shingleton assigned to PowerLight his MaxTracker[™], MaxRack[™], MaxRack Ballast[™] and MaxClip[™] products and all related intellectual property rights. Mr. Shingleton is obligated to provide consulting services to PowerLight related to such technology until December 31, 2012 and is required to assign to PowerLight any enhancements he makes to the technology while providing such consulting services. Mr. Shingleton retains a first security interest in the patents and patent applications assigned until the earlier of the expiration of the patents, full payment by PowerLight to Mr. Shingleton of all of the royalty obligations under the Technology Assignment and Services Agreement, or the termination of the Technology Assignment and Services Agreement. In the event of PowerLight’s default under the Technology Assignment and Services Agreement, MaxTracker Services and Mr. Shingleton may terminate the agreements and the related assignments and cause the intellectual rights assigned to it to be returned to Mr. Shingleton or MaxTracker Services, including patents related to SunPower[™] Tracker. In addition, upon such termination, PowerLight must grant Mr. Shingleton a perpetual, non-exclusive, royalty-free right and license to use, sell, and otherwise exploit throughout the world any intellectual property MaxTracker Services or Mr. Shingleton developed during the provision of consulting services to PowerLight. Events of default by PowerLight which could enable Mr. Shingleton or Max Tracker Services to terminate the agreements and the related assignments and cause the intellectual rights assigned to it to be returned to Mr. Shingleton or MaxTracker Services include the following:

- if PowerLight files a petition in bankruptcy or equivalent order or petition under the laws of any jurisdiction;
- if a petition in bankruptcy or equivalent order or petition under the laws of any jurisdiction is filed against it which is not dismissed within 60 days of such filing;
- if PowerLight’s assets are assigned for the benefit of creditors;
- if PowerLight voluntarily or involuntarily dissolves;
- if PowerLight fails to pay any amount due under the agreements when due and does not remedy such failure to pay within 10 days of written notice of such failure to pay; or
- if PowerLight defaults in the performance of any of its material obligations under the agreements when required (other than payment of amounts due under the agreements), and such failure is not remedied within 30 days of written notice to it of such default from Mr. Shingleton or MaxTracker Services. However, if such a default can reasonably be cured after the 30-day period, and PowerLight commences cure of such default within 30-day period and diligently prosecutes that cure to completion, such default does not trigger a termination right unless and until PowerLight ceases commercially reasonable efforts to cure such default.

If we are unable to continue to use and sell SunPower™ Tracker as a result of the termination of the agreements and the related assignment or any other reason, our business, prospects, operating results and financial condition would be materially harmed.

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 solar cells 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 cells. 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 may 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. Our participation in intellectual property enforcement actions may negatively impact our financial results.

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

“SunPower” is our registered trademark in the United States and the European Community for use with solar cells and solar panels. We are seeking similar registration of the “SunPower” trademark in foreign countries but we may not be successful in some of these jurisdictions. In the foreign jurisdictions where we are unable to obtain this registration or have not tried, others may be able to sell their products using the SunPower trademark which could lead to customer confusion. In addition, if there are jurisdictions where someone else has already established trademark rights in the SunPower name, we may face trademark disputes and may have to market our products with other trademarks, which also could hurt our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to SunPower 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.

We hold registered trademarks for SunPower[®], PowerLight[®], PowerGuard[®], PowerTracker[®] and SunTile[®] in the United States and registered trademarks for SunPower[®], PowerLight[®], and PowerGuard[®] in the European Community. We have not registered, and may not be able to register, these trademarks elsewhere.

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 and consultants 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. 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, and we may be unable to determine the extent of any unauthorized use; and
- the laws of other countries in which we market our solar cells, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without paying us for doing so. Any 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 cells or solar system components 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 cells and solar system components 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. As of December 30, 2007, including the United States and foreign countries, we owned 80 issued patents, jointly owned another three patents, and had over 100 pending patent applications across the entire company. These patent applications cover aspects of the technology in the solar cells we currently manufacture and market. Material patents that relate to our systems products and services primarily relate to PowerGuard[®], SunPowerTilt[™] and PowerTracker[®] products and services. 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. In addition, any issued patents may be challenged, invalidated or declared unenforceable. The term of any issued patents would be 20 years from their filing 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 not be sufficient to provide competitive advantages to us. For example, competitors could be successful in challenging any issued patents or, alternatively, 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.

If our ability to effectively obtain patents is decreased due to changes in patent laws or changes in the rules propagated by the US Patent and Trademark Office, or if we need to re-file some of our patent applications, the value of our patent portfolio and the revenue we derive from products protected by the patents may be decreased.

Current legislation is being considered which would make numerous changes to the patent laws, including forcing patent litigation to be filed in the defendant's home court, reducing damage awards for infringement and require specific proof of market value of invention as compared to the closest prior art, limiting enhanced damages to only a small subset of willfully infringing actions, creating a new, expanded post-grant opposition procedure, creating expanded rights for third parties to submit prior art and changing to a first-to-file system (creating a whole new set of prior art). Additionally, current rules being promulgated by the U.S. Patent and Trademark Office may limit our ability to extract inventions from pending U.S. patent applications. Additionally, based on situations such as newly discovered prior art, we may need to re-file some of our patent applications. In these situations, the patent term will be measured from the date of the earliest priority application to which benefit is claimed in such a patent application. This could shorten our period of patent exclusivity. A shortened period of patent exclusivity may negatively impact our revenue protected by our patents.

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, our technical personnel represent a significant asset and serve as the source of our technological and product innovations. We believe our future success will depend upon our ability to retain these key employees and our ability to attract and retain other skilled managerial, engineering and sales and marketing personnel. However, we cannot guarantee that any employee will remain employed at the Company 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 be harmed by liabilities arising out of our acquisition of SP Systems and the indemnity the selling stockholders have agreed to provide may be insufficient to compensate us for these damages.

On January 10, 2007, we completed our previously announced acquisition of SP Systems, formerly known as PowerLight Corporation. SP Systems' former stockholders made representations and warranties to us in the acquisition agreement, including those relating to the accuracy of its financial statements, the absence of litigation and environmental matters and the consents needed to transfer permits, licenses and third-party contracts in connection with our acquisition of SP Systems. To the extent that we are harmed by a breach of these representations and warranties, SP Systems' former stockholders have agreed to indemnify us for monetary damages from an escrowed proceeds account. In most cases we are required to absorb approximately the first \$2.4 million before we are entitled to indemnification. As of December 30, 2007, the escrow proceeds account was comprised of approximately \$23.7 million in cash and approximately 0.7 million shares, with a total aggregate value of \$118.1 million. Following the first anniversary of the closing date, we authorized the release of approximately one-half of the original escrow amount leaving approximately \$11.8 million in cash and approximately 0.4 million shares of our class A common stock. Our rights to recover damages under several provisions of the acquisition agreement also expired on the first anniversary of the closing date. As a result, we are now entitled to recover only limited types of losses, and our recovery will be limited to the amount available in the escrow fund at the time of a claim. The amount available in the escrow fund will be progressively reduced to zero on each anniversary of the closing date. We may incur liabilities from this acquisition which are not covered by the representations and warranties set forth in the agreement or which are non-monetary in nature. Consequently, our acquisition of SP Systems may expose us to liabilities for which we are not entitled to indemnification or our indemnification rights are insufficient.

Charges to earnings resulting from the application of the purchase method of accounting to the acquisition may adversely affect the market value of our class A common stock.

In accordance with generally accepted accounting principles in the United States, or U.S. GAAP, we accounted for the acquisition using the purchase method of accounting. Further, a portion of the purchase price paid in the acquisition has been allocated to in-process research and development. Under the purchase method of accounting, we allocated the total purchase price to SP Systems' net tangible assets and intangible assets based on their fair values as of the date of completion of the acquisition and recorded the excess of the purchase price over those fair values as goodwill. We will incur amortization expense over the useful lives of amortizable intangible assets acquired in connection with the acquisition. In addition, to the extent the value of goodwill and long lived assets becomes impaired, we may be required to incur material charges relating to the impairment of those assets. Further, we may be impacted by nonrecurring charges related to reduced gross profit margins from the requirement to adjust SP Systems' inventory to fair value. Finally, we will incur ongoing compensation charges associated with assumed options, equity held by employees of SP Systems and subjected to equity restriction agreements, and restricted stock granted to employees of our SP Systems business. We estimate that these charges will be approximately \$76.9 million in the aggregate, a majority of which will be recognized in the first two years beginning on January 10, 2007 and lesser amounts in the succeeding two years. Any of the foregoing charges could have a material impact on our results of operations.

Our headquarters and other facilities, as well as the facilities of certain of our key subcontractors, are located in regions that are subject to earthquakes and other natural disasters.

Our headquarters, including research and development operations, our manufacturing facilities and the facilities of our subcontractor upon which we rely to assemble and test our solar panels are located in countries that are subject to earthquakes and other natural disasters. Our headquarters and research and development operations are located in California, our manufacturing facilities are located in the Philippines, and the facilities of our subcontractor for assembly and test of solar panels are located in China. Since we do not have redundant facilities, any earthquake, tsunami or other natural disaster in these countries could materially disrupt our production capabilities and could result in our experiencing a significant delay in delivery, or substantial shortage, of our solar cells.

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 their respective 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. Under our separation agreement with Cypress, we will indemnify Cypress from any environmental liabilities associated with our operations and facilities in San Jose, California and the Philippines.

We maintain self-insurance for certain indemnities we have made to our officers and directors.

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. We primarily self-insure with respect to potential indemnifiable claims. Although we have insured our officers and directors against certain potential third-party claims for which we are legally or financially unable to indemnify them, we intend to primarily self-insure with respect to potential third-party claims which give rise to direct liability to such third-party or an indemnification duty on our part. If we were required to pay a significant amount on account of these liabilities for which we self-insure, our business, financial condition and results of operations could be seriously harmed.

Changes to financial accounting standards may affect our combined results of operations and cause us to change our business practices.

We prepare our financial statements to conform with U.S. GAAP. These accounting principles are subject to interpretation by the American Institute of Certified Public Accountants, the SEC and various bodies formed to interpret and create appropriate accounting policies. A change in those policies can have a significant effect on our combined reported results and may affect our reporting of transactions completed before a change is announced. Changes to those rules or the questioning of current practices may adversely affect our reported financial results or the way we conduct our business. For example, accounting policies affecting many aspects of our business, including rules relating to employee stock option grants and existing joint ventures, have recently been revised, or new guidance relating to outstanding convertible debt are being proposed.

The Financial Accounting Standards Board, or the FASB, and other agencies have made changes to U.S. GAAP, that required U.S. companies, starting in the first quarter of fiscal 2006, to record a charge to earnings for employee stock option grants and other equity incentives. We may have significant and ongoing accounting charges resulting from option grant and other equity awards that could reduce our net income or increase our net loss. In addition, since we have historically used equity-related compensation as a component of our total employee compensation program, the accounting change could make the use of equity-related compensation less attractive to us and therefore make it more difficult to attract and retain employees. In December 2003, the FASB issued the FASB Staff Position FASB Interpretation No. 46 “Consolidation of Variable Interest Entities”, or FSP FIN 46(R). The accounting method under FSP FIN 46(R) may impact our accounting for certain existing or future joint ventures or project companies for which we retain an ownership interest. In the event that we are deemed the primary beneficiary of a Variable Interest Entity (VIE) subject to the accounting of FSP FIN 46(R), we may have to consolidate the assets, liabilities and financial results of the joint venture. This could have an adverse impact on our financial position, gross margin and operating results.

With respect to our existing debt securities, we are not required under U.S. GAAP as presently in effect to record any interest or other expense in connection with our obligation to deliver upon conversion a number of shares (or an equivalent amount of cash) having a value in excess of the outstanding principal amount of the debentures. We refer to this obligation as our “net share obligation”. The accounting method for net share settled convertible securities such as ours is currently under consideration by the FASB. In September 2007, the FASB issued a proposed FASB Staff Position APB 14-a, which clarifies the accounting for convertible debt instruments that may be settled in cash upon conversion. The proposed guidance, if issued in final form, would significantly impact the accounting for our existing debt securities by requiring us to separately account for the liability and equity components of our existing debt securities in a manner that reflects interest expense equal to our non-convertible debt borrowing rate. If the proposed position were adopted, it is expected to cause us to incur additional interest expense and potentially increase our cost of capital equipment and future depreciation expense due to capitalized interest, thereby reducing our operating results. The proposed guidance, if approved, would be effective for fiscal years beginning after December 15, 2007, and retrospective application would be required for all periods presented. In a November 2007 update to its website, the FASB announced it is expected to begin its redeliberations of the guidance in the proposed FASB Staff Position APB 14-a in January 2008. Therefore, final guidance will not be issued until at least the first quarter of 2008.

In addition, because the 1.8 million shares of class A common stock loaned to an affiliate of Credit Suisse Securities (USA) LLC in July 2007 must be returned to us prior to August 1, 2027, we believe that under U.S. GAAP as presently in effect, the borrowed shares will not be considered outstanding for the purpose of computing and reporting our earnings per share. We have a similar belief with respect to the 2.9 million shares of class A common stock we loaned to an affiliate of Lehman Brothers Inc. in connection with our February 2007 offering of 1.25% senior convertible debentures due 2027. This accounting method is also subject to change. If we become required to treat the borrowed shares as outstanding for purposes of computing earnings per share, our earnings per share would be reduced. Any reduction in our earnings per share could cause our stock price to decrease, possibly significantly.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud. As a result, current and potential stockholders could lose confidence in our financial reporting, which could harm our business and the trading price of our common stock.

Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate and report on our internal controls over financial reporting and have our independent registered public accounting firm annually attest to the effectiveness of our internal control over financial reporting. We have in the past discovered, and may in the future discover, areas of our internal controls that need improvement. We are complying with Section 404 by strengthening, assessing and testing our system of internal controls to provide the basis for our report. However, the continuous process of strengthening our internal controls and complying with Section 404 is expensive and time consuming, and requires significant management attention. We cannot be certain that these measures will ensure that we will maintain adequate control over our financial processes and reporting, or that we or our independent registered public accounting firm will be able to provide the attestation and opinion required under Section 404 in our Annual Reports on Form 10-K. If we or our independent registered public accounting firm discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price. In addition, future non-compliance with Section 404 could subject us to a variety of administrative sanctions, including the suspension or delisting of our common stock from The Nasdaq Global Market and the inability of registered broker-dealers to make a market in our common stock, which would further reduce our stock price.

The development of a unified system of controls over financial reporting may take a significant amount of management's time and attention and, if not completed in a timely manner, could negatively impact us.

Prior to our acquisition of SP Systems in January 2007, SP Systems was not required to report on the effectiveness of its internal controls over financial reporting because it was not subject to the requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. In August 2006, the audit committee of SP Systems received a letter from that company's independent auditors identifying certain material weaknesses in that company's internal controls over financial reporting relating to that company's audits of its Consolidated Financial Statements for 2005, 2004 and 2003. These material weaknesses included problems with financial statement close processes and procedures, inadequate accounting resources, unsatisfactory application of the percentage-of-completion accounting method, inaccurate physical inventory counts, incorrect accounting for complex capital transactions and inadequate disclosure of related party transactions. In addition, SP Systems had to restate its 2004 and 2003 financial statements to correct previously reported amounts primarily related to its contract revenue, contract costs, accrued warranty, California state sales taxes and inventory items. In July 2007, subsequent to our acquisition of SP Systems, its independent auditors completed their audit of SP Systems' 2006 financial statements. In connection with that audit, our audit committee received a letter from the independent auditors of SP Systems identifying significant deficiencies in SP Systems' internal controls over financial reporting.

As we would for any other significant deficiencies identified by our external auditors from time to time, we have begun remediation efforts with respect to the significant deficiencies identified by SP Systems' independent auditors. Although initiated, our plans to improve these internal controls and processes are not complete. While we expect to complete this remediation process as quickly as possible, doing so depends on several factors beyond our control, including the hiring of additional qualified personnel and, as a result, we cannot at this time estimate how long it will take to complete the steps identified above. Our management will continue to evaluate the effectiveness of the control environment in our systems segment as well the Company overall and will continue to develop and enhance internal controls. We cannot assure investors that the measures we have taken to date or any future measures will remediate the significant deficiencies reported by the Company's independent auditors. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our prior period financial statements. Ineffective internal controls could also cause investors to lose confidence in our reported financial information, which would likely have a negative effect on the trading price of our securities.

Our report on internal controls over financial reporting in our annual reports on Form 10-K for the fiscal years ended December 30, 2007 and December 31, 2006 did not include an assessment of SP Systems' internal controls. We are not required to include SP Systems, which now makes up our Systems Segment, in our report on internal controls until our annual report on Form 10-K for the fiscal year ending December 28, 2008. Unanticipated factors may hinder the effectiveness or delay the integration of our combined internal control systems post-acquisition. We cannot be certain as to whether we will be able to establish an effective, unified system of internal controls over financial reporting in a timely manner, or at all.

Our credit agreement with Wells Fargo contains covenant restrictions that may limit our ability to operate our business.

Our Credit Agreement with Wells Fargo contains, and any of our other future debt agreements may contain, covenant restrictions that limit our ability to operate our business, including restrictions on our ability to:

- incur additional debt 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.

In addition, our credit agreement contains additional affirmative and negative covenants that are more restrictive than those contained in the indenture governing the debentures. 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. For example, the credit agreement prohibited our providing corporate guaranties to customers of our subsidiaries. However, in January 2008 Wells Fargo agreed to waive compliance with the prohibition. In exchange, we agreed to fund a deposit account to fully secure our repayment obligations to Wells Fargo. Had Wells Fargo not waived this prohibition, we would have been in default of our debt covenants, and we may have been required to immediately repay the aggregate outstanding indebtedness we owed to Wells Fargo under both the line of credit, including its letter of credit subfeature, and the letter of credit line.

As a result of these covenants, our ability to respond to changes in business and economic conditions and to obtain additional financing, if needed, may be significantly restricted, and we may be prevented from engaging in transactions that might otherwise be beneficial to us. In addition, our failure to comply with these covenants could result in a default under the debentures and our other debt, which could permit the holders to accelerate such debt. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt.

If the recent worsening of credit market conditions continues or increases, it could have a material adverse impact on our investment portfolio and on our sales of residential solar systems.

Recent U.S. sub-prime mortgage defaults have had a significant impact across various sectors of the financial markets, causing global credit and liquidity issues. In February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, which occurs when sell orders exceed buy orders resulting from lack of liquidity and does not necessarily signify a default by the issuer. As of December 30, 2007, we held ten auction rate securities totaling \$50.8 million. As of February 29, 2008, four of these auction rate securities totaling \$24.1 million failed to clear at auctions and such failures could continue to occur in the future. These auction rate securities were student loans that are typically over collateralized by pools of loans originated under the Federal Family Education Loan Program, or FFELP, and are guaranteed by the U.S. Department of Education, and insured. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations, or NRSRO, as triple-A. For failed auctions, we continue to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. In the event we need to access these funds, we will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. If these auction rate securities are unable to successfully clear at future auctions or issuers do not redeem the securities, we may be required to adjust the carrying value of the securities and record an impairment charge. If we determine that the fair value of these auction rate securities is temporarily impaired, we would record a temporary impairment within Consolidated Statements of Comprehensive Income (Loss), a component of stockholders' equity. If it is determined that the fair value of these securities is other-than-temporarily impaired, we would record a loss in our Consolidated Statements of Operations, which could materially adversely impact our results of operations and financial condition.

Sales of our solar systems to new homebuilders, residential and commercial customers is also affected by the availability of credit financing and the general strength of the housing market and the overall economy. Continued distress in the credit markets, the housing market and the overall economy could materially adversely impact our results of operations and financial condition.

We are in the process of implementing a new enterprise resource planning (ERP) system to manage our worldwide financial, accounting and operations reporting.

We have been preparing for the ERP system implementation for over a year and are taking appropriate measures to ensure the successful and timely implementation including but not limited to hiring qualified consultants and performing extensive testing. However, implementations of this scope have inherent risks that in the extreme could lead to a disruption in our financial, accounting and operations reporting as well as the inability to obtain access to key financial data.

Risks Related to Our Debentures and Class A Common Stock

Conversion of our outstanding debentures will dilute the ownership interest of existing stockholders, including holders who had previously converted their debentures.

To the extent we issue class A common stock upon conversion of 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 class A common stock issuable upon such conversion could adversely affect prevailing market prices of our class A common stock. 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 price of our class A common stock.

As of the first trading day of the first quarter in fiscal 2008, holders of the outstanding debentures are able to exercise their right to convert the debentures any day in that fiscal quarter because the closing price of our class A common stock equaled or exceeded \$70.94 and \$102.80, which represents more than 125% of the applicable conversion price for our 1.25% and 0.75% outstanding debentures, respectively, for at least 20 of the last 30 trading days during the preceding fiscal quarter. This test is repeated each fiscal quarter, and prior to August 1, 2025, holders of our outstanding debentures may only exercise their right to convert during a fiscal quarter in which this test is met. After August 1, 2025, the debentures are convertible at any time.

In the event of conversion by holders of the outstanding debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding. We believe that it is unlikely that a significant percentage of holders of the outstanding debentures will exercise their right to convert in the near future because they would likely receive less value upon conversion than the current market value of the debentures based on the debentures' trading prices quoted on Bloomberg in January and February 2008. However, there is no assurance that this will continue to be the case. As of February 29, 2008, no holders of the outstanding debentures exercised their right to convert the debentures.

As of December 30, 2007, we had cash and cash equivalents of \$285.2, while the aggregate outstanding principal balance due under the debentures was \$425.0 million. For more information about our convertible debentures, please see "*Liquidity*" within "*Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations.*"

Substantial future sales or other dispositions of our class A common stock or other securities, or short selling activity, could cause our stock price to fall.

Sales of our class A common stock in the public market or sales of any of our other securities, or the perception that such sales could occur, could cause the market price of our class A common stock to decline. As of December 30, 2007, we had approximately 84.7 million shares of class A common stock outstanding, and Cypress owned the 44.5 million outstanding shares of our class B common stock, representing approximately 56% of the total outstanding shares of our common stock. Cypress, its successors in interest and its subsidiaries may convert their shares of our class B common stock into class A common stock at any time. Subject to applicable United States federal and state securities laws, Cypress may sell or distribute to its stockholders any or all of the shares of our common stock that it owns, which may or may not include the sale of a controlling interest in us. In late 2006, Cypress announced that it was exploring ways in which to allow its stockholders to fully realize the value of its investment in our company. Since that date, Cypress has made public statements and taken actions that are consistent with these announcements. In May 2007, Cypress sold 7.5 million shares of our class B common stock to an unaffiliated third party in an offering pursuant to Rule 144 under the Securities Act. Upon the completion of that sale, such shares automatically, by their terms, converted into 7.5 million shares of our class A common stock.

If Cypress elects to convert its shares of our class B common stock into shares of our class A common stock, an additional 44.5 million shares of our class A common stock will be available for sale, subject to customary sales restrictions. In addition, except in limited circumstances, Cypress has the right to cause us to register the sale of its shares of our class B common stock or class A common stock under the Securities Act. Registration of these shares under the Securities Act would result in these shares, other than shares purchased by our affiliates, becoming freely tradable without restriction under the Securities Act.

If Cypress distributes to its stockholders shares of our common stock that it owns, substantially all of these shares would be eligible for immediate resale in the public market. We are unable to predict whether significant amounts of our common stock would be sold in the open market in anticipation of, or after, any such distribution. We also are unable to predict whether a sufficient number of buyers for shares of our common stock would be in the market at that time.

We have filed registration statements covering approximately 2.7 million shares of class A common stock issuable under outstanding options under various equity incentive plans and, as of December 30, 2007, have 0.7 million shares reserved for future issuance under our Amended and Restated 2005 Stock Incentive Plan. We have also registered for resale up to approximately 4.1 million shares of class A common stock for resale by holders of former PowerLight shares. Although some of these shares have already been sold into the market, the remaining shares are available for sale, although sales of shares held by former PowerLight shareholders who are now affiliates of SunPower are subject to sales restrictions under the Securities Act. Some of the aggregate of approximately 4.7 million shares of class A common stock that we lent to underwriters of our debenture offerings are being restricted by such underwriters to facilitate later hedging arrangements of future purchases for debentures in the after-market. These shares may be freely sold into the market by the underwriters at any time, and such sales could depress our stock price. In addition, any hedging activity facilitated by our debenture underwriters would involve short sales or privately negotiated derivatives transactions. These or other similar transactions could further negatively affect our stock price.

If securities or industry analysts do not publish research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our securities prices and trading volumes could decline.

The trading markets for our class A common stock and debentures are influenced by the research and reports that industry or securities analysts publish about us, our business or our market. If one or more of the analysts who cover us change their recommendation regarding our stock adversely, our stock and debenture prices would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our securities prices or trading volumes to decline.

The price of our class A common stock, and therefore of our outstanding debentures, may fluctuate significantly, and a liquid trading market for our class A common stock may not be sustained.

Our class A common stock has a limited trading history in the public markets, and during that period has experienced extreme price and volume fluctuations. The trading price of our class A common stock could be subject to wide fluctuations due to the factors discussed in this risk factors section. In addition, the stock market in general, and The Nasdaq Global 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 class A common stock, regardless of our actual operating performance. Because the debentures are convertible into our class A common stock, volatility or depressed prices of our class A common stock could have a similar effect on the trading price of these debentures. In addition, in the past, following periods of volatility in the overall market and the market price of a company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

The difference in the voting rights of our class A and our class B common stock may reduce the value and liquidity of our class A common stock.

The rights of class A and class B common stock are substantially similar, except with respect to voting, conversion and other protective provisions. The class B common stock is entitled to eight votes per share and the class A common stock is entitled to one vote per share. The difference in the voting rights of our class A and class B common stock could reduce the value of our class A common stock to the extent that any investor or potential future purchaser of our common stock ascribes value to the right of our class B common stock to eight votes per share.

Delaware law and our certificate of incorporation and bylaws contain anti-takeover provisions that could delay or discourage takeover attempts that stockholders may consider favorable.

Provisions in our restated certificate of incorporation and bylaws 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 approximately 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; and
- in the event that Cypress, its successors in interest and its subsidiaries no longer collectively own shares of our common stock equal to at least 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes:
- our board of directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible;
- no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;
- stockholders may not call special meetings of the stockholders; and
- our board of directors will be able to alter our bylaws without obtaining stockholder approval.

Until such time as Cypress, its successor in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, the affirmative vote of at least 75% of the then-authorized number of members of our board of directors will be required to: (1) adopt, amend or repeal our bylaws or certificate of incorporation; (2) appoint or remove our chief executive officer; (3) designate, appoint or allow for the nomination or recommendation for election by our stockholders of an individual to our board of directors; (4) change the size of our board of directors to be other than in the range of five to seven members; (5) form a committee of our board of directors or establish or change a charter, committee responsibilities or committee membership of any committee of our board of directors; (6) adopt any stockholder rights plan, “poison pill” or other similar arrangement; or (7) approve any transactions that would involve a merger, consolidation, restructuring, sale of substantially all of our assets or any of our subsidiaries or otherwise result in any person or entity obtaining control of us or any of our subsidiaries. Cypress may at any time in its sole discretion waive this requirement to obtain such a supermajority vote of our board of directors.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or the DGCL. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us. These provisions in our restated certificate of incorporation, bylaws and under Delaware law could discourage potential takeover attempts and could reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than they would without these provisions.

Provisions of our outstanding debentures could discourage an acquisition of us by a third party.

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, 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 of their debentures or any portion of the principal amount of such debentures in integral multiples of \$1,000. We may also be required to issue additional shares of our class A common stock upon conversion of such debentures in the event of certain fundamental changes.

We currently have a significant amount of debt outstanding. Our substantial indebtedness, along with our 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 debentures and our other debt.

We currently have a significant amount of debt and debt service requirements. As of December 30, 2007, after giving effect to our July 2007 offering of debentures, we had \$425.0 million of outstanding debt for borrowed money.

This level of debt could have significant consequences on our future operations, including:

- making it more difficult for us to meet our payment and other obligations under the 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, which event of default could result in all of our debt becoming immediately due and payable;
- reducing the availability of our cash flow to fund working capital, capital expenditures, 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, including borrowings under our new credit facility;
- 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.

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 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 agreements in the future. These commitments could have an adverse effect on our liquidity and our ability to meet our payment obligations under the debentures and our other debt.

Our ability to meet our payment and other obligations under our debt instruments depends on our ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative and regulatory factors as well as other factors that are beyond our control. We cannot assure investors that our business will generate cash flow from operations, or that future borrowings will be available to us under our existing or any future credit facilities or otherwise, in an amount sufficient to enable us to meet our payment obligations under our outstanding debentures and our other debt and to fund other liquidity needs. If we are not able to generate

sufficient cash flow to service our debt obligations, we may need to refinance or restructure our debt, including our outstanding debentures, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives, we may not be able to meet our payment obligations under the debentures and our other debt and other obligations.

As of the first trading day of the first quarter in fiscal 2008, holders of the outstanding debentures are able to exercise their right to convert the debentures any day in that fiscal quarter because the closing price of our class A common stock equaled or exceeded \$70.94 and \$102.80, which represents more than 125% of the applicable conversion price for our 1.25% and 0.75% outstanding debentures, respectively, for at least 20 of the last 30 trading days during the preceding fiscal quarter. This test is repeated each fiscal quarter, and prior to August 1, 2025, holders of our outstanding debentures may only exercise their right to convert during a fiscal quarter in which this test is met. After August 1, 2025, the debentures are convertible at any time.

In the event of conversion by holders of the outstanding debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding. We believe that it is unlikely that a significant percentage of holders of the outstanding debentures will exercise their right to convert in the near future because they would likely receive less value upon conversion than the current market value of the debentures based on the debentures' trading prices quoted on Bloomberg in January and February 2008. However, there is no assurance that this will continue to be the case. As of February 29, 2008, no holders of the outstanding debentures exercised their right to convert the debentures.

As of December 30, 2007, we had cash and cash equivalents of \$285.2, while the aggregate outstanding principal balance due under the debentures was \$425.0 million. For more information about our convertible debentures, please see “*Liquidity*” within “*Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations.*” See also “*Risk Factors - We expect to continue to make significant capital expenditures, particularly in our manufacturing facilities, and if adequate funds are not available or if the covenants in our credit agreements impair our ability to raise capital when needed, our ability to expand our manufacturing capacity and our business will suffer.*”

Our outstanding debentures are effectively subordinated to any existing and future secured indebtedness and structurally subordinated to existing and future liabilities and other indebtedness of our subsidiaries.

Our outstanding debentures are our general, unsecured obligations and rank equally in right of payment with all of our existing and future unsubordinated, unsecured indebtedness. All of our \$425.0 million in outstanding principal amount of debentures rate equally in right of payment. Our outstanding debentures are effectively subordinated to our existing and any future secured indebtedness we may have to the extent of the value of the assets securing such indebtedness, and structurally subordinated to any existing and future liabilities and other indebtedness of our subsidiaries. These liabilities may include indebtedness, trade payables, guarantees, lease obligations and letter of credit obligations. The debentures do not restrict us or our subsidiaries from incurring indebtedness, including senior secured indebtedness in the future, nor do they limit the amount of indebtedness we can issue that is equal in right of payment.

The terms of our outstanding debentures do not contain restrictive covenants and provide only limited protection in the event of a change of control.

The indentures under which our outstanding debentures were issued do not contain restrictive covenants that would protect holders from several kinds of transactions that may adversely affect them. In particular, the indentures do not contain covenants that will limit our ability to pay dividends or make distributions on or redeem our capital stock or limit our ability to incur additional indebtedness and, therefore, may not protect holders of our debentures in the event of a highly leveraged transaction or other similar transaction. The requirement that we offer to repurchase our outstanding debentures upon a change of control is limited to the transactions specified in the definitions of a “fundamental change” in the indentures. Similarly, the circumstances under which we are required to adjust the conversion rate upon the occurrence of a “non-stock change of control” are limited to circumstances where a debenture is converted in connection with such a transaction as set forth in the indentures.

Accordingly, subject to restrictions contained in our other debt agreements, we could enter into certain transactions, such as acquisitions, refinancings or recapitalizations, that could affect our capital structure and the value of the debentures and our class A common stock but would not constitute a fundamental change under the debentures.

We may be unable to repurchase the debentures for cash when required by the holders, including following a fundamental change.

Holders of our outstanding debentures have the right to require us to repurchase such debentures on specified dates or upon the occurrence of a fundamental change prior to maturity as described in the indentures governing such debentures. We may not have sufficient funds to make the required repurchase in cash at such time or the ability to arrange necessary financing on acceptable terms. In addition, our ability to repurchase the debentures in cash may be limited by law or the terms of other agreements relating to our debt outstanding at the time, including our current credit facility which limits our ability to purchase the debentures for cash in certain circumstances. If we fail to repurchase the debentures in cash as required by the indenture governing the debentures, it would constitute an event of default under each indenture governing our outstanding debentures, which, in turn, would constitute an event of default under our credit facility and the other indenture.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to offer to repurchase our outstanding debentures.

Upon the occurrence of a fundamental change, holders of our debentures will have the right to require us to repurchase their debentures. However, the fundamental change provisions of our indentures will not afford protection to holders of debentures in the event of certain transactions. For example, transactions such as leveraged recapitalizations, refinancings, restructurings or acquisitions initiated by us, as well as stock acquisitions by certain companies, would not constitute a fundamental change requiring us to repurchase the debentures. In the event of any such transaction, holders of debentures would not have the right to require us to repurchase their debentures, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the holders of our debentures.

The adjustment to the conversion rates of our outstanding debentures upon the occurrence of certain types of fundamental changes may not adequately compensate holders for the lost option time value of their debentures as a result of such fundamental change.

If certain types of fundamental changes occur prior to August 1, 2010 with respect to our 0.75% debentures or prior to February 13, 2012 with respect to our 1.25% debentures, we may adjust the conversion rate of the debentures to increase the number of shares issuable upon conversion. The number of additional shares to be added to the conversion rate will be determined based on the date on which the fundamental change becomes effective and the price paid per share of our class A common stock in the fundamental change as described in the indentures for such debentures. Although this adjustment is designed to compensate holders for the lost option value of their debentures as a result of certain types of fundamental changes, the adjustment is only an approximation of such lost value based upon assumptions made at the time when their debentures were issued and may not adequately compensate them for such loss. In addition, with respect to our 0.75% debentures, if the price paid per share of our class A common stock in the fundamental change is less than \$64.50 or more than \$155.00 (subject to adjustment), or if such transaction occurs on or after August 1, 2010, there will be no such adjustment. Moreover, in no event will the total number of shares issuable upon conversion as a result of this adjustment exceed 15,5039 per \$1,000 principal amount of the 0.75% debentures, subject to adjustment for stock splits, combinations and the like. With respect to our 1.25% debentures, if the price paid per share of our class A common stock in the fundamental change is less than \$44.51 or more than \$135.00 (subject to adjustment), or if such transaction occurs on or after February 15, 2012, there will be no such adjustment. Moreover, in no event will the total number of shares issuable upon conversion as a result of this adjustment exceed 22,4668 per \$1,000 principal amount of the 1.25% debentures, subject to adjustment for stock splits, combinations and the like.

There is currently no public market for our outstanding debentures, and an active trading market may not develop for these debentures. The failure of a market to develop for our debentures could adversely affect the liquidity and value of our debentures.

We do not intend to apply for listing of the debentures on any securities exchange or for quotation of the debentures on any automated dealer quotation system. Although we have been advised by the underwriters that the underwriters intend to make a market in the debentures, none of the underwriters is obligated to do so and may discontinue market making at any time without notice. No assurance can be given as to the liquidity of the trading market, if any, for the debentures.

An active market may not develop for any of our outstanding debentures, and there can be no assurance as to the liquidity of any market that may develop for the debentures. If active, liquid markets do not develop for our debentures, the market price and liquidity of the affected debentures may be adversely affected. Any of the debentures may trade at a discount from their initial offering price.

The liquidity of the trading market and future trading prices of our debentures will depend on many factors, including, among other things, the market price of our class A common stock, prevailing interest rates, our operating results, financial performance and prospects, the market for similar securities and the overall securities market, and may be adversely affected by unfavorable changes in these factors.

Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for our debentures will be subject to disruptions which may have a negative effect on the holders of these debentures, regardless of our operating results, financial performance or prospects.

Upon any conversion of our outstanding debentures, we will pay cash in lieu of issuing shares of our class A common stock with respect to an amount up to the principal amount of debentures converted. We retain the right to satisfy any remaining conversion obligation, in whole or part, in additional shares of class A common stock or, in the case of our 0.75% debentures, in cash, based upon a predetermined formula. Therefore, upon conversion, holders of our debentures may not receive any shares of our class A common stock, or may receive fewer shares than the number into which their debentures would otherwise be convertible.

Upon any conversion of debentures, we will pay cash in lieu of issuing shares of our common stock with respect to an amount up to the principal amount of debentures converted. We retain the right to satisfy any remaining conversion obligation, in whole or part, in additional shares of our class A common stock or, in the case of our 0.75% debentures, in cash, with respect to the conversion value in excess thereof, based on a daily conversion value (as defined herein) calculated based on a proportionate basis for each day of the 20 trading day conversion period. Accordingly, upon conversion of debentures, holders may not receive any shares of our class A common stock. In addition, because of the 20 trading day calculation period, in certain cases, settlement will be delayed until at least the 26th trading day following the related conversion date. Moreover, upon conversion of debentures, holders may receive less proceeds than expected because the price of our class A common stock may decrease (or not appreciate as much as they may expect) between the conversion date and the day the settlement amount of their debentures is determined. Further, as a result of cash payments, our liquidity may be reduced upon conversion of the debentures. In addition, in the event of our bankruptcy, insolvency or certain similar proceedings during the conversion period, there is a risk that a bankruptcy court may decide a holder's claim to receive such cash and/or shares could be subordinated to the claims of our creditors as a result of such holder's claim being treated as an equity claim in bankruptcy.

As of the first trading day of the first quarter in fiscal 2008, holders of the outstanding debentures are able to exercise their right to convert the debentures any day in that fiscal quarter because the closing price of our class A common stock equaled or exceeded \$70.94 and \$102.80, which represents more than 125% of the applicable conversion price for our 1.25% and 0.75% outstanding debentures, respectively, for at least 20 of the last 30 trading days during the preceding fiscal quarter. This test is repeated each fiscal quarter, and prior to August 1, 2025, holders of our outstanding debentures may only exercise their right to convert during a fiscal quarter in which the test was met. After August 1, 2025, the debentures are convertible at any time.

In the event of conversion by holders of the outstanding debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding. We believe that it is unlikely that a significant percentage of holders of the outstanding debentures will exercise their right to convert in the near future because they would likely receive less value upon conversion than the current market value of the debentures based on the debentures' trading prices quoted on Bloomberg in January and February 2008. However, there is no assurance that this will continue to be the case. As of February 29, 2008, no holders of the outstanding debentures exercised their right to convert the debentures.

As of December 30, 2007, we had cash and cash equivalents of \$285.2, while the aggregate outstanding principal balance due under the debentures was \$425.0 million. For more information about our convertible debentures, please see "Liquidity" within "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations."

The conditional conversion features of our outstanding debentures could result in holders receiving less than the value of the class A common stock into which a debenture would otherwise be convertible.

At certain times, the debentures are convertible into cash and, if applicable, shares of our class A common stock only if specified conditions are met. If these conditions are not met, holders will not be able to convert their debentures at that time, and, upon a later conversion, holders may not be able to receive the value of the class A common stock into which the debentures would otherwise have been convertible had such conditions been met.

The conversion rate of our outstanding debentures may not be adjusted for all dilutive events that may adversely affect their trading prices or the class A common stock issuable upon conversion of these debentures.

The conversion rates of our outstanding debentures are subject to adjustment upon certain events, including the issuance of stock dividends on our class A common stock, the issuance of rights or warrants, subdivisions, combinations, distributions of capital stock, indebtedness or assets, cash dividends and issuer tender or exchange offers. The conversion rates will not be adjusted for certain other events, including, for example, upon the issuance of additional shares of stock for cash, any of which may adversely affect the trading price of our debentures or the class A common stock issuable upon conversion of the debentures. Even if the conversion price is adjusted for a dilutive event, such as a leveraged recapitalization, it may not fully compensate holders for their economic loss.

Holders of our debentures will not be entitled to any rights with respect to our class A common stock, but they will be subject to all changes made with respect to our class A common stock.

Holders of our debentures will not be entitled to any rights with respect to our class A common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our class A common stock), but they will be subject to all changes affecting our class A common stock. Holders will have rights with respect to our class A common stock only if they convert their debentures, which they are permitted to do only in limited circumstances. For example, in the event that an amendment is proposed to our certificate of incorporation or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of our class A common stock to holders, they will not be entitled to vote on the amendment, although they will nevertheless be subject to any changes in the powers, preferences or rights of our class A common stock.

Our outstanding debentures may not be rated or may receive lower ratings than anticipated.

We do not intend to seek a rating on any of our outstanding debentures. However, if one or more rating agencies rates these debentures and assigns them a rating lower than the rating expected by investors, or reduces their ratings in the future, the market price of the affected debentures and our class A common stock could be reduced.

Risks Related to Our Relationship with Cypress Semiconductor Corporation

As long as Cypress controls us, the ability of our other stockholders to influence matters requiring stockholder approval will be limited.

As of December 30, 2007, Cypress owned all 44.5 million shares of outstanding our class B common stock, representing approximately 56% of the total outstanding shares of our common stock, or approximately 51% of such shares on a fully diluted basis after taking into account outstanding options (or 49% of such shares on a fully diluted basis after taking into account outstanding stock options and loaned shares to underwriters of our convertible indebtedness), and 90% of the voting power of our outstanding capital stock.

Shares of our class A common stock and our class B common stock have substantially similar rights, preferences and privileges except with respect to certain voting and conversion rights and other protective provisions. Shares of our class B common stock are entitled to eight votes per share of class B common stock, and shares of our class A common stock are entitled to one vote per share of class A common stock. Cypress, its successors in interest or its subsidiaries may convert their shares of our class B common stock into shares of our class A common stock on a one-for-one basis at any time. Prior to a tax-free distribution by Cypress of its shares of our class B common stock to its stockholders, the class B common shares will automatically convert into shares of class A common stock if such shares are transferred to a person other than Cypress, its successors in interest or its subsidiaries. In most circumstances in the event that Cypress owns less than 40% of the shares of all classes of our common stock then outstanding, each outstanding share of class B common stock will automatically convert into one share of class A common stock. By virtue of its ownership of class B common stock, Cypress is able to elect all of the members of our board of directors.

In addition, until such time as Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, Cypress will have the ability to take stockholder action without the vote of any other stockholder and, by virtue of the voting power afforded the shares of our class B common stock, investors will not be able to affect the outcome of any stockholder vote during this period. As a result, Cypress will have the ability to control all matters affecting us, including:

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- the composition of our board of directors and, through the board of directors, any determination with respect to the combined company's business plans and policies, including the appointment and removal of officers;
- any determinations with respect to mergers and other business combinations;
- our acquisition or disposition of assets;
- our financing activities;
- changes to the agreements providing for our separation from Cypress;
- the allocation of business opportunities that may be suitable for us;
- the payment of dividends on our class A common stock; and
- the number of shares available for issuance under our stock plans.

For the reasons described above, Cypress may be unwilling to support certain corporate transactions proposed by us that could dilute its ownership below 40%, including financings or acquisitions effected through the issuance of our securities. In addition, Cypress may have tax-related or other objectives that cause it to be unwilling to support these or other transactions that dilute its ownership below 50%. Cypress's voting control may also discourage transactions involving a change of control of SunPower, including transactions in which holders of our class A common stock might otherwise receive a premium for their shares over the then current market price. Cypress is not prohibited from selling a controlling interest in us to a third party and may do so without approval of holders of our class A common stock and without providing for a purchase of our class A common stock. Accordingly, shares of our class A common stock may be worth less than they would be if Cypress did not maintain voting control over us.

Our ability to continue to manufacture our solar cells in our current facilities with our current and planned manufacturing capacities, and therefore to maintain and increase revenue and achieve profitability, depends to a large extent upon the continued success of our relationship with Cypress.

We manufacture our solar cells in a Philippines manufacturing facility which we lease from Cypress, with the option to purchase the facility. We are in the process of expanding existing facilities for solar and panel assembly. If we are unable to expand in our current facility or are required to move our manufacturing facility, we would incur significant expenses as well as lost sales. Furthermore, we may not be able to locate a facility that meets our needs on terms acceptable to us. Any of these circumstances would increase our expenses and decrease our total revenue and could prevent us from sustaining profitability.

Our ability to operate our business effectively may suffer if we are unable to cost-effectively establish our own administrative and other support functions in order to operate as a stand-alone company after the expiration of our services agreements with Cypress.

As a subsidiary of Cypress, we have relied on administrative and other resources of Cypress to operate our business. In connection with our initial public offering, we entered into various service agreements to retain the ability for specified periods to use these Cypress resources. These agreements will expire upon the earlier of November 2009 or a change of control of our Company. We need to create our own administrative and other support systems or contract with third parties to replace Cypress' systems. In addition, we recently established disclosure controls and procedures and internal control over financial reporting as part of our becoming a separate public company in November 2005. These services may not be provided at the same level as when we were a wholly owned subsidiary of Cypress, and we may not be able to obtain the same benefits that we received prior to the separation. These services may not be sufficient to meet our needs, and after our agreements with Cypress expire, we may not be able to replace these services at all or obtain these services at prices and on terms as favorable as we currently have with Cypress. Any failure or significant downtime in our own administrative systems or in Cypress' administrative systems during the transitional period could result in unexpected costs, impact our results and/or prevent us from paying our suppliers or employees and performing other administrative services on a timely basis.

Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations or related considerations may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives.

We have entered into a tax sharing agreement with Cypress, under which we and Cypress agree to indemnify one another for certain taxes and similar obligations that the other party could incur under certain circumstances. In general, we will be responsible for taxes relating to our business. Furthermore, we may be held jointly and severally liable for taxes determined on a consolidated basis for the entire Cypress group for any particular taxable year that we are a member of the group even though Cypress is required to indemnify us for its taxes pursuant to the tax sharing agreement. As of June 2006, we ceased to be a member of the Cypress consolidated group for federal income tax purposes and most state income tax purposes. Thus, to the extent that we become entitled to utilize on our separate tax returns portions of those 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 our option. Accordingly, we will be subject to the obligations payable to Cypress for any federal income tax credit or loss carryforwards utilized in our federal tax returns. As of December 30, 2007, we had \$44.0 million of federal net operating loss carryforwards and approximately \$73.5 million of California net operating loss carryforwards, meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate approximately \$19.1 million. The majority of these net operating loss carryforwards were created by employee stock transactions. Because there is uncertainty as to the realizability of these loss carryforwards, the portion created by employee stock transactions are not reflected on the Company's Consolidated Balance Sheets. If these losses were reflected on the Consolidated Balance Sheets, to the extent the deductions were not matched against previous stock-based compensation charges, the loss carryforwards would be accounted for as an increase to deferred tax assets and stockholders' equity.

If Cypress distributes our class B common stock to Cypress stockholders in a transaction intended to qualify as a tax-free distribution under Section 355 of the Internal Revenue Code, or the Code, Cypress intends to obtain an opinion of counsel to the effect that such distribution qualifies under Section 355 of the Code. Despite such an opinion, however, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of our voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of our stock. The tax sharing agreement includes our obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability attributable solely to certain dispositions of our stock by Cypress, that cause Cypress' distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code. Under current law, following a distribution by Cypress and for up to two years thereafter (or possibly longer if we are acting pursuant to a preexisting plan), our obligation to indemnify Cypress will be triggered only if we issue stock or otherwise participate in one or more transactions other than the distribution in which 50% or more of our voting power or economic value is acquired in financing or acquisition transactions that are part of a plan or series of related transactions that includes the distribution. If such an indemnification obligation is triggered, the extent of our liability to Cypress will generally equal the product of (a) Cypress' top marginal federal and state income tax rate for the year of the distribution, and (b) the difference between the fair market value of our class B common stock distributed to Cypress stockholders and Cypress' tax basis in such stock as determined on the date of the distribution.

For example, under the current tax rules, if Cypress was to make a complete distribution of its shares of our class B common stock, and our total outstanding capital stock at the time of such distribution were 84 million shares, unless we qualified for one of several safe harbor exemptions available under the Treasury Regulations, in order to avoid our indemnification obligation to Cypress, we could not, for up to two years (or possibly longer if we are acting pursuant to a preexisting plan) from the date of Cypress' distribution, issue 84 million or more shares of our class A common stock, nor could we participate in one or more transactions (excluding the distribution itself) in which 42 million or more shares of our then-existing class A common stock were to be acquired in connection with a plan or series of related transactions that includes the distribution. In addition, these limits could be lower depending on certain actions that we or Cypress might take before or after a distribution. If we were to participate in such a transaction, assuming Cypress distributed 44.5 million shares, Cypress' top marginal income tax rate was 40% for federal and state income tax purposes, the fair market value of our class B common stock was \$70.00 per share and Cypress' tax basis in such stock was \$5.00 per share on the date of their distribution, then our liability under our indemnification obligation to Cypress would be approximately \$1.2 billion.

In order to preserve various options for the separation of our two companies, we and Cypress may seek to preserve Cypress' ownership of our company at certain levels. Any such effort could limit our ability to use our equity to raise capital, pursue acquisitions, compensate employees or engage in other business initiatives. In addition, our ability to use our equity to obtain additional financing or to engage in acquisition transactions for a period of time after a tax-free distribution of our shares by Cypress will be restricted if we can only sell or issue a limited amount of our stock before triggering our obligation to indemnify Cypress for taxes it incurs under Section 355(e) of the Code. Separation of the two companies is dependent, to a large degree, on the tax efficient provisions within the tax law. Changes to these provisions, either through change of statute or judicial interpretation, may render the separation strategy less attractive.

Third parties may seek to hold us responsible for liabilities of Cypress.

Under our separation agreements with Cypress, Cypress will indemnify us for claims and losses relating to liabilities related to Cypress' business and not related to our business. However, if those liabilities are significant and we are ultimately held liable for them, we cannot assure investors that we will be able to recover the full amount of our losses from Cypress.

Our inability to resolve any disputes that arise between us and Cypress with respect to our past and ongoing relationships may result in a significant reduction of our revenue.

Disputes may arise between Cypress and us in a number of areas relating to our past and ongoing relationships, including:

- labor, tax, employee benefit, indemnification and other matters arising from our separation from Cypress;
- employee retention and recruiting;
- business combinations involving us;
- pricing for transitional services;
- sales or distributions by Cypress of all or any portion of its ownership interest in us;
- the nature, quality and pricing of services Cypress has agreed to provide us; and
- business opportunities that may be attractive to both Cypress and us.

We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party.

The agreements we entered into with Cypress may be amended upon agreement between the parties. While we are controlled by Cypress, we may not have the leverage to negotiate amendments to these agreements if required on terms as favorable to us as those we would negotiate with an unaffiliated third party.

Some of our directors and executive officers may have conflicts of interest because of their ownership of Cypress common stock, options to acquire Cypress common stock or their positions as executives or directors at Cypress.

Some of our directors and executive officers own Cypress common stock and/or options to purchase Cypress common stock. In addition, some of our directors are executive officers and/or directors of Cypress. Ownership of Cypress common stock and options to purchase Cypress common stock by our directors and officers and the presence of executive officers or directors of Cypress on our board of directors could create, or appear to create, conflicts of interest with respect to matters involving both us and Cypress. For example, corporate opportunities may arise that concern both of our businesses, such as the potential acquisition of a particular business or technology that is complementary to both of our businesses. In these situations, our amended and restated certificate of incorporation provides that directors and officers who are also directors or officers of Cypress have no duty to communicate or present such corporate opportunity to us unless it is specifically applicable to the solar energy business and not applicable to or reasonably related to any business conducted by Cypress, have the right to deal with such corporate opportunity in their sole discretion and shall not be liable to us or our stockholders for breach of fiduciary duty by reason of the fact that such director or officer pursues or acquires such corporate opportunity for itself or for Cypress. In addition, we have not established at this time any procedural mechanisms to address actual or perceived conflicts of interest of these directors and officers and expect that our board of directors, in the exercise of its fiduciary duties, will determine how to address any actual or perceived conflicts of interest on a case-by-case basis. If any corporate opportunity arises and if our directors and officers do not pursue it on our behalf pursuant to the provisions in our amended and restated certificate of incorporation, we may not become aware of, and may potentially lose, a significant business opportunity.

Because Cypress is not obligated to distribute to its stockholders or otherwise dispose of our common stock that it owns, we will continue to be subject to the risks described above relating to Cypress' control of us if Cypress does not complete such a transaction.

Cypress is not obligated to distribute to its stockholders or otherwise dispose of the shares of our class B common stock that it beneficially owns, although it might elect to do so in the future. Completion of any distribution transaction could be contingent upon, among other things, the receipt of a favorable tax ruling from the Internal Revenue Service, or IRS, and/or a favorable opinion of Cypress' tax advisor as to the tax-free nature of such a transaction for U.S. federal income tax purposes. The provisions allowing for a tax efficient distribution may be amended by legislative or judicial interpretation in the future, affecting Cypress' willingness to distribute or dispose of our class B common stock.

Unless and until such a distribution occurs or Cypress otherwise disposes of shares so that it, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding, we will continue to face the risks described above relating to Cypress' control of us and potential conflicts of interest between Cypress and us. We may be unable to realize potential benefits that could result from such a distribution by Cypress, such as greater strategic focus, greater access to capital markets, better incentives for employees and more accountable management, although we cannot guarantee that we would realize any of these potential benefits if such a distribution did occur. In addition, speculation by the press, investment community, our customers, our competitors or others regarding whether Cypress intends to complete such a distribution or otherwise dispose of its controlling interest in us could harm our business or lead to volatility in our stock price.

So long as Cypress continues to hold a controlling interest in us or is otherwise a significant stockholder, the liquidity and market price of our class A common stock may be adversely impacted. In addition, there can be no assurance that Cypress will distribute or otherwise dispose of any of its remaining shares of our class B common stock.

Cypress' ability to replace our board of directors may make it difficult for us to recruit independent directors.

Cypress may at any time replace our entire board of directors. Furthermore, some actions of our board of directors require the approval of 75% of our directors except to the extent this condition is waived by Cypress. As a result, unless and until Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, Cypress could exercise significant control over our board of directors. As such, individuals who might otherwise accept a board position at SunPower may decline to serve, and Cypress may be able to control important decisions made by our Board of Directors.

ITEM 1B: UNRESOLVED STAFF COMMENTS

None.

ITEM 2: PROPERTIES

Our corporate headquarters is located in San Jose, California, where we occupy approximately 51,000 square feet under a lease from Cypress that expires in April 2011. In Richmond, California, we occupy approximately 250,000 square feet for office, light industrial and research and development use under a lease from an unaffiliated third party that expires in September 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 2012 as well as sales and support offices in Southern California, New Jersey, Germany, Italy, Spain, and South Korea, all of which are leased from unaffiliated third parties.

We also lease from Cypress approximately 215,000 square feet in the Philippines, which serves as our solar cell manufacturing facility. This lease expires in July 2021 and it contains a right to purchase the facility from Cypress at any time at Cypress' original purchase price of approximately \$8.0 million plus interest computed on a variable index starting on the date of purchase by Cypress until the sale to us, unless such purchase option is exercised after a change of control of our Company, in which case the purchase price shall be at a market rate, as reasonably determined by Cypress. Under the lease, we would pay Cypress a rate equal to the cost to Cypress for the facility until the earlier of 10 years from November 22, 2005 or a change of control of our Company. Thereafter, we will pay market rent for the facility. In December 2005 we leased from an unaffiliated third party approximately 46,300 square foot building in the Philippines for five years, with an option to extend the lease at market rental rates when the term expires. In August 2006, we purchased a 344,000 square foot building in the Philippines. This facility is approximately 20 miles from our existing facility and is being developed to house up to 12 solar cell manufacturing lines. We recently began operating three manufacturing lines in the new facility and expect to commence production of an additional five solar cell lines during 2008. We plan to begin production as soon as the first quarter of 2010 on the first line of a third solar cell manufacturing facility. We may require additional space in the future, which may not be available on commercially reasonable terms or in the location we desire.

Because of the interrelation of our business segments, both the components segment and systems segment use substantially all of the properties at least in part, and we retain the flexibility to use each of the properties in whole or in part for each of the segments. Therefore, we do not identify or allocate assets by business segment. For more information on property, plant and equipment by country, see Note 18 of Notes to our Consolidated Financial Statements in "*Item 8: Financial Statements and Supplemental Data.*"

ITEM 3: LEGAL PROCEEDINGS

From time to time we are a party to litigation matters and claims that are normal in the course of our operations. While we believe that the ultimate outcome of these matters will not have a material adverse effect on the Company, the outcome of these matters is not determinable and negative outcomes may adversely affect our financial position, liquidity or results of operations.

ITEM 4: SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

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

Our class A common stock is listed on the NASDAQ Global Market under the trading symbol “SPWR.” The high and low trading prices of our class A common stock during the fiscal years ended December 30, 2007 and December 31, 2006 are as follows:

For the year ended December 30, 2007	High	Low
First quarter	\$ 48.11	\$ 35.40
Second quarter	65.55	45.84
Third quarter	86.93	59.64
Fourth quarter	164.49	81.50
For the year ended December 31, 2006	High	Low
First quarter	\$ 45.09	\$ 29.08
Second quarter	42.00	24.60
Third quarter	34.25	23.75
Fourth quarter	40.00	26.35

As of February 22, 2008, there were approximately 38 record holders of our class A common stock and there was one record holder of our class B common stock. A substantially greater number of holders of our class A common stock 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 capital stock, and we do not currently intend to pay any cash or dividends 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.

Our bank credit facilities place restrictions on us and our subsidiaries’ ability to pay cash dividends. Additionally, our debentures issued in February 2007 and July 2007 allow the holders to convert their bonds into our common stock if we declare a dividend that on a per share basis exceeds 10% of our common stock’s market price.

Recent Sales of Unregistered Securities

We conducted no unregistered sales of equity securities during the fiscal year ended December 30, 2007.

Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased ⁽¹⁾ (in thousands)	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, 2007 through October 28, 2007	1	\$ 127.71	—	—
October 29, 2007 through November 25, 2007	—	—	—	—
November 26, 2007 through December 30, 2007	7	132.49	—	—
Total	8	132.02	—	—

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

Equity Compensation Plan Information

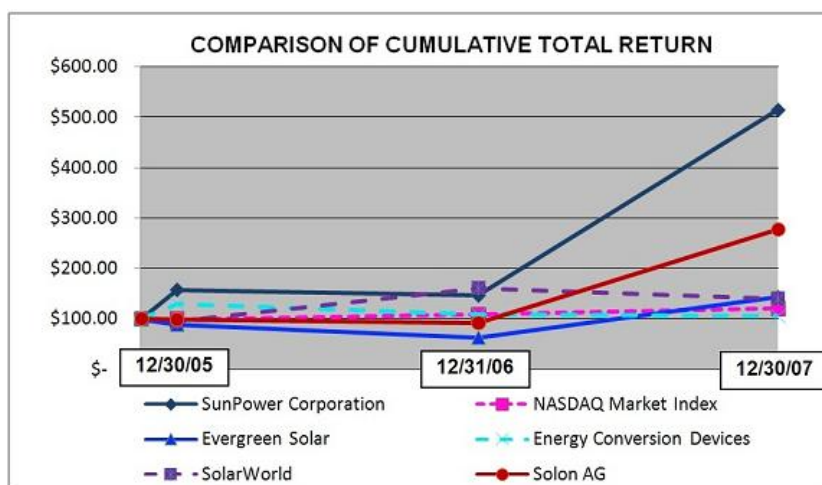
The following table provides certain information as of December 30, 2007 with respect to our equity compensation plans under which shares of class A common stock are authorized for issuance (in thousands, except dollar figures):

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	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)
Equity compensation plans approved by security holders	2,889	\$ 4.73	28
Equity compensation shares not approved by security holders	17 ⁽¹⁾	2.00	—
Total	2,906⁽²⁾	4.71	28

- (1) Represents one option to purchase shares of class A common stock issued to one SunPower employee on June 17, 2004 with an exercise price of \$2.00, vesting over five years.
- (2) This table excludes options to purchase an aggregate of approximately 795,000 shares of class A common stock, at a weighted average exercise price of \$8.09 per share, that we assumed in connection with the acquisition of SP Systems in January 2007.

Company Stock Price Performance

The following graph compares the performance of an investment in our class A common stock from the pricing of our IPO on November 17, 2005 through December 30, 2007, with the NASDAQ Market Index and with four comparable issuers: Evergreen Solar, Energy Conversion Devices, SolarWorld and Solon AG. The graph assumes \$100 was invested on November 17, 2005 in our class A common stock at the closing price of \$25.45 per share and at the closing prices for the NASDAQ Market Index and each of our peer issuers. It also assumes that any dividends were reinvested on the date of payment without payment of any commissions. The performance shown in the graph represents past performance and should not be considered an indication of future performance.



ASSUMES \$100 INVESTED ON NOVEMBER 17, 2005
 ASSUMES DIVIDEND REINVESTED
 FISCAL YEAR ENDED DECEMBER 30, 2007

	11/17/05	12/30/05	12/31/06	12/30/07
SunPower Corporation	\$ 100.00	\$ 133.56	\$ 146.05	\$ 514.93
NASDAQ Market Index	100.00	99.32	108.77	120.45
Evergreen Solar	100.00	89.27	63.45	144.34
Energy Conversion Devices	100.00	130.15	108.53	105.78
SolarWorld	100.00	94.63	160.70	140.42
Solon AG	100.00	99.11	91.85	277.46

ITEM 6: SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our Consolidated Financial Statements and related notes included elsewhere in this Annual Report on Form 10-K.

On November 9, 2004, Cypress completed a reverse triangular merger with us in which each share of our then outstanding capital stock not owned by Cypress was valued at \$3.30 per share and exchanged for an equivalent number of shares of Cypress common stock. This merger effectively gave Cypress 100% ownership of all of our then outstanding shares of capital stock but left our unexercised warrants and options outstanding. This transaction resulted in the “push down” of the effect of the acquisition of SunPower by Cypress and created a new basis of accounting. See Note 2 of Notes to our Consolidated Financial Statements. The Consolidated Balance Sheets and Statements of Operations data in this Annual Report on Form 10-K prior and up to November 8, 2004 refer to the Predecessor Company and this period is referred to as the pre-merger period, while the Consolidated Balance Sheets and Statements of Operations data subsequent to November 8, 2004 refer to the Successor Company and this period is referred to as the post-merger period. A black line has been drawn between the accompanying financial statements to distinguish between the pre-merger and post-merger periods.

Our Consolidated Financial Statements include purchases of goods and services from Cypress, including wafers, legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure costs. The expenses allocations have been determined based on a method that we and Cypress consider to be a reasonable reflection of the utilization of services provided or the benefit received by us. The financial information included herein may not be indicative of our consolidated financial position, operating results, and cash flows in the future, or what they would have been had we been a separate stand-alone entity during the periods presented. See Note 3 of Notes to our Consolidated Financial Statements for additional information on our relationship with Cypress.

On January 10, 2007, we completed the acquisition of PowerLight, a leading global provider of large-scale solar power systems, which we renamed SunPower Corporation, Systems, or SP Systems in June 2007. SP Systems designs, manufactures, markets and sells solar electric power system technology that integrates solar cells and solar panels manufactured by us and other suppliers to convert sunlight to electricity compatible with the utility network. The results of SP Systems have been included in the following selected consolidated financial information from January 10, 2007.

We report our results of operations on the basis of 52- or 53-week periods, ending on the Sunday closest to December 31. Fiscal 2003 ended on December 28, 2003 and included 52 weeks. The combined periods of fiscal 2004 ended on January 2, 2005 and included 53 weeks. Fiscal 2005 ended on January 1, 2006, fiscal 2006 ended on December 31, 2006, fiscal 2007 ended on December 30, 2007 and each fiscal year included 52 weeks. Our fiscal quarters end on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year in which the additional week falls into the fourth quarter of that fiscal year.

(In thousands, except per share data)	Successor Company				Predecessor Company	
	Year Ended			Nov. 9, 2004 Through Jan. 2, 2005	Dec. 29, 2003 Through Nov. 8, 2004	Year Ended December 28, 2003
	December 30, 2007	December 31, 2006	January 1, 2006			
Consolidated Statements of Operations Data						
Revenue:						
Systems	\$ 464,178	\$ —	\$ —	\$ —	\$ —	\$ —
Components	310,612	236,510	78,736	4,055	6,830	5,005
	774,790	236,510	78,736	4,055	6,830	5,005
Costs and expenses:						
Cost of systems revenue	386,511	—	—	—	—	—
Cost of components revenue	240,475	186,042	74,353	6,079	9,498	4,987
Research and development	13,563	9,684	6,488	1,417	12,118	9,816
Sales, general and administrative	108,256	21,677	10,880	1,111	4,713	3,238
Purchased in-process research and development	9,575	—	—	—	—	—
Impairment of acquisition-related intangibles	14,068	—	—	—	—	—
Total costs and expenses	772,448	217,403	91,721	8,607	26,329	18,041
Operating income (loss)	2,342	19,107	(12,985)	(4,552)	(19,499)	(13,036)
Interest income	13,882	10,086	1,591	3	15	—
Interest expense	(5,071)	(1,809)	(3,185)	(1,072)	(3,759)	(1,509)
Other income (expense), net	(7,871)	1,077	(1,214)	12	(59)	—
Income (loss) before income taxes	3,282	28,461	(15,793)	(5,609)	(23,302)	(14,545)
Income tax provision (benefit)	(5,920)	1,945	50	—	—	—
Net income (loss)	\$ 9,202	\$ 26,516	\$ (15,843)	\$ (5,609)	\$ (23,302)	\$ (14,545)
Net income (loss) per share:						
Basic ⁽¹⁾	\$ 0.12	\$ 0.40	\$ (0.68)	\$ (2,804.50)	\$ (5.51)	\$ (3.50)
Diluted ⁽¹⁾	\$ 0.11	\$ 0.37	\$ (0.68)	\$ (2,804.50)	\$ (5.51)	\$ (3.50)
Weighted-average shares:						
Basic ⁽¹⁾	75,413	65,864	23,306	2	4,230	4,156
Diluted ⁽¹⁾	81,227	71,087	23,306	2	4,230	4,156

- (1) The basic and diluted net income (loss) per share computation excludes potential shares of common stock issuable upon conversion of convertible preferred stock and exercise of options and warrants to purchase common stock when their effect would be antidilutive. Basic and diluted net income (loss) per share computation also excludes 2.9 million shares of class A common stock lent to an affiliate of Lehman Brothers in connection with the Company's issuance of \$200.0 million in principal amount of its 1.25% senior convertible debentures in February 2007 and 1.8 million shares of class A common stock lent to an affiliate of Credit Suisse in connection with the Company's issuance of \$225.0 million in principal amount of its 0.75% senior convertible debentures in July 2007. See Note 6 of Notes to our Consolidated Financial Statements for a detailed explanation of the determination of the shares used in computing basic and diluted net income (loss) per share.

(In thousands)	Successor Company				Predecessor Company
	December 30, 2007	December 31, 2006	January 1, 2006	January 2, 2005	December 28, 2003
Consolidated Balance Sheets Data					
Cash, cash equivalents and short-term investments	\$ 390,667	\$ 182,092	\$ 143,592	\$ 3,776	\$ 5,588
Working capital (deficiency)	93,953	228,269	155,243	(54,314)	(28,574)
Total assets	1,653,738	576,836	317,654	89,646	30,891
Convertible debt	425,000	—	—	—	—
Deferred tax liability	6,213	46	336	—	—
Customer advances, net of current portion	60,153	27,687	28,438	—	—
Other long-term liabilities	14,975	—	—	—	—
Notes payable to Cypress, net of current portion	—	—	—	21,673	5,312
Convertible preferred stock	—	—	—	8,552	9,366
Total stockholders' equity (deficit)	864,090	488,771	258,650	(10,664)	(20,479)

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

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, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are statements that do not represent historical facts. We use words such as “may,” “will,” “should,” “could,” “would,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential” and “continue” 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 our ability to obtain polysilicon ingots or wafers, future financial results, operating results, business strategies, projected costs, products, competitive positions, management’s plans and objectives for future operations, and industry trends. 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 “Item 1A: Risk Factors” and our other filings with the Securities and Exchange Commission 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, 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 quarters or year which ends on the Sunday closest to the calendar month end.

General

We are a vertically integrated solar products and services company that designs, manufactures and markets high-performance solar electric power technologies. Our solar cells and solar panels are manufactured using proprietary processes and technologies based on more than 15 years of research and development. We believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity, of all the solar cells available for the mass market. Our solar power products are sold through our components business segment, or our components segment. In January 2007, we acquired SP Systems, which developed, engineered, manufactured and delivered large-scale solar power systems. These activities are now performed by our systems business segment, or our systems segment. Our solar power systems, which generate electric energy, integrate solar cells and panels manufactured by us as well as other suppliers.

Components segment: Our components segment sells solar power products, including solar cells, solar panels and inverters, which convert sunlight to electricity compatible with the utility network. We believe our solar cells provide the following benefits compared with conventional solar cells:

- superior performance, including the ability to generate up to 50% more power per unit area;
- superior aesthetics, with our uniformly black surface design that eliminates highly visible reflective grid lines and metal interconnect ribbons; and
- efficient use of silicon, a key raw material used in the manufacture of solar cells.

We sell our solar components products to installers and resellers for use in residential and commercial applications where the high efficiency and superior aesthetics of our solar power products provide compelling customer benefits. We also sell products for use in multi-megawatt solar power plant applications. In many situations, we offer a materially 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 commercial solar thin film technologies. We sell our products primarily in Asia, Europe and North America, principally in regions where government incentives have accelerated solar power adoption. In fiscal 2007, 2006 and 2005, components revenue represented approximately 40%, 100% and 100%, respectively, of total revenue.

We manufacture our solar cells at our manufacturing facilities in the Philippines. We currently operate seven cell manufacturing lines in our solar cell fabrication facilities, with a total rated manufacturing capacity of approximately 214 megawatts per year. By the end of 2008, we plan to operate 12 solar cell manufacturing lines with an aggregate manufacturing capacity of 414 megawatts per year. We plan to begin production as soon as the first quarter of 2010 on the first line of a third solar cell manufacturing facility designed to have an aggregate manufacturing capacity of 500 megawatts per year.

We manufacture our solar panels at our panel manufacturing factory located in the Philippines. Our solar panels are also manufactured for us by a third-party subcontractor in China. We currently operate three solar panel manufacturing lines with a rated manufacturing capacity of 90 megawatts of solar panels per year. In addition, our SunPower branded inverters are manufactured for us by multiple suppliers.

Systems segment: Our systems segment sells solar power systems and system technology directly to system owners. When we sell a solar power system it may include services such as development, engineering, procurement of permits and equipment, construction management, access to financing, monitoring and maintenance. We believe our solar systems provide the following benefits compared with competitors' systems:

- superior performance delivered by maximizing energy delivery and financial return through systems technology design;
- superior systems design to meet customer needs and reduce cost, including non-penetrating, fast-install technology; and
- superior channel breadth and delivery capability including turnkey systems.

Our systems segment is comprised primarily of the business we acquired from SP Systems in January 2007. Our customers include commercial and governmental entities, investors, utilities and production home builders. We work with development, construction, system integration and financing companies to deliver our solar power systems to customers. Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years and are principally designed to be used in large-scale applications with system ratings of typically more than 500 kilowatts. Worldwide, more than 400 SunPower solar power systems are commissioned or in construction, rated in aggregate at more than 300 megawatts of peak capacity. In fiscal 2007, systems revenue represented approximately 60% of total revenue.

We have solar power system projects completed or in the process of being completed in various countries including Germany, Italy, Portugal, South Korea, Spain and the United States. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants. Distributed solar power systems are typically rated at more than 500 kilowatts of capacity to provide a supplemental, distributed source of electricity for a customer's facility. Many customers choose to purchase solar electricity from our systems under a power purchase agreement with a financing company which buys the system from us. For example, we recently completed the construction of an approximately 14 megawatt solar power plant at Nellis Air Force Base in Nevada, which will be operated under a power purchase agreement structure with a financier. In Europe and South Korea, our products and systems are typically purchased by a financing company and operated as a central station solar power plant. These power plants are rated with capacities of approximately one to 20 megawatts, and generate electricity for sale under tariff to private and public utilities.

We manufacture certain of our solar power system products at our manufacturing facilities in California and at other facilities located close to our customers. Some of our solar power system products are also manufactured for us by third-party suppliers.

Overview

We were incorporated in 1985 by Dr. Richard Swanson to develop and commercialize high-efficiency photovoltaic solar electric cell technology. Our solar cells were initially used in solar concentrator systems, which concentrate sunlight to reflective dish systems. From 1988 to 2000, we focused our efforts on developing our high-efficiency solar cells and marketing our infrared detectors. In 2001, NASA used our solar cells in the Helios solar-powered airplane to achieve a world record powered-flight altitude of 96,863 feet. For the past several years, we have focused our efforts on building commercial manufacturing capacity for our solar cells.

From 2002 until the closing of our IPO on November 22, 2005, we financed our operations primarily through sale of equity to and borrowings from Cypress totaling approximately \$142.8 million. In November 2005, we raised net proceeds of \$145.6 million in an IPO of 8.8 million shares of class A common stock at a price of \$18.00 per share. In June 2006, we completed a follow-on public offering of 7.0 million shares of our class A common stock, at a per share price of \$29.50, and received net proceeds of \$197.4 million. In July 2007, we completed a follow-on public offering of 2.7 million shares of our class A common stock, at a discounted per share price of \$64.50, and received net proceeds of \$167.4 million.

In February 2007, we issued \$200.0 million in principal amount of our 1.25% senior convertible debentures to Lehman Brothers Inc., or Lehman Brothers, and lent 2.9 million shares of our class A common stock to an affiliate of Lehman Brothers. Net proceeds from the issuance of senior convertible debentures in February 2007 were \$194.0 million. We did not receive any proceeds from the 2.9 million lent shares of our class A common stock, but received a nominal lending fee. In July 2007, we issued \$225.0 million in principal amount of our 0.75% senior convertible debentures to Credit Suisse Securities (USA) LLC, or Credit Suisse, and lent 1.8 million shares of our class A common stock to an affiliate of Credit Suisse. Net proceeds from the issuance of senior convertible debentures in July 2007 were \$220.1 million. We did not receive any proceeds from the 1.8 million lent shares of class A common stock, but received a nominal lending fee. See Note 15 of Notes to our Consolidated Financial Statements.

In January 2007, we completed the acquisition of PowerLight, a privately-held company which developed, engineered, manufactured and delivered large-scale solar power systems for residential, commercial, government and utility customers worldwide. These activities are now performed by our systems business segment. As a result of the acquisition, PowerLight became our indirect wholly owned subsidiary. In June 2007, we changed PowerLight's name to SunPower Corporation, Systems, or SP Systems, to capitalize on SunPower's name recognition. We believe the acquisition will enable us to develop the next generation of solar products and solutions that will accelerate reduction in solar system cost to compete with retail electric rates without incentives and simplify and improve customer experience. The total purchase consideration and future stock compensation for the transaction was \$334.4 million, consisting of \$120.7 million in cash and \$213.7 million in common stock, restricted stock, stock options and related acquisition costs. See Note 4 of Notes to our Consolidated Financial Statements.

After completion of our IPO in November 2005, Cypress held, in the aggregate, approximately 52.0 million shares of our class B common stock. On May 4, 2007, Cypress completed the sale of 7.5 million shares of our class B common stock in an offering pursuant to Rule 144 of the Securities Act. Such shares converted to 7.5 million shares of our class A common stock upon the sale. As of December 30, 2007, including the effect of the sale completed in May 2007, public offerings of our class A common stock in June 2006 and July 2007, and issuance of senior convertible debentures in February 2007 and July 2007, Cypress owned approximately 44.5 million shares of our class B common stock, which represented approximately 56% of the total outstanding shares of our common stock, or approximately 51% of such shares on a fully diluted basis after taking into account outstanding stock options (or 49% of such shares on a fully diluted basis after taking into account outstanding stock options and loaned shares to underwriters of our convertible indebtedness). Cypress also holds approximately 90% of the voting power of our total outstanding common stock. Cypress has agreed to provide specified manufacturing and support services such as legal, tax, treasury and employee benefits services to us for a limited period from the date of our IPO so long as Cypress owns a majority of the aggregate number of shares of all classes of our common stock.

Our employee base has increased from approximately 70 employees as of December 31, 2002 to 3,530 as of December 30, 2007 with the increase coming from hiring at our facilities in the Philippines related to our increased manufacturing capacity, acquisition of SP Systems, and increased headcount in research and development as well as sales and general and administrative functions as we prepare for anticipated continuing growth of our business.

Financial Operations Overview

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

Total Revenue

Systems Segment: Our systems segment generates revenue from sales of engineering, procurement and construction, or EPC, projects and other services relating to solar electric power systems that integrate our solar panels and balance of systems components, as well as materials sourced from other manufacturers. In the United States where customers often utilize rebate and tax credit programs in connection with projects rated one megawatt or less of capacity, we typically sell solar systems rated up to one megawatt of capacity to provide a supplemental, distributed source of electricity for a customer's facility. In Europe and South Korea, our systems are often purchased by third-party investors as central station solar power plants, typically rated from one to 20 megawatts, which generate electricity for sale under tariff to regional and public utilities. We also sell our solar systems through value-added resellers, or VARs, and under materials-only sales contracts in the United States, Europe and Asia. The balance of our systems revenues are generally derived from sales to new home builders for residential applications and maintenance revenue from servicing installed solar systems. Systems revenue accounted for 60% of our total revenue for the year ended December 30, 2007. We had no systems revenue in fiscal 2006 and 2005. Our systems revenue is largely dependent on the timing of revenue recognition on large construction projects and, accordingly, will fluctuate from period to period. For the year ended December 30, 2007, 84% of systems segment's revenue was from EPC construction contracts, of which 40% were derived from international contracts and 60% from construction contracts in the United States. The remaining 16% of systems revenue were from materials-only sales contracts, of which 99% were derived from international sales and 1% were sold in the United States.

Components Segment: Components revenue primarily represents sales of our solar cells, solar panels and inverters to solar systems installers and other resellers. Components revenue accounted for 40% of our total revenue for the year ended December 30, 2007 and 100% of our total revenue in each of fiscal 2006 and 2005. Components revenue from international sales represented 64%, 68%, and 70% of our total components revenue for fiscal 2007, 2006 and 2005, respectively. Components revenue from sales in the United States was 36%, 32%, and 30% of our total components revenue for fiscal 2007, 2006 and 2005, respectively. Factors affecting our components revenue include unit volumes of solar cells and modules produced and shipped, average selling prices, product mix, product demand and the percentage of our construction projects sourced with SunPower solar panels sold through the systems segment which reduces the inventory available to sell through our components segment. We have experienced quarter-over-quarter unit volume increases in shipments of our solar power products since we

began commercial production in the fourth quarter of 2004. During this period, we have experienced increases in average selling prices for our solar power products primarily due to the strength of end-market demand, favorable currency exchange rates, as well as an increase in raw material prices used in the manufacture of our products. Over the next several years, we expect average selling prices for our solar power products to decline as the market becomes more competitive, as certain products mature and as manufacturers are able to lower their manufacturing costs and pass on some of the savings to their customers.

Cost of Revenue

Systems Segment: Our cost of systems revenue consists primarily of solar panels, mounting systems, inverters and subcontractor costs. Other factors contributing to cost of revenue include amortization of intangible assets, depreciation, provisions for warranty, salaries, personnel-related costs, freight, royalties and manufacturing supplies associated with contracting revenues. The cost of solar panels is the single largest cost element in our cost of systems revenue. We expect our cost of systems revenue to fluctuate as a percentage of revenue depending on many factors such as the cost of solar panels, the cost of inverters, subcontractor costs, freight costs and other project related costs. In particular, our systems segment generally experiences higher gross margin on construction projects that utilize SunPower solar panels compared to construction projects that utilize solar panels purchased from third parties. Over time, we expect that our systems segment will increase the percentage of its construction projects sourced with SunPower solar panels from approximately 20% to 30% in 2007 to as much as 50% in 2008. Our cost of systems revenue will also fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large projects and large commercial installation projects that may or may not include solar panels. Our gross profit each quarter is affected by a number of factors, including the types of projects in process and their various stages of completion, the gross margins estimated for those projects in progress and the actual system group department overhead costs. Generally, revenues from materials-only sales contracts generate a higher gross margin percentage for our systems segment than revenue generated from construction projects.

In connection with the acquisition of SP Systems, there were \$79.5 million of identifiable purchased intangible assets, of which \$56.8 million was being amortized to cost of systems revenues on a straight-line basis over periods ranging from one to five years. As a result of our new branding strategy, during the quarter ended July 1, 2007, the PowerLight tradename asset with a net book value of \$14.1 million was written off as an impairment of acquisition-related intangible assets. As such, the remaining balance of \$41.2 million relating to purchased patents, technology and backlog will be amortized to cost of systems revenue on a straight-line basis over periods ranging from one to four years.

Almost all of our systems segment 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. The systems segment also has long-term agreements for solar cell and panel purchases with several major solar panel manufacturers, some with liquidated damages and/or take or pay type arrangements. An increase in project costs, including solar panel, inverter and subcontractor costs, over the term of a construction contract could have a negative impact on our systems segment's overall gross profit. Our systems segment gross profit may also be impacted by certain adjustments for inventory reserves. We are seeking to improve gross profit over time as we implement cost reduction efforts, improve manufacturing processes, and seek better and less expensive materials globally, as we grow the business to attain economies of scale on fixed costs. Any increase in gross profit based on these items, however, could be partially or completely offset by increased raw material costs or our inability to increase revenues in line with expectations, and other competitive pressures on gross margin.

Components Segment: Our cost of components revenue consists primarily of silicon ingots and wafers used in the production of solar cells, along with other materials such as chemicals and gases that are needed to transform silicon wafers into solar cells. Other factors contributing to cost of revenue include amortization of intangible assets, depreciation, provisions for estimated warranty, salaries, personnel-related costs, facilities expenses and manufacturing supplies associated with solar cell fabrication. For our solar panels, our cost of revenue includes the cost of solar cells and raw materials such as glass, frame, backing and other materials, as well as the assembly costs we pay to our third-party subcontractor in China. Additionally, we recently began production within our own solar panel assembly facility in the Philippines which incurs labor, depreciation, utilities and other occupancy costs.

On November 9, 2004, Cypress completed a reverse triangular merger with us in which each share of our then outstanding capital stock not owned by Cypress was valued at \$3.30 per share and exchanged for an equivalent number of shares of Cypress common stock. This merger effectively gave Cypress 100% ownership of all of our then outstanding shares of capital stock but left our unexercised warrants and options outstanding. As a result of that transaction, we were required to record Cypress' cost of acquiring us in our financial statements, including its equity investment and pro rata share of our losses by recording intangible assets, including purchased technology, patents, trademarks and a distribution agreement. The fair value for these intangibles is being amortized as an element of cost of component revenue over two to six years on a straight-line basis. For additional discussion regarding amortization of acquired intangibles, see Note 2 of Notes to our Consolidated Financial Statements.

Our components segment gross profit each quarter is affected by a number of factors, including average selling prices for our products, our product mix, our actual manufacturing costs, the utilization rate of our wafer fabrication facility and changes in amortization of intangible assets. To date, demand for our solar power products has been robust and our production output has increased allowing us to spread a significant amount of our fixed costs over relatively high production volume, thereby reducing our per unit fixed cost. We currently operate seven solar cell manufacturing lines with total production capacity of 214 megawatts per year with the 5th, 6th and 7th lines located in our second building in the Philippines that is expected to eventually house 12 solar cell production lines with a total factory output capacity of approximately 466 megawatts per year. As we build additional manufacturing lines or facilities, our fixed costs will increase, and the overall utilization rate of our wafer fabrication facilities could decline, which could negatively impact our gross profit. This decline may continue until a line's manufacturing output reaches its rated practical capacity.

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. An increase in our manufacturing costs, including raw polysilicon, silicon ingots and wafers, over such a defined period could have a negative impact on our overall gross profit. Our gross profit may also be impacted by fluctuations in manufacturing yield rates and certain adjustments for inventory reserves. We expect our gross profit to increase over time as we improve our manufacturing processes and as we grow our business and leverage certain of our fixed costs. An expected increase in gross profit based on manufacturing efficiencies, however, could be partially or completely offset by increased raw material costs or decreased revenue. Our inventory policy is described in more detail under "Critical Accounting Policies and Estimates."

Operating Expenses

Our operating expenses include research and development expense, sales, general and administrative expense, purchased in-process research and development expense and impairment of acquisition-related intangibles. Research and development expense consists primarily of salaries and related personnel costs, depreciation and the cost of solar cells and solar panel materials and services used for the development of products, including experiment and testing. We expect our research and development expense to 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. We expect our research and development expense to decrease as a percentage of revenue over time, assuming our revenue increases as we expect.

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, 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 grant funding or economic benefit derived from incremental improvements funded. Royalties paid to governmental agencies will be charged to the cost of goods sold. Our funding from government contracts offset our research and development expense by approximately 21%, 8% and 7% in fiscal 2007, 2006 and 2005, respectively. In the third quarter of 2007, we signed a Solar America Initiative agreement with the U.S. Department of Energy in which we were awarded \$8.5 million in the first budgetary period. Total funding for the three-year effort is estimated to be \$24.7 million. Payments received under this contract offset our research and development expense. Our cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be \$27.9 million. Subject to final negotiations and settlement with the government agencies involved, our existing governmental contracts are expected to offset approximately \$7.0 million to \$10.0 million of our research and development expense in each of 2007, 2008 and 2009. This contract replaced our three-year cost-sharing research and development project with the National Renewable Energy Laboratory, entered into in March 2005, to fund up to \$3.0 million or half of the project costs to design the our next generation solar panels.

Sales, general and administrative expense for our business consists primarily of salaries and related personnel costs, professional fees, insurance and other selling and marketing expenses. We expect our sales, general and administrative expense to increase in absolute dollars as we expand our sales and marketing efforts, hire additional personnel, improve our information technology infrastructure and incur expenditures necessary to fund the anticipated growth of our business. We also expect sales, general and administrative expense to increase to support our operations as a public company, including compliance-related costs. However, assuming our revenue increases as we expect, over time we anticipate that our sales, general and administrative expense will decrease as a percentage of revenue.

Purchased in-process research and development expense for the year ended December 30, 2007 of \$9.6 million resulted from the acquisition of SP Systems, as technological feasibility associated with the in-process research and development projects had not been established and no alternative future use existed. During fiscal 2007, we also incurred a charge for the impairment of acquisition-related intangibles of \$14.1 million. In June 2007, we changed our branding strategy and consolidated all of our product and service offerings under the SunPower tradename. To reinforce the new branding strategy, we formally changed the name of PowerLight to SunPower Corporation,

Systems. The fair value of PowerLight tradenames was \$15.5 million at the date of acquisition and ascribed a useful life of 5 years. The determination of the fair value and useful life of the tradename was based on our previous strategy of continuing to market our systems products and services under the PowerLight brand. As a result of the change in our branding strategy, during the quarter ended July 1, 2007, the net book value of the PowerLight tradename of \$14.1 million was written off as an impairment of acquisition-related intangible assets.

Interest and Other Income (Expense), Net

Interest income consists of interest earned on cash, cash equivalents, short-term investments and long-term investments. Historically, interest expense consisted of interest associated with indebtedness to Cypress and the fair value of warrants issued to Cypress which were reflected as interest expense using the effective interest method for financial reporting purposes. Interest expense also included expense related to outstanding advances from customers (see Note 13 of Notes to our Consolidated Financial Statements). In February 2007, we issued \$200.0 million in principal amount of our 1.25% senior convertible debentures and in July 2007, we issued \$225.0 million in principal amount of our 0.75% senior convertible debentures (see Note 15 of Notes to our Consolidated Financial Statements). We expect that interest expense on the aggregate of \$425.0 million in convertible debt will total approximately \$1.0 million per quarter assuming that all of the senior convertible debentures remain outstanding. Other income (expense), net consists primarily of the write-off of unamortized debt issuance costs as a result of the market price conversion trigger on our senior convertible debentures being met, amortization of debt issuance costs, share in net loss of joint venture, gains or losses from foreign exchange and foreign exchange hedging contracts.

Income Taxes

For financial reporting purposes, 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 are no longer eligible to file federal and most state consolidated tax returns with Cypress. 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 the entire deferred tax asset will be realized. Any payments we make to Cypress when we utilize certain tax attributes will be accounted for as an equity transaction with Cypress. See Notes 1, 3 and 10 of Notes to our Consolidated Financial Statements.

As of December 30, 2007, we had federal net operating loss carryforwards of approximately \$147.6 million. These federal net operating loss carryforwards will expire at various dates from 2011 to 2027. We had California state net operating loss carryforwards of approximately \$73.5 million as of December 30, 2007, which expire at various dates from 2011 to 2017. We also had research and development credit carryforwards of approximately \$3.9 million for both federal and state tax purposes. We have provided a valuation allowance on our deferred tax assets, consisting primarily of net operating loss carryforwards, because of the uncertainty of their realizability. In the event we determine that the realization of these deferred tax assets associated with our acquisition of SP Systems and Cypress' acquisition of us is more likely than not, the reversal of the related valuation allowance will first reduce goodwill, then intangible assets and lastly as a reduction to the provision for taxes. Due in part to equity financings, we experienced "ownership changes" as defined in Section 382 of the Internal Revenue Code. Accordingly, our use of a portion of the net operating loss carryforwards and credit carryforwards is limited by the annual limitations described in Sections 382 and 383 of the Internal Revenue Code. The majority of the net operating loss carryforwards were created by employee stock transactions. Because there is uncertainty as to the realizability of the loss carryforwards, the portion created by employee stock transactions are not reflected on the Company's Consolidated Balance Sheets.

We currently benefit from income tax holiday incentives in the Philippines pursuant to our Philippine subsidiary's registrations with the Board of Investments and Philippine Economic Zone Authority, which provide that we pay no income tax in the Philippines for four years pursuant to our Board of Investments non-pioneer status and Philippine Economic Zone Authority registrations, and six years pursuant to our Board of Investments pioneer status registration. Our current income tax holidays expire in 2010, and we intend to apply for extensions. However, these tax holidays may or may not be extended. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our Philippine Economic Zone Authority 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 of 32%. Fiscal 2007 was the first year for which profitable operations benefitted from the Philippine tax ruling.

Critical Accounting Policies and 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. 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. Our most critical policies include: (a) revenue recognition, which impacts the recording of revenue; (b) allowance for doubtful accounts and sales returns, which impacts sales, general and administrative expense; (c) warranty reserves, which impact cost of revenue and gross margin; (d) valuation of inventories, which impacts cost of revenue and gross margin; (e) stock option valuation, which impacts disclosure and cost of revenue and operating expenses; (f) valuation of long-lived assets, which impacts write-offs of goodwill and other intangible assets; (g) valuation of goodwill impairment, which impacts operating expense; (h) purchase accounting, which impacts fair value of goodwill, other intangible assets and in-process research and development expense; (i) fair value of investments; and (j) accounting for income taxes which impacts our tax provision (benefit). 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. The following is a discussion of our most critical policies as of and for the year ended December 30, 2007, as well as the estimates and judgments involved.

Revenue Recognition

Our systems segment revenue is primarily comprised of EPC projects which are governed by customer contracts that require us to deliver functioning solar power systems and are generally completed within 6 to 36 months from the date of the contract signing. In addition, our systems segment also derives revenues from sales of certain solar power products and services that are smaller in scope than an EPC contract. We recognize revenues from fixed price construction contracts under AICPA Statement of Position 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts," using the percentage-of-completion method of accounting. Under this method, systems 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 utilizing the most recent estimates of forecasted costs.

Incurred costs include all direct material, labor, subcontract costs and those indirect costs related to contract performance, such as indirect labor, supplies and tools. Job material costs are included in incurred costs when the job materials have been installed. Where construction contracts stipulate that title to job materials transfers to the customer before installation has been performed, systems revenue is deferred and recognized upon installation, in accordance with the percentage-of-completion method of accounting. Job materials are considered installed materials when they are permanently attached or fitted to the solar power system as required by the job's engineering design.

Due to inherent uncertainties in estimating cost, job costs estimates are reviewed and/or updated by management working within the systems segment. The systems segment determines the completed percentage of installed job materials at the end of each month; generally this information is also reviewed with the customer's on-site representative. The completed percentage of installed job materials is then used for each job to calculate the month-end job material costs incurred. Direct labor, subcontractor and other costs are charged to contract costs as incurred. 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.

As of December 30, 2007, the asset, "Costs and estimated earnings in excess of billings," which represents revenues recognized in excess of amounts billed, was \$39.1 million. The liability, "Billings in excess of costs and estimated earnings," which represents billings in excess of revenues recognized, was \$69.9 million. Ending balances in "Costs and estimated earnings in excess of billings" and "Billings in excess of costs and estimated earnings" are highly dependent on contractual billing schedules which are not necessarily related to the timing of revenue recognition.

We sell our components products, as well as our balance of systems projects from the systems segment, to system integrators and OEMs and recognize revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, the product has shipped, title and risk of loss has passed to the customer, the sales price is fixed and determinable, collectibility of the resulting receivable is reasonably assured and the rights and risks of ownership have passed to the customer. We do not currently have any significant post-shipment obligations, including installation, training or customer acceptance clauses with any of our customers, which could have an impact on revenue recognition. As such, we record revenue and trade receivables for the selling price when the above conditions are met. Our revenue recognition is consistent across product lines and sales practices are consistent across all geographic locations.

We also enter into development agreements with some of our customers. Components revenue related to development agreements is recognized under the proportionate performance method, with the associated costs included in cost of components revenue. We estimate the proportionate performance of our development contracts based on an analysis of progress toward completion.

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. We make our estimates of the collectibility of our accounts receivable by analyzing historical bad debts, specific customer creditworthiness and current economic trends. The allowance for doubtful accounts was \$1.4 million and \$0.6 million as of December 30, 2007 and December 31, 2006, respectively. If the financial condition of our customers were to deteriorate such that their ability to make payments was impaired, additional allowances could be required. In addition, at the time revenue is recognized, we simultaneously record estimates for sales returns which reduces 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. The allowance for sales returns was \$0.4 million as of December 30, 2007 and December 31, 2006.

Warranty Reserves

It is customary in our business and industry to warrant or guarantee the performance of our solar panels at certain levels of conversion efficiency for extended periods, often as long as 25 years. It is also customary to warrant or guarantee the functionality of our solar cells for at least ten years. In addition, we generally provide a warranty on our systems for a period of five years. We also pass through to customers long-term warranties from the original equipment manufacturers of certain system components. Warranties of 20 to 25 years from solar panels suppliers are standard, while inverters typically carry a two, five or ten year warranty. We therefore maintain warranty reserves to cover potential liability that could arise from these guarantees. Our potential liability is generally in the form of product replacement or repair. Our warranty reserves reflect our best estimate of such liabilities and are based on our analysis of product returns, results of industry-standard accelerated testing, unique facts and circumstances involved in each particular construction contract and various other assumptions that we believe to be reasonable under the circumstances. We have sold solar cells only since late 2004 and, accordingly, have a limited history upon which to base our estimates of warranty expense. We recognize our warranty reserve as a component of cost of revenue. Our warranty reserve includes specific accruals for known product and system issues and an accrual for an estimate of incurred but not reported product and system issues based on historical activity. Due to effective product testing and the short turnaround time between product shipment and the detection and correction of product failures, warranty charges were limited to \$10.8 million, \$3.2 million and \$0.4 million during the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.

Valuation of Inventory

Inventory is valued at the lower of cost or market. Certain factors could impact the realizable value of our inventory, so we continually evaluate the recoverability based on assumptions about customer demand and market conditions. The evaluation may take into consideration historic usage, expected demand, 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. The reserve or write-down is equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory reserves or 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 reserved or written down are eventually sold.

Stock-Based Compensation

Effective January 1, 2006, we adopted the fair value recognition provisions of Statement of Financial Accounting Standards ("SFAS") No. 123(R), using the modified prospective application transition method, and therefore have not restated prior periods' results. Under the fair value recognition provisions of SFAS No. 123(R), we recognize stock-based compensation net of an estimated forfeiture rate and only recognize compensation cost for those shares expected to vest over the requisite service period of the award. Prior to the adoption of SFAS No. 123(R), we accounted for share-based payments under APB No. 25 and, accordingly, generally recognized compensation expense only when we granted options with a discounted exercise price.

Determining the appropriate fair value model and calculating the fair value of share-based payment awards require the input of highly subjective assumptions, including the expected life of the share-based payment awards and stock price volatility. The assumptions used in calculating the fair value of share-based payment awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our stock-based

compensation expense could be materially different in the future. In addition, we are required to estimate the expected forfeiture rate and only recognize expense for those shares expected to vest. If our actual forfeiture rate is materially different from our estimate, the stock-based compensation expense could be significantly different from what we have recorded in the current period. See Note 17 of Notes to our Consolidated Financial Statements.

Valuation of Long-Lived Assets

Our long-lived assets include manufacturing equipment and facilities as well as certain intangible assets. Our business requires heavy investment in manufacturing facilities that are technologically advanced but can quickly become significantly under-utilized or rendered obsolete by rapid changes in demand for solar power products produced in those facilities. On November 9, 2004, Cypress completed a reverse triangular merger with us, and as a result of that transaction, we were required to record Cypress' cost of acquiring us in our financial statement by recording intangible assets including purchased technology, patents, trademarks, distribution agreement and goodwill. On January 10, 2007, we acquired PowerLight, which is now named SunPower Corporation, Systems, or SP Systems, and in connection with that transaction, we recorded all the acquired assets and liabilities at their fair values on the date of the acquisition, including goodwill and identified intangible assets.

We evaluate our long-lived assets, including property, plant and equipment and purchased 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. Prior to fiscal 2007, we operated in one business segment, therefore, impairment of long-lived assets was assessed at the enterprise level. As a result of the acquisition of SP Systems, we began operating in two business segments, the systems segment and components segment, and impairment of long-lived assets is assessed at the business segment level. Factors considered important that could result in an impairment review include significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets or the strategy for our business and significant negative industry or economic trends. Impairments are recognized based on the difference between the fair value of the asset and its carrying value, and fair value is generally measured based on discounted cash flow analyses.

In fiscal 2007, we recorded \$14.4 million of impairment charges relating to long-lived assets, primarily related to a \$14.1 million write-off of the carrying value of the PowerLight tradename resulting from a change in our branding strategy. During 2005, we recorded a \$0.5 million impairment charge in relation to certain decommissioned equipment that was in our pilot wafer fab located in Cypress' Round Rock, Texas facility.

Goodwill Impairment

On November 9, 2004, Cypress completed a reverse triangular merger with us, and as a result of that transaction, we were required to record Cypress' cost of acquiring us, including its equity investment and pro rata share of our losses in our financial statements by recording intangible assets including purchased technology, patents, trademarks, distribution agreement and goodwill. On January 10, 2007, we acquired SP Systems, and as a result of that transaction, we were required to record all assets and liabilities acquired under the purchase acquisition, including goodwill and identified intangible assets, at fair value in our financial statements. We perform a goodwill impairment test on an annual basis and will perform an assessment between annual tests in certain circumstances. The process of evaluating the potential impairment of goodwill is highly subjective and requires significant judgment at many points during the analysis. In estimating the fair value of our business, we make estimates and judgments about our future cash flows. Our cash flow forecasts are based on assumptions that are consistent with the plans and estimates we use to manage our business.

Purchase Accounting

We record all assets and liabilities acquired in purchase acquisitions, including goodwill, identified intangible assets and in-process research and development, at fair value as required by SFAS No. 141, "Business Combinations." The initial recording of goodwill, identified intangible assets and in-process research and development requires certain estimates and assumptions especially concerning the determination of the fair values and useful lives of the acquired intangible assets. 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 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 they may be impaired. Other identified 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.

Short-Term and Long-Term Investments

Investments designated as available-for-sale securities under SFAS No. 115, "Accounting for Investment in Certain Debt and Equity Securities," are carried at fair value based on quoted market prices or estimated based on quoted market prices for financial instruments with similar characteristics. Unrealized gains and losses of our available-for-sale securities are excluded from earnings and reported as a component of other comprehensive income (loss). 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 as an impairment of investments in the Consolidated Statements of Operations.

In general, investments with original maturities of greater than ninety days and remaining maturities of less than one year 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.

We also invest in auction rate securities that are typically over collateralized by pools of loans originated under the Federal Family Education Loan Program, or FFELP, and are guaranteed by the U.S. Department of Education, and insured. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations, or NRSRO, as triple-A. Historically, all auction rate securities were classified as short-term investments because we have been able to liquidate these at our direction on seven day, twenty-eight day, thirty-five day or six-month auction cycles. When auction rate securities fail to clear at auction, which occurred with respect to six securities in February 2008, and we are unable to estimate when the impacted auction rate securities will clear at the next auction, we classify these as long-term, consistent with the stated contractual maturities of the securities. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. A failed auction results in a lack of liquidity in the securities but does not signify a default by the issuer.

Accounting for Income Taxes

Our global operations involve manufacturing, research and development and selling activities. Profit from non-U.S. activities is subject to local country taxes 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 deferred tax assets to the amount that is more likely than not to be realized. We consider historical levels of income, expectations and risks associated with estimates of future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance. Should we determine that we would be able to realize deferred tax assets in the future in excess of the net recorded amount, we would record an adjustment to the deferred tax asset valuation allowance. This adjustment would increase income in the period such determination is made.

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 when 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 as required by FIN 48 and SFAS No. 109. This interest and penalty accrual is classified as income tax provision (benefit) in the Consolidated Statements of Operations and is not considered material.

Results of Operations

Revenue

Revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Systems revenue	\$ 464,178	\$ —	\$ —	n.a.	n.a.
Components revenue	310,612	236,510	78,736	31%	200%
Total revenue	\$ 774,790	\$ 236,510	\$ 78,736	228%	200%

We generate revenue from two business segments, as follows:

Systems segment revenue represents sales of engineering, procurement, construction and other services relating to solar electric power systems that integrate our solar panels and balance of systems components, as well as materials sourced from other manufacturers. Systems segment revenue for the year ended December 30, 2007 was \$464.2 million, which accounted for 60% of our total revenue. We had no systems segment revenue in fiscal 2006 and 2005. Our systems segment revenue is largely dependent on the timing of revenue recognition on large construction projects and, accordingly, will fluctuate from period to period. Gross margin for the systems segment was \$77.7 million for the year ended December 30, 2007, or 17% of systems segment revenue. Gross margin in our systems segment is affected by a number of factors, particularly the mix of projects sourced with our panels versus projects using solar panels purchased from other suppliers.

Components segment revenue primarily represents sales of our solar cells, solar panels and inverters to solar systems installers and other resellers. Components segment revenue to unaffiliated customers for the year ended December 30, 2007 was \$310.6 million, as compared to \$236.5 million and \$78.7 million in fiscal 2006 and 2005, respectively. The components segment accounted for 40% of our total revenue for the year ended December 30, 2007 and 100% of our revenue in fiscal 2006 and 2005. Gross margin for the components segment was \$70.1 million for the year ended December 30, 2007, or 23% of components segment revenue, as compared to \$50.5 million and \$4.4 million in fiscal 2006 and 2005, respectively, or 21% and 6% of revenue, respectively.

During the years ended December 30, 2007 and December 31, 2006, our revenues were \$774.8 million and \$236.5 million, respectively, which represent an increase of 228%. Our fiscal 2006 revenue increased 200% compared to our total revenue in 2005 of \$78.7 million. The significant increase in our total revenue from fiscal 2006 to 2007 resulted from the combination of an increase in components revenue of approximately \$74.1 million during the year ended December 30, 2007, and the addition of \$464.2 million in systems revenue for the year ended December 30, 2007, as a result of the acquisition of SP Systems. The increase in components revenue from fiscal 2005 through 2007 is attributable to the continued increase in the demand for our solar cells and solar panels since we began commercial production in late 2004 and continued increases in unit production and unit shipments of both solar cells and solar panels as we have expanded our solar manufacturing capacity. During the first three quarters of 2006, we had three solar cell manufacturing lines in operation with an approximate annual production capacity of 75 megawatts. Since then, we added a fourth 33 megawatt line during the fourth quarter of 2006, and we recently began commercial production on our 5th, 6th and 7th solar cell lines during the third and fourth quarters of 2007. Lines five and six have a rated solar cell production capacity of approximately 33 megawatts per year and line seven has a rated solar cell production capacity of approximately 40 megawatts per year.

From fiscal 2005 through 2007, our components segment has experienced an increase in average selling prices for our solar products, primarily relating to our solar cells and solar panels. Accordingly, our components segment's average selling prices were slightly higher during the year ended December 30, 2007 compared to the same period of 2006. However, we expect average selling prices for our solar power products to decline over time as the market becomes more competitive, as new products are introduced and as manufacturers are able to lower their manufacturing costs and pass on some of the savings to their customers.

We have six customers that each accounted for more than 10 percent of our total revenue in one or more of the years ended December 30, 2007, December 31, 2006 and January 1, 2006 as follows:

		Year Ended		
		December 30, 2007	December 31, 2006	January 1, 2006
Significant customers:	Business Segment			
SolarPack	Systems	18%	—%	—%
MMA Renewable Ventures	Systems	16%	—%	—%
Conergy AG	Components	*	25%	45%
Solon AG	Components	*	24%	16%
SP Systems**	Components	n.a.	16%	*
General Electric Company***	Components	*	*	10%

- * denotes less than 10% during the period
- ** acquired by us on January 10, 2007
- *** includes its subcontracting partner, Plexus Corporation

Effective February 6, 2008, the New York Stock Exchange, or NYSE, suspended the trading of the common stock of MuniMae, or MMA, the parent company of one of our significant systems segment customers, MMA Renewable Ventures, because MMA announced it will be unable to file its audited 2006 financial statements by March 3, 2008, the deadline imposed by the NYSE. MMA Renewable Ventures accounted for approximately 16% of our total revenue in fiscal 2007. In connection with completing the restatement and filing their Annual Report on Form 10-K for the year ended December 31, 2006, MMA incurred substantial accounting costs. In addition, general economic conditions have led to a severe capital and credit downturn, resulting in a slow-down to at least one element of MMA's business. MMA's management has evaluated their financial situation and determined it is not reasonably likely that the current reduction in net cash generated from operations will negatively impact its ability to remain a going concern. However, in the event MMA Renewable Ventures ceases to be a significant customer of ours or fails to pay us in a timely manner, it could have a material adverse effect on our future results of operations.

In November 2007, Conergy announced that it was experiencing a liquidity shortfall. These liquidity issues were subsequently resolved through interim financing from banks. In addition, Conergy is currently undergoing a reorganization which includes changes in the composition of management, discontinuation of certain non-core businesses and headcount reductions. Conergy accounted for approximately 25% and 45% of our total revenue in fiscal 2006 and 2005, respectively. In the year ended December 30, 2007, Conergy accounted for less than 10% of our total revenue. Conergy's management has evaluated their financial situation and determined it is not

reasonably likely that the recently experienced shortfall in liquidity and restructuring activities will negatively impact its ability to remain a going concern. However, in the event Conergy ceases to be a significant customer of ours or fails to pay us in a timely manner, it could have a material adverse effect on our future results of operations.

International sales comprise the majority of revenue for both our systems and components segments. International sales represented approximately 55%, 68% and 70% of our total revenue for fiscal 2007, 2006 and 2005, respectively, and we expect international sales to remain a significant portion of overall sales for the foreseeable future. Domestic sales as a percentage of our total revenue increased approximately 13% for the year ended December 30, 2007, as compared to the year ended December 31, 2006, as a result of the inclusion of systems segment revenue in 2007, and we expect domestic sales as a percentage of total revenue to increase in the future.

Cost of Revenue

Cost of revenue as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2007 vs. 2006 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Cost of systems revenue	\$ 386,511	\$ —	\$ —	n.a.	n.a.
Cost of components revenue	240,475	186,042	74,353	29%	150%
Total cost of revenue	<u>\$ 626,986</u>	<u>\$ 186,042</u>	<u>\$ 74,353</u>	237%	150%
Total cost of revenue as a percentage of revenue	81%	79%	94%		
Total gross margin percentage	19%	21%	6%		

Details to cost of revenue by segment and the year-over-year change were as follows:

(Dollars in thousands)	Systems Segment*		Components Segment			
	Year Ended December 30, 2007		Year Ended			2007 vs. 2006 Change
			December 30, 2007	December 31, 2006	January 1, 2006	
Amortization of purchased intangible assets	\$ 20,085	\$ 4,767	\$ 4,690	\$ 1,175	2%	299%
Stock-based compensation	8,187	4,213	846	155	398%	446%
Factory pre-operating costs	939	3,964	383	—	935%	n.a.
All other cost of revenue	357,300	227,531	180,123	73,023	26%	147%
Total cost of revenue	<u>\$ 386,511</u>	<u>\$ 240,475</u>	<u>\$ 186,042</u>	<u>\$ 74,353</u>	29%	150%
Total cost of revenue as a percentage of revenue	83%	77%	79%	94%		
Total gross margin percentage	17%	23%	21%	6%		

* We had no cost of systems revenue in fiscal 2006 and 2005.

During fiscal 2007, 2006 and 2005, our total cost of revenue was \$627.0 million, \$186.0 million and \$74.4 million, respectively. The marked annual increases in our cost of revenue resulted from increased costs in all spending categories relating to operating more production lines and producing and selling substantially higher unit volumes of our components products, as well as the inclusion of cost of systems revenue for the period subsequent to January 10, 2007. As a percentage of sales, our total cost of revenues increased from fiscal 2006 to 2007 primarily due to a \$20.1 million increase in amortization of intangible assets charged to cost of systems revenue for the year ended December 30, 2007 and an additional \$8.2 million in stock-based compensation expense charged to cost of systems revenue incurred in fiscal 2007, both associated with our acquisition of SP Systems. Additionally, costs of raw materials such as polysilicon continued to increase from fiscal 2006 to 2007 and we began incurring pre-operating costs associated with our new solar cell and solar panel manufacturing facilities starting in the fourth quarter of 2006. Such pre-operating costs, which included compensation and training costs for factory workers as well as utilities and consumable materials associated with preproduction activities, totaled \$4.9 million and \$0.4 million in the years ended December 30, 2007 and December 31, 2006, respectively. Our solar panel manufacturing facility began production in the first quarter of 2007 and our new solar cell line began production in the third quarter of 2007. The additional cost of revenue in fiscal 2007 were only partially offset by improved manufacturing economies of scale associated with markedly higher production volume and improved yields. As a percentage of sales, our total cost of revenues declined from fiscal 2005 to 2006, due to economies of scale, improved yields and declining fixed costs per unit associated with markedly higher production volume in 2006 compared to 2005, although our raw materials costs continued to increase.

Since the second half of 2006, we have increased our estimated warranty reserve provision rates based on results of our recent testing that simulates adverse environmental conditions and potential failure rates our solar panels could experience during their 25-year warranty period. Provisions for warranty reserves charged to cost of revenue were \$10.8 million, \$3.2 million and \$0.4 million during fiscal 2007, 2006 and 2005, respectively. As a result of the acquisition of SP Systems, amortization of intangible assets charged to cost of revenue increased to \$24.9 million in fiscal 2007, as compared to \$4.7 million in fiscal 2006 and \$1.2 million in 2005. Amortization of intangible assets charges represent amortization of purchased technology, patents, trademarks and other intangible assets. Stock-based compensation charges to cost of revenue were \$12.4 million, \$0.8 million and \$0.2 million during fiscal 2007, 2006 and 2005, respectively. The substantial increase in stock-based compensation expense between the year ended December 30, 2007 and December 31, 2006 primarily relates to the acquisition of SP Systems.

Our gross margins were 19%, 21% and 6% during fiscal 2007, 2006 and 2005, respectively. The reduction in gross margin during fiscal 2007 compared to 2006 is reflective of certain purchase accounting charges, an increase in stock-based compensation expense as a result of the acquisition of SP Systems, higher warranty and material costs, particularly costs of silicon ingots and wafers, and increased factory pre-operating costs, only partially offset by improved manufacturing economies of scale associated with markedly higher production volume and improved yields. In the first and fourth quarters of 2007, our systems segment gross margin was substantially higher than in the second and third quarters of 2007 as a result of a favorable mix of business than is typical of this business. This favorable mix of business improved our overall gross margin for the year ended December 30, 2007 by approximately five percentage points above what we expected for our systems segment. In addition, during the first quarter of 2007, we received a \$2.7 million settlement from one of our suppliers in connection with defective materials sold to us during 2006. This settlement was reflected as a reduction to cost of revenues in the year ended December 30, 2007. The improvement in gross margin during fiscal 2006 compared to 2005 is reflective of improved manufacturing economies of scale associated with markedly higher production volume and improved yields, offset partially by higher warranty and material costs, particularly costs of silicon ingots and wafers.

Research and Development

Research and development expense as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Research & development	\$ 13,563	\$ 9,684	\$ 6,488	40%	49%
Research & development as a percentage of revenue	2%	4%	8%		

During fiscal 2007, 2006 and 2005, our research and development expenses were \$13.6 million, \$9.7 million and \$6.5 million, respectively. Our research and development expense has steadily decreased as a percentage of revenues as a result of the rapid increase in our total revenue. The increase in research and development spending year-over-year resulted primarily from increases in: (i) salaries, benefits and stock-based compensation costs as a result of increased headcount, including headcount additions attributable to the acquisition of SP Systems on January 10, 2007; (ii) stock-based compensation expense resulting from both the Company’s adoption of SFAS No. 123(R) in 2006 and the acquisition of SP Systems; and (iii) additional material and equipment costs incurred for the development of our next generation of more efficient solar cells and thinner polysilicon wafers for solar cell manufacturing, as well as development of new processes to automate solar panel assembly operations. These increases were partially offset by a decrease in consulting service fees as well as by cost reimbursements received from various government entities in the United States. Additionally, during fiscal 2005, we recognized a \$0.5 million impairment charge related to certain equipment when we decommissioned our pilot wafer lab located in Cypress’ Round Rock, Texas facility. We expect our research and development expense to increase in absolute dollars, but decrease slightly as a percentage of revenue, 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.

Sales, General and Administrative

Sales, general and administrative expense as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Sales, general & administrative	\$ 108,256	\$ 21,677	\$ 10,880	399%	99%
As a percentage of revenue	14%	9%	14%		

During fiscal 2007, 2006 and 2005, our sales, general and administrative expenses were \$108.3 million, \$21.7 million, and \$10.9 million, respectively. Sales, general and administrative expense increased from \$21.7 million in fiscal 2006 to \$108.3 million in 2007, a 399% increase. The increase in our sales, general and administrative expenses in fiscal 2007 compared to 2006 is the result of higher spending in all areas of sales, marketing, finance and information technology to support the growth of our business, particularly increased headcount and payroll related expenses, including stock-based compensation, primarily due to the acquisition and integration of SP Systems, as well as increased outside professional fees for legal and accounting services. During fiscal 2007 and 2006, stock-based compensation included in our sales, general and administrative expense were \$37.0 million and \$2.8 million, respectively. Also contributing to our increased sales, general and administrative expense in fiscal 2007 compared to 2006 are substantial increases in headcount and sales and marketing spending to expand our value added reseller channel and global branding initiatives. As a percentage of revenues, sales, general and administrative expenses increased to 14% in the year ended December 30, 2007 from 9% in the year ended December 31, 2006, because these expenses increased at a higher rate than the rate of growth of our revenue.

Sales, general and administrative expense increased from \$10.9 million in fiscal 2005 to \$21.7 million in 2006, a 99% increase. The increase in our sales, general and administrative expenses in fiscal 2006 compared to 2005 was a result of higher spending to support the growth of our business, particularly increased headcount and payroll costs in all areas of sales, marketing, finance and information technology. In addition, fiscal 2006 included stock-based compensation expense resulting from the adoption of SFAS No. 123(R). Accounting and legal fees had increased substantially in 2006 mainly due to compliance-related costs of having publicly traded common stock since November 2005, including Sarbanes-Oxley compliance costs. Also in 2006, our sales, general and administrative expenses include increased legal costs incurred in relation to due diligence activities and developing contracts and agreements. During 2006, we had also continued to increase headcount and sales and marketing spending to expand our North America sales channel initiative. As a percentage of revenue, sales, general and administrative expense decreased from 14% in 2005 to 9% in 2006 because these expenses increased at a substantially lower rate than the rate of growth in our revenue. In the future, we anticipate that sales, general and administrative expense will increase in absolute dollars, but will decrease as a percentage of sales, assuming our revenue grows as we expect.

Purchased In-Process Research and Development, or IPR&D

Purchased in-process research and development expense as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Purchased in-process research and development	9,575	—	—	n.a.	n.a.
Purchased in-process research & development as a percentage of revenue	1%	n.a.	n.a.		

In connection with the acquisition of SP Systems, we recorded an IPR&D charge of \$9.6 million in the first quarter of fiscal 2007, as technological feasibility associated with the IPR&D projects had not been established and no alternative future use existed.

These IPR&D projects consisted of two components: design automation tool and tracking systems and other. In assessing the projects, we considered key characteristics of the technology as well as its future prospects, the rate technology changes in the industry, product life cycles and the various projects' stage of development.

The value of IPR&D was determined using the income approach method, which calculated the sum of the discounted future cash flows attributable to the projects once commercially viable using a 40% discount rate, which were derived from a weighted-average cost of capital analysis and adjusted to reflect the stage of completion and the level of risks associated with the projects. The percentage of completion for each project was determined by identifying the research and development expenses invested in the project as a ratio of the total estimated development costs required to bring the project to technical and commercial feasibility. The following table summarizes certain information related to each project:

	Stage of Completion	Total Cost Incurred to Date	Total Remaining Costs
Design Automation Tool			
As of January 10, 2007 (acquisition date)	8%	\$ 0.2 million	\$ 2.4 million
As of December 30, 2007	35%	\$ 0.9 million	\$ 1.7 million
Tracking System and Other			
As of January 10, 2007 (acquisition date)	25%	\$ 0.2 million	\$ 0.6 million
As of December 30, 2007	100%	\$ 0.8 million	\$ —

Status of IPR&D Projects:

As of December 30, 2007, we have incurred total post-acquisition costs of approximately \$0.7 million related to the design automation tool project and estimate that an additional investment of \$1.7 million will be required to complete the project. We expect to complete the design automation tool project by June 2009, approximately one and a half years earlier than the original estimate.

We completed the tracking systems project in June 2007 and incurred total project costs of \$0.8 million, of which \$0.6 million was incurred after the acquisition. Both the actual completion date and the total projects costs were in line with the original estimates.

The development of the design automation tool remains a significant risk due to factors including the remaining efforts to achieve technical viability, rapidly changing customer markets, uncertain standards for new products and competitive threats. The nature of the efforts to develop these technologies into commercially viable products consists primarily of planning, designing, experimenting and testing activities necessary to determine that the technologies can meet market expectations, including functionality and technical requirements. Failure to bring these products to market in a timely manner could result in a loss of market share or a lost opportunity to capitalize on emerging markets and could have a material adverse impact on our business and operating results.

Impairment of Acquisition-Related Intangibles

Impairment of acquisition-related intangibles as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Impairment of acquisition-related intangibles	\$ 14,068	\$ —	\$ —	n.a.	n.a.
As a percentage of revenue	2%	n.a.	n.a.		

During the year ended December 30, 2007, we recognized a charge for the impairment of acquisition-related intangibles of \$14.1 million. In June 2007, we changed our branding strategy and consolidated all of our product and service offerings under the SunPower tradename. To reinforce the new branding strategy, we formally changed the name of PowerLight to SunPower Corporation, Systems. The fair value of PowerLight tradenames was valued at \$15.5 million at the date of acquisition and ascribed a useful life of 5 years. The determination of the fair value and useful life of the tradename was based on our previous strategy of continuing to market our systems products and services under the PowerLight brand. As a result of the change in our branding strategy, during the quarter ended July 1, 2007, the net book value of the PowerLight tradename of \$14.1 million was written off as an impairment of acquisition-related intangible assets. As a percentage of revenues, impairment of acquisition related intangibles was 2% for the year ended December 30, 2007.

Interest and Other Income (Expense), Net

Interest income, interest expense, and other income (expense), net as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Interest income	\$ 13,882	\$ 10,086	\$ 1,591	38%	534%
As a percentage of revenue	2%	4%	2%		
Interest expense	\$ (5,071)	\$ (1,809)	\$ (3,185)	180%	(43)%
As a percentage of revenue	(1)%	(1)%	(4)%		
Other income (expense), net	\$ (7,871)	\$ 1,077	\$ (1,214)	(831)%	(189)%
As a percentage of revenue	(1)%	0%	(2)%		

Interest income during the years ended December 30, 2007, December 31, 2006 and January 1, 2006 primarily represents interest income earned on our cash, cash equivalents and investments during these periods. The increase in interest income of 38% from fiscal 2006 to 2007 is primarily the effect of interest earned on \$581.5 million in net proceeds from our class A common stock and convertible debenture offerings in February and July 2007. The increase in interest income of 534% from fiscal 2005 to 2006 is primarily the effect of interest earned on approximately \$145.6 million in net proceeds from the public issuance of our class A common stock at the close of our IPO in November 2005 and approximately \$197.4 million in net proceeds from our follow-on public offering completed in June 2006.

Interest expense during the year ended December 30, 2007 relates to interest due on customer advance payments and convertible debt. Interest expense during the year ended December 31, 2006 primarily relates to customer advance payments. The increase in our interest expense of 180% from fiscal 2006 to 2007 is primarily due to interest related to the aggregate of \$425.0 million in convertible debentures issued in February and July 2007. During fiscal 2005, interest expense primarily represents interest expense on borrowings and from warrants held by Cypress. Interest expense attributed to debt we owed to Cypress was \$1.9 million in 2005. Our convertible debt and borrowings from Cypress were used to fund our capital expenditures for our manufacturing capacity expansion.

In September 2007, the FASB issued a proposed FASB Staff Position APB 14-a, which clarifies the accounting for convertible debt instruments that may be settled in cash upon conversion. The proposed guidance, if issued in final form, would significantly impact the accounting for our convertible debt. The proposed guidance would require us to separately account for the liability and equity components of the convertible debt in a manner that reflects interest expense equal to our non-convertible debt borrowing rate. The proposed guidance, if issued in final form, will result in significantly higher non-cash interest expense on our convertible debt.

The following table summarizes the components of other income (expense), net:

(In thousands)	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Write-off of unamortized debt issuance costs	\$ (8,260)	\$ —	\$ —
Amortization of debt issuance costs	(1,710)	—	—
Share in net loss of joint venture, net of tax	(278)	—	—
Gain (loss) on derivatives and foreign exchange, net of tax	2,086	863	(1,441)
Other income, net	291	214	227
Total other income (expense), net	<u>\$ (7,871)</u>	<u>\$ 1,077</u>	<u>\$ (1,214)</u>

For the year ended December 30, 2007, total other expense, net consists primarily of the write-off of unamortized debt issuance costs as a result of the market price conversion trigger on our senior convertible debentures being met, amortization of debt issuance costs and share in net loss of Woongjin Energy Co., Ltd, a joint venture, offset slightly by gains from foreign exchange hedging contracts. For the years ended December 31, 2006 and January 1, 2006, total other income (expense), net consists primarily of gains (losses) on foreign exchange and hedging contracts.

Income Taxes

Income tax provision (benefit) as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Year Ended			2007 vs. 2006 Change	2006 vs. 2005 Change
	December 30, 2007	December 31, 2006	January 1, 2006		
Income tax provision (benefit)	\$ (5,920)	\$ 1,945	\$ 50	(404)%	3,790%
As a percentage of revenue	(1)%	1%	0%		

In fiscal 2007, our income tax benefit was primarily the result of recognition of deferred tax assets to the extent of deferred tax liabilities created by the acquisition of SP Systems, net of foreign income taxes in profitable jurisdictions where the tax rates are less than the U.S. statutory rate. In fiscal 2006 and 2005, our income tax expense was provided primarily for foreign income taxes in certain jurisdictions where our operations are profitable. As described in Note 3 of Notes to Consolidated Financial Statements, we will pay federal and state income taxes in accordance with the tax sharing agreement with Cypress. Since the completion of our follow-on public offering of common stock in June 2006, we are no longer considered to be a member of Cypress' consolidated group for federal income tax purposes. Accordingly, we will be required to pay Cypress for any federal income tax credit or net operating loss carryforwards utilized in our federal tax returns in subsequent periods. In the event we determine that the realization of these deferred tax assets associated with the SP Systems and Cypress acquisitions is more likely than not, the reversal of the related valuation allowance will first reduce goodwill, then intangible assets and lastly as a reduction to the provision for taxes.

We recorded a valuation allowance to the extent our net deferred tax asset on all items except comprehensive income exceeded our net deferred tax liability. We expect it is more likely than not that we will not realize our net deferred tax asset as of December 30, 2007. 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 in the period of adjustment. As of December 30, 2007, we had federal net operating loss carryforwards of approximately \$147.6 million. These federal net operating loss carryforwards will expire at various dates from 2011 to 2027. We had California state net operating loss carryforwards of approximately \$73.5 million as of December 30, 2007, which expire at various dates from 2011 to 2017. We also had research and development credit carryforwards of approximately \$3.9 million for both federal and state tax purposes.

Liquidity and Capital Resources

From 2002 until the closing of our IPO of 8.8 million shares of class A common stock on November 22, 2005, we financed our operations primarily through sale of equity to and borrowings from Cypress totaling approximately \$142.8 million. We received net proceeds from our IPO of approximately \$145.6 million and in a follow-on offering of 7.0 million shares of common stock in June 2006 we received net proceeds of approximately \$197.4 million. In February 2007, we raised \$194.0 million net proceeds from the issuance of 1.25% senior convertible debentures. In July 2007, we raised \$220.1 million net proceeds from the issuance of 0.75% senior convertible debentures and \$167.4 million net proceeds from the completion of a follow-on offering of 2.7 million shares of our class A common stock.

Cash Flows

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

(Dollars in thousands)	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Net cash provided by (used in) operating activities	\$ 2,372	\$ (45,966)	\$ 15,903
Net cash used in investing activities	(474,118)	(133,330)	(68,497)
Net cash provided by financing activities	584,625	201,300	192,410

Operating Activities

Net cash generated from operating activities of \$2.4 million in fiscal 2007 was primarily the result of net income of \$9.2 million, plus non-cash charges totaling \$140.7 million for depreciation, amortization, purchased in-process research and development, impairment of acquisition-related intangibles, write-off of unamortized debt issuance costs and stock-based compensation expense. In addition, cash provided by operating activities in fiscal 2007 resulted from increases in accounts payable and accrued liabilities of \$40.3 million, billings in excess of costs and estimated earnings of \$29.9 million related to contractual timing of system project billings and customer advances of \$29.4 million. These items were partially offset by increases in inventory of \$87.0 million, advances to suppliers of \$83.6 million related to our existing supply agreements, accounts receivable of \$42.7 million, costs and estimated earnings in excess of billings of \$32.6 million related to contractual timing of system project billings and other changes in operating assets and liabilities totaling \$1.2 million. The significant increases in substantially all of our current assets and current liabilities resulted from the acquisition of SP Systems, as well as our substantial revenue increase in the year ended December 30, 2007 compared to previous years which impacted net income and working capital.

Net cash used in operating activities was \$46.0 million in fiscal 2006, which primarily represents our net income of \$26.5 million, offset by \$77.4 million of advance payments to raw material suppliers. The net impact of all other sources and uses of fiscal 2006 cash flows from operations was a net increase of \$4.9 million comprised of non-cash charges for depreciation, amortization and stock-based compensation and changes in operating assets and liabilities.

Net cash generated from operating activities was \$15.9 million in fiscal 2005, which reflects our net loss for the year of \$15.8 million, which was primarily offset by customer advances of \$37.4 million to fund expansion of our manufacturing capacity. In April 2005, we entered into an agreement with one of our customers to supply solar cells. As part of this agreement, the customer agreed to pre-fund the expansion of our manufacturing capacity to support this customer's solar cell product demand. Beginning January 1, 2006, we began paying interest on the unpaid balance of this customer advance. We may repay all or any portion of the unpaid principal and related interest on the advances at any time without penalty through December 31, 2010. The net impact of all other sources and uses of fiscal 2005 cash flows from operations was a net decrease of \$5.7 million comprised of changes in operating assets and liabilities, partially offset by non-cash charges for depreciation, amortization and stock-based compensation.

Investing Activities

Net cash used in investing activities was \$474.1 million in fiscal 2007, which primarily relates to capital expenditures of \$193.5 million incurred during the year ended December 30, 2007. Capital expenditures were mainly associated with manufacturing capacity expansion in the Philippines. Although the timing of our capital expansion plans may shift depending on many factors, we currently expect 2008 capital expenditures to be between approximately \$250.0 million and \$300.0 million, primarily related to continued expansion of our manufacturing capacity. Also during the year ended December 30, 2007, we used (i) \$118.0 million of cash for purchases of available-for-sale securities, net of available-for-sale securities sold during the year; (ii) had \$63.2 million of restricted cash; (iii) paid \$98.6 million in cash for the acquisition of SP Systems, net of cash acquired; and (iv) invested \$0.9 million in a joint venture to provide wafer slicing services of silicon ingots (the First Philec Solar joint venture—see Note 11 of Notes to our Consolidated Financial Statements).

Net cash used in investing activities was \$133.3 million in fiscal 2006 and primarily comprised of \$100.3 million of capital expenditures relating to manufacturing property, plant and equipment in the Philippines. Capital equipment purchased in fiscal 2006 was primarily for our manufacturing facilities in the Philippines. Also during the year ended December 31, 2006, we used (i) \$16.5 million to purchase short-term marketable investment securities; (ii) \$10.0 million loaned to SP Systems, which we subsequently acquired on January 10, 2007 and (iii) \$5.0 million investment in a joint venture to manufacture mono-crystalline silicon ingots (the Woongjin Energy joint venture—see Note 11 of Notes to our Consolidated Financial Statements).

Net cash used in investing activities was \$68.5 million in fiscal 2005, substantially all of which represented expenditures for manufacturing facilities and equipment. Capital equipment purchased in fiscal 2005 was primarily for our 215,000 square foot solar cell manufacturing facility in the Philippines, equipment for our first 25 megawatts per year production line and for our second and third 25 megawatts per year production lines.

Financing Activities

Net cash provided by financing activities was \$584.6 million in fiscal 2007, which reflects \$194.0 million in net proceeds from the issuance of \$200.0 million in principal amount of 1.25% senior convertible debentures in February 2007, \$220.1 million in net proceeds from the issuance of \$225.0 million in principal amount of 0.75% senior convertible debentures in July 2007 and \$167.4 million in net proceeds from our follow-on public offering of 2.7 million shares of our class A common stock in July 2007. Also during the year ended December 30, 2007, we paid \$3.6 million on an outstanding line of credit, paid \$2.0 million for treasury stock used to pay withholding taxes on vested restricted stock, received \$8.5 million in proceeds from stock option exercises and received \$0.2 million from employees for the conversion of stock appreciation rights to restricted stock units.

Net cash provided by financing activities was \$201.3 million and 192.4 million in fiscal 2006 and 2005, respectively. In June 2006, we raised \$197.4 million in net proceeds from our follow-on public offering of common stock and, in fiscal 2006, we received \$3.9 million in proceeds from exercises of employee stock options. During fiscal 2005 we raised \$46.6 million of equity and debt financing from Cypress and we raised \$145.6 million of net proceeds from the initial public offering of 8.8 million shares of our Series A common stock in November 2005. We currently have no outstanding debt obligations to Cypress apart from trade payables.

Revision of Statement of Cash Flow Presentation Related to Purchases of Property, Plant and Equipment

We have corrected our Consolidated Statements of Cash Flows for 2006 and 2005 to exclude the impact of purchases of property, plant and equipment that remain unpaid and as such are included in “accounts payable and other accrued liabilities” at the end of the reporting period. Historically, changes in “accounts payable and other accrued liabilities” related to such purchases were included in cash flows from operations, while the investing activity caption “Purchase of property, plant and equipment” included these purchases. As these unpaid purchases do not represent cash transactions, we are revising our cash flow presentations to exclude them. These corrections resulted in an increase to the previously reported amounts of cash used for operating activities of \$8.0 million in fiscal 2006 and a decrease to the cash provided from operating activities of \$1.9 million in fiscal 2005, resulting from a reduction in the amount of cash provided from the change in accounts payable and other accrued liabilities in those years. The corresponding correction in the investing section was to decrease cash used for investing activities by \$8.0 million and \$1.9 million in fiscal 2006 and fiscal 2005, respectively, as a result of the reduction in the amount of cash used for purchases of property, plant and equipment in those years. These corrections had no impact on our previously reported results of operations, working capital or stockholders’ equity. We concluded that these corrections were not material to any of our previously issued consolidated financial statements, based on SEC Staff Accounting Bulletin: No. 99-Materiality.

Debt and Credit Sources

On December 2, 2005, we entered into a \$25.0 million three-year revolving credit facility with affiliates of Credit Suisse and Lehman Brothers, of which there were no borrowings ever made under the facility. We terminated our agreement with affiliates of Credit Suisse and Lehman Brothers on July 13, 2007.

In connection with the acquisition of SP Systems on January 10, 2007, we assumed a line of credit SP Systems had with Union Bank of California, N.A., or UBOC, with an outstanding balance of approximately \$3.6 million. During the first quarter of fiscal 2007, we paid off the outstanding balance in full.

Also on January 10, 2007, we amended and restated the loan agreement with UBOC. The amended and restated loan agreement provided for a \$10.0 million trade finance credit facility, which was scheduled to expire on April 30, 2007. This facility allowed us to issue commercial and standby letters of credit, but did not provide for any loans. All of the assets of SP Systems secured this trade finance facility. In addition, the agreement required that SP Systems maintain cash equal to the value of letters of credit outstanding in restricted accounts as collateral for letters of credit issued by the bank. On April 27, 2007, we amended the loan agreement to, among other things, extend the maturity date to July 31, 2007, and remove the requirement to have cash collateral for letters of credit. We guaranteed \$10.5 million in connection with the April 27, 2007 amendment including the \$10 million trade credit facility and a separate \$0.5 million credit card facility through UBOC. Our line of credit with UBOC expired on July 31, 2007.

On July 13, 2007, we entered into a credit agreement with Wells Fargo Bank, National Association, or Wells Fargo, that was amended on August 20, 2007, providing for a \$50.0 million unsecured revolving credit line, with a \$40.0 million unsecured letter of credit subfeature, and a separate \$50.0 million secured letter of credit facility. We may borrow up to \$50.0 million and request that Wells Fargo issue up to \$40.0 million in letters of credit under the unsecured letter of credit subfeature through July 31, 2008. Letters of credit issued under the subfeature reduce our borrowing capacity under the revolving credit line. Additionally, we may request that Wells Fargo issue up to \$50.0 million in letters of credit under the secured letter of credit facility through July 31, 2012. As detailed in the agreement, we will pay interest on outstanding borrowings and a fee for outstanding letters of credit. We have the ability at any time to prepay outstanding loans. All borrowings must be repaid by July 31, 2008, and all letters of credit issued under the unsecured letter of credit subfeature shall expire on or before July 31, 2008 unless we provide by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the secured letter of credit facility shall expire no later than July 31, 2012. We concurrently entered into a security agreement with Wells Fargo, granting a security interest in a deposit account to secure our obligations in connection with any letters of credit that might be issued under the credit agreement. In connection with the credit agreement, SunPower North America, Inc., our wholly-owned subsidiary, and SP Systems, another wholly-owned subsidiary of ours, entered into an associated continuing guaranty with Wells Fargo. The terms of the credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type.

As of December 30, 2007, four letters of credit totaling \$32.0 million were issued by Wells Fargo under the unsecured letter of credit subfeature and eight letters of credit totaling \$47.9 million were issued by Wells Fargo under the secured letter of credit facility. On December 30, 2007, cash available to be borrowed under the unsecured revolving credit line was \$18.0 million and includes letter of credit capacities available to be issued by Wells Fargo under the unsecured letter of credit subfeature of \$8.0 million. Letters of credit available under the secured letter of credit facility at December 30, 2007 totaled \$2.1 million.

As of December 30, 2007, we were in compliance with all but two debt covenants. We had failed to deliver in a timely manner a certificate of the chief executive officer or chief financial officer that the financial statements in our prior Quarterly Report on Form 10-Q were accurate and that there existed no event of default with debt covenants. We also entered into corporate guaranties on construction project deals in Europe that exceeded the allowed amount under the debt covenants. On January 18, 2008, we entered into an agreement with Wells Fargo to amend the existing credit agreement. Under the amended credit agreement, Wells Fargo waived compliance requirements with certain restrictive covenants, including the prohibition against us to provide corporate guaranties that support contracts between our subsidiaries and third parties. In exchange for waiving compliance with such restrictive covenants, we agreed to maintain a balance of funds in a deposit account with Wells Fargo, in an amount no less than the aggregate outstanding indebtedness we owed to Wells Fargo under both the line of credit, including our letter of credit subfeature, and the letter of credit line, as collateral securing such outstanding indebtedness. Had Wells Fargo not waived this violation, we would have been in default of our debt covenants and we may have been required to immediately repay the aggregate outstanding indebtedness we owed to Wells Fargo under both the line of credit, including our letter of credit subfeature, and the letter of credit line. See Note 14 of Notes to our Consolidated Financial Statements.

In January 2007, we completed the acquisition of SP Systems for a total purchase consideration and future stock compensation of \$334.4 million, consisting of \$120.7 million in cash and \$213.7 million in common stock and related acquisition costs. In conjunction with the acquisition of SP Systems, we entered into a commitment letter with Cypress during the fourth quarter of fiscal 2006 under which Cypress agreed to lend us up to \$130.0 million in cash in order to facilitate the financing of acquisitions or working capital requirements. In February 2007, the commitment letter was terminated. No borrowings were utilized and no borrowings were outstanding at the termination date. See Note 16 of Notes to our Consolidated Financial Statements for details on other borrowings from Cypress, consisting of \$76.0 million in promissory notes and related interest and \$14.7 million in payables that were converted into our class B common stock in fiscal 2005. As of December 30, 2007, December 31, 2006 and January 1, 2006, there were no amounts outstanding in relation to borrowings from Cypress.

In February 2007, we issued \$200.0 million in principal amount of our 1.25% senior convertible debentures, or the February 2007 debentures, to Lehman Brothers and received net proceeds of \$194.0 million. Interest on the February 2007 debentures is payable on February 15 and August 15 of each year, commencing August 15, 2007. The February 2007 debentures will mature on February 15, 2027. Holders may require us to repurchase all or a portion of their February 2007 debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change. Any repurchase of the February 2007 debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the February 2007 debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the February 2007 debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the February 2007 debentures to be redeemed plus accrued and unpaid interest. See Note 15 of Notes to our Consolidated Financial Statements.

In July 2007, we issued \$225.0 million in principal amount of our 0.75% senior convertible debentures, or the July 2007 debentures, to Credit Suisse and received net proceeds of \$220.1 million. Interest on the July 2007 debentures is payable on February 1 and August 1 of each year, commencing February 1, 2008. The July 2007 debentures will mature on August 1, 2027. Holders may require us to repurchase all or a portion of their July 2007 debentures on each of August 1, 2010, August 1, 2015, August 1, 2020 and August 1, 2025, or if we experience certain types of corporate transactions constituting a fundamental change. Any repurchase of the July 2007 debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the July 2007 debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the July 2007 debentures on or after August 1, 2010 for cash at a redemption price equal to 100% of the principal amount of the July 2007 debentures to be redeemed plus accrued and unpaid interest. See Note 15 of Notes to our Consolidated Financial Statements.

Liquidity

The closing price of our class A common stock equaled or exceeded 125% of the \$56.75 per share initial effective conversion price governing the February 2007 debentures and the closing price of our class A common stock equaled or exceeded 125% of the \$82.24 per share initial effective conversion price governing the July 2007 debentures, for 20 out of 30 consecutive trading days ending on December 30, 2007, thus satisfying the market price conversion trigger pursuant to the terms of the debentures. As of the first trading day of the first quarter in fiscal 2008, holders of the February 2007 debentures and July 2007 debentures are able to exercise their right to convert the debentures any day in that fiscal quarter. This test is repeated each fiscal quarter. Therefore, since holders of the February 2007 debentures and July 2007 debentures are able to exercise their right to convert the debentures in fiscal 2008, as of December 30, 2007, we classified the \$425.0 million in aggregate convertible debt as short-term debt in our Consolidated Balance Sheets. In addition, we wrote off \$8.2 million of unamortized debt issuance costs in the fourth fiscal quarter of 2007 and will write off the remaining \$1.0 million of unamortized debt issuance costs in the first fiscal quarter of 2008. Because the closing stock price did not equal or exceed 125% of the initial effective conversion price governing both the February 2007 debentures and July 2007 debentures for 20 out of 30 consecutive trading days during the quarters ended April 1, 2007, July 1, 2007 and September 30, 2007, holders of the debentures were not able to exercise their right to convert the debentures in previous quarters. Accordingly, we classified the \$425.0 million in aggregate convertible debt as long-term debt in previous Quarterly Reports on Form 10-Q.

In the event of conversion by holders of the February 2007 debentures and July 2007 debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding (see Note 14 of Notes to our Consolidated Financial Statements). We believe that it is unlikely that a significant percentage of holders of the February 2007 debentures and July 2007 debentures will exercise their right to convert in the near future because they would likely receive less value upon conversion than the current market value of the debentures based on the debentures' trading prices quoted on Bloomberg in January and February 2008. However, there is no assurance that this will continue to be the case. As of February 29, 2008, no holders of the February 2007 debentures and July 2007 debentures exercised their right to convert the debentures.

As of December 30, 2007, we had cash and cash equivalents of \$285.2 million as compared to \$165.6 million as of December 31, 2006. In addition, we had short-term investments and long-term investments of \$105.4 million and \$29.1 million as of December 30, 2007, respectively, as compared to \$16.5 million and zero as of December 31, 2006, respectively. Of these investments, we held ten auction rate securities totaling \$50.8 million as of December 30, 2007. These auction rate securities were student loans that are typically over collateralized by pools of loans originated under the FFELP and are guaranteed by the U.S. Department of Education, and insured. In addition, all auction rate securities held are rated by one or more of the NRSROs as triple-A. In February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, which occurs when sell orders exceed buy orders resulting from lack of liquidity and does not necessarily signify a default by the issuer. As of February 29, 2008, four of these auction rate securities totaling \$24.1 million failed to clear at auctions, four of these securities totaling \$21.7 million cleared at auctions, and one of these securities totaling \$5.0 million continued to be held. For failed auctions, we continue to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. Historically, failed auctions have rarely occurred, however, such failures could continue to occur in the future. In the event we need to access these funds, we will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. Accordingly, auction rate securities that were not sold subsequent to December 30, 2007 totaling \$29.1 million are classified as long-term investments on the Consolidated Balance Sheets, consistent with the stated contractual maturities of the securities. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years.

We have concluded that no other-than-temporary impairment losses occurred in the year ended December 30, 2007 because all holdings had successful auctions in January 2008. However, if the issuers of these auction rate securities are unable to successfully close future auctions or do not redeem the securities, we may be required to adjust the carrying value of the securities and record an impairment charge in the first quarter of fiscal 2008. If we determine that the fair value of these auction rate securities is temporarily impaired, we would record a temporary impairment within Consolidated Statements of Comprehensive Income (Loss), a component of stockholders' equity in the first quarter of 2008. If it is determined that the fair value of these securities is other-than-temporarily impaired, we would record a loss in our Consolidated Statements of Operations in the first quarter of 2008, which could be material.

We believe that our current cash and cash equivalents and funds available from the credit agreement with Wells Fargo will be sufficient to meet our working capital and capital expenditure commitments for at least the next 12 months. However, there can be no assurance that our liquidity will be adequate over time. 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. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and would likely impose new restrictive covenants like the covenants under the credit agreement with Wells Fargo. Financing arrangements may not be available to us, or may not be available in amounts or on terms acceptable to us.

We expect to experience growth in our operating expenses, including our research and development, sales and marketing and general and administrative expenses, for the foreseeable future to execute our business strategy. We may also be required to purchase polysilicon in advance to secure our wafer supplies or purchase third-party solar modules and materials in advance to support systems projects. We intend to fund these activities with existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo. These anticipated increases in operating expenses may not result in an increase in our revenue and our anticipated revenue may not be sufficient to support these increased expenditures. We anticipate that operating expenses, working capital and capital expenditures will constitute a significant use of our cash resources.

Contractual Obligations

The following summarizes our contractual obligations at December 30, 2007:

(In thousands)	Payments Due by Period				
	Total	2008	2009 -2010	2011 -2012	Beyond 2012
Obligation to Cypress	\$ 4,854	\$ 4,854	\$ —	\$ —	\$ —
Customer advances	69,404	9,250	28,154	16,000	16,000
Interest on customer advances	2,618	1,421	1,197	—	—
Convertible debt	425,000	—	—	—	425,000
Interest on convertible debt	80,853	4,187	8,375	8,375	59,916
Lease commitments	47,027	4,844	10,408	8,090	23,685
Utility obligations	750	—	—	—	750
Royalty obligations	275	275	—	—	—
Non-cancelable purchase orders	161,751	160,867	884	—	—
Purchase commitments under agreements	2,099,495	263,150	744,880	518,103	573,362
Total	<u>\$ 2,892,027</u>	<u>\$ 448,848</u>	<u>\$ 793,898</u>	<u>\$ 550,568</u>	<u>\$ 1,098,713</u>

Customer advances and interest on customer advances relate to advance payments received from customers for future purchases of solar power products or supplies. Convertible debt and interest on convertible debt relate to the aggregate of \$425.0 million in principal amount of our senior convertible debentures. For the purpose of the table above, we assume that (1) no holders of the convertible debt will exercise their right to convert the debentures as a result of the market price conversion trigger being met in the fourth quarter of fiscal 2007 and (2) all holders of the convertible debt will hold the debentures through the date of maturity in fiscal 2027 and upon redemption, the values of the convertible debt are equal to the aggregate principal amount of \$425.0 million with no premiums. Lease commitments primarily relate to our 5-year lease agreement with Cypress for our headquarters in San Jose, California, a 15-year lease agreement with Cypress for our manufacturing facility in the Philippines, an 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California, a 5-year lease agreement with an unaffiliated third party for a second facility in the Philippines and other leases for various office space. Utility obligations relate to our 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California. Royalty obligations result from several of the systems segment government awards and existing agreements. Non-cancelable purchase orders relate to purchase commitments for equipment and building improvements for our manufacturing facilities. Purchase commitments under agreements relate to arrangements entered into with suppliers of polysilicon, ingots, wafers, solar cells and solar modules. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 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.

As of December 30, 2007, total liabilities associated with FIN 48 uncertain tax positions were \$4.1 million, none of which was included in "Accrued liabilities" on the Consolidated Balance Sheets, as it is not expected to be paid within the next twelve months. Total liabilities associated with uncertain tax positions of \$4.1 million is included in "Other long-term liabilities" on our Consolidated Balance Sheets at December 30, 2007. 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.

Off-Balance-Sheet Arrangements

As of December 30, 2007, 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 of Notes to our Consolidated Financial Statements for a description of certain other recent accounting pronouncements including the expected dates of adoption and effects on our results of operations and financial condition.

ITEM 7A: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

Our exposure to market risks for changes in interest rates relates primarily to our cash equivalents, short-term investment and long-term investment portfolio and convertible debt.

In fiscal 2005 and 2006, our cash equivalents consisted of money market funds and commercial paper. As of December 30, 2007, our investment portfolio consisted of a variety of financial instruments, including, but not limited to, money market securities, commercial paper and corporate securities. These investments are generally classified as available-for-sale and, consequently, are recorded on our balance sheet at fair market value with their related unrealized gain or loss reflected as a component of accumulated other comprehensive income (loss) in stockholders' equity. 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 portfolio. Since we believe we have the ability to liquidate 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.

Auction rate securities are variable rate debt instruments with interest rates that, unless they fail to clear at auctions, are reset approximately every seven days, twenty-eight days, thirty-five days or six-months. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. The auction rate securities are classified as available for sale under SFAS No. 115 and are recorded at fair value. Typically, the carrying value of auction rate securities approximates fair value due to the frequent resetting of the interest rates. At December 30, 2007, we had \$50.8 million invested in auction rate securities as compared to \$13.4 million invested in auction rate securities at December 31, 2006. As of February 29, 2008, of the ten auction rate securities invested on December 30, 2007, four of these auction rate securities totaling \$24.1 million failed to clear at auctions. These auction rate securities were student loans that are typically over collateralized by pools of loans originated under the FFELP and are guaranteed by the U.S. Department of Education, and insured. In addition, all auction rate securities held are rated by one or more of the NRSROs as triple-A. We continue to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. We have concluded that no other-than-temporary impairment losses occurred in the year ended December 30, 2007 because all holdings had successful auctions in January 2008. We will continue to analyze our auction rate securities each reporting period for impairment and may be required to record an impairment charge if the issuer of the auction rate securities is unable to successfully close future auctions or does not redeem the securities.

The fair market value of our 1.25% senior convertible debentures issued in February 2007 and 0.75% senior convertible debentures issued in July 2007 is subject to interest rate and market price risk due to the convertible feature of the debentures. The fair market value of the senior convertible debentures will increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the senior convertible debentures will increase as the market price of our class A common stock increases and decrease as the market price falls. The interest and market value changes affect the fair market value of the senior convertible debentures but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations. As of December 30, 2007, the estimated fair value of the senior convertible debentures was approximately \$831.9 million based on quoted market prices. A 10% increase in quoted market prices would increase the estimated fair value of the senior convertible debentures to approximately \$915.1 million, and a 10% decrease in the quoted market prices would decrease the estimated fair value of the senior convertible debentures to \$748.7 million.

Equity Price Risk

Our exposure to equity price risk relate to equity method investments we hold, generally as the result of strategic investments in third parties that are subject to considerable market risk due to their volatility. We generally do not attempt to reduce or eliminate our market exposure in these equity method investments. At December 30, 2007, the total carrying value of our equity method investments was \$5.3 million.

Foreign Currency Exchange Risk

Our exposure to adverse movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros and procurement of certain capital equipment in Euros. Our Switzerland subsidiary has exposure to adverse movements in foreign currency exchange rates primarily related to inventory purchases that are denominated in U.S. dollars. For the years ended December 30, 2007, December 31, 2006 and January 1, 2006, approximately 55%, 68% and 70%, respectively, of our total revenue was generated outside the United States. A hypothetical change of 10% in foreign currency exchange rates as of December 30, 2007 could impact our Consolidated Financial Statements or results of operations by \$14.5 million based on our outstanding forward contracts of \$149.6 million and outstanding option contracts of \$53.2 million. For the year ended December 31, 2006, a hypothetical change of 10% in foreign currency exchange rates could impact our Consolidated Financial Statements or results of operations by \$14.7 million based on our outstanding forward contracts of \$127.2 million and option contracts of \$16.0 million. For the year ended January 1, 2006, a hypothetical change of 10% in foreign currency exchange rates could impact our Consolidated Financial Statements or results of operations by \$2.6 million based on our outstanding forward contracts of \$26.6 million. We currently conduct hedging activities, which involve the use of currency forward contracts and currency option contracts. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our revenue and profitability as a result of foreign currency fluctuations. We believe that we may have increased risk associated with currency fluctuations in the future.

ITEM 8: FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

SUNPOWER CORPORATION

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
SunPower Corporation:

In our opinion, the consolidated financial statements listed in the accompanying index appearing under Item 8 present fairly, in all material respects, the financial position of SunPower Corporation and its subsidiaries (the “Company”) at December 30, 2007 and December 31, 2006, and the results of their operations and their cash flows for each of the three years in the period ended December 30, 2007 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index appearing under Item 8 presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 30, 2007, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control Over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our audits which were integrated audits in 2007 and 2006. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included 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. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 17 to the consolidated financial statements, the Company changed the manner in which it accounts for stock-based compensation in 2006. As discussed in Note 10 to the consolidated financial statements, the Company changed the manner in which it accounts for uncertain tax positions in 2007.

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 (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) 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 (iii) 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.

As described in Management's Report on Internal Control Over Financial Reporting appearing under Item 9A, management has excluded SunPower Corporation, Systems, or SP Systems, formerly known as PowerLight Corporation, from its assessment of internal control over financial reporting as of December 30, 2007 because it was acquired by the Company in a purchase business combination during 2007. We have also excluded SP Systems from our audit of internal control over financial reporting. SP Systems is a wholly-owned subsidiary whose total assets and total revenues represent 35% and 60%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 30, 2007.

/s/ PricewaterhouseCoopers LLP
San Jose, California
March 2, 2008

SunPower Corporation

Consolidated Balance Sheets
(In thousands, except share and per share data)

	December 30, 2007	December 31, 2006
Assets		
Current assets:		
Cash and cash equivalents	\$ 285,214	\$ 165,596
Short-term investments	105,453	16,496
Accounts receivable, net	138,250	51,680
Costs and estimated earnings in excess of billings	39,136	—
Inventories	140,504	22,780
Deferred project costs	8,316	—
Advances to suppliers, current portion	52,277	15,394
Prepaid expenses and other current assets	33,110	16,655
Total current assets	802,260	288,601
Restricted cash	67,887	—
Long-term investments	29,050	—
Property, plant and equipment, net	377,994	202,428
Goodwill	184,684	2,883
Intangible assets, net	50,946	14,049
Advances to suppliers, net of current portion	108,943	62,242
Other long-term assets	31,974	6,633
Total assets	<u>\$ 1,653,738</u>	<u>\$ 576,836</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 119,869	\$ 26,534
Accounts payable to Cypress	4,854	2,909
Accrued liabilities	79,434	18,585
Billings in excess of costs and estimated earnings	69,900	—
Customer advances, current portion	9,250	12,304
Convertible debt	425,000	—
Total current liabilities	708,307	60,332
Deferred tax liability	6,213	46
Customer advances, net of current portion	60,153	27,687
Other long-term liabilities	14,975	—
Total liabilities	<u>789,648</u>	<u>88,065</u>
Commitments and Contingencies (Note 11)		
Stockholders' Equity:		
Preferred stock, \$0.001 par value, 10,042,490 shares authorized; none issued and outstanding	—	—
Common stock, \$0.001 par value, 375,000,000 and 375,000,000 shares authorized; 84,803,006 and 69,849,369 shares issued; 84,710,244 and 69,849,369 shares outstanding at December 30, 2007 and December 31, 2006, respectively	85	70
Additional paid-in capital	883,033	522,819
Accumulated other comprehensive income (loss)	5,762	(2,101)
Accumulated deficit	(22,815)	(32,017)
	866,065	488,771
Less: shares of common stock held in treasury, at cost; 112,762 shares and none at December 30, 2007 and December 31, 2006, respectively	(1,975)	—
Total stockholders' equity	864,090	488,771
Total liabilities and stockholders' equity	<u>\$ 1,653,738</u>	<u>\$ 576,836</u>

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

SunPower Corporation

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

	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Revenue:			
Systems	\$ 464,178	\$ —	\$ —
Components	310,612	236,510	78,736
	<u>774,790</u>	<u>236,510</u>	<u>78,736</u>
Costs and expenses:			
Cost of systems revenue	386,511	—	—
Cost of components revenue	240,475	186,042	74,353
Research and development	13,563	9,684	6,488
Sales, general and administrative	108,256	21,677	10,880
Purchased in-process research and development	9,575	—	—
Impairment of acquisition-related intangibles	14,068	—	—
Total costs and expenses	<u>772,448</u>	<u>217,403</u>	<u>91,721</u>
Operating income (loss)	2,342	19,107	(12,985)
Interest income	13,882	10,086	1,591
Interest expense	(5,071)	(1,809)	(3,185)
Other income (expense), net	(7,871)	1,077	(1,214)
Income (loss) before income taxes	3,282	28,461	(15,793)
Income tax provision (benefit)	(5,920)	1,945	50
Net income (loss)	<u>\$ 9,202</u>	<u>\$ 26,516</u>	<u>\$ (15,843)</u>
Net income (loss) per share:			
Basic	\$ 0.12	\$ 0.40	\$ (0.68)
Diluted	\$ 0.11	\$ 0.37	\$ (0.68)
Weighted-average shares:			
Basic	75,413	65,864	23,306
Diluted	81,227	71,087	23,306

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

SunPower Corporation

Consolidated Statements of Stockholders' Equity
(In thousands)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Value	Shares	Value					
Balances at January 2, 2005	12,915	\$ 8,552	2	\$ —	\$ 34,367	\$ —	\$ (2,341)	\$ (42,690)	\$ (10,664)
Issuance of common stock upon exercise of options	—	—	217	—	177	—	—	—	177
Issuance of common stock to Cypress upon conversion of debt	—	—	20,169	20	68,310	—	—	—	68,330
Issuance of common stock to Cypress upon conversion of accounts payable	—	—	3,060	3	14,712	—	—	—	14,715
Issuance of common stock to Cypress	—	—	6,346	6	27,366	—	—	—	27,372
Issuance of series two preferred stock to Cypress	14,000	7,000	—	—	—	—	—	—	—
Issuance of series two preferred stock to Cypress upon conversion of debt	18,000	9,000	—	—	—	—	—	—	—
Issuance of common stock to Cypress upon conversion of redeemable convertible preferred stock	(44,915)	(24,552)	22,458	23	24,529	—	—	—	24,552
Issuance of restricted stock to employees	—	—	15	—	—	—	—	—	—
Compensation on stock options issued to non-employees	—	—	—	—	1,556	—	—	—	1,556
Proceeds from initial public offering, net of offering expenses	—	—	8,825	9	145,600	—	—	—	145,609
Net unrealized gain on derivatives, net of tax	—	—	—	—	—	—	2,846	—	2,846
Net loss	—	—	—	—	—	—	—	(15,843)	(15,843)
Balances at January 1, 2006	—	—	61,092	61	316,617	—	505	(58,533)	258,650
Issuance of common stock upon exercise of options	—	—	1,529	2	3,867	—	—	—	3,869
Issuance of restricted stock to employees, net of cancellations	—	—	228	—	—	—	—	—	—
Issuance of common stock in relation to follow-on offering, net of offering expenses	—	—	7,000	7	197,424	—	—	—	197,431
Stock-based compensation expense	—	—	—	—	4,911	—	—	—	4,911
Net unrealized loss on derivatives and investments, net of tax	—	—	—	—	—	—	(2,606)	—	(2,606)
Net income	—	—	—	—	—	—	—	26,516	26,516
Balances at December 31, 2006	—	—	69,849	70	522,819	—	(2,101)	(32,017)	488,771
Issuance of common stock upon exercise of options	—	—	2,817	3	8,718	—	—	—	8,721
Issuance of restricted stock to employees, net of cancellations	—	—	608	—	—	—	—	—	—
Issuance of common stock in relation to follow-on offering, net of offering expenses	—	—	2,695	3	167,376	—	—	—	167,379
Issuance of common stock in relation to share lending arrangements	—	—	4,747	5	—	—	—	—	5
Issuance of common stock for purchase acquisition	—	—	4,107	4	111,262	—	—	—	111,266
Stock options assumed in relation to acquisition	—	—	—	—	21,280	—	—	—	21,280
Stock-based compensation expense	—	—	—	—	51,578	—	—	—	51,578
Purchases of treasury stock	—	—	(113)	—	—	(1,975)	—	—	(1,975)
Cumulative translation adjustment	—	—	—	—	—	—	9,746	—	9,746
Net unrealized loss on derivatives and investments, net of tax	—	—	—	—	—	—	(1,883)	—	(1,883)
Net income	—	—	—	—	—	—	—	9,202	9,202
Balances at December 30, 2007	—	\$ —	84,710	\$ 85	\$ 883,033	\$ (1,975)	\$ 5,762	\$ (22,815)	\$ 864,090

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

SunPower Corporation

Consolidated Statements of Comprehensive Income (Loss)
(In thousands)

	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Net income (loss)	\$ 9,202	\$ 26,516	\$ (15,843)
Other comprehensive income (loss):			
Cumulative translation adjustment	9,746	—	—
Unrealized gain (loss) on derivatives and investments, net of tax	(1,883)	(2,606)	2,846
Total comprehensive income (loss)	<u>\$ 17,065</u>	<u>\$ 23,910</u>	<u>\$ (12,997)</u>

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

SunPower Corporation

Consolidated Statements of Cash Flows
(In thousands)

	Year Ended		
	December 30, 2007	December 31, 2006 Note 1	January 1, 2006 Note 1
Cash flows from operating activities:			
Net income (loss)	\$ 9,202	\$ 26,516	\$ (15,843)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Interest expense related to warrants granted and accrued interest on notes payable	—	—	3,381
Depreciation	27,335	16,363	7,147
Amortization of intangible assets	28,540	4,690	4,704
Amortization of debt issuance costs	1,710	—	—
Impairment of acquisition-related intangibles	14,068	—	—
Write-off of unamortized debt issuance costs	8,260	—	—
Impairment charge related to equipment	—	—	461
Stock-based compensation	51,212	4,864	1,556
Purchased in-process research and development	9,575	—	—
(Gain) loss on sale of fixed assets	(20)	(16)	82
Deferred income taxes and other tax liabilities	(9,424)	(290)	1,897
Changes in operating assets and liabilities, net of effect of acquisition:			
Accounts receivable	(42,749)	(26,182)	(20,940)
Costs and estimated earnings in excess of billings	(32,634)	—	—
Inventories	(87,033)	(9,586)	(8,731)
Prepaid expenses and other assets	(11,516)	(3,697)	63
Deferred project costs	17,804	—	—
Advances to suppliers	(83,584)	(77,358)	(278)
Accounts payable and other accrued liabilities	40,346	15,763	(1,135)
Accounts payable to Cypress	1,945	376	6,139
Billings in excess of costs and estimated earnings	29,923	—	—
Customer advances	29,412	2,591	37,400
Net cash provided by (used in) operating activities	2,372	(45,966)	15,903
Cash flows from investing activities:			
Increase in restricted cash	(63,176)	—	—
Purchase of property, plant and equipment	(193,484)	(100,292)	(69,748)
Purchase of available-for-sale securities	(209,607)	(33,996)	—
Proceeds from sales of available-for-sale securities	91,600	17,500	—
Proceeds from sale of fixed assets	90	91	1,251
Note receivable from SP Systems	—	(10,000)	—
Cash paid for acquisition, net of cash acquired	(98,645)	—	—
Investment in joint venture	(896)	(4,994)	—
Other long-term assets	—	(1,639)	—
Net cash used in investing activities	(474,118)	(133,330)	(68,497)
Cash flows from financing activities:			
Proceeds from issuance of convertible debt	425,000	—	—
Convertible debt issuance costs	(10,942)	—	—
Proceeds from issuance of common stock under share lending arrangements	5	—	—
Proceeds from debt obligations to Cypress	—	—	12,500
Proceeds from issuance of preferred stock to Cypress	—	—	7,000
Proceeds from issuance of common stock to Cypress	—	—	27,372
Proceeds from public issuance of common stock, net of offering expenses	—	—	145,609
Proceeds from follow-on offering of common stock, net of offering expenses	167,379	197,431	—
Principal payments on notes payable to Cypress	—	—	(248)
Principal payments on line of credit and notes payable	(3,563)	—	—
Proceeds from exercise of stock options	8,721	3,869	177
Purchases of stock for tax withholding obligations on vested restricted stock	(1,975)	—	—
Net cash provided by financing activities	584,625	201,300	192,410
Effect of exchange rate changes on cash and cash equivalents	6,739	—	—
Net increase in cash and cash equivalents	119,618	22,004	139,816
Cash and cash equivalents at beginning of period	165,596	143,592	3,776
Cash and cash equivalents at end of period	\$ 285,214	\$ 165,596	\$ 143,592
Non-cash transactions:			
Issuance of common stock for purchase acquisition	\$ 111,266	\$ —	\$ —
Stock options assumed in relation to acquisition	21,280	—	—
Additions to property, plant and equipment acquired under accounts payable and other accrued liabilities	8,436	8,015	1,868
Change in goodwill relating to adjustments to acquired net assets	6,640	—	—
Relative fair value of warrants issued (reduction related to debt conversion)	—	—	(7,706)
Conversion of notes payable to preferred stock	—	—	9,000
Conversion of notes payable to common stock	—	—	76,036
Conversion of accounts payable to common stock	—	—	14,715
Conversion of preferred stock to common stock	—	—	24,552
Supplemental cash flow information:			
Cash paid for interest	3,497	1,690	—
Cash paid for income taxes	887	—	—

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

SunPower Corporation**Notes to 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”), a majority-owned subsidiary of Cypress Semiconductor Corporation (“Cypress”), was originally incorporated in the State of California on April 24, 1985. In October 1988, the Company organized as a business venture to commercialize high-efficiency solar cell technologies. The Company designs, manufactures and markets high-performance solar electric power technologies. The Company’s solar cells and solar panels are manufactured using proprietary processes and technologies based on more than 15 years of research and development. The Company’s solar power products are sold through the components business segment.

On November 10, 2005, the Company reincorporated in Delaware and filed an amendment to its certificate of incorporation to effect a 1-for-2 reverse stock split of the Company’s outstanding and authorized shares of common stock. All share and per share figures presented herein have been adjusted to reflect the reverse stock split.

In January 2007, the Company completed the acquisition of PowerLight Corporation (“PowerLight”), a privately-held company which developed, engineered, manufactured and delivered large-scale solar power systems for residential, commercial, government and utility customers worldwide. These activities are now performed by the Company’s systems business segment. As a result of the acquisition, PowerLight became an indirect wholly-owned subsidiary of the Company. In June 2007, the Company changed PowerLight’s name to SunPower Corporation, Systems (“SP Systems”), to capitalize on SunPower’s name recognition. The Company believes the acquisition will enable it to develop the next generation of solar products and solutions that will accelerate reduction in solar system cost to compete with retail electric rates without incentives and simplify and improve customer experience. The total purchase consideration and future stock compensation for the transaction was \$334.4 million, consisting of \$120.7 million in cash and \$213.7 million in common stock, restricted stock, stock options and related acquisition costs (see Note 4).

Cypress made a significant investment in the Company in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with the Company in which all of the outstanding minority equity interest of SunPower was retired, effectively giving Cypress 100% ownership of all of the Company’s then outstanding shares of capital stock but leaving its unexercised warrants and options outstanding. After completion of the Company’s IPO in November 2005, Cypress held, in the aggregate, approximately 52.0 million shares of class B common stock. On May 4, 2007, Cypress completed the sale of 7.5 million shares of the Company’s class B common stock in an offering pursuant to Rule 144 of the Securities Act. Such shares converted to 7.5 million shares of class A common stock upon the sale. As of December 30, 2007, Cypress owned approximately 44.5 million shares of the Company’s class B common stock, which represented approximately 56% of the total outstanding shares of the Company’s common stock, or approximately 51% of such shares on a fully diluted basis after taking into account outstanding stock options (or 49% of such shares on a fully diluted basis after taking into account outstanding stock options and shares loaned to underwriters of the Company’s convertible indebtedness), and 90% of the voting power of the Company’s total outstanding common stock.

The financial statements include purchases of goods and services from Cypress, including wafers, legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure costs. The expenses allocations have been determined based on a method that Cypress and the Company consider to be a reasonable reflection of the utilization of services provided or the benefit received by the Company. See Note 3 for additional information on the transactions with Cypress.

As of December 30, 2007, the Company had an accumulated deficit of \$22.8 million and, with the exception of fiscal 2006 and 2007, has a history of operating losses. The Company is subject to a number of risks including, but not limited to, an industry-wide shortage of polysilicon, potential downward pressure on product pricing as new polysilicon manufactures begin operating and the worldwide supply of solar cells and panels increases, the possible reduction or elimination of government and economic incentives that encourage industry growth, the challenges to reducing costs of installed solar systems by 50% by 2012 to maintain competitiveness, difficulties in maintaining or increasing the Company’s growth rate and managing such growth, and accurately predicting warranty claims.

Summary of Significant Accounting Policies***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 and all of its subsidiaries. Intercompany transactions and balances have been eliminated in consolidation.

Reclassifications

Certain prior period balances have been reclassified to conform to the current period presentation in our Consolidated Financial Statements and the accompanying notes. Such reclassification had no effect on previously reported results of operations or accumulated deficit.

Fiscal Years

The Company reports results of operations on the basis of 52- or 53-week periods, ending on the Sunday closest to December 31. Fiscal 2007 ended on December 30, 2007, fiscal 2006 ended on December 31, 2006 and fiscal 2005 ended on January 1, 2006. Each of fiscal 2007, 2006 and 2005 consisted of 52 weeks.

Management Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates in these financial statements include “percentage-of-completion” for construction projects, allowances for doubtful accounts receivable and sales returns, inventory write-downs, estimates for future cash flows and economic useful lives of property, plant and equipment, asset impairments, certain accrued liabilities including accrued warranty reserves and income taxes and tax valuation allowances. Actual results could differ from those estimates.

Fair Value of Financial Instruments

The fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties. The carrying values of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate their respective fair values due to their short-term maturities. The Company’s outstanding convertible debt is recorded at its carrying values, not its estimated fair values. Investments in available-for-sale securities are carried at fair value based on quoted market prices or estimated based on quoted market prices for financial instruments with similar characteristics. Unrealized gains and losses of the Company’s available-for-sale securities are excluded from earnings and reported as a component of other comprehensive income (loss). 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 are recorded as an impairment of investments 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 wholly-owned 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 derivatives designated as cash flow hedges (see Note 12) and available-for-sale investments carried at their fair value based on quoted market prices as of the balance sheet dates (see Note 8). Comprehensive income (loss) is presented in the Consolidated Statements of Comprehensive Income (Loss).

Cash and 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

As of December 30, 2007, the Company provided security for advance payments received from a customer in the form of \$20.0 million held in an escrow account. Commencing in 2010 and continuing through 2019, the balance in the escrow account will be reduced as the advance payments are to be applied as a credit against the customer’s polysilicon purchases from the Company. Such polysilicon is expected to be used by the customer to manufacture ingots, and potentially wafers, which are to be sold to the Company under an ingot supply agreement. The funds held in the escrow account may be released in exchange for letters of credit issued under the secured letter of credit facility at any time. In addition, the Company enters into various contractual agreements to build turnkey photovoltaic projects for customers in Europe, Korea and the United States. As part of the contractual agreements with the customers in Europe and Korea, the Company may receive advance payments that are secured by providing letters of credit issued by Wells Fargo Bank, National Association (“Wells Fargo”) to the customers. In certain customer contracts, the Company is required to provide construction period letters of credit, to assure the customers of contract completion, for a period of approximately one year. In many cases, the Company is also asked to issue warranty period letters of credit to assure the customers that the Company will meet its warranty obligations, typically for the first two years after the project is installed. The Company issues letters of credit for such purposes through its line of credit facility with Wells Fargo. The credit agreement with Wells Fargo requires the Company to

collateralize the full value of letters of credit issued under the secured letter of credit facility for such purposes with cash placed in an interest bearing restricted account with Wells Fargo. As long as the secured letters of credit are outstanding, the Company will not be able to withdraw the associated funds in the restricted account, though all interest earned on such restricted funds can be withdrawn periodically. As of December 30, 2007, outstanding secured letters of credit issued by Wells Fargo totaled \$47.9 million, of which \$45.4 million relate to contractual agreements with customers in Europe and Korea (see Note 14).

Short-Term and Long-Term Investments

The Company invests in auction rate securities which are classified as short-term investments or long-term investments and carried at their market values. Such securities are bought and sold in the marketplace through a bidding process sometimes referred to as a “Dutch auction.” After the initial issuance of the securities, the interest rate on the securities resets periodically, at intervals set at the time of issuance (e.g., every seven, twenty-eight, or thirty-five days; every six-months; etc.), based on the market demand at the reset period. Historically, all auction rate securities were classified as short-term investments because we have been able to liquidate these at our direction at the reset period. When auction rate securities fail to clear at auction, which occurred with respect to six securities in February 2008, and we are unable to estimate when the impacted auction rate securities will clear at the next auction, we classify these as long-term consistent with the stated contractual maturities of the securities. The “stated” or “contractual” maturities for these securities generally are between 20 to 30 years.

The Company also invests in money market securities, commercial paper and corporate securities with maturities greater than ninety days. In general, investments with original maturities of greater than ninety days and remaining maturities of less than one year are classified as short-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 under Statement of Financial Accounting Standards (“SFAS”) No. 115, “Accounting for Investment in Certain Debt and Equity Securities” (“SFAS No. 115”).

Inventories

Inventories are stated at the lower of standard cost or net realizable value. Standard cost approximates actual cost on a first-in, first-out basis. The Company routinely evaluates quantities and values of inventory in light of current market conditions and market trends, and records reserves for quantities in excess of demand and product obsolescence. The evaluation may take into consideration historic usage, expected demand, 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. Market conditions are subject to change and actual consumption of inventory could differ from forecasted demand. The Company’s products have a long life cycle and obsolescence has not historically been a significant factor in the valuation of inventories. The Company also regularly reviews the cost of inventory against their estimated market value and records a lower of cost or market reserve for inventories that have a cost in excess of estimated market value. Inventory reserves, once recorded, are not reversed until the inventories have been subsequently disposed of.

Deferred Project Costs

Deferred project costs represent uninstalled materials on contracts for which title had transferred to the customer and are recognized as deferred assets until installation. As of December 30, 2007, deferred project costs totaled \$8.3 million.

Property, Plant and Equipment

Property, plant and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is computed for financial reporting purposes 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.

	Useful Lives in Years
Building	15
Manufacturing equipment	2 to 7
Computer equipment	2 to 7
Furniture and fixtures	3 to 5
Leasehold improvements	5 to 15

Long-Lived Assets

The Company evaluates its long-lived assets, including property, plant and equipment and 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 in accordance with SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (“SFAS No. 144”). Factors considered important that could result in an impairment review include significant underperformance 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. Impairments are recognized based on the difference between the fair value of the asset and its carrying value. Fair value is generally measured based on either quoted market prices, if available, or discounted cash flow analyses.

Goodwill and Intangible Assets

The Company accounts for goodwill and other intangibles in accordance with SFAS No. 142, “Goodwill and Other Intangible Assets” (“SFAS No. 142”). Goodwill and intangibles with indefinite lives are not amortized but are tested for impairment on an annual basis or whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. The Company performs its annual test of impairment for goodwill in the third quarter of its fiscal year. Intangible assets with finite useful lives are amortized using the straight-line method over their useful lives ranging primarily from 2 to 6 years and are reviewed for impairment in accordance with SFAS No. 144.

Product Warranties

The Company warrants or guarantees the performance of solar panels that the Company manufactures at certain levels of conversion efficiency for extended periods, often as long as 25 years. It also warrants that the solar cells will be free from defects for at least ten years. In addition, the Company generally provides warranty on systems they install for a period of five years. The Company also passes through to customers long-term warranties from the original equipment manufacturers of certain system components. Warranties of 20 to 25 years from solar panels suppliers are standard, while inverters typically carry a two-, five- or ten-year warranty. Therefore, the Company maintains warranty reserves to cover potential liability that could result from these guarantees. The Company’s potential liability is generally in the form of product replacement or repair. Warranty reserves are based on the Company’s best estimate of such liabilities 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 historical experience of similar products as well as various other assumptions that are considered reasonable under the circumstances. The warranty reserve includes specific accruals for known product and system issues and an accrual for an estimate of incurred but not reported product and system issues based on historical activity (see Note 11).

Revenue Recognition

Construction Contracts

Systems segment revenue is primarily comprised of engineering, procurement and construction (“EPC”) projects which are governed by customer contracts that require the Company to deliver functioning solar power systems and are generally completed within 6 to 36 months from the date of the contract signing. In addition, the systems segment also derives revenues from sales of certain solar power products and services that are smaller in scope than an EPC contract. The Company recognizes revenues from fixed price contracts under AICPA Statement of Position (“SOP”) 81-1, “Accounting for Performance of Construction-Type and Certain Production-Type Contracts,” using the percentage-of-completion method of accounting. Under this method, systems 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 utilizing the most recent estimates of forecasted costs.

Incurred costs include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies and tools. Job material costs are included in incurred costs when the job materials have been installed. Where contracts stipulate that title to job materials transfers to the customer before installation has been performed, revenue is deferred and recognized upon installation, in accordance with the percentage-of-completion method of accounting. Job materials are considered installed materials when they are permanently attached or fitted to the solar power system as required by the job’s engineering design.

Due to inherent uncertainties in estimating cost, job costs estimates are reviewed and/or updated by management working within the systems segment. The systems segment determines the completed percentage of installed job materials at the end of each month; generally this information is also reviewed with the customer’s on-site representative. The completed percentage of installed job materials is then used for each job to calculate the month-end job material costs incurred. Direct labor, subcontractor, and other costs are charged to contract costs as incurred. 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.

As of December 30, 2007, the asset “Costs and estimated earnings in excess of billings,” which represents revenues recognized in excess of amounts billed, was \$39.1 million. The liability “Billings in excess of costs and estimated earnings,” which represents billings in excess of revenues recognized, was \$69.9 million. Ending balances in “Costs and estimated earnings in excess of billings” and “Billings in excess of costs and estimated earnings” are highly dependent on contractual billing schedules which are not necessarily related to the timing of revenue recognition.

Service Agreements

The Company recognizes revenues for service agreements related to construction contracts ratably over the service agreement term and annual service agreement fees are usually prepaid by customers. The Company recognizes revenues for energy efficiency consulting services on a cost plus basis. Systems revenue from these service agreements were not significant for the year ended December 30, 2007.

New Jersey Renewable Energy Credits

Solar renewable energy certificates (“SRECs”) are intangible assets, measured in megawatt-hours, that encompass the environmental benefit associated with producing solar energy. The Company purchases SRECs from solar installation owners in New Jersey, and primarily sells SRECs to entities that must either retire a certain volume of SRECs each year or face much higher alternative compliance payments. The Company recognizes revenues for New Jersey renewable energy credit (“REC”) sales when the RECs are delivered to the customers under the contract terms and cash collections are reasonably assured. Systems revenue from REC sales was not significant for the year ended December 30, 2007.

Components Products

The Company sells its components products, as well as balance of systems projects from the systems segment, directly to system integrators, original equipment manufacturers (“OEMs”) and value-added resellers (“VARs”) and recognizes revenue, net of accruals for estimated sales returns, when persuasive evidence of an arrangement exists, delivery of the product has occurred and title and risk of loss has passed to the customer, the sales price is fixed or determinable, collectibility of the resulting receivable is reasonably assured and the rights and risks 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 its customers that could have an impact on revenue recognition. As such, the Company records a trade receivable for the selling price when the above conditions are met, and reduces inventory for the carrying value of goods shipped. The Company’s revenue recognition policy is consistent across its product lines and sales practices are consistent across all geographic areas. In addition, the Company records a charge to selling expense and a credit to allowance for doubtful accounts when customer accounts receivable are deemed uncollectible. Components revenues under VAR contracts were \$113.8 million, \$63.6 million and \$1.3 million in the years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.

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. The Company recorded charges for sales returns on product sales of \$2.2 million, \$0.8 million and \$0.1 million in fiscal 2007, 2006 and 2005, respectively. Amounts utilized against the sales return allowance aggregated \$2.2 million, \$0.5 million and none in fiscal 2007, 2006 and 2005, respectively. The allowance for sales returns was \$0.4 million as of December 30, 2007 and December 31, 2006.

Shipping and Handling Costs

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

Advertising Costs

Advertising costs are expensed as incurred. Advertising expense totaled approximately \$2.3 million, \$0.8 million and \$0.2 million in the years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.

Research and Development Costs

Research and development costs consist primarily of compensation and related costs for personnel, materials, supplies and equipment depreciation. All research and development costs are expensed as incurred. In the third quarter of 2007, the Company signed a Solar America Initiative agreement with the United States Department of Energy in which it was awarded \$8.5 million in the first budgetary period. Total funding for the three-year effort is estimated to be \$24.7 million. The Company’s cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be \$27.9 million. This contract replaced its three-year cost-sharing research and development project with the National Renewable Energy Laboratory, entered into in March 2005, to fund up to \$3.0 million or half of the project costs to design the Company’s next generation solar panels. Amounts invoiced under these arrangements are offset against research and development expense as costs are incurred in accordance with the agreements with the government agency. For the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, the Company invoiced \$3.6 million, \$0.8 million and \$0.5 million, respectively, for work performed, which was recorded as an offset to research and development expense.

Translation of Foreign Currencies

The Company uses the United States dollar predominately as its functional currency. Accordingly, assets and liabilities of its subsidiaries are translated using exchange rates in effect at the end of the period, except for non-monetary assets, such as property, plant and equipment, which are translated using historical exchange rates. Revenues and costs are translated using average exchange rates for the period, except for income items related to non-monetary assets and liabilities, such as depreciation, that are translated using historical exchange rates. The Company includes gains or losses from foreign currency translation in other income (expense), net with the other hedging activities described in Note 12 and were not significant to the Consolidated Statements of Operations for the periods presented. Certain foreign subsidiaries designate the local currency as their functional currency, and the Company records the translation of their assets and liabilities into U.S. dollars at the balance sheet date, and the translation of their revenues and expenses into U.S. dollars using average exchange rates for the period, as translation adjustments and includes them as a component of accumulated other comprehensive income (loss) in the Consolidated Balance Sheets. As of December 30, 2007 and December 31, 2006, the Company had Euro-denominated accounts receivable of 53.7 million (approximately \$79.0 million) and 20.2 million (approximately \$26.6 million), respectively. In addition, as of December 30, 2007 and December 31, 2006, the Company had a Euro-denominated customer advance (see Note 13) of 19.7 million (approximately \$29.0 million) and 25.1 million (approximately \$33.1 million), respectively.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk are primarily cash, cash equivalents and investments, hedging instruments and trade accounts receivable. The Company's investment policy requires cash and cash equivalents and investments to be placed with high-credit quality institutions and to limit the amount of credit risk from any one issuer. 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 receivable based upon the expected collectibility of all accounts receivable, which takes into consideration an analysis of historical bad debts, specific customer creditworthiness and current economic trends. The allowance for doubtful accounts was \$1.4 million and \$0.6 million as of December 30, 2007 and December 31, 2006, respectively. For the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, the Company provided \$0.8 million, \$0.3 million and \$0.3 million, respectively, for allowance for doubtful accounts. During the fiscal year ended December 30, 2007, December 31, 2006 and January 1, 2006, the Company wrote off zero, \$32,000 and zero of bad debts, respectively. One customer accounted for 21% of accounts receivable as of December 30, 2007. Three customers accounted for 34%, 33% and 12% of accounts receivable as of December 31, 2006.

Income Taxes

For financial reporting purposes, income tax expense and deferred income tax balances were calculated as if the Company were a separate entity and had prepared its own separate tax return. 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 of the deferred tax asset will be realized. The Company accrues interest and penalties on tax contingencies as required by the Financial Accounting Standards Board ("FASB") Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues" ("FIN 48") and SFAS No. 109, "Accounting for Income Taxes" ("SFAS No. 109"). This interest and penalty accrual is classified as income tax provision (benefit) in the Consolidated Statements of Operations and was not material.

The Company filed separate U.S. federal tax returns up to November 2004. From November 8, 2004 through June 2006, the Company filed U.S. federal consolidated tax returns with Cypress. From December 2002 through June 2006, the Company filed combined California returns with Cypress as a member of Cypress' entity group. Effective with the closing of our public offering of common stock in June 2006, the Company no longer files federal and most state consolidated tax returns with Cypress. Cypress and the Company have entered into a tax sharing agreement providing for each company's obligations concerning various tax liabilities (see Notes 3 and 10).

Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value instruments. This statement does not require any new fair value measurements; rather, it applies other accounting pronouncements that require or permit fair value measurements. The provisions of this statement are to be applied prospectively as of the beginning of the fiscal year in which this statement is initially applied, with any transition adjustment recognized as a cumulative effect adjustment to the opening balance of retained earnings. The provisions of SFAS No. 157 are effective for fiscal years beginning after November 15, 2007 and will

be adopted by the Company in the first quarter of fiscal 2008. In December 2007, the FASB released FASB Staff Position FAS 157-b—Effective Date of FASB Statement No. 157, which was adopted in February 2008, delaying the effective date of SFAS No. 157 for one year for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company is in the process of studying the impact of this interpretation on its financial accounting and reporting.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS No. 159”), which provides companies an option to report selected financial assets and liabilities at fair value. SFAS No. 159 requires companies to provide information helping financial statement users to understand the effect of a company’s choice to use fair value on its earnings, as well as to display the fair value of the assets and liabilities a company has chosen to use fair value for on the face of the balance sheet. Additionally, SFAS No. 159 establishes presentation and disclosure requirements designed to simplify comparisons between companies that choose different measurement attributes for similar types of assets and liabilities. The statement is effective as of the beginning of an entity’s first fiscal year beginning after November 15, 2007 and will be adopted by the Company in the first quarter of fiscal 2008. The Company is in the process of studying the impact of this interpretation on its financial accounting and reporting.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), “Business Combinations” (“SFAS No. 141R”), which replaces SFAS No. 141, "Business Combinations" ("SFAS No. 141"). SFAS No. 141R will significantly change the accounting for business combinations in a number of areas including the treatment of contingent consideration, contingencies, acquisition costs, in-process research and development and restructuring costs. In addition, under SFAS No. 141R, changes in deferred tax asset valuation allowances and acquired income tax uncertainties in a business combination after the measurement period will impact income tax expense. SFAS No. 141R is effective as of the beginning of an entity’s first fiscal year beginning after December 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 141R on its financial position and results of operations.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements — an amendment of Accounting Research Bulletin No. 51” (“SFAS No. 160”), which will change the accounting and reporting for minority interests, which will be recharacterized as noncontrolling interests and classified as a component of equity. This new consolidation method will significantly change the accounting for transactions with minority interest holders. SFAS No. 160 is effective as of the beginning of an entity’s first fiscal year beginning after December 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 160 on its financial position and results of operations.

Revision of Statement of Cash Flow Presentation Related to Purchases of Property, Plant and Equipment

The Company has corrected its Consolidated Statements of Cash Flows for 2006 and 2005 to exclude the impact of purchases of property, plant and equipment that remain unpaid and as such are included in “accounts payable and other accrued liabilities” at the end of the reporting period. Historically, changes in “accounts payable and other accrued liabilities” related to such purchases were included in cash flows from operations, while the investing activity caption "Purchase of property, plant and equipment" included these purchases. As these unpaid purchases do not reflect cash transactions, the Company is revising its cash flow presentations to exclude them. These corrections resulted in an increase to the previously reported amounts of cash used for operating activities of \$8.0 million in fiscal 2006 and a decrease to the cash provided from operating activities of \$1.9 million in fiscal 2005, resulting from a reduction in the amount of cash provided from the change in accounts payable and other accrued liabilities in those years. The corresponding correction in the investing section was to decrease cash used for investing activities by \$8.0 million and \$1.9 million in fiscal 2006 and fiscal 2005, respectively, as a result of the reduction in the amount of cash used for purchases of property, plant and equipment in those years. These corrections had no impact on previously reported results of operations, working capital or stockholders’ equity of the Company. The Company concluded that these corrections were not material to any of its previously issued consolidated financial statements, based on SEC Staff Accounting Bulletin: No. 99-Materiality.

Note 2. CYPRESS STEP ACQUISITION OF SUNPOWER

Effective November 9, 2004, SunPower became a wholly owned subsidiary of Cypress when Cypress exchanged Cypress common stock for all outstanding shares of SunPower common stock. Outstanding options to purchase SunPower common stock held by the Company's officers, employees and other service providers and warrants held by Cypress to purchase SunPower common stock remained outstanding as of the closing of the merger.

Cypress accounted for its acquisition of SunPower in accordance with SFAS No. 141. Accordingly, the purchase price was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of investment, based on estimates made by the management of Cypress which considered a number of factors, including valuations performed by outsiders. Management based their decision to capitalize the purchased technology on SFAS No. 141's criteria that an intangible asset that arises from contractual or other legal rights shall be recognized apart from goodwill only if it is separable. These technology-based assets relate to innovations and technological advances of the Company. The excess of the purchase price over the amounts allocated to the assets acquired and liabilities assumed was recorded as goodwill.

Push down accounting requires an entity to establish a new cost basis of accounting for assets and liabilities based on the amount paid for the stock. The amounts pushed down to SunPower financial statements at November 9, 2004, derived from the net carrying balance previously reported by Cypress on November 9, 2004, consisted of the following (in thousands):

(In thousands)	Gross	Accumulated Amortization	Net
As of December 30, 2007			
Purchased Technology	\$ 18,139	\$ (11,376)	\$ 6,763
Patents	3,811	(2,096)	1,715
Trademarks and other	2,066	(1,263)	803
	24,016	(14,735)	9,281
Goodwill	2,883	—	2,883
	<u>\$ 26,899</u>	<u>\$ (14,735)</u>	<u>\$ 12,164</u>
As of December 31, 2006			
Purchased Technology	\$ 18,139	\$ (7,550)	\$ 10,589
Patents	3,811	(1,423)	2,388
Trademarks and other	2,066	(994)	1,072
	24,016	(9,967)	14,049
Goodwill	2,883	—	2,883
	<u>\$ 26,899</u>	<u>\$ (9,967)</u>	<u>\$ 16,932</u>

Amortization of these purchased intangible assets, which is included in cost of components revenue in the accompanying Consolidated Statements of Operations, was \$4.8 million and \$4.7 million in the year ended December 30, 2007 and December 31, 2006, respectively.

Note 3. TRANSACTIONS WITH CYPRESS

Purchases of Imaging and Infrared Detector Products from Cypress

The Company purchases fabricated semiconductor wafers from Cypress at intercompany prices which are consistent with Cypress' internal transfer pricing methodology. Wafer purchases totaled \$4.7 million, \$7.2 million and \$5.3 million for the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively. In December 2007, Cypress announced the planned closure of its Texas wafer fabrication facility that manufactures the Company's imaging and infrared detector products. The planned closure will be completed in the fourth quarter of 2008 and SunPower is evaluating its alternatives relating to future plans for this business.

Administrative Services Provided by Cypress

Cypress has seconded employees and consultants to the Company for different time periods for which the Company pays their fully-burdened compensation. In addition, Cypress personnel render services to the Company to assist with administrative functions such as legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure. Cypress bills the Company for a portion of the Cypress employees' fully-burdened compensation. In the case of the Philippines subsidiary, which entered into a services agreement for such secondments and other consulting services in January 2005, the Company pays the fully burdened compensation plus 10%. The amounts that the Company has recorded as general and administrative expenses in the accompanying statements of operations for these services was approximately \$1.8 million, \$1.5 million and \$2.3 million for the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.

Leased Facility in the Philippines

In 2003, the Company and Cypress reached an understanding that the Company would build out and occupy a building owned by Cypress for its wafer fabrication facility in the Philippines. The Company entered into a lease agreement for this facility, which expires in July 2021. Under the lease, the Company will pay Cypress at a rate equal to the cost to Cypress for that facility (including taxes, insurance, repairs and improvements) until the earlier of November 2015 or a change in control of the Company occurs, which includes such time as Cypress

ceases to own at least a majority of the aggregate number of shares of all classes of the Company's common stock then outstanding. Thereafter, the Company will pay market rate rent for the facility. The Company will have the right to purchase the facility from Cypress at any time at Cypress' original purchase price of approximately \$8.0 million, plus interest computed on a variable index starting on the date of purchase by Cypress until the sale to the Company, unless such purchase option is exercised after a change of control of the Company, in which case the purchase price shall be at a market rate, as reasonably determined by Cypress. The lease agreement also contains certain indemnification and exculpation provisions by the Company for the benefit of Cypress as lessor. Rent expense paid to Cypress for this building was \$0.3 million in each of the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.

Leased Headquarters Facility in San Jose, California

In May 2006, the Company entered into a lease agreement for its 43,732 square foot headquarters, which is located in a building owned by Cypress in San Jose, California, for \$6.0 million over the five-year term of the lease. In the event Cypress decides to sell the building, the Company has the right of first refusal to purchase the building at a fair market price which will be based on comparable sales in the area. Rent expense paid to Cypress for this facility was \$1.3 million and \$0.6 million in fiscal years ended December 30, 2007 and December 31, 2006.

2005 Separation and Service Agreements

In October 2005, the Company entered into a series of separation and services agreements with Cypress. Among these agreements are a master separation agreement, a sublease of the land and a lease for the building in the Philippines (see above); a three-year wafer manufacturing agreement for detector products at inter-company pricing; a three-year master transition services agreement under which Cypress would allow the Company to continue to utilize services provided by Cypress such as corporate accounting, legal, tax, information technology, human resources and treasury administration at Cypress' cost; an asset lease under which Cypress will lease certain manufacturing assets from the Company; an employee matters agreement under which the Company's employees would be allowed to continue to participate in certain Cypress health insurance and other employee benefits plans; an indemnification and insurance matters agreement; an investor rights agreement; and a tax sharing agreement. All of these agreements, except the tax sharing agreement and the manufacturing asset lease agreements, became effective at the time of completion of the Company's initial public offering in November 2005.

Master Separation Agreement

In October 2005, the Company entered into a master separation agreement containing the framework with respect to the Company's separation from Cypress. The master separation agreement provides for the execution of various ancillary agreements that further specify the terms of the separation.

Master Transition Services Agreement

The Company has also entered into a master transition services agreement which would govern the provisions of services provided by Cypress, such as: financial services; human resources; legal matters; training programs; and information technology.

For a period of three years following the Company's November 2005 IPO of 8.8 million shares of class A common stock or earlier if a change of control of the Company occurs, Cypress would provide these services and the Company would pay Cypress for services provided to the Company, at Cypress' cost (which, for purposes of the master transition services agreement, will mean an appropriate allocation of Cypress' full salary and benefits costs associated with such individuals as well as any out-of-pocket expenses that Cypress incurs in connection with providing the Company with those services) or at the rate negotiated with Cypress. Cypress will have the ability to deny requests for services under this agreement if, among other things, the provisions of such services creates a conflict of interest, causes an adverse consequence to Cypress, requires Cypress to retain additional employees or other resources or the provision of such services become impracticable as a result or cause outside of the control of Cypress. In addition, Cypress will incur no liability in connection with the provision of these services. The master transition services agreement also contains certain indemnification provisions by the Company for the benefit of Cypress.

Lease for Manufacturing Assets

In 2005 the Company entered into a lease with Cypress under which Cypress leased from the Company certain manufacturing assets owned by the Company and located in Cypress' Texas manufacturing facility. The term of the lease was 27 months and it expired on December 31, 2007. Under this lease, Cypress reimbursed the Company approximately \$0.7 million representing the net book value of the assets divided by the life of the leasehold improvements.

Employee Matters Agreement

The Company entered into an employee matters agreement with Cypress to allocate assets, liabilities and responsibilities relating to its current and former U.S. and international employees and its participation in the employee benefits plans that Cypress currently sponsors and maintains.

The Company's eligible employees generally will remain able to participate in Cypress' benefit plans, as they may change from time to time. The Company will be responsible for all liabilities incurred with respect to the Cypress plans by the Company as a participating company in such plans. The Company intends to have its own benefit plans established by the time its employees no longer are eligible to participate in Cypress' benefit plans. Once the Company has established its own benefit plans, the Company will have the ability to modify or terminate each plan in accordance with the terms of those plans and its policies. It is the Company's intent that employees not receive duplicate benefits as a result of participation in its benefit plans and the corresponding Cypress benefit plans.

All of the Company's eligible employees will be able to continue to participate in Cypress' health plans, life insurance and other benefit plans as they may change from time to time, until the earliest of, (1) a change of control of the Company occurs, which includes such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of our common stock then outstanding, (2) such time as the Company's status as a participating company under the Cypress plans is not permitted by a Cypress plan or by applicable law, (3) such time as Cypress determines in its reasonable judgment that its status as a participating company under the Cypress plans has or will adversely affect Cypress, or its employees, directors, officers, agents, affiliates or its representatives, or (4) such earlier date as the Company and Cypress mutually agree. However, to avoid redundant benefits, the Company's employees will generally be precluded from participating in Cypress' stock option plans and stock purchase plans.

With respect to the Cypress 401(k) Plan, the Company will be obligated to establish its own 401(k) Plan within 90 days of separation from Cypress, and Cypress will transfer all accounts in the Cypress 401(k) Plan held by the Company's employees to its 401(k) Plan.

Indemnification and Insurance Matters Agreement

The Company will indemnify Cypress and its affiliates, agents, successors and assigns from all liabilities arising from environmental conditions: existing on, under, about or in the vicinity of any of the Company's facilities, or arising out of operations occurring at any of the Company's facilities, including its California facilities, whether prior to or after the separation; existing on, under, about or in the vicinity of the Philippines facility which the Company occupies, or arising out of operations occurring at such facility, whether prior to or after the separation, to the extent that those liabilities were caused by the Company; arising out of hazardous materials found on, under or about any landfill, waste, storage, transfer or recycling site and resulting from hazardous materials stored, treated, recycled, disposed or otherwise handled by any of the Company's operations or the Company's California and Philippines facilities prior to the separation; and arising out of the construction activity conducted by or on behalf of us at Cypress' Texas facility.

The indemnification and insurance matters agreement and the master transition services agreement also contains provisions governing the Company's insurance coverage, which shall be under the Cypress insurance policies (other than our directors and officers insurance, for which the Company intends to obtain its own separate policy) until the earliest of (1) a change of control of the Company occurs, which includes such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of the Company's common stock then outstanding, (2) the date on which Cypress' insurance carriers do not permit the Company to remain on Cypress policies, (3) the date on which Cypress' cost of insurance under any particular insurance policy increases, directly or indirectly, due to the Company's inclusion or participation in such policy, (4) the date on which the Company's coverage under the Cypress policies causes a real or potential conflict of interest or hardship for Cypress, as determined solely by Cypress or (5) the date on which Cypress and the Company mutually agree to terminate this arrangement. Prior to that time, Cypress will maintain insurance policies on the Company's behalf, and the Company shall reimburse Cypress for expenses related to insurance coverage during this period. The Company will work with Cypress to secure additional insurance if desired and cost effective.

Investor Rights Agreement

The Company has entered into an investor rights agreement with Cypress providing for specified (1) registration and other rights relating to the Company's shares of the Company's common stock, (2) information and inspection rights, (3) coordination of auditing practices and (4) approval rights with respect to certain transactions.

Tax Sharing Agreement

The Company has entered into a tax sharing agreement with Cypress providing for each of the party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress will pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis (while being a member of Cypress' consolidated or combined group pursuant to federal, state, local and foreign tax law). The Company's portion of such tax liability or benefit will be determined based upon its separate return tax liability as defined under the tax sharing agreement. Such liability or benefit will be based on a pro forma calculation as if the Company were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis with Cypress subject to adjustments as set forth in the tax sharing agreement.

After the date the Company ceases to be a member of Cypress' consolidated group for federal income tax purposes and most state income tax purposes, as and to the extent that the Company becomes entitled to utilize on the Company's separate tax returns portions of those credit or loss carryforwards existing as of such date, the Company will distribute to Cypress the tax effect, estimated to be 40% for federal income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. The Company will distribute these amounts to Cypress in cash or in the Company's shares, at the Company's option. As of December 30, 2007, the Company has \$44.0 million of federal net operating loss carryforwards and approximately \$73.5 million of California net operating loss carryforwards meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate approximately \$19.1 million.

The majority of these net operating loss carryforwards were created by employee stock transactions. Because there is uncertainty as to the realizability of these loss carryforwards, the portion created by employee stock transactions are not reflected on the Company's Consolidated Balance Sheets.

Upon completion of its follow-on public offering of common stock in June 2006, the Company is no longer considered to be a member of Cypress' consolidated group for federal income tax purposes. Accordingly, the Company will be subject to the obligations payable to Cypress for any federal income tax credit or loss carryforwards utilized in its federal tax returns in subsequent periods, as explained in the preceding paragraph.

The Company will continue to be jointly and severally liable for any tax liability as governed under federal, state and local law during all periods in which it is 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 the Company is included in Cypress' consolidated group, the Company could be liable in the event that any federal tax liability was incurred, but not discharged, by any other member of the group.

If Cypress distributes the Company's class B common stock to Cypress stockholders in a transaction intended to qualify as a tax-free distribution under Section 355 of the Internal Revenue Code (the "Code"), Cypress intends to obtain an opinion of counsel and/or a ruling from the Internal Revenue Service ("IRS") to the effect that such distribution qualifies under Section 355 of the Code. Despite such an opinion or ruling, however, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the Company's voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of the Company's stock. The tax sharing agreement includes the Company's obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of the Company's stock after the distribution, other than liability attributable to certain dispositions of the Company's stock by Cypress, that cause Cypress' distribution of shares of the Company's stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

The tax sharing agreement further provides for cooperation with respect to tax matters, the exchange of information and the retention of records which may affect the income tax liability of either party. Disputes arising between Cypress and the Company relating to matters covered by the tax sharing agreement are subject to resolution through specific dispute resolution provisions contained in the agreement.

Note 4. BUSINESS COMBINATION

PowerLight Acquisition

On January 10, 2007, the Company completed its acquisition of PowerLight. The results of PowerLight have been included in the consolidated results of the Company from January 10, 2007. As a result of the PowerLight acquisition, all of the outstanding shares of PowerLight, and a portion of each vested option to purchase shares of PowerLight, were cancelled, and all of the outstanding options to purchase shares of PowerLight (other than the portion of each vested option that was cancelled) were assumed by the Company in exchange for aggregate consideration of (i) approximately \$120.7 million in cash plus (ii) approximately 5.7 million shares of the Company's class A common stock, inclusive of (a) approximately 1.6 million shares of the Company's class A common stock which may be issued upon the exercise of assumed vested and unvested PowerLight stock options, which options vest on the same schedule as the assumed PowerLight stock options, and (b) approximately 1.1 million shares of the Company's class A common stock issued to employees of PowerLight in connection with the acquisition which, along with approximately 0.5 million of the shares issuable upon exercise of assumed PowerLight stock options, are subject to certain transfer restrictions and a repurchase option by the Company, both of which lapse over a two-year period following the acquisition under the terms of certain equity restriction agreements. The Company under the terms of the acquisition agreement also issued an additional 0.2 million shares of restricted class A common stock to certain employees of PowerLight, which shares are subject to certain transfer restrictions which will lapse over 4 years following the acquisition. In June 2007, the Company changed PowerLight's name to SunPower Corporation, Systems ("SP Systems"), to capitalize on SunPower's name recognition.

The total consideration related to the acquisition is as follows:

(In thousands)	Shares	Fair Value at January 10, 2007
Purchase consideration:		
Cash	—	\$ 120,694
Common stock	2,961	111,266
Stock options assumed that are fully vested	618	21,280
Direct transaction costs	—	2,958
Total purchase consideration	3,579	256,198
Future stock compensation:		
Shares subject to re-vesting restrictions	1,146	43,046
Stock options assumed that are unvested	984	35,126
Total future stock compensation	2,130	78,172
Total purchase consideration and future stock compensation	5,709	\$ 334,370

Of the consideration issued for the acquisition, approximately \$23.7 million in cash and approximately 0.7 million shares, with a total aggregate value of \$118.1 million as of December 30, 2007, are being held in escrow as security for the indemnification obligations of certain former SP Systems shareholders and will be released over a period of five years ending January 10, 2012 (see Note 20).

Purchase Price Allocation

Under the purchase method of accounting, the total purchase price as shown in the table above was allocated to SP Systems' net tangible and intangible assets based on their estimated fair values as of January 10, 2007. The purchase price has been allocated based on management's best estimates. The fair value of the Company's class A common stock issued was determined based on the average closing prices for a range of trading days around the announcement date (November 15, 2006) of the transaction. The fair value of stock options assumed was estimated using the Black-Scholes valuation model (the "Black-Scholes model") with the following assumptions: volatility of 90%, expected life ranging from 2.7 years to 6.3 years, and risk-free interest rate of 4.6%.

The allocation of the purchase price associated with certain assets on January 10, 2007 was as follows:

(In thousands)	Amount
Net tangible assets	\$ 13,925
Patents and purchased technology	29,448
Tradenames	15,535
Backlog	11,787
Customer relationships	22,730
In-process research and development	9,575
Unearned stock compensation	78,172
Deferred tax liability	(21,964)
Goodwill	175,162
Total purchase consideration and future stock compensation	\$ 334,370

Net tangible assets acquired on January 10, 2007 consisted of the following:

(In thousands)	Amount
Cash and cash equivalents	\$ 22,049
Restricted cash	4,711
Accounts receivable, net	40,080
Costs and estimated earnings in excess of billings	9,136
Inventories	28,146
Deferred project costs	24,932
Prepaid expenses and other assets	23,740
Total assets acquired	152,794
Accounts payable	(60,707)
Billings in excess of costs and estimated earnings	(35,887)
Other accrued expenses and liabilities	(42,275)
Total liabilities assumed	(138,869)
Net assets acquired	\$ 13,925

The Company accounted for its acquisition of SP Systems in accordance with SFAS No. 141. Accordingly, all intercompany receivables and payables related to SP Systems at the acquisition date were eliminated in purchase accounting effective January 10, 2007.

Acquired Identifiable Intangible Assets.

The following table presents certain information on the acquired identifiable intangible assets:

Intangible Assets	Method of Valuation	Discount Rate Used	Royalty Rate Used	Estimated Useful Life
Patents and purchased technology	Relief from royalty method	25%	3%	4 years
Tradenames	Relief from royalty method	25%	1%	5 years
Backlog	Income approach	20%	—%	1 year
Customer relationships	Income approach	22%	—%	6 years

The determination of the fair value and useful life of the tradename was based on the Company's strategy of continuing to market its systems products and services under the PowerLight brand. Based on the Company's change in branding strategy and changing PowerLight's name to SunPower Corporation, Systems, during the quarter ended July 1, 2007, the Company recognized an impairment charge of \$14.1 million, which represented the net book value of the PowerLight tradename.

Amortization expense for the year ended December 30, 2007 was as follows:

(In thousands)	
Cost of systems revenue	\$ 20,085
Sales, general and administrative	3,688
Total amortization expense	\$ 23,773

In-Process Research and Development ("IPR&D") Charge

In connection with the acquisition of SP Systems, the Company recorded an IPR&D charge of \$9.6 million in the first quarter of fiscal 2007, as technological feasibility associated with the IPR&D projects had not been established and no alternative future use existed.

These IPR&D projects consisted of two components: design automation tool and tracking systems and other. In assessing the projects, the Company considered key characteristics of the technology as well as its future prospects, the rate technology changes in the industry, product life cycles, and the various projects' stage of development.

The value of IPR&D was determined using the income approach method, which calculated the sum of the discounted future cash flows attributable to the projects once commercially viable using a 40% discount rate, which were derived from a weighted-average cost of capital analysis and adjusted to reflect the stage of completion and the level of risks associated with the projects. The percentage of completion for each project was determined by identifying the research and development expenses invested in the project as a ratio of the total estimated development costs required to bring the project to technical and commercial feasibility. The following table summarizes certain information related to each project:

	Stage of Completion	Total Cost Incurred to Date	Total Remaining Costs
Design Automation Tool			
As of January 10, 2007 (acquisition date)	8%	\$ 0.2 million	\$ 2.4 million
As of December 30, 2007	35%	\$ 0.9 million	\$ 1.7 million
Tracking System and Other			
As of January 10, 2007 (acquisition date)	25%	\$ 0.2 million	\$ 0.6 million
As of December 30, 2007	100%	\$ 0.8 million	\$ —

Status of IPR&D:

As of December 30, 2007, the Company has incurred total post-acquisition costs of approximately \$0.7 million related to the design automation tool project and estimates that an additional investment of \$1.7 million will be required to complete the project. The Company expects to complete the design automation tool project by June 2009, approximately one and a half years earlier than the original estimate.

The Company completed the tracking systems project in June 2007 and incurred total project costs of \$0.8 million, of which \$0.6 million was incurred after the acquisition. Both the actual completion date and the total projects costs were in line with the original estimates.

Goodwill

Approximately \$175.2 million had been allocated to goodwill within the systems segment, which represents the excess of the purchase price over the fair value of the underlying net tangible and intangible assets of SP Systems. In accordance with SFAS No. 142, goodwill will not be amortized but instead will be tested for impairment at least annually, or more frequently if certain indicators are present. In the event that management determines that the value of goodwill has become impaired, the Company will incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made. During the year ended December 30, 2007, the Company recorded adjustments aggregating \$6.6 million to increase goodwill related to the purchase of SP Systems on January 10, 2007 to \$181.8 million. The adjustments included a change in the estimated receivable for an existing project as of the acquisition date which was subsequently determined to be unearned and, thus, the receivable will not be paid, an additional loss provision on a construction project contracted as of the acquisition date and was subsequently determined to have a larger loss than originally estimated, as well as adjustments to the value of certain acquired assets and liabilities. Goodwill that resulted from the acquisition of SP Systems is not deductible for tax purposes.

Financial Commitment Letter

In conjunction with the acquisition, Cypress entered into a commitment letter with the Company during the fourth quarter of fiscal 2006 under which Cypress agreed to lend to the Company up to \$130.0 million in cash to be used to facilitate the financing of the acquisition or working capital requirements. In February 2007, Cypress and the Company mutually terminated the commitment letter. No borrowings were outstanding at the termination date.

Pro Forma Financial Information (Unaudited)

Supplemental information on an unaudited pro forma basis, as if the acquisition of SP Systems were completed at the beginning of fiscal years 2007 and 2006, is as follows:

	Year Ended	
(In thousands, except per share amounts)	December 30, 2007	December 31, 2006
Revenue	\$ 777,104	\$ 442,115
Net income (loss)	\$ 7,094	\$ (57,635)
Basic net income (loss) per share	\$ 0.09	\$ (0.84)
Diluted net income (loss) per share	\$ 0.09	\$ (0.84)

The unaudited pro forma supplemental information is based on estimates and assumptions, which the Company believes are reasonable. The unaudited pro forma supplemental information includes non-recurring in-process research and development charge of \$9.6 million recorded in the first quarter ended April 1, 2007 and April 2, 2006. The unaudited pro forma supplemental information prepared by management is not necessarily indicative of the consolidated financial position or results of operations in future periods or the results that actually would have been realized had the Company and SP Systems been a combined company during the specified periods.

Note 5. OTHER INCOME (EXPENSE), NET

The following table summarizes the components of other income (expense), net, recorded in the Consolidated Statements of Operations:

(In thousands)	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Write-off of unamortized debt issuance costs	\$ (8,260)	\$ —	\$ —
Amortization of debt issuance costs	(1,710)	—	—
Share in net loss of joint venture, net of tax	(278)	—	—
Gain (loss) on derivatives and foreign exchange, net of tax	2,086	863	(1,441)
Other income, net	291	214	227
Total other income (expense), net	<u>\$ (7,871)</u>	<u>\$ 1,077</u>	<u>\$ (1,214)</u>

Note 6. NET INCOME (LOSS) PER SHARE

Basic net income (loss) per share is computed using the weighted-average common shares outstanding. Diluted net income (loss) per share is computed using the weighted-average common shares outstanding plus any potentially dilutive securities outstanding during the period using the treasury stock method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock and senior convertible debentures.

Holders of the Company's senior convertible debentures may, under certain circumstances at their option, convert the senior convertible debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity (see Note 15). Pursuant to EITF 90-19, the senior convertible debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury stock method.

For the fiscal year ended January 1, 2006, stock options to purchase common stock were excluded from the calculation of diluted net loss per share as the Company was in a net loss position and their inclusion would have been anti-dilutive. The following is a summary of all outstanding anti-dilutive potential common shares:

(In thousands)	As of		
	December 30, 2007	December 31, 2006	January 1, 2006
Stock options	—	44	6,572

The following table sets forth the computation of basic and diluted weighted-average common shares:

(In thousands)	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Basic weighted-average common shares	75,413	65,864	23,306
Effect of dilutive securities:			
Stock options	4,203	5,147	—
Restricted stock	357	76	—
Shares subject to re-vesting restrictions	439	—	—
February 2007 debentures	620	—	—
July 2007 debentures	195	—	—
Weighted-average common shares for diluted computation	<u>81,227</u>	<u>71,087</u>	<u>23,306</u>

Basic weighted-average common shares excludes 2.9 million shares of class A common stock lent to an affiliate of Lehman Brothers in connection with the Company's issuance of \$200.0 million in principal amount of its 1.25% senior convertible debentures in February 2007 and 1.8 million shares of class A common stock lent to an affiliate of Credit Suisse in connection with the Company's issuance of \$225.0 million in principal amount of its 0.75% senior convertible debentures in July 2007 (see Note 15).

For the year ended December 30, 2007, dilutive potential common shares includes approximately 0.6 million shares for the impact of \$200.0 million in principal amount of the Company's 1.25% senior convertible debentures issued in February 2007 and 0.2 million shares for the impact of \$225.0 million in principal amount of the Company's 0.75% senior convertible debentures issued in July 2007, as the Company has experienced a substantial increase in its common stock price. Under the treasury stock method, such senior convertible 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 senior convertible debentures.

Note 7. BALANCE SHEET COMPONENTS

(In thousands)	December 30, 2007	December 31, 2006
Costs and estimated earnings in excess of billings on contracts in progress and billings in excess of costs and estimated earnings on contracts in progress consists of the following:		
Costs and estimated earnings in excess of billings on contracts in progress	\$ 39,136	\$ —
Billings in excess of costs and estimated earnings on contracts in progress	69,900	—
	<u>\$ (30,764)</u>	<u>\$ —</u>
Costs incurred to date on contracts in progress	\$ 481,340	\$ —
Estimated earnings to date	145,643	—
Contract revenue earned to date	626,983	—
Less: Billings to date, including earned incentive rebates, on contracts in progress	(657,747)	—
	<u>\$ (30,764)</u>	<u>\$ —</u>
Inventories:		
Raw materials*	\$ 89,604	\$ 8,703
Work-in-process	2,027	79
Finished goods	48,873	13,998
	<u>\$ 140,504</u>	<u>\$ 22,780</u>
* In addition to polysilicon and other raw materials for solar cell manufacturing, raw materials as of December 30, 2007 includes solar panels purchased from third-party vendors and installation materials for systems projects.		
Prepaid expenses and other current assets:		
Deferred tax asset, current portion	\$ 8,437	\$ 1,446
Note receivable from SP Systems	—	10,000
VAT receivable, current portion	7,266	48
Prepaid materials	4,652	—
Other receivables	9,946	3,556
Other prepaid expenses	2,809	1,605
	<u>\$ 33,110</u>	<u>\$ 16,655</u>
Property, plant and equipment, net:		
Land and buildings	\$ 7,482	\$ 7,304
Manufacturing equipment	194,963	120,104
Computer equipment	12,399	2,496
Furniture and fixtures	2,648	83
Leasehold improvements	113,801	45,175
Construction-in-process (manufacturing facility in the Philippines)	99,945	53,252
	431,238	228,414
Less: Accumulated depreciation**	(53,244)	(25,986)
	<u>\$ 377,994</u>	<u>\$ 202,428</u>
** Total depreciation expense was \$27.3 million, \$16.4 million and \$7.1 million for the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.		
Intangible assets:		
Patents and purchased technology	\$ 51,398	\$ 21,950
Tradenames	1,603	1,603
Backlog	11,787	—
Customer relationships and other	23,193	463
	<u>87,981</u>	<u>24,016</u>
Accumulated amortization of intangible assets:		
Patents and purchased technology	(20,630)	(8,973)
Tradenames	(808)	(548)
Backlog	(11,460)	—
Customer relationships and other	(4,137)	(446)
	<u>(37,035)</u>	<u>(9,967)</u>
	<u>\$ 50,946</u>	<u>\$ 14,049</u>

(In thousands)	December 30, 2007	December 31, 2006
The estimated future amortization expense related to intangible assets as of December 30, 2007 is as follows:		
2008	\$ 15,076	
2009	14,740	
2010	13,228	
2011	4,008	
2012 and beyond	3,894	
	<u>\$ 50,946</u>	
Other long-term assets:		
VAT receivable, net of current portion	\$ 24,269	\$ —
Investment in joint venture	5,304	4,994
Other	2,401	1,639
	<u>\$ 31,974</u>	<u>\$ 6,633</u>
Accrued liabilities:		
VAT payable	\$ 18,138	\$ 575
Employee compensation and employee benefits	15,338	3,961
Income taxes payable	11,106	1,995
Warranty	10,502	3,446
Foreign exchange derivative liability	8,920	4,849
Other	15,430	3,759
	<u>\$ 79,434</u>	<u>\$ 18,585</u>

Note 8. INVESTMENTS

Cash and cash equivalents, short-term investments, restricted cash and long-term investments classified as available-for-sale securities were comprised of the following:

(In thousands)	December 30, 2007				December 31, 2006			
	Cost	Unrealized		Fair Value	Cost	Unrealized		Fair Value
		Gross Gains	Gross Losses			Gross Gains	Gross Losses	
Money market securities	\$ 281,458	\$ —	\$ —	\$ 281,458	\$ 135,298	\$ —	\$ —	\$ 135,298
Corporate securities	92,395	6	(50)	92,351	13,400	—	—	13,400
Commercial paper	78,163	2	(2)	78,163	28,739	—	(4)	28,735
Total available-for-sale securities	<u>\$ 452,016</u>	<u>\$ 8</u>	<u>\$ (52)</u>	<u>\$ 451,972</u>	<u>\$ 177,437</u>	<u>\$ —</u>	<u>\$ (4)</u>	<u>\$ 177,433</u>

The following table summarizes the fair value and gross unrealized losses of the Company's available-for-sale securities, aggregated by type of investment instrument and length of time that individual securities have been in a continuous unrealized loss position, at December 30, 2007:

(In thousands)	Less than 12 Months		12 Months or Greater		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate securities	\$ 25,536	\$ (50)	\$ —	\$ —	\$ 25,536	\$ (50)
Commercial paper	24,002	(2)	—	—	24,002	(2)
	<u>\$ 49,538</u>	<u>\$ (52)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 49,538</u>	<u>\$ (52)</u>

The decline in fair value of the available-for-sale securities was primarily related to changes in interest rates, which the Company considered to be temporary in nature. The Company has the ability and intent to hold these securities until a recovery of fair value, which is maturity. In addition, the Company evaluated the near-term prospects of the available-for-sale securities in relation to the severity and duration of the impairment. Based on that evaluation and the Company's ability and intent to hold these investments for a reasonable period of time, the Company did not consider these investments to be other-than-temporarily impaired.

The classification and contractual maturities of available-for-sale securities is as follows:

(In thousands)	December 30, 2007	December 31, 2006
Included in:		
Cash and cash equivalents	\$ 249,582	\$ 160,937
Short-term investments	105,453	16,496
Restricted cash	67,887	—
Long-term investments	29,050	—
	<u>\$ 451,972</u>	<u>\$ 177,433</u>
Contractual maturities:		
Due in less than one year	\$ 396,228	\$ 164,033
Due from one to two years	4,994	—
Due from two to 30 years	50,750	13,400
	<u>\$ 451,972</u>	<u>\$ 177,433</u>

The Company classifies all available-for-sale securities that are intended to be available for use in current operations as cash and cash equivalents, short-term investments and/or restricted cash.

From time to time the Company invests in auction rate securities, which are bought and sold in the marketplace through a bidding process sometimes referred to as a “Dutch auction,” and which are classified as short-term investments or long-term investments and carried at their market values. After the initial issuance of the securities, the interest rate on the securities resets periodically, at intervals set at the time of issuance (e.g., every seven, twenty-eight, or thirty-five days; every six-months; etc.), based on the market demand at the reset period. The “stated” or “contractual” maturities for these securities generally are between 20 to 30 years.

At December 30, 2007, the Company had \$50.8 million invested in auction rate securities as compared to \$13.4 million invested in auction rate securities at December 31, 2006. At December 30, 2007, these auction rate securities were student loans that are typically over collateralized by pools of loans originated under the Federal Family Education Loan Program (“FFELP”) that are guaranteed by the U.S. Department of Education, and insured. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations (“NRSRO”) as triple-A. In February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, which occurs when sell orders exceed buy orders resulting from lack of liquidity and does not necessarily signify a default by the issuer. As of February 29, 2008, four of these auction rate securities totaling \$24.1 million failed to clear at auctions, four of these securities totaling \$21.7 million cleared at auctions, and one of these securities totaling \$5.0 million continued to be held. For failed auctions, the Company continues to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. Historically, failed auctions have rarely occurred, however, such failures could continue to occur in the future. In the event the Company needs to access these funds, the Company will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. Accordingly, auction rate securities that were not sold subsequent to December 30, 2007 totaling \$29.1 million are classified as long-term investments on the Consolidated Balance Sheets, consistent with the stated contractual maturities of the securities. The “stated” or “contractual” maturities for these securities generally are between 20 to 30 years.

The Company has concluded that no other-than-temporary impairment losses occurred in the year ended December 30, 2007 because all holdings had successful auctions in January 2008. If the issuers of these auction rate securities are unable to successfully close future auctions or do not redeem the securities, the Company may be required to adjust the carrying value of the securities and record an impairment charge in the first quarter of fiscal 2008. If the Company determines that the fair value of these auction rate securities is temporarily impaired, the Company would record a temporary impairment within Consolidated Statements of Comprehensive Income (Loss), a component of stockholders' equity in the first quarter of 2008. If it is determined that the fair value of these securities is other-than-temporarily impaired, the Company would record a loss in its Consolidated Statements of Operations in the first quarter of 2008, which could be material (see Note 20).

The Company classifies auction rate securities as available-for-sale securities under SFAS No. 115. As these securities trade at their par values, no gains or losses are recorded in comprehensive income (loss).

Note 9. ADVANCES TO SUPPLIERS

The Company has entered into agreements with various polysilicon, ingot, wafer, solar cells and solar module vendors and manufacturers. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements (see Note 11).

Furthermore, under certain of these agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. In the year ended December 30, 2007, the Company paid advances totaling \$94.3 million in accordance with the terms of existing supply agreements. As of December 30, 2007, advances to suppliers totaled \$161.2 million, the current portion of which is \$52.3 million.

The Company's future prepayment obligations related to these agreements as of December 30, 2007 are as follows (in thousands):

2008	\$ 58,433
2009	48,840
2010	11,100
	<u>\$ 118,373</u>

On January 10, 2008, the Company paid an additional advance of 1.6 million Euros (approximately \$2.4 million) in accordance with the terms of an existing supply agreement.

Note 10. INCOME TAXES

The Company applies SFAS No. 109, which requires the Company to recognize deferred tax assets and liabilities for expected future tax consequences of events that have been recognized in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax basis of assets and liabilities using the enacted tax rates in effect for the year in which the differences are expected to reverse. SFAS No. 109 requires deferred tax assets and liabilities to be adjusted when the tax rates or other provisions of the income tax laws change.

The geographic distribution of income (loss) before income taxes and the components of provision for (benefit from) income taxes are summarized below:

(In thousands)	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Geographic distribution of income (loss) before income taxes:			
U.S. income (loss)	\$ (93,881)	\$ 3,419	\$ (14,675)
Non-U.S. income (loss)	97,163	25,042	(1,118)
Income (loss) before income taxes	<u>\$ 3,282</u>	<u>\$ 28,461</u>	<u>\$ (15,793)</u>
Provision for (benefit from) income taxes:			
Current tax (benefit) expense			
Federal	\$ (67)	\$ 241	\$ —
State	647	100	—
Foreign	12,319	1,604	50
Total current tax expense	<u>12,899</u>	<u>1,945</u>	<u>50</u>
Deferred tax benefit			
Federal	(14,499)	—	—
State	(4,320)	—	—
Foreign	—	—	—
Total deferred tax benefit	<u>(18,819)</u>	<u>—</u>	<u>—</u>
Provision for (benefit from) income taxes	<u>\$ (5,920)</u>	<u>\$ 1,945</u>	<u>\$ 50</u>

The income tax provision (benefit) differs from the amounts obtained by applying the statutory U.S. federal tax rate to income (loss) before taxes as shown below:

(In thousands)	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Statutory rate	35%	35%	35%
Tax at U.S. statutory rate	\$ 1,149	\$ 9,961	\$ (5,528)
Foreign rate differential	(20,731)	(7,162)	459
State income taxes, net of benefit	647	65	—
Recognition of prior year benefits	—	(1,205)	—
Purchased in-process research and development	3,351	—	—
Impairment of acquisition-related intangibles	4,924	—	—
Alternative minimum tax	67	—	—
Benefit of net operating losses not recognized	1,329	—	4,617
Non-deductible stock option compensation expense	3,227	241	502
Other, net	117	45	—
Total	<u>\$ (5,920)</u>	<u>\$ 1,945</u>	<u>\$ 50</u>

Temporary differences and carryforwards, which give rise to significant portions of deferred tax assets and liabilities, are as follows:

(In thousands)	December 30, 2007	December 31, 2006
Deferred tax assets:		
Net operating loss carryforwards	\$ 709	\$ 9,130
Research and development credit and California manufacturing credit carryforwards	1,491	1,797
Reserves and accruals	30,043	3,204
Capitalized research and development expenses	43	1,023
Total deferred tax asset	32,286	15,154
Valuation allowance	(13,924)	(9,836)
Total deferred tax asset, net of valuation allowance	18,362	5,318
Deferred tax liabilities:		
Intangible assets	(16,138)	(5,318)
Other	—	1,400
Total deferred tax liabilities	(16,138)	(3,918)
Net deferred tax asset	<u>\$ 2,224</u>	<u>\$ 1,400</u>

As of December 30, 2007, the Company had federal net operating loss carryforwards of approximately \$147.6 million. These federal net operating loss carryforwards will expire at various dates from 2011 to 2027. The Company had California state net operating loss carryforwards of approximately \$73.5 million as of December 30, 2007, which expire at various dates from 2011 to 2017. The Company also had research and development credit carryforwards of approximately \$3.9 million for both federal and state tax purposes. The Company's ability to utilize a portion of the net operating loss 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 a tax holiday in the Philippines, where it manufactures its products. This tax holiday is scheduled to expire in 2010, unless extended. As of yet, no tax benefit has been realized from the income tax holiday due to operating losses incurred in the Philippines.

Unrecognized Tax Benefits

On January 1, 2007, the Company adopted the provisions for FIN 48, which is an interpretation of SFAS No. 109. FIN 48 prescribes a recognition threshold that a tax position is required to meet before being recognized in the financial statements and provides guidance on de-recognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition issues. FIN 48 contains a two-step approach to recognizing and measuring uncertain tax positions accounted for in accordance with SFAS No. 109. 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.

The total amount of unrecognized tax benefits recorded in the Consolidated Balance Sheets at the date of adoption was approximately \$1.1 million, which, if recognized, would affect the Company's effective tax rate. The additional amount of unrecognized tax benefits accrued during the year ended December 30, 2007 was \$3.1 million. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

(In thousands)	December 30, 2007
Balance at January 1, 2007 (after adoption of FIN 48)	\$ 1,120
Additions based on tax positions related to the current year	2,726
Additions for tax positions of prior years	326
Reductions for tax positions of prior years	—
Settlements and effective settlements with tax authorities and related remeasurements	—
Balance at December 30, 2007	<u>\$ 4,172</u>

Of the total unrecognized tax benefit, \$0.3 million was accounted for as an adjustment to goodwill as it related to unrecognized tax benefits resulting from the acquisition of SP Systems. In addition to the amounts disclosed above, a contra-asset of \$0.4 million was netted against deferred tax assets as an unrecognized tax benefit against income tax credits.

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 statute of limitations 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.

The Company’s valuation allowance was determined in accordance with the provisions of SFAS No. 109, which requires an assessment of 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. 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. The amount of the deferred tax asset valuation allowance, however, could be reduced in future periods to the extent that future taxable income is realized. A portion of the valuation allowance would be released to goodwill as it offsets deferred tax assets acquired in the acquisition of SP Systems.

Classification of Interest and Penalties

The Company accrues interest and penalties on tax contingencies as required by FIN 48 and SFAS No. 109. This interest and penalty accrual is classified as income tax provision (benefit) in the Consolidated Statements of Operations and was not material.

Tax Years and Examination

The Company files tax returns in each jurisdiction in which they are 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 31, 2007:

Tax Jurisdictions	Tax Years
United States	2004 and onward
California	2003 and onward

Additionally, while years prior to 2003 for the U.S. corporate tax return are not open for assessment, the IRS can adjust net operating loss and research and development carryovers that were generated in prior years and carried forward to 2003.

The IRS is currently conducting an audit of SP Systems’ federal income tax returns for fiscal 2004 and 2005. As of December 30, 2007, no material adjustments have been proposed by the IRS. Changes to SP Systems’ pre-acquisition tax liabilities, if any, would be recorded as a purchase price adjustment. Management believes that the ultimate outcome of the IRS examination will not have a material impact on the Company’s financial position or results of operations. If material tax adjustments are proposed by the IRS and acceded to by the Company, an adjustment to goodwill and income taxes payable may result.

Note 11. COMMITMENTS AND CONTINGENCIES

Operating Lease Commitments

The Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress, which expires in April 2011 (see Note 3). The lease requires the Company to pay property taxes, insurance and certain other costs. In addition, the Company leases its Richmond, California facility under a non-cancelable operating lease from an unaffiliated third party, which expires in September 2018. The Company also leases its solar cell manufacturing facility in the Philippines from Cypress, under a lease which expires in July 2021 (see Note 3). In December 2005, the Company entered into a 5-year operating lease from an unaffiliated third party for an additional building in the

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Philippines. The Company also has various lease arrangements, including its European headquarters located in Geneva, Switzerland under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Germany and South Korea, all of which are leased from unaffiliated third parties. Future minimum obligations under all non-cancelable operating leases as of December 30, 2007 are as follows (in thousands):

2008	\$	4,844
2009		4,995
2010		5,413
2011		4,258
2012		3,832
Thereafter		23,685
	\$	<u>47,027</u>

Rent expense, including the rent paid to Cypress for the California facility and the wafer fabrication facility in the Philippines (see Note 3), was \$3.3 million, \$1.3 million and \$0.6 million for the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively.

Purchase Commitments

The Company purchases raw materials for inventory, services 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 upon 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 recorded purchase commitments arising from these agreements are firm, non-cancelable and unconditional commitments.

The Company also has agreements with several suppliers of polysilicon, ingots, wafers, solar cells and solar panels which specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 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 (see Note 9).

At December 30, 2007, total obligations related to such supplier agreements was \$2.1 billion, of which \$250.3 million was related to a joint venture (discussed below). The Company's non-cancelable purchase orders related to equipment and building improvements totaled approximately \$161.8 million.

Future minimum obligations under supplier agreements and non-cancelable purchase orders as of December 30, 2007 are as follows (in thousands):

2008	\$	424,017
2009		381,440
2010		364,324
2011		371,634
2012		146,469
Thereafter		573,362
	\$	<u>2,261,246</u>

Joint Ventures

In the third quarter of fiscal 2006, the Company entered into an agreement with Woongjin Coway Co., Ltd. ("Woongjin"), a provider of environmental products located in Korea, to form Woongjin Energy Co., Ltd ("Woongjin Energy"), a joint venture to manufacture monocrystalline silicon ingots. Under the joint venture, the Company and Woongjin have funded the joint venture through capital investments. In addition, Woongjin Energy obtained a \$33.0 million loan originally guaranteed by Woongjin. The Company will supply polysilicon and technology required for the silicon ingot manufacturing to the joint venture, and the Company will procure the manufactured silicon ingots from the joint venture. Woongjin Energy began manufacturing in the third quarter of fiscal 2007, and the Company expects to purchase approximately \$250.3 million of silicon ingots from Woongjin Energy under a five-year agreement.

As of December 30, 2007, the Company had a \$4.4 million investment in the joint venture on the Consolidated Balance Sheets which comprised of a 19.9% equity investment valued at \$1.1 million and a \$3.3 million convertible note that is convertible at the Company's option into an additional 20.1% equity ownership in the joint venture. The Company accounted for its joint venture in Woongjin Energy using the equity method of accounting, in which the entire

minority investment of \$4.4 million is classified as “Other long-term assets” in the Consolidated Balance Sheets and the Company’s share of Woongjin Energy’s losses totaling \$0.3 million for the year ended December 30, 2007 is included in “Other income (expense), net” in the Consolidated Statements of Operations. Neither party has contractual obligations to provide any additional funding to the joint venture.

On October 18, 2007, the Company entered into an agreement with Woongjin and Woongjin Holdings Co., Ltd. (“Woongjin Holdings”), whereby Woongjin transferred its 80.1% equity investment held in Woongjin Energy to Woongjin Holdings and Woongjin Holdings assumed all rights and obligations formerly owned by Woongjin under the joint venture agreement described above, including the \$33.0 million loan guarantee. On January 18, 2008, the Company and Woongjin Holdings provided Woongjin Energy with additional funding through capital investments in which the Company invested an additional \$5.4 million in the joint venture. As of January 18, 2008, the Company’s equity investment increased from 19.9% to 27.4%. In addition, on or after January 18, 2008, if the Company elects to convert the \$3.3 million convertible note, its equity ownership in the joint venture would increase an additional 12.6% (see Note 20). The Company has reviewed the qualitative and quantitative attributes of this joint venture and determined that it does not meet the criteria to be accounted for under FASB Staff Position on FASB Interpretation No. 46 (revised December 2003), “Consolidation of Variable Interest Entities,” therefore, this joint venture is not consolidated into the Company’s financial statements.

On October 1, 2007, the Company entered into an agreement with First Philippine Electric Corporation (“First Philec”) to form First Philec Solar Corporation (“First Philec Solar”), a joint venture to provide wafer slicing services of silicon ingots to the Company. This joint venture will operate in the Philippines, with silicon ingots to be supplied primarily from the Company. The Company expects to purchase an aggregate quantity of silicon wafers sufficient to support up to approximately 660 megawatts annually of solar cell manufacturing production based on the Company’s expected silicon utilization through the five-year wafering supply and sales agreement, which is anticipated to begin in the second half of 2008 when First Philec Solar’s proposed manufacturing capacity is expected to become operational.

As of December 30, 2007, the Company had invested \$0.9 million in First Philec Solar comprised of a 16.9% equity investment. The Company accounted for its joint venture using the equity method of accounting, in which the entire minority investment of \$0.9 million is classified as “Other long-term assets” in the Consolidated Balance Sheets. On January 18, 2008, the Company invested an additional \$0.2 million in the joint venture, increasing its equity investment from 16.9% to 20.0% (see Note 20). The Company is currently reviewing the qualitative and quantitative attributes of this joint venture that is in the development stage to determine whether this joint venture will need to be consolidated into the Company’s financial statements in the future.

Product Warranties

The Company warrants or guarantees the performance of the solar panels that the Company manufactures at certain levels of power output for extended periods, usually 25 years. It also warrants that the solar cells will be free from defects for at least ten years. In addition, it passes through to customers long-term warranties from the original equipment manufacturers of certain system components. Warranties of 20 to 25 years from solar panels suppliers are standard, while inverters typically carry a two-, five- or ten-year warranty. Therefore, the Company maintains warranty reserves to cover potential liability that could result from these guarantees. The Company’s potential liability is generally in the form of product replacement or repair. Warranty reserves are based on the Company’s best estimate of such liabilities 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 historical experience of similar products as well as various other assumptions that are considered reasonable under the circumstances.

The Company generally provides warranty on systems installed for a period of five years. The Company’s estimated warranty cost for each project is accrued and the related costs are charged against the warranty accrual when incurred. It is not possible to predict the maximum potential amount of future warranty-related expenses under these or similar contracts due to the conditional nature of the Company’s obligations and the unique facts and circumstances involved in each particular contract. Historically, warranty costs related to contracts have been within management’s expectations.

Provisions for warranty reserves charged to cost of revenue were \$10.8 million, \$3.2 million and \$0.4 million during the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively. Activity within accrued warranty for fiscal 2007, 2006 and 2005 is summarized as follows:

(In thousands)	December 30, 2007	December 31, 2006	January 1, 2006
Balance at the beginning of the period	\$ 3,446	\$ 574	\$ 180
SP Systems accrued balance at date of acquisition	6,542	—	—
Accruals for warranties issued during the period	10,771	3,226	411
Settlements made during the period	(3,565)	(354)	(17)
Balance at the end of the period	<u>\$ 17,194</u>	<u>\$ 3,446</u>	<u>\$ 574</u>

The accrued warranty balance at December 30, 2007 includes \$6.7 million of accrued costs primarily related to servicing the Company’s obligations under long-term maintenance contracts entered into under the systems segment and the balance is included in “other long-term liabilities” in the Consolidated Balance Sheets.

FIN 48 Uncertain Tax Positions

As of December 30, 2007, total liabilities associated with FIN 48 uncertain tax positions were \$4.1 million, none of which was included in "Accrued liabilities" on the Consolidated Balance Sheets, as it is not expected to be paid within the next twelve months. Total liabilities associated with uncertain tax positions of \$4.1 million is included in "Other long-term liabilities" on our Consolidated Balance Sheets at December 30, 2007. 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."

Royalty Obligations

As of January 10, 2007, the Company assumed certain royalty obligations related to existing agreements entered into by PowerLight before the date of acquisition. In September 2002 and subsequently amended in December 2005, PowerLight entered into a Technology Assignment and Services Agreement and other ancillary agreements with Jefferson Shingleton and MaxTracker Services, LLC, a New York limited liability company controlled by Mr. Shingleton. Under the agreements, the PowerTracker®, now referred to as SunPower™ Tracker, was acquired through an assignment and acquisition of the patents associated with the product from Mr. Shingleton and the Company is obligated to pay Mr. Shingleton royalties on the tracker systems that it sells. In addition, several of the systems segment's government awards require the Company to pay royalties based on specified formulas related to sales of products developed or enhanced from such government awards. As of and for the fiscal year ended December 30, 2007, the Company incurred royalty expense totaling \$2.6 million which was charged to cost of systems revenue and the Company's total royalty liabilities were \$0.3 million.

Indemnifications

The Company is a party to a variety of agreements pursuant to 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 pursuant to 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

From time to time the Company is a party to litigation matters and claims that are normal in the course of its operations. While the Company believes that the ultimate outcome of these matters will not have a material adverse effect on the Company, the outcome of these matters is not determinable and negative outcomes may adversely affect the Company's financial position, liquidity or results of operations.

Note 12. 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 hedge instruments to manage the exposures associated with purchases of foreign sourced equipment, net asset or liability positions of its subsidiaries and forecasted revenues and expenses. The Company does not enter into foreign currency derivative financial instruments for speculative or trading purposes.

As of December 30, 2007, the Company's hedge instruments consisted of foreign currency option contracts and foreign currency forward exchange contracts. The Company calculates the fair value of its option and forward contracts based on market volatilities, spot rates and interest differentials from published sources.

In accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133"), the Company accounts for its hedges of forecasted foreign currency revenues as cash flow hedges and hedges of firmly committed purchase contracts denominated in foreign currency as fair value hedges.

Cash Flow Hedges: Hedges of forecasted foreign currency denominated revenues are designated as cash flow hedges and changes in fair value of the effective portion of hedge contracts are recorded in accumulated other comprehensive income (loss) in stockholders' equity in the Consolidated Balance Sheets. Amounts deferred in accumulated other comprehensive income (loss) are reclassified into the Consolidated Statements of Operations in the periods in which the hedged exposure impacts earnings. The effective portion of unrealized gains (losses) recorded in accumulated other comprehensive income (loss), net of tax, was a \$3.9 million loss, \$2.1 million loss and a \$0.5 million gain for the years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively. As of December 30, 2007 and December 31, 2006, the Company had outstanding cash flow hedge forward contracts with an aggregate notional value of \$140.1 million and \$89.6 million, respectively. As of December 30, 2007 and December 31, 2006, the Company had outstanding cash flow hedge option contracts with an aggregate notional value of zero and \$16.0 million, respectively. The maturity dates of the outstanding contracts ranged from January 2008 to July 2008.

Fair Value Hedges: On occasion, the Company commits to purchase equipment in foreign currency, predominantly Euros. When these purchases are hedged and qualify as firm commitments under SFAS No. 133, they are designated as fair value hedges and changes in the fair value of the firm commitment derivative contract are recognized in the Consolidated Statements of Operations. Under fair value hedge treatment, the changes in the firm commitment on a spot to spot basis are recorded in property, plant and equipment, net, in the Consolidated Balance Sheets and in other income (expense), net, in the Consolidated Statements of Operations. As of December 30, 2007 and December 31, 2006, the Company had no outstanding fair value hedges.

Both cash flow hedges and fair value hedges are tested for effectiveness each period on a spot to spot basis using the dollar-offset method. Both the excluded time value and any ineffectiveness, which were not significant for all periods, are recorded in other income (expense), net.

In addition, the Company began hedging the net balance sheet effect of Euro denominated assets and liabilities in 2005 primarily for Euro denominated receivables from customers, prepayments to suppliers and advances received from customers. The Company records its hedges of foreign currency denominated monetary assets and liabilities at fair value with the related gains or losses recorded in other income (loss). 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, 2007 and December 31, 2006, the Company held forward contracts with an aggregate notional value of \$62.7 million and \$37.6 million, respectively, to hedge the risks associated with Euro foreign currency denominated assets and liabilities.

Note 13. CUSTOMER ADVANCES

From time to time, the Company enters into agreements where customers make advances for future purchases of solar power products. In general, the Company pays no interest on the advances and applies the advances as shipments of product occur.

In August 2007, the Company entered into an agreement with one of its customers to supply polysilicon. Under the polysilicon agreement, the customer has agreed to make material aggregate cash advance payments to the Company in fiscal 2007 and 2008. Commencing in fiscal 2010 and continuing through 2019, these advance payments are to be applied as a credit against the customer's polysilicon purchases from the Company. Such polysilicon is expected to be used by the customer to manufacture ingots, and potentially wafers, which are to be sold to the Company under an ingot supply agreement. As of December 30, 2007, the Company received total advances of \$40.0 million from this customer, all of which is classified as long-term customer advances in the accompanying Consolidated Balance Sheets.

In April 2005, the Company entered into an agreement with one of its customers to supply solar cells. As part of this agreement, the customer agreed to fund 30 million Euros (approximately \$35.5 million) for the expansion of the Company's manufacturing capacity to support this customer's solar cell product demand. Beginning on January 1, 2006, the Company was obligated to pay interest at a rate of 5.7% per annum on the remaining unpaid balance. The Company's settlement of principal on the advances is to be recognized over product deliveries at a specified rate on a per-unit-of-product-delivered basis through December 31, 2010. The Company paid interest on the remaining unpaid balance of 1.4 million Euros (approximately \$1.9 million) and 1.4 million Euros (approximately \$1.8 million) in fiscal 2007 and 2006, respectively. As of December 31, 2006, the remaining outstanding advance was 25.1 million Euros (approximately \$33.1 million) of which \$7.9 million had been classified in current portion of customer advances and \$25.2 million in long-term customer advances in the accompanying Consolidated Balance Sheets, based on projected product shipment dates. As of December 30, 2007, the remaining outstanding advance was 19.7 million Euros (approximately \$29.0 million) of which \$8.8 million and \$20.2 million has been classified in current portion of customer advances and in long-term customer advances, respectively. The Company has utilized all funds advanced by this customer towards expansion of the Company's manufacturing capacity.

The Company has also entered into agreements with other customers who have made advance payments for solar products. These advances will be applied as shipments of product occur. As of December 30, 2007 and December 31, 2006, such customers had made advances of \$0.4 million and \$6.9 million, respectively.

The estimated utilization of advances from customers and the related interest of \$2.6 million thereto are (in thousands):

2008	\$	10,671
2009		10,962
2010		18,389
2011		8,000
2012		8,000
Thereafter		16,000
Total	\$	<u>72,022</u>

Note 14. LINE OF CREDIT

In December 2005, the Company entered into a \$25.0 million three-year revolving credit facility with affiliates of Credit Suisse and Lehman Brothers, of which there were no borrowings ever made under the facility. The Company terminated its agreement with affiliates of Credit Suisse and Lehman Brothers on July 13, 2007.

In connection with the SP Systems acquisition on January 10, 2007, the Company assumed a line of credit SP Systems had with Union Bank of California, N.A. ("UBOC") with an outstanding balance of approximately \$3.6 million. During the first quarter of fiscal 2007, the Company paid off the outstanding balance in full.

Also on January 10, 2007, the Company amended and restated the loan agreement with UBOC. The amended and restated loan agreement provided for a \$10.0 million trade finance credit facility, which was scheduled to expire on April 30, 2007. This facility allowed the Company to issue commercial and standby letters of credit, but did not provide for any loans. All of the assets of SP Systems secured this trade finance facility. In addition, the agreement required that SP Systems maintain cash equal to the value of letters of credit outstanding in restricted accounts as collateral for letters of credit issued by the bank. On April 27, 2007, the Company amended the loan agreement to, among other things, extend the maturity date to July 31, 2007, and remove the requirement to have cash collateral for letters of credit. The Company guaranteed \$10.5 million in connection with the April 27, 2007 amendment including the \$10 million trade credit facility and a separate \$0.5 million credit card facility through UBOC. The Company's line of credit with UBOC expired on July 31, 2007.

On July 13, 2007, the Company entered into a credit agreement with Wells Fargo that replaced the credit lines with Credit Suisse, Lehman Brothers and UBOC. On August 20, 2007, the Company entered into an amendment to the credit agreement. As amended, the credit agreement provides for a \$50.0 million unsecured revolving credit line, with a \$40.0 million unsecured letter of credit subfeature, and a separate \$50.0 million secured letter of credit facility. The Company may borrow up to \$50.0 million and request that Wells Fargo issue up to \$40.0 million in letters of credit under the unsecured letter of credit subfeature through July 31, 2008. Letters of credit issued under the subfeature reduce the Company's borrowing capacity under the revolving credit line. The Company may request that Wells Fargo issue up to \$50.0 million in letters of credit under the secured letter of credit facility through July 31, 2012. As detailed in the agreement, the Company will pay interest on outstanding borrowings and a fee for outstanding letters of credit. The Company has the ability at any time to prepay outstanding loans. All borrowings must be repaid by July 31, 2008, and all letters of credit issued under the unsecured letter of credit subfeature shall expire on or before July 31, 2008 unless the Company provides by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the secured letter of credit facility shall expire no later than July 31, 2012. The Company concurrently entered into a security agreement with Wells Fargo, granting a security interest in a deposit account to secure its obligations in connection with any letters of credit that might be issued under the credit agreement. In connection with the credit agreement, SunPower North America, Inc., a wholly-owned subsidiary of the Company, and SP Systems, another wholly-owned subsidiary of the Company, entered into an associated continuing guaranty with Wells Fargo. The terms of the credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type.

As of December 30, 2007, four letters of credit totaling \$32.0 million were issued by Wells Fargo under the unsecured letter of credit subfeature and eight letters of credit totaling \$47.9 million were issued by Wells Fargo under the secured letter of credit facility. On December 30, 2007, cash available to be borrowed under the unsecured revolving credit line was \$18.0 million and includes letter of credit capacities available to be issued by Wells Fargo under the unsecured letter of credit subfeature of \$8.0 million. Letters of credit available under the secured letter of credit facility at December 30, 2007 totaled \$2.1 million.

As of December 30, 2007, the Company was in compliance with all but two debt covenants. The Company had failed to deliver in a timely manner a certificate of the chief executive officer or chief financial officer that the financial statements in its prior Quarterly Report on Form 10-Q were accurate and that there existed no event of default with debt covenants. The Company also entered into corporate guaranties on construction project deals in Europe that exceeded the allowed amount under the debt covenants. On January 18, 2008, the Company entered into an agreement with Wells Fargo to amend the existing credit agreement. Under the amended credit agreement, Wells Fargo waived compliance requirements with certain restrictive covenants, including the prohibition against the Company providing corporate guaranties supporting contracts between its subsidiaries and third parties. In exchange for waiving compliance with such restrictive covenants, the Company agreed to maintain a balance of funds in a deposit account with Wells Fargo, in an amount no less than the aggregate outstanding indebtedness owed by the Company to Wells Fargo under both the line of credit, including its letter of credit subfeature, and the letter of credit line, as collateral securing such outstanding indebtedness (see Note 20). Had Wells Fargo not waived this violation, the Company would have been in default of its debt covenants and the Company may have been required to immediately repay the aggregate outstanding indebtedness owed by the Company to Wells Fargo under both the line of credit, including its letter of credit subfeature, and the letter of credit line.

Note 15. SENIOR CONVERTIBLE DEBENTURES AND SHARE LENDING ARRANGEMENTS

February 2007 and July 2007 Debt Issuance

In February 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures (the "February 2007 debentures"). Interest on the February 2007 debentures is payable on February 15 and August 15 of each year, commencing August 15, 2007. The February 2007 debentures will mature on February 15, 2027. Holders may require the Company to repurchase all or a portion of their February 2007 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. In addition, the Company may redeem some or all of the February 2007 debentures on or after

February 15, 2012. The February 2007 debentures are initially convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than \$1,000, then the excess conversion value will be convertible into common stock. The initial effective conversion price of the February 2007 debentures is approximately \$56.75 per share, which represented a premium of 27.5% to the closing price of the Company's common stock on the date of issuance. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

In July 2007, the Company issued \$225.0 million in principal amount of its 0.75% senior convertible debentures (the "July 2007 debentures"). Interest on the July 2007 debentures is payable on February 1 and August 1 of each year, commencing February 1, 2008. The July 2007 debentures will mature on August 1, 2027. Holders may require the Company to repurchase all or a portion of their July 2007 debentures on each of August 1, 2010, August 1, 2015, August 1, 2020, and August 1, 2025, or if the Company is involved in certain types of corporate transactions constituting a fundamental change. In addition, the Company may redeem some or all of the July 2007 debentures on or after August 1, 2010. The July 2007 debentures are initially convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than \$1,000, then the excess conversion value will be convertible into cash, common stock or a combination of cash and common stock, at the Company's election. The initial effective conversion price of the February 2007 debentures is approximately \$82.24 per share, which represented a premium of 27.5% to the closing price of the Company's common stock on the date of issuance. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

The February 2007 debentures and July 2007 debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company. The February 2007 debentures and July 2007 debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The February 2007 debentures and July 2007 debentures do not contain any covenants or sinking fund requirements.

The closing price of the Company's class A common stock equaled or exceeded 125% of the \$56.75 per share initial effective conversion price governing the February 2007 debentures and the closing price of the Company's class A common stock equaled or exceeded 125% of the \$82.24 per share initial effective conversion price governing the July 2007 debentures, for 20 out of 30 consecutive trading days ending on December 30, 2007, thus satisfying the market price conversion trigger pursuant to the terms of the debentures. As of the first trading day of the first quarter in fiscal 2008, holders of the February 2007 debentures and July 2007 debentures are able to exercise their right to convert the debentures any day in that fiscal quarter. This test is repeated each fiscal quarter. Therefore, since holders of the February 2007 debentures and July 2007 debentures are able to exercise their right to convert the debentures in fiscal 2008, as of December 30, 2007, the Company classified the \$425.0 million in aggregate convertible debt as short-term debt in its Consolidated Balance Sheets. In addition, the Company wrote off \$8.2 million of unamortized debt issuance costs in the fourth fiscal quarter of 2007 and will write off the remaining \$1.0 million of unamortized debt issuance costs in the first fiscal quarter of 2008. Because the closing stock price did not equal or exceed 125% of the initial effective conversion price governing both the February 2007 debentures and July 2007 debentures for 20 out of 30 consecutive trading days during the quarters ended April 1, 2007, July 1, 2007 and September 30, 2007, holders of the debentures were not able to exercise their right to convert the debentures in previous quarters. Accordingly, the Company classified the \$425.0 million in aggregate convertible debt as long-term debt in previous Quarterly Reports on Form 10-Q.

As of December 30, 2007, the estimated fair value of the February 2007 debentures and July 2007 debentures was approximately \$465.6 million and \$366.3 million, respectively, based on quoted market prices. The fair market value of the senior convertible debentures will increase as interest rates fall and/or as the market price of our class A common stock increases. Conversely, the fair market value of the senior convertible debentures will decrease as interest rates rise and/or as the market price of our class A common stock falls.

As of February 29, 2008, no holders of the February 2007 debentures and July 2007 debentures exercised their right to convert the debentures. In the event of conversion by holders of the February 2007 debentures and July 2007 debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, the Company must satisfy the remaining conversion obligation of the February 2007 debentures in shares of its class A common stock, and the Company maintains the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of its class A common stock or cash.

February 2007 Amended and Restated Share Lending Arrangement and July 2007 Share Lending Arrangement

Concurrent with the offering of the February 2007 debentures, the Company lent 2.9 million shares of its class A common stock, all of which are being borrowed by an affiliate of Lehman Brothers Inc. ("LBIE"), one of the underwriters of the February 2007 debentures. The lent shares are to be used to facilitate the establishment by investors in the February 2007 debentures and July 2007 debentures of hedged positions in the Company's class A common stock. Under the share lending agreement, LBIE has the ability to offer any of the 1.0 million

shares that remain in LBIE’s possession to facilitate hedging arrangements for subsequent purchasers of both the February 2007 debentures and July 2007 debentures and, with the Company’s consent, purchasers of securities the Company may issue in the future. Concurrent with the offering of the July 2007 debentures, the Company also lent 1.8 million shares of its class A common stock, all of which are being borrowed by an affiliate of Credit Suisse Securities (USA) LLC (“CSI”), one of the underwriters of the July 2007 debentures. The Company did not receive any proceeds from these offerings of class A common stock, but received a nominal lending fee of \$0.001 per share for each share of common stock that is loaned pursuant to the share lending agreements described below.

Share loans under the share lending agreement will terminate and the borrowed shares must be returned to the Company under the following circumstances: (i) LBIE and 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 LBIE and CSI under the share lending agreement, including a breach by LBIE and CSI of any of its representations and warranties, covenants or agreements under the share lending agreement, or the bankruptcy of LBIE and 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), all outstanding loans will terminate on the effective date of such event. In addition, LBIE and 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 reborrowed.

Any shares loaned to LBIE and CSI will be issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares will 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 class A common stock.

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 and the contractual undertakings of LBIE and 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, the borrowed shares are not considered outstanding for the purpose of computing and reporting earnings per share. Notwithstanding the foregoing, the shares will nonetheless be issued and outstanding and will be eligible for trading on The Nasdaq Global Market.

Note 16. REDEEMABLE CONVERTIBLE PREFERRED STOCK AND COMMON STOCK

At December 30, 2007, the Company was authorized to issue up to 375.0 million shares of \$0.001 par value common stock and 10.0 million shares of \$0.001 par value preferred stock.

Shares Reserved for Future Issuance

The Company had shares of common stock reserved for future issuance as follows:

(In thousands)	December 30, 2007	December 31, 2006
Stock option plans	3,982	5,127

Redeemable Convertible Preferred Stock

At December 31, 2004, the Company’s redeemable convertible preferred stock consisted of two series designated as series one and series two preferred stock, both of which were wholly owned by Cypress. In connection with the Company’s initial public offering of common stock in November 2005, all redeemable convertible preferred stock was converted into shares of class B common stock.

Common Stock

Until November 8, 2004, there was only one class of common stock. After the merger with Cypress on November 9, 2004, three classes of common stock were authorized for issuance, classes A, B and C common stock. On September 30, 2005, SunPower amended and restated its Articles of Incorporation to change from a three class common stock structure to a two class common stock (class A and class B) structure, with the series one and two preferred stock convertible into class B common stock. The two new classes of common stock have substantially similar rights except as to voting, conversion and protective provisions.

On September 30, 2005, SunPower entered into an exchange agreement with Cypress in which Cypress exchanged all of its outstanding shares of class A common stock for an equal number of shares of class B common stock.

On November 10, 2005, the Company filed with the Delaware Secretary of State a certificate of merger to merge into its wholly-owned subsidiary and thereby reincorporate in Delaware. The Company is now incorporated in the state of Delaware. In addition, on November 10, 2005 the Company filed an amendment to the Company’s certificate of incorporation to effect a 2-for-1 reverse stock split of the Company’s outstanding and authorized shares of common stock following the Company’s reincorporation in Delaware. The conversion rate of the series one and two preferred stock into class B common stock was adjusted to be one share of class B common stock for every two shares of preferred stock. All information related to common stock and options and warrants to purchase common stock and earnings per share included in the accompanying Consolidated Financial Statements has been retroactively adjusted to give effect to the reverse stock split and the reincorporation of the Company in Delaware.

In March 2005, the Company issued to Cypress 17.6 million shares of its class A common stock at a price of \$3.30 per share, the consideration for which was \$7.1 million cash and the cancellation by Cypress of \$50.9 million of promissory notes and related interest held by Cypress. Accordingly, the net amount of \$47.4 million comprising of the \$50.9 million debt less the unamortized discount of \$3.5 million was credited to equity. These shares were converted to class B common stock on September 30, 2005.

In July 2005, SunPower issued 12.0 million shares of class A common stock to Cypress at a price of \$7.00 per share, the consideration for which was \$20.2 million cash, the cancellation by Cypress of \$25.1 million promissory notes and related interest held by Cypress, the cancellation of payables to Cypress of \$14.7 million and the cancellation of warrants to purchase 3.8 million shares of SunPower class A common stock held by Cypress at an exercise price of \$0.14 per share. The Company also reduced the net carrying value of the associated unamortized debt discount of \$4.2 million, which was reflected in equity as part of this conversion of related-party debt into class A common stock. As a result, the net impact to equity for the issuance of common stock upon cancellation of the related-party debt was approximately \$21.0 million. These shares were converted into class B common stock on September 30, 2005.

In November 2005, SunPower issued approximately 8.8 million shares of class A common stock in the Company’s IPO at a price of \$18.00 per share. In addition, the Company issued approximately 22.5 million shares of class B common stock to Cypress to convert Cypress’ Series One and Series Two Redeemable Convertible Preferred Stock.

In June 2006, the Company completed a follow-on public offering of 7.0 million shares of its class A common stock at a price of \$29.50 per share. In July 2007, the Company completed a follow-on public offering of 2.7 million shares of its class A common stock, at a discounted per share price of \$64.50.

Common stock consisted of the following:

(In thousands, except share data)	December 30, 2007	December 31, 2006
Class A common stock, \$0.001 par value; 217,500,000 shares authorized and 40,176,957* and 17,816,082** shares issued and outstanding at December 30, 2007 and December 31, 2006, respectively	\$ 40	\$ 18
Class B common stock, \$0.001 par value; 157,500,000 shares authorized and 44,533,287 and 52,033,287 shares issued and outstanding as of December 30, 2007 and December 31, 2006, respectively	45	52
Total common stock	<u>\$ 85</u>	<u>\$ 70</u>

- * Includes approximately 0.7 million shares of restricted stock and a total of 4.7 million shares of class A common stock lent to LBIE and CSI.
- ** Includes approximately 0.2 million shares of restricted stock.

As of December 30, 2007, the voting and dividend rights of the common stock were as follows:

Voting Rights—Common Stock

The class A common stock is entitled to one vote per share while the class B common stock is entitled to eight votes per share on all matters to be voted on by the Company’s stockholders. The class B common stock is initially held by Cypress, is convertible at any time into class A common stock by its holder on a share for share basis, and so converts automatically when transferred by Cypress other than transfers to its subsidiaries or tax-free distributions to its stockholders or when Cypress, its successors in interest and subsidiaries collectively own less than 40% of the shares of all classes of Company common stock prior to effecting a tax-free distribution to Cypress stockholders.

Dividends—Common Stock

When and if declared by the board of directors, and subject to the preferences applicable to any preferred stock outstanding, the holders of class A and class B common stock are entitled to receive equal per share dividends. In the case of a dividend or distribution payable in the form of common stock, each holder of class A and class B is only entitled to receive the class of stock that they hold.

Other Transactions

In February 2003, in connection with the issuance of a \$2.5 million promissory note to Cypress maturing in March 2008, the Company granted a warrant to Cypress to purchase approximately 0.2 million shares of its common stock with an exercise price of \$0.14 per share and a term of ten years. The fair value of the warrant was estimated on the date of grant using the Black-Scholes pricing model with the following assumptions: no dividend yield; risk-free rate of 3.95%; volatility of 85% and expected life of five years. The Company recorded the relative fair value of this warrant of \$80,000 as a discount to debt. The fair value of the warrant was amortized to interest expense over the original term of the note (60 months) using the effective interest method. During the year ended January 1, 2006, \$7,000 of the amount relating to the warrants was amortized to interest expense. The net unamortized discount of approximately \$47,000 was reflected in equity as part of the conversion of this related-party debt into common stock in March 2005.

In May 2004, the Company signed an amended note purchase and line of credit agreement with Cypress, finalizing the terms of a \$30.0 million loan from Cypress which required principal payments between June 2007 and May 2012. In November 2005 this facility was canceled. In connection with the issuance of this line of credit (originally signed in May 2002), the Company granted warrants to purchase approximately 2.1 million shares of its common stock with an exercise price of \$0.14 per share and a term of ten years. The fair value of the warrants was estimated on the date of grant using the Black-Scholes pricing model with the following assumptions: no dividend yield; risk free rate of 2.63%; volatility of 81.15% and expected life of three years. The Company recorded the relative fair value of these warrants of \$6.6 million as a discount to the debt. The relative fair value of the warrant was amortized to interest expense over the original term of the note using the effective interest method. During the year ended January 1, 2006, \$1.2 million of the amount relating to the warrants was amortized to interest expense. The remaining \$4.2 million of the unamortized discount was reflected in equity as part of the conversion of the related-party debt into common stock completed in July 2005.

From March 2004 through June 2005, Cypress loaned the Company \$36.5 million for operations and equipment financing. These loans were demand loans bearing interest at 7%. In conjunction with the issuance of these loans, the Company granted warrants to Cypress to purchase 1.5 million shares of its common stock with an exercise price of \$0.14 per share and a term of ten years. The relative fair value of the warrants was estimated on the date of grant using the Black-Scholes pricing model with the following assumptions: no dividend yield; risk free rate of 1.86% to 3.10%; volatility of 81.15% and expected life of three years. The Company recorded the fair value of these warrants of \$4.4 million as a discount to debt. The fair value of the warrant was amortized to interest expense using the effective interest method. During the year ended January 1, 2006, \$0.3 million of the amount relating to the warrants was amortized to interest expense. The remaining \$3.5 million of the unamortized discount was reflected in equity as part of the conversion of this related-party debt into common stock in March 2005.

Note 17. STOCK-BASED COMPENSATION AND OTHER EMPLOYEE BENEFIT PLANS

Adoption of SFAS No. 123(R)

Effective January 1, 2006, the Company adopted the provisions of SFAS No. 123 (revised 2004), “Share-Based Payment” (“SFAS No. 123(R)”), which requires the Company to measure the stock-based compensation costs of share-based compensation arrangements based on the grant-date fair value and recognize the costs in the financial statements over the employee requisite service period. As permitted by SFAS No. 123(R), the Company elected to use the modified prospective application transition method and has not restated its financial results for prior periods. Under this transition method, stock-based compensation expense for fiscal 2007 and 2006 included compensation expense for all stock-based compensation awards granted prior to, but not yet vested as of January 1, 2006, based on the grant-date fair value estimated in accordance with the original provision of SFAS No. 123, “Accounting for Stock-Based Compensation” (“SFAS No. 123”). Stock-based compensation expense for all stock-based compensation awards granted after January 1, 2006 was based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123(R).

The following table summarizes the consolidated stock-based compensation expense, by type of awards:

(In thousands)	Year Ended	
	December 30, 2007	December 31, 2006
Employee stock options	\$ 17,819	\$ 3,930
Non-employee stock options	—	304
Restricted stock	13,121	677
Shares released from re-vesting restrictions	20,638	—
Change in stock-based compensation capitalized in inventory	(366)	(47)
Total stock-based compensation expense	<u>\$ 51,212</u>	<u>\$ 4,864</u>

In connection with the acquisition of SP Systems (see Note 4), 1.1 million shares of the Company's class A common stock issued to employees of SP Systems, which were valued at \$42.0 million, are subject to certain transfer restrictions and a repurchase option by the Company. As the re-vesting restrictions of these shares lapse over the two-year period beginning on the date of acquisition, the fair value of the shares is being expensed over a two-year period. Shares released from such re-vesting restrictions are included in stock-based compensation expense per the table above.

The following table summarizes the consolidated stock-based compensation expense by line items in the Consolidated Statements of Operations:

(In thousands)	Year Ended	
	December 30, 2007	December 31, 2006
Cost of systems revenue	\$ 8,187	\$ —
Cost of components revenue	4,213	846
Research and development	1,817	1,197
Sales, general and administrative	36,995	2,821
Total stock-based compensation expense before income taxes	<u>51,212</u>	<u>4,864</u>
Tax effect on stock-based compensation expense	<u>—</u>	<u>—</u>
Total stock-based compensation expense after income taxes	<u>\$ 51,212</u>	<u>\$ 4,864</u>

As stock-based compensation expense recognized in the Consolidated Statements of Operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Consolidated net cash proceeds from the issuance of shares under the Company's employee stock plans were \$8.5 million, \$3.9 million and \$0.2 million for the fiscal years ended December 30, 2007, December 31, 2006 and January 1, 2006, respectively. No income tax benefit was realized from stock option exercises during fiscal 2007, 2006 and 2005. As required, the Company presents excess tax benefits from the exercise of stock options, if any, as financing cash flows rather than operating cash flows.

The following table summarizes the unrecognized stock-based compensation cost by type of awards:

(In thousands, except years)	As of December 30, 2007	Weighted-Average Amortization Period (in years)
Stock options	\$ 23,922	1.3
Restricted stock	71,789	3.4
Shares subject to re-vesting restrictions	21,338	1.0
Total unrecognized stock-based compensation cost	<u>\$ 117,049</u>	2.3

The Company recognizes its stock-based compensation cost on a straight-line recognition basis. Additionally, the Company issues new shares upon option exercises by employees.

Prior to the Adoption of SFAS No. 123(R)

Prior to the adoption of SFAS 123(R), the Company applied SFAS No. 123, as amended by Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure," which allowed companies to apply the accounting rules under Accounting Principles Board No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25"), and related interpretations. The following table illustrates the effect on net loss after tax and net loss per share as if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based compensation:

(In thousands, except per share data)		Year Ended January 1, 2006
Net loss—as reported	\$	(15,843)
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects		(4,704)
Non-deductible stock option compensation expense	\$	(20,547)
Net loss per share:		
Basic and diluted—as reported	\$	(0.68)
Basic and diluted—pro forma	\$	(0.88)

Valuation Assumptions

The Company estimates the fair value of its stock-based awards using the Black-Scholes model. The determination of fair value of share-based payment awards on the date of grant using the Black-Scholes model is affected by the stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors.

Assumptions used in the determination of fair value of share-based payment awards using the Black-Scholes model were as follows:

	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Expected term	6.5 years	6.5 years	4.0 years
Risk-free interest rate	4.58 - 4.68%	4.80 - 5.11%	3.63 - 4.36%
Volatility	90%	92%	92%
Dividend yield	0%	0%	0%

For Fiscal Year Ended January 1, 2006:

The Company estimated the expected term based on an assumed exercise of vested tranches at the earlier of one year after their vesting date or one year after an assumed public offering. Volatility was based on Cypress’s volatility for all periods through the third quarter of fiscal 2005, and from the fourth quarter of fiscal 2005 onwards, on a publicly-traded U.S.-based direct competitor of the Company. The interest rate was based on the U.S. Treasury yield curve in effect at the time of grant. Since the Company does not pay and does not expect to pay dividends, the expected dividend yield is zero.

For Fiscal Year Ended December 31, 2006 and December 30, 2007:

The Company utilizes the simplified method under the provisions of Staff Accounting Bulletin No. 107 (“SAB No. 107”) for estimating expected term, instead of its historical exercise data. The Company elected not to base the expected term on historical data because of the significant difference in its status before and after the effective date of SFAS No. 123(R). The Company was a privately-held company until its IPO, and the only available liquidation event for option holders was Cypress’s buyout of minority interests in November 2004. At all other times, optionees could not cash out on their vested options. From the time of the Company’s IPO in November 2005 through May 2006 when lock-up restrictions expired, a majority of the optionees were unable to exercise vested options.

Because of the limited history of its stock price returns, the Company does not believe that its historical volatility would be representative of the expected volatility for its equity awards. Accordingly, the Company has chosen to use the historical volatility rates for a publicly-traded U.S.-based direct competitor as the basis for calculating the volatility for its granted options.

The interest rate is based on the U.S. Treasury yield curve in effect at the time of grant. Since the Company does not pay and does not expect to pay dividends, the expected dividend yield is zero.

Equity Incentive Programs

Stock Option Plans:

The Company has three stock option plans: the 1996 Stock Plan (“1996 Plan”), the Amended and Restated 2005 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, or SP Systems, on January 10, 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 SP Systems’ board of directors in October 2000. In May 2007 and May 2006, the Company’s stockholders approved increases of 925,000 shares and 250,000 shares, respectively, in the number of shares available for grant under the 2005 Plan. As of December 30, 2007, approximately 281,000 shares were available for grant under the 2005 Plan. 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.

The following table summarizes the Company’s stock option activities:

	Shares (in thousands)	Weighted- Average Exercise Price Per Share
Options outstanding as of January 2, 2005	4,285	\$ 2.30
Granted	2,581	4.98
Exercised	(217)	0.82
Forfeited	(77)	1.91
Outstanding as of January 1, 2006	6,572	3.41
Granted	44	39.05
Exercised	(1,529)	2.54
Forfeited	(107)	4.14
Outstanding as of December 31, 2006	4,980	3.97
Options exchanged/assumed in connection with SP Systems acquisition	1,602	5.54
Granted	18	56.20
Exercised	(2,817)	3.01
Forfeited	(82)	13.36
Outstanding as of December 30, 2007	3,701	5.44
Exercisable as of December 30, 2007	1,247	3.76

The Company’s weighted average grant date fair value of options granted in fiscal 2007, 2006 and 2005 were \$44.09, \$31.02 and \$2.96, respectively. For the year ended December 30, 2007, the intrinsic value of options exercised and the total fair value of options vested were \$168.4 million and \$7.2 million, respectively. For the year ended December 31, 2006, the intrinsic value of options exercised and the total fair value of options vested were \$47.7 million and \$3.8 million, respectively.

In December 2005, the Company granted 15,000 shares of restricted stock to one employee. 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
Outstanding as of January 1, 2006	4,789	\$ 3.82	15	\$ 30.04
Granted	44	39.05	230	35.43
Forfeited	(1,692)	3.56	(16)	30.92
Outstanding as of December 31, 2006	3,141	4.45	229	35.40
Granted	1,620	6.10	1,141	71.64
Vested	(2,225)	3.28	(105)	43.18
Forfeited	(82)	12.94	(91)	51.00
Outstanding as of December 30, 2007	<u>2,454</u>	<u>6.29</u>	<u>1,174</u>	<u>68.74</u>

Information regarding the Company's outstanding stock options as of December 30, 2007 was as follows:

Range of Exercise Price	Options Outstanding				Options Exercisable			
	Shares (in thousands)	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)	Shares (in thousands)	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)
\$ 0.04— 0.75	649	4.06	\$ 0.30	\$ 84,845	256	4.95	\$ 0.50	\$ 33,445
0.88— 2.66	247	6.93	2.08	31,905	58	6.71	2.00	7,478
3.30— 4.95	2,093	6.85	3.32	267,301	821	6.86	3.31	104,859
7.00— 16.20	359	7.66	8.43	43,980	79	7.67	8.59	9,710
17.00— 56.20	<u>353</u>	<u>8.55</u>	<u>26.71</u>	<u>36,905</u>	<u>33</u>	<u>8.45</u>	<u>31.79</u>	<u>3,256</u>
	<u>3,701</u>	<u>6.56</u>	<u>5.44</u>	<u>\$ 464,936</u>	<u>1,247</u>	<u>6.53</u>	<u>3.76</u>	<u>\$ 158,748</u>

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of \$131.05 at December 30, 2007, which would have been received by the option holders had all option holders exercised their options as of that date.

As of December 30, 2007, stock options vested and expected to vest totaled approximately 3.6 million shares, with weighted-average remaining contractual life of 6.6 years and weighted-average exercise price of \$5.40 per share and an aggregate intrinsic value of approximately \$447.9 million. The total number of in-the-money options exercisable was 1.2 million shares as of December 30, 2007.

Options Issued to Non-Employees:

For the years ended December 30, 2007 and December 31, 2006, there were no options issued to non-employees. For the year ended January 1, 2006, the Company granted options to consultants to purchase 23,000 shares of class A common stock with a weighted average exercise price of \$9.26 per share. The fair value of options granted to consultants was estimated using the Black-Scholes model resulting in stock-based compensation expense of \$1.6 million for the fiscal year ended January 1, 2006.

Stock Unit Plan:

In September 2005, the Company adopted the 2005 Stock Unit Plan in which all of the Company's employees except its executive officers and directors are eligible to participate, although the Company currently intends to limit participation to its non-U.S. employees who are not senior managers. Under the 2005 Stock Unit Plan, the Company's board of directors awards participants the right to receive cash payments from the Company in an amount equal to the appreciation in the Company's common stock between the award date and the date the employee redeems the award. The right to redeem the award typically vests in the same manner as options vest under the 2005 Stock Unit Plan. In July 2006, the board of directors amended the terms of the plan to increase the maximum number of stock units that may be subject to stock unit awards granted under the 2005 Stock Unit Plan from 100,000 to 300,000 stock units. As of December 30, 2007, the Company has granted approximately 236,000 units to 2,200 employees in the Philippines at an average unit price of \$39.80. During the years ended December 30, 2007, December 31, 2006 and January 1, 2006, the Company recognized \$2.4 million, \$0.6 million and \$5,000, respectively, of total compensation expense associated with the 2005 Stock Unit Plan.

Other Employee Benefit Plans:

The Company has a statutory pension plan covering its employees in the Philippines. Consistent with the requirements of local law, the Company accrues for the unfunded portion of the obligation and plans to appoint a third-party trustee of the retirement funds by the end of fiscal 2008. The assumptions used in calculating the obligation for this pension plan depends on Philippine Accounting Standards No. 19. The outstanding liability of this pension plan was \$0.6 million and \$0.1 million at December 30, 2007 and December 31, 2006, respectively.

All of the Company's eligible employees participate in Cypress' health plans, life insurance and other benefit plans (other than the stock plans and stock purchase plans), as they may change from time to time, until the earliest of (1) a change of control of the Company occurs, which includes such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of the Company's common stock then outstanding, (2) such time as the Company's status as a participating company under the Cypress plans is not permitted by a Cypress plan or by applicable law, (3) such time as Cypress determines in its reasonable judgment that the Company's status as a participating company under the Cypress plans has or will adversely affect Cypress, or its employees, directors, officers, agents, affiliates or its representatives, or (4) such earlier date as the Company and Cypress mutually agree.

Note 18. SEGMENT AND GEOGRAPHICAL INFORMATION

Prior to fiscal year 2007, the Company operated in one business segment comprising the design, manufacture and sale of solar electric power products based on its proprietary processes and technologies. Following the acquisition of SP Systems, the Company operated in two business segments: systems and components. The systems segment generally represents sales directly to systems owners of engineering, procurement, construction and other services relating to solar electric power systems that integrate the Company's solar panels and balance of systems components, as well as materials sourced from other manufacturers. The components segment primarily represents sales of the Company's solar cells, solar panels and inverters to solar systems installers and other resellers. The Chief Operating Decision Maker ("CODM"), as defined by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," is the Company's Chief Executive Officer. The CODM assesses the performance of both operating segments using information about its revenue and gross margin.

The following tables present revenue by geography and segment, gross margin by segment, revenue by significant customer and property, plant and equipment information based on geographic region. Revenue is based on the destination of the shipments. Property, plant and equipment are based on the physical location of the assets:

	Year Ended		
	December 30, 2007	December 31, 2006	January 1, 2006
Revenue by geography:			
United States	45%	32%	30%
Europe:			
Spain	29%	—%	—%
Germany	10%	49%	61%
Other	11%	9%	6%
Rest of world	5%	10%	3%
	<u>100%</u>	<u>100%</u>	<u>100%</u>
Revenue by segment:			
Systems	60%	—%	—%
Components	40%	100%	100%
	<u>100%</u>	<u>100%</u>	<u>100%</u>
Gross margin by segment:			
Systems	17%	—%	—%
Components	23%	21%	6%

Significant Customers:

		Year Ended		
		December 30, 2007	December 31, 2006	January 1, 2006
Business Segment				
SolarPack	Systems	18%	—%	—%
MMA Renewable Ventures	Systems	16%	—%	—%
Conergy AG	Components	*	25%	45%
Solon AG	Components	*	24%	16%
SP Systems**	Components	n.a.	16%	*
General Electric Company***	Components	*	*	10%

* denotes less than 10% during the period

** acquired by us on January 10, 2007

*** includes its subcontracting partner, Plexus Corporation

(In thousands)	December 30, 2007	December 31, 2006
Property, plant and equipment by geography:		
United States	\$ 18,026	\$ 8,051
Philippines	359,968	192,335
China	—	2,042
	<u>\$ 377,994</u>	<u>\$ 202,428</u>

Note 19. RELATED-PARTY TRANSACTIONS

In fiscal 2007, the Company conducted related-party transactions with Woongjin Energy, a joint venture with whom the Company entered into, to manufacture monocrystalline silicon ingots. For the year ended December 30, 2007, the Company recognized \$5.8 million in components revenue related to the sale of solar modules to Woongjin Energy, of which \$3.2 million remained due and receivable as of December 30, 2007.

Note 20. SUBSEQUENT EVENTS
Acquisition of Solar Solutions

On January 8, 2008, the Company completed the acquisition of Solar Solutions, a solar systems integration and product distribution company based in Faenza, Italy. Solar Solutions is a 14-person division of Combigas S.r.l., a petroleum products trading firm. Active since 2002, Solar Solutions distributes components such as solar panels and inverters, and offers turnkey solar power systems and standard system kits via a network of dealers throughout Italy. Prior to the acquisition, Solar Solutions had been a customer of the Company since fiscal 2006. As a result of the acquisition, Solar Solutions became a wholly-owned subsidiary of the Company. In January 2008, the Company changed Solar Solutions' name to SunPower Italia.

Polysilicon Supply Agreement and Option Agreement with NorSun AS

On January 10, 2008, the Company entered into a long-term polysilicon supply agreement (the "First Polysilicon Agreement") with NorSun AS ("NorSun"). The First Polysilicon Agreement provides the general terms and conditions pursuant to which NorSun is to sell and the Company is to purchase specified annual quantities of polysilicon at specified prices from 2010 through 2019. The First Polysilicon Agreement provides that NorSun's obligation to sell polysilicon is conditioned upon receipt of polysilicon from NorSun's joint venture with Swicorp Jousour Company and Chemical Development Company for the construction of a new polysilicon manufacturing facility in Saudi Arabia. NorSun will initially hold a fifty percent equity interest in the joint venture.

On January 10, 2008, the Company and the anticipated shareholders of the joint venture also agreed upon the terms and conditions of an additional long-term polysilicon supply agreement (the "Second Polysilicon Agreement" and, together with the First Polysilicon Agreement, the "Supply Agreements") between the Company and the joint venture, which is in the process of formation. The Second Polysilicon Agreement provides the general terms and conditions pursuant to which the joint venture is to sell and the Company is to purchase specified annual quantities of polysilicon at specified prices from 2010 through 2019. The Second Polysilicon Agreement provides that the joint venture's obligation to sell polysilicon is conditioned upon the new polysilicon manufacturing facility achieving commercial operation.

If applicable conditions under the Supply Agreements are satisfied, the aggregate quantity of polysilicon to be purchased by the Company from 2010 through 2019 is expected to satisfy production requirements for up to approximately 2,500 megawatts of solar cell manufacturing based on the Company's expected polysilicon utilization during such period.

In connection with the Supply Agreements, on January 10, 2008, NorSun and the Company entered into an Option Agreement (the “Option Agreement”) which provides the general terms and conditions pursuant to which the Company will deliver cash advance payments to NorSun for the purchase of polysilicon under the First Polysilicon Agreement, which NorSun will use to fund its portion of the equity investment in the joint venture. The Company shall provide a letter of credit or deposit funds in an escrow account to secure NorSun’s right to such advance payments. Under the terms of the Option Agreement, the Company may exercise a call option and apply the advance payments to purchase fifty percent, subject to certain adjustments, of NorSun’s equity interest in the joint venture. The Company may exercise its option at any time until six months following the commercial operation of the Saudi Arabian polysilicon manufacturing facility. The Option Agreement also provides NorSun an option to put fifty percent, subject to certain adjustments, of its equity interest in the joint venture to the Company. NorSun’s option is exercisable commencing July 1, 2009 through six months following commercial operation of the polysilicon manufacturing facility. NorSun will grant a security interest in its equity interest in the joint venture subject to the put-call option to secure its obligations under the Option Agreement. If either the call option or the put option is exercised, (i) the parties will credit any advance payments for polysilicon against the option’s exercise price, (ii) the First Polysilicon Agreement will terminate, and (iii) the Company will assume NorSun’s rights and obligations under a long-term polysilicon supply agreement between NorSun and the joint venture pursuant to which the joint venture will sell and the Company will purchase specified annual quantities of polysilicon at specified prices from 2010 through 2019, representing the same quantities and prices under, and on terms and conditions substantially similar to, the First Polysilicon Agreement.

Escrow from the Acquisition of SP Systems

Of the consideration issued for the acquisition of SP Systems, approximately \$23.7 million in cash and approximately 0.7 million shares, with a total aggregate value of \$118.1 million as of December 30, 2007, were held in escrow as security for the indemnification obligations of certain former SP Systems shareholders and would be released over a period of five years from the acquisition date of January 10, 2007, ending on January 10, 2012. Following the first anniversary of the closing date, the Company authorized the release of approximately one-half of the original escrow amount leaving approximately \$11.8 million in cash and approximately 0.4 million shares of the Company’s class A common stock in escrow. The Company’s rights to recover damages under several provisions of the acquisition agreement also expired on January 10, 2008. As a result, the Company is now entitled to recover only limited types of losses, and its recovery will be limited to the amount available in the escrow fund at the time of a claim.

Additional Capital Investment in Joint Ventures

On January 18, 2008, the Company and Woongjin Holdings provided Woongjin Energy with additional funding through capital investments in which the Company invested an additional \$5.4 million in the joint venture. As of January 18, 2008, the Company’s equity investment increased from 19.9% to 27.4%. In addition, on or after January 18, 2008, if the Company elects to convert the \$3.3 million convertible note, its equity ownership in the joint venture would increase an additional 12.6%.

On January 18, 2008, the Company invested an additional \$0.2 million in First Philec Solar, increasing its equity investment from 16.9% to 20.0% (see Note 11).

Waiver Agreement with Wells Fargo

On January 18, 2008, the Company entered into an agreement with Wells Fargo to amend the existing credit agreement. Under the amended credit agreement, Wells Fargo waived compliance requirements with certain restrictive covenants, including the prohibition against the Company providing corporate guaranties supporting contracts between its subsidiaries and third parties. In exchange for waiving compliance with such restrictive covenants, the Company agreed to maintain a balance of funds in a deposit account with Wells Fargo, in an amount no less than the aggregate outstanding indebtedness owed by the Company to Wells Fargo under both the line of credit, including its letter of credit subfeature, and the letter of credit line, as collateral securing such outstanding indebtedness (see Note 14).

Polysilicon Supply Agreement with Jupiter Corporation Ltd.

On February 8, 2008, the Company entered into a polysilicon supply agreement with Jupiter Corporation Ltd. (“Jupiter”). The agreement provides the general terms and conditions pursuant to which the Company will purchase fixed annual quantities of polysilicon at specified prices from 2010 through 2016. The Company expects to supply the polysilicon to third parties that will manufacture ingots or using such polysilicon for the Company. The aggregate quantity of polysilicon to be purchased over the term of the agreement is expected to support more than 3 gigawatts of solar cell manufacturing production based on the Company’s expected silicon utilization during such period. The Company’s future purchase commitments under the agreement represent a material financial obligation of the Company.

Auction Rate Securities Failed to Trade

As of December 30, 2007, the Company held ten auction rate securities totaling \$50.8 million. These auction rate securities were student loans that are typically over collateralized by pools of loans originated under the FFELP and are guaranteed by the U.S. Department of Education, and insured. In addition, all auction rate securities held are rated by one or more of the NRSROs as triple-A. In February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, which occurs when sell orders exceed buy orders resulting from lack of liquidity and does not necessarily signify a default by the issuer. As of February 29, 2008, four of these auction rate securities totaling \$24.1 million failed to clear at auctions, four of these securities totaling \$21.7 million cleared at auctions, and one of these securities totaling \$5.0 million continued to be held. For failed auctions, the Company continues to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. Historically, failed auctions have rarely occurred, however, such failures could continue to occur in the future. In the event the Company needs to access these funds, the Company will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. Accordingly, auction rate securities that were not sold subsequent to December 30, 2007 totaling \$29.1 million are classified as long-term investments on the Consolidated Balance Sheets, consistent with the stated contractual maturities of the securities. The “stated” or “contractual” maturities for these securities generally are between 20 to 30 years. The Company has concluded that no other-than-temporary impairment losses occurred in the year ended December 30, 2007 because all holdings had successful auctions in January 2008.

In January 2008, the Company purchased two additional auction rate securities totaling \$10.0 million that failed to clear at auction in February 2008. If the issuers of these auction rate securities are unable to successfully close future auctions or do not redeem the securities, the Company may be required to adjust the carrying value of the securities and record an impairment charge in the first quarter of fiscal 2008. If the Company determines that the fair value of these auction rate securities is temporarily impaired, the Company would record a temporary impairment within Consolidated Statements of Comprehensive Income (Loss), a component of stockholders' equity, in the first quarter of 2008. If it is determined that the fair value of these securities is other-than-temporarily impaired, the Company would record a loss in its Consolidated Statements of Operations in the first quarter of 2008, which could be material (see Note 8).

Amended Agreement with Wells Fargo

On February 13, 2008, the Company entered into an amendment to the credit agreement with Wells Fargo, increasing the unsecured letter of credit subfeature from \$40.0 million to \$50.0 million. Under the new credit agreement, the Company may request that Wells Fargo issue up to \$50.0 million in letters of credit under the unsecured letter of credit subfeature through July 31, 2008. In terms with the waiver agreement entered into with Wells Fargo on January 18, 2008, the Company agreed to maintain a balance of funds in a deposit account with Wells Fargo, in an amount no less than the aggregate outstanding indebtedness owed by the Company to Wells Fargo under the letter of credit subfeature, as collateral securing such outstanding indebtedness (see Note 14).

SELECTED UNAUDITED QUARTERLY FINANCIAL DATA

Revision of Statement of Cash Flow Presentation Related to Purchases of Property, Plant and Equipment

As discussed in Note 1 to the consolidated financial statements, the Company has corrected its Consolidated Statements of Cash Flows for 2006 and 2005 to exclude the impact of purchases of property, plant and equipment that remain unpaid and as such are included in “accounts payable and other accrued liabilities” at the end of the reporting period. Historically, changes in “accounts payable and other accrued liabilities” related to such purchases were included in cash flows from operations, while the investing activity caption "Purchase of property, plant and equipment" included these purchases. As these unfunded purchases do not reflect cash transactions, the Company is revising its cash flow presentations to exclude them. These corrections had no impact on previously reported results of operations, working capital or stockholders’ equity of the Company. The impact of the correction of this error on the previously reported statements of cash flows included in the Company's Quarterly Reports on Form 10-Q filed during 2006 and 2007 is included below. The Company concluded that these corrections were not material to any of its previously reported consolidated financial statements, based on SEC Staff Accounting Bulletin: No. 99-Materiality.

	Three Months Ended	Six Months Ended	Nine Months Ended
(In thousands)	April 2, 2006	July 2, 2006	October 1, 2006
Cash flows from operations as reported	\$ (6,630)	\$ (2,033)	\$ 4,615
Cash flows from operations as corrected	(10,564)	(4,014)	3,166
Cash flows from investing activities as reported	(20,254)	(63,284)	(94,424)
Cash flows from investing activities as corrected	(16,320)	(61,303)	(92,975)
Cash flows from operations as reported	\$ (9,766)	\$ (4,644)	\$ (18,557)
Cash flows from operations as corrected	(5,059)	(903)	(26,447)
Cash flows from investing activities as reported	(138,774)	(206,837)	(327,691)
Cash flows from investing activities as corrected	(143,481)	(210,578)	(319,801)

Consolidated Statements of Operations

	Three Months Ended			
(In thousands, except per share data)	December 30 (a)	September 30	July 1 (b)	April 1 (c)
Fiscal 2007:				
Revenue	\$ 224,343	\$ 234,334	\$ 173,766	\$ 142,347
Gross margin	47,182	38,405	29,792	32,425
Net income (loss)	4,876	8,431	(5,345)	1,240
Net income (loss) per share, basic	0.06	0.11	(0.07)	0.02
Net income (loss) per share, diluted	0.06	0.10	(0.07)	0.02
Fiscal 2006:				
Revenue	\$ 74,509	\$ 65,348	\$ 54,695	\$ 41,958
Gross margin	18,145	15,184	11,447	5,692
Net income	11,309	9,568	5,384	255
Net income per share, basic	0.16	0.14	0.08	0.00
Net income per share, diluted	0.15	0.13	0.08	0.00

- (a) Included a charge of \$8.3 million for the write-off of unamortized debt issuance costs as a result of the market price conversion trigger on our senior convertible debentures being met.
- (b) Included a charge of \$14.1 million for the impairment of acquisition-related intangibles.
- (c) Included a charge of \$9.6 million for purchased in-process research and development.

ITEM 9: CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

None.

ITEM 9A: CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission 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 recognized 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 necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures 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 and subject to the foregoing, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective.

Management’s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) of the Exchange Act. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and can only provide reasonable assurance with respect to financial statement preparation. 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.

We assessed the effectiveness of our internal control over financial reporting as of December 30, 2007. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in *Internal Control—Integrated Framework*. Based on our assessment using those criteria, our management (including our Chief Executive Officer and Chief Financial Officer) concluded that our internal control over financial reporting was effective as of December 30, 2007.

The effectiveness of our internal control over financial reporting as of December 30, 2007 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears on page 77 of this Annual Report on Form 10-K.

The Company’s evaluation of the effectiveness of its internal control over financial reporting as of December 30, 2007 excluded the internal controls of SunPower Corporation, Systems, or SP Systems, formerly known as PowerLight Corporation, because SP Systems was acquired by the Company in a purchase business combination during fiscal 2007. SP Systems is a wholly-owned subsidiary whose total assets and total revenues represent 35% and 60%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 30, 2007.

Changes in Internal Control over Financial Reporting

There were no material changes in our internal control over financial reporting that occurred during the fourth quarter of fiscal 2007 that has materially affected, or is 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*

The information required by this Item concerning our directors is incorporated by reference from the information set forth in the section entitled “Proposal One—Election of Directors” in our Proxy Statement.

The information required by this Item concerning our executive officers is incorporated by reference to the information set forth in the section entitled “Security Ownership of Management and Certain Beneficial Owners—Executive Officers of the Registrant” in our Proxy Statement.

The information required by this Item concerning compliance with Section 16(a) of the Securities Exchange Act of 1934 is incorporated by reference from the information set forth in the section entitled “Other Disclosures—Section 16(a) Beneficial Ownership Reporting Compliance in our Proxy Statement.

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, 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.

The information required by this Item concerning our audit committee and audit committee financial expert is incorporated by reference from the information set forth in the section entitled “Corporate Governance—Committee Membership—Audit Committee” in our Proxy Statement.

ITEM 11: *EXECUTIVE COMPENSATION*

The information required by this Item concerning executive compensation is incorporated by reference from the information set forth in the sections entitled “Compensation Discussion and Analysis,” “Executive Compensation,” “Compensation Committee Report” and “Other Disclosures—Compensation Committee Interlocks and Insider Participation” in our Proxy Statement.

The information required by this item concerning compensation of directors is incorporated by reference from the information set forth in the section entitled “Director Compensation” in our Proxy Statement.

ITEM 12: *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS*

The information required by this Item concerning equity compensation plan information is incorporated by reference from the information set forth in the section titled “Equity Compensation Plan Information” in our Proxy Statement.

The information required by this Item regarding security ownership of certain beneficial owners, directors and executive officers is incorporated by reference from the information set forth in the section entitled “Security Ownership of Management and Certain Beneficial Owners” in our Proxy Statement.

ITEM 13: *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE*

Information required by this Item regarding director independence and transactions with related persons is incorporated by reference from the information set forth in the sections entitled “Corporate Governance—Board Structure,” “Committee Membership” and “Other Disclosures” in our Proxy Statement.

ITEM 14: *PRINCIPAL ACCOUNTANT FEES AND SERVICES*

The information required by this Item is incorporated by reference from the information set forth in the sections entitled “Report of the Audit Committee of the Board of Directors” and “Proposal Two—Ratification of the Selection of Independent Registered Public Accountants” in our Proxy Statement.

PART IV**ITEM 15: EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as a part of this Annual Report on Form 10-K:

1. *Financial Statements:*

	Page
Report of Independent Registered Public Accounting Firm	77
Consolidated Balance Sheets	78
Consolidated Statements of Operations	79
Consolidated Statements of Stockholders' Equity	80
Consolidated Statements of Comprehensive Income (Loss)	81
Consolidated Statements of Cash Flows	82
Notes to Consolidated Financial Statements	83

2. *Financial Statement Schedule:*

	Page
Schedule II – Valuation and Qualifying Accounts	131

All other 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:*

See (b) below.

(b) Exhibits:

EXHIBIT INDEX

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated November 15, 2006, by and among SunPower Corporation, Pluto Acquisition Company LLC, PowerLight Corporation and Thomas L. Dinwoodie (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed with the Securities and Exchange Commission on November 22, 2006).
2.2	First Amendment to Agreement and Plan of Merger, dated December 21, 2006, by and between SunPower Corporation and PowerLight 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 22, 2006).
3.1	Form of Restated Certificate of Incorporation of SunPower Corporation (incorporated by reference to Exhibit 3.(i)2 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 11, 2005).
3.2	Form of By-laws of SunPower Corporation (incorporated by reference to Exhibit 3.(ii)2 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
4.1	Specimen Class A Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).
4.2	Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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	First Supplemental Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 February 8, 2007).
4.4	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).
4.5	Form of Registration Rights Agreement (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 22, 2006).
10.1	Share Lending Agreement, dated July 25, 2007, by and among SunPower Corporation, Credit Suisse International and Credit Suisse Securities (USA) LLC (incorporated by reference to Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
10.2	Amended and Restated Share Lending Agreement, dated July 25, 2007, by and among SunPower Corporation, Lehman Brothers International (Europe) Limited and Lehman Brothers Inc. (incorporated by reference to Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
10.3	SunPower Corporation 1996 Stock Plan and form of agreements thereunder (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).
10.4	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).
10.5	Amended and Restated SunPower Corporation 2005 Stock Incentive Plan and form of agreements thereunder (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 May 7, 2007).
10.6	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).
10.7	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).
10.8	Form of PowerLight Corporation Non-Qualified Stock Option, Market Standoff and Stock Restriction Agreement (Directors and Consultants) (incorporated by reference to Exhibit 4.5 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.9	Form of Non-Qualified Stock Option Agreement, by and between PowerLight Corporation and Gary Wayne (incorporated by reference to Exhibit 4.7 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.10	Form of Non-Qualified Stock Option Agreement, by and between PowerLight Corporation and Dan Shugar (incorporated by reference to Exhibit 4.9 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.11	Form of Equity Restriction Agreement, by and between SunPower Corporation and each of Messrs. Dinwoodie, Wenger, Ledesma and Shugar (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 January 17, 2007).

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10.12	Form of Indemnification Agreement, by and between SunPower Corporation and its officers and directors (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.13	Offer Letter, dated May 22, 2003, by and between SunPower Corporation and Thomas Werner (incorporated by reference to Exhibit 10.8 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.14	Offer Letter, dated January 14, 2005, by and between SunPower Corporation and PM Pai (incorporated by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.15	Offer Letter, dated April 1, 2005, by and between SunPower Corporation and Emmanuel Hernandez (incorporated by reference to Exhibit 10.10 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.16	SunPower Corporation 2006 Key Employee Bonus Plan (KEBP) (incorporated by reference to Exhibit 10.29 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 24, 2006).
10.17	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Thomas L. Dinwoodie and PowerLight 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 January 17, 2007).
10.18	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Howard J. Wenger and PowerLight Corporation (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 January 17, 2007).
10.19	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Bruce R. Ledesma and PowerLight Corporation (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 January 17, 2007).
10.20	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Dan S. Shugar and PowerLight Corporation.
10.21	Industrial Lease, dated May 12, 1999, between Temescal, L.P., Contra Costa Industrial Park, Ltd. and PowerLight Corporation (as amended on November 6, 2000 and January 22, 2004) (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 May 11, 2007).
10.22	Standard Industrial / Commercial Multi-Tenant Lease, dated December 15, 2006, by and between PowerLight Corporation and FPOC, LLC (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 May 11, 2007).
10.23	First Amendment to Lease, dated May 24, 2007, by and between PowerLight Corporation and FPOC, LLC (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 7, 2007).
10.24	Second Amendment to Lease, dated December 18, 2007, by and between SunPower Corporation, Systems and FPOC, LLC.
10.25	PV Risk Reduction Agreement, dated December 18, 2007, by and between SunPower Corporation, Systems and FPOC, LLC.
10.26†	Credit Agreement, dated July 13, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).

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10.27	First Amendment to Credit Agreement, dated August 20, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.28	Second Amendment to Credit Agreement, dated August 31, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.29†	Security Agreement, dated July 13, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.30	Continuing Guaranty, dated July 13, 2007, by and between SunPower North America, Inc., SunPower Corporation, Systems and Wells Fargo Bank, National Association (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 9, 2007).
10.31†	Original Equipment Manufacturer Production of Photovoltaic Modules Agreement, dated December 6, 2006, by and between PowerLight Corporation and aleo solar AG (as amended on March 21, 2007) (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 May 11, 2007).
10.32†	Supply Agreement, dated June 30, 2006, by and between SunPower Philippines Manufacturing, Ltd. and DC Chemical Co., Ltd. (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 16, 2006).
10.33†	Photovoltaic Module Master Supply Agreement, dated November 3, 2005, by and among PowerLight Corporation, PowerLight Systems AG and Evergreen Solar, Inc. (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 May 11, 2007).
10.34†	Amendment One to Photovoltaic Module Master Supply Agreement, dated June 29, 2006, by and among PowerLight Corporation, PowerLight Systems AG and Evergreen Solar, Inc. (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 May 11, 2007).
10.35†	Wafering Supply and Sales Agreement, dated October 1, 2007, by and between SunPower Philippines Manufacturing Ltd. and First Philec Solar Corp. (incorporated by reference to Exhibit 10.12 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 9, 2007).
10.36†	Long-Term Supply Agreement II, dated July 16, 2007, by and between SunPower Corporation and Hemlock Semiconductor Corporation (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report filed with the Securities and Exchange Commission on November 9, 2007).
10.37†	Ingot/Wafer Agreement, dated December 3, 2007, by and between SunPower Corporation and Jiawei SolarChina Co., LTD.
10.38†	Terms and Conditions, dated January 1, 2006, by and between SunPower Philippines Manufacturing Ltd. and M.Setek Company Ltd. (incorporated by reference to Exhibit 10.35 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 16, 2006).
10.39†	Long-Term Ingot and Wafer Supply Agreement, dated August 9, 2007, by and between SunPower Corporation and NorSun AS (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 9, 2007).

10.40†	Master Supply Contract for Solar Cells, dated May 18, 2006, by and between PowerLight Corporation and Q-Cells Aktiengesellschaft (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 May 11, 2007).
10.41†	Supply Agreement, dated August 21, 2005, by and between SunPower Corporation and Wacker-Chemie GmbH (incorporated by reference to Exhibit 10.22 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.42†	Supply Agreement, dated August 3, 2006, by and between SunPower Corporation and Wacker Chemie AG (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 13, 2006).
10.43†	Ingot Supply Agreement, dated December 22, 2006, by and between SunPower Corporation and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.62 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 2, 2007).
10.44†	Engineering, Procurement and Construction Agreement, dated as of March 26, 2007, by and among PowerLight Systems S.A., Agrupacion Solar Llerena-Badajoz 1, A.I.E. and Solarpack Corporacion Tecnologica, S.L. (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 May 11, 2007).
10.45†	Supply Agreement, dated April 17, 2004, by and between SunPower Corporation and Conergy AG, and Appendixes thereto (incorporated by reference to Exhibit 10.24 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).
10.46†	Amendment to Supply Agreement, dated December 22, 2005, by and between SunPower Corporation and Conergy AG (incorporated by reference to Exhibit 10.31 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 24, 2006).
10.47†	Amendment to Supply Agreement, dated June 21, 2007, by and between SunPower Corporation and Conergy AG (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 August 7, 2007).
10.48†	Long-Term Polysilicon Supply Agreement, dated August 9, 2007, by and between SunPower Corporation and NorSun AS (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 9, 2007).
10.49†	Turnkey Construction Contract for the Construction of a Solar Park, dated December 28, 2007, by and between SunPower Energy Systems Spain, S.L. and Solargen Proyectos e Instalaciones Solares, S.L.
10.50†	Amended and Restated Supply Agreement, dated November 10, 2005, by and among SunPower Corporation, SunPower Technology Limited and Solon AG fur Solartechnik (incorporated by reference to Exhibit 10.23 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).
10.51†	Turnkey Construction Contract for the Construction of a Solar Park, dated October 10, 2007, by and between SunPower Energy System Spain S.L. and Sedwick Corporate, S.L.
10.52†	Polysilicon Supply Agreement, dated December 22, 2006, by and between SunPower Corporation Manufacturing, Ltd. and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.61 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 2, 2007).
10.53†	Turnkey Construction Contract for the Construction of a Solar Park, dated November 6, 2007, by and between SunPower Energy Systems Spain, S.L. and Almuradiel Solar, S.L.

10.54†	Turnkey Construction Contract for the Construction of a Solar Park, dated November 6, 2007, by and between SunPower Energy Systems Spain, S.L. and Morals Renovables, S.L.
10.55†	Turnkey Construction Contract for the Construction of a Solar Park, dated November 6, 2007, by and between SunPower Energy Systems Spain, S.L. and Naturener Solar Tinajeros, S.L.
10.56	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 21, 2007, by and among SunPower Energy Systems Spain, S.L., Almuradiel Solar, S.L., Morals Renovables, S.L. and Naturener Solar Tinajeros, S.L.
10.57†	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 29, 2007, by and between SunPower Energy Systems Spain, S.L. and Almuradiel Solar, S.L.
10.58†	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 29, 2007, by and between SunPower Energy Systems Spain, S.L. and Morals Renovables, S.L.
10.59†	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 29, 2007, by and between SunPower Energy Systems Spain, S.L. and Naturener Solar Tinajeros, S.L.
10.60	Master Separation Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.12 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.61	Indemnification and Insurance Matters Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.13 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.62	Investor Rights Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.14 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.63	Employee Matters Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.64	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).
10.65	Master Transition Services Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.66	Wafer Manufacturing Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.67	Contract of Lease, dated October 6, 2005, by and between SunPower Philippines Manufacturing Ltd. – Philippines Branch and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.19 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).

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10.68	Services Agreement, dated January 1, 2005, by and between Cypress Semiconductor Philippines Headquarters Ltd. Regional Operating Headquarters and SunPower Philippines Manufacturing Ltd. (incorporated by reference to Exhibit 10.26 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005).
10.69	Asset Lease, dated October 28, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.27 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005).
10.70	Office Lease Agreement, dated May 15, 2006 between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.36 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 16, 2006).
21.1	List of Subsidiaries.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (set forth on the signature page of this Report).
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.

A cross (†) indicates that confidential treatment has been requested for portions of the marked exhibits.

SCHEDULE II
VALUATION AND QUALIFYING ACCOUNTS

(In thousands)	Balance at Beginning of Period	Charges (Releases) to Expenses/Revenues	Deductions	Balance at End of Period
Allowance for doubtful accounts:				
Year ended December 30, 2007	\$ 557	\$ 816	\$ —	\$ 1,373
Year ended December 31, 2006	317	272	(32)	557
Year ended January 1, 2006	59	258	—	317
Allowance for sales returns:				
Year ended December 30, 2007	\$ 445	\$ 2,172	\$ (2,249)	\$ 368
Year ended December 31, 2006	110	808	(473)	445
Year ended January 1, 2006	—	101	—	110
Valuation allowance for deferred tax asset:				
Year ended December 30, 2007	\$ 9,836	\$ 4,088	\$ —	\$ 13,924
Year ended December 31, 2006	9,278	558	—	9,836
Year ended January 1, 2006	5,049	4,229	—	9,278

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: March 3, 2008

By: _____ /s/ EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer

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, Emmanuel T. Hernandez, and Bruce Ledesma, and each 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 this 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 this 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.

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.

Signature	Title	Date
_____ /s/ THOMAS H. WERNER Thomas H. Werner	Chief Executive Officer and Director (Principal Executive Officer)	March 3, 2008
_____ /s/ EMMANUEL T. HERNANDEZ Emmanuel T. Hernandez	Chief Financial Officer (Principal Financial and Accounting Officer)	March 3, 2008
_____ /s/ T.J. RODGERS T.J. Rodgers	Chairman of the Board of Directors	March 3, 2008
_____ /s/ W. STEVE ALBRECHT W. Steve Albrecht	Director	March 3, 2008
_____ /s/ BETSY S. ATKINS Betsy S. Atkins	Director	March 3, 2008
_____ /s/ PATRICK WOOD Patrick Wood	Director	March 3, 2008

EXHIBIT INDEX

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated November 15, 2006, by and among SunPower Corporation, Pluto Acquisition Company LLC, PowerLight Corporation and Thomas L. Dinwoodie (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed with the Securities and Exchange Commission on November 22, 2006).
2.2	First Amendment to Agreement and Plan of Merger, dated December 21, 2006, by and between SunPower Corporation and PowerLight 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 22, 2006).
3.1	Form of Restated Certificate of Incorporation of SunPower Corporation (incorporated by reference to Exhibit 3.(i)2 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 11, 2005).
3.2	Form of By-laws of SunPower Corporation (incorporated by reference to Exhibit 3.(ii)2 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
4.1	Specimen Class A Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).
4.2	Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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	First Supplemental Indenture, dated February 7, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 February 8, 2007).
4.4	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).
4.5	Form of Registration Rights Agreement (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 22, 2006).
10.1	Share Lending Agreement, dated July 25, 2007, by and among SunPower Corporation, Credit Suisse International and Credit Suisse Securities (USA) LLC (incorporated by reference to Exhibit 10.1 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
10.2	Amended and Restated Share Lending Agreement, dated July 25, 2007, by and among SunPower Corporation, Lehman Brothers International (Europe) Limited and Lehman Brothers Inc. (incorporated by reference to Exhibit 10.2 of Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 26, 2007).
10.3	SunPower Corporation 1996 Stock Plan and form of agreements thereunder (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).
10.4	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).

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10.5	Amended and Restated SunPower Corporation 2005 Stock Incentive Plan and form of agreements thereunder (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 May 7, 2007).
10.6	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).
10.7	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).
10.8	Form of PowerLight Corporation Non-Qualified Stock Option, Market Standoff and Stock Restriction Agreement (Directors and Consultants) (incorporated by reference to Exhibit 4.5 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.9	Form of Non-Qualified Stock Option Agreement, by and between PowerLight Corporation and Gary Wayne (incorporated by reference to Exhibit 4.7 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.10	Form of Non-Qualified Stock Option Agreement, by and between PowerLight Corporation and Dan Shugar (incorporated by reference to Exhibit 4.9 to the Registrant's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 25, 2007).
10.11	Form of Equity Restriction Agreement, by and between SunPower Corporation and each of Messrs. Dinwoodie, Wenger, Ledesma and Shugar (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 January 17, 2007).
10.12	Form of Indemnification Agreement, by and between SunPower Corporation and its officers and directors (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.13	Offer Letter, dated May 22, 2003, by and between SunPower Corporation and Thomas Werner (incorporated by reference to Exhibit 10.8 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.14	Offer Letter, dated January 14, 2005, by and between SunPower Corporation and PM Pai (incorporated by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.15	Offer Letter, dated April 1, 2005, by and between SunPower Corporation and Emmanuel Hernandez (incorporated by reference to Exhibit 10.10 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on August 25, 2005).
10.16	SunPower Corporation 2006 Key Employee Bonus Plan (KEBP) (incorporated by reference to Exhibit 10.29 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 24, 2006).
10.17	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Thomas L. Dinwoodie and PowerLight 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 January 17, 2007).
10.18	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Howard J. Wenger and PowerLight Corporation (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 January 17, 2007).

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10.19	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Bruce R. Ledesma and PowerLight Corporation (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 January 17, 2007).
10.20	Amended and Restated Employment Agreement, effective as of January 11, 2007, by and between Dan S. Shugar and PowerLight Corporation.
10.21	Industrial Lease, dated May 12, 1999, between Temescal, L.P., Contra Costa Industrial Park, Ltd. and PowerLight Corporation (as amended on November 6, 2000 and January 22, 2004) (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 May 11, 2007).
10.22	Standard Industrial / Commercial Multi-Tenant Lease, dated December 15, 2006, by and between PowerLight Corporation and FPOC, LLC (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 May 11, 2007).
10.23	First Amendment to Lease, dated May 24, 2007, by and between PowerLight Corporation and FPOC, LLC (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 7, 2007).
10.24	Second Amendment to Lease, dated December 18, 2007, by and between SunPower Corporation, Systems and FPOC, LLC.
10.25	PV Risk Reduction Agreement, dated December 18, 2007, by and between SunPower Corporation, Systems and FPOC, LLC.
10.26†	Credit Agreement, dated July 13, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.27	First Amendment to Credit Agreement, dated August 20, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.28	Second Amendment to Credit Agreement, dated August 31, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.29†	Security Agreement, dated July 13, 2007, by and between SunPower Corporation and Wells Fargo Bank, National Association (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 9, 2007).
10.30	Continuing Guaranty, dated July 13, 2007, by and between SunPower North America, Inc., SunPower Corporation, Systems and Wells Fargo Bank, National Association (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 9, 2007).
10.31†	Original Equipment Manufacturer Production of Photovoltaic Modules Agreement, dated December 6, 2006, by and between PowerLight Corporation and aleo solar AG (as amended on March 21, 2007) (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 May 11, 2007).
10.32†	Supply Agreement, dated June 30, 2006, by and between SunPower Philippines Manufacturing, Ltd. and DC Chemical Co., Ltd. (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 16, 2006).

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10.33†	Photovoltaic Module Master Supply Agreement, dated November 3, 2005, by and among PowerLight Corporation, PowerLight Systems AG and Evergreen Solar, Inc. (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 May 11, 2007).
10.34†	Amendment One to Photovoltaic Module Master Supply Agreement, dated June 29, 2006, by and among PowerLight Corporation, PowerLight Systems AG and Evergreen Solar, Inc. (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 May 11, 2007).
10.35†	Wafering Supply and Sales Agreement, dated October 1, 2007, by and between SunPower Philippines Manufacturing Ltd. and First Philec Solar Corp. (incorporated by reference to Exhibit 10.12 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 9, 2007).
10.36†	Long-Term Supply Agreement II, dated July 16, 2007, by and between SunPower Corporation and Hemlock Semiconductor Corporation (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report filed with the Securities and Exchange Commission on November 9, 2007).
10.37†	Ingot/Wafer Agreement, dated December 3, 2007, by and between SunPower Corporation and Jiawei SolarChina Co., LTD.
10.38†	Terms and Conditions, dated January 1, 2006, by and between SunPower Philippines Manufacturing Ltd. and M.Setek Company Ltd. (incorporated by reference to Exhibit 10.35 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 16, 2006).
10.39†	Long-Term Ingot and Wafer Supply Agreement, dated August 9, 2007, by and between SunPower Corporation and NorSun AS (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 9, 2007).
10.40†	Master Supply Contract for Solar Cells, dated May 18, 2006, by and between PowerLight Corporation and Q-Cells Aktiengesellschaft (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 May 11, 2007).
10.41†	Supply Agreement, dated August 21, 2005, by and between SunPower Corporation and Wacker-Chemie GmbH (incorporated by reference to Exhibit 10.22 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.42†	Supply Agreement, dated August 3, 2006, by and between SunPower Corporation and Wacker Chemie AG (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 13, 2006).
10.43†	Ingot Supply Agreement, dated December 22, 2006, by and between SunPower Corporation and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.62 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 2, 2007).
10.44†	Engineering, Procurement and Construction Agreement, dated as of March 26, 2007, by and among PowerLight Systems S.A., Agrupacion Solar Llerena-Badajoz 1, A.I.E. and Solarpack Corporacion Tecnologica, S.L. (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 May 11, 2007).
10.45†	Supply Agreement, dated April 17, 2004, by and between SunPower Corporation and Conergy AG, and Appendixes thereto (incorporated by reference to Exhibit 10.24 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).

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10.46†	Amendment to Supply Agreement, dated December 22, 2005, by and between SunPower Corporation and Conergy AG (incorporated by reference to Exhibit 10.31 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 24, 2006).
10.47†	Amendment to Supply Agreement, dated June 21, 2007, by and between SunPower Corporation and Conergy AG (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 August 7, 2007).
10.48†	Long-Term Polysilicon Supply Agreement, dated August 9, 2007, by and between SunPower Corporation and NorSun AS (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 9, 2007).
10.49†	Turnkey Construction Contract for the Construction of a Solar Park, dated December 28, 2007, by and between SunPower Energy Systems Spain, S.L. and Solargen Proyectos e Instalaciones Solares, S.L.
10.50†	Amended and Restated Supply Agreement, dated November 10, 2005, by and among SunPower Corporation, SunPower Technology Limited and Solon AG fur Solartechnik (incorporated by reference to Exhibit 10.23 to the Registrant’s Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on November 14, 2005).
10.51†	Turnkey Construction Contract for the Construction of a Solar Park, dated October 10, 2007, by and between SunPower Energy System Spain S.L. and Sedwick Corporate, S.L.
10.52†	Polysilicon Supply Agreement, dated December 22, 2006, by and between SunPower Corporation Manufacturing, Ltd. and Woongjin Energy Co., Ltd. (incorporated by reference to Exhibit 10.61 to the Registrant’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 2, 2007).
10.53†	Turnkey Construction Contract for the Construction of a Solar Park, dated November 6, 2007, by and between SunPower Energy Systems Spain, S.L. and Almuradiel Solar, S.L.
10.54†	Turnkey Construction Contract for the Construction of a Solar Park, dated November 6, 2007, by and between SunPower Energy Systems Spain, S.L. and Moralas Renovables, S.L.
10.55†	Turnkey Construction Contract for the Construction of a Solar Park, dated November 6, 2007, by and between SunPower Energy Systems Spain, S.L. and Naturener Solar Tinajeros, S.L.
10.56	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 21, 2007, by and among SunPower Energy Systems Spain, S.L., Almuradiel Solar, S.L., Moralas Renovables, S.L. and Naturener Solar Tinajeros, S.L.
10.57†	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 29, 2007, by and between SunPower Energy Systems Spain, S.L. and Almuradiel Solar, S.L.
10.58†	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 29, 2007, by and between SunPower Energy Systems Spain, S.L. and Moralas Renovables, S.L.
10.59†	Amendment to Turnkey Construction Contract for the Construction of a Solar Park, dated November 29, 2007, by and between SunPower Energy Systems Spain, S.L. and Naturener Solar Tinajeros, S.L.
10.60	Master Separation Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.12 to the Registrant’s Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).

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10.61	Indemnification and Insurance Matters Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.13 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.62	Investor Rights Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.14 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.63	Employee Matters Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.64	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).
10.65	Master Transition Services Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.66	Wafer Manufacturing Agreement, dated October 6, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.67	Contract of Lease, dated October 6, 2005, by and between SunPower Philippines Manufacturing Ltd. – Philippines Branch and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.19 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 11, 2005).
10.68	Services Agreement, dated January 1, 2005, by and between Cypress Semiconductor Philippines Headquarters Ltd. Regional Operating Headquarters and SunPower Philippines Manufacturing Ltd. (incorporated by reference to Exhibit 10.26 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005).
10.69	Asset Lease, dated October 28, 2005, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.27 to the Registrant's Registration Statement on Form S-1/A filed with the Securities and Exchange Commission on October 31, 2005).
10.70	Office Lease Agreement, dated May 15, 2006 between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.36 to the Registrant's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 16, 2006).
21.1	List of Subsidiaries.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (set forth on the signature page of this Report).
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.

A cross (†) indicates that confidential treatment has been requested for portions of the marked exhibits.

DANIEL S. SHUGAR

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Agreement amends and restates the employment agreement entered into as of November 1, 2005 (the "Effective Date") by and between PowerLight Corporation, a California corporation (the "Company") and Daniel S. Shugar ("Executive") to reflect the proposed acquisition of the Company by SunPower Corporation, a Delaware corporation ("SunPower") and merger (the "Merger") of the Company with and into Pluto Acquisition Corporation LLC, a Delaware LLC ("PowerLight LLC") pursuant to the Agreement and Plan of Merger dated November 15, 2006 among the Company, SunPower, PowerLight LLC and Thomas L. Dinwoodie as Shareholders' Representative. This Agreement as amended and restated shall be effective as of one business day following the date the Merger is consummated (the "Amendment Date"), and if the Merger does not occur such amendments shall be without effect. After the Amendment Date, all references to the Company shall be to PowerLight LLC.

1. Duties and Scope of Employment.

(a) Positions and Duties. As of the Amendment Date, Executive will serve as President of the Company, a subsidiary of SunPower. Executive will render such business and professional services in the performance of his duties, consistent with Executive's position within the Company, as will reasonably be assigned to him by the Chief Executive Officer of the Company (the "Supervisor"). The period of Executive's employment under this Agreement is referred to herein as the "Employment Term."

(b) Obligations. During the Employment Term, Executive will devote Executive's full business efforts and time to the Company. Executive acknowledges that the performance of his duties may require reasonable business travel. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation, or consulting activity for any direct or indirect remuneration without the prior approval of the Supervisor (which approval will not be unreasonably withheld); provided, however, that Executive may, without the approval of the Supervisor, serve in any capacity with any civic, educational, or charitable organization, provided such services do not interfere with Executive's obligations to the Company.

2. At-Will Employment. Executive and the Company agree that Executive's employment with the Company constitutes "at-will" employment. Executive and the Company acknowledge that, notwithstanding the term described in Section 3, this employment relationship may be terminated at any time, upon written notice to the other party, with or without good cause or for any or no cause, at the option either of the Company or Executive. However, as described in this Agreement, Executive may be entitled to severance benefits depending upon the circumstances of Executive's termination of employment. Upon the termination of Executive's employment with the Company for any reason, in addition to the severance compensation provided elsewhere in this Agreement, Executive will be entitled to payment of all accrued but unpaid vacation, expense reimbursements, and other benefits due to Executive through his termination date under any Company-provided or paid plans, policies, and arrangements. Executive agrees to resign from all positions that he holds with the Company (other than his position, if any, as a member of the Board of Directors of SunPower (the "Board")) immediately following the termination of his employment if the Supervisor so requests.

3. Term of Agreement. This Agreement will have an initial term of three years commencing on the Effective Date. On the third anniversary of the Effective Date, and on each three-year anniversary thereafter, this Agreement automatically will renew for an additional three-year term unless the Company provides Executive with notice of non-renewal at least 120 days prior to the date of automatic renewal.

4. Compensation.

(a) Base Salary. Commencing as of the date when the Company implements its Company-wide salary increases for 2007, the Company will pay Executive an initial monthly salary of \$20,278.17 as compensation for his services (the "Base Salary"). The Base Salary will not be subject to further increase as a result of SunPower's separate implementation of its own company-wide salary increases for 2007. The Base Salary will be paid periodically in accordance with SunPower's normal payroll practices and be subject to the usual, required withholding. Executive's salary will be subject to review, and adjustments will be made based upon SunPower's standard practices.

(b) Annual Bonus. Executive shall be eligible to participate in SunPower's Key Employee Bonus Plan ("KEBP"). Executive's target bonus will be determined from time to time by the Supervisor in accordance with the KEBP ("Target Bonus"); provided, however, that Executive's initial Target Bonus shall be 50% of the Base Salary. The actual bonus paid may be higher or lower than the Target Bonus for over- or under-achievement of goals as determined by the Supervisor. Executive's annual bonus, if any, will be payable each quarter and/or year upon completion of a performance review by the Supervisor.

(c) Equity Compensation. Executive may be entitled to participate in SunPower's equity incentive programs, as determined from time to time by the Board and/or its compensation committee (including being considered in connection with SunPower's annual evergreen equity incentive granting program commencing in 2007).

(d) Additional Compensation. The Company shall provide Executive with a vehicle which shall be, at the Company's discretion, either owned or leased by the Company for Executive's business and personal use.

5. Employee Benefits. During the Employment Term, Executive will be eligible to participate in accordance with the terms of all SunPower employee benefit plans, policies, and arrangements that are applicable to other senior executives of SunPower, as such plans, policies, and arrangements may exist from time to time.

6. Expenses. The Company will reimburse Executive for reasonable travel, entertainment, and other expenses incurred by Executive in the furtherance of the performance of Executive's duties hereunder, in accordance with SunPower's expense reimbursement and other policies as in effect from time to time.

7. Severance.

(a) Termination Without Cause or Resignation for Good Reason. If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, then, subject to Section 8, Executive will receive: (i) a lump-sum payment equal to Executive's monthly Base Salary in effect immediately prior to the date of Executive's employment termination ("Termination Date") multiplied by twenty-four (24), (ii) in the event the Termination Date following a completed fiscal year for which Executive's annual bonus relating to such prior completed fiscal year has not been paid as of the Termination Date, a lump-sum payment equal to the actual bonus that would have been paid for such completed fiscal year (iii) a lump-sum payment equal to Executive's Target Bonus in effect immediately prior to the Termination Date divided by twelve (12) and multiplied by the number of whole calendar months between the commencement of the then current fiscal year and the Termination Date, and (iv) Company-paid coverage for Executive and Executive's eligible dependents under the Company's Benefit Plans for twenty-four (24) months, or, if earlier, until Executive is eligible for similar benefits from another employer (provided Executive validly elects to continue coverage under applicable law).

(b) Voluntary Termination without Good Reason; Termination for Cause. If Executive's employment with the Company terminates voluntarily by Executive without Good Reason or is terminated for Cause by the Company, then (i) all further vesting of Executive's outstanding equity awards will terminate immediately, (ii) all payments of compensation by the Company to Executive hereunder will terminate immediately (except as to amounts already earned), and (iii) Executive will be paid all expense reimbursements and other benefits due to Executive through his termination date under any Company-provided or paid plans, policies, and arrangements.

(c) Termination due to Death or Disability. If Executive's employment terminates by reason of death or disability, then (i) Executive will be entitled to the payments described in Section 7(a)(ii) and (iii) above, (ii) all provisions regarding forfeiture, restrictions on transfer, and the Company's or SunPower's (as applicable) rights of repurchase, in each case otherwise applicable to shares of restricted stock held by such Executive pursuant to the Equity Restriction Agreement between Executive and the Company, dated of even date herewith, shall lapse as of the effective date of such termination (iii) Executive will be entitled to receive other benefits only in accordance with the Company's then applicable plans, policies, and arrangements, and (iv) Executive's outstanding equity awards will terminate if and to the extent provided under the applicable award agreement(s). For purpose of this Section 7(c) only, the term disability shall refer to Executive's failure to perform the essential functions of Executive's position for a period of six (6) months, with or without reasonable accommodation, due to a disability, which, in the opinion of a qualified physician, is reasonably likely to be continuous or permanent for the remainder of Executive's life.

(d) Sole Right to Severance. This Agreement is intended to represent Executive's sole entitlement to severance payments and benefits in connection with the termination of his employment. To the extent Executive is entitled to receive severance or similar payments and/or benefits under any other Company plan, program, agreement, policy, practice, or the like, severance payments and benefits due to Executive under this Agreement will be so reduced.

(e) Timing of Payments. If, as of the Termination Date, Executive is a "specified employee" within the meaning of Treasury Regulation §1.409A, as determined by SunPower's legal counsel, the lump-sum payments specified in Sections 7(a) and 7(b) (and the amounts still due under Section 9(b)) shall be paid on the first business day on or after the six-month anniversary of the Termination Date, or, if earlier, on notification of Executive's death.

8. Conditions to Receipt of Severance: No Duty to Mitigate.

(a) Separation Agreement and Release of Claims. The receipt of any severance pursuant to Section 7 will be subject to Executive signing and not revoking a separation agreement and release of claims in a form reasonably acceptable to the Company. Such agreement will provide (among other things) the provisions of Section 8(c). No severance will be paid or provided until the separation agreement and release agreement becomes effective.

(b) Nonsolicitation. In the event of a termination of Executive's employment that otherwise would entitle Executive to the receipt of severance pursuant to Section 7, Executive agrees that, during the one (1) year period following the Termination Date, Executive, directly or indirectly, whether as employee, owner, sole proprietor, partner, director, member, consultant, agent, founder, co-venturer or otherwise, will (i) not solicit, induce, or influence any person to modify his or her employment or consulting relationship with the Company or SunPower (the "No-Inducement"), and (ii) not solicit business from any of the Company's or SunPower's substantial customers and users (the "No-Solicit"). If Executive breaches the No-Inducement or the No-Solicit, in addition to any other rights or remedies available to the Company and SunPower, all continuing payments and benefits to which Executive otherwise may be entitled pursuant to Section 7 and/or Section 9(a) will cease immediately.

(c) Nondisparagement. In the event of a termination of Executive's employment that otherwise would entitle Executive to the receipt of severance pursuant to Section 7, Executive agrees to refrain from any disparagement, criticism, defamation, slander of the Company or SunPower, its directors, its executive officers, or its employees, or tortious interference with the contracts and relationships of the Company or SunPower. The foregoing restrictions will not apply to any statements that are made truthfully in response to a subpoena or other compulsory legal process.

(d) No Duty to Mitigate. Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any earnings that Executive may receive from any other source reduce any such payment.

9. Acceleration of Vesting Upon Change of Control.

(a) If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, and the termination is in Connection with a Change of Control, then, subject to Section 8, (x) all of such Executive's unvested options granted from and after the date the Merger is consummated will become fully vested and exercisable as of the date of such termination of employment and remain exercisable for the time period otherwise applicable to such options following such termination of employment pursuant to the applicable option plan and option agreement and (y) all provisions regarding forfeiture, restrictions on transfer, and the Company's or SunPower's (as applicable) rights of repurchase, in each case otherwise applicable to shares of restricted stock held by such Executive and granted from and after the date the Merger is consummated, shall lapse as of the effective date of such termination of employment.

(b) Section 280G Limitation. If any payment or benefit Executive would receive pursuant to Section 7 and/or Section 9(a), but determined without regard to any additional payment required under this Section 9(b), (collectively, the "Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties payable with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive's benefits under this Agreement shall be either: (1) delivered in full, or (2) delivered as to such lesser extent which would result in no portion of such benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Executive on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code.

(c) The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is also serving as accountant or auditor for the individual, entity or group which will control the Company upon the occurrence of a Change of Control, the Company shall appoint a nationally recognized accounting firm other than the accounting firm engaged by the Company for general audit purposes to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

(d) The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within thirty (30) calendar days after the date on which such accounting firm has been engaged to make such determinations or such other time as requested by the Company or Executive. Any good faith determinations of the accounting firm made hereunder shall be final, binding, and conclusive upon the Company and Executive.

10. Definitions.

(a) Benefit Plans. For purposes of this Agreement, “Benefit Plans” means plans, policies, or arrangements that SunPower sponsors (or participates in) and that immediately prior to Executive’s termination of employment provide Executive and Executive’s eligible dependents with medical, dental, or vision benefits. Benefit Plans do not include any other type of benefit (including, but not by way of limitation, financial counseling, disability, life insurance, or retirement benefits). A requirement that the Company provide Executive and Executive’s eligible dependents with (or reimburse for) coverage under the Benefit Plans will not be satisfied unless the coverage is no less favorable than that provided to Executive and Executive’s eligible dependents immediately prior to Executive’s termination of employment; provided, however, that the Company may reduce coverage under the Benefit Plans if such reduction is applicable to all other senior executives of SunPower and its subsidiaries. Subject to the immediately preceding sentence, the Company may, at its option, satisfy any requirement that the Company provide (or reimburse for) coverage under any Benefit Plan by instead providing (or reimbursing for) coverage under a separate plan or plans providing coverage that is no less favorable or by paying Executive a lump-sum payment which is, on an after-tax basis, sufficient to provide Executive and Executive’s eligible dependents with equivalent coverage under a third party plan that is reasonably available to Executive and Executive’s eligible dependents.

(b) Cause. For purposes of this Agreement, “Cause” means (i) acts or omissions constituting gross negligence or willful misconduct on the part of Executive with respect to Executive’s obligations or otherwise relating to the business of Company, (ii) Executive’s (A) felony conviction of, or felony plea of nolo contendere for, fraud, misappropriation or embezzlement, or a felony crime of moral turpitude, or (B) conviction of fraud, misappropriation or embezzlement, (iii) Executive’s violation or breach of any fiduciary duty, or (iv) Executive’s violation or breach of any contractual duty to the Company which duty is material to the performance of the Executive’s duties or results in material damage to the Company or its business; provided that if any of the foregoing events is capable of being cured, the Company will provide notice to Executive describing the nature of such event and Executive will thereafter have thirty (30) days to cure such event.

(c) Change of Control. For purposes of this Agreement, “Change of Control” means (i) a sale of all or substantially all of the Company’s or SunPower’s assets, (ii) any merger, consolidation, or other business combination transaction of the Company or SunPower with or into another corporation, entity, or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company or SunPower outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company or SunPower (or the respective surviving entity) outstanding immediately after such transaction, (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company or SunPower, (iv) a contested election of directors, as a result of which or in connection with which the persons who were directors before such election or their nominees cease to constitute a majority of the Board, or (v) a dissolution or liquidation of the Company or SunPower. Notwithstanding anything to the contrary in the foregoing, any pro rata distribution (or retirement and pro rata issuance) of shares of SunPower stock held by SunPower’s corporate parent, Cypress Semiconductor, Inc. (“Cypress”) to the existing public shareholders of Cypress (in proportion to their shareholdings of Cypress) shall not constitute a Change of Control.

(d) Disability. For purposes of this Agreement, Disability shall have the same defined meaning as in the Company's long-term disability plan.

(e) Good Reason. For purposes of this Agreement, "Good Reason" means the occurrence of any of the following without Executive's express prior written consent: (i) a material reduction in Executive's position (other than as a result of a change of the Company from a subsidiary to a division of SunPower) or duties after the Amendment Date, (ii) a material breach of this Agreement, which the Company has not cured within thirty (30) days after receipt of written notice of such breach from Executive, (iii) a reduction in Executive's Base Salary and Target Bonus excluding a reduction that is applied to substantially all of the Company's and SunPower's other senior executives; provided, however, that for purposes of this clause (iii) whether a reduction in Target Bonus has occurred shall be determined without any regard to any actual bonus payments made to Executive, (iv) a material reduction in the aggregate level of benefits made available to Executive other than a reduction that also is applied to substantially all of the Company's and SunPower's other senior executives, or (v) a relocation of Executive's primary place of business for the performance of his duties to the Company to a location that is more than thirty-five (35) miles from the Company's current business location in Berkeley, California.

(f) In Connection with a Change of Control. For purposes of this Agreement, a termination of Executive's employment with the Company is "in Connection with a Change of Control" if Executive's employment terminates during the period beginning three (3) months prior to a Change of Control and ending eighteen (18) months following a Change of Control.

11. Indemnification and Insurance. Executive will be covered under the Company's insurance policies and, subject to applicable law, will be provided indemnification to the maximum extent permitted by the Company's bylaws and Articles of Incorporation, with such insurance coverage and indemnification to be in accordance with the Company's standard practices for senior executive officers but on terms no less favorable than provided to any other Company senior executive officer or director.

12. Confidential Information. Executive acknowledges that the Employee Proprietary Information and Inventions Agreement between Executive and the Company (the "Confidential Information Agreement") will continue in effect. During the Employment Term, Executive agrees to execute any updated versions of the Company's form of Confidential Information Agreement (any such updated version also referred to as the "Confidential Information Agreement") as may be required of substantially all of the Company's executive officers.

13. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of Executive upon Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive's right to compensation or other benefits will be null and void.

14. Notices. All notices, requests, demands, and other communications called for hereunder will be in writing and will be deemed given (a) on the date of delivery if delivered personally, (b) one day after being sent by a well established commercial overnight service, or (c) four days after being mailed by registered or certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company:

Attn: Chief Executive Officer
SunPower Corporation
3939 North First Street
San Jose, CA 95134

If to Executive, at the last known residential address on file with the Company.

15. Severability. If any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement will continue in full force and effect without said provision.

16. Arbitration. The Parties agree that any and all disputes arising out of the terms of this Agreement, their interpretation, and any of the matters herein released, shall be subject to binding arbitration in Alameda County before the American Arbitration Association under its National Rules for the Resolution of Employment Disputes, supplemented by the California Code of Civil Procedure. The Parties agree that the prevailing party in any arbitration shall be entitled to injunctive relief in any court of competent jurisdiction to enforce the arbitration award. **The Parties hereby agree to waive their right to have any dispute between them resolved in a court of law by a judge or jury.** This paragraph will not prevent either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the Parties and the subject matter of their dispute relating to Executive's obligations under this Agreement and the Confidentiality Information Agreement.

17. Integration and Existing Agreement. All of the Company's and Executive's respective rights and obligations under the original Agreement dated as of the Effective Date shall continue in effect and survive the amendments made herein with respect to all periods and events occurring through the date the Merger is consummated. This Agreement as amended and restated, together with the Confidential Information Agreement and Executive's equity award agreements, represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral, except as provided for in the preceding sentence. In the event of any conflict between this Agreement and the Confidential Information Agreement or Executive's equity award agreements, this Agreement shall prevail. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing that specifically references this Section and is signed by duly authorized representatives of the parties hereto. Notwithstanding the preceding sentence, both the Company and Executive agree to amend this Agreement with respect to the timing of payments if the Board determines that an amendment is necessary to prevent the imposition of additional tax liability under Section 409A of the Internal Revenue Code of 1986, as amended.

18. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

19. Survival. The Confidential Information Agreement, and the Company's and Executive's responsibilities under Sections 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 19 and 22 will survive the termination of this Agreement.

20. Headings. All captions and Section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

21. Tax Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable taxes.

22. Governing Law. This Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

23. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

24. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

* * * * *

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by a duly authorized officer, as of November 15, 2006.

COMPANY:

EXECUTIVE:

PowerLight LLC

By: SunPower Corporation, its sole member

By:	<u>/s/ Emmanuel T. Hernandez</u>	<u>/s/ Daniel Shugar</u>
Name:	Emmanuel T. Hernandez	Daniel Shugar
Its:	Chief Financial Officer	

SECOND AMENDMENT TO LEASE
(Expansion of Premises)

This Second Amendment to Lease (“**Amendment**”) is made and entered into as of the 18th day of December, 2007 by and between FPOC, LLC, a California limited liability company (“**Landlord**” or “**Lessor**”), and Sunpower Corporation, Systems, a Delaware corporation (“**Tenant**” or “**Lessee**”), successor-in-interest to PowerLight Corporation.

R E C I T A L S

A. Landlord and PowerLight Corporation (“**Powerlight**”) entered into that certain Standard Multi-Tenant Industrial Lease – Net dated as of December 15, 2006 (together with the Addendum thereto, the “**Original Lease**”) pursuant to which Tenant leases certain premises containing approximately 175,802 square feet (the “**Current Premises**”) in that certain commercial building known as Ford Point (the “**Building**”) and located at 1414 Harbour Way South, Richmond, California. The Current Premises consist of approximately 110,522 square feet of space (the “**Existing Premises**”) and approximately 65,280 square feet (the “**Expansion Premises**”). Landlord and Powerlight entered into that certain First Amendment to Lease dated as of May 24, 2007 (the “**First Amendment**”). The Original Lease as amended by the First Amendment is hereinafter referred to as the “**Lease**”. Tenant has assumed the obligations of Powerlight as “tenant” under the Lease.

B. Tenant desires to lease additional space in the Building.

C. Landlord and Tenant presently desire to amend the Lease to provide, among other things, for the expansion of the Current Premises, as more fully set forth below.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms.** All capitalized terms not defined herein shall have the same respective meanings as are given such terms in the Lease unless expressly provided otherwise in this Amendment.

2. **Confirmation of the Commencement Date for the Existing Premises.** (a) The parties hereto acknowledge that the Commencement Date for the portion of the Existing Premises which Tenant occupied as of December 17, 2007 (the “**December 17 Increment**”) shall be deemed to be December 17, 2007 (the “**December 17 Commencement Date**”). The Commencement Date for the remainder of the First Increment (the “**Remaining Increment**”) shall be the date on which the Remaining Increment is ready for occupancy as evidenced by a temporary certificate of occupancy or its equivalent from the City of Richmond (the “**Remaining Increment Commencement Date**”). Each of Landlord and Tenant hereby waives any claims against the other for delays in connection with the delivery of the First Increment. As used in the Lease, “Commencement Date” shall mean the December 17 Commencement Date with respect to the December 17 Increment and the Remaining Increment Commencement Date with respect to the Remaining Increment. The square footage of the December 17 Increment and the Remaining Increment shall be determined by Landlord’s architect promptly following the full execution of this Amendment by Landlord and Tenant. Notwithstanding the foregoing, Tenant acknowledges that Landlord has no obligation to perform the following work in the Existing Premises: (i) installation of glass doors, (ii) installation of special feature glass in the conference room, (iii) any furniture and Tenant-supplied fixtures and equipment, (iv) installation of non-stainless steel countertops, (v) AV and teledata, (vi) specialty interior paint, and (vii) roof access by stair with weatherproof observation enclosure allowing for safe assembly of 10 people minimum (item #2 under “Tenant Improvements” listed on Exhibit B-3 attached to the Lease).

(b) The parties acknowledge that the provisions of Paragraph 52(b) are hereby deleted from the Lease and shall be of no further force or effect.

3. **Additional Allowance.** The parties hereto acknowledge that Landlord provided Tenant with an Additional Allowance with respect to the Existing Premises pursuant to Paragraph 2.2 of Exhibit B to the Lease. The parties acknowledge that, notwithstanding the provisions of the second sentence of Paragraph 2.2 of Exhibit B to the Lease, Landlord shall have no obligation to finance the amount of the Additional Allowance and that therefore Tenant shall pay such amount to Landlord in immediately available funds within thirty (30) days of Landlord and Tenant’s good faith agreement regarding the actual amount of such Additional Allowance.

4. **Addition of 8,310 SF Increment.**

(a) The increment of space consisting of approximately 8,110 square feet of office space located on the 2nd floor of the Building and 200 square feet located on the first floor of the Building (collectively, the “**8,310 SF Increment**”) and labeled as such on the attached Exhibit A-3 shall become part of the Premises on the date hereof and shall be delivered to Tenant concurrently with the Existing Premises. The Term of the Lease with respect to the 8,310 SF Increment shall be co-terminous with the Term of the Lease for the Existing Premises. Subject to adjustment as provided in Paragraph 72 of the Lease, the Base Rent with respect to the 8,310 SF Increment shall commence upon the commencement date for the Second Increment and shall be as follows.

Period:	Monthly Base Rent:
Second Increment Commencement Date – 9/30/10	\$12,162.65
10/1/10 – 9/30/11	\$12,527.53
10/1/11 – 9/30/12	\$12,903.36
10/1/12 – 9/30/13	\$13,290.46
10/1/13 – 9/30/14	\$13,689.17
10/1/14 – 9/30/15	\$14,099.85
10/1/15 – 9/30/16	\$14,522.84
10/1/16 – 9/30/17	\$14,958.53
10/1/17 – 9/30/18	\$15,407.28

Concurrently with Tenant's execution of this Amendment, Tenant shall deliver to Landlord Base Rent in the amount of \$12,162.65 to be credited toward Base Rent due for the first full month following the 8,310 SF Commencement Date (as defined below). The schedule of rent herein shall be subject to adjustment as provided in the Lease for the Current Premises.

(b) Prior to delivering the 8,310 SF Increment to Tenant, Landlord shall design and construct the Base Building Improvements therein as described in Exhibits B, B-1 and B-2 of the Lease and shall improve the 8,310 SF Increment pursuant to the Approved 8,310 SF Working Drawings, as defined below (the "**8,310 SF Improvements**"), all in accordance with the Work Letter attached to the Lease. In performing such work, Landlord shall pay for all Standard Base Building Costs as described in Exhibit B-1 of the Lease with respect to the 8,310 SF Increment. Tenant shall pay for all modifications and upgrades to the Base Building Standards within the 8,310 SF Increment with a credit for any cost saved by Landlord from the amounts Landlord would have incurred for Standard Base Building Costs, all as more specifically described in the Work Letter.

(c) As used herein, "**Approved 8,310 SF Working Drawings**" shall mean the final 8,310 SF Working Drawings approved by Landlord and Tenant. The Approved 8,310 SF Working Drawings consist of the Approved 8,110 SF Working Drawings attached hereto as Exhibit A-3-1 and the Approved 200 SF Working Drawings attached hereto as Exhibit A-3-2. Tenant shall make no changes or modifications to the Approved 8,310 SF Working Drawings without the prior written consent of Landlord, which shall not be unreasonably withheld. The 8,310 SF Improvements shall be performed in compliance with all Applicable Requirements. Landlord shall notify Tenant upon Substantial Completion of the 8,310 SF Improvements.

(d) The commencement date of the Lease for the 8,310 SF Increment shall be the Commencement Date for the Second Increment regardless of the date Tenant commences occupancy and use of the 8,310 SF Increment for the conduct of its business (the "**8,310 SF Commencement Date**"). Tenant's use and occupancy of the 8,310 SF Increment shall not trigger the Commencement Date for the Second Increment.

(e) To reflect the addition of the 8,310 SF Increment to the Lease, effective as of the 8,310 SF Commencement Date, Lessee's Share shall be 1.61% with respect to the 8,310 SF Increment. Tenant's initial monthly payment for the estimated Common Area Operating Expenses with respect to the 8,310 SF Increment is \$1,246.50. Concurrently with Tenant's execution of this Amendment, Tenant shall pay to Landlord the amount of \$1,246.50 representing the monthly installment of the estimated Common Area Operating Expenses due with respect to the 8,310 SF Increment for the first month of the Term of the Lease with respect to the 8,310 SF Increment.

(f) To reflect the addition of the 8,310 SF Increment to the Lease, effective as of the Commencement Date, Tenant shall be entitled to an additional thirty-two (32) unreserved parking spaces. All parking shall be free of charge throughout the initial Lease Term.

5. **Addition of Additional Office Space.** Subject to Tenant's Additional Termination Right set forth in Section 8 below, the following space shall be added to the Current Premises: that certain space consisting of two increments: (i) "**Phase 1**" consisting of approximately 17,629 square feet, and (ii) "**Phase 2**" consisting of approximately 23,460 square feet, collectively referred to herein as the "**Additional Office Space**" and labeled as such on the attached Exhibit A-4. Landlord and Tenant agree that for purposes of the Lease and this Amendment, the Additional Office Space shall be deemed to contain approximately 41,089 square feet of space, subject to the provisions of Paragraph 72 of the Lease. Upon delivery of the applicable Phase of the Additional Office Space, the Lease shall be modified to provide that the "Premises" consists of approximately 247,576 square feet (the combined 8,310 SF Increment, the Current Premises, Additional Office Space and the R&D Space [as defined below] shall hereinafter be referred to as the "**Premises**"). No later than January 15, 2008, Tenant may elect by written notice to Landlord to perform both the Base Building Improvements and any additional improvements it desires in the Additional Office Space (the "**Tenant-Controlled Notice**"). If Tenant timely elects to perform such work by delivery of the Tenant-Controlled Notice to Landlord, then the provisions of Section 5(B) shall govern the addition of the Additional Office Space to the Premises. If Tenant fails to timely notify Landlord that it has elected to perform such work, then Landlord shall perform such work and the provisions of Section 5(A) shall govern the addition of the Additional Office Space to the Premises.

A. Landlord-Controlled Build-Out

(a) The Additional Office Space shall be delivered to Tenant upon Substantial Completion of the Additional Space Improvements (as defined below).

(b) Prior to delivering the Additional Office Space to Tenant, Landlord shall design and construct the Base Building Improvements therein as described in Exhibits B, B-1 and B-2 of the Lease and shall improve the Additional Office Space pursuant to the Approved Working Drawings as defined below (the "**Additional Space Improvements**"), all in accordance with the Work Letter attached to the Lease. In performing such work, Landlord shall pay for all Standard Base Building Costs as described in Exhibit B-1 of the Lease with respect to the Additional Office Space. In addition, Landlord shall, at Landlord's sole cost and expense, perform the following work in the Additional Office Space: (i) construct mezzanine 2 bathroom similar to the one in mezzanine 4, (ii) install rough plumbing for kitchen to the west side of the mezzanine 2 wall, and (iii) construct all necessary exiting from the Additional Office Space. Tenant shall pay for all modifications and upgrades to the Base Building Standards within the Additional Office Space with a credit for any cost saved by Landlord from the amounts Landlord would have incurred for Standard Base Building Costs, all as more specifically described in the Work Letter.

(c) As of the date of this Amendment, Landlord and Tenant have not developed or agreed upon the space plans for the Additional Office Space ("**Preliminary Space Plans**"). The parties agree to work in good faith to develop and agree upon such Preliminary Space Plans.

(d) Landlord shall construct the Additional Space Improvements pursuant to the provisions of the Work Letter attached to the Lease as **Exhibit B** except that the schedule for development of the construction drawings shall be as follows: If Tenant has not elected to perform the Additional Space Improvements, then within thirty (30) days following the later to occur of: (x) the date on which the Preliminary Space Plans have been approved by Landlord and Tenant, and (y) the earlier to occur of the date on which Landlord receives the Tenant-Controlled Notice (in which Tenant indicates that Tenant has elected *not* to perform the Additional Space Improvements) and January 16, 2008, Landlord shall cause to be prepared working drawings (“**Additional Space Working Drawings**”) for the Additional Space Improvements pursuant to the Preliminary Space Plans and shall deliver the same to Tenant for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned so long as the Additional Space Working Drawings are consistent with the approved Preliminary Space Plans). The Additional Space Working Drawings shall include basic programming, including architectural and MEP, all clearly documented. Tenant shall notify Landlord whether it approves of the submitted Additional Space Working Drawings within ten (10) business days after Landlord’s submission thereof. If Tenant disapproves of such Additional Space Working Drawings, then Tenant shall notify Landlord thereof specifying in reasonable detail the reasons for such disapproval, in which case Landlord shall, within five (5) business days after such notice, revise such Additional Space Working Drawings in accordance with Tenant’s reasonable objections and submit the revised Additional Space Working Drawings to Tenant for its review and approval. Tenant shall notify Landlord in writing whether it approves of the resubmitted Additional Space Working Drawings within five (5) business days after its receipt thereof. This process shall be repeated until the Additional Space Working Drawings have been finally approved by Landlord and Tenant.

(e) As used herein, “**Approved Additional Space Working Drawings**” shall mean the final Additional Space Working Drawings approved by Landlord and Tenant, as amended from time to time by any approved changes thereto. Landlord shall provide a final copy of the Approved Additional Space Working Drawings to Tenant no later than the date which is twenty (20) days following the approval of the Approved Additional Space Working Drawings by Landlord and Tenant. Neither party shall make any changes or modifications to the Approved Additional Space Working Drawings without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned or delayed. Landlord shall hire an established and qualified general contractor which has been approved by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. The contractor shall put subcontractors (three each for each of the major trades) through a competitive bid process reviewed by Tenant’s project manager, and such hiring process shall include a determination as to the subcontractor’s ability to meet Tenant’s reasonable timing and budget requirements. The Additional Space Improvements shall be performed in compliance with all Applicable Requirements. Promptly following finalization of the Approved Additional Space Working Drawings, Landlord shall commence and diligently prosecute to completion the Additional Space Improvements. Landlord shall deliver to Tenant a construction schedule for the Additional Space Improvements and shall update such schedule not less than once a week. Landlord shall use commercially reasonable efforts to notify Tenant at least thirty (30) days prior to the date on which Landlord estimates that Substantial Completion of the Additional Space Improvements will occur and Landlord shall notify Tenant promptly following the actual date of the Substantial Completion of the Additional Space Improvements.

(f) The target commencement date (“**Target Commencement Date**”) of the Lease for Phase 1 of the Additional Office Space shall be the earlier to occur of: (i) the date which is five (5) months following the date on which the Approved Additional Space Working Drawings were approved by Landlord and Tenant, or (ii) January 1, 2009, provided that in the event the Additional Space Working Drawings were approved after June 30, 2008 for reasons other than Tenant Delay, the January 1, 2009 date shall be extended one day for each day after June 30, 2008 through the date immediately preceding the date of such approval of the Additional Space Working Drawings. Except as provided below, the commencement date for Phase 1 of the Additional Office Space shall be the earlier of: (x) the date of Substantial Completion of the Additional Space Improvements in the Additional Office Space in accordance with the Work Letter, but in no event prior to the Target Commencement Date, or (y) the date on which Tenant begins operating its business in any portion of Phase 1 of the Additional Office Space (the “**Additional Space Commencement Date**”). Notwithstanding the foregoing, if (AA) Substantial Completion of the Lessor’s Work in Phase 1 of the Additional Office Space has not occurred by January 1, 2009 (the “**Outside Additional Delivery Date**”) as extended by any (i) Tenant Delay or (ii) events of Force Majeure, then commencing on the day immediately following the Outside Additional Delivery Date [as such date may be extended as provided herein], Tenant shall be entitled to an abatement of Base Rent on a per diem basis for each day of such delay. The Outside Additional Delivery Date shall be delayed one day for each day of delay in the occurrence of the approval of the Additional Space Working Drawings on and after June 30, 2008. The term of the Lease with respect to Phase 1 of the Additional Office Space shall commence on the Additional Space Commencement Date and shall be co-terminous with the Term of the Lease for the Existing Premises. The commencement date of the Lease for Phase 2 of the Additional Office Space shall be the earlier to occur of: (A) January 1, 2010, provided that Landlord has Substantially Completed the Additional Space Improvements therein in compliance with the Work Letter and this Amendment, and (B) the date on which Tenant begins operating its business in Phase 2 of the Additional Office Space (the “**Phase 2 Commencement Date**”). The term of the Lease with respect to Phase 2 of the Additional Office Space shall commence on the Phase 2 Commencement Date and shall be co-terminous with the Term of the Lease for the Existing Premises.

(g) Tenant shall be permitted early access to each Phase of the Additional Office Space commencing on the date which Landlord estimates to be thirty (30) days prior to Substantial Completion of the Additional Space Improvements in the subject Phase of the Additional Office Space (each, an “**Additional Space Access Date**”), subject to the terms and conditions set forth herein. Subject to and in accordance with all of the terms and conditions of the Lease, as amended hereby, except for Tenant’s obligation to pay Rent with respect to the Additional Office Space (which obligation shall commence as provided in Section 6 below), Tenant shall have access to the subject Phase of the Additional Office Space on the subject Additional Space Access Date. The period of early access shall commence on the subject Additional Space Access Date and continue through the date immediately preceding the Additional Space Commencement Date or the Phase 2 Commencement Date, as the case may be (each, an “**Additional Space Access Period**”). During the Additional Space Access Period, Tenant may enter the subject Phase of the Additional Office Space for the purpose of installing Tenant’s furniture, fixtures and equipment, provided that Tenant shall be solely responsible for any loss or damage to its equipment and fixtures from any cause whatsoever other than to the extent arising from the negligence or willful misconduct of Landlord, its contractor or any of their agents or representatives. Such early access to the Additional Office Space and the performance of such installation activity shall be permitted only to the extent that Landlord determines that such early access and the performance of such installation activity will not delay the Substantial Completion of the Additional Space Improvements. Tenant shall (i) provide certificates of insurance evidencing the existence and amounts of liability insurance carried by Tenant and its agents and contractors, reasonably satisfactory to Landlord, prior to such early entry, and (ii) comply with all Applicable Requirements to such early entry work in the Additional Office Space. Landlord and Tenant shall cooperate in the scheduling of Tenant’s early access to each Phase of the Additional Office Space and of the performance of the installation activities in an attempt to maximize the benefits to Tenant of this Section 3(g) without interfering with the Substantial Completion of the Additional Space Improvements. Notwithstanding the foregoing, if such early access or installation delays or interferes with Landlord’s performance of the Additional Space Improvements, Landlord shall have the right to deny Tenant further access to the subject Phase of the Additional Office Space until the Additional Space Commencement Date or the Phase 2 Commencement Date, as the case may be.

B. Tenant-Controlled Build-Out

(a) Tenant shall be permitted early access to the Additional Office Space commencing on the first business day following Tenant's delivery of the Tenant-Controlled Notice to Landlord (the "**Additional Space Access Date**"), subject to the terms and conditions set forth herein. Subject to and in accordance with all of the terms and conditions of the Lease, as amended hereby, except for Tenant's obligation to pay Rent with respect to the Additional Office Space (which obligation shall commence as provided in Section 6(a) below), Tenant shall have access to the Additional Office Space on the Additional Space Access Date. The period of early access shall commence on the Additional Space Access Date and continue through the date immediately preceding the Additional Space Commencement Date or the Phase 2 Commencement Date, as the case may be (each, an "**Additional Space Access Period**"). During the Additional Space Access Period, Tenant may enter the Additional Office Space for the purpose of constructing the Additional Space Improvements and installing Tenant's furniture, fixtures and equipment, provided that Tenant shall be solely responsible for any loss or damage to its equipment and fixtures from any cause whatsoever. Tenant shall (i) provide certificates of insurance evidencing the existence and amounts of liability insurance carried by Tenant and its agents and contractors, reasonably satisfactory to Landlord, prior to such early entry, and (ii) comply with all Applicable Requirements to such early entry work in the Additional Office Space.

(b) Tenant shall design and construct the Base Building Improvements in the Additional Office Space as described in Exhibits B, B-1 and B-2 of the Lease and shall improve the Additional Office Space pursuant to the Approved Additional Space Working Drawings as defined below (the "**Additional Space Improvements**"), all in accordance with the Work Letter attached to the Lease and this Amendment. In performing such work, Landlord shall pay Tenant an allowance of \$40.00 per square foot of the Additional Office Space (the "**Additional Office Space Base Allowance**") for all Standard Base Building Costs as described in Exhibit B-1 of the Lease with respect to the Additional Office Space. Notwithstanding the foregoing, Landlord shall, at Landlord's sole cost and expense, perform the following work in the Additional Office Space: (i) construct mezzanine 2 bathroom similar to the one in mezzanine 4, (ii) install rough plumbing for kitchen to the west side of the mezzanine 2 wall, and (iii) construct all necessary exiting from the Additional Office Space.

(c) As of the date of this Amendment, Landlord and Tenant have not developed or agreed upon the space plans for the Additional Office Space (“**Preliminary Space Plans**”). The parties agree to work in good faith to develop and agree upon such Preliminary Space Plans. Tenant shall construct the Additional Space Improvements pursuant to the provisions of the Work Letter attached to the Lease as **Exhibit B** except that the schedule for development of the construction drawings shall be as follows: Within thirty (30) days following the later to occur of Tenant’s delivery to Landlord of the Tenant-Controlled Notice and the approval of the Preliminary Space Plans by Landlord and Tenant, Tenant shall cause to be prepared working drawings (“**Additional Space Working Drawings**”) for the Additional Space Improvements pursuant to the Preliminary Space Plans and deliver the same to Landlord for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned). The Additional Space Working Drawings shall include basic programming, including architectural and MEP, all clearly documented. Landlord shall notify Tenant whether it approves of the submitted Additional Space Working Drawings within ten (10) business days after Tenant’s submission thereof. If Landlord disapproves of such Additional Space Working Drawings, then Landlord shall notify Tenant thereof specifying in reasonable detail the reasons for such disapproval, in which case Tenant shall, within five (5) business days after such notice, revise such Additional Space Working Drawings in accordance with Landlord’s reasonable objections and submit the revised Additional Space Working Drawings to Landlord for its review and approval. Landlord shall notify Tenant in writing whether it approves of the resubmitted Additional Space Working Drawings within five (5) business days after its receipt thereof. This process shall be repeated until the Additional Space Working Drawings have been finally approved by Landlord and Tenant. If, despite Tenant’s diligent efforts (but excluding any delays solely due to Landlord Delay, as defined below), the Additional Space Working Drawings are not approved by Landlord and Tenant on or before October 1, 2008, then Landlord may elect to send a written notice to Tenant stating that Tenant’s failure to perform all necessary work in order to finalize the Additional Space Working Drawings within thirty (30) days of receipt of such notice (the “**Plan Cure Period**”) shall entitle Landlord upon the lapse of such Plan Cure Period to terminate the Lease solely with respect to this Section 5 and Section 6 below. If, despite the good faith efforts of Landlord and Tenant, the Additional Space Working Drawings are not approved by both parties during the Plan Cure Period, then Landlord may elect by delivery of written notice to Tenant (“**Landlord’s Termination Notice**”) to terminate the Lease solely with respect to this Section 5 and Section 6 below and Landlord shall have no further obligation to make the Additional Office Space available for occupancy or lease by Tenant. Within ten (10) days of Tenant’s receipt of Landlord’s Termination Notice, Tenant shall remove any and all of Tenant’s personal property located in the Additional Office Space, if any, and shall pay Landlord a termination fee in the amount of \$100,000.00.

(d) As used herein, “**Approved Additional Space Working Drawings**” shall mean the final Additional Space Working Drawings approved by Landlord and Tenant, as amended from time to time by any approved changes thereto. Tenant shall provide a final copy of the Approved Additional Space Working Drawings to Landlord no later than the date which is twenty (20) days following the approval of the Approved Additional Space Working Drawings by Landlord and Tenant. Tenant shall make no changes or modifications to the Approved Additional Space Working Drawings without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall hire an established general contractor and such general contractor shall be subject to Landlord’s prior approval, such approval not to be unreasonably withheld, conditioned or delayed. The general contractor shall put subcontractors through a competitive bid process reviewed by Landlord’s project manager and such hiring process shall include the general contractor’s ability to meet Tenant’s reasonable timing and budget requirements. The Additional Space Improvements shall be performed in compliance with all Applicable Requirements. Promptly following finalization of the Approved Additional Space Working Drawings, Tenant shall commence and diligently prosecute to completion the Additional Space Improvements. Tenant shall notify Landlord upon Substantial Completion of the Additional Space Improvements.

(f) The commencement date of the Lease for Phase 1 of the Additional Office Space shall be the earlier to occur of: (i) the date which is five (5) months following the approval of the Approved Additional Space Working Drawings by Landlord and Tenant, as such period may be extended by any Landlord Delay, as defined below, and (ii) the date on which Tenant begins operating its business in any portion of Phase 1 of the Additional Office Space (the “**Additional Space Commencement Date**”). The term of the Lease with respect to Phase 1 of the Additional Office Space shall commence on the Additional Space Commencement Date and shall be co-terminous with the Term of the Lease for the Existing Premises. The commencement date of the Lease for Phase 2 of the Additional Office Space shall be the earlier to occur of: (x) January 1, 2010, and (y) the date on which Tenant begins operating its business in Phase 2 of the Additional Office Space (the “**Phase 2 Commencement Date**”). The term of the Lease with respect to Phase 2 of the Additional Office Space shall commence on the Phase 2 Commencement Date and shall be co-terminous with the Term of the Lease for the Existing Premises. For purposes of this Paragraph, the term “**Landlord Delay**” shall any delay in Tenant’s completion of the Additional Space Improvements, including the design and construction of the Additional Space Base Work, that occurs directly (i) because Landlord fails timely to furnish any information or to deliver, review, comment upon or approve any plans, drawings and documentation as provided herein (whether preliminary, interim revisions or final), pricing estimates, construction bids and the like, (ii) because of any changes requested by Landlord to any approved plans and drawings following the approval thereof by the parties, (iii) because Landlord fails to attend any previously scheduled meeting with Tenant, architect, any design professional or any contractor, or their respective employees or representatives as may be required or scheduled hereunder or as otherwise necessary in connection with the preparation or completion of any construction documents and in connection with Tenant’s design and construction of the Additional Space Improvements, or (iv) because Landlord otherwise knowingly delays the completion of the Additional Space Improvements. Tenant shall promptly notify Landlord of any acts, omissions or conditions which Tenant alleges will cause a Landlord Delay.

(g) The Additional Office Space Base Allowance shall be paid to Tenant on the date which is thirty (30) days following Tenant’s compliance with each of the following: (i) Tenant shall have completed the Base Building Improvements in the Additional Office Space (“**Additional Space Base Work**”) in accordance with the Approved Additional Space Working Drawings, (ii) Tenant shall furnish Landlord with copies of invoices or other evidence reasonably satisfactory to Landlord to confirm that Tenant spent at least as much as the Additional Office Space Base Allowance for the Additional Space Base Work, (iii) Tenant shall provide Landlord with an unconditional lien waiver in the statutory form from its general contractor with respect to the Additional Space Base Work, (iv) Tenant shall provide Landlord with a copy of its permits for the construction of the Additional Space Base Work, and (v) Tenant shall provide a certificate from Tenant’s architect that the Additional Space Base Work was completed in material and substantial compliance with such permits and the Approved Additional Space Working Drawings. All bills for the Additional Space Base Work must be submitted on or before December 31, 2010, after which time, any amounts not funded shall be forfeited, and Landlord will make no further payments related to the Additional Space Base Work after such date. Landlord shall have no obligation to fund any portion of the Additional Office Space Base Allowance at any time that Tenant is in Default under the Lease, as amended hereby.

6. **Rent for Additional Office Space.** (a) To reflect the addition of the Additional Office Space to the Lease and notwithstanding anything in the Lease to the contrary, effective as of the Additional Space Commencement Date for each phase, and continuing thereafter through the remainder of the Term, Tenant shall pay to Landlord Base Rent in advance on or before the first day of each calendar month, for the Additional Office Space, as follows:

	Months:	Base Rent Per Month PSF:	Base Rent Per Month:
Phase 1 – 17,629 sf:	1 – 12	\$ 1.57	\$ 27,589.39
Phase 1 + Phase 2	13 – 24	\$ 1.61	\$ 66,153.29
	25 – 36	\$ 1.66	\$ 68,207.74
	37 – 48	\$ 1.71	\$ 70,262.19
	49 – 60	\$ 1.76	\$ 72,316.64
	61 – 72	\$ 1.81	\$ 74,371.09
	73 – 84	\$ 1.87	\$ 76,836.43
	85 – 96	\$ 1.92	\$ 78,890.88
	97 – 108	\$ 1.98	\$ 81,356.22
	109 – 9/30/2018	\$ 2.04	\$ 83,821.56

The schedule of rent herein shall be subject to adjustment as provided in the Lease for the Current Premises.

(b) To reflect the addition of the Additional Office Space to the Lease, effective as of the Additional Space Commencement Date, Lessee’s Share shall be 3.41% with respect to Phase 1 of the Additional Office Space. Commencing on the Phase 2 Commencement Date, Lessee’s Share with respect to the entirety of the Additional Office Space shall be 7.95%.

(c) To reflect the addition of Phase 1 of the Additional Office Space to the Lease, effective as of the Additional Space Commencement Date, Tenant shall be entitled to an additional seventy (70) unreserved parking spaces. Commencing on the Phase 2 Commencement Date, to reflect the addition of Phase 2 of the Additional Office Space to the Lease, Tenant shall be entitled to an additional ninety-three (93) unreserved parking spaces.

7. **Addition of R&D Space.** (a) The increment of space consisting of approximately 22,375 square feet of yard area adjacent to the Current Premises referred to herein as the “**R&D Space**” and labeled as such on the attached Exhibit A-5 were added to the Current Premises and were delivered to Tenant on or about November 1, 2007. Within ninety (90) days following the full execution of this Amendment, Tenant shall enclose the R&D Space with chain link fence (the height of such fence shall be determined by Landlord exercising its reasonable discretion) and provide for an entrance in a mutually acceptable location so that the R&D Space is secured for Tenant’s exclusive use. The lease of the R&D Space shall be on a strictly “AS IS” basis and Tenant shall be responsible, at its sole cost and expense, for complying with any and all Applicable Requirements in connection with its use of the R&D Space. The addition of the R&D Space to the Premises shall not affect Tenant’s Share of Operating Expenses. The Term of the Lease with respect to the R&D Space commenced on November 1, 2007 and shall be co-terminous with the Term of the Lease with respect to the Existing Premises, subject to Section 7(b) below. The Base Rent for the R&D Space shall commence at such time as Landlord has removed its personal property from the R&D Space (The “**R&D Commencement Date**”) and shall be as follows.

Period:	Base Rent Per Month PSF:	Monthly Base Rent:
R&D Commencement Date – 10/31/08	\$ 0.15	\$ 3,356.25
11/1/08 – 10/31/09	\$ 0.155	\$ 3,456.94
11/1/09 – 10/31/10	\$ 0.159	\$ 3,560.65
11/1/10 – 10/31/11	\$ 0.164	\$ 3,667.46
11/1/11 – 10/31/12	\$ 0.169	\$ 3,777.49
11/1/12 – 10/31/13	\$ 0.174	\$ 3,890.81
11/1/13 – 10/31/14	\$ 0.179	\$ 4,007.54
11/1/14 – 10/31/15	\$ 0.184	\$ 4,127.76
11/1/15 – 10/31/16	\$ 0.184	\$ 4,251.60
11/1/16 – 10/31/17	\$ 0.190	\$ 4,379.14
11/1/17 – 10/31/18	\$ 0.196	\$ 4,385.50

The R&D Commencement Date is estimated to occur on or about December 10, 2007.

(b) Tenant shall have the right to terminate the Lease solely with respect to the R&D Space (the “**R&D Termination Right**”) by delivering to Landlord not less than six (6) months’ advance written notice (the “**R&D Termination Notice**”) of the exercise of such R&D Termination Right. As used herein, the “**Early R&D Termination Date**” shall mean the date which is six (6) months following Landlord’s receipt of the R&D Termination Notice. Prior to the Early R&D Termination Date, Tenant shall, at Tenant’s sole cost and expense, restore the R&D Space to the same condition as the remainder of the parking lot as to grading, drainage, asphalt and striping (the “**R&D Restoration Work**”). If Tenant delivers a valid R&D Termination Notice, timely performs the R&D Restoration Work and surrenders the R&D Space to Landlord free of all Tenant’s personal property, then the Lease solely with respect to the R&D Space shall terminate at 11:59 p.m. on the Early R&D Termination Date. If Tenant fails to perform the R&D Restoration Work, then Landlord shall perform the same and Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord in connection therewith within thirty (30) days of receipt of documented invoices for such Work.

8. **Termination Right.** (a) Prior to Tenant's occupancy of any portion of the Additional Office Space, Tenant shall have a right to terminate the Lease solely with respect to the Additional Office Space (the "**Additional Termination Right**") by delivering to Landlord written notice (the "**Additional Termination Notice**") of the exercise of such Additional Termination Right. If the Additional Termination Notice is delivered to Landlord on or before May 1, 2008 and prior to Tenant commencing any construction in the Additional Office Space, then Tenant shall pay to Landlord the amount of \$100,000.00. If the Additional Termination Notice is delivered to Landlord after May 1, 2008 and prior to Tenant's occupancy of any portion of the Additional Office Space, then concurrently with delivery of the Additional Termination Notice to Landlord, Tenant shall pay to Landlord a "**Termination Payment**" equal to the sum of (A) the unamortized portions of the Standard Base Building Costs and any Additional Allowance paid by Landlord in connection with the Additional Office Space, plus (B) the unamortized portion of leasing commissions, and legal fees paid by Landlord on account of the Lease with respect to the Additional Office Space, plus (C) an amount equal to six (6) months Base Rent with respect to the entirety of the Additional Office Space in the amount of \$396,919.74 (the "**Termination Rental Sum**"). The Termination Rental Sum shall be paid concurrently with delivery of the Additional Termination Notice to Landlord and the remaining portions of the Termination Payment shall be made within thirty (30) days following such date as Landlord provides to Tenant written verification of such costs, fees and commissions. As used herein, the "**Additional Early Termination Date**" shall mean the date of Landlord's receipt of the Additional Termination Notice. The amortization calculation shall be computed as of the last day of the period covered by the Termination Rental Sum. If Tenant delivers a valid Additional Termination Notice together with the amount of \$100,000.00 or the Termination Payment, as the case may be, then the Lease solely with respect to the Additional Office Space shall terminate at 11:59 p.m. on the Additional Early Termination Date.

(b) Tenant's rights under this Section 8 shall terminate: (1) on and after the date on which Tenant takes occupancy of any portion of the Additional Office Space, (2) if Tenant assigns any of its interest in the Lease, or sublets any portion of the Premises other than to a Permitted Transferee, or (3) if Tenant fails to timely exercise the Additional Termination Right under this Section 8, time being of the essence with respect to Tenant's exercise thereof. Tenant may not exercise its rights under this Section 8 if a Default exists as of the date of delivery of the Additional Termination Notice or as of the Additional Early Termination Date.

9. **Expansion Commencement Date.** Notwithstanding the provisions of Section 3(d) of the First Amendment, the Expansion Commencement Date shall be the date which is three (3) months prior to the earlier to occur of: (i) the date on which Tenant begins to conduct its business operations in any portion of the Expansion Premises and (ii) the date on which the Expansion Premises Improvements have been Substantially Completed, subject to any Tenant Delay.

10. **Modification of Roof Rights.** As of the date hereof, the parties hereto acknowledge that the rights of Tenant with respect to the placement of PV Equipment on the roof of the Building pursuant to Paragraph 73 of the Lease have been reduced in scope such that rather than the entire roof, Tenant's rights are limited to the roof located over the 2 bays in the southeast corner of the Building above Tenant's research and development area.

11. **Security Deposit.** Notwithstanding anything in the Lease to the contrary, the addition of the 8,310 SF Increment, the Additional Office Space and the R&D Space shall not increase the Security Deposit or the amount of the Letter of Credit required under the Lease. Landlord acknowledges that Tenant is under no obligation to increase the amount of the Letter of Credit pursuant to the terms of Paragraph 56(d) of the Lease.

12. **Real Estate Brokers.** Tenant and Landlord warrant that they have had no dealings with any broker or agent in connection with this Amendment, other than BT Commercial (Landlord's broker) and CM Realty (Tenant's broker). Landlord shall pay a commission to Landlord's broker pursuant to a separate written agreement and shall pay Tenant's broker pursuant to the existing separate written agreement between Landlord and Tenant's broker. Landlord covenants to pay, hold harmless and indemnify Tenant from and against any and all cost, expense or liability for any compensation, commissions or charges claimed by any other broker or agent utilized by Landlord with respect to this Amendment or the negotiation hereof. Tenant covenants to pay, hold harmless and indemnify Landlord from and against any and all cost, expense or liability for any compensation, commissions or charges claimed by any other broker or agent utilized by Tenant with respect to this Amendment or the negotiation hereof.

13. **Authority.** Tenant and each person executing this Amendment on behalf of Tenant hereby covenants and warrants that (a) Tenant is duly organized and validly existing under the laws of the States of California and Delaware, (b) Tenant has full power and authority to enter into this Amendment and to perform all Tenant's obligations under the Lease, as amended by this Amendment, and (c) each person (and all of the persons if more than one signs) signing this Amendment on behalf of Tenant is duly and validly authorized to do so.

14. **No Offer.** Submission of this instrument for examination and signature by Tenant does not constitute an offer to lease or a reservation of or option for lease, and this instrument is not effective as a lease amendment or otherwise until executed and delivered by both Landlord and Tenant.

15. **Exhibits.** Exhibit A-3, Exhibit A-3-1, Exhibit A-3-2, Exhibit A-4 and, Exhibit A-5 attached hereto shall be incorporated into the Lease, as amended hereby.

16. **Lease in Full Force and Effect.** This Amendment contains the entire understanding between the parties with respect to the matters contained herein. Tenant hereby affirms to its knowledge that on the date hereof no breach or default by either party has occurred and that the Lease, and all of its terms, conditions, covenants, agreements and provisions, except as hereby modified, are in full force and effect with no defenses or offsets thereto. No representations, warranties, covenants or agreements have been made concerning or affecting the subject matter of this Amendment, except as are contained herein and in the Lease. This Amendment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change or modification or discharge is sought.

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LANDLORD:	TENANT:
FPOC, LLC, a California limited liability company	Sunpower Corporation, Systems, a Delaware corporation
BY: FP Management, LLC, a California limited liability company, its Manager By: <u>/s/ J.R. ORTON, III</u> J.R. Orton, III, Manager	By: <u>/S/ TOM DINWOODIE</u> Name: Tom Dinwoodie Its: CEO, Systems By: <u>/S/ DAN SHUGAR</u> Name: Dan Shugar Its: President, Systems

Exhibit A-3

Outline of 8,310 SF Increment

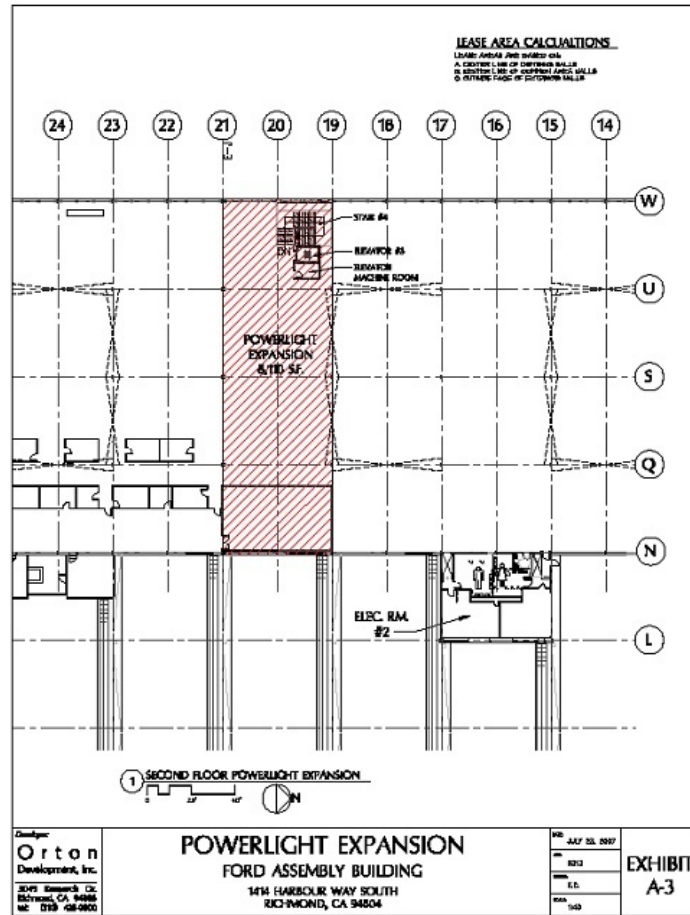


Exhibit A-3-1

Outline of Approved 8,110 SF Working Drawings

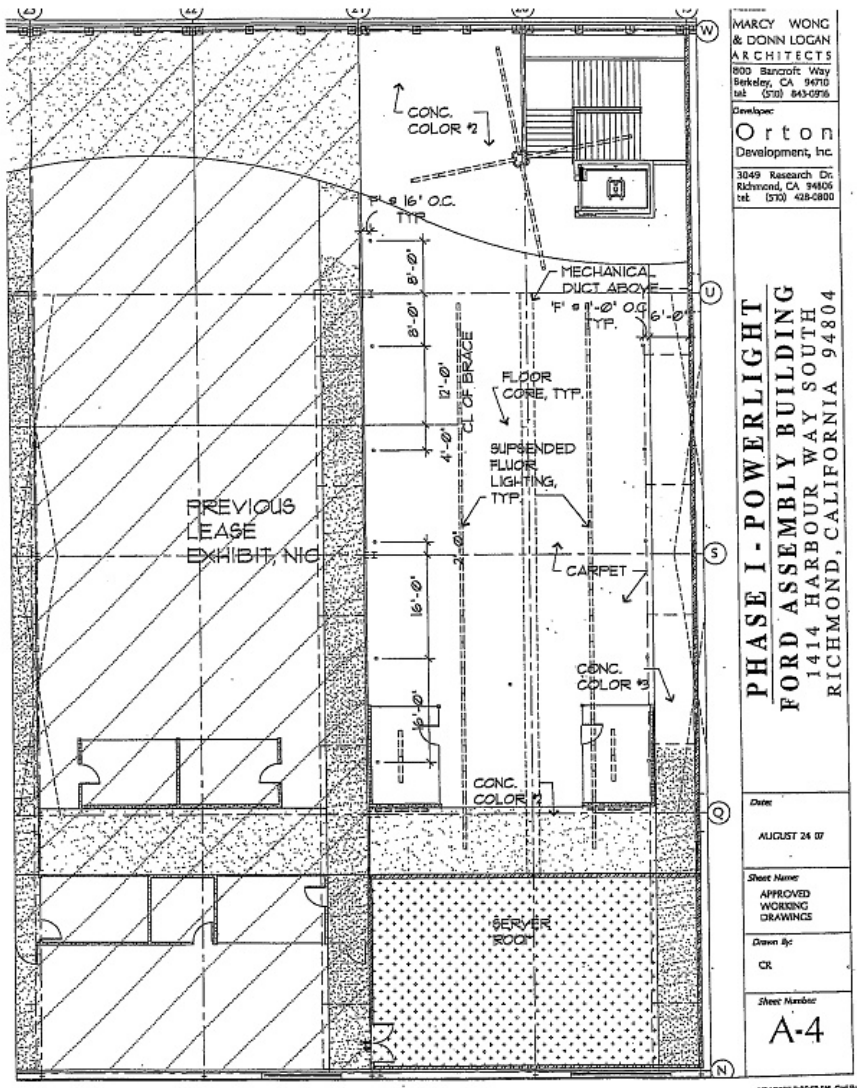


Exhibit A-3-2

Outline of Approved 200 SF Working Drawings

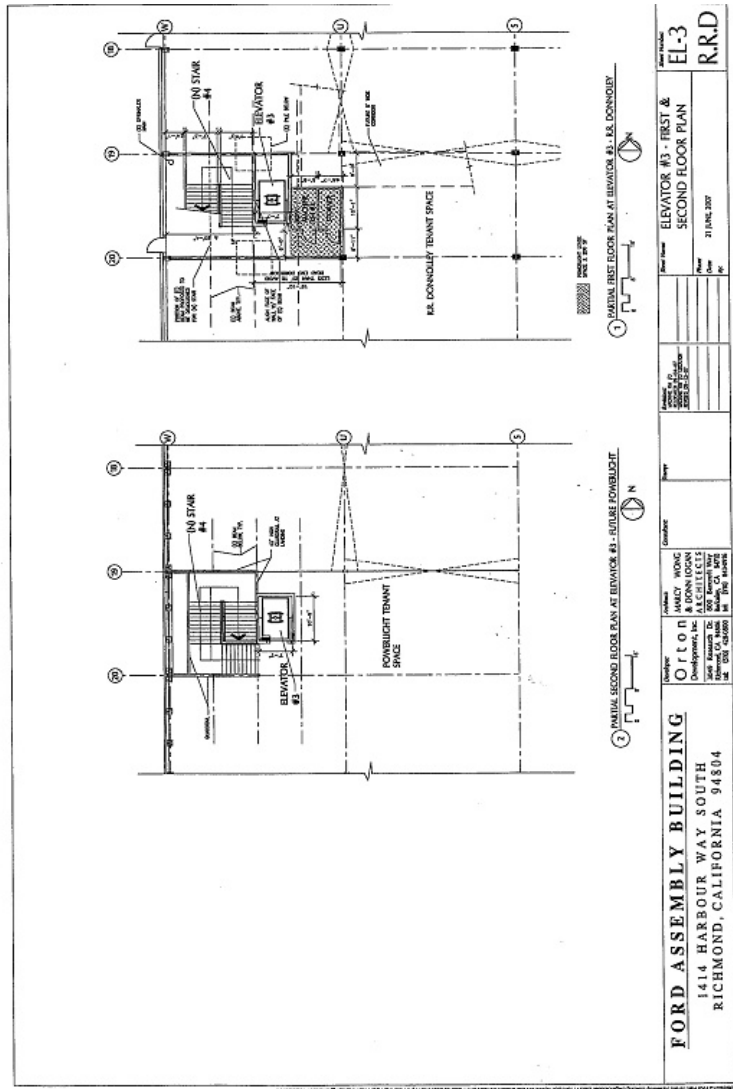


Exhibit A-4

Outline of Additional Office Space

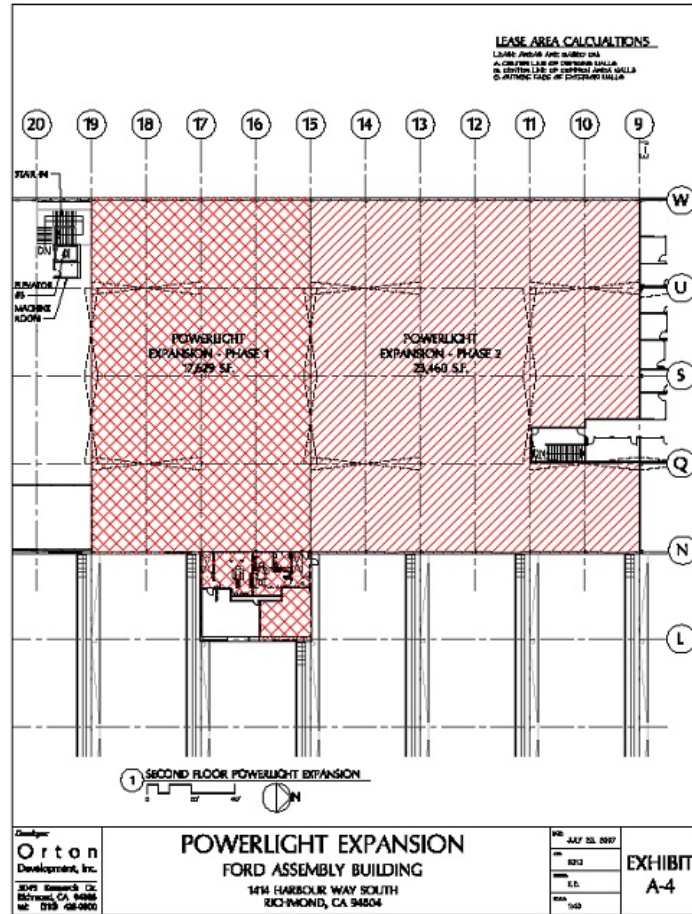
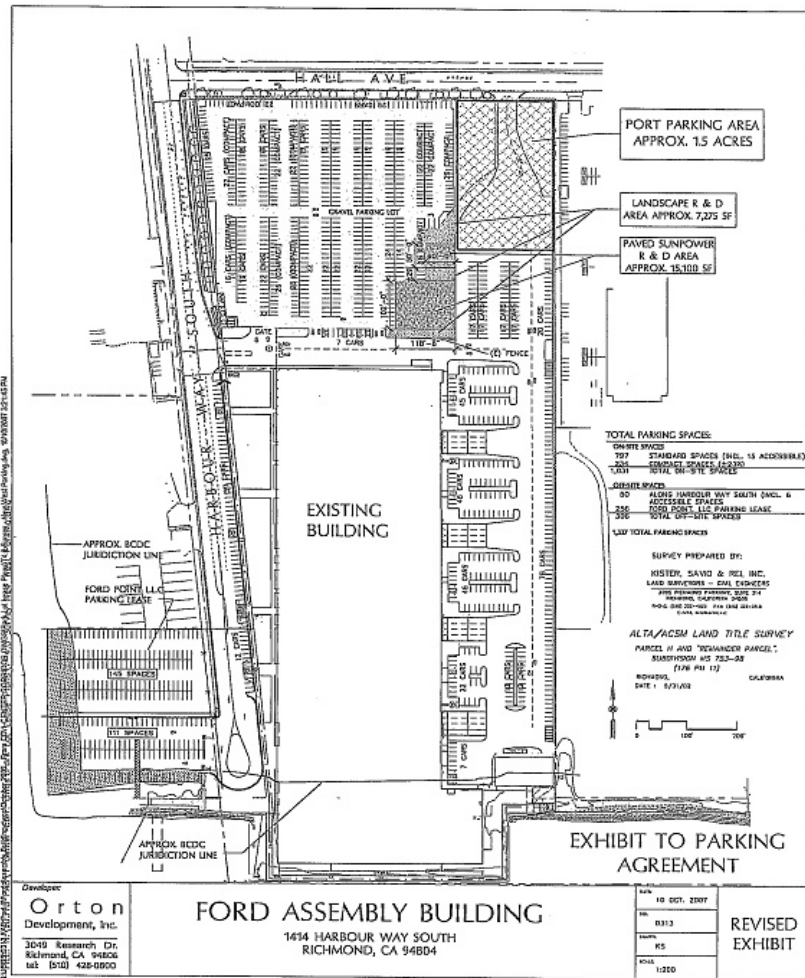


Exhibit A-5

Outline of R&D Space



PV Risk Reduction Agreement

This PV Risk Reduction Agreement (“**Agreement**”) is made and entered into as of the 18th day of December, 2007 by and between FPOC, LLC, a California limited liability company (“**Landlord**”), and Sunpower Corporation, Systems, a Delaware corporation (“**Tenant**”).

R E C I T A L S

A. Landlord and Tenant are parties to that certain Standard Multi-Tenant Industrial Lease – Net dated as of December 15, 2006 (together with the Addendum thereto, the “**Original Lease**”) pursuant to which Tenant leases certain premises (the “**Premises**”) in that certain commercial building known as Ford Point (the “**Building**”) and located at 1414 Harbour Way South, Richmond, California. Landlord and Tenant are parties to that certain First Amendment to Lease dated as of May 24, 2007 (the “**First Amendment**”) and that certain Second Amendment to Lease dated as of December 18, 2007 (the “**Second Amendment**”). The Original Lease as amended by the First Amendment and the Second Amendment is hereinafter referred to as the “**Lease**.”

B. Landlord and Tenant are parties to that certain Power Purchase Agreement of even date herewith (the “**PPA**”) pursuant to which Landlord intends to sell electricity to Tenant, such electricity to be generated from solar energy.

C. Pursuant to that certain System Purchase and Installation Agreement of even date herewith, Landlord will purchase and install on the roof of the Building a solar panel array with a 966KW DC (equal to 850KW AC) capacity and also to install related improvements necessary or appropriate to transmit and provide electrical power to the Premises (collectively, the “**Solar Equipment**”), but Landlord would not make the investment necessary to accomplish the foregoing without a reasonable assurance of an income stream sufficient to fully amortize Landlord’s investment.

D. Landlord and Tenant wish to amend the Lease as more specifically set forth herein.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms.** All capitalized terms not defined herein shall have the same respective meanings as are given such terms in the Lease unless expressly provided otherwise in this Agreement.

2. **PV Risk Reduction Payment.** Commencing on January 1, 2013, and subject to the condition described in Section 3 below, Tenant shall make the following payments (the “**PV Payments**”) to Landlord in accordance with the following schedule:

<i>Payment Date:</i>	<i>Installment Amount:</i>
January 1, 2013	\$150,000.00
January 1, 2014	\$150,000.00
January 1, 2015	\$150,000.00
January 1, 2016	\$150,000.00
January 1, 2017	\$150,000.00

The parties hereto acknowledge that the foregoing payment schedule is predicated on Landlord's constructing and installing the Solar Equipment with a 966KW DC (equal to 850KW AC). If the Solar Equipment actually has a smaller capacity, then the amount of the PV Payments shall be proportionately reduced. For example, if the Solar Equipment actually constructed and installed by Landlord has a 10% smaller capacity than 966KW DC (equal to 850KW AC), then each of the PV Payments shall be reduced by 10%.

3. **Extension of Lease Term.** Paragraph 68 of the Lease is hereby modified to permit Tenant to elect, in lieu of the two (2) five (5) year options described therein, to extend the Term of the Lease for a period of ten (10) years (the "**New 10-Year Term**") by delivery of an irrevocable and unconditional written notice of such election to Landlord on or before January 15, 2012 (the "**10-Year Exercise Notice**"). Base Rent for the New 10-Year Term shall be determined in accordance with Paragraphs 68(c) and 68(d) of the Lease. Tenant's obligation to make the PV Payments pursuant to Section 2 above is subject to the condition precedent that Tenant fails to timely deliver the 10-Year Exercise Notice to Landlord. Notwithstanding the provisions of Section 2 above, in the event Tenant timely delivers the 10-Year Exercise Notice as described above, then Tenant shall have no obligation to make any PV Payments and Section 2 shall thereafter be of no force or effect. If Tenant does not elect to extend the Lease Term for the New 10-Year Term as provided in the first sentence of this Section 3, then Tenant shall still have the right to extend the Term of the Lease for two (2) periods of five (5) years each as originally set forth in Paragraph 68 of the Lease, but any such extension(s) shall not excuse or waive Tenant's obligation to make the full amount of all PV Payments in a timely manner in accordance with the schedule set forth in Section 2 above.

4. **Lease Amended.** This Agreement shall constitute an amendment to the Lease, and in the event of any conflict or inconsistency between the Lease and this Agreement, this Agreement shall be controlling. Except as expressly provided herein, the Lease shall continue in full force and effect.

5. **Authority.** Tenant and each person executing this Agreement on behalf of Tenant hereby covenants and warrants that (a) Tenant is duly organized and validly existing under the laws of the States of California and Delaware, (b) Tenant has full power and authority to enter into this Agreement, and (c) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Tenant is duly and validly authorized to do so.

6. **Entire Understanding.** This Agreement contains the entire understanding between the parties with respect to the matters contained herein. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change or modification or discharge is sought.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first set forth above.

LANDLORD:	TENANT:
FPOC, LLC, a California limited liability company	Sunpower Corporation, Systems, a Delaware corporation
BY: FP Management, LLC, a California limited liability company, its Manager	By: <u>/S/ THOMAS DINWOODIE</u>
By: <u>/s/ J.R. ORTON, III</u> J.R. Orton, III, Manager	Name: Thomas Dinwoodie
	Its: CEO, Systems
	By: <u>/S/ DAN SHUGAR</u>
	Name: Dan Shugar
	Its: President, Systems

CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION

Ingot and Wafer Supply Agreement

between

JIAWEI SOLARCHINA CO., LTD.

and

SUNPOWER CORPORATION

This Ingot and Wafer Supply Agreement (this “Agreement”) is made on December 3rd, 2007 (the “Effective Date”) between

JIawei SolorChina Co., LTD, a Chinese company with registered address as Unit 1816 18/F Star House, NO. 3 Salisbury Road, Tsimshatsui Kowloon, Hong (hereafter referred to as “Jiawei”);

and

SunPower Corporation, a company with registered address 3939 North First Street, San Jose, California 95134, USA (hereafter referred to as “SunPower”).

RECITALS

WHEREAS, Jiawei is active in the field of manufacture and supply of Ingots and Wafers (as defined herein);

WHEREAS, SunPower procures Ingots and Wafers for its manufacture of solar cells and solar modules;

WHEREAS, Jiawei may, under this Supply Agreement, procure polycrystalline from SunPower or other qualified polycrystalline sources for use towards the volume committed in this agreement and SunPower will work closely with Jiawei to balance the polycrystalline for use in manufacturing; and

WHEREAS, SunPower desires to purchase Ingots and Wafers from Jiawei, and Jiawei is willing to supply such Ingots and Wafers to SunPower on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

- 1.1 The “Agreement” shall mean this signed document and
 - 1.1.1 Schedule 1 Specification of Ingots and Wafers;
 - 1.1.2 Schedule 2 Prices and Payment; and
 - 1.1.3 Schedule 3 Forecasts, Quantities, Yield/Ratios Limits, and Delivery Schedule.
- 1.2 “Confidential Information” shall have the meaning as set forth in Section 9.1.
- 1.3 “Delivery Schedule” shall mean such delivery dates and quantities applicable to certain periods set forth in Schedule 3.
- 1.4 “Effective Date” shall mean the first date written above.

- 1.5 “Ingot” shall mean a pseudo squared single crystal silicon unit to be used in manufacturing of photovoltaic Ingots as further specified in Schedule 1, per SunPower specification as identified in Schedule 1.
- 1.6 “Wafer” shall mean a pseudo quadratic disc sliced from a single crystal silicon Ingot, and with the technical specifications as set out in Schedule 1, per SunPower specification as identified in Schedule 1.
- 1.7 “Products” shall mean, collectively, Ingots and Wafers as defined above.

2. SALE AND PURCHASE

- 2.1 Unless otherwise instructed by SunPower in writing, Jiawei shall be under a firm commitment obligation to sell Products in the quantities and (subject to Section 5.2.1) on the delivery dates set forth in the Delivery Schedule. Notwithstanding anything to the contrary in this Agreement, SunPower assumes no obligation to purchase any Products under this Agreement other than with respect to specific quantities of Products which SunPower identifies in its firm purchase orders as part of SunPower’s 60 day rolling forecast.
- 2.2 All sales and purchase of Products between the Parties are subject to and governed by this Agreement unless otherwise agreed in writing (under purchase orders or otherwise).
- 2.3 Unless otherwise consented to in writing by SunPower, Jiawei shall sell Products manufactured with polysilicon delivered by SunPower, exclusively to SunPower.
- 2.4 From time to time, Jiawei may submit purchase orders to SunPower under which Jiawei would purchase polysilicon from SunPower for use by Jiawei in its production of Products to be sold to SunPower. If SunPower agrees to sell polysilicon to Jiawei as requested by Jiawei’s purchase order, SunPower shall confirm such sale in writing. The parties anticipate that Jiawei will purchase quantities of polysilicon as set forth in Schedule 3 to this Agreement; however, Jiawei is under no obligation to purchase, and SunPower is under no obligation to sell, such polysilicon contemplated in Schedule 3 to this Agreement.

3. PRICES

- 3.1 The price for Products shall be fixed through December 31, 2012. The price for Wafers sold by Jiawei to SunPower is set forth on Schedule 2 to this Agreement. The price for Wafers sold by Jiawei in 2011 and 2012 are to be negotiated by the parties. If no agreement is reached, neither party is under an obligation to purchase or sell Wafers in such years. The price for Ingots sold by Jiawei to SunPower is set forth on Schedule 3 to this Agreement. The price for polysilicon sold by SunPower to Jiawei is set forth in Schedule 3 to this Agreement.
- 3.2 All prices for the Products include all applicable sales, use, value added or other taxes or duties.

4. PAYMENT

- 4.1** All payments for Products shall be made by SunPower to Jiawei no later than 30 days following the date of Jiawei's invoice. All payments for polysilicon shall be made by Jiawei to SunPower no later than 30 days following the date of SunPower's invoice. Payment shall be net of any and all invoice fees or other fees or charges, other than those specified in this Agreement. All invoices should be sent to SunPower at its registered office. Value added or sales tax where applicable shall be shown separately on all invoices.
- 4.2** Unless otherwise agreed by Jiawei, no deductions from Product invoices by SunPower are permitted, and unless otherwise agreed by SunPower, no deductions from polysilicon invoices by Jiawei are permitted.

5. DELIVERY SCHEDULE

- 5.1** Upon receipt of a confirming purchase order submitted by SunPower, Jiawei shall supply the Products in such quantities on such dates as set forth in the Delivery Schedule in Schedule 3 to this Agreement. The Delivery Schedule shall be effective through December 31, 2012.
- 5.2** Notwithstanding anything to the contrary in the Delivery Schedule:
- 5.2.1** If delivery of polysilicon from SunPower to Jiawei is delayed for any reason, the dates for delivery of Products from Jiawei to SunPower may (unless otherwise agreed by the Parties in writing) be delayed for the same period.
- 5.2.2** Until Jiawei has established sufficient Wafer manufacturing capacity at its Beijing China facility or such China facilities to be determined and agreed upon, Jiawei shall deliver squared Ingots to SunPower unless the Parties agree to ship as-grown or ground round Ingots in addition to, or in lieu of, squared Ingots. When such capacity has been established, Jiawei shall deliver Wafers to SunPower.
- 5.2.3** Jiawei must qualify each of the manufacturing steps associated with such Ingot and Wafer manufacturing capacity with SunPower. The Parties will mutually agree upon the specific volumes of Wafers to be delivered based on actual Wafer manufacturing ramp up performance over time.

6. DELIVERY

- 6.1** The Products and polysilicon shall be delivered FCA Hong Kong until changed with mutual agreement (Incoterms 2000). SunPower shall instruct Jiawei on the delivery location for each shipment. In the event Products are delivered more than four (4) weeks following the delivery date requested by SunPower, Jiawei agrees to immediately dedicate its entire factory production to fulfilling SunPower's delivery, and ship such Products via air freight to a delivery location then requested by SunPower at Jiawei's expense. If Products are not delivered within six (6) weeks following the requested delivery date, Jiawei will pay SunPower late delivery penalties at a rate of *** percent (***) of the net purchase price, excluding duty, VAT, any applicable taxes applicable to such shipment per week thereafter, up to a maximum of *** percent (***) of such purchase price.

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- 6.2** Title to the Products shall pass to SunPower simultaneously with risk of loss under FCA Hong Kong (Incoterms 2000). Title to polysilicon sold by SunPower to Jiawei shall pass to Jiawei simultaneously with risk of loss under FCA Hong Kong (Incoterms 2000).
- 6.3** A conformance certificate shall be issued by Jiawei to SunPower for each delivery of Products. The parameters shown in the delivery certificate are outlined in Schedule 1.
- 7. PACKAGING AND SHIPPING**
- 7.1** Jiawei shall bear all costs associated with packaging or storing the Products until delivery to SunPower pursuant to the delivery terms specified in Section 6. All Products shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to reduce the risk of damage and to be packaged in the smallest commercially acceptable form in order to enable SunPower to obtain the lowest shipping rates possible (based on volume metric dimensions) and in accordance with all applicable federal, state and local packaging and transportation laws and regulations. An itemized packing list shall accompany each shipment. Other or special packaging and shipping requirements are set forth on Schedule 1.
- 7.2** Jiawei shall establish reasonable control routines in order to ensure punctual delivery of the Products at the agreed time and without any defects or non-conformities.
- 8. INSPECTION**
- 8.1** All Products may be inspected and tested by SunPower. No inspection, test, approval, or acceptance of the Products shall relieve Jiawei from responsibility for any defects in the Products or other failures to meet the requirements of this Agreement.
- 8.2** SunPower shall notify Jiawei promptly of any complaint about the Products, including but not limited to non-compliance with any specifications set out in Schedule 1 or quantities to be delivered in accordance with Schedule 3. Upon Jiawei's request, Product samples shall be submitted to Jiawei for examination.
- 8.3** SunPower shall upon Jiawei's request return such Products to Jiawei at Jiawei's expense.
- 9. CONFIDENTIALITY**
- 9.1** The Parties acknowledge and agree that the terms of this Agreement and certain information exchanged between them pertaining to this Agreement, including information regarding research, technology, product developments, marketing plans or conditions, products, business strategies, and the like, constitute "Confidential Information" of the Party disclosing the information. The purpose of the exchange of the Confidential Information" is to allow the Parties to meet their obligations and responsibilities under this Agreement. During the term of this Agreement, and for a period of 15 years following its termination or expiration, except as required by applicable law, regulation or rules of any securities exchange, the Party receiving any Confidential Information, and its employees, attorneys, financial advisors, officers, directors and shareholders who shall receive such Confidential Information shall not, except with the prior written consent of the disclosing Party, use, divulge, disclose or communicate, to any person, firm, corporation or entity, in any manner whatsoever, the terms of this Agreement or any Confidential Information of the disclosing Party; provided, however, that each Party may use, divulge, disclose or communicate the terms of this Agreement or Confidential Information of the disclosing Party to wholly-owned or majority owned subsidiaries if such subsidiaries undertake to keep such information strictly confidential in accordance with this Section 9 and each subsidiary has a "need to know". The Parties will be liable for any breach of this Section 9 by any of their respective wholly-owned or majority owned subsidiaries. Each Party further agrees to use the same degree of care to avoid publication or dissemination of the Confidential Information disclosed to such Party under this Agreement as it employs with respect to its own Confidential Information, but at all times shall use at least reasonable care to protect against disclosure.
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- 9.2 Confidential Information does not and shall not include information that:
 - 9.2.1 was already known to the receiving Party at the time such information is disclosed by the other Party;
 - 9.2.2 was or became publicly known through no wrongful act of the receiving Party;
 - 9.2.3 was rightfully received from a third party without restriction;
 - 9.2.4 was independently developed by the receiving Party;
 - 9.2.5 was approved for release by written authorization of the Party disclosing such information under this Agreement; or
 - 9.2.6 was required by legal or financial reporting purposes to be disclosed; provided, however, that the party being required to disclose shall, if circumstances permit, provide advanced notice to the other Party.

10. WARRANTY

- 10.1 Jiawei warrants that the Products will be free from defects and workmanship, and conform to the specifications set forth in Schedule 1, provided that Jiawei is notified of any defects or non-conformity within thirty (30) days after delivery and that the defect or non-conformity is shown to be due to Jiawei’s faulty design, workmanship, material or packaging.
- 10.2 If any Products fail to conform to this warranty, then Jiawei will, at SunPower’s option, either refund or replace such Products. For valid warranty claims all associated shipping and return costs shall be paid by Jiawei.

11. INDEMNIFICATION

- 11.1** Jiawei shall indemnify SunPower against any and all costs, loss and liability for all personal injury and property damage caused by the Products (whether performed on the premises of Jiawei or SunPower or elsewhere) and shall defend at its sole cost and expense any action brought against SunPower as a result of any such personal injury or property damage. Jiawei shall carry and maintain insurance coverage satisfactory to cover the above, and upon SunPower's request, shall furnish SunPower with evidence of such insurance.
- 11.2** Jiawei shall defend, at its own expense, any suit or claim that may be instituted against SunPower or any customer of SunPower for alleged infringement of patents, trade secrets, copyrights or other intellectual property rights relating to the maintenance, sale or use of the Products, and Jiawei shall indemnify SunPower and its customers for all costs and damages arising out of such alleged infringement.
- 12. FORCE MAJEURE**
- 12.1** Neither Party shall be liable for delays or failures in performance of an order or default in delivery arising out of or resulting from acts of God, acts of the other Party, acts of the Government or the public enemy, fire, flood, epidemics, quarantine restrictions, strikes, or freight embargoes (each a "Force Majeure Event").
- 12.2** In the event of any Force Majeure Event, the unaffected Party shall honor its obligations hereunder as soon as the affected Party is able to perform.
- 13. ASSIGNMENT AND CHANGE OF CONTROL**
- 13.1** No assignment of the Agreement or of any right or obligation under the Agreement shall be made by Jiawei without the prior written consent of SunPower, said consent shall not be unreasonably withheld. In the event of a proper assignment, the Agreement shall be binding upon and inure to the benefit of the assigning Party's successors and assigns.
- 14. NO PARTNERSHIP OR AGENCY**
- 14.1** Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership or agency between the Parties.
- 15. NOTICES**
- 15.1** Any communication which is required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, telefaxed (and with a confirmation copy also sent by mail), delivered by a reputable commercial courier service or mailed, always with receipt acknowledged, to the registered address of either Party as set forth herein or to such other registered address as follows from a prior notification to the other Party by the receiving Party.
- 16. ENTIRE AGREEMENT**

16.1 This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of the Agreement and supersedes any prior discussions, negotiations, agreements, memoranda of understanding and the like. Modifications to the Agreement may be made only in writing and signed by each Party. If one or more of the provisions of this Agreement shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of this Agreement. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives of the illegal, invalid or unenforceable provision.

17. WAIVER

17.1 Either Party's failure to exercise a right or remedy or such Party's acceptance of a partial or delinquent payment or delivery shall not operate as a waiver of any of such Party's rights or the other Party's obligations under the Agreement and shall not constitute a waiver of such Party's right to declare an immediate or a subsequent default.

18. TERM AND TERMINATION

18.1 This Agreement commences on the Effective Date, and continues to remain in force and effect until December 31, 2012 (the "Term"), at which time this Agreement may be extended with the mutual agreement of both Parties.

18.2 The parties expressly agree that Jiawei is obligated to supply the Products at the contracted volumes and prices pursuant to this Agreement unless SunPower in its sole and absolute discretion waives such delivery obligations. Accordingly, the basis and circumstances under which the Parties can terminate this Agreement prior to the expiration of the Term of this Agreement is expressly limited to the terms of this Section 18.

18.3 Termination by Jiawei. Jiawei may, at its option, terminate this Agreement only upon all of the following events: (i) a material breach by SunPower of its obligations under this Agreement, (ii) service of written notice of such breach to SunPower, and (iii) a failure by SunPower to cure such breach within ninety (90) days of receipt of the written notice of breach. If SunPower rectifies any such breach within such period, then SunPower's breach shall be deemed cured and Jiawei shall not be entitled to terminate this Agreement.

18.4 Termination by SunPower. SunPower may, at its option, terminate this Agreement upon all of the following events: (i) a material breach of this Agreement by Jiawei, (ii) service of written notice of such failure to Jiawei, and (iii) a failure by Jiawei to cure such breach within ninety (90) days of receipt of written notice of breach. If Jiawei rectifies any such breach within such period, then Jiawei's breach shall be deemed cured and SunPower shall not be entitled to terminate this Agreement. In addition, SunPower may, at its option, immediately terminate this Agreement in the event Jiawei discontinues its Product manufacturing activities for a period exceeding thirty (30) days.

- 18.5

Sections 9 through 22 shall survive any termination of this Agreement.
19.

ATTORNEYS FEES AND COSTS
- 19.1

In the event of SunPower’s enforcement of any term or condition in the Agreement, Jiawei shall be liable to SunPower for all costs, including reasonable attorney fees, incurred by SunPower in enforcing the Agreement and in collecting any sums owed by Jiawei to SunPower.
20.

DOLLARS
- 20.1

All references to monetary amounts shall be in U.S. Dollars.
21.

AGREEMENT PREPARATION
- 21.1

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the manner in which this Agreement was negotiated, prepared, drafted or executed.
22.

GOVERNING LAW AND DISPUTE RESOLUTION
- 22.1

The Agreement is made in, and shall be governed and controlled in all respects by the laws of the State of California, USA (specifically disclaiming the U.N. Convention Contracts for the International Sale of Goods) and all disputes, including interpretation, enforceability, validity, and construction, shall be determined under the law of the State of California, without regard to any conflict of law provisions.
- 22.2

The Parties submit to the exclusive jurisdiction and venue of the U.S. District Court for the Northern District of California for all disputes arising, directly or indirectly, under this Agreement.
23.

AUDIT RIGHTS
- 23.1

SunPower may require an audit of Jiawei’s supporting documentation verifying Jiawei’s compliance with the provisions of this Agreement. Any such audit shall be conducted by a qualified independent third party who shall be granted access, under a confidentiality agreement, to all relevant documentation it reasonably requests for such verification. Any such audit shall be paid for by SunPower.

[signature page follows]

The Agreement is signed in 2 original counterparts, of which the Parties keep one counterpart each.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

JIAWEI SOLAR CHINA CO., LTD

SUNPOWER CORPORATION

By: /S/ KONGXIAN DING
Name: Kongxian Ding
Title: President

By: /S/ JON WHITEMAN
Name: Jon Whiteman
Title: VP Strategic Supply

SCHEDULE NO. 1 SPECIFICATION OF INGOTS AND WAFERS

See SunPower Squared Ingot spec #001-07689 Rev A

See SunPower Wafer spec #001-07686 Rev A.

Sunpower and Jiawei may choose to alter specification as needed with approvals from both parties. The requesting party will allow twenty (20) days for such review and acceptance. In such case of change in total spec, Jiawei will review and comment as soon as possible. (N to P type change).

SCHEDULE NO. 2 PRICES AND PAYMENT

WAFER ROADMAP (THIN WAFER – 150mm diameter)

	Q108	Q208	Q308	Q408	2009	2010	2011	2012
Saw Yield	***	***	***	***	***	***	***	***
Wafer Diameter (mm)	***	***	***	***	***	***	***	***
Sawed Wafer Thickness (um)	***	***	***	***	***	***	***	***
Kerf Loss + Wire (um)	***	***	***	***	***	***	***	***
Pitch (um)	***	***	***	***	***	***	***	***
Silicon/Wafer –round (grams)	***	***	***	***	***	***	***	***
In-house Wafers/Kg (kg of round ingot)	***	***	***	***	***	***	***	***
Cost/Wafer (\$)	***	***	***	***	***	***	***	***

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SCHEDULE NO. 3 FORECASTS, QUANTITIES, YIELD/RATIO LIMITS, AND DELIVERY SCHEDULE

Year	Month	Poly Price	Conversion Price	Conversion Ratio	CHINA Round Ingot Cost (\$/kg)	China Plant # of Growers	Nameplate Capacity (Ingot MTs)	SPWR Poly Supplied	QTY of Round Ingots Delivered by China Plant	Wafers/kg roadmap/ plan	Equiv Wafer Qty in Kpc
2007	Nov	***	***	***	***	***	***	***	***	***	***
	Dec	***	***	***	***	***	***	***	***	***	***
2008	Jan	***	***	***	***	***	***	***	***	***	***
	Feb	***	***	***	***	***	***	***	***	***	***
	Mar	***	***	***	***	***	***	***	***	***	***
	Apr	***	***	***	***	***	***	***	***	***	***
	May	***	***	***	***	***	***	***	***	***	***
	Jun	***	***	***	***	***	***	***	***	***	***
	Jul	***	***	***	***	***	***	***	***	***	***
	Aug	***	***	***	***	***	***	***	***	***	***
	Sept	***	***	***	***	***	***	***	***	***	***
	Oct	***	***	***	***	***	***	***	***	***	***
	Nov	***	***	***	***	***	***	***	***	***	***
	Dec	***	***	***	***	***	***	***	***	***	***
2009	Jan	***	***	***	***	***	***	***	***	***	***
	Feb	***	***	***	***	***	***	***	***	***	***
	Mar	***	***	***	***	***	***	***	***	***	***
	Apr	***	***	***	***	***	***	***	***	***	***
	May	***	***	***	***	***	***	***	***	***	***
	Jun	***	***	***	***	***	***	***	***	***	***
	Jul	***	***	***	***	***	***	***	***	***	***
	Aug	***	***	***	***	***	***	***	***	***	***
	Sept	***	***	***	***	***	***	***	***	***	***
	Oct	***	***	***	***	***	***	***	***	***	***
	Nov	***	***	***	***	***	***	***	***	***	***
	Dec	***	***	***	***	***	***	***	***	***	***
2010	Jan	***	***	***	***	***	***	***	***	***	***
	Feb	***	***	***	***	***	***	***	***	***	***
	Mar	***	***	***	***	***	***	***	***	***	***
	Apr	***	***	***	***	***	***	***	***	***	***
	May	***	***	***	***	***	***	***	***	***	***
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	Sept	***	***	***	***	***	***	***	***	***	***
	Oct	***	***	***	***	***	***	***	***	***	***
	Nov	***	***	***	***	***	***	***	***	***	***
	Dec	***	***	***	***	***	***	***	***	***	***
2011	Jan	***	***	***	***	***	***	***	***	***	***
	Feb	***	***	***	***	***	***	***	***	***	***
	Mar	***	***	***	***	***	***	***	***	***	***
	Apr	***	***	***	***	***	***	***	***	***	***
	May	***	***	***	***	***	***	***	***	***	***
	Jun	***	***	***	***	***	***	***	***	***	***
	Jul	***	***	***	***	***	***	***	***	***	***
	Aug	***	***	***	***	***	***	***	***	***	***
	Sept	***	***	***	***	***	***	***	***	***	***
	Oct	***	***	***	***	***	***	***	***	***	***
	Nov	***	***	***	***	***	***	***	***	***	***
	Dec	***	***	***	***	***	***	***	***	***	***
2012	annual	***	***	***	***	***	***	***	***	***	***

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CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION

**TURNKEY CONSTRUCTION CONTRACT
FOR THE CONSTRUCTION OF A SOLAR PARK**

BETWEEN

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.

As Contractor

AND

SOLARGEN PROYECTOS E INSTALACIONES SOLARES, S.L.

as Owner

December 28, 2007

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- ANNEX 3.- IMPLEMENTATION SCHEDULE
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- ANNEX 5.- MINIMUM INVENTORY AND SUPPLY OF SPARE PARTS
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ANNEX 8.- AUTHORIZED EQUIPMENT

ANNEX 9.- FORM OF DIRECT AGREEMENT

ANNEX 10.- MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE

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APPEARING PARTIES

- (A) **SOLARGEN PROYECTOS E INSTALACIONES SOLARES, S.L.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-84299767 herein represented by Dr. Rafael Sánchez Lodaes, with National Identity Document (DNI) No. 403893-J, pursuant to the powers conferred upon him pursuant to a public instrument executed on the date hereof before Ms. Maria del Rosario Algora Wesolowski, a Madrid notary, and recorded in her notarial protocol under No. 2353.
- (B) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the “**Contractor**”), with a registered office in Madrid at calle Pradillo nº 5, herein represented by Mr. Juan Salsas Sala, with National Identity Document (DNI) No. 46331174-C, pursuant to the powers conferred upon him pursuant to a public instrument executed on December 26, 2007 before Mr. José Ángel Martínez Sánchez, a Madrid notary, and recorded in her notarial protocol under No. 4181.

RECITALS

- (1) The Owner is interested in promoting the installation and operation of a solar park in Las Casas de Son Pedro (Badajoz), consisting of seventy (70) Solar Facilities having between 115 and 122 kWp of peak power and 100 kWe at the inverter. The solar park is divided in two (2) phases, the first phase (the “**First Phase**”) to be developed in Site 1 and the second one (the “**Second Phase**”) to be developed in Site 2. Each phase will consist of the Solar Facilities determined by the Parties according to Clause 3.
- (2) The Contractor is dedicated to the construction and start-up of facilities of this type, and intends and has the capacity to construct the Solar Park in accordance with the specifications of this Contract.
- (3) The Owner will partially finance the payment of the Contract Price through financing to be made available to the Owner by one or more credit providers (the “**Financial Institutions**”).
- (4) ***
- (5) Now, therefore, the Parties mutually acknowledging the legal capacity required to enter into contract and bind themselves, agree to execute this "turnkey" construction contract (hereinafter, the “**Contract**”) in accordance with the following:

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CLAUSES

1. DEFINITIONS

In this Contract, the terms listed below shall have the meaning established in each instance:

- **Final Start-Up Certificate or Final Start-Up:** means the governmental certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, with respect to each of the Solar Facilities and the Electrical Infrastructure, which allows for the commencement of the commercial operation thereof, including, for the purposes of this Contract, obtaining the final registration of each of such Solar Facilities and Electrical Infrastructures with the Register of Power Facilities included within the Special Regime (*Registro Administrativo de Instalaciones de Producción de Energía en Régimen Especial*), pursuant to the provisions of Section 12 of Royal Decree 661, which grants to the corresponding facilities the status of a production facility accepted under the special regime, in accordance with the terms of this contract.
- **Direct Agreement:** the agreement executed among the Contractor, the Owner and the agent for the institutions providing financing to the Owner, for purposes of, among other things, making the payments contemplated in this Contract, pursuant to the provisions of Clause 17.
- **Scope of Work:** the entirety of all services, supplies and work that the Contractor must provide under this Contract in accordance with the provisions of Clause 2.2 and the specific details contained in Annex 2. The Scope of Work will include works of the two phases or of the phase with respect to which the Contract is in force according to Clause 3.
- **Insurance Advisor:** means the insurance advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Legal Advisor:** means Gómez-Acebo & Pombo, S.L. Ramón & Cajal Attorneys or any other legal advisor that the Financial Institutions may designate in the context of the financing of the Solar Park
- **Technical Advisor:** means the technical advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Performance Bond:** means any of the bonds payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations and which shall be effective as from delivery thereof to the Owner in accordance with the provisions of this contract until the execution of the Solar Park Provisional Acceptance Certificate.

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- **Guarantee Bond:** means each of the bonds payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations during the Guarantee Period, which shall be effective as from the execution of the Solar Park Provisional Acceptance Certificate through the execution of the Final Acceptance Certificate.
- **Final Acceptance Certificate (FAC):** means the certificate that shall be executed by the Parties at the end of the Guarantee Period to attest to the final acceptance of the Solar Park by the Owner.
- **Solar Park Provisional Acceptance Certificate (Park PAC):** means the certificate that shall be executed by the Parties concurrently with the execution of the Provisional Acceptance Certificate for the last Solar Facility forming a part of the Solar Park, to evidence the proper operation of the Solar Park as a result of the Overall Test of all Solar Facilities and the Electrical Infrastructure, as well as the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period.
- **Solar Facility Provisional Acceptance Certificate (Facility PAC):** means the certificate that shall be executed by the Parties to evidence the proper operation of the equipment as a result of the Performance Tests for each of the Solar Facilities (including the Electrical Infrastructure associated with each Solar Facility) and the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period. In order to issue a Provisional Acceptance Certificate for a Solar Facility, proper operation of the General Electrical Infrastructure in order to meet the installed capacity of the Solar Facilities in operation at such time must also be verified.
- **Contractor:** means SUNPOWER ENERGY SYSTEMS SPAIN, S.L. and any other company that may succeed it in its obligations in accordance with the provisions of this Contract.
- **Contract:** means this contract together with the Annexes hereto. In the event of conflict between the body of this Contract and one or more of the Annexes, the body of this Contract shall prevail.
- **Maintenance Agreement:** means the Maintenance Agreement entered into by the Contractor and the Owner on even date herewith, providing for the assumption by the Contractor of the maintenance work for the Solar Park upon execution of the Solar Park Provisional Acceptance Certificate.
- **Systemic Defect:** is an operational failure of the Solar Facilities of the Solar Park occurring during the Production Guarantee Period that (i) is not caused by non-conforming performance of the Work by the Contractor under this Contract, the Technical Specifications, the Construction Model or the regulations applicable to the Work (in accordance with the terms of this Contract), and (ii) that

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- § is the same failure or is a failure that affects, at least: 0.5% of the solar modules, 7 or more inverters or their corresponding peripheral systems, 7 or more trackers, or 4 or more transformers (including breakers and switches) supplied by the same manufacturer for the Solar Park; or
- § the relevant supplier or well-known independent third party in the solar industry reports that at least 1% of worldwide production of the corresponding model of solar module, inverter, tracker or transformer is affected by the same operational failure and advises replacement thereof (in which event the Owner must receive proof in the form of delivery of a document signed by the manufacturer or of a report from an independent third party which confirms the existence of said systemic failure with reference to the model and series of the affected equipment).

This notwithstanding, the Parties will agree in the document to be signed by them to determine each phase's size, the number of inverters, trackers and transformers applying in case that only Phase 1 is executed, on the basis of the final size of this phase.

- **Business Day:** means any day other than a bank holiday in Madrid and Badajoz, with the express provision that Saturday is not a Business Day.
- **Financial Institutions:** has the meaning set forth in the Recital (3).
- **Site 1:** means parcel 7, polygon 17, in the municipality of Casas de Don Pedro (Badajoz), with a surface of 14.9186 Ha, registered with the Land Property Register of Herrera del Duque, Volume 105, Book 8, Sheet 62, land property 1410, identified in Annex 13.
- **Site 2:** means parcel 10, polygon 17, in the municipality of Casas de Don Pedro (Badajoz), with a surface of 4.197 Ha, registered with the Land Property Register of Herrera del Duque, Volume 105, Book 8, Sheet 52, land property 1401; parcel 8, polygon 17, in the municipality of Casas de Don Pedro (Badajoz), with a surface of 7.161 Ha, registered with the Land Property Register of Herrera del Duque, Volume 105, Book 8, Sheet 41, land property 1395 and; parcel 9, polygon 17, in the municipality of Casas de Don Pedro (Badajoz), with a surface of 7 Ha, registered with the Land Property Register of Herrera del Duque, Volume 105, Book 8, Sheet 40, land property 1394, identified in Annex 13.
- **Authorized Equipment:** means the list of brands and models of the principal equipment or elements that will make up the Solar Facilities and the Electrical Infrastructures described in Annex 8 hereto.
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- **Technical Specifications:** means the technical conditions for executing the Work that will be prepared by the Contractor and delivered to the Owner in accordance with Annex 2.
- **Phase 1:** means the phase mentioned in Recital 1.
- **Phase 2:** means the phase mentioned in Recital 1.
- **Phases:** means Phase 1 and Phase 2.
- **Delivery Deadline:** means July 15, 2008.
- ***
- ***
- **Payment Milestones:** means the milestones for the payment of the Contract Price, as described in Clause 4.2 below.
- **Specific Electrical Infrastructure:** means the entirety of the electrical elements permitting the evacuation to the distribution grid of the electrical power produced by each of the Solar Facilities, including from the Solar Facilities to the specific transformer center for such Solar Facility.
- **General Electrical Infrastructure:** means the entirety of the electrical elements permitting the connection of each of the Solar Facilities, from the specific transformer center, in order to permit the evacuation of electrical power generated by each Solar Facility to the distribution grid, including the Evacuation Line, the distribution and sectioning center (*centro de reparto y seccionamiento*) and supplemental elements of supervision, monitoring and data collection.
- **Electrical Infrastructure:** collectively, the General Electrical Infrastructures and the Specific Electrical Infrastructures.
- **Solar Facility:** means the entirety of the electromechanical elements that allow for the generation of low voltage (“LV”) electrical power, including from the solar modules themselves, solar trackers, and inverters, to the LV meter, with a peak unit capacity of between 115 and 122 kWp. All references in this Contract to the Solar Facilities will make reference to the seventy (70) facilities except in case the Contract is terminated for Phase 2. In such a case, references to Solar Facilities will make reference to the Solar Facilities of Phase 1, which size will be agreed by the Parties according to Clause 3.
- **Evacuation Lines:** the 20 kV output electrical evacuation line of the distribution center of the General Electrical Infrastructure, necessary to connect such Infrastructures to the substation of the power distribution company (Iberdrola) to be built in accordance with the agreement entered into between the Owner and such distribution company.

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- **Change Order:** means a document signed by the Contractor and the Owner pursuant to which a change is agreed upon in the Scope of Work, the Contract Price or the Execution Schedule, or any other modification, as provided in this Contract.
- **Solar Park:** means the entirety of the seventy (70) Solar Facilities having between 115 and 122 kWp of peak capacity and 100 kW_e at the inverter, that must reach a total peak capacity of 8.295 MW_p, located at the Site, including the Electrical Infrastructure and any other facilities that, in accordance with the terms of this Contract, may be necessary for its Start-Up. References in this Contract to the Solar Park will comprise the Solar Facilities, the Electrical Infrastructure and other elements corresponding to both phases, except in case the Contract is terminated for Phase 2. In such a case, references to the Solar Park will only comprise the Solar Facilities, the Electrical Infrastructure and other elements corresponding to Phase 1.
- **Guarantee Period:** means the period between the signing of the Provisional Acceptance Certificate for the first Solar Facility until the moment where, having elapsed a term of *** as from the signature of the Provisional Acceptance Certificate for the Solar Park, conditions for the execution of the Final Acceptance Certificate are met.
- **Production Guarantee Period:** means the period between Start-up of the Solar Park until *** following execution of the Solar Park Provisional Acceptance Certificate.
- **Contract Price:** The price payable by the Owner to the Contractor for the performance of the obligations contained in this Contract, the amount of which is set forth in Clause 4 of the Contract. For purposes of this Contract, the price corresponding to an individual Solar Facility shall be the amount obtained by dividing the total Contract Price by the seventy (70) Solar Facilities (or by the Solar Facilities corresponding to Phase 1 in case the Contract is terminated for Phase 2 according to Clause 3).
- **Implementation Schedule:** means the schedule for the implementation of the Scope of Work, which is attached as **Annex 3** to this Contract.
- **Owner:** means SOLARGEN PROYECTOS E INSTALACIONES SOLARES, S.L., as well as any company subrogating to its contractual position in accordance with the provisions of this Contract.
- **Overall Test:** means the test described in **Annex 4**, to be performed as a prerequisite to the execution of the Solar Park Provisional Acceptance Certificate to verify the proper operation of all Solar Facilities and the Electrical Infrastructure. The Overall Test will definitively verify the proper operation of the General Electrical Infrastructure to absorb the power discharged by all Solar Facilities.

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- **Performance Tests:** means the tests described in Annex 4, to be performed as a prerequisite to the execution of each Solar Facility Provisional Acceptance Certificate to verify the proper operation of the corresponding Solar Facility and Electrical Infrastructures. Pursuant to the provisions of Clause 5.2(1), each Performance Test will be performed on a minimum of ten (10) Solar Facilities (with their corresponding Electrical Infrastructures).
- **Production Tests:** means the tests that will be performed at the end of the Production Guarantee Period in order to determine compliance with the Production Guarantee set forth in Clause 8.4, following the protocols set forth in Annex 4.
- **Start-up:** means, with reference to a particular Solar Facility and/or Electrical Infrastructure, the point when all of the work required by this Contract has been completed and all Performance Tests have been passed in accordance with this Contract and the Annexes hereto, the Provisional Acceptance Certificate has been executed and the Owner has received the corresponding Final Start-up Certificate (as confirmed by the Legal Advisor). Reference to Start-up of a Solar Park shall be understood to mean the point when all Solar Facilities and corresponding Electrical Infrastructures have passed the Overall Tests and comply with the above referenced requirements.
- **RD 661:** Royal Decree No. 661/2007, of May 25, which regulates activities involving the production of power under special regime.
- **Subcontractors:** means the subcontractors with which the Contractor subcontracts all or part of the works to be executed under this Contract.
- **Work:** means the work and supplies to be provided by the Contractor pursuant to the provisions of this Contract that will comprise work and supplies for Phase 1 and Phase 2 or, in case the Contract is terminated for Phase 2 according to Clause 3, work and supplies for Phase 1.

2. **PURPOSE AND SCOPE OF WORK**

2.1 **Purpose of the Contract**

The purpose of this Contract is the construction, start-up and delivery of the Solar Park to the Owner pursuant to the terms set forth in this Contract such that, upon issuance of the Final Start-up Certificate, the production of power and sale thereof to the electric distribution grid may commence, in accordance with applicable law and the Technical Specifications.

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This Contract is executed as a "turnkey" contract, and the Contractor is hereby obligated to deliver to the Owner the design, construction and Start-up of the Solar Park for the fixed price and within the fixed time periods established herein, subject to the other terms and conditions set forth in this Contract.

2.2 Scope of Work

(1) According to the terms and conditions of this Contract, the Contractor shall carry out and shall be responsible for all of the equipment, services, supplies and work comprising the Scope of Work. The Scope of Work includes each of the following concepts, as well as all acts that, even if not expressly mentioned in this Contract or in Annex 2, are necessary for the proper operation, performance and commercial exploitation of the Solar Park, in each case in accordance with the customary usage and practices in the industry for a project having these characteristics, this Contract, the Technical Specifications, and applicable law (without prejudice to the provisions of Clause 2.4(4)):

- § Design, engineering (basic and detailed) and required technical schedules.
- § Execution of all aspects of the Scope of Work and the supply of all materials, elements and equipment set forth in Annex 2, and the supply of all materials necessary and appropriate to properly carry out the Scope of Work.
- § Performance of inspections, inventory of materials, performance controls, tests and other analyses required under applicable law and in accordance with the technical specifications and this contract.
- § Transportation to the Site of all materials, equipment, utilities, spare parts, consumables and machinery for which the Contractor is responsible under the Contract.
- § Direct and indirect labor necessary to carry out the Scope of Work and all costs and social charges associated with such labor.
- § Demolition and dismantling of the provisional facilities not required by the Owner and conditioning and cleaning of the Site following issuance of the Solar Park Provisional Acceptance Certificate.
- § Maintenance, protection, security, custody and conservation of the equipment installed or stored at the Site up to the signing of the Solar Park Provisional Acceptance Certificate.
- § Preparation and delivery to the Owner of all documentation within the scope of this Contract, sufficiently in advance for the utilization thereof by the Owner. In particular, the delivery of the documentation and manuals set forth in Annex 2.

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§ Training of the Owner's personnel in the operation and maintenance of the materials and equipment acquired in accordance with the terms of Clause 6.7 of this Contract.

§ Construction of all necessary auxiliary facilities, their maintenance, cleaning and security during the performance of the Work, including that performed in compliance with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan (*Prevención de Riesgos Laborales y el Plan de Seguridad y Salud*); as well as the demolition or dismantling of any temporary facilities not required by the Owner and the conditioning and clearing of the Site following the issuance of the Solar Park Provisional Acceptance Certificate.

§ Supply of spare parts pursuant to the provisions of Clause 6.3.

§ Provision of material and human resources required to comply with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan, as well as the creation of the Social Security and Health Plan.

2.3 Exclusions

The Scope of Work for this Contract shall not include amounts associated with the purchase or lease of land or easements, or the payment of concessions or any other amounts owed in respect of surface rights to the Site where the Solar Park will be built. Further, it does not include the services associated with the obligations assumed by the Owner in Clause 7, the selection and hiring of personnel by the Owner or the costs and liabilities arising from the selection and hiring of third parties by the Owner for performance of the work consisting of safety and health coordination, or the supervision, external inspection, security, and quality control of the Contractor's work, including the Technical Advisor.

Further, it does not include the dismantling and of the undergrounding of the high voltage lines that currently crossed the Sites or the work to be carried out by the Owner under the agreement signed with Iberdrola for the construction of a new substation.

2.4 Changes in the Scope

- (1) Under no circumstances may the Parties make any changes to the Scope of Work contemplated by this Contract (of any kind, whether for expansions, reductions or changes to any portion of the work and/or the items supplied under this Contract), unless a Change Order has previously been signed.

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- (2) At any time prior to Provisional Acceptance, the Owner may propose a change to the Scope of Work by sending the Contractor a notice describing the nature and scope of the change. Upon receipt of such notice, the Contractor must send to the Owner, within a maximum period of ten (10) Business Days, a communication that includes a complete proposal for the changes in the Contract Price, deadlines and form of payment, or any other changes that may be necessary in connection with the changes proposed by the Owner. This communication shall also include a reasoned explanation of the grounds and/or criteria used for the calculation of the new Contract Price and/or deadline. However, the Contractor recognizes that in accordance with the Direct Agreement, the approval of the Financial Institutions is an essential requirement for the validity of the changes.
- (3) Without prejudice to the terms of the Direct Agreement, the Contractor may, at any time during the performance of the Contract, propose changes to the Scope of Work that it deems necessary or appropriate to improve the quality, efficiency or safety of the Solar Park or the facilities or supplies that make up the Solar Park. The Owner, at its discretion, may approve or reject the changes proposed by the Contractor. The Parties will execute a Change Order in the event that the modifications are approved by the Owner.
- (4) In addition, upon the entry into force, promulgation, derogation or change of any mandatory legal provision after the execution of this Contract that affects the Work, the Parties shall sign a document governing the changes that must be made to the purpose of this Contract.
- (5) The Owner and the Contractor shall negotiate in good faith the effects on the deadlines agreed to under this Contract that might occur as a result of the changes requested within the context of the provisions of this Clause. In any event, the prices applicable to any change in the Scope of Work shall consist of the costs of the additional work or supplies arising therefrom (reasonably justified to the Owner) plus ***% as the Contractor's margin.

3. COMMENCEMENT OF WORK

- (1) Without prejudice to the entrance into force of this Contract, which occurs on the date of its execution, the Parties agree that it will be an essential requirement for the commencement of the Works of each of the Phases the performance of the following conditions (hereinafter, the “**Conditions Precedent**”) in relation to any of the Phases:
- (i) a letter signed by the agent of the Financial Institutions has been delivered to the Contractor in accordance with Annex 12 confirming the availability of the financing related to the relevant Phase;

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- (ii) a copy of all the licences and authorisations necessary for the commencement of the construction of the relevant Phase has been delivered to the Contractor, with the exception of those that are inherent to the construction activity and correspond to the Contractor according to Clause 6.6 (including, but not limited to, the Owner shall deliver local works and activity licences (where activity licenses were necessary), the administrative authorisation, the approval of the execution project of the Electrical Infrastructure and the Solar Facilities, the connection point and environmental authorisations which may be necessary). The Contractor acknowledges that it received from the Owner prior to the signing of this Contract copies of the licences and authorisations obtained, which were obtained by the Owner for the carrying out of the project initially planned by the Owner which was to be the construction of a 7MW solar park on Site 1. If the amendments to the licences and authorisations initially obtained by the Owner, or if the obtaining of new ones that would be necessary for the construction of the Solar Park with its current configuration, more burdensome conditions would arise from than those contained in the licences and authorisations which have already granted to the Contractor before the date hereof, the Parties will agree to the amendments that, where appropriate, must be made to the Scope of the Work and/or the Contract Price in the document established in section (iv) below;
- (iii) the Site of the relevant Phase is entirely available and accessible for the commencement of the Work of that Site;
- (iv) the Contractor and the Owner have entered into an agreement which sets out: **(a)** the dimension of each of the Phases of this Contract (and, in particular, the Solar Facilities comprising each of the Phases), **(b)** the definition of Systemic Defect applicable if only Phase 1 of the Solar Park is executed, **(c)** the price of the perimeter fences and the monitoring system (Scada) of the tracker hubs (*cajas de concentración de los seguidores*) in accordance with the provisions of the last paragraph of Clause 4.1(2) or, alternatively, the exclusion of such Works from the Scope of the Work, **(d)** the increase of the Contract Price that, where appropriate and calculated in accordance with Clause 2.4(5), the Parties had agreed according to the samples on the Site and the review of the licences and authorisations mentioned in (ii) above and section (3) below, and **(e)** the Contract Price for each of the Phases as an exclusive consequence of the abovementioned items; and
- (v) the Owner has paid the Contractor the amount established in Clause 4.2 (i) for the relevant Phase in return for the simultaneous granting by the Contractor of the corresponding Performance Bond in accordance with Clause 8.5 and - only if the Conditions Precedent related to Phase 1 have been met- the Corporate Guarantee.

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Notwithstanding the foregoing, the Owner acknowledges and accepts that the Contractor will require a period of at least five (5) Business Days in order to obtain the Performance Bond and thus, once the conditions established in (i) to (iv) above have been met, the Parties will carry out the conditions established in (v) above within the period between the sixth (6th) and ninth (9th) Business Day following the date on which the conditions established in (i) to (iv) are met.

Once the remaining Conditions Precedent are met, the date when the Owner pays the Contractor the amount established in Clause 4.2 (i) for each Phase and the Contractor delivers the Performance Bond and, where appropriate, the Corporate Guarantee will be named, hereinafter, the “**Performance Date of the Conditions of Phase 1**” or the “**Performance Date of the Conditions of Phase 2**”, as the case may be.

- (2) In the event that the Conditions Precedent for Phase 1 established in (i) through (iv) above are not met prior to 31 January 2008 (or if the Performance Date of the Conditions of Phase 1 does not occur prior to the tenth (10th) business day following the date on which the Conditions Precedent for Phase 1 would have been met), the Contractor and the Owner will be entitled to terminate the Contract by serving the other Party a notice in which the former states its intention to terminate the Contract, upon which the Parties will be released from all obligations arising from the Contract. Likewise, in the event that the Conditions Precedent for Phase 2 established in (i) through (iv) above are not met prior to 3 March 2008 (or if the Performance Date of the Conditions of Phase 2 does not occur prior to the tenth (10th) business days following the date on which the Conditions Precedent for Stage 2 would have been met), any Party will be entitled to terminate the Contract, but only with respect to the rights and obligations related to Phase 2, by serving the other Party a notice in which the former states its desire to terminate the Contract upon which the Parties will be released from all obligations arising from the Contract with respect to Phase 2. The above is without prejudice to purchase orders or orders that the Parties, or companies belonging to their groups, had carried out or to which they had agreed prior to, or on the same date, as the signing of this Contract, which will remain in force. For clarification purposes, if the total termination established in this section is not carried out, these purchase orders or orders will fall into the Scope of Work and, therefore, into the Contract Price, reducing the amount paid by the Owner from the First Payment Milestone established in Clause 4.1 (i). If the Contract is terminated only with respect to Phase 2, only the purchase orders or orders corresponding to the Solar Facilities and/or Electrical Infrastructure which had been integrated in Phase 1 will fall into the Scope of Work, and the only reduction of the First Payment Milestone of Phase 1 will be the amounts paid as equipments related to such Phase.

Nevertheless, the Contractor may not terminate the Agreement when, having the Owner confirmed its desire and ability to make the payments established in Clause 4.2 (i), the Performance Date of the Conditions of the relevant Stage has not been met as a result of the Contractor not having granted the Bank Guarantee of Performance and, where appropriate, the Corporate Guarantee.

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(3) Without prejudice to paragraph three of this section, the Contractor declares that it has examined the Site, its land and subsoil, its surroundings and its accesses prior to signing the Contract.

Likewise, subject to paragraph three of this section, the Contractor declares that the Site is appropriate and sufficient for the execution of the Work and acknowledges and undertakes all the risks and contingencies of the Site which might affect the execution of the Work included, but not limited to, weather conditions (including winds, snowfalls, frosts, rainfalls, etc.), as well as hydrographic, water, geotechnic and seismic conditions, the presence of toxic wastes or archaeological ruins which might be found on the Site and in general on any other natural or artificial circumstances of the Site and the subsoil of the same. As a consequence, the Contractor waives to claim any additional amounts to the price of the Contract as increase of the construction, delay of the same, or extra charges of any type, or to claim any extension to the delivery period or the interim periods of the Work derived from the conditions of the Site to which this Clause refers.

Notwithstanding the foregoing, the Owner acknowledges that it will be necessary to carry out some samples over the Site in order to confirm its features and whether any additional works that would require modification to the Scope of Work and/or the Contract Price are necessary. Nevertheless, the Contractor agrees that the Site will be considered ideal and will therefore have no right to make any amendment to the Contract Price and/or the Scope of the Work when it has been concluded from the mentioned samples that the conditions of the Site are equivalent to the conditions of the site of the solar park which is being developed by the Contractor by virtue of an agreement entered into on 6 November 2007 between Naturener Solar Tinajeros, S.L. and the Contractor, modified by virtue of agreements entered into on 21 November and 29 November 2007.

The Parties expressly agree that for the purposes of the Agreement the existence of archaeological ruins on the Site will be considered as Force Majeure cause and thus, in that event, Clause 12 will be applied.

4. PRICE AND FORM OF PAYMENT

4.1 Contract Price

(1) The Contract Price payable by the Owner to the Contractor in consideration for the works to be performed by Contractor under this Contract shall be *** Euros for both Phases. The document to be signed according to Clause 3 (1) (iv) will include the price corresponding to each phase depending on the number of Solar Facilities assigned to each phase. This amount shall be increased by an amount corresponding to Value Added Tax (VAT) pursuant to applicable law at any given time. The Contractor hereby acknowledges and agrees that the Contract Price is a lump-sum, fixed, and final price, and is not subject to any change or revision whatsoever on the basis of any changes in the prices of labor, materials, equipment, exchange rates or any other similar items, including a change in any taxes levied on the scope of the work.

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- (2) The Contract Price includes all the costs and expenses associated with the Contractor's performance of work under the Contract, including those specifically set forth in the Scope of Work. The Contract Price shall be deemed to include, by way of example:
- § taxes, fees, industrial- and intellectual-property royalties on the equipment supplied, Social Security and other encumbrances upon the supplied equipment and materials in their country of origin or destination, including, if applicable, the rights of free circulation in the European Union and any other tax with respect to the importation of the Equipment and the performance of the Work, except for the VAT on the actual Contract Price. For purposes of clarification, the Price does not include legalization fees or costs for permits and authorizations, which are the responsibility of the Owner.
 - § payroll costs and the cost of equipment required for the Contractor's performance of the Work or to ensure the protection, security and proper performance thereof.
 - § the cost of any insurance that must be taken out by the Contractor pursuant to Clause 11.
- However, the Parties agree that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs (*cajas de concentración de los seguidores*) are not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon the Parties confirmation in the document to be signed according to Clause 3 of a new Contract Price that includes such items.
- (3) In the event of changes in the Scope of Work agreed to pursuant to the provisions of this Contract, the price agreed to in the corresponding Change Order shall apply.
- (4) Without prejudice to the foregoing, in consideration for the maintenance and security tasks to be performed by the Contractor prior to the execution of the Solar Park Provisional Acceptance Certificate, the Owner shall pay to the Contractor (in addition to the Contract Price), the portion of the price contemplated in the Maintenance Agreement that is equivalent to the percentage representing the Solar Facilities that have obtained a Provisional Acceptance Certificate with respect to all Solar Facilities contemplated by this Contract.

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4.2 Payment Milestones

The Contract Price shall be paid by the Owner to the Contractor pursuant to the payment schedule set forth below (each of the milestones set forth below shall be deemed a **“Payment Milestone”**):

- (i) On the Condition Satisfaction Date of each Phase, an amount equal to ***% percent of the Contract Price of the corresponding Phase, upon delivery of the Performance Bond by the Contractor.
- (ii) Based on the monthly progress of the civil works involving earth moving, leveling and foundation laying of each Phase, measured as 100 kWe Solar Facilities whose foundations are completed, the Owner will pay up to a maximum of *** percent (***) of the Contract Price of the corresponding Phase, upon presentation of the respective invoices by the Contractor.
- (iii) Upon each delivery to the Site of the module supports, inverters and trackers of each Solar Facility and presentation of the corresponding invoices not earlier than two (2) months prior to the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***) percent of the Contract Price corresponding to such Solar Facilities.
- (iv) Upon each delivery of the solar modules of each Solar Facility to the Site and upon presentation of the corresponding invoices not earlier than the dates indicated in the Implementation Schedule of each Phase, the Owner shall pay up to a maximum of *** (***) percent of the Contract Price corresponding to such Solar Facilities.
- (v) Based on the monthly progress of the mechanical assembly of the module supports, solar trackers and the modules mounted thereon, as well as the installation of the inverters and the transformer center, measured as Solar Facilities of 100 kWe whose facilities up to the transformer center have been completed, the Owner will pay up to a maximum of *** (***) percent of the Contract Price of the corresponding Solar Facilities, upon presentation of the respective invoices.
- (vi) Upon the execution of each Provisional Acceptance Certificate for a Facility, the Owner shall pay *** (***) percent of the Contract Price corresponding to such Solar Facility (together with the remaining portion of the Contract Price, if any, that was not previously paid and that corresponds to Work completed by the Contractor under this Contract in respect of such Solar Facility). The last Solar Facility payment shall be made concurrently with the execution of the Solar Park Provisional Acceptance Certificate.

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4.3 Invoicing System and Form of Payment

- (1) Once the Contractor deems that a Payment Milestone has been achieved, the Contractor shall give written notice thereof to the Owner and the Technical Advisor, attaching thereto the invoice and any documentation that may be necessary to demonstrate achievement of the corresponding Payment Milestone (including, for this purpose, all of the documentation that must be furnished by the Contractor to the Owner at any time, pursuant to the provisions of Annex 2).
- (2) Within fifteen (15) Business Days following receipt of the above-mentioned notice, the Owner and the Technical Advisor shall confirm the achievement of the corresponding Payment Milestone. Within such period, the Owner and the Technical Advisor shall communicate in writing to the Contractor: **(i)** their agreement that the corresponding Payment Milestone has been achieved, in which case the Owner and the Technical Advisor shall provide documentary confirmation by approving the corresponding invoice, or **(ii)** that the Payment Milestone has not been fully achieved, in which case the Owner and/or the Technical Advisor must specify in writing to the Contractor a detailed and reasoned explanation of the work pending performance in order for the Payment Milestone to be deemed to have been achieved. In the event that the Owner and/or the Technical Advisor fail to respond to the Contractor within the above-mentioned period of fifteen (15) Business Days, due solely to the failure of the Contractor to provide all documentation required to verify achievement of the Payment Milestone, the Owner and the Technical Advisor agree to request the same within the above period of fifteen (15) Business Days. The Owner and the Technical Advisor will be allotted another ten (10) Business Days to issue their response, counting from the date of receipt of all requested documentation.
- (3) If the Owner and/or the Technical Advisor do not agree that a Payment Milestone has been achieved, the Owner shall be entitled to return the corresponding invoice until the Contractor has completed the work in accordance with the provisions of this Contract. However, if the Parties agree that the disagreement involves only part of the work included in the Payment Milestone, the Owner shall pay the invoice amounts corresponding to the work not affected by the dispute, with the rest remaining subject to full performance and delivery by the Contractor in accordance with the terms of this Contract.
- (4) If, following the period referred to in subsection (2) above, the Owner and/or the Technical Advisor have not responded, the Contractor may send a demand notice to the Owner and the Technical Advisor communicating such fact and allowing an additional period of five (5) Business Days for confirmation of their agreement or disagreement as to the achievement of the respective Payment Milestone. If, upon expiration of such period, the Owner and/or the Technical Advisor still have not responded, achievement of the Payment Milestone shall be deemed accepted by the Owner and the Technical Advisor.

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- (5) Under no circumstances shall the Owner's or the Technical Advisor's agreement to a Payment Milestone imply acceptance of the Work associated therewith, which acceptance shall in any event remain conditioned upon passing the Performance Tests and executing the respective Provisional Acceptance Certificate and, ultimately, the Final Acceptance Certificate.
- (6) Payments shall be made by the Owner to the Contractor via bank transfer to the bank account designated by the Contractor within *** Business Days following the date on which the Owner accepted the corresponding Payment Milestone (or on the date on which the Payment Milestone was deemed accepted by the Owner, in accordance with subsection (4) above). On an exceptional basis, the payment corresponding to the first Payment Milestone shall be paid by the Owner on the Condition Satisfaction Date of each Phase (with respect to such payment, approval of a Payment Milestone by the Contractor and the Owner pursuant to the above provisions is not required).

5. IMPLEMENTATION SCHEDULE. TESTS AND PROVISIONAL ACCEPTANCE

5.1 Implementation Schedule. Changes in the Deadline

- (1) The Contractor hereby undertakes to perform the Work in accordance with the Implementation Schedule for each Phase attached hereto as **Annex 3**, such that the Solar Park shall have all technical attributes required for issuance of the Final Acceptance Certificate (and the same has been requested in accordance with Clause 2.4) no later than the Delivery Deadline.
- (2) The dates for performance specified in the Implementation Schedule and, in particular, the Delivery Deadline, are fixed and final, and may not be postponed, and the performance deadlines may not be extended, except under the following circumstances:
- (i) due to agreed-upon changes in accordance with the provisions of Clause 2.4, provided that such changes include an extension of the deadlines;
 - (ii) due to a breach by the Owner giving rise to a delay in the Work (including, specifically, delays in procuring authorizations and licenses for which it is responsible), provided that such breaches are not attributable to actions, omissions or breaches by the Contractor;
 - (iii) suspension of the Work in accordance with the provisions of Clause 13, except in the event of suspensions attributable to the Contractor; or
 - (iv) the occurrence of an event of *Force Majeure* that reasonably justifies an extension of the deadlines established in the Implementation Schedule.

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- (3) The Contractor must inform the Owner of the alleged facts or causes, in writing and within a maximum period of ten (10) Business Days after the Contractor becomes aware thereof, and the communication must be accompanied by all available information and data on such date that substantiate such facts and the consequences thereof on the Work, the extension (if such extension can be determined) proposed by the Contractor, and a detailed explanation of the measures adopted to mitigate the consequences thereof.

The Owner may request any additional information that it deems reasonably necessary to analyze the request and shall make a decision thereon as soon as possible, but in any event no later than fifteen (15) days after receipt of such communication from the Contractor or receipt of the documentation required to evaluate the circumstances, if later. If the Owner accepts the extension proposed by the Contractor, the Parties shall issue a Change Order confirming the changes to the Implementation Schedule.

5.2 Performance Tests and Provisional Acceptance

- (1) Upon completion of the construction of a group of at least ten (10) Solar Facilities, or of the Solar Park, the Contractor shall notify the Owner so that, within a maximum period of seven (7) Business Days, the Performance Tests or the Overall Test may be commenced. All Tests shall be conducted in accordance with the Test procedures and protocols attached hereto as **Annex 4**. The Contractor agrees that the Performance Tests and the procedures set forth in this Clause shall begin only when at least ten (10) Solar Facilities are ready for provisional acceptance.
- (2) Once the Owner and the Technical Advisor have verified that the Performance Tests (or, if applicable, the Overall Test) have been passed in accordance with the standards set forth in this Contract and that the Owner has received all documentation set forth in the Scope of Work, the Contractor and the Owner shall execute the corresponding Provisional Acceptance Certificate for the Solar Facilities delivered or the Provisional Acceptance Certificate for the Solar Park, as applicable, provided that the following conditions have been met:
- a) The Work corresponding to the applicable Solar Facilities, or, if applicable, the Solar Park, has been satisfactorily completed.

However, if the Performance Tests or the Overall Test have been passed and the remaining conditions specified in this Clause have been met with certain punch list items still pending, the Owner shall sign the corresponding Provisional Acceptance Certificate, acknowledging, in an attached document, the existence of the punch list items and setting a period of thirty (30) Business Days for completion thereof, or another longer period of time agreed by the Parties. If such punch list items have not been completed by the Contractor at the conclusion of the specified time period, the Owner may, at its discretion, (i) demand the completion thereof, or (ii) perform such work itself or through third parties, deducting the direct costs of such punch list items from what is owed to the Contractor, or enforce of the bonds delivered pursuant to this Contract.

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The term “punch list items” shall be understood to refer to those tasks pending execution by the Contractor for which the work pertaining to such Work has been completed within the time periods specified in this Contract that do not affect the operation, production or output of the Solar Facilities or the Electrical Infrastructure.

- b) All of the documentation that the Contractor must submit in accordance with the provisions of Annex 2 has been submitted to the Owner;
 - c) The spare parts specified in Clause 6.3 have been made available to the Owner; and
 - d) With respect to the Solar Park Provisional Acceptance Certificate, the Contractor has delivered to the Owner the Guarantee Bond in the amount specified in Clause 8.5.
- (3) The deadlines granted to the Contractor for completion of pending punch list items upon execution of a Provisional Acceptance Certificate shall not be considered an extension of the deadlines set forth in this Contract, and the Contractor shall indemnify the Owner for any damages that the Owner may incur as a result thereof pursuant to Clause 5.2(a) above.
- (4) In the event that the Owner does not execute the Provisional Acceptance Certificates for the respective Solar Facilities (or, if applicable, the Solar Park) within seven (7) Business Days of verifying compliance with the stipulated requirements, the Contractor may request in writing that the Owner execute the respective Certificate within an additional period of five (5) Business Days. If the Owner has not executed the new Provisional Acceptance Certificates for the Solar Facilities (or, if applicable, the Solar Park) within said period, the conditions required in this clause for execution of the corresponding Certificate have been satisfied, it shall be understood that provisional acceptance has been achieved, except to the extent discrepancies exist as to the performance of the conditions required by the same, in which event the Parties shall submit the matter to arbitration in accordance with the provisions of Clause 20 (2).
- (5) Within thirty (30) days following the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must: (i) remove from the Site any material used in the construction, as well as any equipment, machinery, tools, vehicles and temporary structures that are not necessary during the Guarantee Period; (ii) clean the Site and remove any debris or waste; and (iii) deliver the “As Built” Plans for the Solar Park.

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6. OTHER OBLIGATIONS OF THE CONTRACTOR

6.1 Prevention of Occupational Risks

- (1) The Contractor shall be obligated, in compliance with current legislation, to perform the works under this Contract in such a way as to ensure the safety of workers, and to apply the preventive activity principles set forth in Law 31/1995 and its implementing regulations. Accordingly, the Contractor shall be responsible for designing the construction process in accordance with the provisions of Royal Decree No. 1627/1997, which establish minimum safety and health provisions for construction work, and in its the other implementing or supplemental regulations, such that the safety of the activities that are performed simultaneously or consecutively is ensured, and the safety of third parties present in the vicinity of the work site is also ensured.
- (2) In particular, as part of the scope of this Contract, the Owner has prepared a Safety and Health Study, and furthermore, in compliance with the provisions of Royal Decree No. 1627/1997, the Contractor must prepare a Workplace Safety and Health Plan (*Plan de Seguridad y Salud en el Trabajo*), both specifically for the work provided for within the scope of this Contract. The Contractor hereby represents that they contain, or will contain, all requirements of such Royal Decree and its implementing rules and regulations (including the provisions of the autonomous communities that apply, if any).
- (3) Furthermore, the Owner (at the request of the Contractor) shall appoint a safety and health coordinator, who shall have the obligations set forth in Royal Decree 1627/1997, and who shall be responsible for ensuring that all of personnel of the Contractor, the Subcontractors and of the suppliers of equipment or materials under this Contract comply with the safety requirements established in current legislation. Both the Owner and the Contractor shall be obligated to respect and comply with their respective obligations, as imposed by Royal Decree 1627/1997 and other applicable rules and regulations.
- (4) The Owner reserves the right to evaluate security during the construction period. This does not imply that Owner has assumed responsibility with respect to security measures taken or the preparation of documentation or the content of such documentation referred to in this Clause, without prejudice to the obligations and responsibilities under law that attach as a result of Owner's capacity as a developer. To this effect, the Contractor shall provide to the Owner all documentation that Owner may reasonably require in order to confirm the performance of the obligations set forth in this Clause.
- (5) For clarification purposes, in no event shall the Contract Price be increased if, as a result of a security check, legal review or technical risk review, the Contractor is required to take additional measures designed to guarantee compliance with applicable rules and regulations for the prevention of occupational risks.

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6.2 Obligation to Provide Access to the Site

The Contractor hereby undertakes to provide to the Owner access to the workshops, warehouses and sites where the Contractor or Subcontractors are performing work, tests or trials; manufacturing equipment; or storing materials for the construction, assembly and Start-up of the Solar Park, provided that the Owner has so requested in writing reasonably in advance, that the visit causes the least possible interruption of the performance of the work by the Contractor, and further provided that the Owner agrees to honor all reasonably necessary confidentiality measures and to respect security measures in force at the Site. The Contractor also undertakes to ensure that the Subcontractors grant access to the Owner under the terms of this subsection, for which purpose the Contractor shall include in the contracts to be entered into with the Subcontractors an obligation imposed upon them consistent with the provisions of this subsection.

6.3 Minimum Stock and Supply of Spare Parts

At the time of execution of the Solar Park Provisional Acceptance Certificate, The Contractor shall maintain a minimum stock of spare parts in accordance with the provisions of Annex 5. Such minimum stock shall be maintained at all times until the execution of the Final Acceptance Certificate, for which purpose the Contractor undertakes to replace any material or equipment used during such period as promptly as reasonably possible.

Further, Contractor shall be responsible for providing, upon the Owner's request, spare parts (in particular, modules, inverters and trackers, identical or similar to those covered by this Contract, in accordance with the terms of Annex 5) necessary for the proper operation and maintenance of the Solar Park in accordance with the terms of Clause 8.3.2(8) below.

6.4 Quality Control

The Contractor must perform a quality control inspection of the modules, using standards for acceptance and rejection and testing and measurement protocols that are acceptable to the Technical Advisor. For these purposes, the Contractor must inform the Technical Advisor of the quality control inspections that it is going to use in the performance of this Agreement, and detail the respective acceptance and rejection standards and testing and measurement protocols, such that the Technical Advisor can approve the same prior to the date on which such modules are expected to be received under this Contract.

Once the Technical Advisor has verified the quality control inspection procedures, the Contractor shall follow such quality control inspection procedures for all modules received under this Contract, except with respect to those which are subject to another quality control inspection that has been expressly approved by the Technical Advisor in writing.

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6.5 Regulatory Compliance

- (1) The Contractor undertakes to observe and comply with the regulations applicable to the performance of the Work, without prejudice of the provisions of subsection (3) below. In particular, the Contractor must ensure compliance with regulations regarding classified activities, safety, health, and environmental protection. In particular, the Contractor shall be the only responsible party for compliance with applicable law and regulations with respect to (i) ***, and (ii) environmental protection during the period of manufacture, construction, erection and Tests until the Solar Park Provisional Acceptance Certificate has been executed.
- (2) The Contractor represents that it is current in the payment of wages and Social Security contributions for the professionals hired by the Contractor to perform the services covered by this Contract. Accordingly, the Contractor agrees to show to the Owner all documents that the Owner may reasonably request evidencing compliance with wage, tax and Social Security obligations (including, without limitation, certificates of good standing and compliance with tax obligations and the TC1 and TC2 Social Security dues bulletins).
- (3) In the event of any change in the applicable rules and regulations after the date on which this Contract is signed, the Parties shall proceed in accordance with the provisions of Clause 2.4(4) above. In the event that either Party does not sign the applicable change document, the Contractor shall continue to perform the work in compliance with the rules and regulations previously in force, and shall not assume any responsibility for any breach of the applicable new rules and regulations.

6.6 Permits and Authorizations

- (1) ***. Further, both parties agree to follow the joint application procedure provided for in the last paragraph of subsection 1 of Section 12 of RD 661 and Section 11 of Order of January 27, 2007 of the Regional Economy and Work Ministry of Extremadura, such that the applications for the certificate relating to start-up and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be made jointly. The Parties recognize that making such joint application is an essential element for both Parties. Such application shall be submitted by the Contractor before the Delivery Deadline, although in such submission (a) it shall be the responsibility of the Contractor to provide all information and documentation necessary to apply for the start-up certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, and (b) it shall be the responsibility of the Owner to provide all information and documentation necessary to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power included within the Special Regimen, in accordance with the terms of Section 12 of RD 661. Once presented, the handling of the applications for the start-up certificate and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be the responsibility of the Owner, without prejudice to the Contractor's obligation to cooperate with the Owner in all respects in accordance with the terms of Clause 6.11.

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(2) For clarification purposes:

- (i) if, due to causes attributable to the Contractor, the application for the Final Start-up Certificate is not presented in accordance with subsection (1) above with respect to one or more Solar Facilities or to the Solar Park on or before the Delivery Deadline, and/or
- (ii) prior to September 29, 2008, the Owner has not have obtained the Final Start-up Certificate as a result of design defects, defective or inadequate equipment or performance of the Work or of defects, imprecision or omissions in the documentation or in the technical information delivered by the Contractor,

the Owner shall have the right to terminate the Contract in accordance with the terms of Clause 14.1. Notwithstanding the foregoing, the Owner may not terminate the Contract and the Contractor shall not be held responsible for the consequences occurring as a result of the failure to obtain the Final Start-up Certificate, if this failure was due to (i) the Owner's failure to deliver, or incomplete delivery, of the documentation which Owner was required to furnish in connection with the application for the Final Start-up Certificate (although the Contractor recognizes that the Owner shall not be responsible for failure to provide documentation required by Section 12 of RD 661 when such documentation could not be obtained as a result of the failures, imprecision or omissions contemplated in subsection (ii) above), or (ii) the failure to request, late request or failure to obtain such permits and authorizations that are not the responsibility of the Contractor pursuant to this Contract; or (iii) any other circumstance not attributable to the Contractor, such as delays by the respective administrative entity.

The Owner agrees to cooperate with the Contractor in all respects needed for purposes of the application or the procurement of ***. Further, the Owner agrees to inform the Contractor as soon as possible of any communication, request or requirement received from a competent administrative authority relating to the application for approval of the Final Start-up Certificate.

In any case, even in the event that the application for the Final Start-up Certificate with respect to all of the Solar Facilities and the Electrical Infrastructure has not been presented prior to the Delivery Deadline and, without prejudice to the foregoing, both Parties agree to use their best efforts and to provide all cooperation necessary to obtain the Final Start-up Certificate prior to September 29, 2008.

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6.7 Training of the Owner’s Personnel

The Contractor must adequately and sufficiently train the Owner’s personnel to efficiently operate the Solar Park in all respects. Such training must be provided by the Contractor during the four week period prior to the issuance of the Provisional Acceptance Certificate for the Solar Park and shall have a maximum duration of five (5) Business Days. The personnel designated by the Owner to receive such training shall not exceed five (5) individuals.

6.8 Designation of Project Director

- (1) The Contractor shall name a Project Director with an officially recognized technical degree and relevant industry experience with similar projects. The appointment of the Project Director must be submitted to the Owner for approval. The Owner may not reject a proposed candidate without just cause.
- (2) The Project Director shall be responsible for overseeing proper performance of the Work and for directing, managing, and supervising all of the activities necessary for the implementation of the services agreed to by the Contractor in accordance with the terms and time periods specified in this Contract. Further, the Project Director shall be the principle contact between the Contractor and the Owner during the term of this Contract.
- (3) Without prejudice to the foregoing subsection, in accordance with the terms of this Contract and applicable law, the Contractor shall be responsible for the actions of the Project Director and any and all consequences arising from such actions.

6.9 Taxes and Import Duties

The Contractor agrees to pay all taxes, including all expenses, interest and surcharges relating thereto, applicable to the supply, manufacture, transportation, services, sales and other services for which the Contractor is responsible under this Contract, except with respect to those whose payment is expressly attributable to the Owner.

6.10 Intellectual and Industrial Property Rights

All of the drawings and designs that the Owner has prepared or supplied to the Contractor, and all of the patents, copyrights, design rights and other intellectual and industrial property rights thereto shall be the property of the Owner.

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The Contractor, in turn, grants to the Owner, as part of the Contract Price and at no additional cost, an irrevocable license, not transferable to third parties (except in conjunction with all of the rights and obligations of the Owner under this Contract), and free of any royalties, to use in the Solar Park (and therefore, in no other project) the creations, plans, drawings, specifications, documents, procedures, methods, products, inventions prepared or developed by the Contractor under this Contract, in all cases, subject to any restrictions imposed on such intellectual or industrial rights by third parties. The Contractor represents and warrants to the Owner that the same are owned by the Contractor or that the Contractor has sufficient legal rights to use the same for such purpose. Should any claim or action be brought by a third party alleging an infringement of any intellectual or industrial property right granted by the Contractor to the Owner hereunder, the Contractor shall indemnify the Owner for all liabilities and damages (including costs and expenses) that may arise as a consequence of such infringement of third parties' rights, claim or actions arising there from.

6.11 Cooperation

The Contractor undertakes to provide to the Owner all of the cooperation that the latter may reasonably request in connection with the implementation of the project for the construction of the Solar Park and compliance with the Owner's obligations as specified in this Contract, and to submit to the Owner all of the documentation or information that the Owner may reasonably request in connection with the Work and that is available to the Contractor.

7. OBLIGATIONS OF THE OWNER

The Owner undertakes to comply with the obligations set forth in this Contract, those resulting from good faith, and those resulting from the applicable laws and regulations, including, in particular, the following:

- (i) To comply with its payment obligations under this Contract;
- (ii) To provide to the Contractor, its Subcontractors and employees, during the effective term of this Contract, access to the Site to fulfill their contractual obligations, including appropriate access to highways and access roads to perform the Work. For these effects, the Owner will execute, at its cost and expense, agreements with landowners that procure all necessary easements or land use rights;
- (iii) Subject and without prejudice to the obligations of the Contractor under Clauses 6.6 and 2.2 of his Contract, the Owner shall negotiate and obtain, at its own cost and expense, the permits required for Final Start-Up and operation of the Solar Park, including the Final Start-up Certificate. Specifically, with respect to the joint application procedure referred to in Clause 6.6 of this Contract, the Owner agrees to provide all documentation and information required to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power within the Special Regime, in accordance with the terms of Section 12 of RD 661, upon the terms of such Clause 6.6;

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- (iv) To cooperate with the Contractor, to the extent necessary, in order to avoid any impact on the Implementation Schedule or in the performance of the works by the Contractor;
- (v) To appoint a project coordinator to act on behalf of the Owner in the performance of matters associated with the Contract and who must possess sufficient powers to represent the Owner;
- (vi) To provide to the Contractor all of the cooperation that the latter may reasonably request in connection with the implementation of the Work and compliance with the Contractor's obligations under this Contract. The Owner shall submit to the Contractor all documentation or information that the Contractor may reasonably request in connection with the Solar Park and that is available to the Owner.

8. GUARANTEES

8.1 Solar Module Degradation Guarantee

The Contractor guarantees the durability of the solar modules during the Guarantee Period, in accordance with the schedule of guarantees made by the manufacturer of the modules set forth on **Annex 6** of this Contract. Upon expiration of the Guarantee Period, the Contractor undertakes to assign to the Owner its rights under the module supplier guarantees through the remainder of the 25-year useful life of the modules.

8.2 Solar Module Capacity Guarantee

- (1) The Contractor guarantees that the total peak capacity of the Solar Park is equal to or higher than the total contracted capacity for both Phases of 8,295 kWp (which will be confirmed by the manufacturer's photoflash certificates). In case the Contract is terminates for Phase 2 according to Clause 3, the total peak capacity of the Solar Park will be the result from multiplying the number of Solar Facilities assigned to Phase 1 by the Parties by 118.5 kWp. In addition, all certificates for each module shall be within the rated peak capacity margin of ***% and all aggregate certificates for each of the Solar Facilities shall be within the rated peak capacity margin of ***% (although the Solar Park aggregate can only have a margin with respect to the above referenced peak capacity of ***%, in which case the Contract Price shall be reduced proportionately in accordance with the final reduced peak capacity and the corresponding amount of the final Payment Milestone contemplated in Clause 4.2 reduced accordingly).
- (2) In the event that (i) the total sum of the certificates is less than the contracted 8,295 kWp or the kWp fro Phase 1 in case of partial termination of the Contract (unless it is within the permitted margin for the Solar Park pursuant to subsection (1) above), or (ii) the certificates do not comply with the above referenced margins, the Contractor shall replace, at its expense, solar modules as needed to increase the total peak capacity of the Solar Park to the minimum permitted under subsection (1) above, or those modules whose individual capacity is inferior to the aforementioned tolerance.

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- (3) If, as of the date set forth in Clause 14.1(1)(i), the sum of the manufacturer's photoflash certificates demonstrate the peak capacity of the Solar Park is less than the referenced total peak capacity (unless it is within the permitted margin for the Solar Park set forth in subsection (1) above), the Owner may terminate the Contract for Contractor breach in accordance with the terms of Clause 14.1, and pay the indemnity set forth in such Clause.
- (4) The Owner reserves the right to perform capacity tests on the solar module samples that have been provided at the CIEMAT, CENER or IFE-Fraunhofer laboratories, in accordance with the applicable IEC (International Electrotechnical Commission) standard in order to confirm their compliance with the capacity specified by the manufacturer and guaranteed by the Contractor. The results thereof shall be binding on the Parties. In the event that such results confirm that the capacity of the modules does not fall within the tolerance guaranteed by the Contractor, the Contractor shall bear the costs of such tests and shall immediately replace the entire batch of modules corresponding to the tested samples, except to the extent that the modules failing the capacity test can be identified, in which case, only those modules shall be replaced.

8.3 Design, Assembly and Performance Guarantee. Materials Quality Guarantee.

8.3.1 Design, Assembly and Performance Guarantee

- (1) The Contractor guarantees during the Guarantee Period that the procedures followed for the design of the facilities and for the performance of the work are of the required quality and conform to the specifications contained in this Contract.
- (2) The Contractor is obliged to repair or, if necessary in its opinion, to supply totally new, and reinstall free of charge to the Owner, those parts or components of the facilities included in the Scope of Work that fail during the Guarantee Period due to design, assembly or performance defects.
- (3) The provisions of subsections 8.3(2) to (8) below with respect to the Materials Quality Guarantee shall apply, *mutatis mutandis*, to the guarantee provided under this subsection.

8.3.2 Materials Quality Guarantee

- (1) The Contractor guarantees that all the materials and components used in the manufacture, assembly and Start-up of the Solar Park are of the required quality and conform to the specifications for the equipment and the technical documents contained in the Annexes to this Contract. The Contractor further guarantees a minimum stock of spare parts to the Owner in accordance with the terms of Clause 6.3 and **Annex 5** of this Contract.

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- (2) The materials quality guarantee will enter into force on the date of issuance of the relevant Solar Park Provisional Acceptance Certificate and shall remain in force until the Solar Park Final Acceptance Certificate is signed. If the Solar Park or a portion thereof, cannot be commercially operated during the Guarantee Period for reasons attributable to the Contractor, the Guarantee Period shall be extended (only as regards the affected facilities) for a period equal to the period during which the corresponding facilities are not operating. For this purpose, the parties shall record in writing the periods during which operation is suspended and the corresponding extensions of the guarantee.
- (3) During the Guarantee Period, the Contractor is required, in its discretion:
- a) To replace any material and equipment that do not comply with what was agreed upon or required pursuant to this Contract, or that are inadequate or of a deficient quality; and
 - b) To adjust, repair or replace any equipment exhibiting any design, materials, manufacturing, operation, or performance defect. If a Systemic Defect exists with respect to any equipment or components supplied under this Contract, the Contractor shall carry out, at its expense, the redesign and/or modifications necessary to cure such problem in accordance with the Owner's requirements.
- (4) The adjustments, repairs or replacements must be performed within the shortest period that is reasonably possible (and, in any event, no later than fifteen (15) days from the time the defect is detected), in a manner that is least prejudicial to the Owner and taking all action needed to cause the least possible harm to the operation of the overall facilities of the Solar Park.
- If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within the period established in this Clause, the Owner shall so inform the Contractor and shall grant the Contractor a period of five (5) days to complete any such adjustments, repairs or replacements. If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within such period, the Owner may do so itself or through third parties at the Contractor's expense, which action shall not entail forfeiture of the quality guarantee provided by the Contractor under this Clause. The Contractor shall be also required to pay to the Owner the direct expenses paid to the above-mentioned third parties for such purpose.
- (5) Repairs, adjustments, alterations, replacements or maintenance that may be necessary because of the normal wear and tear of on the facilities provided under this Contract or caused by misuse or negligent use of the equipment by the Owner or by third parties (other than the Contractor or its Subcontractors) or because of the use of the equipment supplied to Owner in a manner that does not conform to the technical specifications, are all excluded from the scope of the guarantee. For clarification purposes, it shall be understood that the Owner (or third parties acting on its behalf) has used equipment in the intended manner when such use conforms to the operation and maintenance manuals delivered to the Owner by the Contractor pursuant to this Contract. This guarantee may not be enforced in the event of the inaccessibility of the Site, provided that the Contractor has notified the Owner of the existence of such inaccessibility, or, in the events of *Force Majeure* (for such time as exist the circumstances preventing the provision thereof).

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- (6) The obligations arising from the guarantee set forth in this section shall be fulfilled by the Contractor at its sole cost and expense and free of any charges or expenditures by the Owner, and the Contractor shall bear the expenses arising as a result thereof for the Owner, such as demolition and disassembly, construction, carting, insurance and packaging for returned materials and their replacement, assembly and supervision, taxes and the like.
- (7) All repaired or replaced material shall carry a new guarantee period of the following duration from the date of repair or replacement:
- (i) if repaired, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer; and
 - (ii) if replaced, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer.
- (8) The Contractor guarantees the availability of spare parts for the modules, inverters and solar trackers during the Guarantee Period and during the entire useful life of each Solar Facility, in the latter case provided the Maintenance Agreement remains in force. The Contractor shall provide such guarantee on the following terms:
- (i) With respect to the module, inverter or solar tracker spare parts that are manufactured by the Contractor or by companies of its group (currently headed by Sunpower Corporation), the Contractor shall ensure that such spare parts continue to be manufactured or, in the event that the Contractor or the companies of its group do not manufacture spare parts identical to those already installed, that spare parts for modules, inverters or solar trackers of similar characteristics (and, in the case of modules, of equal or greater capacity) are available, provided they do not entail a reduction in the guaranteed performance of the Solar Park.
 - (ii) With respect to the module, inverter or solar tracker spare parts that are not manufactured by the Contractor or by companies of its group, the Contractor shall use reasonable efforts to (a) cause the respective suppliers to continue to manufacture such spare parts or other spare parts with similar characteristics (and, in the case of modules, of equal or greater capacity), provided they do not entail a reduction of the guaranteed performance of the Solar Park, or (b) obtain such spare parts with similar characteristics from other vendors with technical capabilities that are at least similar to the original ones. Should the Contractor become aware that an original vendor intends to stop manufacturing such spare parts, it shall so notify the Owner so that the Owner may order, through the Contractor, the spare parts it deems appropriate, provided they are available on the market.

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Such spare parts will be supplied at the Owner's request at the market prices prevailing from time to time (which shall be paid by the Owner) and within such reasonable period as the Parties agree, taking into account the characteristics of the requested spare part.

8.4 Solar Park Production Guarantee.

- (1) The Contractor guarantees to the Owner that the aggregate electric output of the Solar Park during each of the *** periods included in the Production Guarantee Period shall reach the PR guaranteed pursuant to Annex 10 (the "Guaranteed PR"), for each determined irradiance and temperature condition, and that in no event shall it fall beneath the PR minimum set forth in such Annex (the "Minimum PR").

In the event of a partial termination of the Contract in accordance with the provisions of Clause 14.1, the Guaranteed PR and the Minimum PR shall be applied to the electric output of the Solar Facilities that were not rejected by the Owner.

- (2) A Production Test shall be performed at the end of each *** period dividing the Production Guarantee Period in order to confirm the electrical output. For these purposes, within the forty-five (45) days prior to the termination of the *** period following the commencement date of the Production Guarantee Period, and within the forty-five (45) days prior to the termination of the Production Guarantee Period, the Contractor shall notify the Owner of such circumstance so that the Parties may agree upon a date to perform the Production Tests for the corresponding *** period (which, in no event may be later than the date which is fifteen (15) Business Days following the date of termination of the period which is *** following the commencement date of the Production Guarantee Period or the termination date of the Production Guarantee Period, as applicable). The following shall apply to the results of the Production Tests for the Solar Park:

- (a) If the actual measured output of the Solar Park is less than the Guaranteed PR for the corresponding *** period (as such term is defined in Annex 10) but is greater than the Minimum PR for such period, the Contractor shall pay to the Owner the penalties set forth in Annex 10, up to a maximum of ***% of the Contract Price.

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- (b) If the actual measured output of the Solar Park is less than the Minimum PR for the corresponding *** period, the Owner may elect to: (i) return the entire Solar Park to the Contractor (or the part thereof that was not rejected in the event of a partial termination in accordance with the terms of Clause 14.1), the Contractor then being obligated to return the entire Contract Price paid by the Owner pursuant to this Contract and to indemnify the Owner for damages pursuant to Clause 14.1(5), or (ii) return the Solar Facilities causing the failure to achieve the Minimum PR to the Contractor, the Contractor then being obligated to return the portion of the Contract Price corresponding to such Solar Facilities and to indemnify the Owner for damages pursuant to Clause 14.1(5) that correspond to the returned Solar Facilities.
- (3) If the Guaranteed PR is reached in the Production Tests for each *** period, or if the Contractor shall have paid the required penalties for achieving an output between the Minimum PR and the Guaranteed PR, the Parties shall execute a certificate of agreement. The execution of such certificate corresponding to the second *** period for the Guaranteed Production Period shall grant the Contractor the right to require the Owner to return the Guarantee Bond in force at the time and replace the same with a new Guarantee Bond in an amount equal to ***% of the Contract Price. The same provisions of this subsection shall also be applied to the Solar Facilities, if any, that the Owner did not return in accordance with subsection 8.4(2)(b).
- (4) The Contractor shall not be responsible for breach of the guarantees in the event that such failure was caused by the circumstances described in Clause 8.3.2(5) above or by excessive failures of the grid coupled with the disconnection of the inverters for exceeding the conditions detailed in their technical specifications.

Further, in the event that a Systemic Defect arises during a Production Guarantee Period, the data from the Solar Park as a whole shall not be considered for purposes of the Production Guarantee during the time the Contractor is replacing the equipment affected by such Systemic Defect, up to a maximum of three (3) months. Thus, in the event that the Contractor takes more than three (3) months to replace the Solar Park equipment affected by a Systemic Defect, only that three (3) month period shall remain in the Production Guarantee Period. For this purpose, the parties shall record the suspension periods and corresponding extensions of the Production Guarantee in writing.

For clarification purposes, the appearance of a Systemic Defect shall obligate the Contractor to replace all equipment of the same model and manufacturer, regardless of whether they have manifested such defect at the time of their replacement.

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8.5 Bonds

- (1) On the Condition Satisfaction Date of Phase 1, the Contractor shall deliver to the Owner the Performance Bond, as per the form attached hereto as Annex 7, in an amount equivalent to ***% of the Contract Price corresponding to such Phase. on the Condition Satisfaction Date of Phase 2, such Performance Bond will be replaced by another one in an amount equivalent to ***% of the total Contract Price. The Performance Bond shall guarantee the performance by the Contractor of any payment obligation for which the Contractor is responsible from the commencement of the Work until the date of execution of the Solar Park Provisional Acceptance Certificate (for any reason, including but not limited to the return of the amounts paid by the Owner, under this Contract, and penalties or compensation for damages and losses, including the performance by the Contractor of its obligations during the portion of the Guarantee Period prior to the execution of the Solar Park Provisional Acceptance Certificate).
- (2) As a requirement for the execution of the Solar Park Provisional Acceptance Certificate, the Contractor shall deliver to the Owner the Guarantee Bond (in exchange for the return of the Performance Bond by the Owner), in an amount equal to ***% of the Contract Price (either of the total Contract Price or of the corresponding part in case only Phase 1 is executed). The Guarantee Bond shall conform to the form attached hereto as Annex 7 and shall guarantee the Contractor's compliance with its obligations during the Guarantee Period (beginning from the execution of the Solar Park Provisional Acceptance Certificate). However, once the Performance Tests corresponding to the second *** period of the Production Guarantee Period have been performed and the written agreement referred to in Clause 8.4(3) has been executed, the Contractor shall have the right to replace the Guarantee Bond delivered to the Owner with a new Guarantee Bond in an amount equal to ***% of the Contract Price.
- (3) The Performance Bond and the Guarantee Bond shall be issued by a financial institution with a minimum "A" rating by Standard & Poor's Corporation or the equivalent from Moody's Investors Services Inc., and shall be enforceable, in whole or in part, on demand by the Owner, in the event of the Contractor's breach of its obligations under this Contract.
- (4) The delivery of the bonds provided under this section shall in no way limit the Contractor's liability under this Contract, as the bonds only constitute a means to guarantee the performance of the obligations assumed by the Contractor.
- (5) If the Contract Price is amended pursuant to Change Orders, the Contractor must update the amount of the Performance Bond. To such end, the Contractor must deliver to the Owner (within fifteen (15) Business Days following the execution of the corresponding Change Order), another bond in the updated amount, in the form attached hereto as Annex 7.

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9. FINAL ACCEPTANCE OF THE SOLAR PARK

- (1) Within forty-five (45) days prior to the passage of *** from the date on which the Solar Park Final Start-Up Certificate has been obtained, the Contractor shall give notice thereof to the Owner in order for both Parties to agree upon a date to analyze the status and condition of the Solar Park (which shall not occur later than the Guarantee Period expiration date).
- (2) If such inspection does not reveal the presence of defects, the Parties shall proceed to execute the Final Acceptance Certificate, at which time the Owner shall return the Guarantee Bond to the Contractor.
- (3) If such inspection finds that defects are present that affect the Contractor's obligations during the Guarantee Period, the Parties shall sign a certificate specifying the defects, if any, that must be corrected within a period of forty-five (45) days of the date of execution of the corresponding certificate, or within such shorter period that the Parties may agree upon.

Once such defects have been corrected by the Contractor within the specified period, a new inspection shall be performed, and if the defects have been remedied, the Parties shall proceed to execute the Final Acceptance Certificate, and the Owner shall return the Guarantee Bond to the Contractor.

10. OWNERSHIP OF THE FACILITIES AND TRANSFER OF RISK

- (1) The Owner and the Contractor expressly agree that the actual transfer of ownership of the facilities and equipment covered by this Contract will be made, for all contractual purposes, when each of the same shall have been paid for in full by the Owner. With respect to the solar modules, module supports and trackers, ownership thereof will be transferred to the Owner upon payment of the respective invoice as provided in Clause 4, whereupon the Owner will become the owner of the solar modules, the module supports and the trackers included in such invoice.
- (2) Without prejudice to the foregoing, or to the Contractor's obligations during the Guarantee Period, the possession and the risk of loss of the same shall not be transferred to the Owner until the execution of the Solar Park Provisional Acceptance Certificate.
- (3) Until the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must repair or replace, at its own expense, any equipment, facility or portion of Work that is lost or damaged. Further, the Contractor must assume responsibility for the care and security of the Site and assume responsibility for any loss, theft or damage that may occur with respect to the Contractor's materials or machinery or the equipment delivered pursuant to this Contract.

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11. INSURANCE

- (1) At all times during which the Contractor continues performing work under this Contract, the Contractor, at its own cost and expense, shall take out and maintain in force the insurance described below with well-known and solvent insurance companies that are legally authorized to issue policies in Spain, on terms and conditions of coverage satisfactory to the Owner and the Insurance Advisor:
- a) Occupational Accidents or Social Security Insurance for all its own personnel or for the personnel of the Subcontractors as is legally required during the effective period of the Contract.
 - b) Mandatory Civil Liability Insurance and Voluntary Civil Liability Insurance for the Circulation of Vehicles and Machinery, pursuant to the limits and conditions mandated by the Legislation in force during the effective period of the Contract.
 - c) Civil Liability Insurance covering all activities of the Contractor and the Subcontractors necessary to complete the Work, with a limit of not less than €1,500,000 per occurrence.
 - d) Transportation Insurance covering the transportation of material and machinery to the Site, with a limit of not less than the aggregate value of the transported goods.
 - e) All-Risks Construction and Assembly Insurance, which will specifically include theft and vandalism at the Site, from the unloading of the material at the Site until the transfer of ownership of the Solar Park, including the testing period and covering a maintenance period of not less than 12 months, with an insured amount not less than the Contract Price.
 - f) Any other mandatory insurance.
- (2) The contracting of insurance provided in this clause shall in no event limit the liabilities of the Contractor under this Contract. Additionally, the amounts established as an insurance deductible in each of the insurance policies shall be borne by the Contractor, unless the loss is attributable to the Owner.
- (3) The Owner may require that the Contractor deliver documentation evidencing the contracting of the insurance set forth under this Clause to verify compliance therewith and/or for verification by the Insurance Advisor, and the Contractor undertakes to make such documentation available to the Owner as soon as possible.

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12. **FORCE MAJEURE**

- (1) Neither Party shall be deemed liable for the breach of any of its obligations to the extent that the performance of such obligations is delayed or becomes impossible as a consequence of *Force Majeure*.
- (2) For the purposes of this Contract, events of *Force Majeure* shall be deemed to be the events described in Article 1105 of the Civil Code, provided that they actually prevent compliance by the party invoking it from complying in whole or in part with its obligations under this Contract. The Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of *Force Majeure* for purposes of this Contract (without prejudice to the changes, if any, that the Parties may agree to in accordance with subsection (11) below and the consequences set forth therein). By way of example and not limitation, the Contractor may not invoke the following as an event of force majeure:
- (i) Meteorological conditions or phenomena that could have been reasonably foreseen by experienced contractors operating at the Site.
 - (ii) Delays or failures in obtaining materials or labor that are foreseeable or avoidable in advance.
 - (iii) Delays by any Subcontractor, unless such delays are based on any of the events specified in this clause.
 - (iv) Strikes or labor conflicts affecting the Contractor or the Subcontractors, unless they are national, sector-wide or local in scope.
- (3) The Party affected by *Force Majeure* shall give written notice to the other Party as soon as possible within a maximum period of forty-eight (48) hours from the day on which such Party became aware thereof, attaching to such notice all available documents evidencing the event that is deemed to amount to *Force Majeure*, the measures taken up to such point in time, and an estimation, if possible, of the expected duration thereof and its impact on the Work
- (4) The performance of the obligations affected by an event of *Force Majeure* shall be suspended for the duration of such event, the Parties not being entitled to damages as results of such events of *Force Majeure*.
- (5) If the Work is affected by the event of *Force Majeure* and the Contract is suspended for more than one hundred eighty (180) days, either of the Parties may seek termination of the Contract, with the consequences provided in Clause 14.3.
- (6) After cessation of the event of *Force Majeure*, the Parties shall agree upon the corresponding extension of deadlines (in all cases in light of the duration of the event of *Force Majeure* and the mobilization periods), or, if applicable, the measures that must be adopted to recover, in whole or in part, the time lost so as to preserve such dates, if possible. The contractual obligations not affected by *Force Majeure* must be met within the deadlines that were in force prior to the occurrence of the event of *Force Majeure*.

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- (7) In any event, upon cessation of the event of *Force Majeure*, the Parties shall take all reasonable measures within their power to resume performance of the obligations under the Contract under optimal conditions and with the least possible delay.
- (8) The expenses incurred as a consequence of the repair, replacement or adjustment of the items damaged by the events of *Force Majeure* shall be borne by the party bearing the risk of loss for such elements at the time of occurrence of the event of *Force Majeure*.
- (9) In the event that an event of *Force Majeure* prevents a Party from complying with a payment obligation required by the Contract, such payment obligation shall not be waived and the other Party may suspend performance of its obligations under the Contract. Such occurrence shall not give either Party a right to indemnification for damages, without prejudice to any interest for delay in payment that might apply.
- (10) The Party claiming the *Force Majeure* event shall immediately notify the other Party of its cessation. Within seven (7) calendar days following the cessation of the *Force Majeure* event, the Parties shall meet to agree and assess the effects that such situation caused. Such agreement shall be documented in a certificate signed by both Parties describing the changes to the contractual conditions.
- (11) In the event that archeological ruins are discovered at the Site, but the Work may be continued by reducing the size of the Solar Park, the number of Solar Facilities, or by implementing a reconfiguration of the technical configuration of the Solar Park, the Parties shall meet to agree on such changes and shall execute a certificate describing the changes to the contractual conditions. In any event, if the change entails a reduction in the capacity of the Solar Park, or in the number of Solar Facilities, thus requiring a reduction of the Contract Price, the Owner shall have the right to withhold from the remaining Payment Milestones payable after the change, the portion of the Contract Price previously paid by the Owner that corresponds to the Solar Facilities or the equipment affected by the reduction and which, consequently, were not delivered by the Contractor under this Contract.

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13. SUSPENSION OF THE WORK

13.1 Suspension by the Owner

- (1) The Owner may at any time give written notice to the Contractor ordering the immediate suspension of the Solar Park, in whole or in part, for any of the following reasons:
- a) If the Contractor is performing the Work in a defective or inappropriate manner, or not adhering to uses and practices customary for projects of this type or as established under this Contract, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - b) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with safety standards, avoiding damage to people and things, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - c) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with quality control requirements, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - d) If the Contractor fails to comply with the instructions issued by the Governmental Authorities for the execution of the Work, to the extent that this may affect the authorizations granted or requested or the successful achievement of the purpose of the Contract.
 - e) By unilateral decision of the Owner.
- (2) The order providing for the suspension of the Work shall specify in writing the portion thereof that is being suspended, the grounds for suspension, the effective date of suspension and the date provided for the resumption of the Work (if applicable).
- (3) In all the cases provided in subsection (1) above, except for the ones mentioned in subsection (e), the suspension shall last for all the time required and until the Contractor cures the circumstances that gave rise to the suspension of the Work. Additionally, in none of such cases shall the Contractor be entitled to any additional payment whatsoever or to the extension of the periods provided in the Implementation Schedule, except in the case mentioned in subsection (e), where the Contractor shall be entitled to an extension of the deadlines provided in the Implementation Schedule for a period at least equal to the suspension period and to be compensated for the costs resulting from the repair, replacement or adjustment of the items damaged during the suspension period and the costs arising from the suspension and resumption of the Work.
- (4) If the suspension lasts for a period in excess of one hundred and eighty (180) days, and the reasons are not attributable to the Owner, the Contractor shall reserve the right to terminate the Contract upon the terms of Clause 14.1.

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13.2 Suspension by the Contractor

- (1) The Contractor shall be entitled to temporarily suspend the Work as provided under this Contract, applicable law and in the event that the Owner incurs a delay in excess of thirty (30) days in the payments owing to the Contractor, as regards the expiration dates of the relevant invoices (except in the case of the works relating to a Payment Milestone disputed in accordance with Clause 4.3 (3)). In such event, the Owner shall pay to the Contractor its expenses arising from the suspension (including the costs resulting as a consequence of the repair, replacement or adaptation of the damaged elements during the suspension period and the costs arising from the suspension and resumption of the Work) and the Parties shall agree upon an extension of the deadlines for performance based on the effects of the suspension thereon.
- (2) If the suspension for a cause attributable to the Owner (including the one provided under subsection 13.1(1)(e) above) lasts for more than three (3) months or during several consecutive periods totaling more than three (3) months, the Contractor shall be entitled to terminate the Contract upon the terms of Clause 14.2.

13.3 Suspension by Judicial or Governmental Authority

- (1) In the event of suspension, interruption or stoppage of the Work, in whole or in part, ordered by any judicial or governmental authority, or by the Owner or Contractor following the instructions of any judicial or governmental authority, the financial and contractual consequences of the delay shall be borne by the party that is responsible for performance where the failure to perform or incorrect performance triggered the judicial or governmental action.
- (2) If such suspension, interruption or stoppage does not result from the actions or omissions of any of the Parties, the periods of the Implementation Schedule shall be extended for a period at least equal to the one during which the situation subsisted, and the Owner shall pay to the Contractor the duly verified costs incurred as a result of such interruption. The Contractor undertakes to act diligently to minimize such costs.
- (3) If the suspension ordered by any judicial or governmental order, or by the Owner or the Contractor following the instructions of any judicial or governmental authority, extends for more than six (6) months, either of the Parties will be entitled to terminate the Contract upon the terms of Clause 14.

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14. TERMINATION

14.1 Termination for Causes Attributable to the Contractor

- (1) The Owner may terminate the Contract in the cases authorized by the Law, in the instances provided for in this Contract, or upon the occurrence of any of the following events:
- a) The dissolution or merger (provided it involves a change in control) of the Contractor ***, or when a substantial portion of the assets of the Contractor *** is transferred to another company, provided that such circumstances seriously prejudice the Contractor's *** capacity to perform the obligations under this Contract ***, respectively;
 - b) The voluntary filing by the Contractor of a bankruptcy petition or the allowance of a bankruptcy petition by a third party against the Contractor (or any equivalent action in accordance with the insolvency legislation applicable to the Contractor), or in the case of clear financial difficulties that prevent the Contractor from normally complying with obligations arising under the Contract, unless its obligations are sufficiently guaranteed under this Contract. The occurrence of the same events as regards *** shall also be grounds for termination.
 - c) If the Contractor assigns or subcontracts the Contract, in whole or in part, without complying with the conditions set forth in this document.
 - d) If the Contractor fails to comply with its obligations involving the contracting and maintenance of the insurance provided under the Contract in a manner that might endanger coverage under the relevant policies.
 - e) If the Contractor has been assessed penalties for failure to achieve the Production Guarantee beyond the maximum limits, if applicable, provided under this Contract.
 - f) If the Contractor has interrupted the Work or a substantial portion thereof or has abandoned the Solar Park for a period exceeding twenty (20) calendar days without the Owner's authorization, or in the case of interruptions for an aggregate duration of more than thirty (30) days within the same calendar year, provided that the interruptions do not arise from a suspension of the Work provided under Clause 13.2.
 - g) If the application for the Final Start-up Certificate has not been filed together with all required in accordance with the terms of Clause 6.6 on or prior to the Delivery Deadline due to causes attributable to the Contractor, although the Owner cannot effect termination for the reason set forth in this subsection with respect to those Solar Facilities or Electrical Infrastructure for which a Final Start-up Certificate would have been obtained prior to September 29, 2008.

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- h) If the Owner has not obtained the Final Start-up Certificate (with respect to one or more Solar Facilities and/or the Electrical Infrastructure) prior to ***, for the reasons set forth in Clause 6.6(2)(ii).
 - i) If the Provisional Acceptance Certificate for one or more Solar Facilities or the Electrical Infrastructure has not been issued prior to ***,
 - j) ***
 - k) ***
 - l) If there is any other material breach of the obligations assumed by the Contractor under this Contract.
 - m) Any other serious breach of a principal obligation of the Contractor that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
- (2) Upon the occurrence of any of the above events, the Owner may elect to terminate the Contract, in whole or in part, with respect to the Solar Facilities for which the Provisional Acceptance Certificate of a Facility has not been issued as of the date of notice of termination, or for which the Final Start-up Certificate has not been obtained in the case of subsections g) and h) above (hereinafter, the “**Affected Facilities**”), except to the extent that the number of Affected Facilities is less than 40% of the total Solar Facilities, in which case the Owner may only terminate the Contract with respect to such Affected Facilities.
- However, if the Affected Facilities represent less than 40% of the Solar Facilities, the Owner may elect to terminate the Contract with respect to the entire Solar Park if one of the termination events set forth in subsections a) or b) has occurred and the Owner reasonably believes that such circumstances pose a material prejudice or risk to the performance of the Contractor’s obligations under this Contract during the Guarantee Period. The foregoing shall not apply if the Contractor has provided equipment guarantees, satisfactory to the Owner, sufficient to ensure proper maintenance and replacement of the Solar Park during the Guarantee Period and the Contractor has assigned such guarantees to the Owner pursuant to the terms of this Contract.
- The above shall not prejudice the Owner’s option to return the Solar Park in its entirety upon the occurrence of the circumstance set forth in Clause 8.4(2)(b).
- (3) Upon the occurrence of any of the above events, the Owner shall give the Contractor a period of thirty (30) days to remedy the event, or any other longer period that may be agreed upon by the Parties. If within such period the Contractor fails to remedy such grounds for termination to the Owner’s satisfaction, the Contract shall be terminated (in whole or in part, as applicable). For clarification purposes, it is noted for the record that in no event will the remedy period provided herein be applicable to the circumstances provided in subsections (1)(b), (e), (f), (g) , (h) and (i) of this Clause.

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- (4) In the event of a termination of the Contract (in whole or in part) under this subsection, the following shall occur (without prejudice to the provisions of subsection (6)):
- (i) In the event of partial termination, only as to some Solar Facilities in the Solar Park, the Contractor shall be obligated to return to the Owner the portion of the Contract Price that it charged for the Affected Facilities and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of the property comprising such Solar Facilities.
 - (ii) In the event of complete termination, the Contractor shall be obligated to return the aggregate Contract Price charged by the Contractor, and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of all the property delivered to the Owner.
- (5) Upon the occurrence of either two events described in the preceding subsection, the Contractor shall be obligated to pay indemnification to the Owner for damages, including:
- (i) The Financial Costs associated with the Affected Facilities or the entire Solar Park, as applicable. **“Financial Costs”** shall be understood to mean all costs, expenses, fees (whether up-front, early termination or of any other type) and interest paid by the Owner in respect of the financing documents entered into by the Owner with the Financial Institutions, including cancellation or breakage fees for any interest rate swap agreements entered into by the Owner with the Financial Institutions.
- The Contractor acknowledges the validity of the amount, as determined by the Agent under the financing documents, to be provided in the settlement statement that will be delivered by the Agent to the Owner in which the factors used to calculate the Financing Costs with respect to the Solar Facility or Facilities or the Solar Park, as applicable, will be described.
- (ii) The costs, expenses and damages incurred by the Owner as a result of, or with respect to, the early termination or the breach by the Contractor, duly certified by the Owner, plus an amount equal to *** euros for each Affected Facility, to cover permitting costs.

Concurrently with the payments provided for in subsections 15.1(4) and 15.1(5), the Owner agrees to take all necessary actions which are in its control to assign to the Contractor, or its designee, ownership title (free of encumbrances and liens) to the permits and authorizations relating to the Affected Facilities (or the Solar Park in its entirety in the event of total termination), as well as corresponding usage rights (free of encumbrances and liens) to the part of the Site on which such Affected Facilities are located and the contractual rights in those contracts relating to the Solar Park with respect to the Affected Facilities. For purposes of this paragraph, it shall be understood that the Owner has assigned (free of encumbrances and liens) all permits and authorizations for the Affected Facilities or the Solar Park, as applicable, upon delivery to the Contractor of all documentation required by the Contractor (and which must be contributed by the grantor) to immediately request the approval by the competent administrative entity for the assignment of such permits and authorizations.

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In the event that a special purpose entity holds title to such permits and authorizations and usage rights to the Site, the Owner agrees to transfer to the Contractor, free of encumbrances and liens, all shares or participations representing the entire share capital of such special purpose entity (provided that such entity only holds title to the Affected Facilities).

For clarification purposes, in no event shall the above-referenced obligation be construed as an obligation to achieve a specific result, and the Owner does not assume any responsibility in the event that the assignment of the permits and authorizations referred to in the previous paragraph cannot be completed as a result of the failure to receive approval (when necessary) for such assignment from the relevant government administration or entity or the Contractor's failure to comply with the requirements imposed on the Contractor by the holders of such permits or authorizations.

- (6) Notwithstanding the provisions of subsections (4) and (5), if the Owner had the right to terminate the Contract, in whole or in part, as a result of the failure to achieve Start-up prior to September 29, 2008 for the reasons set forth in subsections 14.1(g) and 14.1(h) above, the Owner may not elect to return the Affected Facilities, if:
- (i) prior to September 29, 2008 the Contractor pays to the Owner an amount that is sufficient to (a) restore the Debt Service Coverage Ratio (as will be defined in the financing documents referred to in Clause 14.1(5)(i)) to the Base Case (as will be defined in the financing documents referred to in Clause 14.1(5)(i)) agreed to by the Financial Institutions and the Owner in such financing documents, and (b) cover the loss of profitability for the Owner's shareholders, taking into account the tariffs which will be received by the Owner from the sale of power from the Solar Park. For such purposes, the Contractor acknowledges and accepts that the amount to be paid to the Owner (for the items set forth in the preceding subsection) will be proposed by the Agent for the Financial Institutions and negotiated between the Owner and the Contractor on the basis of the assumptions in the Base Case to be notarized by the Owner and the Financial Institutions along with the financing documents; and

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(ii) Start-up of the Affected Facilities shall have occurred prior to November 30, 2008.

The Owner may require the return of the Solar Facilities for which the above requirements and Contractor payments have not been met, each in accordance with the provisions of subsections (4) and (5) above.

(7) The Contractor is required to pay the amounts referred to in subsections (4) and (5) above to the Owner within *** days of the date of settlement of the amounts owed.

(8) In all the foregoing instances, the Owner may, without prejudice to the reservation of rights to take all legal action to which it is entitled for the defense of its rights, adopt any or all of the following measures:

- a) Offset any payments pending in favor of the Contractor by an amount equivalent to the balance in favor of the Owner (returning, in the event of complete termination, the Performance Bond or the Guarantee Bond, as applicable, once such offset has been made).
- b) Enforce the Performance Bond and/or the Guarantee Bond.
- c) Withhold the Contractor's materials, machinery and items belonging to the Contractor that are in the possession of the Owner, until the Contractor has fully paid all amounts due as a consequence of the termination.

14.2 Termination by the Contractor

(1) The Contractor may terminate the Contract under the circumstances provided for under applicable law, in this Contract, or upon occurrence of any of the following events:

- (i) The voluntary filing by the Owner of a bankruptcy petition or the allowance of a bankruptcy petition filed by a third party against the Owner, or in the event of patent financial difficulties that would prevent the Owner from normally complying with the obligations arising under this Contract in cases different from the one provided under subsection (ii) below, unless its obligations are sufficiently guaranteed under this Contract.
- (ii) A delay in payment for a period in excess of sixty (60) days from the date on which payment should have been made.

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- (iii) Any other serious breach of a principal obligation of the Owner that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
 - (iv) A suspension of the works and services for causes attributable to the Owner for a period greater than three (3) months.
 - (v) The dissolution of the Owner, or if a substantial portion of the assets of the Owner is transferred to another company, and such circumstance seriously prejudices the Owner's capacity to perform the obligations set forth in this Contract.
- (2) The Contractor shall give to the Owner a period of thirty (30) days to cure the event, or any other longer period that may be agreed upon by the Parties. Such cure period shall not apply if the event giving rise to grounds for termination is one provided for in subsections (i) and (iv) of Clause 14.2(1) above. If the Owner fails to remedy such grounds for termination to the Contractor's satisfaction within such period, the Contract shall be terminated (in whole or in part, as applicable).
- (3) Upon termination of the Contract for any of the foregoing reasons, the Owner must:
- (i) Pay all of the Contractor's outstanding invoices.
 - (ii) Pay to the Contractor the value of the Work performed before termination and which is not yet included in the invoices. Accordingly, the Owner must pay to the Contractor the cost of the equipment already delivered to the Contractor or that it is legally required to accept under the contracts entered into with its suppliers and manufacturers, which shall become the property of the Owner if they had not already become so.

However, the Contractor undertakes to take such actions necessary or appropriate to minimize the costs referred in this subsection. The Contractor shall include the provisions required to that effect in the contracts with suppliers and subcontractors.
 - (iii) Pay all duly authenticated damages that are sustained by the Contractor as a consequence of the contractual breach or early termination, including direct demobilization costs.
 - (iv) Return to the Contractor the Bonds received from the Contractor.
- (4) Upon the Owner's compliance with the conditions set forth in the above subsection, the Contractor shall abandon the Site within a period of thirty (30) days and the Owner may complete the Work by itself or with another contractor, the Owner being entitled to request the Contractor to assign each and every contract signed by the Contractor and its subcontractors (except contracts entered into for the supply of solar modules, supports and trackers or for the supply of technology and software, which the Owner may not assume). The Contractor is obligated to cooperate in good faith with the Owner to effect such assignments.

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14.3 Termination due to Force Majeure

In the event of termination of the Contract due to an event of *Force Majeure*, the provisions of subsections 14.2 (3) (i), (ii) and (iv) above shall apply.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Assignment

- (1) The Contractor may not assign or transfer to third parties, in whole or in part, the economic, commercial or financial rights or credits arising under this Contract, or engage in any other transaction involving any type of disposition, encumbrance, commitment and/or transaction, in whole or in part, regarding such rights and credits, unless it has obtained the prior written approval of the Owner and the Financial Institutions. An assignment to other companies within the Contractor’s group that have the same technical capacity to perform the contractual obligations and that satisfy the requirements of the Direct Agreement is permitted, ***.
- (2) The Owner may only assign all or a portion of the rights and obligations arising under this Contract in favor of the Financial Institutions in accordance with Clause 17, or to any other third party with the prior written approval of the Contractor.

15.2 Subcontracting

- (1) The Contractor may subcontract the Work, provided the following conditions are met:
 - (i) All the subcontracts executed (except the contracts entered into for the supply and manufacture of solar modules, supports and trackers or for the supply of technology and software, which Owner may not assume) and all guarantees obtained from any of the suppliers or Subcontractors may be assigned at the request of the Owner in the event of termination of this Contract. For such purpose, the Contractor irrevocably undertakes to assign to the Owner and the Financial Institutions the rights arising from all the guarantees and subcontracts obtained from Authorized Subcontractors upon the expiration of the Guarantee Period or in the event of termination of the Contract.
 - (ii) The guarantees or subcontracts executed by the Contractor with Subcontractors or suppliers shall be consistent with the terms and provisions of this Contract.

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(iii) The Contractor shall deliver to the Owner, within a reasonable period after the request thereof, a copy without prices or other commercial terms, of all the contracts, agreements and guarantees signed with the Subcontractors (containing the waiver referred to in subsection (3) below)

(2) In no event shall a contractual relationship be implied among the Subcontractors and the Owner. The Contractor shall remain liable for all of the activities of its Subcontractors and suppliers and for all contractual and labor obligations arising from the performance of their work; as well as for the actions, failures and negligence of any of its subcontractors or suppliers and the agents and employees thereof, under the same terms and conditions as if committed or performed by the Contractor itself, its agents or employees.

(3) The Owner shall not be liable vis-à-vis any Subcontractor or supplier, or vis-à-vis their employees, for any claims arising directly or indirectly from the Contract. For such purpose, the Contractor undertakes to procure an express and written waiver of the rights conferred by Article 1597 of the Civil Code from each Subcontractor.

16. LIABILITY AND DAMAGES

(1) The Parties shall have the obligation to provide indemnification for those damages caused to the other Party as a consequence of the breach of this Contract. The Owner's approval of the projects, calculations, drawings or other technical documents prepared by the Contractor, or the conduct of inspections or Tests do not release the Contractor from such liability, and do not imply that such liability must be shared by the Owner.

Further, the recommendations made by the Owner or its representatives during the performance of the Contract or on occasion of inspections or Tests shall not give rise to an exemption, mitigation or excuse for the Contractor's performance under this Contract, except to the extent such recommendations or observations were implemented despite the Contractor's objection.

(2) The Contractor shall be liable vis-à-vis the Owner for any loss or physical damage to the equipment, materials or assets owned by the Owner or third parties that is caused by the Contractor through the execution of the relevant Solar Facility Provisional Acceptance Certificate, and thereafter only when the Contractor is within the Site performing the Work, repairs or similar activities and causes the relevant damage.

If the Contractor fails to hold the Owner or the third parties harmless from the above-mentioned damages, the Owner shall be entitled to redress such damages, deducting the costs of repair from any amounts pending payment to the Contractor, or by enforcement of the Bonds issued pursuant to this Contract.

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- (3) By application of Article 1596 of the Civil Code, it is expressly agreed that the Contractor shall also be liable for damages caused by the persons or entities employed by the Contractor in the performance of the Work, whether as employees, technicians, subcontractors or otherwise, from whom the same diligence owed by the Contractor shall be required.
- (4) The Parties expressly agree that in no event will a Party be liable for the so-called consequential or indirect damages, including loss of profits and loss of output, loss of use or loss of any contract or other damages that are considered to be indirect, except for cases involving willful misconduct or gross negligence, and without prejudice to the Contractor's obligation to pay the penalties agreed upon under this Contract.
- (5) The Parties agree that any indemnity received by one of the Parties as beneficiary of any of the insurance taken out by them in connection with the Solar Park will be deducted from the respective claim for damages or, if such indemnity holds the Party in question harmless from the damages sustained, it shall bar such Party from claiming damages and require it to refund the excess, if any. The Party causing the damages shall bear all deductibles, liability limits and any other deductions affecting the indemnities payable to the damaged Party by the insurance companies providing the insurance in accordance with the provisions hereof.
- (6) The maximum total liability of the Contractor hereunder shall not exceed, in the aggregate, an amount equal to *** (***%) percent of the Contract Price. The foregoing shall not affect to the Contractor's obligation to make payments under Clause 14.1 in the event of the termination or partial termination of the Contract.

17. OWNER FINANCING

The Contractor hereby acknowledges as fundamental to this Contract:

- (i) the possibility that the Owner's rights under this Contract may be fully or partially pledged or assigned as security, in one or successive instances, to the Financial Institutions.
- (ii) the possibility that "direct agreements" that provide the Financial Institutions with "step-in" rights will be executed in the form agreed to prior to the execution of this Contract and which are attached hereto as **Annex 9**;
- (ii) the possibility that the right to receive indemnification to which the Owner may be entitled and which arise under the insurance policies purchased in accordance with the terms of this Contract may be pledged or assigned as security to the Financial Institutions (and the essential nature of subscribing the insurance policies upon the terms of the report issued by the Insurance Advisor in accordance with Clause 11);.

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- (iii) that the Financial Institutions and their advisors (including the Technical Advisor and the Insurance Advisor and any others) have the right to access the Site in order to inspect the performance of the work contemplated under this Contract, upon the terms contemplated in Clause 6.2;
- (iv) the Technical Advisor's right to observe all Capacity and Production Tests and the obligation to obtain its prior approval for the issuance of the Solar Park Provisional Acceptance Certificate, each Solar Facility Provisional Acceptance Certificate, the Final Acceptance Certificate and other actions for which the approval of the Technical Advisor is required in accordance with the form of Direct Agreement attached hereto as **Annex 9**;
- (v) the requirement to obtain the prior approval of the Financial Institutions for any change to the terms of this Contract upon the terms contemplated herein;
- (vi) the Contractor's obligation to pay any amounts owed to the Owner under this Contract to the account, if any, indicated in writing by the Financial Institutions;

All of the foregoing is without prejudice to the other rights expressly granted in favor of the financial Institutions pursuant to other clauses of this Contract.

18. CONFIDENTIALITY

- (1) The Parties agree that this Contract and the Annexes hereto, and any written or electronic information or documentation that any of the Parties furnishes to the other for the performance of this Contract (including, without limitation, technical documentation, plans, information, procedures, patents and licenses) are confidential. Therefore, the Parties undertake to keep the information confidential and to refrain from disclosing, providing to third parties or using such information unless such documentation and information (i) is known by the public without any breach of this confidentiality commitment, (ii) has been legally obtained from a third party, (iii) is requested by a judicial or governmental authority, or (iv) the delivery of such documentation and information is made in compliance with any legal obligations enforced upon the disclosing Party.
- (2) The Parties agree that the above shall not apply to any disclosure of information made by any of the Parties to other entities of their Group (within the meaning of Article 4 of Securities Market Law (*Ley del Mercado de Valores*) 24/1988 of July 28), regulatory, tax or governmental authorities, and their respective advisors and auditors, internal or external, in relation to the information requested by them for the development of the investigations, assessments and works carried out by them, provided that, in each and every one of such cases, the parties receiving the confidential information have assumed commitments of confidentiality vis-à-vis the disclosing party on terms similar to this one. In this case, such entities, authorities, advisors or auditors shall have free access to the books, files, documents and information held by the requested Party, and prior authorization is therefore not required from the other Parties to furnish information to such entities, authorities, advisors and/or auditors regarding this Contract and the Annexes hereto and any other information or written documentation relating hereto.

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(3) In particular, the Owner is authorized to transmit information regarding this Contract to the Owner and the Financial Institutions and to those investors with interests in the construction and commercial operation of the Solar Park who reasonably request information with respect to this Contract, provided that they have assumed vis-à-vis the provider of such information confidentiality undertakings upon terms substantially similar hereto. Further, the Owner hereby authorizes the Contractor to provide such information to the Financial Institutions;

(4) The confidentiality commitment must be observed until the passage of two (2) years from the date of execution of the Final Acceptance Certificate or any termination of the Contract, regardless of the cause thereof.

19. NOTICES

(1) All notices and communications between the Parties for the purposes of this Contract shall be made in writing, by certified mail, fax or courier service, to the following addresses:

To the Contractor:

SunPower Energy Systems España, S.L.

Paseo de la Castellana, 86, 8º

28046 Madrid, Spain

Fax: +34 915644451

Attn: General Manager

With a copy to:

SunPower Systems SA

42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland

Fax: +41 22 304 1405

Attn: Marco Antonio Northland

To the Owner:

Solargen Proyectos e Instalaciones Solares, S.L.

Calle Núñez de Balboa, 120, 7º, 28006, Madrid

Fax: +34 91 562 3593

Attn: Juan Carlos Sirviente Rodrigo

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As from the moment the Owner has send the Contractor the identification and address for notices of the Technical Advisor, all notices sent to the Owner should be sent with a copy for the Technical Advisor.

- (2) The Parties may change the above addresses by written notice to each other given in the form and to the addresses mentioned above.
- (3) Notices shall be deemed received on the third (3rd) Business Day following the dispatch thereof when sent by courier service (unless there is evidence of earlier receipt) or the Business Day following the date on which there is evidence of the receipt thereof in the case of faxes and certified mail.

20 LAW AND JURISDICTION

- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation, to which the Contractor and the Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje (CIMA)*) of Madrid in accordance with the Procedural Regulations thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by the Contractor and the other by the Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.
- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

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In witness whereof, the Parties execute this Contract in two (2) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

SOLARGEN PROYECTOS E INSTALACIONES SOLARES, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

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SCOPE OF WORK. TECHNICAL SPECIFICATIONS

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ANNEX 3

IMPLEMENTATION SCHEDULE

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ANNEX 4

TEST PROTOCOLS

Protocol for tests prior to the provisional acceptance of each Solar Facility and of the Solar Park

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ANNEX 5

MINIMUM INVENTORY AND SUPPLY OF SPARE PARTS

The Contractor must make available to the Owner, pursuant to the terms of Clause 6.3, the following inventory of spare parts:

Part	Units per MW	Total quantity
Mechanical part		
Drive bellows boot	0.4	3
Ground braids, torque tube to pier	5	35
Module mounting assemblies	5	35
MC connectors	5	35
Actuator (endless screw)	0.2	2
Low voltage		
Solar panels	10	70
Orientation motor	0.4	3
GPS + PLC + clinometer	0.4	3
SunPower controller (no housing)	0.4	3
Inverter	0.2	2
Communications card for the inverter	0.4	3
Fuse set for the inverter	0.4	3
Set of overvoltage protective devices for the inverter	0.4	3
DC fuses	5	35
Set of overvoltage protective devices for the junction box	0.4	3
Junction box	0.4	3
Fan unit	0.4	3
Set of sensors for the weather station	0.2	2
Communications		
MOXA cards	0.2	2
Routers, switches, hubs, etc.	0.2	2
Medium voltage		
MV fuses (if protective cabinets with fuses are installed)	0.4	3
Protective relay	0.1	1
160 kVA transformer	0.1	1

The second column of the chart shall be recalculated according to the number of MW assigned to Phase 1 in case only Phase 1 is executed.

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ANNEX 6

MODULE DEGRADATION GUARANTEE

The guarantee described in Section 6 of the Technical Specifications, as incorporated into Annex 2.

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FORMS OF SURETY BONDS

Form of Performance Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes to **SUNPOWER ENERGY SYSTEMS, S.L.U.** with a registered address at [I], recorded in [I] (hereinafter the “**Guaranteed Party**”) an irrevocable, absolute, guarantee payable on demand to [I] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on even date herewith with respect to the construction and start-up of a solar park located in [I] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*) or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt, and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guarantee Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [I].

This Bond may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

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All sums due from the BANK under this Bond shall be paid net of any indirect tax, withholding or commission and without any type of offset or deduction. If the BANK, in the performance of this Bond, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholdings) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK's payment was not required.

The payment obligations assumed by the BANK under this Guarantee are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Bond shall automatically expire on the date of execution of the Solar Park Provisional Acceptance Certificate, and in any event, on January 31, 2009, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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Form of Guarantee Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes an irrevocable, absolute, guarantee payable on demand to **SUNPOWER ENERGY SYSTEMS, S.L.U.**, with a registered address at [1], recorded in [1] (hereinafter, the “**Guaranteed Party**”) in favor of [1] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary [on [1]] with respect to the construction and start-up of a solar park located in [1] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guaranteed Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [1].

This Guarantee may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All the sums due from the BANK under this Guarantee shall be paid net of any indirect tax, withholding or commission and without any type of set-off or deduction. If the BANK, in the performance of this Guarantee, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholding) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

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The payment obligations assumed by the BANK under this Bond are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party, or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Guarantee shall automatically expire on the date of execution of the Solar Park Final Acceptance Certificate, and in any event, on January 31, 2012, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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AUTHORIZED EQUIPMENT

Modules:

- Powerlight
- SunPower
- Yingli
- Suntech
- Evergreen Solar
- Sanyo
- O-cells made by Aleo
- Solar Semiconductor

Up to 35% of the modules capacity may be supplied by one or more of the following manufacturers:

- Mitsubishi
- SESE
- CSI
- Solarworld
- Trina
- Gloria

Trackers:

- Powertracker

Inverters:

- Xantrex
- SMA
- Siemens
- Ingeteam

Medium-Voltage Electrical Power Lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt/)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)

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Transformer and Sectioning Stations

1.1 Cells

1.1.1 Encapsulated cells:

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
MANUFACTURAS ELÉCTRICAS	(www.me-sa.es)
SIEMENS	(www.siemens.es)
VEI ELECTRIC SYSTEMS	(www.vei.it)

1.1.2 SF6-insulated cells and switchgear in metal housings

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
VEI ELECTRIC SYSTEMS	(www.vei.it)

1.2 Power transformers

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
IMEFY	(www.imefy.com)
ALKARGO	(www.iberapa.es)
ABB TRAFO	(www.abb.com)
SIEMENS	(www.siemens.es)
INCOESA	(www.incoesa.com)
OASA	(www.oasanet.com)
CONSTRUCCIONES ELÉCTRICAS JARA	(www.trafojara.com)
LAYBOX	(www.laybox.com)

1.3 Prefabricated housings

POSTES NERVIÓN	(www.postesnervion.es/)
PREPHOR	(www.prephor.com)
INAEI	(www.inael.com)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
AREVA T&D	(www.areva-td.com)

Low-voltage lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)

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NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)
CONTECSA	(www.contecsa-spain.com)
CABELTE	(www.cabelte.pt)
MIGUELEZ	(www.miguelez.com)

Low-voltage panels

1.1 Rectifiers – battery chargers

ZIGOR	(www.zigor.com)
SAFT POWER SYSTEMS IBERICA S.L.	(www.spsi.es)
EMISA - EXIDE	(www.exide.com)
ENERTRON	(www.enertron.net)

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1.2 Protective cabinets and A.S. [auxiliary services] control

PROYECTOS MECA	(www.proymeca.com)
CYMI	(www.cymi.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
CUADRELEC	(www.cuadrelec.com)
PMC Ingeniería	

1.3 Exterior cabinets

PINAZO	(www.pinazo.com)
ELDON	(www.eldon.es)
HIMEL	(www.himel.com)
RITTAL	(www.rittal.es)

Electrical protective devices

1.1 Indirect and direct protective devices for MV cells

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
SIEMENS	(www.siemens.es)
GENERAL ELECTRIC	(www.GEIndustrial.com)
TEAM ARTECHE	(www.teamartech.es)
ZIV	(www.ziv.com)

1.2 Direct LV protective devices

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
MOELLER	(www.moeller.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
GOULD	(www.gould.com)

1.3 Metal-oxide lightning rods

TYCO ELECTRONICS RAYCHEM GMBH	(www.energy.tycoelectronics.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
INAEL	(www.inael.es)
ABB	(www.abb.es)
CELSA	(www.celsa.com)

Supervisory System

1.1 PLCs [programmable logic controllers]

SCHNEIDER ELECTRIC	(www.schneider-electric.com)
BECKHOFF	(www.beckhoff.es)
ROCKWELL AUTOMATION	(www.rockwellautomation.com)
GENERAL ELECTRIC FANUC	(www.gefanuc.com)

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1.2 Industrial communications

HIRSCHMANN	(www.hirschmann.com)
MOXA	(www.moxa.com)

1.3 SCADA [system control and data acquisition] platforms

WONDERWARE	(www.wonderware.com)
GENERAL ELECTRIC	(www.gefanuc.com)

1.4 Optical fiber

NEXANS	(www.nexans.com)
CORNING	(www.corning.com)
OPTRAL	WWW.OPTRAL.COM

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FORM OF DIRECT AGREEMENT

*** CONFIDENTIAL MATERIAL REDACTED AND
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DIRECT AGREEMENT

between

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U

as Contractor

and

o

as Owner

and

o

as Agent

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Madrid, on the [1] day of [1], 2008.

APPEARING PARTIES

Party of the first part,

(A) SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U. (the “Contractor”)

Party of the second part,

(B) [1] (the “Owner”).

Party of the third part,

(C) [1] (the “Agent”).

All of whom are hereinafter referred to collectively as the "Parties."

The persons appearing on behalf of each Party, as well as their powers of representation and corresponding grants of authority are set forth on **Annex 1** hereto.

RECITALS

- I. The Owner and the Contractor executed on [1]:
- (i) a “turn-key” construction contract (the “**Construction Contract**”) for the construction and start-up of a solar park en Casas de Don Pedro (Badajoz), composed of two phases, one composed of [1] solar facilities and another of [1] solar facilities, all of them with a unit capacity at the panels between 115 y 122 kWp y 100 kW at the inverter (the “**Solar Park**”);
 - (ii) a maintenance agreement (the “**Maintenance Agreement**”) for the performance by Contractor of the maintenance Work relating to the Solar Park.
- II. In order to finance, among other things, the payments that are the responsibility of the Owner under the Construction Contract, the Owner has entered into the following contracts, on even date herewith, registered as public instruments before the Madrid Notary Mr. [1]:
- (i) a credit agreement in the maximum amount of [1] euros (hereinafter, the “**Credit Agreement**” or the “**Loan**”) with the Agent and [1].
 - (ii) an interest rate hedge agreement (CMOF/ISDA) and its corresponding Schedule with [1], to cover interest rate fluctuation risks relating to the Loan (hereinafter, the master agreement and its Schedule together with the confirmations to be executed in connection therewith, the “**Interest Rate Hedge Agreement**”).

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[I], together with its successors and assigns with respect to the Interest Rate Hedge Agreement, and the institutions which at any given time make up the credit institutions under the Credit Agreement are hereinafter collectively referred to as the “**Financial Institutions.**”

- III. To guarantee the Owner’s obligations under the Credit Agreement and the Interest Rate Hedge Agreement (hereinafter, collectively, the “**Guaranteed Contracts**”) the Owner has granted on even date herewith (among others) a pledge agreement, registered as a public instrument with the Madrid Notary Mr. [I], pursuant to which the rights under the Construction Contract and the Maintenance Agreement (among others) were pledged to the Financial Institutions (the “**Pledge**”).
- IV. In consideration of the premises, and as a fundamental condition to the execution of the Guaranteed Contracts by the Financial Institutions, the Parties have agreed to execute this Contract whereby the Contractor assumes certain obligations to the Financial Institutions with respect to the Construction Contract, the Maintenance Agreement and the Guaranteed Contracts, as follows.

CLAUSES

1. DEFINED TERMS

Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Construction Contract.

2. PLEDGE

- (1) The Contractor hereby pledges all rights to receive payment from the Owner under the Construction Contract and the Maintenance Agreement.
- (2) As a consequence of the foregoing, except in the event of receipt of a written notice from Agent that the Pledge has been cancelled, the Contractor agrees:
- (i) not to convey or create any type of pledge, charge, lien or other security right over the Contractor’s rights to receive payments under the Construction Contract or the Maintenance Agreement, without the express prior written approval of the Agent;
 - (ii) not to honor any notice or instruction from the Owner that contravenes or modifies the terms of the Pledge or of this Contract;

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- (iii) to immediately notify the Agent of any breach by the Owner of its obligations under the Construction Contract or the Maintenance Agreement;
- (iv) to pay any amounts payable by the Contractor to the Owner under the Construction Contract or the Maintenance Agreement to the Owner's account no. [1] (the "**Principal Account**"), or to such other separate account as the Agent and the Owner may jointly specify in writing. The Contractor acknowledges and agrees that a payment made to any other current account or made in any other manner shall not be considered a full discharge for the Contractor;
- (v) upon receipt of written notice from the Agent declaring the enforcement of the Pledge, to deposit or transfer all funds relating to the payment rights under the Construction Contract and/or the Maintenance Agreement in favor of the Agent to the account designated by the Agent in writing.

3. NOTICE OF EARLY TERMINATION EVENTS. BREACH BY THE OWNER.

- (1) The Contractor agrees to provide notice to the Financial Institutions (through the Agent) of the occurrence of any event of early termination of the Construction Contract and/or the Maintenance Agreement, or of its own intention to terminate either of such Contracts, by sending to the Agent a copy of any notice sent to the Owner (which shall include, at a minimum, the proposed date of termination of the Construction Contract and/or the Maintenance Agreement –subject to the terms of subsection (2) below- and the Contractor's stated basis for such termination).
- (2) The Contractor acknowledges agrees that it may not, under any circumstances, terminate the Construction Contract or the Maintenance Agreement without first giving notice to the Agent as provided for in the above subsection, and that, during the period from the Agent's receipt of such notice until fifteen (15) calendar days from the date on which the Agent received such notice, the Agent may (but is not so obligated), with the prior approval of the Financial Institutions in accordance with the agreed majority voting percentages agreed to among the Financial Institutions, take such measures as are necessary or advisable to cure or eliminate such event of early termination under the Construction Contract and/or the Maintenance Agreement.

4. CHANGES TO THE CONSTRUCTION CONTRACT AND ACTIONS OF THE TECHNICAL ADVISOR

4.1 Changes and roles with respect to the Construction Contract

The Contractor hereby acknowledges and agrees that:

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- (i) it may not agree to any change to the Construction Contract or any Change Order or any other document that contains an agreement to make the changes contemplated by Clauses 2.4(4), 5.1(3) and 6.5(3) of the Construction Contract without receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor's rights under such Clauses);
- (ii) except with respect to the assumed consent contemplated by Clause 4.3 of the Construction Contract, the approval of the Technical Advisor must be obtained in order for the Owner to approve a Payment Milestone contemplated by such Clause;
- (iii) the Technical Advisor must be present to observe the performance of the Performance Tests, the Overall Test, the Production Tests and the inspections required for execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate, in accordance with the notice periods set forth in Clauses 5.2 (1), 8.4(2) and 9(1) of the Construction Contract. The periods provided for in such Clauses may not begin to run if the Technical Advisor has not been invited to observe within the notice periods provided in such Clauses. Results of tests and inspections referred to in this subsection that were obtained prior to the expiration of such periods and without the presence of the Technical Advisor shall be invalid. However, the Technical Advisor's failure to attend despite having been duly invited in the manner and within the notice periods provided for in this subsection shall not delay the periods provided for in the Construction Contract for such tests and inspections, nor shall it invalidate the results of the same;
- (iv) except as provided for in Clause 5.2(4) of the Construction Contract, the execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate must be accompanied by the approval of the Technical Advisor;
- (v) the Technical Advisor shall have the power to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 6.2 of the Construction Contract;
- (vi) the Technical Advisor must approve quality controls for the solar modules and has the authority to inspect such quality controls in order to confirm its approval; and
- (vii) an order to suspend the Work by the Owner pursuant to Clause 13.1 of the Construction Contract shall not be valid unless it has been countersigned by the Agent on behalf of the Financial Institutions.

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4.2 **Changes and Actions Regarding the Maintenance Agreement**

The Contractor hereby acknowledges and agrees that:

- (i) it may not agree to any change to the Maintenance Agreement or any Change Order or any other document that contains an agreement to make the changes contemplated by Clause 2.4 of the Maintenance Agreement without first receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor’s rights under such Clause 2.4);
- (ii) the Technical Advisor must receive the data and registrations at least fifteen (15) calendar days in advance to make the availability calculations referred to in Clause 7 of the Maintenance Agreement;
- (iii) the Technical Advisor shall have the authority to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 4(ii) of the Maintenance Agreement.

5. **CUMULATIVE NATURE OF THE OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT**

The rights of the Financial Institutions contemplated in this Agreement are cumulative with the rights of the Financial Institutions under the Construction Contract or the Maintenance Agreement. Therefore, the terms of this Agreement shall not affect the obligation of the Contractor and the Owner to request the consent of the Financial Institutions for such acts that, in accordance with the terms of the Construction Contract and/or the Maintenance Agreement, require the prior consent of the Financial Institutions.

6. **ASSIGNMENTS**

6.1 **Assignment by the Financial Institutions**

This Contract is delivered for the benefit of the Financial Institutions, and therefore inures to the benefit of their successors or assigns permitted under the Guaranteed Contracts. Therefore, in the event of an assignment, in whole or in part, of the interest of a Financial Institution under the Guaranteed Contracts, or the replacement of the Agent under the terms of the Credit Agreement, all references made in this public document to the Financial Institutions and the Agent shall be understood to include reference to their respective successors or assigns. An assignee must present its position to the Contractor and the Owner, upon request, by delivery of a copy of the document through which such assignment or replacement of the Agent is made. However, the Agent must inform the Contractor of its replacement with sufficient advance notice to permit the Contractor to comply with its obligations under the Construction Contract, the Maintenance Agreement and this Agreement.

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6.1 Assignment by the Contractor

The Contractor may not assign its rights or obligations under the Construction Contract or the Maintenance Agreement except in strict compliance with the terms of Clauses 15.1 and 11.1 of the Construction Contract and the Maintenance Agreement, respectively. However, in the event of an assignment by the Contractor to one of the companies of its Group, under the terms permitted in such Clauses, the Contractor agrees that it shall not effect such assignment unless the assignee concurrently agrees to adhere to the entirety of the Contractor’s responsibilities and agreements under this Agreement.

7. NOTICES

- (1) Except as otherwise expressly provided for, all notices and communications between the Parties for the purposes of this Agreement shall be made in writing, by certified mail, telegram with confirmed receipt, or for urgent matters, by fax with a confirmation letter to be sent within the following five (5) calendar days.
- (2) All notices, requirements or other communications to the Financial Institutions must be delivered to the Agent (notice to the Financial Institutions shall be considered effective upon receipt by the Agent).
- (3) The Parties designate the following addresses for notice, communications and routine matters:

The Agent:

[I]
Fax: +34 [I]
Attention: Mr. [I]

The Contractor:

SunPower Energy Systems España, S.L.
Paseo de la Castellana, 86, 8º
28046 Madrid, España
Fax: +34 915644451
Attention: General Manager

With a copy to:
SunPower Systems SA
42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attention: Mr. Marco Antonio Northland

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The Owner:

[1]

Fax: +34 91 562 35 93

Attention: Mr. Juan Carlos Sirviente Rodrigo

(4) Any changes to the above addresses must be communicated to the other Parties by certified mail, and shall only take effect as of the date that the other Party receives such notice.

8. LAW AND JURISDICTION

This Contract shall be exclusively governed by generally applicable Spanish legislation.

The Parties expressly waive any other jurisdiction to which they may be entitled and, without prejudice to applicable law, hereby irrevocably submit to the jurisdiction of the Courts and Tribunals of the city of Madrid.

9. TERM

This Contract shall remain in full force and effect throughout the term of the Construction Contract and the Maintenance Agreement or until the payment in full of the obligations assumed by the Owner under the Guaranteed Contracts. Upon payment in full of said amounts, the Owner may request that the Agent issue a joint notice to the Contractor confirming payment in full of all obligations assumed by the Owner under the Guaranteed Contracts.

10. TAXES AND EXPENSES

All fees, taxes and any other costs and expenses arising from the preparation and delivery of this Contract, including the reasonable fees and expenses of legal counsel shall be borne by the Owner.

In witness whereof, the Parties execute this Contract in three (3) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

[1]

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

[1]

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ANNEX 10
MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE

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GUARANTEED VALUES

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FORM OF LETTER TO BE SIGNED BY THE AGENT

SunPower Energy Systems Spain, S.L.U.
Paseo de la Castellana, 86, 8th floor
28046 Madrid, Spain
Fax: +34 915644451
Attn.: General Manager

[1] [1], 2007

Gentlemen:

Re: Commercial loan agreement (the “Loan Agreement”) signed by [1] and [1] on [1], converted into a public instrument in the presence of Mr. [1], a notary of Madrid, and recorded in his notarial protocol under No. [1], for the partial financing of (among other things) the payments owed by [1] pursuant to a “turnkey” construction contract signed by such entity with SunPower Energy Systems Spain, S.L.U. on [1] (the “Construction Contract”)

We hereby confirm to you that, pursuant to the Loan Agreement, [1] has obtained from [1] a loan in the total amount of [1] euros, of which sum [1] euros correspond to Tranche A of the Loan Agreement, and [1] euros correspond to Tranche B of the Loan Agreement, with the purpose of such Tranches being to finance, among other things, the Contract Price and the associated VAT [value-added tax] to be paid by [1] pursuant to the Construction Contract.

Cordially,

[1]

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ANNEX 13

SITE PLAN

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CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION

**TURNKEY CONSTRUCTION CONTRACT
FOR THE CONSTRUCTION OF A SOLAR PARK**

BETWEEN

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.

As Contractor

AND

SEDWICK CORPORATE, S.L.

as Owner

October 10, 2007

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- ANNEX 11.- MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE
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APPEARING PARTIES

- (A) **SEDWICK CORPORATE, S.L.** (hereinafter, the “**Owner**”), with a registered office at Hermosilla 31, 4, 28001 Madrid and having Tax Identification Code (CIF) number B-85093276 herein represented by Iigo Gortázar Sánchez Torres., with National Identity Document (DNI) No. 50847425Z, pursuant to the powers conferred upon him pursuant to a resolution of the board of directors passed on the date hereof, notarized on the date hereof before the Notary Public of Madrid Mr. Luis Sanz Rodero.
- (B) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the “**Contractor**”), with a registered office in Madrid at calle Pradillo nº 5, herein represented by Mr. Marco Antonio Northland, bearing U.S. Passport No. 047605878, in his capacity as attorney-in-fact of such entity pursuant to a public instrument executed before Mr. Ignacio Martínez Gil-Vich, a Madrid notary, on November 28, 2006, and recorded in his notarial protocol under No. 4.551.

RECITALS

- (1) The Owner is interested in promoting the installation and operation of a solar park in Olivenza, consisting of one hundred fifty (150) Solar Facilities having approximately 120kWp of peak power and 100 kWe at the inverter.
- (2) The Contractor is dedicated to the construction and start-up of facilities of this type, and intends and has the capacity to construct the Solar Park in accordance with the specifications of this Contract.
- (3) The Owner will partially finance the payment of the Contract Price through financing to be made available to the Owner by one or more credit providers (the “**Financing Institutions**”).
- (4) ***
- (5) Now, therefore, the Parties mutually acknowledging the legal capacity required to enter into contract and bind themselves, agree to execute this "turnkey" construction contract (hereinafter, the “**Contract**”) in accordance with the following:

CLAUSES

1. DEFINITIONS

In this Contract, the terms listed below shall have the meaning established in each instance:

- **Final Start-Up Certificate or Final Start-Up:** means the governmental certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, with respect to each of the Solar Facilities and the Electrical Infrastructure, which allows for the commencement of the commercial operation thereof, including, for the purposes of this Contract, obtaining the registration of each of such Solar Facilities and Electrical Infrastructures with the Register of Power Facilities included within the Special Regime (*Registro Administrativo de Instalaciones de Producción de Energía en Régimen Especial*), pursuant to the provisions of Section 12 of Royal Decree 661, which grants to the corresponding facilities the status of a production facility accepted under the special regime.
- **Direct Agreement:** the agreement to be executed on the date hereof among the Contractor, the Owner and WestLB AG, Sucursal en España pursuant to the template attached as **Annex 9**.

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- **Scope of Work:** the entirety of all services, supplies and work that the Contractor must provide under this Contract in accordance with the provisions of Clause 2.1 and the specific details contained in Annex 2.
- **Insurance Advisor:** means Willis or any other insurance advisor appointed by the Financing Institutions in the context of the financing of the Solar Park.
- **Legal Advisor:** means Gómez-Acebo & Pombo, S.L. or any other legal advisor that the Financing Institutions may designate in the context of the financing of the Solar Park
- **Technical Advisor:** means Sylcom Solar or any other technical advisor appointed by the Financing Institutions in the context of the financing of the Solar Park.
- **Performance Bond:** means the bond payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations and which shall be effective as from delivery thereof to the Owner in accordance with the provisions of this contract until the execution of the Solar Park Provisional Acceptance Certificate.
- **Guarantee Bond:** means each of the bonds payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations during the Guarantee Period, which shall be effective as from the execution of the Solar Park Provisional Acceptance Certificate through the execution of the Final Acceptance Certificate.
- **Final Acceptance Certificate (FAC):** means the certificate that shall be executed by the Parties at the end of the Guarantee Period to attest to the final acceptance of the Solar Park by the Owner.
- **Solar Park Provisional Acceptance Certificate (Park PAC):** means the certificate that shall be executed by the Parties concurrently with the execution of the Provisional Acceptance Certificate for the last Solar Facility forming a part of the Solar Park, to evidence the proper operation of the Solar Park as a result of the Overall Test of all Solar Facilities and the Electrical Infrastructure, as well as the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period.
- **Solar Facility Provisional Acceptance Certificate (Facility PAC):** means the certificate that shall be executed by the Parties to evidence the proper operation of the equipment as a result of the Performance Tests for each of the Solar Facilities (including the Electrical Infrastructure associated with each Solar Facility) and the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period. In order to issue a Provisional Acceptance Certificate for a Solar Facility, proper operation of the General Electrical Infrastructure in order to meet the installed capacity of the Solar Facilities in operation at such time must also be verified.
- **Contractor:** means SUNPOWER ENERGY SYSTEMS SPAIN, S.L. and any other company that may succeed it in its obligations in accordance with the provisions of this Contract.
- **Contract:** means this contract together with the Annexes hereto. In the event of conflict between one or more of the contractual documents, the body of this Contract shall prevail.
- **Maintenance Agreement:** means the Maintenance Agreement entered into by the Contractor and the Owner on even date herewith, providing for the assumption by the Contractor of the maintenance work for the Solar Park upon execution of the Solar Park Provisional Acceptance Certificate.
- **Environmental Impact Declaration:** means the declaration attached as Annex 10.

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- **Systemic Defect:** is an operational failure of the Solar Facilities of the Solar Park occurring during the Production Guarantee Period that (i) is not caused by non-conforming performance of the Work by the Contractor under this Contract, the Technical Specifications, the Construction Model or the regulations applicable to the Work (in accordance with the terms of this Contract), and (ii) that
 - § is the same failure or is a failure that affects, at least: 0.5% of the solar modules, 10 or more inverters or their corresponding peripheral systems, 10 or more trackers, or 4 or more transformers (including breakers and switches) supplied by the same manufacturer for the Solar Park; or
 - § the relevant supplier or well-known independent third party in the solar industry reports that at least 1% of worldwide production of the corresponding model of solar module, inverter, tracker or transformer is affected by the same operational failure and advises replacement thereof (in which event the Owner must receive proof in the form of delivery of a document signed by the manufacturer or of a report from an independent third party which confirms the existence of said systemic failure with reference to the model and series of the affected equipment).
- **Business Day:** means any day other than a bank holiday in Madrid, London and Olivenza (Badajoz), Saturdays expressly excluded as Business Day. For payment purposes (or for calculating terms of payment set forth in this Contract), any day other than a bank holiday in Madrid, London and New York, Saturdays expressly excluded as Business Day.
- **Authorized Equipment:** means the list of brands and models of the principal equipment or elements that will make up the Solar Facilities and the Electrical Infrastructures described in Annex 8 hereto.
- **Site:** means the site where the Solar Park will be built, located in the municipality of Olivenza (Badajoz) with coordinates 38°73'19 north, 7°8'25 west, altitude 206 meters over the sea level, formed by land properties 12939, 12938, 6911 and 14536 of the Olivenza Land Registry.
- **Technical Specifications:** means the technical conditions for executing the Work that were prepared by the Contractor and delivered to the Owner, and that make up Annex 2.
- **Environmental Impact Study:** means the mandatory environmental report to get the Environmental Impact Declaration according to the regulation applicable to the Site, a copy of which is attached as Annex 10.
- **Delivery Deadline:** means July 15, 2008.
- ***
- ***
- **Payment Milestones:** means the milestones for the payment of the Contract Price, as described in Clause 4.2 below.
- **Technical Milestones:** means the technical milestones described in Annex 3.
- **Specific Electrical Infrastructure:** means the entirety of the electrical elements permitting the evacuation to the distribution grid of the electrical power produced by each of the Solar Facilities, including from the Solar Facilities to the specific transformer center for such Solar Facility.
- **General Electrical Infrastructure:** means the entirety of the electrical elements permitting the connection of each of the Solar Facilities, from the specific transformer center, in order to permit the evacuation of electrical power generated by each Solar Facility to the distribution grid, including the Evacuation Line, the distribution and sectioning center, the substation and supplemental elements of supervision, monitoring and data collection.

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- **Electrical Infrastructure:** collectively, the General Electrical Infrastructures and the Specific Electrical Infrastructures.
- **Solar Facility:** means the entirety of the electromechanical elements that allow for the generation of low voltage ("LV") electrical power, including from the solar modules themselves, solar trackers, and inverters, to the LV meter, with a peak unit capacity of approximately 120 kWp.
- **Evacuation Lines:** the 20 kV output electrical evacuation line of the distribution center of the General Electrical Infrastructure, necessary to connect such Infrastructures to the substation of the power distribution company (Endesa) in Olivenza (Badajoz).
- **Change Order:** means a document signed by the Contractor and the Owner pursuant to which a change is agreed upon in the Scope of Work, the Contract Price or the Execution Schedule, or any other modification, as provided in this Contract.
- **Solar Park:** means the entirety of the one hundred fifty (150) Solar Facilities having approximately 120 kWp of peak capacity and 100 kWe at the inverter, with a total peak capacity of 18 MWp, located at the Site, including the Electrical Infrastructure and any other facilities that, in accordance with the terms of this Contract, may be necessary for its Start-Up.
- **Guarantee Period:** means the period between the signing of the Provisional Acceptance Certificate for the first Solar Facility until satisfaction of the conditions for the execution of the Final Acceptance Certificate.
- **Production Guarantee Period:** means the period between the execution of the Solar Park Provisional Acceptance Certificate and *** following execution of such certificate.
- **Contract Price:** The price payable by the Owner to the Contractor for the performance of the obligations contained in this Contract, the amount of which is set forth in Clause 4 of the Contract. For purposes of this Contract, the price corresponding to an individual Solar Facility shall be the amount obtained by dividing the total Contract Price by the one hundred fifty (150) Solar Facilities.
- **Implementation Schedule:** means the schedule for the implementation of the Scope of Work, which is attached as Annex 3 to this Contract.
- **Owner:** means SEDWICK CORPORATE, S.L., as well as any company subrogating to its contractual position in accordance with the provisions of this Contract.
- **Overall Test:** means the test described in Annex 4, to be performed as a prerequisite to the execution of the Solar Park Provisional Acceptance Certificate to verify the proper operation of all Solar Facilities and the Electrical Infrastructure. The Overall Test will definitively verify the proper operation of the General Electrical Infrastructure to absorb the power discharged by all Solar Facilities.
- **Performance Tests:** means the tests described in Annex 4, to be performed as a prerequisite to the execution of each Solar Facility Provisional Acceptance Certificate to verify the proper operation of the corresponding Solar Facility and Electrical Infrastructures. Pursuant to the provisions of Clause 5.2(1), each Performance Test will be performed on a minimum of ten (10) Solar Facilities (with their corresponding Electrical Infrastructures).
- **Production Tests:** means the tests that will be performed at the end of the Production Guarantee Period in order to determine compliance with the Production Guarantee set forth in Clause 8.4, following the protocols set forth in Annex 4.

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- **Start-up:** means, with reference to a particular Solar Facility and/or Electrical Infrastructure, the point when all of the work required by this Contract has been completed and all Performance Tests have been passed in accordance with this Contract and the Annexes hereto, the Provisional Acceptance Certificate has been executed and the corresponding Final Start-up Certificate has been received (as confirmed by the Legal Advisor). Reference to Start-up of a Solar Park shall be understood to mean the point when all Solar Facilities and corresponding Electrical Infrastructures have passed the Overall Tests and comply with the above referenced requirements.
- **RD 661:** Royal Decree No. 661/2007, of May 25, which regulates activities involving the production of power under special regime.
- **Subcontractors:** means the subcontractors with which the Contractor subcontracts all or part of the works to be executed under this Contract.
- **Work:** means the work and supplies to be provided by the Contractor pursuant to the provisions of this Contract.

2. PURPOSE AND SCOPE OF WORK

2.1 Purpose of the Contract

The purpose of this Contract is the construction, start-up and delivery of the Solar Park to the Owner pursuant to the terms set forth in this Contract such that the production of power and sale thereof to the electric distribution grid may commence, in accordance with applicable law and the Technical Specifications.

This Contract is executed as a "turnkey" contract, which is for the fixed price and within the fixed time periods established herein.

2.2 Scope of Work

- (1) According to the terms and conditions of this Contract, the Contractor shall carry out and shall be responsible for all of the equipment, services, supplies and work comprising the Scope of Work. The Scope of Work includes each of the following concepts, as well as all acts that, even if not expressly mentioned in this Contract or in Annex 2, are necessary for the proper operation, performance and commercial exploitation of the Solar Park, in each case in accordance with the customary usage and practices in the industry for a project having these characteristics, this Contract, the Technical Specifications, and applicable law (without prejudice to the provisions of Clause 2.4(4)):

- § Design, engineering (basic and detailed) and required technical schedules.
- § Execution of all aspects of the Scope of Work and the supply of all materials, elements and equipment set forth in Annex 2, and the supply of all materials necessary and appropriate to properly carry out the Scope of Work.
- § Performance of inspections, inventory of materials, performance controls, tests and other analyses required under applicable law and in accordance with the technical specifications and this contract.
- § Transportation to the Site of all materials, equipment, utilities, spares parts, consumables and machinery for which the Contractor is responsible under the Contract.
- § Direct and indirect labor necessary to carry out the Scope of Work and all costs and social charges associated with such labor.

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- § Demolition and dismantling of the provisional facilities not required by the Owner and conditioning and cleaning of the Site following issuance of the Solar Park Provisional Acceptance Certificate.
- § Maintenance, protection, security, custody and conservation of the equipment installed or stored at the Site up to the signing of the Solar Park Provisional Acceptance Certificate.
- § Preparation and delivery to the Owner of all documentation within the scope of this Contract, sufficiently in advance for the utilization thereof by the Owner. In particular, the delivery of the documentation and manuals set forth in Annex 2.
- § ***
- § Training of the Owner's personnel in the operation and maintenance of the materials and equipment acquired in accordance with the terms of Clause 6.7 of this Contract.
- § Construction of all necessary auxiliary facilities, their maintenance, cleaning and security during the performance of the Work, including that performed in compliance with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan; as well as the demolition or dismantling of any temporary facilities not required by the Owner and the conditioning and clearing of the Site following the issuance of the Solar Park Provisional Acceptance Certificate.
- § Supply of spare parts pursuant to the provisions of Clause 6.3.
- § Provision of material and human resources required to comply with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan, as well as the creation of the Social Security and Health Plan.

2.3 Exclusions

The Scope of Work for this Contract shall not include amounts associated with the purchase or lease of land or easements where the Solar Park will be built. Further, it does not include the services associated with the obligations assumed by the Owner in Clause 7, the selection and hiring of personnel by the Owner or the costs and liabilities arising from the selection and hiring of third parties by the Owner for performance of the work consisting of safety and health coordination, or the supervision, external inspection, security, and quality control of the Contractor's work, including the Technical Advisor.

2.4 Changes in the Scope

- (1) Under no circumstances may the Parties make any changes to the Scope of Work contemplated by this Contract (of any kind, whether for expansions, reductions or changes to any portion of the work and/or the items supplied under this Contract); unless a Change Order has previously been signed.
- (2) At any time prior to Provisional Acceptance, the Owner may propose a change to the Scope of Work by sending the Contractor a notice describing the nature and scope of the change. Upon receipt of such notice, the Contractor must send to the Owner, within a maximum period of ten (10) Business Days, a communication that includes a complete proposal for the changes in the Contract Price, deadlines and form of payment, or any other changes that may be necessary in connection with the changes proposed by the Owner. This communication shall also include a reasoned explanation of the grounds and/or criteria used for the calculation of the new Contract Price and/or deadline.
- (3) The Contractor may, at any time during the performance of the Contract, propose changes to the Scope of Work that it deems necessary or appropriate to improve the quality, efficiency or safety of the Solar Park or the facilities or supplies that make up the Solar Park. The Owner, at its discretion, may approve or reject the changes proposed by the Contractor. The Parties will execute a Change Order in the event that the modifications are approved by the Owner.

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- (4) In addition, upon the entry into force, promulgation, derogation or change of any mandatory legal provision after the execution of this Contract that affects the Work, the Parties shall sign a document governing the changes that must be made to the purpose of this Contract including the extension of the terms set forth in this Contract.
- (5) The Owner and the Contractor shall negotiate in good faith the effects on the deadlines agreed to under this Contract that might occur as a result of the changes requested within the context of the provisions of this Clause. In any event, the prices applicable to any change in the Scope of Work shall consist of the costs of the additional work or supplies arising therefrom (reasonably justified to the Owner) plus ***% as the Contractor's margin.

3. COMMENCEMENT OF WORK

- (1) The Owner acknowledges that the Works have already started. Notwithstanding the above, the lack of fulfilment of the conditions provided in section (2) below shall not give the Contractor the right to claim any kind of payment from the Owner for the works the Contractor may have done in relation with this Contract.
- (2) The Parties have agreed on the following conditions with regard to the payment to be done by the Owner of the amount provided in Clause 4.2(i) and for the delivery by the Owner of the Performance Bond:
- (i) That the Owner has obtained all the authorisations and licences necessary for the start of the construction of the Solar Park, with the exception of those that are intrinsic to the construction activity, in accordance with the provisions of Clause 6.6 (having delivered to the Contractor a copy of those which obtaining is the responsibility of the Owner). For clarification purposes, the Owner must have obtained the corresponding municipal work and activity permits (if applicable), as well as the administrative authorisation and approval of the Electrical Infrastructure Project, the connection point of the Solar Facilities and the Environmental Impact Declaration for all the Solar Facilities of the Solar Park;
 - (ii) That a letter from the Financing Entities agent has been delivered to the Contractor confirming that the Owner has been granted financing to make the payments owed by the Owner by virtue of this Contract and that the conditions necessary to make the initial payment have been met;
 - (iii) That the Contractor has confirmed to the Owner that the Site is fully accessible and available for the start of the Works; and,
 - (iv) That the Contractor has delivered the Corporate Guarantee to the Owner.

The Parties acknowledge that the all conditions mentioned above have been fulfilled prior to the execution of this Contract except: (a) the concession by the Planning Commission of the Government of Extremadura of the obligatory favourable Planning Qualification of the non-developed land in accordance with article 27 of the Land and Planning Law of Extremadura; (b) the issuance of the renovation or rehabilitation of the work licence of the project dated on July 25, 2006 (as amended by resolution of February 27, 2007) in accordance with provision 184 of the Land and Planning Law of Extremadura; (c) the delivery to the Contractor of the letter referred in paragraph (ii) above, and (d) the Delivery of the Corporate Guarantee to the Owner.

Once fulfilled conditions provided in (a) and (b) above, and within the period between the sixth (6th) and ninth (9th) Business Days after the date in which the Owner has notified its fulfilment to the Contractor, the Owner shall pay to the Contractor the first payment milestone as provided in Clause 4.2(i) with a written statement in which the Owner states that all licences required to the construction of the Solar Park and the letter foreseen in (ii), have been obtained against the delivery by the Contractor of the Performance Bond and the Corporate Guarantee. The date on which the deliveries foreseen in this paragraph will henceforth be referred to as the "**Condition Satisfaction Date**".

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- (3) In the event that conditions (a) and (b) above have not been fulfilled within fifteen (15) Business Days as from the date hereof; or, (b) all the conditions having been fulfilled, the Condition Satisfaction Date has not occurred by the ninth Business Day following the date the fifteen (15) Business Days term expires, the Contractor and the Owner may terminate the Contract by delivery to the other Party of a notice setting forth its desire to terminate the Contract, and the Parties shall be released from all obligations assumed with respect thereto. For the sake of clarity, no Party shall be entitled upon the termination of this Contract in accordance with this paragraph to claim any amount from the other Party as consequence of such termination.
- (4) In spite of the provisions of section 2 (iii) above, the Contractor represents that, prior to the execution of this Contract, it has studied the subterrain, surroundings and access thereto.
- The Contractor represents that the Site is adequate and sufficient for the performance of the Work, and that the Contractor is aware of and accepts all the risks and contingencies of the Site that may affect the performance of the Work, including, without limitation, climate conditions (including wind, snow, frost, rain, etc.), hydrographic, hydrological, geotechnical and seismic conditions, any toxic waste or archeological sites that may appear at the Site and in general any other physical, natural or artificial circumstances of the Site and the subsoil thereof. Consequently, the Contractor waives any claim to any supplement to the price of the Contract for an increase in work, delay therein, or additional cost of any kind, and any claim to any extension in the Delivery Deadline or the intermediate deadlines for the Work arising from the Site conditions referred to in this Clause.
- However, the Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of Force Majeure in accordance with the terms of the Contract, with application of the provisions of Clause 12.

4. PRICE AND FORM OF PAYMENT

4.1 Contract Price

- (1) The Contract Price payable by the Owner to the Contractor in consideration for the works to be performed by Contractor under this Contract shall be *** Euros. This amount shall be increased by an amount corresponding to Value Added Tax (VAT) pursuant to applicable law at any given time. The Contractor hereby acknowledges and agrees that the Contract Price is a lump-sum, fixed, and final price, and is not subject to any change or revision whatsoever on the basis of any changes in the prices of labor, materials, equipment, exchange rates or any other similar items, including a change in any taxes levied on the scope of the work.
- (2) The Contract Price includes all the costs and expenses associated with the Contractor's performance of work under the Contract, including those specifically set forth in the Scope of Work. The Contract Price shall be deemed to include, by way of example:
- § taxes, fees, industrial- and intellectual-property royalties on the equipment supplied, Social Security and other encumbrances upon the supplied equipment and materials in their country of origin or destination, including, if applicable, the rights of free circulation in the European Union and any other tax with respect to the importation of the Equipment and the performance of the Work, except for the VAT on the actual Contract Price. For purposes of clarification, the Price does not include legalization fees or costs for permits and authorizations, which are the responsibility of the Owner.

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§ payroll costs and the cost of equipment required for the Contractor's performance of the Work or to ensure the protection, security and proper performance thereof.

§ the cost of any insurance that must be taken out by the Contractor pursuant to Clause 11.

(3) In the event of changes in the Scope of Work agreed to pursuant to the provisions of this Contract, the price agreed to in the corresponding Change Order shall apply.

(4) Without prejudice to the foregoing, in consideration for the maintenance and security tasks to be performed by the Contractor prior to the execution of the Solar Park Provisional Acceptance Certificate, the Owner shall pay to the Contractor (in addition to the Contract Price), the portion of the price contemplated in the Maintenance Agreement that is equivalent to the percentage representing the Solar Facilities that have obtained the Start-up with respect to all Solar Facilities contemplated by this Contract.

Furthermore, in case Solar Facilities Provisional Acceptance Certificates are executed before the dates set forth in the Implementation Schedule, the Contractor will be entitled to receive the amounts set forth in Clause 5.1(1).

4.2 Payment Milestones

The Contract Price shall be paid by the Owner to the Contractor pursuant to the payment schedule set forth below (each of the milestones set forth below shall be deemed a "Payment Milestone"):

- (i) On the Condition Satisfaction Date, an amount equal to ***% percent of the Contract Price, i.e., *** Euros, upon delivery of the Performance Bond by the Contractor.
- (ii) Based on the monthly progress of the civil works involving earth moving, leveling and foundation laying, measured as 100 kWe Solar Facilities whose foundations are completed, the Owner will pay up to a maximum of *** percent (***%) of the Contract Price, i.e., *** Euros, upon presentation of the respective invoices by the Contractor.
- (iii) Upon each delivery to the Site of the module supports, inverters and trackers of each Solar Facility and presentation of the corresponding invoices not earlier than two (2) months prior to the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***%) percent of the Contract Price corresponding to such Solar Facilities.
- (iv) Upon each delivery of the solar modules of each Solar Facility to the Site and upon presentation of the corresponding invoices not earlier than the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***%) percent of the Contract Price corresponding to such Solar Facilities.
- (v) Based on the monthly progress of the mechanical assembly of the module supports, solar trackers and the modules mounted thereon, as well as the installation of the inverters and the transformer center, measured as Solar Facilities of 100 kWe whose facilities up to the transformer center have been completed, the Owner will pay up to a maximum of *** (***%) percent of the Contract Price, upon presentation of the respective invoices.
- (vi) Upon the execution of each Provisional Acceptance Certificate for a Facility, the Owner shall pay *** (***%) percent of the Contract Price corresponding to such Solar Facility (together with the remaining portion of the Contract Price, if any, that was not previously paid and that corresponds to Work completed by the Contractor under this Contract in respect of such Solar Facility). The last Solar Facility payment shall be made concurrently with the execution of the Solar Park Provisional Acceptance Certificate.

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4.3 Invoicing System and Form of Payment

- (1) Once the Contractor deems that a Payment Milestone has been achieved, the Contractor shall give written notice thereof to the Owner and the Technical Advisor, attaching thereto the invoice and any documentation that may be necessary to demonstrate achievement of the corresponding Payment Milestone (including, for this purpose, all of the documentation that must be furnished by the Contractor to the Owner at any time, pursuant to the provisions of Annex 2).
- (2) Within fifteen (15) Business Days following receipt of the above-mentioned notice, the Owner will confirm the achievement of the corresponding Payment Milestone. Within such period, the Owner will communicate in writing to the Contractor: **(i)** their agreement that the corresponding Payment Milestone has been achieved, in which case the Owner will provide documentary confirmation by approving the corresponding invoice, or **(ii)** that the Payment Milestone has not been fully achieved, in which case the Owner must specify in writing to the Contractor a detailed and reasoned explanation of the work pending performance in order for the Payment Milestone to be deemed to have been achieved. In the event that the Owner fails to respond to the Contractor within the above-mentioned period of fifteen (15) Business Days, due solely to the failure of the Contractor to provide all documentation required to verify achievement of the Payment Milestone, the Owner agrees to request the same within the above period of fifteen (15) Business Days. The Owner will be allotted another ten (10) Business Days to issue their response, counting from the date of receipt of all requested documentation.
- (3) If the Owner does not agree that a Payment Milestone has been achieved, the Owner shall be entitled to return the corresponding invoice until the Contractor has completed the work in accordance with the provisions of this Contract. However, if the Parties agree that the disagreement involves only part of the work included in the Payment Milestone, the Owner shall pay the invoice amounts corresponding to the work not affected by the dispute, with the rest remaining subject to full performance and delivery by the Contractor in accordance with the terms of this Contract.
- (4) If, following the period referred to in subsection (2) above, the Owner has not responded, the Contractor may send a demand notice to the Owner communicating such fact and allowing an additional period of five (5) Business Days for confirmation of their agreement or disagreement as to the achievement of the respective Payment Milestone. If, upon expiration of such period, the Owner still has not responded, achievement of the Payment Milestone shall be deemed accepted by the Owner.
- (5) Under no circumstances shall the Owner's agreement to a Payment Milestone imply acceptance of the Work associated therewith, which acceptance shall in any event remain conditioned upon passing the Performance Tests and executing the respective Provisional Acceptance Certificate and, ultimately, the Final Acceptance Certificate.
- (6) Payments shall be made by the Owner to the Contractor via bank transfer to the bank account designated by the Contractor within *** Business Days following the date on which the Owner accepted the corresponding Payment Milestone (or on the date on which the Payment Milestone was deemed accepted by the Owner, in accordance with subsection (4) above). On an exceptional basis, the payment corresponding to the first Payment Milestone shall be paid by the Owner on the Condition Satisfaction Date (with respect to such payment, approval of a Payment Milestone by the Contractor and the Owner pursuant to the above provisions is not required) .

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5. **IMPLEMENTATION SCHEDULE, TESTS AND PROVISIONAL ACCEPTANCE**

5.1 **Implementation Schedule. Changes in the Deadline**

- (1) The Contractor hereby undertakes to perform the Work in accordance with the Implementation Schedule attached hereto as **Annex 3**, such that the Solar Park Provisional Acceptance Certificate is executed no later than the Delivery Deadline.

If any Solar Facility Provisional Acceptance Certificates are signed prior to the dates specified in the Implementation Schedule, the Contractor shall have the right to receive from the Owner 50% of the net earnings obtained through the energy produced by such Solar Facilities (once deducted the operation costs and taxes incurred in connection with the relevant Solar Facility) between their Start-up date and the date the Start-up was scheduled in the Implementation Schedule (or, in the event of the partial or total termination of the Contract pursuant Clause 14.1, the date of such termination).

- (2) The dates for performance specified in the Implementation Schedule and, in particular, the Delivery Deadline, are fixed and final, and may not be postponed, and the performance deadlines may not be extended, except under the following circumstances:

- (i) due to agreed-upon changes in accordance with the provisions of Clause 2.4, provided that such changes include an extension of the deadlines;
- (ii) due to a breach by the Owner giving rise to a delay in the Work (including, specifically, delays in procuring authorizations and licenses for which it is responsible or in the signature of the corresponding "Installations Assignment Agreement" with the relevant utility company), provided that such breaches are not attributable to actions, omissions or breaches by the Contractor;
- (iii) suspension of the Work in accordance with the provisions of Clause 13, except in the event of suspensions attributable to the Contractor; or
- (iv) the occurrence of an event of *Force Majeure* that reasonably justifies an extension of the deadlines established in the Implementation Schedule.

- (3) The Contractor must inform the Owner of the alleged facts or causes, in writing and within a maximum period of ten (10) Business Days after the Contractor becomes aware thereof, and the communication must be accompanied by all available information and data on such date that substantiate such facts and the consequences thereof on the Work, the extension (if such extension can be determined) proposed by the Contractor, and a detailed explanation of the measures adopted to mitigate the consequences thereof.

The Owner may request any additional information that it deems reasonably necessary to analyze the request and shall make a decision thereon as soon as possible, but in any event no later than fifteen (15) days after receipt of such communication from the Contractor or receipt of the documentation required to evaluate the circumstances, if later. If the Owner accepts the extension proposed by the Contractor, the Parties shall issue a Change Order confirming the changes to the Implementation Schedule.

5.2 **Performance Tests and Provisional Acceptance**

- (1) Upon completion of the construction of a group of at least ten (10) Solar Facilities, or of the Solar Park, the Contractor shall notify the Owner so that, within a maximum period of seven (7) Business Days, the Performance Tests or the Overall Test may be commenced. All Tests shall be conducted in accordance with the Test procedures and protocols attached hereto as **Annex 4**. The Contractor agrees that the Performance Tests and the procedures set forth in this Clause shall begin only when at least ten (10) Solar Facilities are ready for provisional acceptance.

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- (2) Once the Owner and the Technical Advisor have verified that the Performance Tests (or, if applicable, the Overall Test) have been passed in accordance with the standards set forth in this Contract and that the Owner has received all documentation set forth in the Scope of Work, the Contractor and the Owner shall execute the corresponding Provisional Acceptance Certificate for the Solar Facilities delivered or the Provisional Acceptance Certificate for the Solar Park, as applicable, provided that the following conditions have been met:
- a) The Work corresponding to the applicable Solar Facilities, or, if applicable, the Solar Park, has been satisfactorily completed.
- However, if the Performance Tests or the Overall Test have been passed and the remaining conditions specified in this Clause have been met with certain punch list items still pending, the Owner shall sign the corresponding Provisional Acceptance Certificate, acknowledging, in an attached document, the existence of the punch list items and setting a period of thirty (30) Business Days for completion thereof, or another longer period of time agreed by the Parties. If such punch list items have not been completed by the Contractor at the conclusion of the specified time period, the Owner may, at its discretion, (i) demand the completion thereof, or (ii) perform such work itself or through third parties, deducting the direct costs of such punch list items from what is owed to the Contractor, or enforce of the bonds delivered pursuant to this Contract.
- The term “punch list items” shall be understood to refer to those tasks pending execution by the Contractor for which the work pertaining to such Work has been completed within the time periods specified in this Contract that do not affect the operation, production or output of the Solar Facilities or the Electrical Infrastructure.
- b) All of the documentation that the Contractor must submit in accordance with the provisions of Annex 2 has been submitted to the Owner;
- c) The spare parts specified in Clause 6.3 have been made available to the Owner;
- d) That the Final Start-Up Certificate has been obtained in respect of the appropriate Solar Facility or for the Solar Park, as appropriate. This notwithstanding, the Contractor will not in any event be responsible for (i) delays in obtaining the Final Start-Up Certificate with regard to the corresponding Solar Facility or for the Solar Park that are produced as a result of the late application or obtaining (or of not obtaining) those licenses and authorizations which, in accordance with this Contract, are not the Contractor’s responsibility; or
- e) With respect to the Solar Park Provisional Acceptance Certificate, the Contractor has delivered to the Owner the Guarantee Bond in the amount specified in Clause 8.5; and
- f) That any technical penalties or for delays due to the Contractor by virtue of the provisions of this Contract in connection with the corresponding Solar Facility (or, in the case of the Solar Park Provisional Acceptance Certificate, for the whole of the park) have been paid to the Owner.
- (3) The deadlines granted to the Contractor for completion of pending punch list items upon execution of a Provisional Acceptance Certificate shall not be considered an extension of the deadlines set forth in this Contract, and the Contractor shall indemnify the Owner for any damages that the Owner may incur as a result thereof pursuant to Clause 5.2(a) above.
- (4) In the event that the Owner does not execute the Provisional Acceptance Certificates for the respective Solar Facilities (or, if applicable, the Solar Park) within seven (7) Business Days of verifying compliance with the stipulated requirements, the Contractor may request in writing that the Owner execute the respective Certificate within an additional period of five (5) Business Days. If the Owner has not executed the new Provisional Acceptance Certificates for the Solar Facilities (or, if applicable, the Solar Park) within said period, the conditions required in this clause for execution of the corresponding Certificate have been satisfied, it shall be understood that provisional acceptance has been achieved, except to the extent discrepancies exist as to the performance of the conditions required by the same, in which event the Parties shall submit the matter to arbitration in accordance with the provisions of Clause 20 (2).

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- (5) Within thirty (30) days following the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must: (i) remove from the Site any material used in the construction, as well as any equipment, machinery, tools, vehicles and temporary structures that are not necessary during the Guarantee Period; (ii) clean the Site and remove any debris or waste; and (iii) deliver the “As Built” Plans for the Solar Park.

6. OTHER OBLIGATIONS OF THE CONTRACTOR

6.1 Prevention of Occupational Risks

- (1) The Contractor shall be obligated, in compliance with current legislation, to perform the works under this Contract in such a way as to ensure the safety of workers, and to apply the preventive activity principles set forth in Law 31/1995 and its implementing regulations. Accordingly, the Contractor shall be responsible for designing the construction process in accordance with the provisions of Royal Decree No. 1627/1997, which establish minimum safety and health provisions for construction work, and in its the other implementing or supplemental regulations, such that the safety of the activities that are performed simultaneously or consecutively is ensured, and the safety of third parties present in the vicinity of the work site is also ensured.
- (2) In particular, as part of the scope of this Contract, the Owner has prepared a Safety and Health Study, and furthermore, in compliance with the provisions of Royal Decree No. 1627/1997, the Contractor must prepare a Workplace Safety and Health Plan, both specifically for the work provided for within the scope of this Contract. The Contractor hereby represents that they contain, or will contain, all requirements of such Royal Decree and its implementing rules and regulations (including the provisions of the autonomous communities that apply, if any).
- (3) Furthermore, the Owner (at the request of the Contractor) shall appoint a safety and health coordinator, who shall have the obligations set forth in Royal Decree 1627/1997, and who shall be responsible for ensuring that all of personnel of the Contractor, the Subcontractors and of the suppliers of equipment or materials under this Contract comply with the safety requirements established in current legislation. Both the Owner and the Contractor shall be obligated to respect and comply with their respective obligations, as imposed by Royal Decree 1627/1997 and other applicable rules and regulations.
- (4) The Owner reserves the right to evaluate security during the construction period. This does not imply that Owner has assumed responsibility with respect to security measures taken or the preparation of documentation or the content of such documentation referred to in this Clause, without prejudice to the obligations and responsibilities under law that attach as a result of Owner’s capacity as a developer. To this effect, the Contractor shall provide to the Owner all documentation that Owner may reasonably require in order to confirm the performance of the obligations set forth in this Clause.
- (5) For clarification purposes, in no event shall the Contract Price be increased if, as a result of a security check, legal review or technical risk review, the Contractor is required to take additional measures designed to guarantee compliance with applicable rules and regulations for the prevention of occupational risks.

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6.2 **Obligation to Provide Access to the Site**

The Contractor hereby undertakes to provide to the Owner access to the workshops, warehouses and sites where the Contractor or Subcontractors are performing work, tests or trials; manufacturing equipment; or storing materials for the construction, assembly and Start-up of the Solar Park, provided that the Owner has so requested in writing reasonably in advance and that the visit causes the least possible interruption of the performance of the work by the Contractor, and further provided that the Owner agrees to honor all reasonably necessary confidentiality measures and to respect security measures in force at the Site. The Contractor also undertakes to ensure that the Subcontractors grant access to the Owner under the terms of this subsection, for which purpose the Contractor shall include in the contracts to be entered into with the Subcontractors an obligation imposed upon them consistent with the provisions of this subsection.

6.3 **Minimum Stock and Supply of Spare Parts**

At the time of execution of the Solar Park Provisional Acceptance Certificate, The Contractor shall maintain a minimum stock of spare parts in accordance with the provisions of **Annex 5**. Such minimum stock shall be maintained at all times until the execution of the Final Acceptance Certificate, for which purpose the Contractor undertakes to replace any material or equipment used during such period as promptly as reasonably possible.

Further, Contractor shall be responsible for providing, upon the Owner’s request, spare parts (in particular, modules, inverters and trackers, identical or similar to those covered by this Contract, in accordance with the terms of **Annex 5**) necessary for the proper operation and maintenance of the Solar Park in accordance with the terms of Clause 8.3.2(8) below.

6.4 **Quality Control**

The Contractor must perform a quality control inspection of the modules, using standards for acceptance and rejection and testing and measurement protocols that are acceptable to the Technical Advisor. For these purposes, the Contractor must inform the Technical Advisor of the quality control inspections that it is going to use in the performance of this Agreement, and detail the respective acceptance and rejection standards and testing and measurement protocols, such that the Technical Advisor can approve the same prior to the date on which such modules are expected to be received under this Contract.

Once the Technical Advisor has verified the quality control inspection procedures, the Contractor shall follow such quality control inspection procedures for all modules received under this Contract, except with respect to those which are subject to another quality control inspection that has been expressly approved by the Technical Advisor in writing.

6.5 **Regulatory Compliance**

- (1) The Contractor undertakes to observe and comply with the regulations applicable to the performance of the Work, subject to the provisions of subsection (3) below. In particular, the Contractor must ensure compliance with regulations regarding classified activities, safety, health, and environmental protection. In particular, the Contractor shall be the only responsible party for compliance with applicable law and regulations with respect to (i) ***, and (ii) environmental protection during the period of manufacture, construction, erection, Start-Up and Tests until the Solar Park Provisional Acceptance Certificate has been executed.
- (2) The Contractor represents that it is current in the payment of wages and Social Security contributions for the professionals hired by the Contractor to perform the services covered by this Contract. Accordingly, the Contractor agrees to show to the Owner all documents that the Owner may reasonably request evidencing compliance with wage, tax and Social Security obligations (including, without limitation, certificates of good standing and compliance with tax obligations and the TC1 and TC2 Social Security dues bulletins).

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- (3) In the event of any change in the applicable rules and regulations after the date on which this Contract is signed, the Parties shall proceed in accordance with the provisions of Clause 2.4(4) above. In the event that either Party does not sign the applicable change document, the Contractor shall continue to perform the work in compliance with the rules and regulations previously in force, and shall not assume any responsibility for any breach of the applicable new rules and regulations.

6.6 Permits and Authorizations

- (1) ***
- (2) For clarification purposes failure to obtain the Final Start-up Certificate in the date set forth in Clause 14.1(g), will entitled the Owner to terminate the Contract according to Clause 14 (without prejudice of Clause 14.1.6) except in case such failure if this failure was due to (i) the Owner’s failure to deliver of the documentation requested by the Contractor and which Owner was required to furnish for the obtaining of the Final Start-up Certificate or (ii) the late request or obtaining or the failure to obtain such permits and authorizations that are not the responsibility of the Contractor pursuant to this Contract.

6.7 Training of the Owner’s Personnel

The Contractor must adequately and sufficiently train the Owner’s personnel to efficiently operate the Solar Park in all respects. Such training must be provided by the Contractor during the four week period prior to the issuance of the Provisional Acceptance Certificate for the Solar Park and shall have a maximum duration of five (5) Business Days. The personnel designated by the Owner to receive such training shall not exceed five (5) individuals.

6.8 Designation of Project Director

- (1) The Contractor shall name a Project Director with an officially recognized technical degree and relevant industry experience with similar projects. The appointment of the Project Director must be submitted to the Owner for approval. The Owner may not reject a proposed candidate without just cause.
- (2) The Project Director shall be responsible for overseeing proper performance of the Work and for directing, managing, and supervising all of the activities necessary for the implementation of the services agreed to by the Contractor in accordance with the terms and time periods specified in this Contract. Further, the Project Director shall be the principle contact between the Contractor and the Owner during the term of this Contract.
- (3) Without prejudice to the foregoing subsection, in accordance with the terms of this Contract and applicable law, the Contractor shall be responsible for the actions of the Project Director and any and all consequences arising from such actions.

6.9 Taxes and Import Duties

The Contractor agrees to pay all taxes, including all expenses, interest and surcharges relating thereto, applicable to the supply, manufacture, transportation, services, sales and other services for which the Contractor is responsible under this Contract, except with respect to those whose payment is expressly attributable to the Owner.

6.10 Intellectual and Industrial Property Rights

All of the drawings and designs that the Owner has prepared or supplied to the Contractor, and all of the patents, copyrights, design rights and other intellectual and industrial property rights thereto shall be the property of the Owner.

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The Contractor, in turn, grants to the Owner, as part of the Contract Price and at no additional cost, an irrevocable license, not transferable to third parties (except in conjunction with all of the rights and obligations of the Owner under this Contract), and free of any royalties, to use in the Solar Park (and therefore, in no other project) the creations, plans, drawings, specifications, documents, procedures, methods, products, inventions prepared or developed by the Contractor under this Contract, in all cases, subject to any restrictions imposed on such intellectual or industrial rights by third parties. The Contractor represents and warrants to the Owner that the same are owned by the Contractor or that the Contractor has sufficient legal rights to use the same for such purpose. Should any claim or action be brought by a third party alleging an infringement of any intellectual or industrial property right granted by the Contractor to the Owner hereunder, the Contractor shall indemnify the Owner for all liabilities and damages (including costs and expenses) that may arise as a consequence of such infringement of third parties' rights, claim or actions arising there from.

6.11 Cooperation

The Contractor undertakes to provide to the Owner all of the cooperation that the latter may reasonably request in connection with the implementation of the project for the construction of the Solar Park and compliance with the Owner's obligations as specified in this Contract, and to submit to the Owner all of the documentation or information that the Owner may reasonably request in connection with the Work and that is available to the Contractor.

7. OBLIGATIONS OF THE OWNER

The Owner undertakes to comply with the obligations set forth in this Contract, those resulting from good faith, and those resulting from the applicable laws and regulations, including, in particular, the following:

- (i) To comply with its payment obligations under this Contract;
- (ii) To provide to the Contractor, its Subcontractors and employees, during the effective term of this Contract, access to the Site to fulfill their contractual obligations, including appropriate access to highways and access roads to perform the Work. For these effects, the Owner will execute, at its cost and expense, agreements with landowners that procure all necessary easements or land use rights;
- (iii) Process and obtain, at his cost and responsibility, the licenses and authorizations necessary for the start of the construction (amongst which are included, but not restricted to, the corresponding municipal building and activity licenses, if required, as well as the administrative authorization and approval of the Electrical Infrastructure Project, the connection point for the Solar Facilities and the environmental permits for all the Solar Facilities in the Solar Park), as well as all the licenses necessary for the Start-Up and operation of the Solar Park, other than the Final Start-Up Certificate;
- (iv) Provide the Contractor with all the documentation and collaboration that is reasonably required to obtain the Final Start-Up Certificate and other licenses and authorizations that the latter must obtain as set forth in this Contract, and that must be provided by the Owner;
- (v) To cooperate with the Contractor, to the extent necessary, in order to avoid any impact on the Implementation Schedule or in the performance of the works by the Contractor;
- (vi) To appoint a project coordinator to act on behalf of the Owner in the performance of matters associated with the Contract and who must possess sufficient powers to represent the Owner. The Owner's project coordinator will be Mr. Juan Ignacio Marti Junco except in case a notice communicating the change of project coordinator has been sent by the Owner to the Contractor;

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- (vii) The Owner undertakes to provide to the Contractor all of the cooperation that the latter may reasonably request in connection with the implementation of the Work and compliance with the Contractor's obligations under this Contract. The Owner shall submit to the Contractor all documentation or information that the Contractor may reasonably request in connection with the Solar Park and that is available to the Owner.

8. GUARANTEES

8.1 Solar Module Degradation Guarantee

The Contractor guarantees the durability of the solar modules during the Guarantee Period, in accordance with the schedule of guarantees made by the manufacturer of the modules set forth on **Annex 6** of this Contract. Upon expiration of the Guarantee Period, the Contractor undertakes to assign to the Owner its rights under the module supplier guarantees through the remainder of the 25-year useful life of the modules.

8.2 Solar Module Capacity Guarantee

- (1) The Contractor guarantees that the total peak capacity of the Solar Park is equal to or higher than the contracted capacity of 18,000 kWp (which will be confirmed by the manufacturer's photoflash certificates). In addition, all certificates for each module shall be within the rated peak capacity margin of ***% and all aggregate certificates for each of the Solar Facilities shall be within the rated peak capacity margin of ***% (although the Solar Park aggregate will not have a margin with respect to the above referenced peak capacity).
- (2) In the event that (i) the total sum of the certificates is less than the contracted 18,000 kWp, or (ii) the certificates do not comply with the above referenced margins, the Contractor shall replace, at its expense, solar modules as needed to increase the total peak capacity of the Solar Park to the minimum permitted under subsection (1) above, or those modules whose individual capacity is inferior to the aforementioned tolerance.
- (3) If, as of the Delivery Deadline (or the date set forth in Clause 14.1(1)(i) if this is a later date), the sum of the manufacturer's photoflash certificates demonstrate the peak capacity of the Solar Park is less than the referenced total peak capacity, the Owner may terminate the Contract for Contractor breach in accordance with the terms of Clause 14.1, and pay the indemnity set forth in such Clause.
- (4) The Owner reserves the right to perform capacity tests on the solar module samples that have been provided at the CIEMAT, CENER or IFE-Fraunhofer laboratories, in accordance with the applicable IEC (International Electrotechnical Commission) standard in order to confirm their compliance with the capacity specified by the manufacturer and guaranteed by the Contractor. The results thereof shall be binding on the Parties. In the event that such results confirm that the capacity of the modules does not fall within the tolerance guaranteed by the Contractor, the Contractor shall bear the costs of such tests and shall immediately replace the entire batch of modules corresponding to the tested samples, except to the extent that the modules failing the capacity test can be identified, in which case, only those modules shall be replaced.

8.3 Design, Assembly and Performance Guarantee. Materials Quality Guarantee.

8.3.1 Design, Assembly and Performance Guarantee

- (1) The Contractor guarantees during the Guarantee Period that the procedures followed for the design of the facilities and for the performance of the work are of the required quality and conform to the specifications contained in this Contract.
- (2) The Contractor is obliged to repair or, if necessary in its opinion, to supply totally new, and reinstall free of charge to the Owner, those parts or components of the facilities included in the Scope of Work that fail during the Guarantee Period due to design, assembly or performance defects.

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- (3) The provisions of subsections 8.3(2) to (8) below with respect to the Materials Quality Guarantee shall apply, *mutatis mutandis*, to the guarantee provided under this subsection.

8.3.2 Materials Quality Guarantee

- (1) The Contractor guarantees that all the materials and components used in the manufacture, assembly and Start-up of the Solar Park are of the required quality and conform to the specifications for the equipment and the technical documents contained in the Annexes to this Contract. The Contractor further guarantees a minimum stock of spare parts to the Owner in accordance with the terms of Clause 6.3 and Annex 5 of this Contract.
- (2) The materials quality guarantee will enter into force on the date of issuance of the relevant Solar Park Provisional Acceptance Certificate and shall remain in force until the Solar Park Final Acceptance Certificate is signed. If the Solar Park or a portion thereof, cannot be commercially operated during the Guarantee Period for reasons attributable to the Contractor, the Guarantee Period shall be extended (only as regards the affected facilities) for a period equal to the period during which the corresponding facilities are not operating. For this purpose, the parties shall record in writing the periods during which operation is suspended and the corresponding extensions of the guarantee.
- (3) During the Guarantee Period, the Contractor is required, in its discretion:
- a) To replace any material and equipment that do not comply with what was agreed upon or required pursuant to this Contract, or that are inadequate or of a deficient quality; and
 - b) To adjust, repair or replace any equipment exhibiting any design, materials, manufacturing, operation, or performance defect. If a Systemic Defect exists with respect to any equipment or components supplied under this Contract, the Contractor shall carry out, at its expense, the redesign and/or modifications necessary to cure such problem in accordance with the Owner's requirements.
- (4) The adjustments, repairs or replacements must be performed within the shortest period that is reasonably possible (and, in any event, no later than fifteen (15) days from the time the defect is detected), in a manner that is least prejudicial to the Owner and taking all action needed to cause the least possible harm to the operation of the overall facilities of the Solar Park.

If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within the period established in this Clause, the Owner shall so inform the Contractor and shall grant the Contractor a period of five (5) days to complete any such adjustments, repairs or replacements. If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within such period, the Owner may do so itself or through third parties at the Contractor's expense, which action shall not entail forfeiture of the quality guarantee provided by the Contractor under this Clause. The Contractor shall be also required to pay to the Owner the direct expenses paid to the above-mentioned third parties for such purpose.

- (5) Repairs, adjustments, alterations, replacements or maintenance that may be necessary because of the normal wear and tear of on the facilities provided under this Contract or caused by misuse or negligent use of the equipment by the Owner or by third parties (other than the Contractor or its Subcontractors) or because of the use of the equipment supplied to Owner in a manner that does not conform to the technical specifications, are all excluded from the scope of the guarantee. For clarification purposes, it shall be understood that the Owner (or third parties acting on its behalf) has used equipment in the intended manner when such use conforms to the operation and maintenance manuals delivered to the Owner by the Contractor pursuant to this Contract. This guarantee will not be enforceable in the event of the inaccessibility of the Site, provided that the Contractor has notified the Owner of the existence of such inaccessibility, or, in the events of *Force Majeure* (whilst the circumstances preventing access last).

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- (6) The obligations arising from the guarantee set forth in this section shall be fulfilled by the Contractor at its sole cost and expense and free of any charges or expenditures by the Owner, and the Contractor shall bear the expenses arising as a result thereof for the Owner, such as demolition and disassembly, construction, carting, insurance and packaging for returned materials and their replacement, assembly and supervision, taxes and the like.
- (7) All repaired or replaced material shall carry a new guarantee period of the following duration from the date of repair or replacement:
- (i) if repaired, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer; and
 - (ii) if replaced, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer.
- (8) The Contractor guarantees the availability of spare parts for the modules; inverters and solar trackers during the Guarantee Period and during the entire useful life of each Solar Facility, in the latter case provided the Maintenance Agreement remains in force. The Contractor shall provide such guarantee on the following terms:
- (i) With respect to the module, inverter or solar tracker spare parts that are manufactured by the Contractor or by companies of its group (currently headed by Sunpower Corporation), the Contractor shall ensure that such spare parts continue to be manufactured or, in the event that the Contractor or the companies of its group do not manufacture spare parts identical to those already installed, that spare parts for modules, inverters or solar trackers of similar characteristics (and, in the case of modules, of equal or greater capacity) are available, provided they do not entail a reduction in the guaranteed performance of the Solar Park.
 - (ii) With respect to the module, inverter or solar tracker spare parts that are not manufactured by the Contractor or by companies of its group, the Contractor shall use reasonable efforts to (a) cause the respective suppliers to continue to manufacture such spare parts or other spare parts with similar characteristics (and, in the case of modules, of equal or greater capacity), provided they do not entail a reduction of the guaranteed performance of the Solar Park, or (b) obtain such spare parts with similar characteristics from other vendors with technical capabilities that are at least similar to the original ones. Should the Contractor become aware that an original vendor intends to stop manufacturing such spare parts, it shall so notify the Owner so that the Owner may order, through the Contractor, the spare parts it deems appropriate, provided they are available on the market.

Such spare parts will be supplied at the Owner's request at the market prices prevailing from time to time (which shall be paid by the Owner) and within such reasonable period as the Parties agree, taking into account the characteristics of the requested spare part.

8.4 Solar Park Production Guarantee.

- (1) The Contractor guarantees to the Owner that the aggregate electric output of the Solar Park during each of the *** periods included in the Production Guarantee Period shall reach the PR guaranteed pursuant to Annex 11 (the "Guaranteed PR"), for each determined irradiance and temperature condition, and that in no event shall it fall beneath the PR minimum set forth in such Annex (the "Minimum PR").

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In the event of a partial termination of the Contract in accordance with the provisions of Clause 14.1 and only some Solar Facilities have achieved the Start-up, the Guaranteed PR and the Minimum PR shall be applied to the electric output of the Solar Facilities that have reached the Start-up.

- (2) A Production Test shall be performed at the end of each *** period dividing the Production Guarantee Period in order to confirm the electrical output. For these purposes, within the forty-five (45) days prior to the termination of the *** period following the execution of the Solar Park Provisional Acceptance Certificate, and within the forty-five (45) days prior to the termination of the Production Guarantee Period, the Contractor shall notify the Owner of such circumstance so that the Parties may agree upon a date to perform the Production Tests for the corresponding *** period (which, in no event may be later than the date which is fifteen (15) Business Days following the date of termination of the period which is *** following the execution of the Solar Park Provisional Acceptance Certificate or the termination date of the Production Guarantee Period, as applicable). The following shall apply to the results of the Production Tests for the Solar Park:
- (a) If the actual measured output of the Solar Park is less than the Guaranteed PR for the corresponding *** period (as such term is defined in Annex 11 but is greater than the Minimum PR for such period, the Contractor shall pay to the Owner the penalties set forth in Annex 11, up to a maximum of ***% of the Contract Price.
- (b) If the actual measured output of the Solar Park is less than the Minimum PR for the corresponding *** period, the Owner may elect to: **(i)** return the entire Solar Park to the Contractor (or the part thereof that has achieved the Start-Up), the Contractor then being obligated to return the entire Contract Price paid by the Owner pursuant to this Contract and to indemnify the Owner for damages pursuant to Clause 14.1(5), or **(ii)** return the Solar Facilities causing the failure to achieve the Minimum PR to the Contractor, the Contractor then being obligated to return the portion of the Contract Price corresponding to such Solar Facilities and to indemnify the Owner for damages pursuant to Clause 14.1(5) that correspond to the returned Solar Facilities.
- (3) If the Guaranteed PR is reached in the Production Tests for each *** period, or if the Contractor shall have paid the required penalties for achieving an output between the Minimum PR and the Guaranteed PR, the Parties shall execute a certificate of agreement. The execution of such certificate corresponding to the second *** period for the Guaranteed Production Period shall grant the Contractor the right to require the Owner to return the Guarantee Bond in force at the time and replace the same with a new Guarantee Bond in an amount equal to ***% of the Contract Price. The same provisions of this subsection shall also be applied to the Solar Facilities, if any, that the Owner did not return in accordance with subsection 8.4(2)(b).
- (4) The Contractor shall not be responsible for breach of the guarantees in the event that such failure was caused by the circumstances described in Clause 8.3.2(5) above or by excessive failures of the grid coupled with the disconnection of the inverters for exceeding the conditions detailed in their technical specifications.

Further, in the event that a Systemic Defect arises during a Production Guarantee Period, the data from the Solar Park as a whole shall not be considered for purposes of the Production Guarantee during the time the Contractor is replacing the equipment affected by such Systemic Defect, up to a maximum of three (3) months. Thus, in the event that the Contractor takes more than three (3) months to replace the Solar Park equipment affected by a Systemic Defect, only that three (3) month period shall remain in the Production Guarantee Period. For this purpose, the parties shall record the suspension periods and corresponding extensions of the Production Guarantee in writing.

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For clarification purposes, the appearance of a Systemic Defect shall obligate the Contractor to replace all equipment of the same model and manufacturer, regardless of whether they have manifested such defect at the time of their replacement.

8.5 Bonds

- (1) On the Condition Satisfaction Date, the Contractor shall deliver to the Owner the Performance Bond, as per the form attached hereto as Annex 7, in an amount equivalent to ***% of the Contract Price. The Performance Bond shall guarantee the performance by the Contractor of any payment obligation for which the Contractor is responsible from the commencement of the Work until the date of execution of the Solar Park Provisional Acceptance Certificate (for any reason, including but not limited to the return of the amounts paid by the Owner, under this Contract, and penalties or compensation for damages and losses, including the performance by the Contractor of its obligations during the portion of the Guarantee Period prior to the execution of the Solar Park Provisional Acceptance Certificate).
- (2) As a requirement for the execution of the Solar Park Provisional Acceptance Certificate, the Contractor shall deliver to the Owner the Guarantee Bond (in exchange for the return of the Performance Bond by the Owner), in an amount equal to ***% of the Contract Price. The Guarantee Bond shall conform to the form attached hereto as Annex 7 and shall guarantee the Contractor's compliance with its obligations during the Guarantee Period (beginning from the execution of the Solar Park Provisional Acceptance Certificate). However, once the Performance Tests corresponding to the second *** period of the Production Guarantee Period have been performed and the written agreement referred to in Clause 8.4(3) has been executed, the Contractor shall have the right to replace the Guarantee Bond delivered to the Owner with a new Guarantee Bond in an amount equal to ***% of the Contract Price.
- (3) The Performance Bond and the Guarantee Bond shall be issued by a financial institution with a minimum "A" rating by Standard & Poor's Corporation or the equivalent from Moody's Investors Services Inc., and shall be enforceable, in whole or in part, on demand by the Owner, in the event of the Contractor's breach of its obligations under this Contract.
- (4) The delivery of the bonds provided under this section shall in no way limit the Contractor's liability under this Contract, as the bonds only constitute a means to guarantee the performance of the obligations assumed by the Contractor.
- (5) If the Contract Price is amended pursuant to Change Orders, the Contractor must update the amount of the Performance Bond. To such end, the Contractor must deliver to the Owner (within fifteen (15) Business Days following the execution of the corresponding Change Order), another bond in the updated amount, in the form attached hereto as Annex 7.

9. FINAL ACCEPTANCE OF THE SOLAR PARK

- (1) Within forty-five (45) days prior to the passage of *** from the date of execution of the Solar Park Provisional Acceptance Certificate, the Contractor shall give notice thereof to the Owner in order for both Parties to agree upon a date to analyze the status and condition of the Solar Park (which shall not occur later than the Guarantee Period expiration date).
- (2) If such inspection does not reveal the presence of defects, the Parties shall proceed to execute the Final Acceptance Certificate, at which time the Owner shall return the Guarantee Bond to the Contractor.
- (3) If such inspection finds that defects are present that affect the Contractor's obligations during the Guarantee Period, the Parties shall sign a certificate specifying the defects, if any, that must be corrected within a period of forty-five (45) days of the date of execution of the corresponding certificate, or within such shorter period that the Parties may agree upon.

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Once such defects have been corrected by the Contractor within the specified period, a new inspection shall be performed, and if the defects have been remedied, the Parties shall proceed to execute the Final Acceptance Certificate, and the Owner shall return the Guarantee Bond to the Contractor.

10. OWNERSHIP OF THE FACILITIES AND TRANSFER OF RISK

- (1) The Owner and the Contractor expressly agree that the actual transfer of ownership of the facilities and equipment covered by this Contract will be made, for all contractual purposes, when each of the same shall have been paid for in full by the Owner. With respect to the solar modules, module supports and trackers, ownership thereof will be transferred to the Owner upon payment of the respective invoice as provided in Clause 4, whereupon the Owner will become the owner of the solar modules, the module supports and the trackers included in such invoice.
- (2) Without prejudice to the foregoing, or to the Contractor's obligations during the Guarantee Period, the possession and the risk of loss of the same shall not be transferred to the Owner until the execution of the Solar Park Provisional Acceptance Certificate.
- (3) Until the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must repair or replace, at its own expense, any equipment, facility or portion of Work that is lost or damaged. Further, the Contractor must assume responsibility for the care and security of the Site and assume responsibility for any loss, theft or damage that may occur with respect to the Contractor's materials or machinery or the equipment delivered pursuant to this Contract.

11. INSURANCE

- (1) At all times during which the Contractor continues performing work under this Contract, the Contractor, at its own cost and expense, shall take out and maintain in force the insurance described below with well-known and solvent insurance companies that are legally authorized to issue policies in Spain, on terms and conditions of coverage satisfactory to the Owner and the Insurance Advisor:
 - a) Occupational Accidents or Social Security Insurance for all its own personnel or for the personnel of the Subcontractors as is legally required during the effective period of the Contract.
 - b) Mandatory Civil Liability Insurance and Voluntary Civil Liability Insurance for the Circulation of Vehicles and Machinery, pursuant to the limits and conditions mandated by the Legislation in force during the effective period of the Contract.
 - c) Civil Liability Insurance covering all activities of the Contractor and the Subcontractors necessary to complete the Work, with a limit of not less than €1,500,000 per occurrence.
 - d) Transportation Insurance covering the transportation of material and machinery to the Site, with a limit of not less than the aggregate value of the transported goods.
 - e) All-Risks Construction and Assembly Insurance, which will specifically include theft and vandalism at the Site, from the unloading of the material at the Site until the transfer of ownership of the Solar Park, including the testing period and covering a maintenance period of not less than 12 months, with an insured amount not less than the Contract Price.
 - f) Any other mandatory insurance.
- (2) The contracting of insurance provided in this clause shall in no event limit the liabilities of the Contractor under this Contract. Additionally, the amounts established as an insurance deductible in each of the insurance policies shall be borne by the Contractor, unless the loss is attributable to the Owner.

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- (3) The Owner may require that the Contractor deliver documentation evidencing the contracting of the insurance set forth under this Clause to verify compliance therewith and/or for verification by the Insurance Advisor, and the Contractor undertakes to make such documentation available to the Owner as soon as possible.

12. FORCE MAJEURE

- (1) Neither Party shall be deemed liable for the breach of any of its obligations to the extent that the performance of such obligations is delayed or becomes impossible as a consequence of *Force Majeure*.
- (2) For the purposes of this Contract, events of *Force Majeure* shall be deemed to be the events described in Article 1105 of the Civil Code, provided that they actually prevent compliance by the party invoking it from complying in whole or in part with its obligations under this Contract. The Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of *Force Majeure* for purposes of this Contract (without prejudice to the changes, if any, that the Parties may agree to in accordance with subsection (11) below and the consequences set forth therein). By way of example and not limitation, the Contractor may not invoke the following as an event of force majeure:
- (i) Meteorological conditions or phenomena that could have been reasonably foreseen by experienced contractors operating at the Site.
 - (ii) Delays or failures in obtaining materials or labor that are foreseeable or avoidable in advance.
 - (iii) Delays by any Subcontractor, unless such delays are based on any of the events specified in this clause.
 - (iv) Strikes or labor conflicts affecting the Contractor or the Subcontractors, unless they are national, sector-wide or local in scope.
- (3) The Party affected by *Force Majeure* shall give written notice to the other Party as soon as possible within a maximum period of forty-eight (48) hours from the day on which such Party became aware thereof, attaching to such notice all available documents evidencing the event that is deemed to amount to *Force Majeure*, and an estimation, if possible, of the expected duration thereof and its impact on the Work
- (4) The performance of the obligations affected by an event of *Force Majeure* shall be suspended for the duration of such event, the Parties not being entitled to damages as results of such events of *Force Majeure*.
- (5) If the Work is affected by the event of *Force Majeure* and the Contract is suspended for more than one hundred eighty (180) days, either of the Parties may seek termination of the Contract, with the consequences provided in Clause 14.3.
- (6) After cessation of the event of *Force Majeure*, the Parties shall agree upon the corresponding extension of deadlines (in all cases in light of the duration of the event of *Force Majeure* and the mobilization periods), or, if applicable, the measures that must be adopted to recover, in whole or in part, the time lost so as to preserve such dates, if possible. The contractual obligations not affected by *Force Majeure* must be met within the deadlines that were in force prior to the occurrence of the event of *Force Majeure*.

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- (7) In any event, upon cessation of the event of *Force Majeure*, the Parties shall take all reasonable measures within their power to resume performance of the obligations under the Contract under optimal conditions and with the least possible delay.
- (8) The expenses incurred as a consequence of the repair, replacement or adjustment of the items damaged by the events of *Force Majeure* shall be borne by the party bearing the risk of loss for such elements at the time of occurrence of the event of *Force Majeure*.
- (9) In the event that an event of *Force Majeure* prevents a Party from complying with a payment obligation required by the Contract, such payment obligation shall not be waived and the other Party may suspend performance of its obligations under the Contract. Such occurrence shall not give either Party a right to indemnification for damages, without prejudice to any interest for delay in payment that might apply.
- (10) The Party claiming the *Force Majeure* event shall immediately notify the other Party of its cessation. Within seven (7) calendar days following the cessation of the *Force Majeure* event, the Parties shall meet to agree and assess the effects that such situation caused. Such agreement shall be documented in a certificate signed by both Parties describing the changes to the contractual conditions.
- (11) In the event that archeological ruins are discovered at the Site, but the Work may be continued by reducing the size of the Solar Park, the number of Solar Facilities, or by implementing a reconfiguration of the technical configuration of the Solar Park, the Parties shall meet to agree on such changes and shall execute a certificate describing the changes to the contractual conditions. In any event, if the change entails a reduction in the capacity of the Solar Park, or in the number of Solar Facilities, thus requiring a reduction of the Contract Price, the Owner shall have the right to withhold from the remaining Payment Milestones payable after the change, the portion of the Contract Price previously paid by the Owner that corresponds to the Solar Facilities or the equipment affected by the reduction and which, consequently, were not delivered by the Contractor under this Contract.

13. SUSPENSION OF THE WORK

13.1 Suspension by the Owner

- (1) The Owner may at any time give written notice to the Contractor ordering the immediate suspension of the Solar Park, in whole or in part, for any of the following reasons:
- a) If the Contractor is performing the Work in a defective or inappropriate manner or not adhering to uses and practices customary for projects of this type or as established under this Contract, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
- b) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with safety standards, avoiding damage to people and things, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
- c) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with quality control requirements, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
- d) If the Contractor fails to comply with the instructions issued by the Governmental Authorities for the execution of the Work, to the extent that this may affect the authorizations granted or requested or the successful achievement of the purpose of the Contract.

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- e) By unilateral decision of the Owner.
- (2) The order providing for the suspension of the Work shall specify in writing the portion thereof that is being suspended, the grounds for suspension, the effective date of suspension and the date provided for the resumption of the Work (if applicable).
- (3) In all the cases provided in subsection (1) above, except for the ones mentioned in subsection (e), the suspension shall last for all the time required and until the Contractor cures the circumstances that gave rise to the suspension of the Work. Additionally, in none of such cases shall the Contractor be entitled to any additional payment whatsoever or to the extension of the periods provided in the Implementation Schedule, except in the case mentioned in subsection (e), where the Contractor shall be entitled to an extension of the deadlines provided in the Implementation Schedule for a period at least equal to the suspension period and to be compensated for the costs resulting from the repair, replacement or adjustment of the items damaged during the suspension period and the costs arising from the suspension and resumption of the Work.
- (4) If the suspension lasts for a period in excess of one hundred and eighty (180) days, and the reasons are not attributable to the Owner, the Contractor shall reserve the right to terminate the Contract upon the terms of Clause 14.1.

13.2 Suspension by the Contractor.

- (1) The Contractor shall be entitled to temporarily suspend the Work as provided under this Contract, applicable law and in the event that the Owner incurs a delay in excess of thirty (30) days in the payments owing to the Contractor, as regards the expiration dates of the relevant invoices. In such event, the Owner shall pay to the Contractor its expenses arising from the suspension (including the costs resulting as a consequence of the repair, replacement or adaptation of the damaged elements during the suspension period and the costs arising from the suspension and resumption of the Work) and the Parties shall agree upon an extension of the deadlines for performance based on the effects of the suspension thereon.
- (2) If the suspension for a cause attributable to the Owner (including the one provided under subsection 13.1(1)(e) above) lasts for more than three (3) months or during several consecutive periods totaling more than three (3) months, the Contractor shall be entitled to terminate the Contract upon the terms of Clause 14.2.

13.3 Suspension by Judicial or Governmental Authority

- (1) In the event of suspension, interruption or stoppage of the Work, in whole or in part, ordered by any judicial or governmental authority, or by the Owner or Contractor following the instructions of any judicial or governmental authority, the financial and contractual consequences of the delay shall be borne by the party that is responsible for performance where the failure to perform or incorrect performance triggered the judicial or governmental action.
- (2) If such suspension, interruption or stoppage does not result from the actions or omissions of any of the Parties, the periods of the Implementation Schedule shall be extended for a period at least equal to the one during which the situation subsisted, and the Owner shall pay to the Contractor the duly verified costs incurred as a result of such interruption. The Contractor undertakes to act diligently to minimize such costs.
- (3) If the suspension ordered by any judicial or governmental order, or by the Owner or the Contractor following the instructions of any judicial or governmental authority, extends for more than six (6) months, either of the Parties will be entitled to terminate the Contract upon the terms of Clause 14.2.

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14. Termination

14.1 Termination for Causes Attributable to the Contractor

- (1) The Owner may terminate the Contract in the cases authorized by the Law, in the instances provided for in this Contract, or upon the occurrence of any of the following events:
- a) The dissolution or merger (provided it involves a change in control) of the Contractor ***, or when a substantial portion of the assets of the Contractor *** is transferred to another company, provided that such circumstances seriously prejudice the Contractor’s *** capacity to perform the obligations under this Contract;
 - b) The voluntary filing by the Contractor of a bankruptcy petition or the allowance of a bankruptcy petition by a third party against the Contractor (or any equivalent action in accordance with the insolvency legislation applicable to the Contractor), or in the case of clear financial difficulties that prevent the Contractor from normally complying with obligations arising under the Contract, unless its obligations are sufficiently guaranteed under this Contract. The occurrence of the same events as regards *** shall also be grounds for termination.
 - c) If the Contractor assigns or subcontracts the Contract, in whole or in part, without complying with the conditions set forth in this document.
 - d) If the Contractor fails to comply with its obligations involving the contracting and maintenance of the insurance provided under the Contract in a manner that might endanger coverage under the relevant policies.
 - e) If the Contractor has been assessed penalties for failure to achieve the Production Guarantee beyond the maximum limits, if applicable, provided under this Contract.
 - f) The Contractor has interrupted the Work or a substantial portion thereof or has abandoned the Solar Park for a period exceeding twenty (20) calendar days without the Owner’s authorization, or in the case of interruptions for an aggregate duration of more than thirty (30) days within the same calendar year, provided that the interruptions do not arise from a suspension of the Work provided under Clause 13.2.
 - g) If the Solar Park Provisional Acceptance Certificate has not been issued prior to ***.
 - h) ***
 - i) ***
 - j) If there is any other material breach of the obligations assumed by the Contractor under this Contract.
 - k) Any other serious breach of a principal obligation of the Contractor that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
- (2) Upon the occurrence of any of the above events, the Owner may elect to terminate the Contract, in whole or in part, with respect to the Solar Facilities for which the Provisional Acceptance Certificate of a Facility has not been issued as of the date of notice of termination, (or, for the circumstance set forth in paragraph (g) , as of the date set forth in such paragraph) except to the extent that before such date the Solar Facility Provisional Acceptance Certificate has been executed for at least hundred (100) Solar Facilities. In such a case the Owner may only terminate the Contract with respect to the Solar Facilities for which the Solar Facility Provisional Acceptance Certificate has not been executed. However, if the number of Solar Facilities for which the Solar Facility Provisional Acceptance Certificate has been executed is over hundred (100) Solar Facilities, the Owner may elect to terminate the Contract with respect to the entire Solar Park if one of the termination events set forth in subsections a) or b) has occurred and the Owner reasonably believes that such circumstances pose a material prejudice or risk to the performance of the Contractor’s obligations under this Contract during the Guarantee Period. The foregoing shall not apply if the Contractor has provided equipment guarantees, satisfactory to the Owner, sufficient to ensure proper maintenance and replacement of the Solar Park during the Guarantee Period and the Contractor has assigned such guarantees to the Owner pursuant to the terms of this Contract.

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The above shall not prejudice the Owner's option to return the Solar Park in its entirety upon the occurrence of the circumstance set forth in Clause 8.4(2)(b).

- (3) Upon the occurrence of any of the above events, the Owner shall give the Contractor a period of thirty (30) days to remedy the event, or any other longer period that may be agreed upon by the Parties. If within such period the Contractor fails to remedy such grounds for termination to the Owner's satisfaction, the Contract shall be terminated (in whole or in part, as applicable). For clarification purposes, it is noted for the record that in no event will the remedy period provided herein be applicable to the circumstances provided in subsections (1)(b), (e), (f) and (g) of this Clause.
- (4) In the event of a termination of the Contract (in whole or in part) under this subsection, the following shall occur (without prejudice to the provisions of subsection (6)):
- (i) In the event of partial termination, only as to some Solar Facilities in the Solar Park, the Contractor shall be obligated to return to the Owner the portion of the Contract Price that it charged for the affected Solar Facilities and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of the property comprising such Solar Facilities.
- (ii) In the event of complete termination, the Contractor shall be obligated to return the aggregate Contract Price charged by the Contractor, and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of all the property delivered to the Owner.
- (5) Upon the occurrence of either two events described in the preceding subsection, the Contractor shall be obligated to pay indemnification to the Owner for damages, including:
- (i) The Financial Costs associated with the affected Solar Facilities or the entire Solar Park, as applicable. "**Financial Costs**" shall be understood to mean all costs, expenses, fees (whether up-front, early termination or of any other type) and interest paid by the Owner in respect of the financing documents entered into by the Owner with the Financing Institutions, including cancellation or breakage fees for any interest rate swap agreements entered into by the Owner with the Financing Institutions.
- The Contractor acknowledges the validity of the amount, as determined by the Agent under the financing documents, to be provided in the settlement statement that will be delivered by the Agent to the Owner in which the factors used to calculate the Financing Costs with respect to the Solar Facility or Facilities or the Solar Park, as applicable, will be described.
- (ii) The costs, expenses and damages incurred by the Owner as a result of, or with respect to, the early termination or the breach by the Contractor, duly certified by the Owner, (including costs to be paid by the Owner, if applicable, for the termination of the surface right that the Owner has entered into for using the Site) plus ****% of the part of the Contract Price that corresponds to the affected Solar Facilities in the event of a partial termination (or of the Contract Price in the event of total termination), to cover permitting costs.

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Concurrently with the payments provided for in subsections 15.1(4) and 15.1(5), the Owner agrees to take all necessary actions which are in its control to assign to the Contractor, or its designee, ownership title (free of encumbrances and liens) to the permits and authorizations relating to the affected Solar Facilities (or the Solar Park in its entirety in the event of total termination), as well as corresponding usage rights (free of encumbrances and liens) to the part of the Site on which such affected Solar Facilities are located and the contractual rights in those contracts relating to the Solar Park with respect to the affected Solar Facilities.

In the event that a special purpose entity holds title to such permits and authorizations and usage rights to the Site, the Owner agrees to transfer to the Contractor, free of encumbrances and liens, all shares or participations representing the entire share capital of such special purpose entity (provided that such entity only holds title to the affected Solar Facilities).

For clarification purposes, in no event shall the above-referenced obligation be construed as an obligation to achieve a specific result, and the Owner does not assume any responsibility in the event that the assignment of the permits and authorizations referred to in the previous paragraph cannot be completed as a result of the failure to receive approval (when necessary) for such assignment from the relevant government administration or entity or the Contractor's failure to comply with the requirements imposed on the Contractor by the holders of such permits or authorizations.

- (6) Notwithstanding the provisions of subsections (4) and (5), if the Owner had the right to terminate the Contract, in whole or in part, as a result of the failure to achieve Start-Up prior to September 29, 2008, the Owner may not elect to return the affected Solar Facilities for which the Solar Facility Provisional Acceptance Certificate has been executed before October 31, 2008, provided that prior to September 29, 2008 the Contractor pays to the Owner an amount that is sufficient to (i) restore the Debt Service Coverage Ratio to the Base Case (as defined in the financing documents referred to in Clause 14.1(5)(i)) agreed to by the Financing Institutions and the Owner in such financing documents, and (ii) cover the loss of profitability for the Owner's shareholders, taking into account the tariffs which will be received by the Owner from the sale of power from the Solar Park.

For such purposes, the Contractor acknowledges and accepts that the amount to be paid to the Owner (for the items set forth in the preceding subsection) will be proposed by the Agent for the Financing Institutions and negotiated between the Owner and the Contractor on the basis of the assumptions in the Base Case developed by the Owner and the Financing Institutions in connection with the financing documents.

In case that:

- (i) the amount that should be paid by the Contractors has not been paid before September 29, 2008, or
- (ii) the amount having been paid, the Solar Park Provisional Acceptance Certificate has not been executed before October 31, 2008.

the Owner may require the return of the affected Solar Facilities and the payment by the Contractor of the due amounts, each in accordance with the provisions of subsection (5) above.

- (7) The Contractor is required to pay the amounts referred to in subsections (4) and (5) above to the Owner within *** days of the date of settlement of the amounts owed.
- (8) In all the foregoing instances, the Owner may, without prejudice to the reservation of rights to take all legal action to which it is entitled for the defense of its rights, adopt any or all of the following measures:

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- a) Offset any payments pending in favor of the Contractor by an amount equivalent to the balance in favor of the Owner (returning, in the event of complete termination, the Performance Bond, once such offset has been made).
- b) Enforce the Performance Bond and/or the Guarantee Bond.
- c) Withhold the Contractor's materials, machinery and items belonging to the Contractor that are in the possession of the Owner, until the Contractor has fully paid all amounts due as a consequence of the termination.

14.2 Termination by the Contractor

- (1) The Contractor may terminate the Contract under the circumstances provided for under applicable law, in this Contract, or upon occurrence of any of the following events:
 - (i) The voluntary filing by the Owner of a bankruptcy petition or the allowance of a bankruptcy petition filed by a third party against the Owner, or in the event of patent financial difficulties that would prevent the Owner from normally complying with the obligations arising under this Contract in cases different from the one provided under subsection (ii) below, unless its obligations are sufficiently guaranteed under this Contract.
 - (ii) A delay in payment for a period in excess of sixty (60) days from the date on which payment should have been made.
 - (iii) Any other serious breach of a principal obligation of the Owner that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
 - (iv) A suspension of the works and services for causes attributable to the Owner for a period greater than three (3) months.
 - (v) The dissolution of the Owner, or if a substantial portion of the assets of the Owner is transferred to another company, and such circumstance seriously prejudices the Owner's capacity to perform the obligations set forth in this Contract.
- (2) The Contractor shall give to the Owner a period of thirty (30) days to cure the event, or any other longer period that may be agreed upon by the Parties. If the Owner fails to remedy such grounds for termination to the Contractor's satisfaction within such period, the Contract shall be terminated (in whole or in part, as applicable).
- (3) Upon termination of the Contract for any of the foregoing reasons, the Owner must:
 - (i) Pay all of the Contractor's outstanding invoices.
 - (ii) Pay to the Contractor the value of the Work performed before termination and which is not yet included in the invoices. Accordingly, the Owner must pay to the Contractor the cost of the equipment already delivered to the Contractor or that it is legally required to accept under the contracts entered into with its suppliers and manufacturers, which shall become the property of the Owner if they had not already become so.

However, the Contractor undertakes to take such actions necessary or appropriate to minimize the costs referred in this subsection. The Contractor shall include the provisions required to that effect in the contracts with suppliers and subcontractors.
 - (iii) Pay all duly authenticated damages that are sustained by the Contractor as a consequence of the contractual breach or early termination, including direct demobilization costs.

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(iv) Return to the Contractor the Bonds received from the Contractor.

- (4) Upon the Owner's compliance with the conditions set forth in the above subsection, the Contractor shall abandon the Site within a period of thirty (30) days and the Owner may complete the Work by itself or with another contractor, the Owner being entitled to request the Contractor to assign each and every contract signed by the Contractor and its subcontractors (except contracts entered into for the supply of solar modules, supports and trackers or for the supply of technology and software, which the Owner may not assume). The Contractor is obligated to cooperate in good faith with the Owner to effect such assignments.

14.3 Termination due to *Force Majeure*

In the event of termination of the Contract due to an event of *Force Majeure*, the provisions of subsections 14.2 (3) (i), (ii) and (iv) above shall apply.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Assignment

- (1) The Contractor may not assign or transfer to third parties, in whole or in part, the economic, commercial or financial rights or credits arising under this Contract, or engage in any other transaction involving any type of disposition, encumbrance, commitment and/or transaction, in whole or in part, regarding such rights and credits, unless it has obtained the prior written approval of the Owner. An assignment to other companies within the Contractor's group that have the same technical capacity to perform the contractual obligations and that satisfy the requirements of the Direct Agreement is permitted, ***.
- (2) The Owner may only assign all or a portion of the rights and obligations arising under this Contract in favor of the Financing Institutions in accordance with Clause 17, or to any other third party with the prior written approval of the Contractor.

15.2 Subcontracting

- (1) The Contractor may subcontract the Work, provided the following conditions are met:
- (i) All the subcontracts executed (except the contracts entered into for the supply and manufacture of solar modules, supports and trackers or for the supply of technology and software, which Owner may not assume) and all guarantees obtained from any of the suppliers or Subcontractors may be assigned at the request of the Owner in the event of termination of this Contract. For such purpose, the Contractor irrevocably undertakes to assign to the Owner and the Financing Institutions the rights arising from all the guarantees and subcontracts obtained from Authorized Subcontractors upon the expiration of the Guarantee Period or in the event of termination of the Contract.
 - (ii) The guarantees or subcontracts executed by the Contractor with Subcontractors or suppliers shall be consistent with the terms and provisions of this Contract.
 - (iii) The Contractor shall deliver to the Owner, within a reasonable period after the request thereof, a copy without prices or other commercial terms, of all the contracts, agreements and guarantees signed with the Subcontractors (containing the waiver referred to in subsection (3) below).
 - (iv) Works relating to the Evacuation Line may only be subcontracted with the major subcontractor of medium voltage mentioned in **Annex 8**.
- (2) In no event shall a contractual relationship be implied among the Subcontractors and the Owner. The Contractor shall remain liable for all of the activities of its Subcontractors and suppliers and for all contractual and labor obligations arising from the performance of their work; as well as for the actions, failures and negligence of any of its subcontractors or suppliers and the agents and employees thereof, under the same terms and conditions as if committed or performed by the Contractor itself, its agents or employees.

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- (3) The Owner shall not be liable vis-à-vis any Subcontractor or supplier, or vis-à-vis their employees, for any claims arising directly or indirectly from the Contract. For such purpose, the Contractor undertakes to procure an express and written waiver of the rights conferred by Article 1597 of the Civil Code from each Subcontractor.

16. LIABILITY AND DAMAGES

- (1) The Parties shall have the obligation to provide indemnification for those damages caused to the other Party as a consequence of the breach of this Contract. The Owner's approval of the projects, calculations, drawings or other technical documents prepared by the Contractor, or the conduct of inspections or Tests do not release the Contractor from such liability, and do not imply that such liability must be shared by the Owner.

Further, the recommendations made by the Owner or its representatives during the performance of the Contract or on occasion of inspections or Tests shall not give rise to an exemption, mitigation or excuse for the Contractor's performance under this Contract, except to the extent such recommendations or observations were implemented despite the Contractor's objection.

- (2) The Contractor shall be liable vis-à-vis the Owner for any loss or physical damage to the equipment, materials or assets owned by the Owner or third parties that is caused by the Contractor through the execution of the relevant Solar Facility Provisional Acceptance Certificate, and thereafter only when the Contractor is within the Site performing the Work, repairs or similar activities and causes the relevant damage.

If the Contractor fails to hold the Owner or the third parties harmless from the above-mentioned damages, the Owner shall be entitled to redress such damages, deducting the costs of repair from any amounts pending payment to the Contractor, or by enforcement of the Bonds issued pursuant to this Contract.

- (3) By application of Article 1596 of the Civil Code, it is expressly agreed that the Contractor shall also be liable for damages caused by the persons or entities employed by the Contractor in the performance of the Work, whether as employees, technicians, subcontractors or otherwise, from whom the same diligence owed by the Contractor shall be required.
- (4) The Parties expressly agree that in no event will a Party be liable for the so-called consequential or indirect damages, including loss of profits and loss of output, loss of use or loss of any contract or other damages that are considered to be indirect, except for cases involving willful misconduct or gross negligence, and without prejudice to the Contractor's obligation to pay the penalties agreed upon under this Contract.
- (5) The Parties agree that any indemnity received by one of the Parties as beneficiary of any of the insurance taken out by them in connection with the Solar Park will be deducted from the respective claim for damages or, if such indemnity holds the Party in question harmless from the damages sustained, it shall bar such Party from claiming damages and require it to refund the excess, if any. The Party causing the damages shall bear all deductibles, liability limits and any other deductions affecting the indemnities payable to the damaged Party by the insurance companies providing the insurance in accordance with the provisions hereof.
- (6) The maximum total liability of the Contractor hereunder shall not exceed, in the aggregate, an amount equal to *** (***) percent of the Contract Price. The foregoing shall not affect to the Contractor's obligation to make payments under Clause 14.1 in the event of the termination or partial termination of the Contract.

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17. OWNER FINANCING

The Contractor hereby acknowledges as fundamental to this Contract:

- (i) the possibility that the Owner's rights under this Contract may be fully or partially pledged or assigned as security, in one or successive instances, to the Financing Institutions.
- (ii) the possibility that "direct agreements" that provide the Financing Institutions with "step-in" rights will be executed in the form agreed to prior to the execution of this Contract and which are attached hereto as **Annex 9**;
- (ii) the possibility that the right to receive indemnification to which the Owner may be entitled and which arise under the insurance policies purchased in accordance with the terms of this Contract may be pledged or assigned as security to the Financing Institutions (and the essential nature of subscribing the insurance policies upon the terms of the report issued by the Insurance Advisor in accordance with Clause 11);
- (iii) that the Financing Institutions and their advisors (including the Technical Advisor and the Insurance Advisor and any others) have the right to access the Site in order to inspect the performance of the work contemplated under this Contract, upon the terms contemplated in Clause 6.2;
- (iv) the Technical Advisor's right to observe all Capacity and Production Tests and the obligation to obtain its prior approval for the issuance of the Solar Park Provisional Acceptance Certificate and each Solar Facility Provisional Acceptance Certificate;
- (v) the requirement to obtain the prior approval of the Technical Advisor for any change to the terms of this Contract upon the terms contemplated herein;
- (vi) the Contractor's obligation to pay any amounts owed to the Owner under this Contract to the account, if any, indicated in writing by the Financing Institutions;

all of the foregoing is without prejudice to the other rights expressly granted in favor of the Financing Institutions pursuant to other clauses of this Contract.

18. CONFIDENTIALITY

- (1) The Parties agree that this Contract and the Annexes hereto, and any written or electronic information or documentation that any of the Parties furnishes to the other for the performance of this Contract (including, without limitation, technical documentation, plans, information, procedures, patents and licenses) are confidential. Therefore, the Parties undertake to keep the information confidential and to refrain from disclosing, providing to third parties or using such information unless such documentation and information (i) is known by the public without any breach of this confidentiality commitment, (ii) has been legally obtained from a third party, (iii) is requested by a judicial or governmental authority, or (iv) the delivery of such documentation and information is made in compliance with any legal obligations enforced upon the disclosing Party.
- (2) The Parties agree that the above shall not apply to any disclosure of information made by any of the Parties to other entities of their Group (within the meaning of Article 4 of Securities Market Law (*Ley del Mercado de Valores*) 24/1988 of July 28), regulatory, tax or governmental authorities, and their respective advisors and auditors, internal or external, in relation to the information requested by them for the development of the investigations, assessments and works carried out by them, provided that, in each and every one of such cases, the parties receiving the confidential information have assumed commitments of confidentiality vis-à-vis the disclosing party on terms similar to this one. In this case, such entities, authorities, advisors or auditors shall have free access to the books, files, documents and information held by the requested Party, and prior authorization is therefore not required from the other Parties to furnish information to such entities, authorities, advisors and/or auditors regarding this Contract and the Annexes hereto and any other information or written documentation relating hereto.

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(3) In particular, the Owner is authorized to transmit information regarding this Contract to the Owner and the Financing Institutions and to those investors with interests in the construction and commercial operation of the Solar Park who reasonably request information with respect to this Contract (including any entity belonging to the same group than AIG Financial Products Corp.), provided that they have assumed vis-à-vis the provider of such information confidentiality undertakings upon terms substantially similar hereto. Further, the Owner hereby authorizes the Contractor to provide such information to the Financing Institutions;

(4) The confidentiality commitment must be observed until the passage of two (2) years from the date of execution of the Final Acceptance Certificate or any termination of the Contract, regardless of the cause thereof.

19. NOTICES

(1) All notices and communications between the Parties for the purposes of this Contract shall be made in writing, by certified mail, fax or courier service, to the following addresses:

To the Contractor:

SunPower Energy Systems España, S.L.

Paseo de la Castellana, 86, 8º
28046 Madrid, Spain
Fax: +34 915644451
Attn: General Manager

With a copy to:

SunPower Systems SA

42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attn: Marco Antonio Northland

To the Owner:

Sedwick Corporate, S.L.

Hermosilla, 31, 4º, Derecha 28001, Madrid
Fax: +34 91 7815641
Attn: Juan Ignacio Martí Junco

With a copy to:

Sylcom Solar

Laguna del Marquesado 10 - N8
28021 Madrid
Attn: Pablo Valera

(2) The Parties may change the above addresses by written notice to each other given in the form and to the addresses mentioned above.

(3) Notices shall be deemed received on the third (3rd) Business Day following the dispatch thereof when sent by courier service (unless there is evidence of earlier receipt) or the Business Day following the date on which there is evidence of the receipt thereof in the case of faxes and certified mail.

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20 **LAW AND JURISDICTION**

- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation, to which the Contractor and the Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje (CIMA)*) of Madrid in accordance with the Procedural Regulations thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by the Contractor and the other by the Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.
- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

In witness whereof, the Parties execute this Contract in two (2) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

SEDWICK CORPORATE, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

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ANNEX 1

FORM OF CORPORATE GUARANTEE

*** CONFIDENTIAL MATERIAL REDACTED AND
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ANNEX 2

SCOPE OF WORK. TECHNICAL SPECIFICATIONS

*** CONFIDENTIAL MATERIAL REDACTED AND
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ANNEX 3

IMPLEMENTATION SCHEDULE

*** CONFIDENTIAL MATERIAL REDACTED AND
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ANNEX 4

TEST PROTOCOLS

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ANNEX 5

MINIMUM INVENTORY AND SUPPLY OF SPARE PARTS

The Contractor must make available to the Owner, pursuant to the terms of Clause 6.3, the following inventory of spare parts:

Part		Units per MW	Total quantity
Mechanical part	Drive bellows boot	0,4	6
	Ground braids, torque tube to pier	5	75
	Module mounting assemblies	5	75
	MC connectors	5	75
	Actuator (endless screw)	0,2	3
Low voltage	Solar panels	10	150
	Orientation motor	0,4	6
	GPS + PLC + clinometer	0,4	6
	SunPower controller (no housing)	0,4	6
	Inverter	0,2	3
	Communications card for the inverter	0,4	6
	Fuse set for the inverter	0,4	6
	Set of overvoltage protective devices for the inverter	1	15
	DC fuses	5	75
	Set of overvoltage protective devices for the junction box	0,4	6
	Junction box	0,4	6
	Fan unit	0,4	6
	Set of sensors for the weather station	0,2	3
Communications	MOXA cards	0,2	3
	Routers, switches, hubs, etc.	0,2	3

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ANNEX 6

MODULE DEGRADATION GUARANTEE

The guarantee described in Section 6 of the Technical Specifications, as incorporated into Annex 2.

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FORMS OF SURETY BONDS

Form of Performance Bond

[Name of the Bank] (hereinafter, the “**BANK**”) hereby furnishes to **SUNPOWER ENERGY SYSTEMS, S.L.U.** with a registered address at [1], recorded in [1] (hereinafter the “**Guaranteed Party**”) an irrevocable, absolute, guarantee payable on demand to **SEDWICK CORPORATE, S.L.** (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on even date herewith with respect to the construction and start-up of a solar park located in Olivenza (Badajoz) (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt, and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guarantee Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [1].

This Bond may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All sums due from the BANK under this Bond shall be paid net of any indirect tax, withholding or commission and without any type of offset or deduction. If the BANK, in the performance of this Bond, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholdings) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

The payment obligations assumed by the BANK under this Guarantee are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK’s obligation remaining unchanged under the agreed terms as if such action did not occur.

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This Bond shall automatically expire on the date of execution of the Solar Park Provisional Acceptance Certificate, and in any event, on January 31, 2009.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the Financing institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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Form of Guarantee Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes an irrevocable, absolute, guarantee payable on demand to **SUNPOWER ENERGY SYSTEMS, S.L.U.**, with a registered address at [1], recorded in [1] (hereinafter, the “**Guaranteed Party**”) in favor of **SEDWICK CORPORATE, S.L.** (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on [1] with respect to the construction and start-up of a solar park located in Olivenza (Badajoz) (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guaranteed Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [1].

This Guarantee may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All the sums due from the BANK under this Guarantee shall be paid net of any indirect tax, withholding or commission and without any type of set-off or deduction. If the BANK, in the performance of this Guarantee, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholding) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

The payment obligations assumed by the BANK under this Bond are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party, or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK’s obligation remaining unchanged under the agreed terms as if such action did not occur.

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This Guarantee shall automatically expire on the date of execution of the Solar Park Final Acceptance Certificate, and in any event, on January 31, 2012.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the Financing institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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AUTHORIZED EQUIPMENT AND MEDIUM VOLTAGE MAJOR SUBCONTRACTOR

Authorised Equipment**Modules:**

- Powerlight
- SunPower
- Yingli
- Suntech
- Evergreen Solar
- Sanyo

Inverters:

- SMA
- Siemens
- Ingeteam

Medium-Voltage Electrical Power Lines

- Ormazábal
- Schneider (incluyendo las marcas del grupo: Merlin Gerin, MESA, etc)
- ABB
- INAEL
- SIEMENS

Transformer and Sectioning Stations

- COTRADIS
- MERLIN GERIN – CEVELSA
- ABB-DIESTRE
- ALKARGO
- PAUWELS
- SIEMENS
- EFACEC
- OASA
- MACE
- IMEFY

Medium Voltage Major Subcontractor

- PRODIEL
- ADITEL
- ELECNOR
- ELÉCTRICAS VÁZQUEZ
- ELECTROANSA Y PEPE VILLA
- Others authorized by ENDESA Distribución in Extremadura

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FORM OF DIRECT AGREEMENT

*** CONFIDENTIAL MATERIAL REDACTED AND
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DIRECT AGREEMENT

between

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U

as Contractor

and

SEDWICK CORPORATE, S.L.

as Owner

and

WESTLB AG, SUCURSAL EN ESPAÑA

as Agent

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APPEARING PARTIES

Party of the first part,

(A) SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U. (the “Contractor”)

Party of the second part,

(B) SEDWICK CORPORATE, S.L. (the “Owner”).

Party of the third part,

(C) WESTLB AG, SUCURSAL EN ESPAÑA (the “Agent”).

All of whom are hereinafter referred to collectively as the "Parties."

The persons appearing on behalf of each Party, as well as their powers of representation and corresponding grants of authority are set forth on Annex 1 hereto.

RECITALS

- I. The Owner and the Contractor have executed on even date herewith:
- (i) a “turn-key” construction contract (the “Construction Contract”) for the construction and start-up of a solar park in Olivenza (Badajoz), composed of hundred fifty (150) solar facilities with a unit capacity at the panels of approximately kWp y 100 kW at the inverter (the “Solar Park”);
 - (ii) a maintenance agreement (the “Maintenance Agreement”) for the performance by Contractor of the maintenance Work relating to the Solar Park.
- II. In order to finance, among other things, the payments that are the responsibility of the Owner under the Construction Contract, the Owner has entered into the following contracts, on even date herewith, registered as public instruments before the Madrid Notary Mr. Luis Sanz Rodero;
- (i) a credit agreement in the maximum amount of [1] euros (hereinafter, the “Credit Agreement” or the “Loan”) with the Agent divided in three tranches: Tranch A1 for a maximum amount of [1] euros, Tranch A2 for a maximum amount of [1] euros and Trach B for a maximum amount of [1] euros.
 - (ii) an interest rate hedge agreement (CMOF) and its corresponding Schedule with the Agent, to cover interest rate fluctuation risks relating to the Loan (hereinafter, the master agreement and its Schedule together with the confirmations to be executed in connection therewith, the “Interest Rate Hedge Agreement”).
- WESTLB AG, SUCURSAL EN ESPAÑA, together with its successors and assigns with respect to the Interest Rate Hedge Agreement, and the institutions which at any given time make up the credit institutions under the Credit Agreement are hereinafter collectively referred to as the “Financing Institutions.”
- III. To guarantee the Owner’s obligations under the Credit Agreement and the Interest Rate Hedge Agreement (hereinafter, collectively, the “Guaranteed Contracts”) the Owner has granted on even date herewith (among others) a pledge agreement, registered as a public instrument with the Madrid Notary Mr. [1], pursuant to which the rights under the Construction Contract and the Maintenance Agreement (among others) were pledged to the Financing Institutions (the “Pledge”).

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IV. In consideration of the premises, and as a fundamental condition to the execution of the Guaranteed Contracts by the Financing Institutions, the Parties have agreed to execute this Contract whereby the Contractor assumes certain obligations to the Financing Institutions with respect to the Construction Contract, the Maintenance Agreement and the Guaranteed Contracts, as follows.

CLAUSES

1. DEFINED TERMS

Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Construction Contract.

2. PLEDGE

- (1) The Contractor hereby pledges all rights to receive payment from the Owner under the Construction Contract and the Maintenance Agreement.
- (2) As a consequence of the foregoing, except in the event of receipt of a written notice from Agent that the Pledge has been cancelled, the Contractor agrees:
- (i) not to convey or create any type of pledge, charge, lien or other security right over the Contractor’s rights to receive payments under the Construction Contract or the Maintenance Agreement, without the express prior written approval of the Agent;
 - (ii) not to honor any notice or instruction from the Owner that contravenes or modifies the terms of the Pledge or of this Contract;
 - (iii) to immediately notify the Agent of any breach by the Owner of its obligations under the Construction Contract or the Maintenance Agreement;
 - (iv) to pay any amounts payable by the Contractor to the Owner under the Construction Contract or the Maintenance Agreement to the Owner’s account no. [1] (the “**Principal Account**”), or to such other separate account as the Agent and the Owner may jointly specify in writing. The Contractor acknowledges and agrees that a payment made to any other current account or made in any other manner shall not be considered a full discharge for the Contractor;
 - (v) upon receipt of written notice from the Agent declaring the enforcement of the Pledge, to deposit or transfer all funds relating to the payment rights under the Construction Contract and/or the Maintenance Agreement in favor of the Agent to the account designated by the Agent in writing.

3. NOTICE OF EARLY TERMINATION EVENTS. BREACH BY THE OWNER.

- (1) The Contractor agrees to provide notice to the Financing Institutions (through the Agent) of the occurrence of any event of early termination of the Construction Contract and/or the Maintenance Agreement, or of its own intention to terminate either of such Contracts, by sending to the Agent a copy of any notice sent to the Owner (which shall include, at a minimum, the proposed date of termination of the Construction Contract and/or the Maintenance Agreement –subject to the terms of subsection (2) below- and the Contractor’s stated basis for such termination).
- (2) The Contractor acknowledges agrees that it may not, under any circumstances, terminate the Construction Contract or the Maintenance Agreement without first giving notice to the Agent as provided for in the above subsection, and that, during the period from the Agent’s receipt of such notice until fifteen (15) calendar days from the date on which the Agent received such notice, the Agent may (but is not so obligated), with the prior approval of the Financing Institutions in accordance with the agreed majority voting percentages agreed to among the Financing Institutions, take such measures as are necessary or advisable to cure or eliminate such event of early termination under the Construction Contract and/or the Maintenance Agreement.

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4. CHANGES TO THE CONSTRUCTION CONTRACT AND ACTIONS OF THE TECHNICAL ADVISOR

4.1 Changes and roles with respect to the Construction Contract

The Contractor hereby acknowledges and agrees that:

- (i) it may not agree to any change to the Construction Contract or any Change Order or any other document that contains an agreement to make the changes contemplated by Clauses 2.4(4), 5.1(3) and 6.5(3) of the Construction Contract without the Technical Advisor having confirmed its approval through its express approval included in the corresponding document or Change Order (the foregoing is without prejudice to the Contractor's rights under such Clauses);
- (ii) except with respect to the assumed consent contemplated by Clause 4.3 of the Construction Contract, the approval of the Technical Advisor must be obtained in order for the Owner to approve a Payment Milestone contemplated by such Clause;
- (iii) the Technical Advisor must be present (i) to observe the performance of the Performance Tests, the Overall Test, the Production Tests and the inspections required for execution of the Final Acceptance Certificate, in accordance with the notice periods set forth in Clauses 5.2 (1), 8.4(2) and 9(1) of the Construction Contract (the periods provided for in such Clauses may not begin to run if the Technical Advisor has not been invited to observe within the notice periods provided in such Clauses); and (ii) to observe the necessary inspections to verify the fulfillment of any Technical Milestone with at least 15 days of prior notice. Results of tests and inspections referred to in this subsection that were obtained prior to the expiration of such periods and without the presence of the Technical Advisor shall be invalid. However, the Technical Advisor's failure to attend despite having been duly invited in the manner and within the notice periods provided for in this subsection shall not delay the periods provided for in the Construction Contract for such tests and inspections, nor shall it invalidate the results of the same;
- (iv) except as provided for in Clause 5.2(4) of the Construction Contract, the execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate must be accompanied by the approval of the Technical Advisor;
- (v) the Technical Advisor shall have the power to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 6.2 of the Construction Contract;
- (vi) the Technical Advisor must approve quality controls for the solar modules and has the authority to inspect such quality controls in order to confirm its approval; and
- (vii) the Financing Institutions should have been approved, if applicable, the necessary amount to restore the Debt Service Coverage Ratio to the Base Case set forth in Clause 14.1(6).

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4.2 **Changes and Actions Regarding the Maintenance Agreement**

The Contractor hereby acknowledges and agrees that:

- (i) it may not agree to any change to the Maintenance Agreement or any Change Order or any other document that contains an agreement to make the changes contemplated by Clause 2.4 of the Maintenance Agreement without first receiving the prior approval of the Financing Institutions (the foregoing is without prejudice to the Contractor’s rights under such Clause 2.4);
- (ii) the Technical Advisor must receive the data and registrations at least fifteen (15) calendar days in advance to make the availability calculations referred to in Clause 7 of the Maintenance Agreement;
- (iii) the Technical Advisor shall have the authority to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 4(ii) of the Maintenance Agreement.

5. **CUMULATIVE NATURE OF THE OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT**

The rights of the Financing Institutions contemplated in this Agreement are cumulative with the rights of the Financing Institutions under the Construction Contract or the Maintenance Agreement. Therefore, the terms of this Agreement shall not affect the obligation of the Contractor and the Owner to request the consent of the Financing Institutions for such acts that, in accordance with the terms of the Construction Contract and/or the Maintenance Agreement, require the prior consent of the Financing Institutions.

6. **ASSIGNMENTS**

6.1 **Assignment by the Financing Institutions**

This Contract is delivered for the benefit of the Financing Institutions, and therefore inures to the benefit of their successors or assigns permitted under the Guaranteed Contracts. Therefore, in the event of an assignment, in whole or in part, of the interest of a Financing Institution under the Guaranteed Contracts, or the replacement of the Agent under the terms of the Credit Agreement, all references made in this public document to the Financing Institutions and the Agent shall be understood to include reference to their respective successors or assigns. An assignee must present its position to the Contractor and the Owner, upon request, by delivery of a copy of the document through which such assignment or replacement of the Agent is made. However, the Agent must inform the Contractor of its replacement with sufficient advance notice to permit the Contractor to comply with its obligations under the Construction Contract, the Maintenance Agreement and this Agreement.

6.2 **Assignment by the Contractor**

The Contractor may not assign its rights or obligations under the Construction Contract or the Maintenance Agreement except in strict compliance with the terms of Clauses 15.1 and 11.1 of the Construction Contract and the Maintenance Agreement, respectively. However, in the event of an assignment by the Contractor to one of the companies of its Group, under the terms permitted in such Clauses, the Contractor agrees that it shall not effect such assignment unless the assignee concurrently agrees to adhere to the entirety of the Contractor’s responsibilities and agreements under this Agreement.

7. **NOTICES**

- (1) Except as otherwise expressly provided for, all notices and communications between the Parties for the purposes of this Agreement shall be made in writing, by certified mail, telegram with confirmed receipt, or for urgent matters, by fax with a confirmation letter to be sent within the following five (5) calendar days.

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(2) All notices, requirements or other communications to the Financing Institutions must be delivered to the Agent (notice to the Financing Institutions shall be considered effective upon receipt by the Agent).

(3) The Parties designate the following addresses for notice, communications and routine matters:

The Agent:
WESTLB AG, SUCURSAL EN ESPAÑA
Calle Serrano 37 5ª Planta
Fax: +34 914328054
Attention: Mr. Manuel Cabrerizo/Pedro Sanabria

The Contractor:

SunPower Energy Systems España, S.L.
Paseo de la Castellana, 86, 8º
28046 Madrid, España
Fax: +34 915644451
Attention: General Manager

With a copy to:
SunPower Systems SA
42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attention: Mr. Marco Antonio Northland

The Owner:

SEDWICK CORPORATE, S.L.
Calle Hermosilla 31, 4º, 28001 Madrid
Fax: +34 91 7815641
Attention: Mr. Juan Ignacio Martí Junco

With copy to:
SYLCOM SOLAR
Laguna del Marquesado 10, N(28021 Madrid
Attention: Pablo Varela

(4) Any changes to the above addresses must be communicated to the other Parties by certified mail, and shall only take effect as of the date that the other Party receives such notice.

8. LAW AND JURISDICTION

This Contract shall be exclusively governed by generally applicable Spanish legislation.

The Parties expressly waive any other jurisdiction to which they may be entitled and, without prejudice to applicable law, hereby irrevocably submit to the jurisdiction of the Courts and Tribunals of the city of Madrid.

9. TERM

This Contract shall remain in full force and effect throughout the term of the Construction Contract and the Maintenance Agreement or until the payment in full of the obligations assumed by the Owner under the Guaranteed Contracts. Upon payment in full of said amounts, the Owner may request that the Agent issue a joint notice to the Contractor confirming payment in full of all obligations assumed by the Owner under the Guaranteed Contracts.

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10. TAXES AND EXPENSES

All fees, taxes and any other costs and expenses arising from the preparation and delivery of this Contract, including the reasonable fees and expenses of legal counsel shall be borne by the Owner.

In witness whereof, the Parties execute this Contract in three (3) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

SEDWICK CORPORATE, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

WESTLB AG, SUCURSAL EN ESPAÑA

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ENVIRONMENTAL IMPACT DECLARATION AND ENVIRONMENTAL IMPACT STUDY

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ANNEX 11

MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE

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ANNEX 12

GUARANTEED VALUES

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CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION

**TURNKEY CONSTRUCTION CONTRACT
FOR THE CONSTRUCTION OF A SOLAR PARK**

BETWEEN

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.

As Contractor

AND

ALMURADIEL SOLAR, S.L.

as Owner

CCC

November 6, 2007

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APPEARING PARTIES

- (A) **ALMURADIEL SOLAR, S.L.** (hereinafter, the **“Owner”**), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-82299587 herein represented by Mr. Juan Carlos Sirviente Rodrigo, pursuant to the powers conferred upon him pursuant to a resolution of the board of directors of the company passed on the date hereof.
- (B) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the **“Contractor”**), with a registered office in Madrid at calle Pradillo nº 5, herein represented by Mr. Marco Antonio Northland, bearing U.S. Passport No. 047605878, in his capacity as attorney-in-fact of such entity pursuant to a public instrument executed before Mr. Ignacio Martínez Gil-Vich, a Madrid notary, on November 28, 2006, and recorded in his notarial protocol under No. 4.551.

RECITALS

- (1) The Owner is interested in promoting the installation and operation of a solar park in Almuradiel (Ciudad Real), consisting of twenty five (25) Solar Facilities having between 115 and 122 kWp of peak power and 100 kWe at the inverter.
- (2) The Contractor is dedicated to the construction and start-up of facilities of this type, and intends and has the capacity to construct the Solar Park in accordance with the specifications of this Contract.
- (3) The Owner will partially finance the payment of the Contract Price through financing to be made available to the Owner by one or more credit providers (the **“Financial Institutions”**).
- (4) ***
- (5) Now, therefore, the Parties mutually acknowledging the legal capacity required to enter into contract and bind themselves, agree to execute this "turnkey" construction contract (hereinafter, the **“Contract”**) in accordance with the following:

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1. DEFINITIONS

In this Contract, the terms listed below shall have the meaning established in each instance:

- **Final Start-Up Certificate or Final Start-Up:** means the governmental certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, with respect to each of the Solar Facilities and the Electrical Infrastructure, which allows for the commencement of the commercial operation thereof, including, for the purposes of this Contract, obtaining the final registration of each of such Solar Facilities and Electrical Infrastructures with the Register of Power Facilities included within the Special Regime (*Registro Administrativo de Instalaciones de Producción de Energía en Régimen Especial*), pursuant to the provisions of Section 12 of Royal Decree 661, which grants to the corresponding facilities the status of a production facility accepted under the special regime, in accordance with the terms of this contract.
- **Direct Agreement:** the agreement executed among the Contractor, the Owner and the agent for the institutions providing financing to the Owner, for purposes of, among other things, making the payments contemplated in this Contract, pursuant to the provisions of Clause 17.
- **Scope of Work:** the entirety of all services, supplies and work that the Contractor must provide under this Contract in accordance with the provisions of Clause 2.2 and the specific details contained in Annex 2.
- **Insurance Advisor:** means Willis or any other insurance advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Legal Advisor:** means Gómez-Acebo & Pombo, S.L. Ramón & Cajal Attorneys or any other legal advisor that the Financial Institutions may designate in the context of the financing of the Solar Park
- **Technical Advisor:** means Sylcom Solar or any other technical advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Performance Bond:** means the bond payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations and which shall be effective as from delivery thereof to the Owner in accordance with the provisions of this contract until the execution of the Solar Park Provisional Acceptance Certificate.
- **Guarantee Bond:** means each of the bonds payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations during the Guarantee Period, which shall be effective as from the execution of the Solar Park Provisional Acceptance Certificate through the execution of the Final Acceptance Certificate.

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- **Final Acceptance Certificate (FAC):** means the certificate that shall be executed by the Parties at the end of the Guarantee Period to attest to the final acceptance of the Solar Park by the Owner.
- **Solar Park Provisional Acceptance Certificate (Park PAC):** means the certificate that shall be executed by the Parties concurrently with the execution of the Provisional Acceptance Certificate for the last Solar Facility forming a part of the Solar Park, to evidence the proper operation of the Solar Park as a result of the Overall Test of all Solar Facilities and the Electrical Infrastructure, as well as the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period.
- **Solar Facility Provisional Acceptance Certificate (Facility PAC):** means the certificate that shall be executed by the Parties to evidence the proper operation of the equipment as a result of the Performance Tests for each of the Solar Facilities (including the Electrical Infrastructure associated with each Solar Facility) and the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period. In order to issue a Provisional Acceptance Certificate for a Solar Facility, proper operation of the General Electrical Infrastructure in order to meet the installed capacity of the Solar Facilities in operation at such time must also be verified.
- **Contractor:** means SUNPOWER ENERGY SYSTEMS SPAIN, S.L. and any other company that may succeed it in its obligations in accordance with the provisions of this Contract.
- **Contract:** means this contract together with the Annexes hereto. In the event of conflict between the body of this Contract and one or more of the Annexes, the body of this Contract shall prevail.
- **Maintenance Agreement:** means the Maintenance Agreement entered into by the Contractor and the Owner on even date herewith, providing for the assumption by the Contractor of the maintenance work for the Solar Park upon execution of the Solar Park Provisional Acceptance Certificate.
- **Systemic Defect:** is an operational failure of the Solar Facilities of the Solar Park occurring during the Production Guarantee Period that (i) is not caused by non-conforming performance of the Work by the Contractor under this Contract, the Technical Specifications, the Construction Model or the regulations applicable to the Work (in accordance with the terms of this Contract), and (ii) that
 - § is the same failure or is a failure that affects, at least: 0.5% of the solar modules, 3 or more inverters or their corresponding peripheral systems, 3 or more trackers, or 2 or more transformers (including breakers and switches) supplied by the same manufacturer for the Solar Park; or

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- § the relevant supplier or well-known independent third party in the solar industry reports that at least 1% of worldwide production of the corresponding model of solar module, inverter, tracker or transformer is affected by the same operational failure and advises replacement thereof (in which event the Owner must receive proof in the form of delivery of a document signed by the manufacturer or of a report from an independent third party which confirms the existence of said systemic failure with reference to the model and series of the affected equipment).
- **Business Day:** means any day other than a bank holiday in Madrid and Albacete, with the express provision that Saturday is not a Business Day.
 - **Financial Institutions:** has the meaning set forth in the Recital (3).
 - **Site:** means parcels 42, 23, 24 and 11, polygon 2, in the municipality of Almuradiel (Ciudad Real), as identified in **Annex 13**.
 - **Authorized Equipment:** means the list of brands and models of the principal equipment or elements that will make up the Solar Facilities and the Electrical Infrastructures described in **Annex 8** hereto.
 - **Technical Specifications:** means the technical conditions for executing the Work that were prepared by the Contractor and delivered to the Owner, and that make up **Annex 2**.
 - **Delivery Deadline:** means July 15, 2008.
 - *******
 - *******
 - **Payment Milestones:** means the milestones for the payment of the Contract Price, as described in Clause 4.2 below.
 - **Specific Electrical Infrastructure:** means the entirety of the electrical elements permitting the evacuation to the distribution grid of the electrical power produced by each of the Solar Facilities, including from the Solar Facilities to the specific transformer center for such Solar Facility.
 - **General Electrical Infrastructure:** means the entirety of the electrical elements permitting the connection of each of the Solar Facilities, from the specific transformer center, in order to permit the evacuation of electrical power generated by each Solar Facility to the distribution grid, including the Evacuation Line, the distribution and sectioning center (*centro de reparto y seccionamiento*) and supplemental elements of supervision, monitoring and data collection.

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- **Electrical Infrastructure:** collectively, the General Electrical Infrastructures and the Specific Electrical Infrastructures.
- **Solar Facility:** means the entirety of the electromechanical elements that allow for the generation of low voltage (“LV”) electrical power, including from the solar modules themselves, solar trackers, and inverters, to the LV meter, with a peak unit capacity of between 115 and 122 kWp.
- **Evacuation Line:** the 15kV output electrical evacuation line of the distribution center of the General Electrical Infrastructure, necessary to connect such Infrastructures to the electrical line of the power distribution company (Unión Fenosa) to support number 5 of line 701 of the substation in Almuradiel.
- **Change Order:** means a document signed by the Contractor and the Owner pursuant to which a change is agreed upon in the Scope of Work, the Contract Price or the Execution Schedule, or any other modification, as provided in this Contract.
- **Solar Park:** means the entirety of the twenty five (25) Solar Facilities having between 115 and 122 kWp of peak capacity and 100 kWe at the inverter, that must reach a total peak capacity of 2.9625 MWp, located at the Site, including the Electrical Infrastructure and any other facilities that, in accordance with the terms of this Contract, may be necessary for its Start-Up.
- **Guarantee Period:** means the period between the signing of the Provisional Acceptance Certificate for the first Solar Facility until the date *** (***) years following the execution of the Solar Park Provisional Acceptance Certificate.
- **Production Guarantee Period:** means the period between Start-up of the Solar Park until *** following Start-up of the Solar Park.
- **Contract Price:** The price payable by the Owner to the Contractor for the performance of the obligations contained in this Contract, the amount of which is set forth in Clause 4 of the Contract. For purposes of this Contract, the price corresponding to an individual Solar Facility shall be the amount obtained by dividing the total Contract Price by the twenty five (25) Solar Facilities.
- **Implementation Schedule:** means the schedule for the implementation of the Scope of Work, which is attached as Annex 3 to this Contract.
- **Owner:** means ALMURADIEL SOLAR, S.L., as well as any company subrogating to its contractual position in accordance with the provisions of this Contract.
- **Overall Test:** means the test described in Annex 4, to be performed as a prerequisite to the execution of the Solar Park Provisional Acceptance Certificate to verify the proper operation of all Solar Facilities and the Electrical Infrastructure. The Overall Test will definitively verify the proper operation of the General Electrical Infrastructure to absorb the power discharged by all Solar Facilities.

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- **Performance Tests:** means the tests described in Annex 4, to be performed as a prerequisite to the execution of each Solar Facility Provisional Acceptance Certificate to verify the proper operation of the corresponding Solar Facility and Electrical Infrastructures. Pursuant to the provisions of Clause 5.2(1), each Performance Test will be performed on a minimum of ten (10) Solar Facilities (with their corresponding Electrical Infrastructures).
- **Production Tests:** means the tests that will be performed at the end of the Production Guarantee Period in order to determine compliance with the Production Guarantee set forth in Clause 8.4, following the protocols set forth in Annex 4.
- **Start-up:** means, with reference to a particular Solar Facility and/or Electrical Infrastructure, the point when all of the work required by this Contract has been completed and all Performance Tests have been passed in accordance with this Contract and the Annexes hereto, the Provisional Acceptance Certificate has been executed and the Owner has received the corresponding Final Start-up Certificate (as confirmed by the Legal Advisor). Reference to Start-up of a Solar Park shall be understood to mean the point when all Solar Facilities and corresponding Electrical Infrastructures have passed the Overall Tests and comply with the above referenced requirements.
- **RD 661:** Royal Decree No. 661/2007, of May 25, which regulates activities involving the production of power under special regime.
- **Subcontractors:** means the subcontractors with which the Contractor subcontracts all or part of the works to be executed under this Contract.
- **Work:** means the work and supplies to be provided by the Contractor pursuant to the provisions of this Contract.

2. PURPOSE AND SCOPE OF WORK

2.1 Purpose of the Contract

The purpose of this Contract is the construction, start-up and delivery of the Solar Park to the Owner pursuant to the terms set forth in this Contract such that, upon issuance of the Final Start-up Certificate, the production of power and sale thereof to the electric distribution grid may commence, in accordance with applicable law and the Technical Specifications.

This Contract is executed as a "turnkey" contract, and the Contractor is hereby obligated to deliver to the Owner the design, construction and Start-up of the Solar Park for the fixed price and within the fixed time periods established herein, subject to the other terms and conditions set forth in this Contract.

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2.2 Scope of Work

- (1) According to the terms and conditions of this Contract, the Contractor shall carry out and shall be responsible for all of the equipment, services, supplies and work comprising the Scope of Work. The Scope of Work includes each of the following concepts, as well as all acts that, even if not expressly mentioned in this Contract or in Annex 2, are necessary for the proper operation, performance and commercial exploitation of the Solar Park, in each case in accordance with the customary usage and practices in the industry for a project having these characteristics, this Contract, the Technical Specifications, and applicable law (without prejudice to the provisions of Clause 2.4(4)):
- § Design, engineering (basic and detailed) and required technical schedules.
 - § Execution of all aspects of the Scope of Work and the supply of all materials, elements and equipment set forth in Annex 2, and the supply of all materials necessary and appropriate to properly carry out the Scope of Work.
 - § Performance of inspections, inventory of materials, performance controls, tests and other analyses required under applicable law and in accordance with the technical specifications and this contract.
 - § Transportation to the Site of all materials, equipment, utilities, spare parts, consumables and machinery for which the Contractor is responsible under the Contract.
 - § Direct and indirect labor necessary to carry out the Scope of Work and all costs and social charges associated with such labor.
 - § Demolition and dismantling of the provisional facilities not required by the Owner and conditioning and cleaning of the Site following issuance of the Solar Park Provisional Acceptance Certificate.
 - § Maintenance, protection, security, custody and conservation of the equipment installed or stored at the Site up to the signing of the Solar Park Provisional Acceptance Certificate.
 - § Preparation and delivery to the Owner of all documentation within the scope of this Contract, sufficiently in advance for the utilization thereof by the Owner. In particular, the delivery of the documentation and manuals set forth in Annex 2.
 - § ***

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- § Training of the Owner's personnel in the operation and maintenance of the materials and equipment acquired in accordance with the terms of Clause 6.7 of this Contract.
- § Construction of all necessary auxiliary facilities, their maintenance, cleaning and security during the performance of the Work, including that performed in compliance with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan (*Prevención de Riesgos Laborales y el Plan de Seguridad y Salud*); as well as the demolition or dismantling of any temporary facilities not required by the Owner and the conditioning and clearing of the Site following the issuance of the Solar Park Provisional Acceptance Certificate.
- § Supply of spare parts pursuant to the provisions of Clause 6.3.
- § Provision of material and human resources required to comply with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan, as well as the creation of the Social Security and Health Plan.

2.3 Exclusions

The Scope of Work for this Contract shall not include amounts associated with the purchase or lease of land or easements, or the payment of concessions or any other amounts owed in respect of surface rights to the Site where the Solar Park will be built. Further, it does not include the services associated with the obligations assumed by the Owner in Clause 7, the selection and hiring of personnel by the Owner or the costs and liabilities arising from the selection and hiring of third parties by the Owner for performance of the work consisting of safety and health coordination, or the supervision, external inspection, security, and quality control of the Contractor's work, including the Technical Advisor.

2.4 Changes in the Scope

- (1) Under no circumstances may the Parties make any changes to the Scope of Work contemplated by this Contract (of any kind, whether for expansions, reductions or changes to any portion of the work and/or the items supplied under this Contract), unless a Change Order has previously been signed.
- (2) At any time prior to Provisional Acceptance, the Owner may propose a change to the Scope of Work by sending the Contractor a notice describing the nature and scope of the change. Upon receipt of such notice, the Contractor must send to the Owner, within a maximum period of ten (10) Business Days, a communication that includes a complete proposal for the changes in the Contract Price, deadlines and form of payment, or any other changes that may be necessary in connection with the changes proposed by the Owner. This communication shall also include a reasoned explanation of the grounds and/or criteria used for the calculation of the new Contract Price and/or deadline. However, the Contractor recognizes that in accordance with the Direct Agreement, the approval of the Financial Institutions is an essential requirement for the validity of the changes.

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- (3) Without prejudice to the terms of the Direct Agreement, the Contractor may, at any time during the performance of the Contract, propose changes to the Scope of Work that it deems necessary or appropriate to improve the quality, efficiency or safety of the Solar Park or the facilities or supplies that make up the Solar Park. The Owner, at its discretion, may approve or reject the changes proposed by the Contractor. The Parties will execute a Change Order in the event that the modifications are approved by the Owner.
- (4) In addition, upon the entry into force, promulgation, derogation or change of any mandatory legal provision after the execution of this Contract that affects the Work, the Parties shall sign a document governing the changes that must be made to the purpose of this Contract.
- (5) The Owner and the Contractor shall negotiate in good faith the effects on the deadlines agreed to under this Contract that might occur as a result of the changes requested within the context of the provisions of this Clause. In any event, the prices applicable to any change in the Scope of Work shall consist of the costs of the additional work or supplies arising therefrom (reasonably justified to the Owner) plus ***% as the Contractor's margin.

3. COMMENCEMENT OF WORK

- (1) The Parties agree that the payment by Owner of the amount set forth in Clause 4.2(i) and the delivery by the Contractor of the Performance Bond and the Corporate Guarantee are subject only to the delivery by the Owner to the Contractor of a letter signed by the Financial Institutions in the form of Annex 12 confirming the availability of the financing. The payment by the Owner of the amount in accordance with Clause 4.2(i) and the delivery of the Performance Bond and the Corporate Guarantee by the Contractor must be made concurrently on a date between the sixth (6th) and ninth (9th) Business Day following the date the Owner notifies the Contractor that the agreed conditions are satisfied. The date the Owner pays the amount pursuant to Clause 4.2(i) to the Contractor and the Contractor delivers the Performance Bond and the Corporate Guarantee shall be hereinafter referred to as the **“Condition Satisfaction Date.”**
- (2) By executing this Contract, the Owner hereby represents to the Contractor as follows:

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- (i) It has obtained all authorizations and licenses necessary for the commencement of construction for the Solar Park, except those that are intrinsic to the construction itself and that are the responsibility of the Contractor in accordance with the terms of Clause 6.6 (having delivered to the Contractor a copy of those that are the responsibility of the Owner). For purposes of clarification, the Owner has obtained the municipal licenses for the work and related activities (to the extent necessary), as well as the administrative authorization, the approval of the Electrical Infrastructures Plan and the interconnection point of the Solar Facilities and has delivered to the Contractor a confirmation issued by the Council for the Environmental and Rural Development (*Consejería de Medio Ambiente y Desarrollo Rural*) of Castilla La Mancha that an Environmental Impact Statement is not required with respect to any of the Solar Facilities of the Solar Park; and
- (ii) The Site is fully accessible and available for the commencement of Work.

- (3) In the event that **(a)** the letter relating the financing described in subsection (1) has not been delivered by November 23, 2007, or **(b)** the Condition Satisfaction Date has not occurred by the tenth Business Day following the date the Owner delivered such letter to the Contractor, the Contractor and the Owner may terminate the Contract by delivery to the other Party of a notice setting forth its desire to terminate the Contract, and the Parties shall be released from all obligations assumed with respect thereto. The foregoing shall be without prejudice to the purchase orders or requests that the Parties, or companies belonging to their groups, shall have already made or agreed to, as of or following the execution of this Contract. Such purchase orders or requests shall continue in force and effect in accordance with their terms unless the Owner elects to cancel them, in which case the Owner shall pay the Contractor any cancellation costs that the Contractor or any company in its group must pay to any distributor or manufacturer with respect to such orders.

However, the Contractor may not terminate the Contract if the Owner has confirmed its intention and ability to make the payment described in Clause 4.2(i) and the Condition Satisfaction Date has not have occurred due to the Contractor's failure to deliver the Performance Bond and the Corporate Guarantee.

- (4) Subject to paragraph three of this section, the Contractor represents that, prior to the execution of this Contract, it has studied the sub terrain, surroundings and access thereto.

Further, subject to paragraph three of this section, The Contractor represents that the Site is adequate and sufficient for the performance of the Work, and that the Contractor is aware of and accepts all the risks and contingencies of the Site that may affect the performance of the Work, including, without limitation, climate conditions (including wind, snow, frost, rain, etc.), hydrographic, hydrological, geotechnical and seismic conditions, any toxic waste or archeological sites that may appear at the Site and in general any other physical, natural or artificial circumstances of the Site and the subsoil thereof. Consequently, the Contractor waives any claim to any supplement to the price of the Contract for an increase in work, delay therein, or additional cost of any kind, and any claim to any extension in the Delivery Deadline or the intermediate deadlines for the Work arising from the Site conditions referred to in this Clause.

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Representations contained in the previous paragraphs regarding the adequation of the Site for the performance of the Work shall be subject to the Contractor receiving the definitive geotechnical report on the Site in the five (5) days following signature of this Contract. Upon receipt of such report by the Contractor, the Parties shall sign a document declaring the Site adequate or, if applicable, agreeing the necessary amendments to the Scope of Work and/or the Contract Price on the basis of contingencies arisen from the report. As from the signature of such document, representations contained in this section shall be fully valid and binding for the Contractor. Notwithstanding the above, the Contractor accepts that, in case the geotechnical report concludes that the Site conditions are equivalent to those of the report for the site where is going to be built a solar park according to an agreement signed on the date hereof between the Contractor and Naturener Solar Tinajeros, S.L., the Site will be deemed adequate, the Contractor not being entitled to claim any amendment to the Scope of Work and/or Contract Price.

The Contractor recognizes that the Owner is carrying on the necessary steps to extend the Site to other adjacent properties in order to improve the Solar Park performance. In case that the Owner deliver to the Contractor before December 31, 2007 all the necessary licenses and rights over the properties to extend the Site to such properties, the Contractor shall be entitled to build the Solar Park in those adjacent properties for the same Contract Price and within the terms set forth in this Contract. However it is up to the Contractor to build the Solar Park in the adjacent properties, the Contractor recognizes that the extension of the Solar Park to those properties may improve the Solar Park performance so that it undertakes to make its best efforts to reconfigure the Solar Park and choose for the extension of the park to those properties.

For the sake of clarity, the Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of Force Majeure in accordance with the terms of the Contract, with application of the provisions of Clause 12.

4. PRICE AND FORM OF PAYMENT

4.1 Contract Price

- (1) The Contract Price payable by the Owner to the Contractor in consideration for the works to be performed by Contractor under this Contract shall be *** Euros. This amount shall be increased by an amount corresponding to Value Added Tax (VAT) pursuant to applicable law at any given time. The Contractor hereby acknowledges and agrees that the Contract Price is a lump-sum, fixed, and final price, and is not subject to any change or revision whatsoever on the basis of any changes in the prices of labor, materials, equipment, exchange rates or any other similar items, including a change in any taxes levied on the scope of the work.

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- (2) The Contract Price includes all the costs and expenses associated with the Contractor's performance of work under the Contract, including those specifically set forth in the Scope of Work. The Contract Price shall be deemed to include, by way of example:
- § taxes, fees, industrial- and intellectual-property royalties on the equipment supplied, Social Security and other encumbrances upon the supplied equipment and materials in their country of origin or destination, including, if applicable, the rights of free circulation in the European Union and any other tax with respect to the importation of the Equipment and the performance of the Work, except for the VAT on the actual Contract Price. For purposes of clarification, the Price does not include legalization fees or costs for permits and authorizations, which are the responsibility of the Owner.
- § payroll costs and the cost of equipment required for the Contractor's performance of the Work or to ensure the protection, security and proper performance thereof.
- § the cost of any insurance that must be taken out by the Contractor pursuant to Clause 11.

However, the Parties agree that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs (*cajas de concentración de los seguidores*) are not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon the Contractor's delivery to Owner, prior to November 23, 2007, of an offer to perform such works and the issuance of a Change Order agreeing to a new Contract Price that includes such items.

Likewise, the Owner recognizes that the Technical Specifications contained in Annex 2 are subject to the prior verification by the Contractor within the seven (7) Business Days following the signature of this Contract. In case such Technical Specifications contained essential differences with regard to the technical conditions contained in the technical specifications attached as Annex 2 to the construction agreement entered into between the Contractor and Naturener Solar Tinajeros, S.L. on the date hereof, the Parties shall mutually agree the amendments (including amendments to the Contract Price) arising from such differences before November 23, 2007. Notwithstanding the above, the Contractor recognizes that the Owner shall be entitled to ask for the execution of Work according to the Contractor's offer, reserving the right to discuss later the essential character, the origin or the contents of the amendments proposed by the Contractor following the procedure set forth in Clause 20.

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- (3) In the event of changes in the Scope of Work agreed to pursuant to the provisions of this Contract, the price agreed to in the corresponding Change Order shall apply.
- (4) Without prejudice to the foregoing, in consideration for the maintenance and security tasks to be performed by the Contractor prior to the execution of the Solar Park Provisional Acceptance Certificate, the Owner shall pay to the Contractor (in addition to the Contract Price), the portion of the price contemplated in the Maintenance Agreement that is equivalent to the percentage representing the Solar Facilities that have obtained a Provisional Acceptance Certificate with respect to all Solar Facilities contemplated by this Contract.

4.2 Payment Milestones

The Contract Price shall be paid by the Owner to the Contractor pursuant to the payment schedule set forth below (each of the milestones set forth below shall be deemed a **“Payment Milestone”**):

- (i) On the Condition Satisfaction Date, an amount equal to ***% percent of the Contract Price, i.e., *** euros, upon delivery of the Performance Bond by the Contractor.
- (ii) Based on the monthly progress of the civil works involving earth moving, leveling and foundation laying, measured as 100 kWe Solar Facilities whose foundations are completed, the Owner will pay up to a maximum of *** percent (***%) of the Contract Price, i.e., *** euros, upon presentation of the respective invoices by the Contractor.
- (iii) Upon each delivery to the Site of the module supports, inverters and trackers of each Solar Facility and presentation of the corresponding invoices not earlier than two (2) months prior to the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***%) percent of the Contract Price corresponding to such Solar Facilities.
- (iv) Upon each delivery of the solar modules of each Solar Facility to the Site and upon presentation of the corresponding invoices not earlier than the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***%) percent of the Contract Price corresponding to such Solar Facilities.
- (v) Based on the monthly progress of the mechanical assembly of the module supports, solar trackers and the modules mounted thereon, as well as the installation of the inverters and the transformer center, measured as Solar Facilities of 100 kWe whose facilities up to the transformer center have been completed, the Owner will pay up to a maximum of *** (***%) percent of the Contract Price, upon presentation of the respective invoices.

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- (vi) Upon the execution of each Provisional Acceptance Certificate for a Facility, the Owner shall pay *** (***%) percent of the Contract Price corresponding to such Solar Facility (together with the remaining portion of the Contract Price, if any, that was not previously paid and that corresponds to Work completed by the Contractor under this Contract in respect of such Solar Facility). The last Solar Facility payment shall be made concurrently with the execution of the Solar Park Provisional Acceptance Certificate.

4.3 Invoicing System and Form of Payment

- (1) Once the Contractor deems that a Payment Milestone has been achieved, the Contractor shall give written notice thereof to the Owner and the Technical Advisor, attaching thereto the invoice and any documentation that may be necessary to demonstrate achievement of the corresponding Payment Milestone (including, for this purpose, all of the documentation that must be furnished by the Contractor to the Owner at any time, pursuant to the provisions of Annex 2).
- (2) Within fifteen (15) Business Days following receipt of the above-mentioned notice, the Owner and the Technical Advisor shall confirm the achievement of the corresponding Payment Milestone. Within such period, the Owner and the Technical Advisor shall communicate in writing to the Contractor: **(i)** their agreement that the corresponding Payment Milestone has been achieved, in which case the Owner and the Technical Advisor shall provide documentary confirmation by approving the corresponding invoice, or **(ii)** that the Payment Milestone has not been fully achieved, in which case the Owner and/or the Technical Advisor must specify in writing to the Contractor a detailed and reasoned explanation of the work pending performance in order for the Payment Milestone to be deemed to have been achieved. In the event that the Owner and/or the Technical Advisor fail to respond to the Contractor within the above-mentioned period of fifteen (15) Business Days, due solely to the failure of the Contractor to provide all documentation required to verify achievement of the Payment Milestone, the Owner and the Technical Advisor agree to request the same within the above period of fifteen (15) Business Days. The Owner and the Technical Advisor will be allotted another ten (10) Business Days to issue their response, counting from the date of receipt of all requested documentation.
- (3) If the Owner and/or the Technical Advisor do not agree that a Payment Milestone has been achieved, the Owner shall be entitled to return the corresponding invoice until the Contractor has completed the work in accordance with the provisions of this Contract. However, if the Parties agree that the disagreement involves only part of the work included in the Payment Milestone, the Owner shall pay the invoice amounts corresponding to the work not affected by the dispute, with the rest remaining subject to full performance and delivery by the Contractor in accordance with the terms of this Contract.

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- (4) If, following the period referred to in subsection (2) above, the Owner and/or the Technical Advisor have not responded, the Contractor may send a demand notice to the Owner and the Technical Advisor communicating such fact and allowing an additional period of five (5) Business Days for confirmation of their agreement or disagreement as to the achievement of the respective Payment Milestone. If, upon expiration of such period, the Owner and/or the Technical Advisor still have not responded, achievement of the Payment Milestone shall be deemed accepted by the Owner and the Technical Advisor.
- (5) Under no circumstances shall the Owner’s or the Technical Advisor’s agreement to a Payment Milestone imply acceptance of the Work associated therewith, which acceptance shall in any event remain conditioned upon passing the Performance Tests and executing the respective Provisional Acceptance Certificate and, ultimately, the Final Acceptance Certificate.
- (6) Payments shall be made by the Owner to the Contractor via bank transfer to the bank account designated by the Contractor within *** Business Days following the date on which the Owner accepted the corresponding Payment Milestone (or on the date on which the Payment Milestone was deemed accepted by the Owner, in accordance with subsection (4) above). On an exceptional basis, the payment corresponding to the first Payment Milestone shall be paid by the Owner on the Condition Satisfaction Date (with respect to such payment, approval of a Payment Milestone by the Contractor and the Owner pursuant to the above provisions is not required) .

5. IMPLEMENTATION SCHEDULE. TESTS AND PROVISIONAL ACCEPTANCE

5.1 Implementation Schedule. Changes in the Deadline

- (1) The Contractor hereby undertakes to perform the Work in accordance with the Implementation Schedule attached hereto as Annex 3, such that the Solar Park shall have all technical attributes required for issuance of the Final Acceptance Certificate (and the same has been requested in accordance with Clause 2.4) no later than the Delivery Deadline.
- (2) The dates for performance specified in the Implementation Schedule and, in particular, the Delivery Deadline, are fixed and final, and may not be postponed, and the performance deadlines may not be extended, except under the following circumstances:

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- (i) due to agreed-upon changes in accordance with the provisions of Clause 2.4, provided that such changes include an extension of the deadlines;
 - (ii) due to a breach by the Owner giving rise to a delay in the Work (including, specifically, delays in procuring authorizations and licenses for which it is responsible), provided that such breaches are not attributable to actions, omissions or breaches by the Contractor;
 - (iii) suspension of the Work in accordance with the provisions of Clause 13, except in the event of suspensions attributable to the Contractor; or
 - (iv) the occurrence of an event of *Force Majeure* that reasonably justifies an extension of the deadlines established in the Implementation Schedule.
- (3) The Contractor must inform the Owner of the alleged facts or causes, in writing and within a maximum period of ten (10) Business Days after the Contractor becomes aware thereof, and the communication must be accompanied by all available information and data on such date that substantiate such facts and the consequences thereof on the Work, the extension (if such extension can be determined) proposed by the Contractor, and a detailed explanation of the measures adopted to mitigate the consequences thereof.
- The Owner may request any additional information that it deems reasonably necessary to analyze the request and shall make a decision thereon as soon as possible, but in any event no later than fifteen (15) days after receipt of such communication from the Contractor or receipt of the documentation required to evaluate the circumstances, if later. If the Owner accepts the extension proposed by the Contractor, the Parties shall issue a Change Order confirming the changes to the Implementation Schedule.

5.2 Performance Tests and Provisional Acceptance

- (1) Upon completion of the construction of a group of at least ten (10) Solar Facilities, or of the Solar Park, the Contractor shall notify the Owner so that, within a maximum period of seven (7) Business Days, the Performance Tests or the Overall Test may be commenced . All Tests shall be conducted in accordance with the Test procedures and protocols attached hereto as **Annex 4**. The Contractor agrees that the Performance Tests and the procedures set forth in this Clause shall begin only when at least ten (10) Solar Facilities are ready for provisional acceptance.
- (2) Once the Owner and the Technical Advisor have verified that the Performance Tests (or, if applicable, the Overall Test) have been passed in accordance with the standards set forth in this Contract and that the Owner has received all documentation set forth in the Scope of Work, the Contractor and the Owner shall execute the corresponding Provisional Acceptance Certificate for the Solar Facilities delivered or the Provisional Acceptance Certificate for the Solar Park, as applicable, provided that the following conditions have been met:

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- a) The Work corresponding to the applicable Solar Facilities, or, if applicable, the Solar Park, has been satisfactorily completed.

However, if the Performance Tests or the Overall Test have been passed and the remaining conditions specified in this Clause have been met with certain punch list items still pending, the Owner shall sign the corresponding Provisional Acceptance Certificate, acknowledging, in an attached document, the existence of the punch list items and setting a period of thirty (30) Business Days for completion thereof, or another longer period of time agreed by the Parties. If such punch list items have not been completed by the Contractor at the conclusion of the specified time period, the Owner may, at its discretion, (i) demand the completion thereof, or (ii) perform such work itself or through third parties, deducting the direct costs of such punch list items from what is owed to the Contractor, or enforce of the bonds delivered pursuant to this Contract.

The term “punch list items” shall be understood to refer to those tasks pending execution by the Contractor for which the work pertaining to such Work has been completed within the time periods specified in this Contract that do not affect the operation, production or output of the Solar Facilities or the Electrical Infrastructure.

- b) All of the documentation that the Contractor must submit in accordance with the provisions of Annex 2 has been submitted to the Owner;

- c) The spare parts specified in Clause 6.3 have been made available to the Owner;

- d) With respect to the Solar Park Provisional Acceptance Certificate, the Contractor has delivered to the Owner the Guarantee Bond in the amount specified in Clause 8.5; and

- (3) The deadlines granted to the Contractor for completion of pending punch list items upon execution of a Provisional Acceptance Certificate shall not be considered an extension of the deadlines set forth in this Contract, and the Contractor shall indemnify the Owner for any damages that the Owner may incur as a result thereof pursuant to Clause 5.2(a) above.

- (4) In the event that the Owner does not execute the Provisional Acceptance Certificates for the respective Solar Facilities (or, if applicable, the Solar Park) within seven (7) Business Days of verifying compliance with the stipulated requirements, the Contractor may request in writing that the Owner execute the respective Certificate within an additional period of five (5) Business Days. If the Owner has not executed the new Provisional Acceptance Certificates for the Solar Facilities (or, if applicable, the Solar Park) within said period, the conditions required in this clause for execution of the corresponding Certificate have been satisfied, it shall be understood that provisional acceptance has been achieved, except to the extent discrepancies exist as to the performance of the conditions required by the same, in which event the Parties shall submit the matter to arbitration in accordance with the provisions of Clause 20 (2).

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(5) Within thirty (30) days following the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must: (i) remove from the Site any material used in the construction, as well as any equipment, machinery, tools, vehicles and temporary structures that are not necessary during the Guarantee Period; (ii) clean the Site and remove any debris or waste; and (iii) deliver the “As Built” Plans for the Solar Park.

6. OTHER OBLIGATIONS OF THE CONTRACTOR

6.1 Prevention of Occupational Risks

- (1) The Contractor shall be obligated, in compliance with current legislation, to perform the works under this Contract in such a way as to ensure the safety of workers, and to apply the preventive activity principles set forth in Law 31/1995 and its implementing regulations. Accordingly, the Contractor shall be responsible for designing the construction process in accordance with the provisions of Royal Decree No. 1627/1997, which establish minimum safety and health provisions for construction work, and in its the other implementing or supplemental regulations, such that the safety of the activities that are performed simultaneously or consecutively is ensured, and the safety of third parties present in the vicinity of the work site is also ensured.
- (2) In particular, as part of the scope of this Contract, the Owner has prepared a Safety and Health Study, and furthermore, in compliance with the provisions of Royal Decree No. 1627/1997, the Contractor must prepare a Workplace Safety and Health Plan, both specifically for the work provided for within the scope of this Contract. The Contractor hereby represents that they contain, or will contain, all requirements of such Royal Decree and its implementing rules and regulations (including the provisions of the autonomous communities that apply, if any).
- (3) Furthermore, the Owner (at the request of the Contractor) shall appoint a safety and health coordinator, who shall have the obligations set forth in Royal Decree 1627/1997, and who shall be responsible for ensuring that all of personnel of the Contractor, the Subcontractors and of the suppliers of equipment or materials under this Contract comply with the safety requirements established in current legislation. Both the Owner and the Contractor shall be obligated to respect and comply with their respective obligations, as imposed by Royal Decree 1627/1997 and other applicable rules and regulations.

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- (4) The Owner reserves the right to evaluate security during the construction period. This does not imply that Owner has assumed responsibility with respect to security measures taken or the preparation of documentation or the content of such documentation referred to in this Clause, without prejudice to the obligations and responsibilities under law that attach as a result of Owner's capacity as a developer. To this effect, the Contractor shall provide to the Owner all documentation that Owner may reasonably require in order to confirm the performance of the obligations set forth in this Clause.
- (5) For clarification purposes, in no event shall the Contract Price be increased if, as a result of a security check, legal review or technical risk review, the Contractor is required to take additional measures designed to guarantee compliance with applicable rules and regulations for the prevention of occupational risks.

6.2 **Obligation to Provide Access to the Site**

The Contractor hereby undertakes to provide to the Owner access to the workshops, warehouses and sites where the Contractor or Subcontractors are performing work, tests or trials; manufacturing equipment; or storing materials for the construction, assembly and Start-up of the Solar Park, provided that the Owner has so requested in writing reasonably in advance and that the visit causes the least possible interruption of the performance of the work by the Contractor, and further provided that the Owner agrees to honor all reasonably necessary confidentiality measures and to respect security measures in force at the Site. The Contractor also undertakes to ensure that the Subcontractors grant access to the Owner under the terms of this subsection, for which purpose the Contractor shall include in the contracts to be entered into with the Subcontractors an obligation imposed upon them consistent with the provisions of this subsection.

6.3 **Minimum Stock and Supply of Spare Parts**

At the time of execution of the Solar Park Provisional Acceptance Certificate, The Contractor shall maintain a minimum stock of spare parts in accordance with the provisions of Annex 5. Such minimum stock shall be maintained at all times until the execution of the Final Acceptance Certificate, for which purpose the Contractor undertakes to replace any material or equipment used during such period as promptly as reasonably possible.

Further, Contractor shall be responsible for providing, upon the Owner's request, spare parts (in particular, modules, inverters and trackers, identical or similar to those covered by this Contract, in accordance with the terms of Annex 5) necessary for the proper operation and maintenance of the Solar Park in accordance with the terms of Clause 8.3.2(8) below.

6.4 **Quality Control**

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The Contractor must perform a quality control inspection of the modules, using standards for acceptance and rejection and testing and measurement protocols that are acceptable to the Technical Advisor. For these purposes, the Contractor must inform the Technical Advisor of the quality control inspections that it is going to use in the performance of this Agreement, and detail the respective acceptance and rejection standards and testing and measurement protocols, such that the Technical Advisor can approve the same prior to the date on which such modules are expected to be received under this Contract.

Once the Technical Advisor has verified the quality control inspection procedures, the Contractor shall follow such quality control inspection procedures for all modules received under this Contract, except with respect to those which are subject to another quality control inspection that has been expressly approved by the Technical Advisor in writing.

6.5 Regulatory Compliance

- (1) The Contractor undertakes to observe and comply with the regulations applicable to the performance of the Work, subject to the provisions of subsection (3) below. In particular, the Contractor must ensure compliance with regulations regarding classified activities, safety, health, and environmental protection. In particular, the Contractor shall be the only responsible party for compliance with applicable law and regulations with respect to (i) ***, and (ii) environmental protection during the period of manufacture, construction, erection and Tests until the Solar Park Provisional Acceptance Certificate has been executed.
- (2) The Contractor represents that it is current in the payment of wages and Social Security contributions for the professionals hired by the Contractor to perform the services covered by this Contract. Accordingly, the Contractor agrees to show to the Owner all documents that the Owner may reasonably request evidencing compliance with wage, tax and Social Security obligations (including, without limitation, certificates of good standing and compliance with tax obligations and the TC1 and TC2 Social Security dues bulletins).
- (3) In the event of any change in the applicable rules and regulations after the date on which this Contract is signed, the Parties shall proceed in accordance with the provisions of Clause 2.4(4) above. In the event that either Party does not sign the applicable change document, the Contractor shall continue to perform the work in compliance with the rules and regulations previously in force, and shall not assume any responsibility for any breach of the applicable new rules and regulations.

6.6 Permits and Authorizations

- (1) ***. Further, both parties agree to follow the joint application procedure provided for in the last paragraph of subsection 1 of Section 12 of RD 661 and subsection 1 of Section 11 of Decree 299/2003, of November 4, of Castilla-La Mancha, such that the applications for the certificate relating to start-up and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be made jointly. The Parties recognize that making such joint application is an essential element for both Parties. Such application shall be submitted by the Contractor before the Delivery Deadline, although in such submission **(a)** it shall be the responsibility of the Contractor to provide all information and documentation necessary to apply for the start-up certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, and **(b)** it shall be the responsibility of the Owner to provide all information and documentation necessary to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power included within the Special Regimen, in accordance with the terms of Section 12 of RD 661. Once presented, the handling of the applications for the start-up certificate and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be the responsibility of the Owner, without prejudice to the Contractor's obligation to cooperate with the Owner in all respects in accordance with the terms of Clause 6.11.

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(2) For clarification purposes:

- (i) if, due to causes attributable to the Contractor, the application for the Final Start-up Certificate is not presented in accordance with subsection (1) above with respect to one or more Solar Facilities or to the Solar Park on or before the Delivery Deadline, and/or
- (ii) prior to September 29, 2008, the Owner has not have obtained the Final Start-up Certificate as a result of design defects, defective or inadequate equipment or performance of the Work or of defects, imprecision or omissions in the documentation or in the technical information delivered by the Contractor,

the Owner shall have the right to terminate the Contract in accordance with the terms of Clause 14.1. Notwithstanding the foregoing, the Owner may not terminate the Contract and the Contractor shall not be held responsible for the consequences occurring as a result of the failure to obtain the Final Start-up Certificate, if this failure was due to (i) the Owner's failure to deliver, or incomplete delivery, of the documentation which Owner was required to furnish in connection with the application for the Final Start-up Certificate (although the Contractor recognizes that the Owner shall not be responsible for failure to provide documentation required by Section 12 of RD 661 when such documentation could not be obtained as a result of the failures, imprecision or omissions contemplated in subsection **(ii)** above), or (ii) the failure to request, late request or failure to obtain such permits and authorizations that are not the responsibility of the Contractor pursuant to this Contract; or (iii) any other circumstance not attributable to the Contractor, such as delays by the respective administrative entity.

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The Owner agrees to cooperate with the Contractor in all respects needed for purposes of the application or the procurement of ***. Further, the Owner agrees to inform the Contractor as soon as possible of any communication, request or requirement received from a competent administrative authority relating to the application for approval of the Final Start-up Certificate.

In any case, even in the event that the application for the Final Start-up Certificate with respect to all of the Solar Facilities and the Electrical Infrastructure has not been presented prior to the Delivery Deadline and, without prejudice to the foregoing, both Parties agree to use their best efforts and to provide all cooperation necessary to obtain the Final Start-up Certificate prior to September 29, 2008.

6.7 Training of the Owner's Personnel

The Contractor must adequately and sufficiently train the Owner's personnel to efficiently operate the Solar Park in all respects. Such training must be provided by the Contractor during the four week period prior to the issuance of the Provisional Acceptance Certificate for the Solar Park and shall have a maximum duration of five (5) Business Days. The personnel designated by the Owner to receive such training shall not exceed five (5) individuals.

6.8 Designation of Project Director

- (1) The Contractor shall name a Project Director with an officially recognized technical degree and relevant industry experience with similar projects. The appointment of the Project Director must be submitted to the Owner for approval. The Owner may not reject a proposed candidate without just cause.
- (2) The Project Director shall be responsible for overseeing proper performance of the Work and for directing, managing, and supervising all of the activities necessary for the implementation of the services agreed to by the Contractor in accordance with the terms and time periods specified in this Contract. Further, the Project Director shall be the principle contact between the Contractor and the Owner during the term of this Contract.
- (3) Without prejudice to the foregoing subsection, in accordance with the terms of this Contract and applicable law, the Contractor shall be responsible for the actions of the Project Director and any and all consequences arising from such actions.

6.9 Taxes and Import Duties

The Contractor agrees to pay all taxes, including all expenses, interest and surcharges relating thereto, applicable to the supply, manufacture, transportation, services, sales and other services for which the Contractor is responsible under this Contract, except with respect to those whose payment is expressly attributable to the Owner.

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6.10 Intellectual and Industrial Property Rights

All of the drawings and designs that the Owner has prepared or supplied to the Contractor, and all of the patents, copyrights, design rights and other intellectual and industrial property rights thereto shall be the property of the Owner.

The Contractor, in turn, grants to the Owner, as part of the Contract Price and at no additional cost, an irrevocable license, not transferable to third parties (except in conjunction with all of the rights and obligations of the Owner under this Contract), and free of any royalties, to use in the Solar Park (and therefore, in no other project) the creations, plans, drawings, specifications, documents, procedures, methods, products, inventions prepared or developed by the Contractor under this Contract, in all cases, subject to any restrictions imposed on such intellectual or industrial rights by third parties. The Contractor represents and warrants to the Owner that the same are owned by the Contractor or that the Contractor has sufficient legal rights to use the same for such purpose. Should any claim or action be brought by a third party alleging an infringement of any intellectual or industrial property right granted by the Contractor to the Owner hereunder, the Contractor shall indemnify the Owner for all liabilities and damages (including costs and expenses) that may arise as a consequence of such infringement of third parties' rights, claim or actions arising there from.

6.11 Cooperation

The Contractor undertakes to provide to the Owner all of the cooperation that the latter may reasonably request in connection with the implementation of the project for the construction of the Solar Park and compliance with the Owner's obligations as specified in this Contract, and to submit to the Owner all of the documentation or information that the Owner may reasonably request in connection with the Work and that is available to the Contractor.

7. OBLIGATIONS OF THE OWNER

The Owner undertakes to comply with the obligations set forth in this Contract, those resulting from good faith, and those resulting from the applicable laws and regulations, including, in particular, the following:

- (i) To comply with its payment obligations under this Contract;
- (ii) To provide to the Contractor, its Subcontractors and employees, during the effective term of this Contract, access to the Site to fulfill their contractual obligations, including appropriate access to highways and access roads to perform the Work. For these effects, the Owner will execute, at its cost and expense, agreements with landowners that procure all necessary easements or land use rights;

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- (iii) Subject and without prejudice to the obligations of the Contractor under Clauses 6.6 and 2.2 of his Contract, the Owner shall negotiate and obtain, at its own cost and expense, the permits required for Final Start-Up and operation of the Solar Park, including the Final Start-up Certificate. Specifically, with respect to the joint application procedure referred to in Clause 6.6 of this Contract, the Owner agrees to provide all documentation and information required to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power within the Special Regime, in accordance with the terms of Section 12 of RD 661, upon the terms of such Clause 6.6;
- (iv) To cooperate with the Contractor, to the extent necessary, in order to avoid any impact on the Implementation Schedule or in the performance of the works by the Contractor;
- (v) To appoint a project coordinator to act on behalf of the Owner in the performance of matters associated with the Contract and who must possess sufficient powers to represent the Owner;
- (vi) The Owner undertakes to provide to the Contractor all of the cooperation that the latter may reasonably request in connection with the implementation of the Work and compliance with the Contractor's obligations under this Contract. The Owner shall submit to the Contractor all documentation or information that the Contractor may reasonably request in connection with the Solar Park and that is available to the Owner.

8. GUARANTEES

8.1 Solar Module Degradation Guarantee

The Contractor guarantees the durability of the solar modules during the Guarantee Period, in accordance with the schedule of guarantees made by the manufacturer of the modules set forth on Annex 6 of this Contract. Upon expiration of the Guarantee Period, the Contractor undertakes to assign to the Owner its rights under the module supplier guarantees through the remainder of the 25-year useful life of the modules.

8.2 Solar Module Capacity Guarantee

- (1) The Contractor guarantees that the total peak capacity of the Solar Park is equal to or higher than the contracted capacity of 2,962.5 kWp (which will be confirmed by the manufacturer's photoflash certificates). In addition, all certificates for each module shall be within the rated peak capacity margin of ***% and all aggregate certificates for each of the Solar Facilities shall be within the rated peak capacity margin of ***% (although the Solar Park aggregate can only have a margin with respect to the above referenced peak capacity of ***%, in which case the Contract Price shall be reduced proportionately in accordance with the final reduced peak capacity and the corresponding amount of the final Payment Milestone contemplated in Clause 4.2 reduced accordingly).

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- (2) In the event that (i) the total sum of the certificates is less than the contracted 2,962.5 kWp (unless it is within the permitted margin for the Solar Park pursuant to subsection (1) above), or (ii) the certificates do not comply with the above referenced margins, the Contractor shall replace, at its expense, solar modules as needed to increase the total peak capacity of the Solar Park to the minimum permitted under subsection (1) above, or those modules whose individual capacity is inferior to the aforementioned tolerance.
- (3) If, as of the date set forth in Clause 14.1(1)(i), the sum of the manufacturer’s photoflash certificates demonstrate the peak capacity of the Solar Park is less than the referenced total peak capacity (unless it is within the permitted margin for the Solar Park set forth in subsection (1) above), the Owner may terminate the Contract for Contractor breach in accordance with the terms of Clause 14.1, and pay the indemnity set forth in such Clause.
- (4) The Owner reserves the right to perform capacity tests on the solar module samples that have been provided at the CIEMAT, CENER or IFE-Fraunhofer laboratories, in accordance with the applicable IEC (International Electrotechnical Commission) standard in order to confirm their compliance with the capacity specified by the manufacturer and guaranteed by the Contractor. The results thereof shall be binding on the Parties. In the event that such results confirm that the capacity of the modules does not fall within the tolerance guaranteed by the Contractor, the Contractor shall bear the costs of such tests and shall immediately replace the entire batch of modules corresponding to the tested samples, except to the extent that the modules failing the capacity test can be identified, in which case, only those modules shall be replaced.

8.3 Design, Assembly and Performance Guarantee. Materials Quality Guarantee.

8.3.1 Design, Assembly and Performance Guarantee

- (1) The Contractor guarantees during the Guarantee Period that the procedures followed for the design of the facilities and for the performance of the work are of the required quality and conform to the specifications contained in this Contract.
- (2) The Contractor is obliged to repair or, if necessary in its opinion, to supply totally new, and reinstall free of charge to the Owner, those parts or components of the facilities included in the Scope of Work that fail during the Guarantee Period due to design, assembly or performance defects.
- (3) The provisions of subsections 8.3(2) to (8) below with respect to the Materials Quality Guarantee shall apply, *mutatis mutandis*, to the guarantee provided under this subsection.

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8.3.2 Materials Quality Guarantee

- (1) The Contractor guarantees that all the materials and components used in the manufacture, assembly and Start-up of the Solar Park are of the required quality and conform to the specifications for the equipment and the technical documents contained in the Annexes to this Contract. The Contractor further guarantees a minimum stock of spare parts to the Owner in accordance with the terms of Clause 6.3 and Annex 5 of this Contract.
- (2) The materials quality guarantee will enter into force on the date of issuance of the relevant Solar Park Provisional Acceptance Certificate and shall remain in force until the Solar Park Final Acceptance Certificate is signed. If the Solar Park or a portion thereof, cannot be commercially operated during the Guarantee Period for reasons attributable to the Contractor, the Guarantee Period shall be extended (only as regards the affected facilities) for a period equal to the period during which the corresponding facilities are not operating. For this purpose, the parties shall record in writing the periods during which operation is suspended and the corresponding extensions of the guarantee.
- (3) During the Guarantee Period, the Contractor is required, in its discretion:
- a) To replace any material and equipment that do not comply with what was agreed upon or required pursuant to this Contract, or that are inadequate or of a deficient quality; and
 - b) To adjust, repair or replace any equipment exhibiting any design, materials, manufacturing, operation, or performance defect. If a Systemic Defect exists with respect to any equipment or components supplied under this Contract, the Contractor shall carry out, at its expense, the redesign and/or modifications necessary to cure such problem in accordance with the Owner's requirements.
- (4) The adjustments, repairs or replacements must be performed within the shortest period that is reasonably possible (and, in any event, no later than fifteen (15) days from the time the defect is detected), in a manner that is least prejudicial to the Owner and taking all action needed to cause the least possible harm to the operation of the overall facilities of the Solar Park.

If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within the period established in this Clause, the Owner shall so inform the Contractor and shall grant the Contractor a period of five (5) days to complete any such adjustments, repairs or replacements. If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within such period, the Owner may do so itself or through third parties at the Contractor's expense, which action shall not entail forfeiture of the quality guarantee provided by the Contractor under this Clause. The Contractor shall be also required to pay to the Owner the direct expenses paid to the above-mentioned third parties for such purpose.

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- (5) Repairs, adjustments, alterations, replacements or maintenance that may be necessary because of the normal wear and tear of on the facilities provided under this Contract or caused by misuse or negligent use of the equipment by the Owner or by third parties (other than the Contractor or its Subcontractors) or because of the use of the equipment supplied to Owner in a manner that does not conform to the technical specifications, are all excluded from the scope of the guarantee. For clarification purposes, it shall be understood that the Owner (or third parties acting on its behalf) has used equipment in the intended manner when such use conforms to the operation and maintenance manuals delivered to the Owner by the Contractor pursuant to this Contract. This guarantee may not be enforced in the event of the inaccessibility of the Site, provided that the Contractor has notified the Owner of the existence of such inaccessibility, or, in the events of *Force Majeure* (for such time as exist the circumstances preventing the provision thereof).
- (6) The obligations arising from the guarantee set forth in this section shall be fulfilled by the Contractor at its sole cost and expense and free of any charges or expenditures by the Owner, and the Contractor shall bear the expenses arising as a result thereof for the Owner, such as demolition and disassembly, construction, carting, insurance and packaging for returned materials and their replacement, assembly and supervision, taxes and the like.
- (7) All repaired or replaced material shall carry a new guarantee period of the following duration from the date of repair or replacement:
- (i) if repaired, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer; and
 - (ii) if replaced, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer.
- (8) The Contractor guarantees the availability of spare parts for the modules, inverters and solar trackers during the Guarantee Period and during the entire useful life of each Solar Facility, in the latter case provided the Maintenance Agreement remains in force. The Contractor shall provide such guarantee on the following terms:
- (i) With respect to the module, inverter or solar tracker spare parts that are manufactured by the Contractor or by companies of its group (currently headed by Sunpower Corporation), the Contractor shall ensure that such spare parts continue to be manufactured or, in the event that the Contractor or the companies of its group do not manufacture spare parts identical to those already installed, that spare parts for modules, inverters or solar trackers of similar characteristics (and, in the case of modules, of equal or greater capacity) are available, provided they do not entail a reduction in the guaranteed performance of the Solar Park.

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- (ii) With respect to the module, inverter or solar tracker spare parts that are not manufactured by the Contractor or by companies of its group, the Contractor shall use reasonable efforts to (a) cause the respective suppliers to continue to manufacture such spare parts or other spare parts with similar characteristics (and, in the case of modules, of equal or greater capacity), provided they do not entail a reduction of the guaranteed performance of the Solar Park, or (b) obtain such spare parts with similar characteristics from other vendors with technical capabilities that are at least similar to the original ones. Should the Contractor become aware that an original vendor intends to stop manufacturing such spare parts, it shall so notify the Owner so that the Owner may order, through the Contractor, the spare parts it deems appropriate, provided they are available on the market.

Such spare parts will be supplied at the Owner's request at the market prices prevailing from time to time (which shall be paid by the Owner) and within such reasonable period as the Parties agree, taking into account the characteristics of the requested spare part.

8.4 Solar Park Production Guarantee.

- (1) The Contractor guarantees to the Owner that the aggregate electric output of the Solar Park during each of the *** periods included in the Production Guarantee Period shall reach the PR guaranteed pursuant to Annex 10 (the "**Guaranteed PR**"), for each determined irradiance and temperature condition, and that in no event shall it fall beneath the PR minimum set forth in such Annex (the "**Minimum PR**").

In the event of a partial termination of the Contract in accordance with the provisions of Clause 14.1, the Guaranteed PR and the Minimum PR shall be applied to the electric output of the Solar Facilities that were not rejected by the Owner.

- (2) A Production Test shall be performed at the end of each *** period dividing the Production Guarantee Period in order to confirm the electrical output. For these purposes, within the forty-five (45) days prior to the termination of the *** period following the commencement date of the Production Guarantee Period, and within the forty-five (45) days prior to the termination of the Production Guarantee Period, the Contractor shall notify the Owner of such circumstance so that the Parties may agree upon a date to perform the Production Tests for the corresponding *** period (which, in no event may be later than the date which is fifteen (15) Business Days following the date of termination of the period which is *** following the commencement date of the Production Guarantee Period or the termination date of the Production Guarantee Period, as applicable). The following shall apply to the results of the Production Tests for the Solar Park:

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- (a) If the actual measured output of the Solar Park is less than the Guaranteed PR for the corresponding *** period (as such term is defined in Annex 10) but is greater than the Minimum PR for such period, the Contractor shall pay to the Owner the penalties set forth in Annex 10, up to a maximum of ***% of the Contract Price.
- (b) If the actual measured output of the Solar Park is less than the Minimum PR for the corresponding *** period, the Owner may elect to: **(i)** return the entire Solar Park to the Contractor (or the part thereof that was not rejected in the event of a partial termination in accordance with the terms of Clause 14.1), the Contractor then being obligated to return the entire Contract Price paid by the Owner pursuant to this Contract and to indemnify the Owner for damages pursuant to Clause 14.1(5), or **(ii)** return the Solar Facilities causing the failure to achieve the Minimum PR to the Contractor, the Contractor then being obligated to return the portion of the Contract Price corresponding to such Solar Facilities and to indemnify the Owner for damages pursuant to Clause 14.1(5) that correspond to the returned Solar Facilities.
- (3) If the Guaranteed PR is reached in the Production Tests for each *** period, or if the Contractor shall have paid the required penalties for achieving an output between the Minimum PR and the Guaranteed PR, the Parties shall execute a certificate of agreement. The execution of such certificate corresponding to the second *** period for the Guaranteed Production Period shall grant the Contractor the right to require the Owner to return the Guarantee Bond in force at the time and replace the same with a new Guarantee Bond in an amount equal to ***% of the Contract Price. The same provisions of this subsection shall also be applied to the Solar Facilities, if any, that the Owner did not return in accordance with subsection 8.4(2)(b).
- (4) The Contractor shall not be responsible for breach of the guarantees in the event that such failure was caused by the circumstances described in Clause 8.3.2(5) above or by excessive failures of the grid coupled with the disconnection of the inverters for exceeding the conditions detailed in their technical specifications.

Further, in the event that a Systemic Defect arises during a Production Guarantee Period, the data from the Solar Park as a whole shall not be considered for purposes of the Production Guarantee during the time the Contractor is replacing the equipment affected by such Systemic Defect, up to a maximum of three (3) months. Thus, in the event that the Contractor takes more than three (3) months to replace the Solar Park equipment affected by a Systemic Defect, only that three (3) month period shall remain in the Production Guarantee Period. For this purpose, the parties shall record the suspension periods and corresponding extensions of the Production Guarantee in writing.

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For clarification purposes, the appearance of a Systemic Defect shall obligate the Contractor to replace all equipment of the same model and manufacturer, regardless of whether they have manifested such defect at the time of their replacement.

- 8.5 **Bonds**
- (1)

On the Condition Satisfaction Date, the Contractor shall deliver to the Owner the Performance Bond, as per the form attached hereto as **Annex 7**, in an amount equivalent to ****% of the Contract Price. The Performance Bond shall guarantee the performance by the Contractor of any payment obligation for which the Contractor is responsible from the commencement of the Work until the date of execution of the Solar Park Provisional Acceptance Certificate (for any reason, including but not limited to the return of the amounts paid by the Owner, under this Contract, penalties or compensation for damages and losses, including the performance by the Contractor of its obligations during the portion of the Guarantee Period prior to the execution of the Solar Park Provisional Acceptance Certificate).
- (2)

As a requirement for the execution of the Solar Park Provisional Acceptance Certificate, the Contractor shall deliver to the Owner the Guarantee Bond (in exchange for the return of the Performance Bond by the Owner), in an amount equal to ****% of the Contract Price. The Guarantee Bond shall conform to the form attached hereto as **Annex 7** and shall guarantee the Contractor’s compliance with its obligations during the Guarantee Period (beginning from the execution of the Solar Park Provisional Acceptance Certificate). However, once the Performance Tests corresponding to the second *** period of the Production Guarantee Period have been performed and the written agreement referred to in Clause 8.4(3) has been executed, the Contractor shall have the right to replace the Guarantee Bond delivered to the Owner with a new Guarantee Bond in an amount equal to ****% of the Contract Price.
- (3)

The Performance Bond and the Guarantee Bond shall be issued by a financial institution with a minimum “A” rating by Standard & Poor’s Corporation or the equivalent from Moody’s Investors Services Inc., and shall be enforceable, in whole or in part, on demand by the Owner, in the event of the Contractor’s breach of its obligations under this Contract.
- (4)

The delivery of the bonds provided under this section shall in no way limit the Contractor's liability under this Contract, as the bonds only constitute a means to guarantee the performance of the obligations assumed by the Contractor.

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- (5) If the Contract Price is amended pursuant to Change Orders, the Contractor must update the amount of the Performance Bond. To such end, the Contractor must deliver to the Owner (within fifteen (15) Business Days following the execution of the corresponding Change Order), the bonds in the updated amount, in the form attached hereto as Annex Z.
9. FINAL ACCEPTANCE OF THE SOLAR PARK
- (1) Within forty-five (45) days prior to the passage of *** from the date on which the Solar Park Final Start-Up Certificate has been obtained, the Contractor shall give notice thereof to the Owner in order for both Parties to agree upon a date to analyze the status and condition of the Solar Park (which shall not occur later than the Guarantee Period expiration date).
- (2) If such inspection does not reveal the presence of defects, the Parties shall proceed to execute the Final Acceptance Certificate, at which time the Owner shall return the Guarantee Bond to the Contractor.
- (3) If such inspection finds that defects are present that affect the Contractor's obligations during the Guarantee Period, the Parties shall sign a certificate specifying the defects, if any, that must be corrected within a period of forty-five (45) days of the date of execution of the corresponding certificate, or within such shorter period that the Parties may agree upon.
- Once such defects have been corrected by the Contractor within the specified period, a new inspection shall be performed, and if the defects have been remedied, the Parties shall proceed to execute the Final Acceptance Certificate, and the Owner shall return the Guarantee Bond to the Contractor.
10. OWNERSHIP OF THE FACILITIES AND TRANSFER OF RISK
- (1) The Owner and the Contractor expressly agree that the actual transfer of ownership of the facilities and equipment covered by this Contract will be made, for all contractual purposes, when each of the same shall have been paid for in full by the Owner. With respect to the solar modules, module supports and trackers, ownership thereof will be transferred to the Owner upon payment of the respective invoice as provided in Clause 4, whereupon the Owner will become the owner of the solar modules, the module supports and the trackers included in such invoice.
- (2) Without prejudice to the foregoing, or to the Contractor’s obligations during the Guarantee Period, the possession and the risk of loss of the same shall not be transferred to the Owner until the execution of the Solar Park Provisional Acceptance Certificate.
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(3) Until the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must repair or replace, at its own expense, any equipment, facility or portion of Work that is lost or damaged. Further, the Contractor must assume responsibility for the care and security of the Site and assume responsibility for any loss, theft or damage that may occur with respect to the Contractor's materials or machinery or the equipment delivered pursuant to this Contract.

11. INSURANCE

(1) At all times during which the Contractor continues performing work under this Contract, the Contractor, at its own cost and expense, shall take out and maintain in force the insurance described below with well-known and solvent insurance companies that are legally authorized to issue policies in Spain, on terms and conditions of coverage satisfactory to the Owner and the Insurance Advisor:

- a) Occupational Accidents or Social Security Insurance for all its own personnel or for the personnel of the Subcontractors as is legally required during the effective period of the Contract.
- b) Mandatory Civil Liability Insurance and Voluntary Civil Liability Insurance for the Circulation of Vehicles and Machinery, pursuant to the limits and conditions mandated by the Legislation in force during the effective period of the Contract.
- c) Civil Liability Insurance covering all activities of the Contractor and the Subcontractors necessary to complete the Work, with a limit of not less than €1,500,000 per occurrence.
- d) Transportation Insurance covering the transportation of material and machinery to the Site, with a limit of not less than the aggregate value of the transported goods.
- e) All-Risks Construction and Assembly Insurance, which will specifically include theft and vandalism at the Site, from the unloading of the material at the Site until the transfer of ownership of the Solar Park, including the testing period and covering a maintenance period of not less than 12 months, with an insured amount not less than the Contract Price.
- f) Any other mandatory insurance.

(2) The contracting of insurance provided in this clause shall in no event limit the liabilities of the Contractor under this Contract. Additionally, the amounts established as an insurance deductible in each of the insurance policies shall be borne by the Contractor, unless the loss is attributable to the Owner.

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- (3) The Owner may require that the Contractor deliver documentation evidencing the contracting of the insurance set forth under this Clause to verify compliance therewith and/or for verification by the Insurance Advisor, and the Contractor undertakes to make such documentation available to the Owner as soon as possible.

12. **FORCE MAJEURE**

- (1) Neither Party shall be deemed liable for the breach of any of its obligations to the extent that the performance of such obligations is delayed or becomes impossible as a consequence of *Force Majeure*.
- (2) For the purposes of this Contract, events of *Force Majeure* shall be deemed to be the events described in Article 1105 of the Civil Code, provided that they actually prevent compliance by the party invoking it from complying in whole or in part with its obligations under this Contract. The Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of *Force Majeure* for purposes of this Contract (without prejudice to the changes, if any, that the Parties may agree to in accordance with subsection (11) below and the consequences set forth therein). By way of example and not limitation, the Contractor may not invoke the following as an event of force majeure:
- (i) Meteorological conditions or phenomena that could have been reasonably foreseen by experienced contractors operating at the Site.
 - (ii) Delays or failures in obtaining materials or labor that are foreseeable or avoidable in advance.
 - (iii) Delays by any Subcontractor, unless such delays are based on any of the events specified in this clause.
 - (iv) Strikes or labor conflicts affecting the Contractor or the Subcontractors, unless they are national, sector-wide or local in scope.
- (3) The Party affected by *Force Majeure* shall give written notice to the other Party as soon as possible within a maximum period of forty-eight (48) hours from the day on which such Party became aware thereof, attaching to such notice all available documents evidencing the event that is deemed to amount to *Force Majeure*, the measures taken up to such point in time, and an estimation, if possible, of the expected duration thereof and its impact on the Work
- (4) The performance of the obligations affected by an event of *Force Majeure* shall be suspended for the duration of such event, the Parties not being entitled to damages as results of such events of *Force Majeure*.

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- (5) If the Work is affected by the event of *Force Majeure* and the Contract is suspended for more than one hundred eighty (180) days, either of the Parties may seek termination of the Contract, with the consequences provided in Clause 14.3.
- (6) After cessation of the event of *Force Majeure*, the Parties shall agree upon the corresponding extension of deadlines (in all cases in light of the duration of the event of *Force Majeure* and the mobilization periods), or, if applicable, the measures that must be adopted to recover, in whole or in part, the time lost so as to preserve such dates, if possible. The contractual obligations not affected by *Force Majeure* must be met within the deadlines that were in force prior to the occurrence of the event of *Force Majeure*.
- (7) In any event, upon cessation of the event of *Force Majeure*, the Parties shall take all reasonable measures within their power to resume performance of the obligations under the Contract under optimal conditions and with the least possible delay.
- (8) The expenses incurred as a consequence of the repair, replacement or adjustment of the items damaged by the events of *Force Majeure* shall be borne by the party bearing the risk of loss for such elements at the time of occurrence of the event of *Force Majeure*.
- (9) In the event that an event of *Force Majeure* prevents a Party from complying with a payment obligation required by the Contract, such payment obligation shall not be waived and the other Party may suspend performance of its obligations under the Contract. Such occurrence shall not give either Party a right to indemnification for damages, without prejudice to any interest for delay in payment that might apply.
- (10) The Party claiming the *Force Majeure* event shall immediately notify the other Party of its cessation. Within seven (7) calendar days following the cessation of the *Force Majeure* event, the Parties shall meet to agree and assess the effects that such situation caused. Such agreement shall be documented in a certificate signed by both Parties describing the changes to the contractual conditions.
- (11) In the event that archeological ruins are discovered at the Site, but the Work may be continued by reducing the size of the Solar Park, the number of Solar Facilities, or by implementing a reconfiguration of the technical configuration of the Solar Park, the Parties shall meet to agree on such changes and shall execute a certificate describing the changes to the contractual conditions. In any event, if the change entails a reduction in the capacity of the Solar Park, or in the number of Solar Facilities, thus requiring a reduction of the Contract Price, the Owner shall have the right to withhold from the remaining Payment Milestones payable after the change, the portion of the Contract Price previously paid by the Owner that corresponds to the Solar Facilities or the equipment affected by the reduction and which, consequently, were not delivered by the Contractor under this Contract.

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13. SUSPENSION OF THE WORK

13.1 Suspension by the Owner

- (1) The Owner may at any time give written notice to the Contractor ordering the immediate suspension of the Solar Park, in whole or in part, for any of the following reasons:
- a) If the Contractor is performing the Work in a defective or inappropriate manner, or not adhering to uses and practices customary for projects of this type or as established under this Contract, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - b) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with safety standards, avoiding damage to people and things, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - c) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with quality control requirements, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - d) If the Contractor fails to comply with the instructions issued by the Governmental Authorities for the execution of the Work, to the extent that this may affect the authorizations granted or requested or the successful achievement of the purpose of the Contract.
 - e) By unilateral decision of the Owner.
- (2) The order providing for the suspension of the Work shall specify in writing the portion thereof that is being suspended, the grounds for suspension, the effective date of suspension and the date provided for the resumption of the Work (if applicable).
- (3) In all the cases provided in subsection (1) above, except for the ones mentioned in subsection (e), the suspension shall last for all the time required and until the Contractor cures the circumstances that gave rise to the suspension of the Work. Additionally, in none of such cases shall the Contractor be entitled to any additional payment whatsoever or to the extension of the periods provided in the Implementation Schedule, except in the case mentioned in subsection (e), where the Contractor shall be entitled to an extension of the deadlines provided in the Implementation Schedule for a period at least equal to the suspension period and to be compensated for the costs resulting from the repair, replacement or adjustment of the items damaged during the suspension period and the costs arising from the suspension and resumption of the Work.

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- (4) If the suspension lasts for a period in excess of one hundred and eighty (180) days, and the reasons are not attributable to the Owner, the Contractor shall reserve the right to terminate the Contract upon the terms of Clause 14.1.

13.2 Suspension by the Contractor

- (1) The Contractor shall be entitled to temporarily suspend the Work as provided under this Contract, applicable law and in the event that the Owner incurs a delay in excess of thirty (30) days in the payments owing to the Contractor, as regards the expiration dates of the relevant invoices (except in the case of the works relating to a Payment Milestone disputed in accordance with Clause 4.3 (3)). In such event, the Owner shall pay to the Contractor its expenses arising from the suspension (including the costs resulting as a consequence of the repair, replacement or adaptation of the damaged elements during the suspension period and the costs arising from the suspension and resumption of the Work) and the Parties shall agree upon an extension of the deadlines for performance based on the effects of the suspension thereon.
- (2) If the suspension for a cause attributable to the Owner (including the one provided under subsection 13.1(1)(e) above) lasts for more than three (3) months or during several consecutive periods totaling more than three (3) months, the Contractor shall be entitled to terminate the Contract upon the terms of Clause 14.2.

13.3 Suspension by Judicial or Governmental Authority

- (1) In the event of suspension, interruption or stoppage of the Work, in whole or in part, ordered by any judicial or governmental authority, or by the Owner or Contractor following the instructions of any judicial or governmental authority, the financial and contractual consequences of the delay shall be borne by the party that is responsible for performance where the failure to perform or incorrect performance triggered the judicial or governmental action.
- (2) If such suspension, interruption or stoppage does not result from the actions or omissions of any of the Parties, the periods of the Implementation Schedule shall be extended for a period at least equal to the one during which the situation subsisted, and the Owner shall pay to the Contractor the duly verified costs incurred as a result of such interruption. The Contractor undertakes to act diligently to minimize such costs.
- (3) If the suspension ordered by any judicial or governmental order, or by the Owner or the Contractor following the instructions of any judicial or governmental authority, extends for more than six (6) months, either of the Parties will be entitled to terminate the Contract upon the terms of Clause 14.

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14.1 Termination for Causes Attributable to the Contractor

- (1) The Owner may terminate the Contract in the cases authorized by the Law, in the instances provided for in this Contract, or upon the occurrence of any of the following events:
- a) The dissolution or merger (provided it involves a change in control) of the Contractor ***, or when a substantial portion of the assets of the Contractor *** is transferred to another company, provided that such circumstances seriously prejudice the Contractor's *** capacity to perform the obligations under this Contract;
 - b) The voluntary filing by the Contractor of a bankruptcy petition or the allowance of a bankruptcy petition by a third party against the Contractor (or any equivalent action in accordance with the insolvency legislation applicable to the Contractor), or in the case of clear financial difficulties that prevent the Contractor from normally complying with obligations arising under the Contract, unless its obligations are sufficiently guaranteed under this Contract. The occurrence of the same events as regards *** shall also be grounds for termination.
 - c) If the Contractor assigns or subcontracts the Contract, in whole or in part, without complying with the conditions set forth in this document.
 - d) If the Contractor fails to comply with its obligations involving the contracting and maintenance of the insurance provided under the Contract in a manner that might endanger coverage under the relevant policies.
 - e) If the Contractor has been assessed penalties for failure to achieve the Production Guarantee beyond the maximum limits, if applicable, provided under this Contract.
 - f) The Contractor has interrupted the Work or a substantial portion thereof or has abandoned the Solar Park for a period exceeding twenty (20) calendar days without the Owner's authorization, or in the case of interruptions for an aggregate duration of more than thirty (30) days within the same calendar year, provided that the interruptions do not arise from a suspension of the Work provided under Clause 13.2.
 - g) If the application for the Final Start-up Certificate has not been filed together with all required in accordance with the terms of Clause 6.6 on or prior to the Delivery Deadline due to causes attributable to the Contractor, although the Owner cannot effect termination for the reason set forth in this subsection with respect to those Solar Facilities or Electrical Infrastructure for which a Final Start-up Certificate would have been obtained prior to September 29, 2008.

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- h) If the Owner has not obtained the Final Start-up Certificate (with respect to one or more Solar Facilities and/or the Electrical Infrastructure) prior to ***, for the reasons set forth in Clause 6.6(2)(ii).
- i) If the Provisional Acceptance Certificate for one or more Solar Facilities or the Electrical Infrastructure has not been issued prior to ***.
- j) ***.
- k) ***.
- l) If there is any other material breach of the obligations assumed by the Contractor under this Contract.
- m) Any other serious breach of a principal obligation of the Contractor that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.

- (2) Upon the occurrence of any of the above events, the Owner may elect to terminate the Contract, in whole or in part, with respect to the Solar Facilities for which the Provisional Acceptance Certificate of a Facility has not been issued as of the date of notice of termination, or for which the Final Start-up Certificate has not been obtained in the case of subsections g) and h) above (hereinafter, the “**Affected Facilities**”), except to the extent that the number of Affected Facilities is less than 40% of the total Solar Facilities, in which case the Owner may only terminate the Contract with respect to such Affected Facilities.

However, if the Affected Facilities represent less than 40% of the Solar Facilities, the Owner may elect to terminate the Contract with respect to the entire Solar Park if one of the termination events set forth in subsections a) or b) has occurred and the Owner reasonably believes that such circumstances pose a material prejudice or risk to the performance of the Contractor’s obligations under this Contract during the Guarantee Period. The foregoing shall not apply if the Contractor has provided equipment guarantees, satisfactory to the Owner, sufficient to ensure proper maintenance and replacement of the Solar Park during the Guarantee Period and the Contractor has assigned such guarantees to the Owner pursuant to the terms of this Contract.

The above shall not prejudice the Owner’s option to return the Solar Park in its entirety upon the occurrence of the circumstance set forth in Clause 8.4(2)(b).

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- (3) Upon the occurrence of any of the above events, the Owner shall give the Contractor a period of thirty (30) days to remedy the event, or any other longer period that may be agreed upon by the Parties. If within such period the Contractor fails to remedy such grounds for termination to the Owner's satisfaction, the Contract shall be terminated (in whole or in part, as applicable). For clarification purposes, it is noted for the record that in no event will the remedy period provided herein be applicable to the circumstances provided in subsections (1)(b), (e), (f), (g), (h) and (i) of this Clause.
- (4) In the event of a termination of the Contract (in whole or in part) under this subsection, the following shall occur (without prejudice to the provisions of subsection (6)):
- (i) In the event of partial termination, only as to some Solar Facilities in the Solar Park, the Contractor shall be obligated to return to the Owner the portion of the Contract Price that it charged for the Affected Facilities and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of the property comprising such Solar Facilities.
- (ii) In the event of complete termination, the Contractor shall be obligated to return the aggregate Contract Price charged by the Contractor, and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of all the property delivered to the Owner.
- (5) Upon the occurrence of either two events described in the preceding subsection, the Contractor shall be obligated to pay indemnification to the Owner for damages, including:
- (i) The Financial Costs associated with the Affected Facilities or the entire Solar Park, as applicable. **"Financial Costs"** shall be understood to mean all costs, expenses, fees (whether up-front, early termination or of any other type) and interest paid by the Owner in respect of the financing documents entered into by the Owner with the Financial Institutions, including cancellation or breakage fees for any interest rate swap agreements entered into by the Owner with the Financial Institutions.
- The Contractor acknowledges the validity of the amount, as determined by the Agent under the financing documents, to be provided in the settlement statement that will be delivered by the Agent to the Owner in which the factors used to calculate the Financing Costs with respect to the Solar Facility or Facilities or the Solar Park, as applicable, will be described.
- (ii) The costs, expenses and damages incurred by the Owner as a result of, or with respect to, the early termination or the breach by the Contractor, duly certified by the Owner, plus an amount equal to *** euros for each Affected Facility (i.e., *** euros in the event of total termination or the amount that corresponds to the Affected Facilities in the event of a partial termination), to cover permitting costs.

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Concurrently with the payments provided for in subsections 15.1(4) and 15.1(5), the Owner agrees to take all necessary actions which are in its control to assign to the Contractor, or its designee, ownership title (free of encumbrances and liens) to the permits and authorizations relating to the Affected Facilities (or the Solar Park in its entirety in the event of total termination), as well as corresponding usage rights (free of encumbrances and liens) to the part of the Site on which such Affected Facilities are located and the contractual rights in those contracts relating to the Solar Park with respect to the Affected Facilities. For purposes of this paragraph, it shall be understood that the Owner has assigned (free of encumbrances and liens) all permits and authorizations for the Affected Facilities or the Solar Park, as applicable, upon delivery to the Contractor of all documentation required by the Contractor (and which must be contributed by the grantor) to immediately request the approval by the competent administrative entity for the assignment of such permits and authorizations.

In the event that a special purpose entity holds title to such permits and authorizations and usage rights to the Site, the Owner agrees to transfer to the Contractor, free of encumbrances and liens, all shares or participations representing the entire share capital of such special purpose entity (provided that such entity only holds title to the Affected Facilities).

For clarification purposes, in no event shall the above-referenced obligation be construed as an obligation to achieve a specific result, and the Owner does not assume any responsibility in the event that the assignment of the permits and authorizations referred to in the previous paragraph cannot be completed as a result of the failure to receive approval (when necessary) for such assignment from the relevant government administration or entity or the Contractor's failure to comply with the requirements imposed on the Contractor by the holders of such permits or authorizations.

(6) Notwithstanding the provisions of subsections (4) and (5), if the Owner had the right to terminate the Contract, in whole or in part, as a result of the failure to achieve Start-up prior to September 29, 2008 for the reasons set forth in subsections 14.1(g) and 14.1(h) above, the Owner may not elect to return the Affected Facilities, if:

- (i) prior to September 29, 2008 the Contractor pays to the Owner an amount that is sufficient to (a) restore the Debt Service Coverage Ratio (as defined in the financing documents referred to in Clause 14.1(5)(i)) to the Base Case (as defined in the financing documents referred to in Clause 14.1(5)(i)) agreed to by the Financial Institutions and the Owner in such financing documents, and (b) cover the loss of profitability for the Owner's shareholders, taking into account the tariffs which will be received by the Owner from the sale of power from the Solar Park. For such purposes, the Contractor acknowledges and accepts that the amount to be paid to the Owner (for the items set forth in the preceding subsection) will be proposed by the Agent for the Financial Institutions and negotiated between the Owner and the Contractor on the basis of the assumptions in the Base Case developed by the Owner and the Financial Institutions in connection with the financing documents; and

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(ii) Start-up of the Affected Facilities shall have occurred prior to October 31, 2008.

The Owner may require the return of the Solar Facilities for which the above requirements and Contractor payments have not been met, each in accordance with the provisions of subsection (5) above.

(7) The Contractor is required to pay the amounts referred to in subsections (4) and (5) above to the Owner within *** days of the date of settlement of the amounts owed.

(8) In all the foregoing instances, the Owner may, without prejudice to the reservation of rights to take all legal action to which it is entitled for the defense of its rights, adopt any or all of the following measures:

- a) Offset any payments pending in favor of the Contractor by an amount equivalent to the balance in favor of the Owner (returning, in the event of complete termination, the Performance Bond or the Guarantee Bond, as applicable, once such offset has been made).
- b) Enforce the Performance Bond and/or the Guarantee Bond.
- c) Withhold the Contractor's materials, machinery and items belonging to the Contractor that are in the possession of the Owner, until the Contractor has fully paid all amounts due as a consequence of the termination.

14.2 Termination by the Contractor

(1) The Contractor may terminate the Contract under the circumstances provided for under applicable law, in this Contract, or upon occurrence of any of the following events:

- (i) The voluntary filing by the Owner of a bankruptcy petition or the allowance of a bankruptcy petition filed by a third party against the Owner, or in the event of patent financial difficulties that would prevent the Owner from normally complying with the obligations arising under this Contract in cases different from the one provided under subsection (ii) below, unless its obligations are sufficiently guaranteed under this Contract.

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- (ii) A delay in payment for a period in excess of sixty (60) days from the date on which payment should have been made.
 - (iii) Any other serious breach of a principal obligation of the Owner that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
 - (iv) A suspension of the works and services for causes attributable to the Owner for a period greater than three (3) months.
 - (v) The dissolution of the Owner, or if a substantial portion of the assets of the Owner is transferred to another company, and such circumstance seriously prejudices the Owner's capacity to perform the obligations set forth in this Contract.
- (2) The Contractor shall give to the Owner a period of thirty (30) days to cure the event, or any other longer period that may be agreed upon by the Parties. Such cure period shall not apply if the event giving rise to grounds for termination is one provided for in subsections (i) and (iv) of Clause 14.2(1) above. If the Owner fails to remedy such grounds for termination to the Contractor's satisfaction within such period, the Contract shall be terminated (in whole or in part, as applicable).
- (3) Upon termination of the Contract for any of the foregoing reasons, the Owner must:
- (i) Pay all of the Contractor's outstanding invoices.
 - (ii) Pay to the Contractor the value of the Work performed before termination and which is not yet included in the invoices. Accordingly, the Owner must pay to the Contractor the cost of the equipment already delivered to the Contractor or that it is legally required to accept under the contracts entered into with its suppliers and manufacturers, which shall become the property of the Owner if they had not already become so.

However, the Contractor undertakes to take such actions necessary or appropriate to minimize the costs referred in this subsection. The Contractor shall include the provisions required to that effect in the contracts with suppliers and subcontractors.
 - (iii) Pay all duly authenticated damages that are sustained by the Contractor as a consequence of the contractual breach or early termination, including direct demobilization costs.
 - (iv) Return to the Contractor the Bonds received from the Contractor.

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- (4) Upon the Owner's compliance with the conditions set forth in the above subsection, the Contractor shall abandon the Site within a period of thirty (30) days and the Owner may complete the Work by itself or with another contractor, the Owner being entitled to request the Contractor to assign each and every contract signed by the Contractor and its subcontractors (except contracts entered into for the supply of solar modules, supports and trackers or for the supply of technology and software, which the Owner may not assume). The Contractor is obligated to cooperate in good faith with the Owner to effect such assignments.

14.3 Termination due to *Force Majeure*

In the event of termination of the Contract due to an event of *Force Majeure*, the provisions of subsections 14.2 (3) (i), (ii) and (iv) above shall apply.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Assignment

- (1) The Contractor may not assign or transfer to third parties, in whole or in part, the economic, commercial or financial rights or credits arising under this Contract, or engage in any other transaction involving any type of disposition, encumbrance, commitment and/or transaction, in whole or in part, regarding such rights and credits, unless it has obtained the prior written approval of the Owner and the Financial Institutions. An assignment to other companies within the Contractor's group that have the same technical capacity to perform the contractual obligations and that satisfy the requirements of the Direct Agreement is permitted***.
- (2) The Owner may only assign all or a portion of the rights and obligations arising under this Contract in favor of the Financial Institutions in accordance with Clause 17, or to any other third party with the prior written approval of the Contractor.

15.2 Subcontracting

- (1) The Contractor may subcontract the Work, provided the following conditions are met:
- (i) All the subcontracts executed (except the contracts entered into for the supply and manufacture of solar modules, supports and trackers or for the supply of technology and software, which Owner may not assume) and all guarantees obtained from any of the suppliers or Subcontractors may be assigned at the request of the Owner in the event of termination of this Contract. For such purpose, the Contractor irrevocably undertakes to assign to the Owner and the Financial Institutions the rights arising from all the guarantees and subcontracts obtained from Authorized Subcontractors upon the expiration of the Guarantee Period or in the event of termination of the Contract.

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- (ii) The guarantees or subcontracts executed by the Contractor with Subcontractors or suppliers shall be consistent with the terms and provisions of this Contract.
 - (iii) The Contractor shall deliver to the Owner, within a reasonable period after the request thereof, a copy without prices or other commercial terms, of all the contracts, agreements and guarantees signed with the Subcontractors (containing the waiver referred to in subsection (3) below)
- (2) In no event shall a contractual relationship be implied among the Subcontractors and the Owner. The Contractor shall remain liable for all of the activities of its Subcontractors and suppliers and for all contractual and labor obligations arising from the performance of their work; as well as for the actions, failures and negligence of any of its subcontractors or suppliers and the agents and employees thereof, under the same terms and conditions as if committed or performed by the Contractor itself, its agents or employees.
- (3) The Owner shall not be liable vis-à-vis any Subcontractor or supplier, or vis-à-vis their employees, for any claims arising directly or indirectly from the Contract. For such purpose, the Contractor undertakes to procure an express and written waiver of the rights conferred by Article 1597 of the Civil Code from each Subcontractor.

16. LIABILITY AND DAMAGES

- (1) The Parties shall have the obligation to provide indemnification for those damages caused to the other Party as a consequence of the breach of this Contract. The Owner's approval of the projects, calculations, drawings or other technical documents prepared by the Contractor, or the conduct of inspections or Tests do not release the Contractor from such liability, and do not imply that such liability must be shared by the Owner.
- Further, the recommendations made by the Owner or its representatives during the performance of the Contract or on occasion of inspections or Tests shall not give rise to an exemption, mitigation or excuse for the Contractor's performance under this Contract, except to the extent such recommendations or observations were implemented despite the Contractor's objection.
- (2) The Contractor shall be liable vis-à-vis the Owner for any loss or physical damage to the equipment, materials or assets owned by the Owner or third parties that is caused by the Contractor through the execution of the relevant Solar Facility Provisional Acceptance Certificate, and thereafter only when the Contractor is within the Site performing the Work, repairs or similar activities and causes the relevant damage.

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If the Contractor fails to hold the Owner or the third parties harmless from the above-mentioned damages, the Owner shall be entitled to redress such damages, deducting the costs of repair from any amounts pending payment to the Contractor, or by enforcement of the Bonds issued pursuant to this Contract.

- (3) By application of Article 1596 of the Civil Code, it is expressly agreed that the Contractor shall also be liable for damages caused by the persons or entities employed by the Contractor in the performance of the Work, whether as employees, technicians, subcontractors or otherwise, from whom the same diligence owed by the Contractor shall be required.
- (4) The Parties expressly agree that in no event will a Party be liable for the so-called consequential or indirect damages, including loss of profits and loss of output, loss of use or loss of any contract or other damages that are considered to be indirect, except for cases involving willful misconduct or gross negligence, and without prejudice to the Contractor's obligation to pay the penalties agreed upon under this Contract.
- (5) The Parties agree that any indemnity received by one of the Parties as beneficiary of any of the insurance taken out by them in connection with the Solar Park will be deducted from the respective claim for damages or, if such indemnity holds the Party in question harmless from the damages sustained, it shall bar such Party from claiming damages and require it to refund the excess, if any. The Party causing the damages shall bear all deductibles, liability limits and any other deductions affecting the indemnities payable to the damaged Party by the insurance companies providing the insurance in accordance with the provisions hereof.
- (6) The maximum total liability of the Contractor hereunder shall not exceed, in the aggregate, an amount equal to *** (***) percent of the Contract Price. The foregoing shall not affect to the Contractor's obligation to make payments under Clause 14.1 in the event of the termination or partial termination of the Contract.

17. OWNER FINANCING

The Contractor hereby acknowledges as fundamental to this Contract:

- (i) the possibility that the Owner's rights under this Contract may be fully or partially pledged or assigned as security, in one or successive instances, to the Financial Institutions.
- (ii) the possibility that "direct agreements" that provide the Financial Institutions with "step-in" rights will be executed in the form agreed to prior to the execution of this Contract and which are attached hereto as Annex 9:

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- (ii) the possibility that the right to receive indemnification to which the Owner may be entitled and which arise under the insurance policies purchased in accordance with the terms of this Contract may be pledged or assigned as security to the Financial Institutions (and the essential nature of subscribing the insurance policies upon the terms of the report issued by the Insurance Advisor in accordance with Clause 11);.
- (iii) that the Financial Institutions and their advisors (including the Technical Advisor and the Insurance Advisor and any others) have the right to access the Site in order to inspect the performance of the work contemplated under this Contract, upon the terms contemplated in Clause 6.2;
- (iv) the Technical Advisor's right to observe all Capacity and Production Tests and the obligation to obtain its prior approval for the issuance of the Solar Park Provisional Acceptance Certificate, each Solar Facility Provisional Acceptance Certificate, the Final Acceptance Certificate and other actions for which the approval of the Technical Advisor is required in accordance with the form of Direct Agreement attached hereto as Annex 9;
- (v) the requirement to obtain the prior approval of the Financial Institutions for any change to the terms of this Contract upon the terms contemplated herein;
- (vi) the Contractor's obligation to pay any amounts owed to the Owner under this Contract to the account, if any, indicated in writing by the Financial Institutions;

All of the foregoing is without prejudice to the other rights expressly granted in favor of the financial Institutions pursuant to other clauses of this Contract.

18. CONFIDENTIALITY

- (1) The Parties agree that this Contract and the Annexes hereto, and any written or electronic information or documentation that any of the Parties furnishes to the other for the performance of this Contract (including, without limitation, technical documentation, plans, information, procedures, patents and licenses) are confidential. Therefore, the Parties undertake to keep the information confidential and to refrain from disclosing, providing to third parties or using such information unless such documentation and information (i) is known by the public without any breach of this confidentiality commitment, (ii) has been legally obtained from a third party, (iii) is requested by a judicial or governmental authority, or (iv) the delivery of such documentation and information is made in compliance with any legal obligations enforced upon the disclosing Party.
- (2) The Parties agree that the above shall not apply to any disclosure of information made by any of the Parties to other entities of their Group (within the meaning of Article 4 of Securities Market Law 24/1988 of July 28), regulatory, tax or governmental authorities, and their respective advisors and auditors, internal or external, in relation to the information requested by them for the development of the investigations, assessments and works carried out by them, provided that, in each and every one of such cases, the parties receiving the confidential information have assumed commitments of confidentiality vis-à-vis the disclosing party on terms similar to this one. In this case, such entities, authorities, advisors or auditors shall have free access to the books, files, documents and information held by the requested Party, and prior authorization is therefore not required from the other Parties to furnish information to such entities, authorities, advisors and/or auditors regarding this Contract and the Annexes hereto and any other information or written documentation relating hereto.

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- (3) In particular, the Owner is authorized to transmit information regarding this Contract to the Owner and the Financial Institutions and to those investors with interests in the construction and commercial operation of the Solar Park who reasonably request information with respect to this Contract, provided that they have assumed vis-à-vis the provider of such information confidentiality undertakings upon terms substantially similar hereto. Further, the Owner hereby authorizes the Contractor to provide such information to the Financial Institutions;
- (4) The confidentiality commitment must be observed until the passage of two (2) years from the date of execution of the Final Acceptance Certificate or any termination of the Contract, regardless of the cause thereof.

19. NOTICES

- (1) All notices and communications between the Parties for the purposes of this Contract shall be made in writing, by certified mail, fax or courier service, to the following addresses:

To the Contractor:

SunPower Energy Systems España, S.L.

Paseo de la Castellana, 86, 8º

28046 Madrid, Spain

Fax: +34 915644451

Attn: General Manager

With a copy to:

SunPower Systems SA

42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland

Fax: +41 22 304 1405

Attn: Marco Antonio Northland

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To the Owner:

Almuradiel Solar, S.L.

Calle Núñez de Balboa, 120, 7º, 28006, Madrid

Fax: +34 91 562 3593

Attn: Juan Carlos Sirviente Rodrigo

With a copy to:

Sylcom Solar

Laguna del Marquesado 10 - N8

28021 Madrid

Attn: Pablo Valera

(2) The Parties may change the above addresses by written notice to each other given in the form and to the addresses mentioned above.

(3) Notices shall be deemed received on the third (3rd) Business Day following the dispatch thereof when sent by courier service (unless there is evidence of earlier receipt) or the Business Day following the date on which there is evidence of the receipt thereof in the case of faxes and certified mail.

20 LAW AND JURISDICTION

(1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation, to which the Contractor and the Owner expressly submit.

(2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje (CIMA)*) of Madrid in accordance with the Procedural Regulations thereof.

(3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by the Contractor and the other by the Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.

(4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.

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- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In witness whereof, the Parties execute this Contract in two (2) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above. It is expressly acknowledged that Mr. Marco Antonio Northland, whose signature appears below, has hereby authorized Ms. Nuria Casellas Cabrerizo, having a National Identity Document (DNI) number 43679456H, to review the pages hereof as evidence of the agreement of the Contractor to the content of this document.

ALMURADIEL SOLAR, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

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SCOPE OF WORK. TECHNICAL SPECIFICATIONS AND SUNPOWER TECHNICAL SPECIFICATIONS

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IMPLEMENTATION SCHEDULE

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TEST PROTOCOLS

Protocol for tests prior to the provisional acceptance of each Solar Facility and of the Solar Park

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ANNEX 5

MINIMUM INVENTORY AND SUPPLY OF SPARE PARTS

The Contractor must make available to the Owner, pursuant to the terms of Clause 6.3, the following inventory of spare parts:

Part	Units per MW	Total quantity
Mechanical part		
Drive bellows boot	0.4	4
Ground braids, torque tube to pier	6	50
Module mounting assemblies	6	50
MC connectors	6	50
Actuator (endless screw)	0.0.4	2
Low voltage		
Solar panels	10	100
Orientation motor	0.4	4
GPS + PLC + clinometer	0.4	4
SunPower controller (no housing)	0.4	4
Inverter	0.2	2
Communications card for the inverter	0.4	4
Fuse set for the inverter	0.4	4
Set of overvoltage protective devices for the inverter	0.4	4
DC fuses	6	50
Set of overvoltage protective devices for the junction box	0.4	4
Junction box	0.4	4
Fan unit	0.4	4
Set of sensors for the weather station	0.4	2
Communications		
MOXA cards	0.4	2
Routers, switches, hubs, etc.	0.4	2

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MODULE DEGRADATION GUARANTEE

The guarantee described in Section 6 of the Technical Specifications, as incorporated into Annex 2.

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FORMS OF SURETY BONDS

Form of Performance Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes to **SUNPOWER ENERGY SYSTEMS, S.L.U.** with a registered address at [I], recorded in [I] (hereinafter the “**Guaranteed Party**”) an irrevocable, absolute, guarantee payable on demand to [I] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on even date herewith with respect to the construction and start-up of a solar park located in [I] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y division*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt, and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guarantee Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [I].

This Bond may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

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All sums due from the BANK under this Bond shall be paid net of any indirect tax, withholding or commission and without any type of offset or deduction. If the BANK, in the performance of this Bond, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholdings) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK's payment was not required.

The payment obligations assumed by the BANK under this Guarantee are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Bond shall automatically expire on the date of execution of the Solar Park Provisional Acceptance Certificate, and in any event, on January 31, 2009, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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Form of Guarantee Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes an irrevocable, absolute, guarantee payable on demand to **SUNPOWER ENERGY SYSTEMS, S.L.U.**, with a registered address at [1], recorded in [1] (hereinafter, the “**Guaranteed Party**”) in favor of [1] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on [1] with respect to the construction and start-up of a solar park located in [1] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guaranteed Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [1].

This Guarantee may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All the sums due from the BANK under this Guarantee shall be paid net of any indirect tax, withholding or commission and without any type of set-off or deduction. If the BANK, in the performance of this Guarantee, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholding) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

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The payment obligations assumed by the BANK under this Bond are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party, or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Guarantee shall automatically expire on the date of execution of the Solar Park Final Acceptance Certificate, and in any event, on January 31, 2012, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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AUTHORIZED EQUIPMENT

Modules:

- Powerlight
- SunPower
- Yingli
- Suntech
- Evergreen Solar
- Sanyo

Trackers:

- Powertracker

Inverters:

- Xantrex
- SMA
- Siemens
- Ingeteam

Medium-Voltage Electrical Power Lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt/)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)

Transformer and Sectioning Stations**1.1 Cells****1.1.1 Encapsulated cells:**

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
MANUFACTURAS ELÉCTRICAS	(www.me-sa.es)
SIEMENS	(www.siemens.es)
VEI ELECTRIC SYSTEMS	(www.vei.it)

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1.1.2 *SF6-insulated cells and switchgear in metal housings*

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
VEI ELECTRIC SYSTEMS	(www.vei.it)

1.2 *Power transformers*

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
IMEFY	(www.imefy.com)
ALKARGO	(www.iberapa.es)
ABB TRAFO	(www.abb.com)
SIEMENS	(www.siemens.es)
INCOESA	(www.incoesa.com)
OASA	(www.oasanet.com)
CONSTRUCCIONES ELÉCTRICAS JARA	(www.trafojara.com)
LAYBOX	(www.laybox.com)

1.3 *Prefabricated housings*

POSTES NERVIÓN	(www.postesnervion.es/)
PREPHOR	(www.prephor.com)
INAEI	(www.inael.com)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
AREVA T&D	(www.areva-td.com)

Low-voltage lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)
CONTECSA	(www.contecsa-spain.com)
CABELTE	(www.cabelte.pt)
MIGUELEZ	(www.miguelez.com)

Low-voltage panels

1.1 *Rectifiers – battery chargers*

ZIGOR	(www.zigor.com)
SAFT POWER SYSTEMS IBERICA S.L.	(www.spsi.es)
EMISA - EXIDE	(www.exide.com)
ENERTRON	(www.enertron.net)

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1.2 Protective cabinets and A.S. auxiliary services control

PROYECTOS MECA	(www.proymeca.com)
CYMI	(www.cymi.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
CUADRELEC	(www.cuadrelec.com)
PMC Ingeniería	

1.3 Exterior cabinets

PINAZO	(www.pinazo.com)
ELDON	(www.eldon.es)
HIMEL	(www.himel.com)
RITTAL	(www.rittal.es)

Electrical protective devices

1.1 Indirect and direct protective devices for MV cells

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
SIEMENS	(www.siemens.es)
GENERAL ELECTRIC	(www.GEIndustrial.com)
TEAM ARTECHE	(www.teamartech.es)
ZIV	(www.ziv.com)

1.2 Direct LV protective devices

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
MOELLER	(www.moeller.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
GOULD	(www.gould.com)

1.3 Metal-oxide lightning rods

TYCO ELECTRONICS RAYCHEM GMBH	(www.energy.tycoelectronics.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
INAEI	(www.inael.es)
ABB	(www.abb.es)
CELSA	(www.celsa.com)

Supervisory System

1.1 PLCs programmable logic controllers

SCHNEIDER ELECTRIC	(www.schneider-electric.com)
BECKHOFF	(www.beckhoff.es)
ROCKWELL AUTOMATION	(www.rockwellautomation.com)
GENERAL ELECTRIC FANUC	(www.gefanuc.com)

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1.2 Industrial communications

HIRSCHMANN	(www.hirschmann.com)
MOXA	(www.moxa.com)

1.3 SCADA system control and data acquisition platforms

WONDERWARE	(www.wonderware.com)
GENERAL ELECTRIC	(www.gefanuc.com)

1.4 Optical fiber

NEXANS	(www.nexans.com)
CORNING	(www.corning.com)
OPTRAL	WWW.OPTRAL.COM

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FORM OF DIRECT AGREEMENT

*** CONFIDENTIAL MATERIAL REDACTED AND
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DIRECT AGREEMENT

between

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U

as Contractor

and

ALMURADIEL SOLAR, S.L.

as Owner

and

CAJA CASTILLA LA MANCHA

as Agent

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APPEARING PARTIES

Party of the first part,

(A) SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U. (the “Contractor”)

Party of the second part,

(B) ALMURADIEL SOLAR, S.L. (the “Owner”).

Party of the third part,

(C) CAJA CASTILLA LA MANCHA (the “Agent”).

All of whom are hereinafter referred to collectively as the "Parties."

The persons appearing on behalf of each Party, as well as their powers of representation and corresponding grants of authority are set forth on Annex 1 hereto.

RECITALS

- I. The Owner and the Contractor have executed on even date herewith:
- (i) a “turn-key” construction contract (the “Construction Contract”) for the construction and start-up of a solar park in Almuradiel (Ciudad Real), composed of twenty five (25) solar facilities with a unit capacity at the panels between 115 y 122 kWp y 100 kW at the inverter (the “Solar Park”);
 - (ii) a maintenance agreement (the “Maintenance Agreement”) for the performance by Contractor of the maintenance Work relating to the Solar Park.
- II. In order to finance, among other things, the payments that are the responsibility of the Owner under the Construction Contract, the Owner has entered into the following contracts, on even date herewith, registered as public instruments before the Madrid Notary Mr. [1]:
- (i) a credit agreement in the maximum amount of [1] euros (hereinafter, the “Credit Agreement” or the “Loan”) with the Agent and [1].
 - (ii) an interest rate hedge agreement (CMOF) and its corresponding Schedule with [1], to cover interest rate fluctuation risks relating to the Loan (hereinafter, the master agreement and its Schedule together with the confirmations to be executed in connection therewith, the “Interest Rate Hedge Agreement”).

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[I], together with its successors and assigns with respect to the Interest Rate Hedge Agreement, and the institutions which at any given time make up the credit institutions under the Credit Agreement are hereinafter collectively referred to as the **“Financial Institutions.”**

- III. To guarantee the Owner’s obligations under the Credit Agreement and the Interest Rate Hedge Agreement (hereinafter, collectively, the **“Guaranteed Contracts”**) the Owner has granted on even date herewith (among others) a pledge agreement, registered as a public instrument with the Madrid Notary Mr. [I], pursuant to which the rights under the Construction Contract and the Maintenance Agreement (among others) were pledged to the Financial Institutions (the **“Pledge”**).
- IV. In consideration of the premises, and as a fundamental condition to the execution of the Guaranteed Contracts by the Financial Institutions, the Parties have agreed to execute this Contract whereby the Contractor assumes certain obligations to the Financial Institutions with respect to the Construction Contract, the Maintenance Agreement and the Guaranteed Contracts, as follows.

CLAUSES

1. DEFINED TERMS

Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Construction Contract.

2. PLEDGE

- (1) The Contractor hereby pledges all rights to receive payment from the Owner under the Construction Contract and the Maintenance Agreement.
- (2) As a consequence of the foregoing, except in the event of receipt of a written notice from Agent that the Pledge has been cancelled, the Contractor agrees:
- (i) not to convey or create any type of pledge, charge, lien or other security right over the Contractor’s rights to receive payments under the Construction Contract or the Maintenance Agreement, without the express prior written approval of the Agent;
 - (ii) not to honor any notice or instruction from the Owner that contravenes or modifies the terms of the Pledge or of this Contract;

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- (iii) to immediately notify the Agent of any breach by the Owner of its obligations under the Construction Contract or the Maintenance Agreement;
- (iv) to pay any amounts payable by the Contractor to the Owner under the Construction Contract or the Maintenance Agreement to the Owner's account no. [1] (the "**Principal Account**"), or to such other separate account as the Agent and the Owner may jointly specify in writing. The Contractor acknowledges and agrees that a payment made to any other current account or made in any other manner shall not be considered a full discharge for the Contractor;
- (v) upon receipt of written notice from the Agent declaring the enforcement of the Pledge, to deposit or transfer all funds relating to the payment rights under the Construction Contract and/or the Maintenance Agreement in favor of the Agent to the account designated by the Agent in writing.

3. NOTICE OF EARLY TERMINATION EVENTS. BREACH BY THE OWNER.

- (1) The Contractor agrees to provide notice to the Financial Institutions (through the Agent) of the occurrence of any event of early termination of the Construction Contract and/or the Maintenance Agreement, or of its own intention to terminate either of such Contracts, by sending to the Agent a copy of any notice sent to the Owner (which shall include, at a minimum, the proposed date of termination of the Construction Contract and/or the Maintenance Agreement –subject to the terms of subsection (2) below- and the Contractor's stated basis for such termination).
- (2) The Contractor acknowledges agrees that it may not, under any circumstances, terminate the Construction Contract or the Maintenance Agreement without first giving notice to the Agent as provided for in the above subsection, and that, during the period from the Agent's receipt of such notice until fifteen (15) calendar days from the date on which the Agent received such notice, the Agent may (but is not so obligated), with the prior approval of the Financial Institutions in accordance with the agreed majority voting percentages agreed to among the Financial Institutions, take such measures as are necessary or advisable to cure or eliminate such event of early termination under the Construction Contract and/or the Maintenance Agreement.

4. CHANGES TO THE CONSTRUCTION CONTRACT AND ACTIONS OF THE TECHNICAL ADVISOR

4.1 Changes and roles with respect to the Construction Contract

The Contractor hereby acknowledges and agrees that:

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- (i) it may not agree to any change to the Construction Contract or any Change Order or any other document that contains an agreement to make the changes contemplated by Clauses 2.4(4), 5.1(3) and 6.5(3) of the Construction Contract without receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor's rights under such Clauses);
- (ii) except with respect to the assumed consent contemplated by Clause 4.3 of the Construction Contract, the approval of the Technical Advisor must be obtained in order for the Owner to approve a Payment Milestone contemplated by such Clause;
- (iii) the Technical Advisor must be present to observe the performance of the Performance Tests, the Overall Test, the Production Tests and the inspections required for execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate, in accordance with the notice periods set forth in Clauses 5.2 (1), 8.4(2) and 9(1) of the Construction Contract. The periods provided for in such Clauses may not begin to run if the Technical Advisor has not been invited to observe within the notice periods provided in such Clauses. Results of tests and inspections referred to in this subsection that were obtained prior to the expiration of such periods and without the presence of the Technical Advisor shall be invalid. However, the Technical Advisor's failure to attend despite having been duly invited in the manner and within the notice periods provided for in this subsection shall not delay the periods provided for in the Construction Contract for such tests and inspections, nor shall it invalidate the results of the same;
- (iv) except as provided for in Clause 5.2(4) of the Construction Contract, the execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate must be accompanied by the approval of the Technical Advisor;
- (v) the Technical Advisor shall have the power to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 6.2 of the Construction Contract;
- (vi) the Technical Advisor must approve quality controls for the solar modules and has the authority to inspect such quality controls in order to confirm its approval; and
- (vii) an order to suspend the Work by the Owner pursuant to Clause 13.1 of the Construction Contract shall not be valid unless it has been countersigned by the Agent on behalf of the Financial Institutions.

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4.2 Changes and Actions Regarding the Maintenance Agreement

The Contractor hereby acknowledges and agrees that:

- (i) it may not agree to any change to the Maintenance Agreement or any Change Order or any other document that contains an agreement to make the changes contemplated by Clause 2.4 of the Maintenance Agreement without first receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor's rights under such Clause 2.4);
- (ii) the Technical Advisor must receive the data and registrations at least fifteen (15) calendar days in advance to make the availability calculations referred to in Clause 7 of the Maintenance Agreement;
- (iii) the Technical Advisor shall have the authority to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 4(ii) of the Maintenance Agreement.

5. CUMULATIVE NATURE OF THE OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT

The rights of the Financial Institutions contemplated in this Agreement are cumulative with the rights of the Financial Institutions under the Construction Contract or the Maintenance Agreement. Therefore, the terms of this Agreement shall not affect the obligation of the Contractor and the Owner to request the consent of the Financial Institutions for such acts that, in accordance with the terms of the Construction Contract and/or the Maintenance Agreement, require the prior consent of the Financial Institutions.

6. ASSIGNMENTS

6.1 Assignment by the Financial Institutions

This Contract is delivered for the benefit of the Financial Institutions, and therefore inures to the benefit of their successors or assigns permitted under the Guaranteed Contracts. Therefore, in the event of an assignment, in whole or in part, of the interest of a Financial Institution under the Guaranteed Contracts, or the replacement of the Agent under the terms of the Credit Agreement, all references made in this public document to the Financial Institutions and the Agent shall be understood to include reference to their respective successors or assigns. An assignee must present its position to the Contractor and the Owner, upon request, by delivery of a copy of the document through which such assignment or replacement of the Agent is made. However, the Agent must inform the Contractor of its replacement with sufficient advance notice to permit the Contractor to comply with its obligations under the Construction Contract, the Maintenance Agreement and this Agreement.

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6.1 Assignment by the Contractor

The Contractor may not assign its rights or obligations under the Construction Contract or the Maintenance Agreement except in strict compliance with the terms of Clauses 15.1 and 11.1 of the Construction Contract and the Maintenance Agreement, respectively. However, in the event of an assignment by the Contractor to one of the companies of its Group, under the terms permitted in such Clauses, the Contractor agrees that it shall not effect such assignment unless the assignee concurrently agrees to adhere to the entirety of the Contractor’s responsibilities and agreements under this Agreement.

7. NOTICES

- (1) Except as otherwise expressly provided for, all notices and communications between the Parties for the purposes of this Agreement shall be made in writing, by certified mail, telegram with confirmed receipt, or for urgent matters, by fax with a confirmation letter to be sent within the following five (5) calendar days.
- (2) All notices, requirements or other communications to the Financial Institutions must be delivered to the Agent (notice to the Financial Institutions shall be considered effective upon receipt by the Agent).
- (3) The Parties designate the following addresses for notice, communications and routine matters:

The Agent:

[I]
Fax: +34 [I]
Attention: Mr. [I]

The Contractor:

SunPower Energy Systems España, S.L.
Paseo de la Castellana, 86, 8º
28046 Madrid, España
Fax: +34 915644451
Attention: General Manager

With a copy to:
SunPower Systems SA
42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attention: Mr. Marco Antonio Northland

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The Owner:
Almuradiel Solar, S.L.
Calle Núñez de Balboa 120, 7º, 28006 Madrid
Fax: +34 91 562 35 93
Attention: Mr. Juan Carlos Sirviente Rodrigo

(4) Any changes to the above addresses must be communicated to the other Parties by certified mail, and shall only take effect as of the date that the other Party receives such notice.

8. LAW AND JURISDICTION

This Contract shall be exclusively governed by generally applicable Spanish legislation.

The Parties expressly waive any other jurisdiction to which they may be entitled and, without prejudice to applicable law, hereby irrevocably submit to the jurisdiction of the Courts and Tribunals of the city of Madrid.

9. TERM

This Contract shall remain in full force and effect throughout the term of the Construction Contract and the Maintenance Agreement or until the payment in full of the obligations assumed by the Owner under the Guaranteed Contracts. Upon payment in full of said amounts, the Owner may request that the Agent issue a joint notice to the Contractor confirming payment in full of all obligations assumed by the Owner under the Guaranteed Contracts.

10. TAXES AND EXPENSES

All fees, taxes and any other costs and expenses arising from the preparation and delivery of this Contract, including the reasonable fees and expenses of legal counsel shall be borne by the Owner.

In witness whereof, the Parties execute this Contract in three (3) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

ALMURADIEL SOLAR, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

CAJA CASTILLA LA MANCHA

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MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE

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GUARANTEED VALUES

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FORM OF LETTER TO BE SIGNED BY THE AGENT

SunPower Energy Systems Spain, S.L.U.
Paseo de la Castellana, 86, 8º
28046 Madrid, Spain
Fax: +34 915644451
Attn.: General Manager

[I] [I], 2007

Gentlemen:

Re: Commercial loan agreement (the “Loan Agreement”) signed by [I] and [I] on [I], converted into a public instrument in the presence of Mr. [I], a notary of Madrid, and recorded in his notarial protocol under No. [I], for the partial financing of (among other things) the payments owed by [I] pursuant to a “turnkey” construction contract signed by such entity with SunPower Energy Systems Spain, S.L.U. on [I] (the “Construction Contract”)

We hereby confirm to you that, pursuant to the Loan Agreement, [I] has obtained from [I] a loan in the total amount of [I] euros, of which sum [I] euros correspond to Tranche A of the Loan Agreement, and [I] euros correspond to Tranche B of the Loan Agreement, with the purpose of such Tranches being to finance, among other things, the Contract Price and the associated VAT to be paid by [I] pursuant to the Construction Contract.

Cordially,

[I]

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***CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED
WITH THE COMMISSION***

**TURNKEY CONSTRUCTION CONTRACT
FOR THE CONSTRUCTION OF A SOLAR PARK**

BETWEEN

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.

As Contractor

AND

MORALAS RENOVABLES, S.L.

as Owner

November 6, 2007

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- ANNEX 9.- FORM OF DIRECT AGREEMENT
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- ANNEX 12.- FORM OF LETTER TO BE SIGNED BY THE AGENT
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APPEARING PARTIES

- (A) **MORALAS RENOVABLES, S.L.** (hereinafter, the **“Owner”**), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-79136636 herein represented by Mr. Juan Carlos Sirviente Rodrigo, with identity card number 50708230S pursuant to the powers conferred upon him pursuant to a resolution of the board of directors of the company passed on the date hereof.
- (B) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the **“Contractor”**), with a registered office in Madrid at calle Pradillo nº 5, herein represented by Mr. Marco Antonio Northland, bearing U.S. Passport No. 047605878, in his capacity as attorney-in-fact of such entity pursuant to a public instrument executed before Mr. Ignacio Martínez Gil-Vich, a Madrid notary, on November 28, 2006, and recorded in his notarial protocol under No. 4.551.

RECITALS

- (1) The Owner is interested in promoting the installation and operation of a solar park in Manzanares (Ciudad Real), consisting of fifty (50) Solar Facilities having between 115 and 122 kWp of peak power and 100 kWe at the inverter.
- (2) The Contractor is dedicated to the construction and start-up of facilities of this type, and intends and has the capacity to construct the Solar Park in accordance with the specifications of this Contract.
- (3) The Owner will partially finance the payment of the Contract Price through financing to be made available to the Owner by one or more credit providers (the **“Financial Institutions”**).
- (4) ***
- (5) Now, therefore, the Parties mutually acknowledging the legal capacity required to enter into contract and bind themselves, agree to execute this "turnkey" construction contract (hereinafter, the **“Contract”**) in accordance with the following:

CLAUSES

1. DEFINITIONS

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In this Contract, the terms listed below shall have the meaning established in each instance:

- **Final Start-Up Certificate or Final Start-Up:** means the governmental certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, with respect to each of the Solar Facilities and the Electrical Infrastructure, which allows for the commencement of the commercial operation thereof, including, for the purposes of this Contract, obtaining the final registration of each of such Solar Facilities and Electrical Infrastructures with the Register of Power Facilities included within the Special Regime (*Registro Administrativo de Instalaciones de Producción de Energía en Régimen Especial*), pursuant to the provisions of Section 12 of Royal Decree 661, which grants to the corresponding facilities the status of a production facility accepted under the special regime, in accordance with the terms of this contract.
- **Direct Agreement:** the agreement executed among the Contractor, the Owner and the agent for the institutions providing financing to the Owner, for purposes of, among other things, making the payments contemplated in this Contract, pursuant to the provisions of Clause 17.
- **Scope of Work:** the entirety of all services, supplies and work that the Contractor must provide under this Contract in accordance with the provisions of Clause 2.2 and the specific details contained in Annex 2.
- **Insurance Advisor:** means Willis or any other insurance advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Legal Advisor:** means Gómez-Acebo & Pombo, S.L. Ramón & Cajal Attorneys or any other legal advisor that the Financial Institutions may designate in the context of the financing of the Solar Park
- **Technical Advisor:** means Sylcom Solar or any other technical advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Performance Bond:** means the bond payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations and which shall be effective as from delivery thereof to the Owner in accordance with the provisions of this contract until the execution of the Solar Park Provisional Acceptance Certificate.
- **Guarantee Bond:** means each of the bonds payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations during the Guarantee Period, which shall be effective as from the execution of the Solar Park Provisional Acceptance Certificate through the execution of the Final Acceptance Certificate.

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- **Final Acceptance Certificate (FAC):** means the certificate that shall be executed by the Parties at the end of the Guarantee Period to attest to the final acceptance of the Solar Park by the Owner.
 - **Solar Park Provisional Acceptance Certificate (Park PAC):** means the certificate that shall be executed by the Parties concurrently with the execution of the Provisional Acceptance Certificate for the last Solar Facility forming a part of the Solar Park, to evidence the proper operation of the Solar Park as a result of the Overall Test of all Solar Facilities and the Electrical Infrastructure, as well as the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period.
 - **Solar Facility Provisional Acceptance Certificate (Facility PAC):** means the certificate that shall be executed by the Parties to evidence the proper operation of the equipment as a result of the Performance Tests for each of the Solar Facilities (including the Electrical Infrastructure associated with each Solar Facility) and the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period. In order to issue a Provisional Acceptance Certificate for a Solar Facility, proper operation of the General Electrical Infrastructure in order to meet the installed capacity of the Solar Facilities in operation at such time must also be verified.
 - **Contractor:** means SUNPOWER ENERGY SYSTEMS SPAIN, S.L. and any other company that may succeed it in its obligations in accordance with the provisions of this Contract.
 - **Contract:** means this contract together with the Annexes hereto. In the event of conflict between the body of this Contract and one or more of the Annexes, the body of this Contract shall prevail.
 - **Maintenance Agreement:** means the Maintenance Agreement entered into by the Contractor and the Owner on even date herewith, providing for the assumption by the Contractor of the maintenance work for the Solar Park upon execution of the Solar Park Provisional Acceptance Certificate.
 - **Systemic Defect:** is an operational failure of the Solar Facilities of the Solar Park occurring during the Production Guarantee Period that (i) is not caused by non-conforming performance of the Work by the Contractor under this Contract, the Technical Specifications, the Construction Model or the regulations applicable to the Work (in accordance with the terms of this Contract), and (ii) that
- § is the same failure or is a failure that affects, at least: 0.5% of the solar modules, 5 or more inverters or their corresponding peripheral systems, 5 or more trackers, or 2 or more transformers (including breakers and switches) supplied by the same manufacturer for the Solar Park; or

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- § the relevant supplier or well-known independent third party in the solar industry reports that at least 1% of worldwide production of the corresponding model of solar module, inverter, tracker or transformer is affected by the same operational failure and advises replacement thereof (in which event the Owner must receive proof in the form of delivery of a document signed by the manufacturer or of a report from an independent third party which confirms the existence of said systemic failure with reference to the model and series of the affected equipment).
- **Business Day:** means any day other than a bank holiday in Madrid and Albacete, with the express provision that Saturday is not a Business Day.
 - **Financial Institutions:** has the meaning set forth in the Recital (3).
 - **Site:** means parcel 53, polygon 10, in the municipality of Manzanares (Ciudad Real), as identified in Annex 13.
 - **Authorized Equipment:** means the list of brands and models of the principal equipment or elements that will make up the Solar Facilities and the Electrical Infrastructures described in Annex 8 hereto.
 - **Technical Specifications:** means the technical conditions for executing the Work that were prepared by the Contractor and delivered to the Owner, and that make up Annex 2.
 - **Delivery Deadline:** means July 15, 2008.
 - ***
 - ***
 - **Payment Milestones:** means the milestones for the payment of the Contract Price, as described in Clause 4.2 below.
 - **Specific Electrical Infrastructure:** means the entirety of the electrical elements permitting the evacuation to the distribution grid of the electrical power produced by each of the Solar Facilities, including from the Solar Facilities to the specific transformer center for such Solar Facility.
 - **General Electrical Infrastructure:** means the entirety of the electrical elements permitting the connection of each of the Solar Facilities, from the specific transformer center, in order to permit the evacuation of electrical power generated by each Solar Facility to the distribution grid, including the Evacuation Line, the distribution and sectioning center (*centro de reparto y seccionamiento*) and supplemental elements of supervision, monitoring and data collection.

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- **Electrical Infrastructure:** collectively, the General Electrical Infrastructures and the Specific Electrical Infrastructures.
- **Solar Facility:** means the entirety of the electromechanical elements that allow for the generation of low voltage (“LV”) electrical power, including from the solar modules themselves, solar trackers, and inverters, to the LV meter, with a peak unit capacity of between 115 and 122 kWp.
- **Evacuation Line:** the 15kV output electrical evacuation line of the distribution center of the General Electrical Infrastructure, necessary to connect such Infrastructures to the substation of the power distribution company (Unión Fenosa) of Herrera de la Mancha, excluding works to be carried out inside the substation.
- **Change Order:** means a document signed by the Contractor and the Owner pursuant to which a change is agreed upon in the Scope of Work, the Contract Price or the Execution Schedule, or any other modification, as provided in this Contract.
- **Solar Park:** means the entirety of the fifty (50) Solar Facilities having between 115 and 122 kWp of peak capacity and 100 kWe at the inverter, that must reach a total peak capacity of 5.925 MWp, located at the Site, including the Electrical Infrastructure and any other facilities that, in accordance with the terms of this Contract, may be necessary for its Start-Up.
- **Guarantee Period:** means the period between the signing of the Provisional Acceptance Certificate for the first Solar Facility until the date *** (***) years following the execution of the Solar Park Provisional Acceptance Certificate.
- **Production Guarantee Period:** means the period between Start-up of the Solar Park until the date *** following the execution of the Solar Park Provisional Acceptance Certificate.
- **Contract Price:** The price payable by the Owner to the Contractor for the performance of the obligations contained in this Contract, the amount of which is set forth in Clause 4 of the Contract. For purposes of this Contract, the price corresponding to an individual Solar Facility shall be the amount obtained by dividing the total Contract Price by the fifty (50) Solar Facilities.
- **Implementation Schedule:** means the schedule for the implementation of the Scope of Work, which is attached as **Annex 3** to this Contract.
- **Owner:** means MORALAS RENOVABLES, S.L., as well as any company subrogating to its contractual position in accordance with the provisions of this Contract.
- **Overall Test:** means the test described in **Annex 4**, to be performed as a prerequisite to the execution of the Solar Park Provisional Acceptance Certificate to verify the proper operation of all Solar Facilities and the Electrical Infrastructure. The Overall Test will definitively verify the proper operation of the General Electrical Infrastructure to absorb the power discharged by all Solar Facilities.

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- **Performance Tests:** means the tests described in Annex 4, to be performed as a prerequisite to the execution of each Solar Facility Provisional Acceptance Certificate to verify the proper operation of the corresponding Solar Facility and Electrical Infrastructures. Pursuant to the provisions of Clause 5.2(1), each Performance Test will be performed on a minimum of ten (10) Solar Facilities (with their corresponding Electrical Infrastructures).
- **Production Tests:** means the tests that will be performed at the end of the Production Guarantee Period in order to determine compliance with the Production Guarantee set forth in Clause 8.4, following the protocols set forth in Annex 4.
- **Start-up:** means, with reference to a particular Solar Facility and/or Electrical Infrastructure, the point when all of the work required by this Contract has been completed and all Performance Tests have been passed in accordance with this Contract and the Annexes hereto, the Provisional Acceptance Certificate has been executed and the Owner has received the corresponding Final Start-up Certificate (as confirmed by the Legal Advisor). Reference to Start-up of a Solar Park shall be understood to mean the point when all Solar Facilities and corresponding Electrical Infrastructures have passed the Overall Tests and comply with the above referenced requirements.
- **RD 661:** Royal Decree No. 661/2007, of May 25, which regulates activities involving the production of power under special regime.
- **Subcontractors:** means the subcontractors with which the Contractor subcontracts all or part of the works to be executed under this Contract.
- **Work:** means the work and supplies to be provided by the Contractor pursuant to the provisions of this Contract.

2. PURPOSE AND SCOPE OF WORK

2.1 Purpose of the Contract

The purpose of this Contract is the construction, start-up and delivery of the Solar Park to the Owner pursuant to the terms set forth in this Contract such that, upon issuance of the Final Start-up Certificate, the production of power and sale thereof to the electric distribution grid may commence, in accordance with applicable law and the Technical Specifications.

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This Contract is executed as a "turnkey" contract, and the Contractor is hereby obligated to deliver to the Owner the design, construction and Start-up of the Solar Park for the fixed price and within the fixed time periods established herein, subject to the other terms and conditions set forth in this Contract.

2.2 Scope of Work

(1) According to the terms and conditions of this Contract, the Contractor shall carry out and shall be responsible for all of the equipment, services, supplies and work comprising the Scope of Work. The Scope of Work includes each of the following concepts, as well as all acts that, even if not expressly mentioned in this Contract or in Annex 2, are necessary for the proper operation, performance and commercial exploitation of the Solar Park, in each case in accordance with the customary usage and practices in the industry for a project having these characteristics, this Contract, the Technical Specifications, and applicable law (without prejudice to the provisions of Clause 2.4(4)):

- § Design, engineering (basic and detailed) and required technical schedules.
- § Execution of all aspects of the Scope of Work and the supply of all materials, elements and equipment set forth in Annex 2, and the supply of all materials necessary and appropriate to properly carry out the Scope of Work.
- § Performance of inspections, inventory of materials, performance controls, tests and other analyses required under applicable law and in accordance with the technical specifications and this contract.
- § Transportation to the Site of all materials, equipment, utilities, spare parts, consumables and machinery for which the Contractor is responsible under the Contract.
- § Direct and indirect labor necessary to carry out the Scope of Work and all costs and social charges associated with such labor.
- § Demolition and dismantling of the provisional facilities not required by the Owner and conditioning and cleaning of the Site following issuance of the Solar Park Provisional Acceptance Certificate.
- § Maintenance, protection, security, custody and conservation of the equipment installed or stored at the Site up to the signing of the Solar Park Provisional Acceptance Certificate.
- § Preparation and delivery to the Owner of all documentation within the scope of this Contract, sufficiently in advance for the utilization thereof by the Owner. In particular, the delivery of the documentation and manuals set forth in Annex 2.

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§ Training of the Owner's personnel in the operation and maintenance of the materials and equipment acquired in accordance with the terms of Clause 6.7 of this Contract.

§ Construction of all necessary auxiliary facilities, their maintenance, cleaning and security during the performance of the Work, including that performed in compliance with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan (*Prevención de Riesgos Laborales y el Plan de Seguridad y Salud*); as well as the demolition or dismantling of any temporary facilities not required by the Owner and the conditioning and clearing of the Site following the issuance of the Solar Park Provisional Acceptance Certificate.

§ Supply of spare parts pursuant to the provisions of Clause 6.3.

§ Provision of material and human resources required to comply with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan, as well as the creation of the Social Security and Health Plan.

2.3 Exclusions

The Scope of Work for this Contract shall not include amounts associated with the purchase or lease of land or easements, or the payment of concessions or any other amounts owed in respect of surface rights to the Site where the Solar Park will be built. Further, it does not include the services associated with the obligations assumed by the Owner in Clause 7, the selection and hiring of personnel by the Owner or the costs and liabilities arising from the selection and hiring of third parties by the Owner for performance of the work consisting of safety and health coordination, or the supervision, external inspection, security, and quality control of the Contractor's work, including the Technical Advisor.

2.4 Changes in the Scope

(1) Under no circumstances may the Parties make any changes to the Scope of Work contemplated by this Contract (of any kind, whether for expansions, reductions or changes to any portion of the work and/or the items supplied under this Contract), unless a Change Order has previously been signed.

(2) At any time prior to Provisional Acceptance, the Owner may propose a change to the Scope of Work by sending the Contractor a notice describing the nature and scope of the change. Upon receipt of such notice, the Contractor must send to the Owner, within a maximum period of ten (10) Business Days, a communication that includes a complete proposal for the changes in the Contract Price, deadlines and form of payment, or any other changes that may be necessary in connection with the changes proposed by the Owner. This communication shall also include a reasoned explanation of the grounds and/or criteria used for the calculation of the new Contract Price and/or deadline. However, the Contractor recognizes that in accordance with the Direct Agreement, the approval of the Financial Institutions is an essential requirement for the validity of the changes.

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- (3) Without prejudice to the terms of the Direct Agreement, the Contractor may, at any time during the performance of the Contract, propose changes to the Scope of Work that it deems necessary or appropriate to improve the quality, efficiency or safety of the Solar Park or the facilities or supplies that make up the Solar Park. The Owner, at its discretion, may approve or reject the changes proposed by the Contractor. The Parties will execute a Change Order in the event that the modifications are approved by the Owner.
- (4) In addition, upon the entry into force, promulgation, derogation or change of any mandatory legal provision after the execution of this Contract that affects the Work, the Parties shall sign a document governing the changes that must be made to the purpose of this Contract.
- (5) The Owner and the Contractor shall negotiate in good faith the effects on the deadlines agreed to under this Contract that might occur as a result of the changes requested within the context of the provisions of this Clause. In any event, the prices applicable to any change in the Scope of Work shall consist of the costs of the additional work or supplies arising therefrom (reasonably justified to the Owner) plus ***% as the Contractor's margin.

3. COMMENCEMENT OF WORK

- (1) The Parties agree that the payment by Owner of the amount set forth in Clause 4.2(i) and the delivery by the Contractor of the Performance Bond and the Corporate Guarantee are subject only to the delivery by the Owner to the Contractor of a letter signed by the Financial Institutions in the form of Annex 12 confirming the availability of the financing. The payment by the Owner of the amount in accordance with Clause 4.2(i) and the delivery of the Performance Bond and the Corporate Guarantee by the Contractor must be made concurrently on a date between the sixth (6th) and ninth (9th) Business Day following the date the Owner notifies the Contractor that the agreed conditions are satisfied. The date the Owner pays the amount pursuant to Clause 4.2(i) to the Contractor and the Contractor delivers the Performance Bond and the Corporate Guarantee shall be hereinafter referred to as the "**Condition Satisfaction Date.**"

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(2) By executing this Contract, the Owner hereby represents to the Contractor as follows:

- (i) It has obtained all authorizations and licenses necessary for the commencement of construction for the Solar Park, except those that are intrinsic to the construction itself and that are the responsibility of the Contractor in accordance with the terms of Clause 6.6 (having delivered to the Contractor a copy of those that are the responsibility of the Owner). For purposes of clarification, the Owner has obtained the municipal licenses for the work and related activities (to the extent necessary), as well as the administrative authorization, the approval of the Electrical Infrastructures Plan and the interconnection point of the Solar Facilities and has delivered to the Contractor a confirmation issued by the Council for the Environmental and Rural Development (*Consejería de Medio Ambiente y Desarrollo Rural*) of Castilla La Mancha that an Environmental Impact Statement is not required with respect to any of the Solar Facilities of the Solar Park; and
- (ii) The Site is fully accessible and available for the commencement of Work.

(3) In the event that **(a)** the letter relating the financing described in subsection (1) has not been delivered by November 23, 2007, or **(b)** the Condition Satisfaction Date has not occurred by the tenth Business Day following the date the Owner delivered such letter to the Contractor, the Contractor and the Owner may terminate the Contract by delivery to the other Party of a notice setting forth its desire to terminate the Contract, and the Parties shall be released from all obligations assumed with respect thereto. The foregoing shall be without prejudice to the purchase orders or requests that the Parties, or companies belonging to their groups, shall have already made or agreed to, as of or following the execution of this Contract. Such purchase orders or requests shall continue in force and effect in accordance with their terms unless the Owner elects to cancel them, in which case the Owner shall pay the Contractor any cancellation costs that the Contractor or any company in its group must pay to any distributor or manufacturer with respect to such orders.

However, the Contractor may not terminate the Contract if the Owner has confirmed its intention and ability to make the payment described in Clause 4.2(i) and the Condition Satisfaction Date has not have occurred due to the Contractor's failure to deliver the Performance Bond and the Corporate Guarantee.

(4) Subject to paragraph three of this section, the Contractor represents that, prior to the execution of this Contract, it has studied the subterrain, surroundings and access thereto.

Further, subject to paragraph three of this section, The Contractor represents that the Site is adequate and sufficient for the performance of the Work, and that the Contractor is aware of and accepts all the risks and contingencies of the Site that may affect the performance of the Work, including, without limitation, climate conditions (including wind, snow, frost, rain, etc.), hydrographic, hydrological, geotechnical and seismic conditions, any toxic waste or archeological sites that may appear at the Site and in general any other physical, natural or artificial circumstances of the Site and the subsoil thereof. Consequently, the Contractor waives any claim to any supplement to the price of the Contract for an increase in work, delay therein, or additional cost of any kind, and any claim to any extension in the Delivery Deadline or the intermediate deadlines for the Work arising from the Site conditions referred to in this Clause.

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Representations contained in the previous paragraphs regarding the adequation of the Site for the performance of the Work shall be subject to the Contractor receiving the definitive geotechnical report on the Site in the five (5) days following signature of this Contract. Upon receipt of such report by the Contractor, the Parties shall sign a document declaring the Site adequate or, if applicable, agreeing the necessary amendments to the Scope of Work and/or the Contract Price on the basis of contingencies arisen from the report. As from the signature of such document, representations contained in this section shall be fully valid and binding for the Contractor. Notwithstanding the above, the Contractor accepts that, in case the geotechnical report concludes that the Site conditions are equivalent to those of the report for the site where is going to be built a solar park according to an agreement signed on the date hereof between the Contractor and Naturener Solar Tinajeros, S.L., the Site will be deemed adequate, the Contractor not being entitled to claim any amendment to the Scope of Work and/or Contract Price.

For the sake of clarity, the Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of Force Majeure in accordance with the terms of the Contract, with application of the provisions of Clause 12.

4. PRICE AND FORM OF PAYMENT

4.1 Contract Price

- (1) The Contract Price payable by the Owner to the Contractor in consideration for the works to be performed by Contractor under this Contract shall be *** Euros. This amount shall be increased by an amount corresponding to Value Added Tax (VAT) pursuant to applicable law at any given time. The Contractor hereby acknowledges and agrees that the Contract Price is a lump-sum, fixed, and final price, and is not subject to any change or revision whatsoever on the basis of any changes in the prices of labor, materials, equipment, exchange rates or any other similar items, including a change in any taxes levied on the scope of the work.
- (2) The Contract Price includes all the costs and expenses associated with the Contractor's performance of work under the Contract, including those specifically set forth in the Scope of Work. The Contract Price shall be deemed to include, by way of example:

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§ taxes, fees, industrial- and intellectual-property royalties on the equipment supplied, Social Security and other encumbrances upon the supplied equipment and materials in their country of origin or destination, including, if applicable, the rights of free circulation in the European Union and any other tax with respect to the importation of the Equipment and the performance of the Work, except for the VAT on the actual Contract Price. For purposes of clarification, the Price does not include legalization fees or costs for permits and authorizations, which are the responsibility of the Owner.

§ payroll costs and the cost of equipment required for the Contractor's performance of the Work or to ensure the protection, security and proper performance thereof.

§ the cost of any insurance that must be taken out by the Contractor pursuant to Clause 11.

However, the Parties agree that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs (*cajas de concentración de los seguidores*) are not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon the Contractor's delivery to Owner, prior to November 23, 2007, of an offer to perform such works and the issuance of a Change Order agreeing to a new Contract Price that includes such items.

Likewise, the Owner recognizes that the Technical Specifications contained in Annex 2 are subject to the prior verification by the Contractor within the seven (7) Business Days following the signature of this Contract. In case such Technical Specifications contained essential differences with regard to the technical conditions contained in the technical specifications attached as Annex 2 to the construction agreement entered into between the Contractor and Naturener Solar Tinajeros, S.L. on the date hereof, the Parties shall mutually agree the amendments (including amendments to the Contract Price) arising from such differences before November 23, 2007. Notwithstanding the above, the Contractor recognizes that the Owner shall be entitled to ask for the execution of Work according to the Contractor's offer, reserving the right to discuss later the essential character, the origin or the contents of the amendments proposed by the Contractor following the procedure set forth in Clause 20.

(3) In the event of changes in the Scope of Work agreed to pursuant to the provisions of this Contract, the price agreed to in the corresponding Change Order shall apply.

(4) Without prejudice to the foregoing, in consideration for the maintenance and security tasks to be performed by the Contractor prior to the execution of the Solar Park Provisional Acceptance Certificate, the Owner shall pay to the Contractor (in addition to the Contract Price), the portion of the price contemplated in the Maintenance Agreement that is equivalent to the percentage representing the Solar Facilities that have obtained a Provisional Acceptance Certificate with respect to all Solar Facilities contemplated by this Contract.

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4.2 Payment Milestones

The Contract Price shall be paid by the Owner to the Contractor pursuant to the payment schedule set forth below (each of the milestones set forth below shall be deemed a **“Payment Milestone”**):

- (i) On the Condition Satisfaction Date, an amount equal to ***% percent of the Contract Price, i.e., *** euros, upon delivery of the Performance Bond by the Contractor.
- (ii) Based on the monthly progress of the civil works involving earth moving, leveling and foundation laying, measured as 100 kWe Solar Facilities whose foundations are completed, the Owner will pay up to a maximum of *** percent (***) of the Contract Price, i.e., *** euros, upon presentation of the respective invoices by the Contractor.
- (iii) Upon each delivery to the Site of the module supports, inverters and trackers of each Solar Facility and presentation of the corresponding invoices not earlier than two (2) months prior to the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***) percent of the Contract Price corresponding to such Solar Facilities.
- (iv) Upon each delivery of the solar modules of each Solar Facility to the Site and upon presentation of the corresponding invoices not earlier than the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***) percent of the Contract Price corresponding to such Solar Facilities.
- (v) Based on the monthly progress of the mechanical assembly of the module supports, solar trackers and the modules mounted thereon, as well as the installation of the inverters and the transformer center, measured as Solar Facilities of 100 kWe whose facilities up to the transformer center have been completed, the Owner will pay up to a maximum of *** (***) percent of the Contract Price, upon presentation of the respective invoices.
- (vi) Upon the execution of each Provisional Acceptance Certificate for a Facility, the Owner shall pay *** (***) percent of the Contract Price corresponding to such Solar Facility (together with the remaining portion of the Contract Price, if any, that was not previously paid and that corresponds to Work completed by the Contractor under this Contract in respect of such Solar Facility). The last Solar Facility payment shall be made concurrently with the execution of the Solar Park Provisional Acceptance Certificate.

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4.3 Invoicing System and Form of Payment

- (1) Once the Contractor deems that a Payment Milestone has been achieved, the Contractor shall give written notice thereof to the Owner and the Technical Advisor, attaching thereto the invoice and any documentation that may be necessary to demonstrate achievement of the corresponding Payment Milestone (including, for this purpose, all of the documentation that must be furnished by the Contractor to the Owner at any time, pursuant to the provisions of Annex 2).
- (2) Within fifteen (15) Business Days following receipt of the above-mentioned notice, the Owner and the Technical Advisor shall confirm the achievement of the corresponding Payment Milestone. Within such period, the Owner and the Technical Advisor shall communicate in writing to the Contractor: **(i)** their agreement that the corresponding Payment Milestone has been achieved, in which case the Owner and the Technical Advisor shall provide documentary confirmation by approving the corresponding invoice, or **(ii)** that the Payment Milestone has not been fully achieved, in which case the Owner and/or the Technical Advisor must specify in writing to the Contractor a detailed and reasoned explanation of the work pending performance in order for the Payment Milestone to be deemed to have been achieved. In the event that the Owner and/or the Technical Advisor fail to respond to the Contractor within the above-mentioned period of fifteen (15) Business Days, due solely to the failure of the Contractor to provide all documentation required to verify achievement of the Payment Milestone, the Owner and the Technical Advisor agree to request the same within the above period of fifteen (15) Business Days. The Owner and the Technical Advisor will be allotted another ten (10) Business Days to issue their response, counting from the date of receipt of all requested documentation.
- (3) If the Owner and/or the Technical Advisor do not agree that a Payment Milestone has been achieved, the Owner shall be entitled to return the corresponding invoice until the Contractor has completed the work in accordance with the provisions of this Contract. However, if the Parties agree that the disagreement involves only part of the work included in the Payment Milestone, the Owner shall pay the invoice amounts corresponding to the work not affected by the dispute, with the rest remaining subject to full performance and delivery by the Contractor in accordance with the terms of this Contract.
- (4) If, following the period referred to in subsection (2) above, the Owner and/or the Technical Advisor have not responded, the Contractor may send a demand notice to the Owner and the Technical Advisor communicating such fact and allowing an additional period of five (5) Business Days for confirmation of their agreement or disagreement as to the achievement of the respective Payment Milestone. If, upon expiration of such period, the Owner and/or the Technical Advisor still have not responded, achievement of the Payment Milestone shall be deemed accepted by the Owner and the Technical Advisor.

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- (5) Under no circumstances shall the Owner’s or the Technical Advisor’s agreement to a Payment Milestone imply acceptance of the Work associated therewith, which acceptance shall in any event remain conditioned upon passing the Performance Tests and executing the respective Provisional Acceptance Certificate and, ultimately, the Final Acceptance Certificate.
- (6) Payments shall be made by the Owner to the Contractor via bank transfer to the bank account designated by the Contractor within *** Business Days following the date on which the Owner accepted the corresponding Payment Milestone (or on the date on which the Payment Milestone was deemed accepted by the Owner, in accordance with subsection (4) above). On an exceptional basis, the payment corresponding to the first Payment Milestone shall be paid by the Owner on the Condition Satisfaction Date (with respect to such payment, approval of a Payment Milestone by the Contractor and the Owner pursuant to the above provisions is not required) .

5. IMPLEMENTATION SCHEDULE. TESTS AND PROVISIONAL ACCEPTANCE

5.1 Implementation Schedule. Changes in the Deadline

- (1) The Contractor hereby undertakes to perform the Work in accordance with the Implementation Schedule attached hereto as Annex 3, such that the Solar Park shall have all technical attributes required for issuance of the Final Acceptance Certificate (and the same has been requested in accordance with Clause 2.4) no later than the Delivery Deadline.
- (2) The dates for performance specified in the Implementation Schedule and, in particular, the Delivery Deadline, are fixed and final, and may not be postponed, and the performance deadlines may not be extended, except under the following circumstances:
 - (i) due to agreed-upon changes in accordance with the provisions of Clause 2.4, provided that such changes include an extension of the deadlines;
 - (ii) due to a breach by the Owner giving rise to a delay in the Work (including, specifically, delays in procuring authorizations and licenses for which it is responsible), provided that such breaches are not attributable to actions, omissions or breaches by the Contractor;
 - (iii) suspension of the Work in accordance with the provisions of Clause 13, except in the event of suspensions attributable to the Contractor; or

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(iv) the occurrence of an event of *Force Majeure* that reasonably justifies an extension of the deadlines established in the Implementation Schedule.

- (3) The Contractor must inform the Owner of the alleged facts or causes, in writing and within a maximum period of ten (10) Business Days after the Contractor becomes aware thereof, and the communication must be accompanied by all available information and data on such date that substantiate such facts and the consequences thereof on the Work, the extension (if such extension can be determined) proposed by the Contractor, and a detailed explanation of the measures adopted to mitigate the consequences thereof.

The Owner may request any additional information that it deems reasonably necessary to analyze the request and shall make a decision thereon as soon as possible, but in any event no later than fifteen (15) days after receipt of such communication from the Contractor or receipt of the documentation required to evaluate the circumstances, if later. If the Owner accepts the extension proposed by the Contractor, the Parties shall issue a Change Order confirming the changes to the Implementation Schedule.

5.2 Performance Tests and Provisional Acceptance

- (1) Upon completion of the construction of a group of at least ten (10) Solar Facilities, or of the Solar Park, the Contractor shall notify the Owner so that, within a maximum period of seven (7) Business Days, the Performance Tests or the Overall Test may be commenced. All Tests shall be conducted in accordance with the Test procedures and protocols attached hereto as **Annex 4**. The Contractor agrees that the Performance Tests and the procedures set forth in this Clause shall begin only when at least ten (10) Solar Facilities are ready for provisional acceptance.
- (2) Once the Owner and the Technical Advisor have verified that the Performance Tests (or, if applicable, the Overall Test) have been passed in accordance with the standards set forth in this Contract and that the Owner has received all documentation set forth in the Scope of Work, the Contractor and the Owner shall execute the corresponding Provisional Acceptance Certificate for the Solar Facilities delivered or the Provisional Acceptance Certificate for the Solar Park, as applicable, provided that the following conditions have been met:
- a) The Work corresponding to the applicable Solar Facilities, or, if applicable, the Solar Park, has been satisfactorily completed.

However, if the Performance Tests or the Overall Test have been passed and the remaining conditions specified in this Clause have been met with certain punch list items still pending, the Owner shall sign the corresponding Provisional Acceptance Certificate, acknowledging, in an attached document, the existence of the punch list items and setting a period of thirty (30) Business Days for completion thereof, or another longer period of time agreed by the Parties. If such punch list items have not been completed by the Contractor at the conclusion of the specified time period, the Owner may, at its discretion, (i) demand the completion thereof, or (ii) perform such work itself or through third parties, deducting the direct costs of such punch list items from what is owed to the Contractor, or enforce of the bonds delivered pursuant to this Contract.

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The term “punch list items” shall be understood to refer to those tasks pending execution by the Contractor for which the work pertaining to such Work has been completed within the time periods specified in this Contract that do not affect the operation, production or output of the Solar Facilities or the Electrical Infrastructure.

- b) All of the documentation that the Contractor must submit in accordance with the provisions of Annex 2 has been submitted to the Owner;
 - c) The spare parts specified in Clause 6.3 have been made available to the Owner;
 - d) With respect to the Solar Park Provisional Acceptance Certificate, the Contractor has delivered to the Owner the Guarantee Bond in the amount specified in Clause 8.5; and
- (3) The deadlines granted to the Contractor for completion of pending punch list items upon execution of a Provisional Acceptance Certificate shall not be considered an extension of the deadlines set forth in this Contract, and the Contractor shall indemnify the Owner for any damages that the Owner may incur as a result thereof pursuant to Clause 5.2(a) above.
- (4) In the event that the Owner does not execute the Provisional Acceptance Certificates for the respective Solar Facilities (or, if applicable, the Solar Park) within seven (7) Business Days of verifying compliance with the stipulated requirements, the Contractor may request in writing that the Owner execute the respective Certificate within an additional period of five (5) Business Days. If the Owner has not executed the new Provisional Acceptance Certificates for the Solar Facilities (or, if applicable, the Solar Park) within said period, the conditions required in this clause for execution of the corresponding Certificate have been satisfied, it shall be understood that provisional acceptance has been achieved, except to the extent discrepancies exist as to the performance of the conditions required by the same, in which event the Parties shall submit the matter to arbitration in accordance with the provisions of Clause 20 (2).
- (5) Within thirty (30) days following the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must: (i) remove from the Site any material used in the construction, as well as any equipment, machinery, tools, vehicles and temporary structures that are not necessary during the Guarantee Period; (ii) clean the Site and remove any debris or waste; and (iii) deliver the “As Built” Plans for the Solar Park.

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6. OTHER OBLIGATIONS OF THE CONTRACTOR

6.1 Prevention of Occupational Risks

- (1) The Contractor shall be obligated, in compliance with current legislation, to perform the works under this Contract in such a way as to ensure the safety of workers, and to apply the preventive activity principles set forth in Law 31/1995 and its implementing regulations. Accordingly, the Contractor shall be responsible for designing the construction process in accordance with the provisions of Royal Decree No. 1627/1997, which establish minimum safety and health provisions for construction work, and in its the other implementing or supplemental regulations, such that the safety of the activities that are performed simultaneously or consecutively is ensured, and the safety of third parties present in the vicinity of the work site is also ensured.
- (2) In particular, as part of the scope of this Contract, the Owner has prepared a Safety and Health Study, and furthermore, in compliance with the provisions of Royal Decree No. 1627/1997, the Contractor must prepare a Workplace Safety and Health Plan, both specifically for the work provided for within the scope of this Contract. The Contractor hereby represents that they contain, or will contain, all requirements of such Royal Decree and its implementing rules and regulations (including the provisions of the autonomous communities that apply, if any).
- (3) Furthermore, the Owner (at the request of the Contractor) shall appoint a safety and health coordinator, who shall have the obligations set forth in Royal Decree 1627/1997, and who shall be responsible for ensuring that all of personnel of the Contractor, the Subcontractors and of the suppliers of equipment or materials under this Contract comply with the safety requirements established in current legislation. Both the Owner and the Contractor shall be obligated to respect and comply with their respective obligations, as imposed by Royal Decree 1627/1997 and other applicable rules and regulations.
- (4) The Owner reserves the right to evaluate security during the construction period. This does not imply that Owner has assumed responsibility with respect to security measures taken or the preparation of documentation or the content of such documentation referred to in this Clause, without prejudice to the obligations and responsibilities under law that attach as a result of Owner's capacity as a developer. To this effect, the Contractor shall provide to the Owner all documentation that Owner may reasonably require in order to confirm the performance of the obligations set forth in this Clause.
- (5) For clarification purposes, in no event shall the Contract Price be increased if, as a result of a security check, legal review or technical risk review, the Contractor is required to take additional measures designed to guarantee compliance with applicable rules and regulations for the prevention of occupational risks.

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6.2 Obligation to Provide Access to the Site

The Contractor hereby undertakes to provide to the Owner access to the workshops, warehouses and sites where the Contractor or Subcontractors are performing work, tests or trials; manufacturing equipment; or storing materials for the construction, assembly and Start-up of the Solar Park, provided that the Owner has so requested in writing reasonably in advance and that the visit causes the least possible interruption of the performance of the work by the Contractor, and further provided that the Owner agrees to honor all reasonably necessary confidentiality measures and to respect security measures in force at the Site. The Contractor also undertakes to ensure that the Subcontractors grant access to the Owner under the terms of this subsection, for which purpose the Contractor shall include in the contracts to be entered into with the Subcontractors an obligation imposed upon them consistent with the provisions of this subsection.

6.3 Minimum Stock and Supply of Spare Parts

At the time of execution of the Solar Park Provisional Acceptance Certificate, The Contractor shall maintain a minimum stock of spare parts in accordance with the provisions of Annex 5. Such minimum stock shall be maintained at all times until the execution of the Final Acceptance Certificate, for which purpose the Contractor undertakes to replace any material or equipment used during such period as promptly as reasonably possible.

Further, Contractor shall be responsible for providing, upon the Owner's request, spare parts (in particular, modules, inverters and trackers, identical or similar to those covered by this Contract, in accordance with the terms of Annex 5) necessary for the proper operation and maintenance of the Solar Park in accordance with the terms of Clause 8.3.2(8) below.

6.4 Quality Control

The Contractor must perform a quality control inspection of the modules, using standards for acceptance and rejection and testing and measurement protocols that are acceptable to the Technical Advisor. For these purposes, the Contractor must inform the Technical Advisor of the quality control inspections that it is going to use in the performance of this Agreement, and detail the respective acceptance and rejection standards and testing and measurement protocols, such that the Technical Advisor can approve the same prior to the date on which such modules are expected to be received under this Contract.

Once the Technical Advisor has verified the quality control inspection procedures, the Contractor shall follow such quality control inspection procedures for all modules received under this Contract, except with respect to those which are subject to another quality control inspection that has been expressly approved by the Technical Advisor in writing.

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6.5 Regulatory Compliance

- (1) The Contractor undertakes to observe and comply with the regulations applicable to the performance of the Work, subject to the provisions of subsection (3) below. In particular, the Contractor must ensure compliance with regulations regarding classified activities, safety, health, and environmental protection. In particular, the Contractor shall be the only responsible party for compliance with applicable law and regulations with respect to (i) ***, and (ii) environmental protection during the period of manufacture, construction, erection and Tests until the Solar Park Provisional Acceptance Certificate has been executed.
- (2) The Contractor represents that it is current in the payment of wages and Social Security contributions for the professionals hired by the Contractor to perform the services covered by this Contract. Accordingly, the Contractor agrees to show to the Owner all documents that the Owner may reasonably request evidencing compliance with wage, tax and Social Security obligations (including, without limitation, certificates of good standing and compliance with tax obligations and the TC1 and TC2 Social Security dues bulletins).
- (3) In the event of any change in the applicable rules and regulations after the date on which this Contract is signed, the Parties shall proceed in accordance with the provisions of Clause 2.4(4) above. In the event that either Party does not sign the applicable change document, the Contractor shall continue to perform the work in compliance with the rules and regulations previously in force, and shall not assume any responsibility for any breach of the applicable new rules and regulations.

6.6 Permits and Authorizations

- (1) ***. Further, both parties agree to follow the joint application procedure provided for in the last paragraph of subsection 1 of Section 12 of RD 661 and subsection 1 of Section 11 of Decree 299/2003, of November 4, of Castilla-La Mancha, such that the applications for the certificate relating to start-up and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be made jointly. The Parties recognize that making such joint application is an essential element for both Parties. Such application shall be submitted by the Contractor before the Delivery Deadline, although in such submission **(a)** it shall be the responsibility of the Contractor to provide all information and documentation necessary to apply for the start-up certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, and **(b)** it shall be the responsibility of the Owner to provide all information and documentation necessary to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power included within the Special Regimen, in accordance with the terms of Section 12 of RD 661. Once presented, the handling of the applications for the start-up certificate and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be the responsibility of the Owner, without prejudice to the Contractor's obligation to cooperate with the Owner in all respects in accordance with the terms of Clause 6.11.

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(2) For clarification purposes:

- (i) if, due to causes attributable to the Contractor, the application for the Final Start-up Certificate is not presented in accordance with subsection (1) above with respect to one or more Solar Facilities or to the Solar Park on or before the Delivery Deadline, and/or
- (ii) prior to September 29, 2008, the Owner has not have obtained the Final Start-up Certificate as a result of design defects, defective or inadequate equipment or performance of the Work or of defects, imprecision or omissions in the documentation or in the technical information delivered by the Contractor,

the Owner shall have the right to terminate the Contract in accordance with the terms of Clause 14.1. Notwithstanding the foregoing, the Owner may not terminate the Contract and the Contractor shall not be held responsible for the consequences occurring as a result of the failure to obtain the Final Start-up Certificate, if this failure was due to (i) the Owner's failure to deliver, or incomplete delivery, of the documentation which Owner was required to furnish in connection with the application for the Final Start-up Certificate (although the Contractor recognizes that the Owner shall not be responsible for failure to provide documentation required by Section 12 of RD 661 when such documentation could not be obtained as a result of the failures, imprecision or omissions contemplated in subsection (ii) above), or (ii) the failure to request, late request or failure to obtain such permits and authorizations that are not the responsibility of the Contractor pursuant to this Contract; or (iii) any other circumstance not attributable to the Contractor, such as delays by the respective administrative entity.

The Owner agrees to cooperate with the Contractor in all respects needed for purposes of the application or the procurement of ***. Further, the Owner agrees to inform the Contractor as soon as possible of any communication, request or requirement received from a competent administrative authority relating to the application for approval of the Final Start-up Certificate.

In any case, even in the event that the application for the Final Start-up Certificate with respect to all of the Solar Facilities and the Electrical Infrastructure has not been presented prior to the Delivery Deadline and, without prejudice to the foregoing, both Parties agree to use their best efforts and to provide all cooperation necessary to obtain the Final Start-up Certificate prior to September 29, 2008.

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6.7 Training of the Owner’s Personnel

The Contractor must adequately and sufficiently train the Owner’s personnel to efficiently operate the Solar Park in all respects. Such training must be provided by the Contractor during the four week period prior to the issuance of the Provisional Acceptance Certificate for the Solar Park and shall have a maximum duration of five (5) Business Days. The personnel designated by the Owner to receive such training shall not exceed five (5) individuals.

6.8 Designation of Project Director

- (1) The Contractor shall name a Project Director with an officially recognized technical degree and relevant industry experience with similar projects. The appointment of the Project Director must be submitted to the Owner for approval. The Owner may not reject a proposed candidate without just cause.
- (2) The Project Director shall be responsible for overseeing proper performance of the Work and for directing, managing, and supervising all of the activities necessary for the implementation of the services agreed to by the Contractor in accordance with the terms and time periods specified in this Contract. Further, the Project Director shall be the principle contact between the Contractor and the Owner during the term of this Contract.
- (3) Without prejudice to the foregoing subsection, in accordance with the terms of this Contract and applicable law, the Contractor shall be responsible for the actions of the Project Director and any and all consequences arising from such actions.

6.9 Taxes and Import Duties

The Contractor agrees to pay all taxes, including all expenses, interest and surcharges relating thereto, applicable to the supply, manufacture, transportation, services, sales and other services for which the Contractor is responsible under this Contract, except with respect to those whose payment is expressly attributable to the Owner.

6.10 Intellectual and Industrial Property Rights

All of the drawings and designs that the Owner has prepared or supplied to the Contractor, and all of the patents, copyrights, design rights and other intellectual and industrial property rights thereto shall be the property of the Owner.

The Contractor, in turn, grants to the Owner, as part of the Contract Price and at no additional cost, an irrevocable license, not transferable to third parties (except in conjunction with all of the rights and obligations of the Owner under this Contract), and free of any royalties, to use in the Solar Park (and therefore, in no other project) the creations, plans, drawings, specifications, documents, procedures, methods, products, inventions prepared or developed by the Contractor under this Contract, in all cases, subject to any restrictions imposed on such intellectual or industrial rights by third parties. The Contractor represents and warrants to the Owner that the same are owned by the Contractor or that the Contractor has sufficient legal rights to use the same for such purpose. Should any claim or action be brought by a third party alleging an infringement of any intellectual or industrial property right granted by the Contractor to the Owner hereunder, the Contractor shall indemnify the Owner for all liabilities and damages (including costs and expenses) that may arise as a consequence of such infringement of third parties' rights, claim or actions arising there from.

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6.11 Cooperation

The Contractor undertakes to provide to the Owner all of the cooperation that the latter may reasonably request in connection with the implementation of the project for the construction of the Solar Park and compliance with the Owner’s obligations as specified in this Contract, and to submit to the Owner all of the documentation or information that the Owner may reasonably request in connection with the Work and that is available to the Contractor.

7. OBLIGATIONS OF THE OWNER

The Owner undertakes to comply with the obligations set forth in this Contract, those resulting from good faith, and those resulting from the applicable laws and regulations, including, in particular, the following:

- (i) To comply with its payment obligations under this Contract;
- (ii) To provide to the Contractor, its Subcontractors and employees, during the effective term of this Contract, access to the Site to fulfill their contractual obligations, including appropriate access to highways and access roads to perform the Work. For these effects, the Owner will execute, at its cost and expense, agreements with landowners that procure all necessary easements or land use rights;
- (iii) Subject and without prejudice to the obligations of the Contractor under Clauses 6.6 and 2.2 of his Contract, the Owner shall negotiate and obtain, at its own cost and expense, the permits required for Final Start-Up and operation of the Solar Park, including the Final Start-up Certificate. Specifically, with respect to the joint application procedure referred to in Clause 6.6 of this Contract, the Owner agrees to provide all documentation and information required to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power within the Special Regime, in accordance with the terms of Section 12 of RD 661, upon the terms of such Clause 6.6;

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- (iv) To cooperate with the Contractor, to the extent necessary, in order to avoid any impact on the Implementation Schedule or in the performance of the works by the Contractor;
- (v) To appoint a project coordinator to act on behalf of the Owner in the performance of matters associated with the Contract and who must possess sufficient powers to represent the Owner;
- (vi) The Owner undertakes to provide to the Contractor all of the cooperation that the latter may reasonably request in connection with the implementation of the Work and compliance with the Contractor's obligations under this Contract. The Owner shall submit to the Contractor all documentation or information that the Contractor may reasonably request in connection with the Solar Park and that is available to the Owner.

8. GUARANTEES

8.1 Solar Module Degradation Guarantee

The Contractor guarantees the durability of the solar modules during the Guarantee Period, in accordance with the schedule of guarantees made by the manufacturer of the modules set forth on **Annex 6** of this Contract. Upon expiration of the Guarantee Period, the Contractor undertakes to assign to the Owner its rights under the module supplier guarantees through the remainder of the 25-year useful life of the modules.

8.2 Solar Module Capacity Guarantee

- (1) The Contractor guarantees that the total peak capacity of the Solar Park is equal to or higher than the contracted capacity of 5.925 kWp (which will be confirmed by the manufacturer's photoflash certificates). In addition, all certificates for each module shall be within the rated peak capacity margin of ***% and all aggregate certificates for each of the Solar Facilities shall be within the rated peak capacity margin of ***% (although the Solar Park can only have a margin with respect to the above referenced peak capacity of ***%, in which case the Contract Price shall be reduced proportionately in accordance with the final reduced peak capacity and the corresponding amount of the final Payment Milestone contemplated in Clause 4.2 reduced accordingly).
- (2) In the event that (i) the total sum of the certificates is less than the contracted 5.925 kWp (unless it is within the permitted margin for the Solar Park pursuant to subsection (1) above), or (ii) the certificates do not comply with the above referenced margins, the Contractor shall replace, at its expense, solar modules as needed to increase the total peak capacity of the Solar Park to the minimum permitted under subsection (1) above, or those modules whose individual capacity is inferior to the aforementioned tolerance.

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(3) If, as of the date set forth in Clause 14.1(1)(i), the sum of the manufacturer's photoflash certificates demonstrate the peak capacity of the Solar Park is less than the referenced total peak capacity (unless it is within the permitted margin for the Solar Park set forth in subsection (1) above), the Owner may terminate the Contract for Contractor breach in accordance with the terms of Clause 14.1, and pay the indemnity set forth in such Clause.

(4) The Owner reserves the right to perform capacity tests on the solar module samples that have been provided at the CIEMAT, CENER or IFE-Fraunhofer laboratories, in accordance with the applicable IEC (International Electrotechnical Commission) standard in order to confirm their compliance with the capacity specified by the manufacturer and guaranteed by the Contractor. The results thereof shall be binding on the Parties. In the event that such results confirm that the capacity of the modules does not fall within the tolerance guaranteed by the Contractor, the Contractor shall bear the costs of such tests and shall immediately replace the entire batch of modules corresponding to the tested samples, except to the extent that the modules failing the capacity test can be identified, in which case, only those modules shall be replaced.

8.3 Design, Assembly and Performance Guarantee. Materials Quality Guarantee.

8.3.1 Design, Assembly and Performance Guarantee

- (1) The Contractor guarantees during the Guarantee Period that the procedures followed for the design of the facilities and for the performance of the work are of the required quality and conform to the specifications contained in this Contract.
- (2) The Contractor is obliged to repair or, if necessary in its opinion, to supply totally new, and reinstall free of charge to the Owner, those parts or components of the facilities included in the Scope of Work that fail during the Guarantee Period due to design, assembly or performance defects.
- (3) The provisions of subsections 8.3(2) to (8) below with respect to the Materials Quality Guarantee shall apply, *mutatis mutandis*, to the guarantee provided under this subsection.

8.3.2 Materials Quality Guarantee

- (1) The Contractor guarantees that all the materials and components used in the manufacture, assembly and Start-up of the Solar Park are of the required quality and conform to the specifications for the equipment and the technical documents contained in the Annexes to this Contract. The Contractor further guarantees a minimum stock of spare parts to the Owner in accordance with the terms of Clause 6.3 and **Annex 5** of this Contract.

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- (2) The materials quality guarantee will enter into force on the date of issuance of the relevant Solar Park Provisional Acceptance Certificate and shall remain in force until the Solar Park Final Acceptance Certificate is signed. If the Solar Park or a portion thereof, cannot be commercially operated during the Guarantee Period for reasons attributable to the Contractor, the Guarantee Period shall be extended (only as regards the affected facilities) for a period equal to the period during which the corresponding facilities are not operating. For this purpose, the parties shall record in writing the periods during which operation is suspended and the corresponding extensions of the guarantee.
- (3) During the Guarantee Period, the Contractor is required, in its discretion:
- a) To replace any material and equipment that do not comply with what was agreed upon or required pursuant to this Contract, or that are inadequate or of a deficient quality; and
 - b) To adjust, repair or replace any equipment exhibiting any design, materials, manufacturing, operation, or performance defect. If a Systemic Defect exists with respect to any equipment or components supplied under this Contract, the Contractor shall carry out, at its expense, the redesign and/or modifications necessary to cure such problem in accordance with the Owner's requirements.
- (4) The adjustments, repairs or replacements must be performed within the shortest period that is reasonably possible (and, in any event, no later than fifteen (15) days from the time the defect is detected), in a manner that is least prejudicial to the Owner and taking all action needed to cause the least possible harm to the operation of the overall facilities of the Solar Park.

If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within the period established in this Clause, the Owner shall so inform the Contractor and shall grant the Contractor a period of five (5) days to complete any such adjustments, repairs or replacements. If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within such period, the Owner may do so itself or through third parties at the Contractor's expense, which action shall not entail forfeiture of the quality guarantee provided by the Contractor under this Clause. The Contractor shall be also required to pay to the Owner the direct expenses paid to the above-mentioned third parties for such purpose.

- (5) Repairs, adjustments, alterations, replacements or maintenance that may be necessary because of the normal wear and tear of on the facilities provided under this Contract or caused by misuse or negligent use of the equipment by the Owner or by third parties (other than the Contractor or its Subcontractors) or because of the use of the equipment supplied to Owner in a manner that does not conform to the technical specifications, are all excluded from the scope of the guarantee. For clarification purposes, it shall be understood that the Owner (or third parties acting on its behalf) has used equipment in the intended manner when such use conforms to the operation and maintenance manuals delivered to the Owner by the Contractor pursuant to this Contract. This guarantee may not be enforced in the event of the inaccessibility of the Site, provided that the Contractor has notified the Owner of the existence of such inaccessibility, or, in the events of *Force Majeure* (for such time as exist the circumstances preventing the provision thereof).

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- (6) The obligations arising from the guarantee set forth in this section shall be fulfilled by the Contractor at its sole cost and expense and free of any charges or expenditures by the Owner, and the Contractor shall bear the expenses arising as a result thereof for the Owner, such as demolition and disassembly, construction, carting, insurance and packaging for returned materials and their replacement, assembly and supervision, taxes and the like.
- (7) All repaired or replaced material shall carry a new guarantee period of the following duration from the date of repair or replacement:
- (i) if repaired, *** (*** months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer; and
 - (ii) if replaced, *** (*** months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer.
- (8) The Contractor guarantees the availability of spare parts for the modules, inverters and solar trackers during the Guarantee Period and during the entire useful life of each Solar Facility, in the latter case provided the Maintenance Agreement remains in force. The Contractor shall provide such guarantee on the following terms:
- (i) With respect to the module, inverter or solar tracker spare parts that are manufactured by the Contractor or by companies of its group (currently headed by Sunpower Corporation), the Contractor shall ensure that such spare parts continue to be manufactured or, in the event that the Contractor or the companies of its group do not manufacture spare parts identical to those already installed, that spare parts for modules, inverters or solar trackers of similar characteristics (and, in the case of modules, of equal or greater capacity) are available, provided they do not entail a reduction in the guaranteed performance of the Solar Park.
 - (ii) With respect to the module, inverter or solar tracker spare parts that are not manufactured by the Contractor or by companies of its group, the Contractor shall use reasonable efforts to (a) cause the respective suppliers to continue to manufacture such spare parts or other spare parts with similar characteristics (and, in the case of modules, of equal or greater capacity), provided they do not entail a reduction of the guaranteed performance of the Solar Park, or (b) obtain such spare parts with similar characteristics from other vendors with technical capabilities that are at least similar to the original ones. Should the Contractor become aware that an original vendor intends to stop manufacturing such spare parts, it shall so notify the Owner so that the Owner may order, through the Contractor, the spare parts it deems appropriate, provided they are available on the market.

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Such spare parts will be supplied at the Owner's request at the market prices prevailing from time to time (which shall be paid by the Owner) and within such reasonable period as the Parties agree, taking into account the characteristics of the requested spare part.

8.4 Solar Park Production Guarantee.

- (1) The Contractor guarantees to the Owner that the aggregate electric output of the Solar Park during each of the *** periods included in the Production Guarantee Period shall reach the PR guaranteed pursuant to Annex 10 (the "Guaranteed PR"), for each determined irradiance and temperature condition, and that in no event shall it fall beneath the PR minimum set forth in such Annex (the "Minimum PR").

In the event of a partial termination of the Contract in accordance with the provisions of Clause 14.1, the Guaranteed PR and the Minimum PR shall be applied to the electric output of the Solar Facilities that were not rejected by the Owner.

- (2) A Production Test shall be performed at the end of each *** period dividing the Production Guarantee Period in order to confirm the electrical output. For these purposes, within the forty-five (45) days prior to the termination of the *** period following the commencement date of the Production Guarantee Period, and within the forty-five (45) days prior to the termination of the Production Guarantee Period, the Contractor shall notify the Owner of such circumstance so that the Parties may agree upon a date to perform the Production Tests for the corresponding *** period (which, in no event may be later than the date which is fifteen (15) Business Days following the date of termination of the period which is *** following the commencement date of the Production Guarantee Period or the termination date of the Production Guarantee Period, as applicable). The following shall apply to the results of the Production Tests for the Solar Park:

- (a) If the actual measured output of the Solar Park is less than the Guaranteed PR for the corresponding *** period (as such term is defined in Annex 10) but is greater than the Minimum PR for such period, the Contractor shall pay to the Owner the penalties set forth in Annex 10, up to a maximum of ***% of the Contract Price.

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- (b) If the actual measured output of the Solar Park is less than the Minimum PR for the corresponding *** period, the Owner may elect to: **(i)** return the entire Solar Park to the Contractor (or the part thereof that was not rejected in the event of a partial termination in accordance with the terms of Clause 14.1), the Contractor then being obligated to return the entire Contract Price paid by the Owner pursuant to this Contract and to indemnify the Owner for damages pursuant to Clause 14.1(5), or **(ii)** return the Solar Facilities causing the failure to achieve the Minimum PR to the Contractor, the Contractor then being obligated to return the portion of the Contract Price corresponding to such Solar Facilities and to indemnify the Owner for damages pursuant to Clause 14.1(5) that correspond to the returned Solar Facilities.
- (3) If the Guaranteed PR is reached in the Production Tests for each *** period, or if the Contractor shall have paid the required penalties for achieving an output between the Minimum PR and the Guaranteed PR, the Parties shall execute a certificate of agreement. The execution of such certificate corresponding to the second *** period for the Guaranteed Production Period shall grant the Contractor the right to require the Owner to return the Guarantee Bond in force at the time and replace the same with a new Guarantee Bond in an amount equal to ***% of the Contract Price. The same provisions of this subsection shall also be applied to the Solar Facilities, if any, that the Owner did not return in accordance with subsection 8.4(2)(b).
- (4) The Contractor shall not be responsible for breach of the guarantees in the event that such failure was caused by the circumstances described in Clause 8.3.2(5) above or by excessive failures of the grid coupled with the disconnection of the inverters for exceeding the conditions detailed in their technical specifications.

Further, in the event that a Systemic Defect arises during a Production Guarantee Period, the data from the Solar Park as a whole shall not be considered for purposes of the Production Guarantee during the time the Contractor is replacing the equipment affected by such Systemic Defect, up to a maximum of three (3) months. Thus, in the event that the Contractor takes more than three (3) months to replace the Solar Park equipment affected by a Systemic Defect, only that three (3) month period shall remain in the Production Guarantee Period. For this purpose, the parties shall record the suspension periods and corresponding extensions of the Production Guarantee in writing.

For clarification purposes, the appearance of a Systemic Defect shall obligate the Contractor to replace all equipment of the same model and manufacturer, regardless of whether they have manifested such defect at the time of their replacement.

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- 8.5Bonds
- (1)

On the Condition Satisfaction Date, the Contractor shall deliver to the Owner the Performance Bond, as per the form attached hereto as Annex 7, in an amount equivalent to ***% of the Contract Price. The Performance Bond shall guarantee the performance by the Contractor of any payment obligation for which the Contractor is responsible from the commencement of the Work until the date of execution of the Solar Park Provisional Acceptance Certificate (for any reason, including but not limited to the return of the amounts paid by the Owner, under this Contract, penalties or compensation for damages and losses, including the performance by the Contractor of its obligations during the portion of the Guarantee Period prior to the execution of the Solar Park Provisional Acceptance Certificate).
- (2)

As a requirement for the execution of the Solar Park Provisional Acceptance Certificate, the Contractor shall deliver to the Owner the Guarantee Bond (in exchange for the return of the Performance Bond by the Owner), in an amount equal to ***% of the Contract Price. The Guarantee Bond shall conform to the form attached hereto as Annex 7 and shall guarantee the Contractor’s compliance with its obligations during the Guarantee Period (beginning from the execution of the Solar Park Provisional Acceptance Certificate). However, once the Performance Tests corresponding to the second *** period of the Production Guarantee Period have been performed and the written agreement referred to in Clause 8.4(3) has been executed, the Contractor shall have the right to replace the Guarantee Bond delivered to the Owner with a new Guarantee Bond in an amount equal to ***% of the Contract Price.
- (3)

The Performance Bond and the Guarantee Bond shall be issued by a financial institution with a minimum “A” rating by Standard & Poor’s Corporation or the equivalent from Moody’s Investors Services Inc., and shall be enforceable, in whole or in part, on demand by the Owner, in the event of the Contractor’s breach of its obligations under this Contract.
- (4)

The delivery of the bonds provided under this section shall in no way limit the Contractor's liability under this Contract, as the bonds only constitute a means to guarantee the performance of the obligations assumed by the Contractor.
- (5)

If the Contract Price is amended pursuant to Change Orders, the Contractor must update the amount of the Performance Bond. To such end, the Contractor must deliver to the Owner (within fifteen (15) Business Days following the execution of the corresponding Change Order), the bonds in the updated amount, in the form attached hereto as Annex 7.
- 9.FINAL ACCEPTANCE OF THE SOLAR PARK

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- (1) Within forty-five (45) days prior to the passage of *** from the date on which the Solar Park Final Start-Up Certificate has been obtained, the Contractor shall give notice thereof to the Owner in order for both Parties to agree upon a date to analyze the status and condition of the Solar Park (which shall not occur later than the Guarantee Period expiration date).
- (2) If such inspection does not reveal the presence of defects, the Parties shall proceed to execute the Final Acceptance Certificate, at which time the Owner shall return the Guarantee Bond to the Contractor.
- (3) If such inspection finds that defects are present that affect the Contractor's obligations during the Guarantee Period, the Parties shall sign a certificate specifying the defects, if any, that must be corrected within a period of forty-five (45) days of the date of execution of the corresponding certificate, or within such shorter period that the Parties may agree upon.

Once such defects have been corrected by the Contractor within the specified period, a new inspection shall be performed, and if the defects have been remedied, the Parties shall proceed to execute the Final Acceptance Certificate, and the Owner shall return the Guarantee Bond to the Contractor.

10. OWNERSHIP OF THE FACILITIES AND TRANSFER OF RISK

- (1) The Owner and the Contractor expressly agree that the actual transfer of ownership of the facilities and equipment covered by this Contract will be made, for all contractual purposes, when each of the same shall have been paid for in full by the Owner. With respect to the solar modules, module supports and trackers, ownership thereof will be transferred to the Owner upon payment of the respective invoice as provided in Clause 4, whereupon the Owner will become the owner of the solar modules, the module supports and the trackers included in such invoice.
- (2) Without prejudice to the foregoing, or to the Contractor's obligations during the Guarantee Period, the possession and the risk of loss of the same shall not be transferred to the Owner until the execution of the Solar Park Provisional Acceptance Certificate.
- (3) Until the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must repair or replace, at its own expense, any equipment, facility or portion of Work that is lost or damaged. Further, the Contractor must assume responsibility for the care and security of the Site and assume responsibility for any loss, theft or damage that may occur with respect to the Contractor's materials or machinery or the equipment delivered pursuant to this Contract.

11. INSURANCE

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- (1) At all times during which the Contractor continues performing work under this Contract, the Contractor, at its own cost and expense, shall take out and maintain in force the insurance described below with well-known and solvent insurance companies that are legally authorized to issue policies in Spain, on terms and conditions of coverage satisfactory to the Owner and the Insurance Advisor:
- a) Occupational Accidents or Social Security Insurance for all its own personnel or for the personnel of the Subcontractors as is legally required during the effective period of the Contract.
 - b) Mandatory Civil Liability Insurance and Voluntary Civil Liability Insurance for the Circulation of Vehicles and Machinery, pursuant to the limits and conditions mandated by the Legislation in force during the effective period of the Contract.
 - c) Civil Liability Insurance covering all activities of the Contractor and the Subcontractors necessary to complete the Work, with a limit of not less than €1,500,000 per occurrence.
 - d) Transportation Insurance covering the transportation of material and machinery to the Site, with a limit of not less than the aggregate value of the transported goods.
 - e) All-Risks Construction and Assembly Insurance, which will specifically include theft and vandalism at the Site, from the unloading of the material at the Site until the transfer of ownership of the Solar Park, including the testing period and covering a maintenance period of not less than 12 months, with an insured amount not less than the Contract Price.
 - f) Any other mandatory insurance.
- (2) The contracting of insurance provided in this clause shall in no event limit the liabilities of the Contractor under this Contract. Additionally, the amounts established as an insurance deductible in each of the insurance policies shall be borne by the Contractor, unless the loss is attributable to the Owner.
- (3) The Owner may require that the Contractor deliver documentation evidencing the contracting of the insurance set forth under this Clause to verify compliance therewith and/or for verification by the Insurance Advisor, and the Contractor undertakes to make such documentation available to the Owner as soon as possible.

12. FORCE MAJEURE

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- (1) Neither Party shall be deemed liable for the breach of any of its obligations to the extent that the performance of such obligations is delayed or becomes impossible as a consequence of *Force Majeure*.
- (2) For the purposes of this Contract, events of *Force Majeure* shall be deemed to be the events described in Article 1105 of the Civil Code, provided that they actually prevent compliance by the party invoking it from complying in whole or in part with its obligations under this Contract. The Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of *Force Majeure* for purposes of this Contract (without prejudice to the changes, if any, that the Parties may agree to in accordance with subsection (11) below and the consequences set forth therein). By way of example and not limitation, the Contractor may not invoke the following as an event of force majeure:
- (i) Meteorological conditions or phenomena that could have been reasonably foreseen by experienced contractors operating at the Site.
 - (ii) Delays or failures in obtaining materials or labor that are foreseeable or avoidable in advance.
 - (iii) Delays by any Subcontractor, unless such delays are based on any of the events specified in this clause.
 - (iv) Strikes or labor conflicts affecting the Contractor or the Subcontractors, unless they are national, sector-wide or local in scope.
- (3) The Party affected by *Force Majeure* shall give written notice to the other Party as soon as possible within a maximum period of forty-eight (48) hours from the day on which such Party became aware thereof, attaching to such notice all available documents evidencing the event that is deemed to amount to *Force Majeure*, the measures taken up to such point in time, and an estimation, if possible, of the expected duration thereof and its impact on the Work
- (4) The performance of the obligations affected by an event of *Force Majeure* shall be suspended for the duration of such event, the Parties not being entitled to damages as results of such events of *Force Majeure*.
- (5) If the Work is affected by the event of *Force Majeure* and the Contract is suspended for more than one hundred eighty (180) days, either of the Parties may seek termination of the Contract, with the consequences provided in Clause 14.3.
- (6) After cessation of the event of *Force Majeure*, the Parties shall agree upon the corresponding extension of deadlines (in all cases in light of the duration of the event of *Force Majeure* and the mobilization periods), or, if applicable, the measures that must be adopted to recover, in whole or in part, the time lost so as to preserve such dates, if possible. The contractual obligations not affected by *Force Majeure* must be met within the deadlines that were in force prior to the occurrence of the event of *Force Majeure*.

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- (7) In any event, upon cessation of the event of *Force Majeure*, the Parties shall take all reasonable measures within their power to resume performance of the obligations under the Contract under optimal conditions and with the least possible delay.
- (8) The expenses incurred as a consequence of the repair, replacement or adjustment of the items damaged by the events of *Force Majeure* shall be borne by the party bearing the risk of loss for such elements at the time of occurrence of the event of *Force Majeure*.
- (9) In the event that an event of *Force Majeure* prevents a Party from complying with a payment obligation required by the Contract, such payment obligation shall not be waived and the other Party may suspend performance of its obligations under the Contract. Such occurrence shall not give either Party a right to indemnification for damages, without prejudice to any interest for delay in payment that might apply.
- (10) The Party claiming the *Force Majeure* event shall immediately notify the other Party of its cessation. Within seven (7) calendar days following the cessation of the *Force Majeure* event, the Parties shall meet to agree and assess the effects that such situation caused. Such agreement shall be documented in a certificate signed by both Parties describing the changes to the contractual conditions.
- (11) In the event that archeological ruins are discovered at the Site, but the Work may be continued by reducing the size of the Solar Park, the number of Solar Facilities, or by implementing a reconfiguration of the technical configuration of the Solar Park, the Parties shall meet to agree on such changes and shall execute a certificate describing the changes to the contractual conditions. In any event, if the change entails a reduction in the capacity of the Solar Park, or in the number of Solar Facilities, thus requiring a reduction of the Contract Price, the Owner shall have the right to withhold from the remaining Payment Milestones payable after the change, the portion of the Contract Price previously paid by the Owner that corresponds to the Solar Facilities or the equipment affected by the reduction and which, consequently, were not delivered by the Contractor under this Contract.

13. SUSPENSION OF THE WORK

13.1 Suspension by the Owner

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- (1) The Owner may at any time give written notice to the Contractor ordering the immediate suspension of the Solar Park, in whole or in part, for any of the following reasons:
- a) If the Contractor is performing the Work in a defective or inappropriate manner, or not adhering to uses and practices customary for projects of this type or as established under this Contract, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - b) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with safety standards, avoiding damage to people and things, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - c) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with quality control requirements, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - d) If the Contractor fails to comply with the instructions issued by the Governmental Authorities for the execution of the Work, to the extent that this may affect the authorizations granted or requested or the successful achievement of the purpose of the Contract.
 - e) By unilateral decision of the Owner.
- (2) The order providing for the suspension of the Work shall specify in writing the portion thereof that is being suspended, the grounds for suspension, the effective date of suspension and the date provided for the resumption of the Work (if applicable).
- (3) In all the cases provided in subsection (1) above, except for the ones mentioned in subsection (e), the suspension shall last for all the time required and until the Contractor cures the circumstances that gave rise to the suspension of the Work. Additionally, in none of such cases shall the Contractor be entitled to any additional payment whatsoever or to the extension of the periods provided in the Implementation Schedule, except in the case mentioned in subsection (e), where the Contractor shall be entitled to an extension of the deadlines provided in the Implementation Schedule for a period at least equal to the suspension period and to be compensated for the costs resulting from the repair, replacement or adjustment of the items damaged during the suspension period and the costs arising from the suspension and resumption of the Work.
- (4) If the suspension lasts for a period in excess of one hundred and eighty (180) days, and the reasons are not attributable to the Owner, the Contractor shall reserve the right to terminate the Contract upon the terms of Clause 14.1.

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13.2 Suspension by the Contractor

- (1) The Contractor shall be entitled to temporarily suspend the Work as provided under this Contract, applicable law and in the event that the Owner incurs a delay in excess of thirty (30) days in the payments owing to the Contractor, as regards the expiration dates of the relevant invoices (except in the case of the works relating to a Payment Milestone disputed in accordance with Clause 4.3 (3)). In such event, the Owner shall pay to the Contractor its expenses arising from the suspension (including the costs resulting as a consequence of the repair, replacement or adaptation of the damaged elements during the suspension period and the costs arising from the suspension and resumption of the Work) and the Parties shall agree upon an extension of the deadlines for performance based on the effects of the suspension thereon.
- (2) If the suspension for a cause attributable to the Owner (including the one provided under subsection 13.1(1)(e) above) lasts for more than three (3) months or during several consecutive periods totaling more than three (3) months, the Contractor shall be entitled to terminate the Contract upon the terms of Clause 14.2.

13.3 Suspension by Judicial or Governmental Authority

- (1) In the event of suspension, interruption or stoppage of the Work, in whole or in part, ordered by any judicial or governmental authority, or by the Owner or Contractor following the instructions of any judicial or governmental authority, the financial and contractual consequences of the delay shall be borne by the party that is responsible for performance where the failure to perform or incorrect performance triggered the judicial or governmental action.
- (2) If such suspension, interruption or stoppage does not result from the actions or omissions of any of the Parties, the periods of the Implementation Schedule shall be extended for a period at least equal to the one during which the situation subsisted, and the Owner shall pay to the Contractor the duly verified costs incurred as a result of such interruption. The Contractor undertakes to act diligently to minimize such costs.
- (3) If the suspension ordered by any judicial or governmental order, or by the Owner or the Contractor following the instructions of any judicial or governmental authority, extends for more than six (6) months, either of the Parties will be entitled to terminate the Contract upon the terms of Clause 14.

14. TERMINATION

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14.1 Termination for Causes Attributable to the Contractor

- (1) The Owner may terminate the Contract in the cases authorized by the Law, in the instances provided for in this Contract, or upon the occurrence of any of the following events:
- a) The dissolution or merger (provided it involves a change in control) of the Contractor or a change in the control ***, or when a substantial portion of the assets of the Contractor *** is transferred to another company, provided that such circumstances seriously prejudice the Contractor's *** capacity to perform the obligations under this Contract;
 - b) The voluntary filing by the Contractor of a bankruptcy petition or the allowance of a bankruptcy petition by a third party against the Contractor (or any equivalent action in accordance with the insolvency legislation applicable to the Contractor), or in the case of clear financial difficulties that prevent the Contractor from normally complying with obligations arising under the Contract, unless its obligations are sufficiently guaranteed under this Contract. The occurrence of the same events as regards *** shall also be grounds for termination.
 - c) If the Contractor assigns or subcontracts the Contract, in whole or in part, without complying with the conditions set forth in this document.
 - d) If the Contractor fails to comply with its obligations involving the contracting and maintenance of the insurance provided under the Contract in a manner that might endanger coverage under the relevant policies.
 - e) If the Contractor has been assessed penalties for failure to achieve the Production Guarantee beyond the maximum limits, if applicable, provided under this Contract.
 - f) The Contractor has interrupted the Work or a substantial portion thereof or has abandoned the Solar Park for a period exceeding twenty (20) calendar days without the Owner's authorization, or in the case of interruptions for an aggregate duration of more than thirty (30) days within the same calendar year, provided that the interruptions do not arise from a suspension of the Work provided under Clause 13.2.
 - g) If the application for the Final Start-up Certificate has not been filed together with all required in accordance with the terms of Clause 6.6 on or prior to the Delivery Deadline due to causes attributable to the Contractor, although the Owner cannot effect termination for the reason set forth in this subsection with respect to those Solar Facilities or Electrical Infrastructure for which a Final Start-up Certificate would have been obtained prior to September 29, 2008.

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- h) If the Owner has not obtained the Final Start-up Certificate (with respect to one or more Solar Facilities and/or the Electrical Infrastructure) prior to ***, for the reasons set forth in Clause 6.6(2)(ii).
 - i) If the Provisional Acceptance Certificate for one or more Solar Facilities or the Electrical Infrastructure has not been issued prior to ***.
 - j) ***
 - k) ***
 - l) If there is any other material breach of the obligations assumed by the Contractor under this Contract.
 - m) Any other serious breach of a principal obligation of the Contractor that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
- (2) Upon the occurrence of any of the above events, the Owner may elect to terminate the Contract, in whole or in part, with respect to the Solar Facilities for which the Provisional Acceptance Certificate of a Facility has not been issued as of the date of notice of termination, or for which the Final Start-up Certificate has not been obtained in the case of subsections g) and h) above (hereinafter, the “**Affected Facilities**”), except to the extent that the number of Affected Facilities is less than 40% of the total Solar Facilities, in which case the Owner may only terminate the Contract with respect to such Affected Facilities.
- However, if the Affected Facilities represent less than 40% of the Solar Facilities, the Owner may elect to terminate the Contract with respect to the entire Solar Park if one of the termination events set forth in subsections a) or b) has occurred and the Owner reasonably believes that such circumstances pose a material prejudice or risk to the performance of the Contractor’s obligations under this Contract during the Guarantee Period. The foregoing shall not apply if the Contractor has provided equipment guarantees, satisfactory to the Owner, sufficient to ensure proper maintenance and replacement of the Solar Park during the Guarantee Period and the Contractor has assigned such guarantees to the Owner pursuant to the terms of this Contract.
- The above shall not prejudice the Owner’s option to return the Solar Park in its entirety upon the occurrence of the circumstance set forth in Clause 8.4(2)(b).
- (3) Upon the occurrence of any of the above events, the Owner shall give the Contractor a period of thirty (30) days to remedy the event, or any other longer period that may be agreed upon by the Parties. If within such period the Contractor fails to remedy such grounds for termination to the Owner’s satisfaction, the Contract shall be terminated (in whole or in part, as applicable). For clarification purposes, it is noted for the record that in no event will the remedy period provided herein be applicable to the circumstances provided in subsections (1)(b), (e), (f), (g) , (h) and (i) of this Clause.

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- (4) In the event of a termination of the Contract (in whole or in part) under this subsection, the following shall occur (without prejudice to the provisions of subsection (6)):
- (i) In the event of partial termination, only as to some Solar Facilities in the Solar Park, the Contractor shall be obligated to return to the Owner the portion of the Contract Price that it charged for the Affected Facilities and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of the property comprising such Solar Facilities.
 - (ii) In the event of complete termination, the Contractor shall be obligated to return the aggregate Contract Price charged by the Contractor, and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of all the property delivered to the Owner.
- (5) Upon the occurrence of either two events described in the preceding subsection, the Contractor shall be obligated to pay indemnification to the Owner for damages, including:
- (i) The Financial Costs associated with the Affected Facilities or the entire Solar Park, as applicable. **“Financial Costs”** shall be understood to mean all costs, expenses, fees (whether up-front, early termination or of any other type) and interest paid by the Owner in respect of the financing documents entered into by the Owner with the Financial Institutions, including cancellation or breakage fees for any interest rate swap agreements entered into by the Owner with the Financial Institutions.
- The Contractor acknowledges the validity of the amount, as determined by the Agent under the financing documents, to be provided in the settlement statement that will be delivered by the Agent to the Owner in which the factors used to calculate the Financing Costs with respect to the Solar Facility or Facilities or the Solar Park, as applicable, will be described.
- (ii) The costs, expenses and damages incurred by the Owner as a result of, or with respect to, the early termination or the breach by the Contractor, duly certified by the Owner, plus an amount equal to *** euros for each Affected Facility (i.e., *** euros in the event of total termination or the amount that corresponds to the Affected Facilities in the event of a partial termination), to cover permitting costs.

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Concurrently with the payments provided for in subsections 15.1(4) and 15.1(5), the Owner agrees to take all necessary actions which are in its control to assign to the Contractor, or its designee, ownership title (free of encumbrances and liens) to the permits and authorizations relating to the Affected Facilities (or the Solar Park in its entirety in the event of total termination), as well as corresponding usage rights (free of encumbrances and liens) to the part of the Site on which such Affected Facilities are located and the contractual rights in those contracts relating to the Solar Park with respect to the Affected Facilities. For purposes of this paragraph, it shall be understood that the Owner has assigned (free of encumbrances and liens) all permits and authorizations for the Affected Facilities or the Solar Park, as applicable, upon delivery to the Contractor of all documentation required by the Contractor (and which must be contributed by the grantor) to immediately request the approval by the competent administrative entity for the assignment of such permits and authorizations.

In the event that a special purpose entity holds title to such permits and authorizations and usage rights to the Site, the Owner agrees to transfer to the Contractor, free of encumbrances and liens, all shares or participations representing the entire share capital of such special purpose entity (provided that such entity only holds title to the Affected Facilities).

For clarification purposes, in no event shall the above-referenced obligation be construed as an obligation to achieve a specific result, and the Owner does not assume any responsibility in the event that the assignment of the permits and authorizations referred to in the previous paragraph cannot be completed as a result of the failure to receive approval (when necessary) for such assignment from the relevant government administration or entity or the Contractor's failure to comply with the requirements imposed on the Contractor by the holders of such permits or authorizations.

(6) Notwithstanding the provisions of subsections (4) and (5), if the Owner had the right to terminate the Contract, in whole or in part, as a result of the failure to achieve Start-up prior to September 29, 2008 for the reasons set forth in subsections 14.1(g) and 14.1(h) above, the Owner may not elect to return the Affected Facilities, if:

- (i) prior to September 29, 2008 the Contractor pays to the Owner an amount that is sufficient to (a) restore the Debt Service Coverage Ratio (as defined in the financing documents referred to in Clause 14.1(5)(i)) to the Base Case (as defined in the financing documents referred to in Clause 14.1(5)(i)) agreed to by the Financial Institutions and the Owner in such financing documents, and (b) cover the loss of profitability for the Owner's shareholders, taking into account the tariffs which will be received by the Owner from the sale of power from the Solar Park. For such purposes, the Contractor acknowledges and accepts that the amount to be paid to the Owner (for the items set forth in the preceding subsection) will be proposed by the Agent for the Financial Institutions and negotiated between the Owner and the Contractor on the basis of the assumptions in the Base Case developed by the Owner and the Financial Institutions in connection with the financing documents; and

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(ii) Start-up of the Affected Facilities shall have occurred prior to October 31, 2008.

The Owner may require the return of the Solar Facilities for which the above requirements and Contractor payments have not been met, each in accordance with the provisions of subsection (5) above.

(7) The Contractor is required to pay the amounts referred to in subsections (4) and (5) above to the Owner within *** days of the date of settlement of the amounts owed.

(8) In all the foregoing instances, the Owner may, without prejudice to the reservation of rights to take all legal action to which it is entitled for the defense of its rights, adopt any or all of the following measures:

- a) Offset any payments pending in favor of the Contractor by an amount equivalent to the balance in favor of the Owner (returning, in the event of complete termination, the Performance Bond or the Guarantee Bond, as applicable, once such offset has been made).
- b) Enforce the Performance Bond and/or the Guarantee Bond.
- c) Withhold the Contractor's materials, machinery and items belonging to the Contractor that are in the possession of the Owner, until the Contractor has fully paid all amounts due as a consequence of the termination.

14.2 Termination by the Contractor

(1) The Contractor may terminate the Contract under the circumstances provided for under applicable law, in this Contract, or upon occurrence of any of the following events:

- (i) The voluntary filing by the Owner of a bankruptcy petition or the allowance of a bankruptcy petition filed by a third party against the Owner, or in the event of patent financial difficulties that would prevent the Owner from normally complying with the obligations arising under this Contract in cases different from the one provided under subsection (ii) below, unless its obligations are sufficiently guaranteed under this Contract.
- (ii) A delay in payment for a period in excess of sixty (60) days from the date on which payment should have been made.

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- (iii) Any other serious breach of a principal obligation of the Owner that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
 - (iv) A suspension of the works and services for causes attributable to the Owner for a period greater than three (3) months.
 - (v) The dissolution of the Owner, or if a substantial portion of the assets of the Owner is transferred to another company, and such circumstance seriously prejudices the Owner's capacity to perform the obligations set forth in this Contract.
- (2) The Contractor shall give to the Owner a period of thirty (30) days to cure the event, or any other longer period that may be agreed upon by the Parties. Such cure period shall not apply if the event giving rise to grounds for termination is one provided for in subsections (i) and (iv) of Clause 14.2(1) above. If the Owner fails to remedy such grounds for termination to the Contractor's satisfaction within such period, the Contract shall be terminated (in whole or in part, as applicable).
- (3) Upon termination of the Contract for any of the foregoing reasons, the Owner must:
- (i) Pay all of the Contractor's outstanding invoices.
 - (ii) Pay to the Contractor the value of the Work performed before termination and which is not yet included in the invoices. Accordingly, the Owner must pay to the Contractor the cost of the equipment already delivered to the Contractor or that it is legally required to accept under the contracts entered into with its suppliers and manufacturers, which shall become the property of the Owner if they had not already become so.

However, the Contractor undertakes to take such actions necessary or appropriate to minimize the costs referred in this subsection. The Contractor shall include the provisions required to that effect in the contracts with suppliers and subcontractors.
 - (iii) Pay all duly authenticated damages that are sustained by the Contractor as a consequence of the contractual breach or early termination, including direct demobilization costs.
 - (iv) Return to the Contractor the Bonds received from the Contractor.
- (4) Upon the Owner's compliance with the conditions set forth in the above subsection, the Contractor shall abandon the Site within a period of thirty (30) days and the Owner may complete the Work by itself or with another contractor, the Owner being entitled to request the Contractor to assign each and every contract signed by the Contractor and its subcontractors (except contracts entered into for the supply of solar modules, supports and trackers or for the supply of technology and software, which the Owner may not assume). The Contractor is obligated to cooperate in good faith with the Owner to effect such assignments.

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14.3 Termination due to Force Majeure

In the event of termination of the Contract due to an event of *Force Majeure*, the provisions of subsections 14.2 (3) (i), (ii) and (iv) above shall apply.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Assignment

- (1) The Contractor may not assign or transfer to third parties, in whole or in part, the economic, commercial or financial rights or credits arising under this Contract, or engage in any other transaction involving any type of disposition, encumbrance, commitment and/or transaction, in whole or in part, regarding such rights and credits, unless it has obtained the prior written approval of the Owner and the Financial Institutions. An assignment to other companies within the Contractor’s group that have the same technical capacity to perform the contractual obligations and that satisfy the requirements of the Direct Agreement is permitted, ***.
- (2) The Owner may only assign all or a portion of the rights and obligations arising under this Contract in favor of the Financial Institutions in accordance with Clause 17, or to any other third party with the prior written approval of the Contractor.

15.2 Subcontracting

- (1) The Contractor may subcontract the Work, provided the following conditions are met:
 - (i) All the subcontracts executed (except the contracts entered into for the supply and manufacture of solar modules, supports and trackers or for the supply of technology and software, which Owner may not assume) and all guarantees obtained from any of the suppliers or Subcontractors may be assigned at the request of the Owner in the event of termination of this Contract. For such purpose, the Contractor irrevocably undertakes to assign to the Owner and the Financial Institutions the rights arising from all the guarantees and subcontracts obtained from Authorized Subcontractors upon the expiration of the Guarantee Period or in the event of termination of the Contract.
 - (ii) The guarantees or subcontracts executed by the Contractor with Subcontractors or suppliers shall be consistent with the terms and provisions of this Contract.

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(iii) The Contractor shall deliver to the Owner, within a reasonable period after the request thereof, a copy without prices or other commercial terms, of all the contracts, agreements and guarantees signed with the Subcontractors (containing the waiver referred to in subsection (3) below)

- (2) In no event shall a contractual relationship be implied among the Subcontractors and the Owner. The Contractor shall remain liable for all of the activities of its Subcontractors and suppliers and for all contractual and labor obligations arising from the performance of their work; as well as for the actions, failures and negligence of any of its subcontractors or suppliers and the agents and employees thereof, under the same terms and conditions as if committed or performed by the Contractor itself, its agents or employees.
- (3) The Owner shall not be liable vis-à-vis any Subcontractor or supplier, or vis-à-vis their employees, for any claims arising directly or indirectly from the Contract. For such purpose, the Contractor undertakes to procure an express and written waiver of the rights conferred by Article 1597 of the Civil Code from each Subcontractor.

16. LIABILITY AND DAMAGES

- (1) The Parties shall have the obligation to provide indemnification for those damages caused to the other Party as a consequence of the breach of this Contract. The Owner's approval of the projects, calculations, drawings or other technical documents prepared by the Contractor, or the conduct of inspections or Tests do not release the Contractor from such liability, and do not imply that such liability must be shared by the Owner.

Further, the recommendations made by the Owner or its representatives during the performance of the Contract or on occasion of inspections or Tests shall not give rise to an exemption, mitigation or excuse for the Contractor's performance under this Contract, except to the extent such recommendations or observations were implemented despite the Contractor's objection.

- (2) The Contractor shall be liable vis-à-vis the Owner for any loss or physical damage to the equipment, materials or assets owned by the Owner or third parties that is caused by the Contractor through the execution of the relevant Solar Facility Provisional Acceptance Certificate, and thereafter only when the Contractor is within the Site performing the Work, repairs or similar activities and causes the relevant damage.

If the Contractor fails to hold the Owner or the third parties harmless from the above-mentioned damages, the Owner shall be entitled to redress such damages, deducting the costs of repair from any amounts pending payment to the Contractor, or by enforcement of the Bonds issued pursuant to this Contract.

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- (3) By application of Article 1596 of the Civil Code, it is expressly agreed that the Contractor shall also be liable for damages caused by the persons or entities employed by the Contractor in the performance of the Work, whether as employees, technicians, subcontractors or otherwise, from whom the same diligence owed by the Contractor shall be required.
- (4) The Parties expressly agree that in no event will a Party be liable for the so-called consequential or indirect damages, including loss of profits and loss of output, loss of use or loss of any contract or other damages that are considered to be indirect, except for cases involving willful misconduct or gross negligence, and without prejudice to the Contractor's obligation to pay the penalties agreed upon under this Contract.
- (5) The Parties agree that any indemnity received by one of the Parties as beneficiary of any of the insurance taken out by them in connection with the Solar Park will be deducted from the respective claim for damages or, if such indemnity holds the Party in question harmless from the damages sustained, it shall bar such Party from claiming damages and require it to refund the excess, if any. The Party causing the damages shall bear all deductibles, liability limits and any other deductions affecting the indemnities payable to the damaged Party by the insurance companies providing the insurance in accordance with the provisions hereof.
- (6) The maximum total liability of the Contractor hereunder shall not exceed, in the aggregate, an amount equal to *** (***%) percent of the Contract Price. The foregoing shall not affect to the Contractor's obligation to make payments under Clause 14.1 in the event of the termination or partial termination of the Contract.

17. OWNER FINANCING

The Contractor hereby acknowledges as fundamental to this Contract:

- (i) the possibility that the Owner's rights under this Contract may be fully or partially pledged or assigned as security, in one or successive instances, to the Financial Institutions.
- (ii) the possibility that "direct agreements" that provide the Financial Institutions with "step-in" rights will be executed in the form agreed to prior to the execution of this Contract and which are attached hereto as Annex 9;
- (ii) the possibility that the right to receive indemnification to which the Owner may be entitled and which arise under the insurance policies purchased in accordance with the terms of this Contract may be pledged or assigned as security to the Financial Institutions (and the essential nature of subscribing the insurance policies upon the terms of the report issued by the Insurance Advisor in accordance with Clause 11);.

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- (iii) that the Financial Institutions and their advisors (including the Technical Advisor and the Insurance Advisor and any others) have the right to access the Site in order to inspect the performance of the work contemplated under this Contract, upon the terms contemplated in Clause 6.2;
- (iv) the Technical Advisor's right to observe all Capacity and Production Tests and the obligation to obtain its prior approval for the issuance of the Solar Park Provisional Acceptance Certificate, each Solar Facility Provisional Acceptance Certificate, the Final Acceptance Certificate and other actions for which the approval of the Technical Advisor is required in accordance with the form of Direct Agreement attached hereto as **Annex 9**;
- (v) the requirement to obtain the prior approval of the Financial Institutions for any change to the terms of this Contract upon the terms contemplated herein;
- (vi) the Contractor's obligation to pay any amounts owed to the Owner under this Contract to the account, if any, indicated in writing by the Financial Institutions;

All of the foregoing is without prejudice to the other rights expressly granted in favor of the financial Institutions pursuant to other clauses of this Contract.

18. CONFIDENTIALITY

- (1) The Parties agree that this Contract and the Annexes hereto, and any written or electronic information or documentation that any of the Parties furnishes to the other for the performance of this Contract (including, without limitation, technical documentation, plans, information, procedures, patents and licenses) are confidential. Therefore, the Parties undertake to keep the information confidential and to refrain from disclosing, providing to third parties or using such information unless such documentation and information (i) is known by the public without any breach of this confidentiality commitment, (ii) has been legally obtained from a third party, (iii) is requested by a judicial or governmental authority, or (iv) the delivery of such documentation and information is made in compliance with any legal obligations enforced upon the disclosing Party.
- (2) The Parties agree that the above shall not apply to any disclosure of information made by any of the Parties to other entities of their Group (within the meaning of Article 4 of Securities Market Law 24/1988 of July 28), regulatory, tax or governmental authorities, and their respective advisors and auditors, internal or external, in relation to the information requested by them for the development of the investigations, assessments and works carried out by them, provided that, in each and every one of such cases, the parties receiving the confidential information have assumed commitments of confidentiality vis-à-vis the disclosing party on terms similar to this one. In this case, such entities, authorities, advisors or auditors shall have free access to the books, files, documents and information held by the requested Party, and prior authorization is therefore not required from the other Parties to furnish information to such entities, authorities, advisors and/or auditors regarding this Contract and the Annexes hereto and any other information or written documentation relating hereto.

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(3) In particular, the Owner is authorized to transmit information regarding this Contract to the Owner and the Financial Institutions and to those investors with interests in the construction and commercial operation of the Solar Park who reasonably request information with respect to this Contract, provided that they have assumed vis-à-vis the provider of such information confidentiality undertakings upon terms substantially similar hereto. Further, the Owner hereby authorizes the Contractor to provide such information to the Financial Institutions;

(4) The confidentiality commitment must be observed until the passage of two (2) years from the date of execution of the Final Acceptance Certificate or any termination of the Contract, regardless of the cause thereof.

19. NOTICES

(1) All notices and communications between the Parties for the purposes of this Contract shall be made in writing, by certified mail, fax or courier service, to the following addresses:

To the Contractor:

SunPower Energy Systems España, S.L.

Paseo de la Castellana, 86, 8º
28046 Madrid, Spain
Fax: +34 915644451
Attn: General Manager

With a copy to:

SunPower Systems SA

42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attn: Marco Antonio Northland

To the Owner:

Moralas Renovables, S.L.

Calle Núñez de Balboa, 120, 7º, 28006, Madrid
Fax: +34 91 562 3593
Attn: Juan Carlos Sirviente Rodrigo

With a copy to:

Sylcom Solar

Laguna del Marquesado 10 - N8
28021 Madrid
Attn: Pablo Valera

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- (2) The Parties may change the above addresses by written notice to each other given in the form and to the addresses mentioned above.
- (3) Notices shall be deemed received on the third (3rd) Business Day following the dispatch thereof when sent by courier service (unless there is evidence of earlier receipt) or the Business Day following the date on which there is evidence of the receipt thereof in the case of faxes and certified mail.

20 LAW AND JURISDICTION

- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation, to which the Contractor and the Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje (CIMA)*) of Madrid in accordance with the Procedural Regulations thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by the Contractor and the other by the Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.
- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

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In witness whereof, the Parties execute this Contract in two (2) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above. It is expressly acknowledged that Mr. Marco Antonio Northland, whose signature appears below, has hereby authorized Ms. Nuria Casellas Cabrerizo, having a National Identity Document (DNI) number 43679456H, to review the pages hereof as evidence of the agreement of the Contractor to the content of this document.

MORALAS RENOVABLES, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

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SCOPE OF WORK. TECHNICAL SPECIFICATIONS

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IMPLEMENTATION SCHEDULE

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**ANNEX 4
TEST PROTOCOLS**

Protocol for tests prior to the provisional acceptance of each Solar Facility and of the Solar Park

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ANNEX 5

MINIMUM INVENTORY AND SUPPLY OF SPARE PARTS

The Contractor must make available to the Owner, pursuant to the terms of Clause 6.3, the following inventory of spare parts:

Part	Units per MW	Total quantity
Mechanical part		
Drive bellows boot	0.4	2
Ground braids, torque tube to pier	5	25
Module mounting assemblies	5	25
MC connectors	5	25
Actuator (endless screw)	0.2	1
Low voltage		
Solar panels	10	50
Orientation motor	0.4	2
GPS + PLC + clinometer	0.4	2
SunPower controller (no housing)	0.4	2
Inverter	0.2	1
Communications card for the inverter	0.4	2
Fuse set for the inverter	0.4	2
Set of overvoltage protective devices for the inverter	0.4	2
DC fuses	5	25
Set of overvoltage protective devices for the junction box	0.4	2
Junction box	0.4	2
Fan unit	0.4	2
Set of sensors for the weather station	0.2	1
Communications		
MOXA cards	0.2	1
Routers, switches, hubs, etc.	0.2	1
Medium voltage		
MV fuses (if protective cabinets with fuses are installed)	0.2	1
Protective relay	0.2	1
160 kVA transformer	0.2	1

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ANNEX 6

MODULE DEGRADATION GUARANTEE

The guarantee described in Section 6 of the Technical Specifications, as incorporated into Annex 2.

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FORMS OF SURETY BONDS

Form of Performance Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes to **SUNPOWER ENERGY SYSTEMS, S.L.U.** with a registered address at [I], recorded in [I] (hereinafter the “**Guaranteed Party**”) an irrevocable, absolute, guarantee payable on demand to [I] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on even date herewith with respect to the construction and start-up of a solar park located in [I] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt, and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guarantee Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [I].

This Bond may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All sums due from the BANK under this Bond shall be paid net of any indirect tax, withholding or commission and without any type of offset or deduction. If the BANK, in the performance of this Bond, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholdings) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

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The payment obligations assumed by the BANK under this Guarantee are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Bond shall automatically expire on the date of execution of the Solar Park Provisional Acceptance Certificate, and in any event, on January 31, 2009, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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Form of Guarantee Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes an irrevocable, absolute, guarantee payable on demand to **SUNPOWER ENERGY SYSTEMS, S.L.U.**, with a registered address at [1], recorded in [1] (hereinafter, the “**Guaranteed Party**”) in favor of [1] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on [1] with respect to the construction and start-up of a solar park located in [1] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guaranteed Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [1].

This Guarantee may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All the sums due from the BANK under this Guarantee shall be paid net of any indirect tax, withholding or commission and without any type of set-off or deduction. If the BANK, in the performance of this Guarantee, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholding) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

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The payment obligations assumed by the BANK under this Bond are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party, or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Guarantee shall automatically expire on the date of execution of the Solar Park Final Acceptance Certificate, and in any event, on January 31, 2012, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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AUTHORIZED EQUIPMENT

Modules:

- Powerlight
- SunPower
- Yingli
- Suntech
- Evergreen Solar
- Sanyo

Trackers:

- Powertracker

Inverters:

- Xantrex
- SMA
- Siemens
- Ingeteam

Medium-Voltage Electrical Power Lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt/)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)

Transformer and Sectioning Stations**1.1 Cells****1.1.1 Encapsulated cells:**

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
MANUFACTURAS ELÉCTRICAS	(www.me-sa.es)
SIEMENS	(www.siemens.es)
VEI ELECTRIC SYSTEMS	(www.vei.it)

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1.1.2 SF6-insulated cells and switchgear in metal housings

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
VEI ELECTRIC SYSTEMS	(www.vei.it)

1.2 Power transformers

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
IMEFY	(www.imefy.com)
ALKARGO	(www.iberapa.es)
ABB TRAFO	(www.abb.com)
SIEMENS	(www.siemens.es)
INCOESA	(www.incoesa.com)
OASA	(www.oasanet.com)
CONSTRUCCIONES ELÉCTRICAS JARA	(www.trafojara.com)
LAYBOX	(www.laybox.com)

1.3 Prefabricated housings

POSTES NERVIÓN	(www.postesnervion.es/)
PREPHOR	(www.prephor.com)
INAEI	(www.inael.com)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
AREVA T&D	(www.areva-td.com)

Low-voltage lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)
CONTECSA	(www.contecsa-spain.com)
CABELTE	(www.cabelte.pt)
MIGUELEZ	(www.miguelez.com)

Low-voltage panels

1.1 Rectifiers – battery chargers

ZIGOR	(www.zigor.com)
SAFT POWER SYSTEMS IBERICA S.L.	(www.spsi.es)
EMISA - EXIDE	(www.exide.com)
ENERTRON	(www.enertron.net)

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1.2 Protective cabinets and A.S. auxiliary services control

PROYECTOS MECA	(www.proymeca.com)
CYMI	(www.cymi.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
CUADRELEC	(www.cuadrelec.com)
PMC Ingeniería	

1.3 Exterior cabinets

PINAZO	(www.pinazo.com)
ELDON	(www.eldon.es)
HIMEL	(www.himel.com)
RITTAL	(www.rittal.es)

Electrical protective devices

1.1 Indirect and direct protective devices for MV cells

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
SIEMENS	(www.siemens.es)
GENERAL ELECTRIC	(www.GEIndustrial.com)
TEAM ARTECHE	(www.teamartech.es)
ZIV	(www.ziv.com)

1.2 Direct LV protective devices

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
MOELLER	(www.moeller.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
GOULD	(www.gould.com)

1.3 Metal-oxide lightning rods

TYCO ELECTRONICS RAYCHEM GMBH	(www.energy.tycoelectronics.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
INAEI	(www.inael.es)
ABB	(www.abb.es)
CELSA	(www.celsa.com)

Supervisory System

1.1 PLCs programmable logic controllers

SCHNEIDER ELECTRIC	(www.schneider-electric.com)
BECKHOFF	(www.beckhoff.es)
ROCKWELL AUTOMATION	(www.rockwellautomation.com)
GENERAL ELECTRIC FANUC	(www.gefanuc.com)

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1.2 Industrial communications

HIRSCHMANN	(www.hirschmann.com)
MOXA	(www.moxa.com)

1.3 SCADA system control and data acquisition platforms

WONDERWARE	(www.wonderware.com)
GENERAL ELECTRIC	(www.gefanuc.com)

1.4 Optical fiber

NEXANS	(www.nexans.com)
CORNING	(www.corning.com)
OPTRAL	WWW.OPTRAL.COM

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FORM OF DIRECT AGREEMENT

*** CONFIDENTIAL MATERIAL REDACTED AND
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DIRECT AGREEMENT

between

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U

as Contractor

and

MORALAS RENOVABLES, S.L.U.

as Owner

and

CAJA CASTILLA LA MANCHA

as Agent

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Madrid, on the [1] day of November, 2007.

APPEARING PARTIES

Party of the first part,

(A) SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U. (the “Contractor”)

Party of the second part,

(B) MORALAS RENOVABLES, S.L. (the “Owner”).

Party of the third part,

(C) CAJA CASTILLA LA MANCHA (the “Agent”).

All of whom are hereinafter referred to collectively as the "Parties."

The persons appearing on behalf of each Party, as well as their powers of representation and corresponding grants of authority are set forth on **Annex 1** hereto.

RECITALS

- I. The Owner and the Contractor have executed on even date herewith:
- (i) a “turn-key” construction contract (the “**Construction Contract**”) for the construction and start-up of a solar park in Manzanares (Ciudad Real), composed of fifty (50) solar facilities with a unit capacity at the panels between 115 y 122 kWp y 100 kW at the inverter (the “**Solar Park**”);
 - (ii) a maintenance agreement (the “**Maintenance Agreement**”) for the performance by Contractor of the maintenance Work relating to the Solar Park.
- II. In order to finance, among other things, the payments that are the responsibility of the Owner under the Construction Contract, the Owner has entered into the following contracts, on even date herewith, registered as public instruments before the Madrid Notary Mr. [1];
- (i) a credit agreement in the maximum amount of [1] euros (hereinafter, the “**Credit Agreement**” or the “**Loan**”) with the Agent and [1].
 - (ii) an interest rate hedge agreement (CMOF) and its corresponding Schedule with [1], to cover interest rate fluctuation risks relating to the Loan (hereinafter, the master agreement and its Schedule together with the confirmations to be executed in connection therewith, the “**Interest Rate Hedge Agreement**”).

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[I], together with its successors and assigns with respect to the Interest Rate Hedge Agreement, and the institutions which at any given time make up the credit institutions under the Credit Agreement are hereinafter collectively referred to as the “**Financial Institutions.**”

- III. To guarantee the Owner’s obligations under the Credit Agreement and the Interest Rate Hedge Agreement (hereinafter, collectively, the “**Guaranteed Contracts**”) the Owner has granted on even date herewith (among others) a pledge agreement, registered as a public instrument with the Madrid Notary Mr. [I], pursuant to which the rights under the Construction Contract and the Maintenance Agreement (among others) were pledged to the Financial Institutions (the “**Pledge**”).
- IV. In consideration of the premises, and as a fundamental condition to the execution of the Guaranteed Contracts by the Financial Institutions, the Parties have agreed to execute this Contract whereby the Contractor assumes certain obligations to the Financial Institutions with respect to the Construction Contract, the Maintenance Agreement and the Guaranteed Contracts, as follows.

CLAUSES

1. DEFINED TERMS

Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Construction Contract.

2. PLEDGE

- (1) The Contractor hereby pledges all rights to receive payment from the Owner under the Construction Contract and the Maintenance Agreement.
- (2) As a consequence of the foregoing, except in the event of receipt of a written notice from Agent that the Pledge has been cancelled, the Contractor agrees:
- (i) not to convey or create any type of pledge, charge, lien or other security right over the Contractor’s rights to receive payments under the Construction Contract or the Maintenance Agreement, without the express prior written approval of the Agent;
 - (ii) not to honor any notice or instruction from the Owner that contravenes or modifies the terms of the Pledge or of this Contract;

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- (iii) to immediately notify the Agent of any breach by the Owner of its obligations under the Construction Contract or the Maintenance Agreement;
- (iv) to pay any amounts payable by the Contractor to the Owner under the Construction Contract or the Maintenance Agreement to the Owner's account no. [1] (the "**Principal Account**"), or to such other separate account as the Agent and the Owner may jointly specify in writing. The Contractor acknowledges and agrees that a payment made to any other current account or made in any other manner shall not be considered a full discharge for the Contractor;
- (v) upon receipt of written notice from the Agent declaring the enforcement of the Pledge, to deposit or transfer all funds relating to the payment rights under the Construction Contract and/or the Maintenance Agreement in favor of the Agent to the account designated by the Agent in writing.

3. NOTICE OF EARLY TERMINATION EVENTS. BREACH BY THE OWNER.

- (1) The Contractor agrees to provide notice to the Financial Institutions (through the Agent) of the occurrence of any event of early termination of the Construction Contract and/or the Maintenance Agreement, or of its own intention to terminate either of such Contracts, by sending to the Agent a copy of any notice sent to the Owner (which shall include, at a minimum, the proposed date of termination of the Construction Contract and/or the Maintenance Agreement –subject to the terms of subsection (2) below- and the Contractor's stated basis for such termination).
- (2) The Contractor acknowledges agrees that it may not, under any circumstances, terminate the Construction Contract or the Maintenance Agreement without first giving notice to the Agent as provided for in the above subsection, and that, during the period from the Agent's receipt of such notice until fifteen (15) calendar days from the date on which the Agent received such notice, the Agent may (but is not so obligated), with the prior approval of the Financial Institutions in accordance with the agreed majority voting percentages agreed to among the Financial Institutions, take such measures as are necessary or advisable to cure or eliminate such event of early termination under the Construction Contract and/or the Maintenance Agreement.

4. CHANGES TO THE CONSTRUCTION CONTRACT AND ACTIONS OF THE TECHNICAL ADVISOR

4.1 Changes and roles with respect to the Construction Contract

The Contractor hereby acknowledges and agrees that:

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- (i) it may not agree to any change to the Construction Contract or any Change Order or any other document that contains an agreement to make the changes contemplated by Clauses 2.4(4), 5.1(3) and 6.5(3) of the Construction Contract without receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor's rights under such Clauses);
- (ii) except with respect to the assumed consent contemplated by Clause 4.3 of the Construction Contract, the approval of the Technical Advisor must be obtained in order for the Owner to approve a Payment Milestone contemplated by such Clause;
- (iii) the Technical Advisor must be present to observe the performance of the Performance Tests, the Overall Test, the Production Tests and the inspections required for execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate, in accordance with the notice periods set forth in Clauses 5.2 (1), 8.4(2) and 9(1) of the Construction Contract. The periods provided for in such Clauses may not begin to run if the Technical Advisor has not been invited to observe within the notice periods provided in such Clauses. Results of tests and inspections referred to in this subsection that were obtained prior to the expiration of such periods and without the presence of the Technical Advisor shall be invalid. However, the Technical Advisor's failure to attend despite having been duly invited in the manner and within the notice periods provided for in this subsection shall not delay the periods provided for in the Construction Contract for such tests and inspections, nor shall it invalidate the results of the same;
- (iv) except as provided for in Clause 5.2(4) of the Construction Contract, the execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate must be accompanied by the approval of the Technical Advisor;
- (v) the Technical Advisor shall have the power to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 6.2 of the Construction Contract;
- (vi) the Technical Advisor must approve quality controls for the solar modules and has the authority to inspect such quality controls in order to confirm its approval; and
- (vii) an order to suspend the Work by the Owner pursuant to Clause 13.1 of the Construction Contract shall not be valid unless it has been countersigned by the Agent on behalf of the Financial Institutions.

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4.2 **Changes and Actions Regarding the Maintenance Agreement**

The Contractor hereby acknowledges and agrees that:

- (i) it may not agree to any change to the Maintenance Agreement or any Change Order or any other document that contains an agreement to make the changes contemplated by Clause 2.4 of the Maintenance Agreement without first receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor’s rights under such Clause 2.4);
- (ii) the Technical Advisor must receive the data and registrations at least fifteen (15) calendar days in advance to make the availability calculations referred to in Clause 7 of the Maintenance Agreement;
- (iii) the Technical Advisor shall have the authority to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 4(ii) of the Maintenance Agreement.

5. **CUMULATIVE NATURE OF THE OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT**

The rights of the Financial Institutions contemplated in this Agreement are cumulative with the rights of the Financial Institutions under the Construction Contract or the Maintenance Agreement. Therefore, the terms of this Agreement shall not affect the obligation of the Contractor and the Owner to request the consent of the Financial Institutions for such acts that, in accordance with the terms of the Construction Contract and/or the Maintenance Agreement, require the prior consent of the Financial Institutions.

6. **ASSIGNMENTS**

6.1 **Assignment by the Financial Institutions**

This Contract is delivered for the benefit of the Financial Institutions, and therefore inures to the benefit of their successors or assigns permitted under the Guaranteed Contracts. Therefore, in the event of an assignment, in whole or in part, of the interest of a Financial Institution under the Guaranteed Contracts, or the replacement of the Agent under the terms of the Credit Agreement, all references made in this public document to the Financial Institutions and the Agent shall be understood to include reference to their respective successors or assigns. An assignee must present its position to the Contractor and the Owner, upon request, by delivery of a copy of the document through which such assignment or replacement of the Agent is made. However, the Agent must inform the Contractor of its replacement with sufficient advance notice to permit the Contractor to comply with its obligations under the Construction Contract, the Maintenance Agreement and this Agreement.

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6.1 Assignment by the Contractor

The Contractor may not assign its rights or obligations under the Construction Contract or the Maintenance Agreement except in strict compliance with the terms of Clauses 15.1 and 11.1 of the Construction Contract and the Maintenance Agreement, respectively. However, in the event of an assignment by the Contractor to one of the companies of its Group, under the terms permitted in such Clauses, the Contractor agrees that it shall not effect such assignment unless the assignee concurrently agrees to adhere to the entirety of the Contractor’s responsibilities and agreements under this Agreement.

7. NOTICES

- (1) Except as otherwise expressly provided for, all notices and communications between the Parties for the purposes of this Agreement shall be made in writing, by certified mail, telegram with confirmed receipt, or for urgent matters, by fax with a confirmation letter to be sent within the following five (5) calendar days.
- (2) All notices, requirements or other communications to the Financial Institutions must be delivered to the Agent (notice to the Financial Institutions shall be considered effective upon receipt by the Agent).
- (3) The Parties designate the following addresses for notice, communications and routine matters:

The Agent:

[1]
Fax: +34 [1]
Attention: Mr. [1]

The Contractor:

SunPower Energy Systems España, S.L.
Paseo de la Castellana, 86, 8º
28046 Madrid, España
Fax: +34 915644451
Attention: General Manager

With a copy to:
SunPower Systems SA
42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attention: Mr. Marco Antonio Northland

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The Owner:
Moralas Renovables, S.L.
Calle Núñez de Balboa 120, 7º, 28006 Madrid
Fax: +34 91 562 35 93
Attention: Mr. Juan Carlos Sirviente Rodrigo

(4) Any changes to the above addresses must be communicated to the other Parties by certified mail, and shall only take effect as of the date that the other Party receives such notice.

8. LAW AND JURISDICTION

This Contract shall be exclusively governed by generally applicable Spanish legislation.

The Parties expressly waive any other jurisdiction to which they may be entitled and, without prejudice to applicable law, hereby irrevocably submit to the jurisdiction of the Courts and Tribunals of the city of Madrid.

9. TERM

This Contract shall remain in full force and effect throughout the term of the Construction Contract and the Maintenance Agreement or until the payment in full of the obligations assumed by the Owner under the Guaranteed Contracts. Upon payment in full of said amounts, the Owner may request that the Agent issue a joint notice to the Contractor confirming payment in full of all obligations assumed by the Owner under the Guaranteed Contracts.

10. TAXES AND EXPENSES

All fees, taxes and any other costs and expenses arising from the preparation and delivery of this Contract, including the reasonable fees and expenses of legal counsel shall be borne by the Owner.

In witness whereof, the Parties execute this Contract in three (3) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

MORALAS RENOVABLES, S.L.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

CAJA CASTILLA LA MANCHA

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ANNEX 10
MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE

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ANNEX 11

GUARANTEED VALUES

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FORM OF LETTER TO BE SIGNED BY THE AGENT

SunPower Energy Systems Spain, S.L.U.
Paseo de la Castellana, 86, 8º
28046 Madrid, Spain
Fax: +34 915644451
Attn.: General Manager

[I] [I], 2007

Gentlemen:

Re: Commercial loan agreement (the “Loan Agreement”) signed by [I] and [I] on [I], converted into a public instrument in the presence of Mr. [I], a notary of Madrid, and recorded in his notarial protocol under No. [I], for the partial financing of (among other things) the payments owed by [I] pursuant to a “turnkey” construction contract signed by such entity with SunPower Energy Systems Spain, S.L.U. on [I] (the “Construction Contract”)

We hereby confirm to you that, pursuant to the Loan Agreement, [I] has obtained from [I] a loan in the total amount of [I] euros, of which sum [I] euros correspond to Tranche A of the Loan Agreement, and [I] euros correspond to Tranche B of the Loan Agreement, with the purpose of such Tranches being to finance, among other things, the Contract Price and the associated VAT to be paid by [I] pursuant to the Construction Contract.

Cordially,

[I]

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ANNEX 13

SITE PLAN

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***CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED
WITH THE COMMISSION***

**TURNKEY CONSTRUCTION CONTRACT
FOR THE CONSTRUCTION OF A SOLAR PARK**

BETWEEN

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.

As Contractor

AND

NATURENER SOLAR TINAJEROS, S.L.U.

as Owner

November 6, 2007

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APPEARING PARTIES

- (A) **NATURENER SOLAR TINAJEROS, S.L.U** (hereinafter, the **“Owner”**), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-85128781 herein represented by Dr. Rafael Sánchez Lodaes, with National Identity Document (DNI) No. 403893-J and Mr. Juan Francisco Quiroga Fernández-Ladreda, with National Identity Document (DNI) No. 32.760.974-G, pursuant to the powers conferred upon them pursuant to a public instrument executed before Ms. Maria del Rosario Algora Wesolowski, a Madrid notary, and recorded in her notarial protocol under No. 4.551.
- (B) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the **“Contractor”**), with a registered office in Madrid at calle Pradillo nº 5, herein represented by Mr. Marco Antonio Northland, bearing U.S. Passport No. 047605878, in his capacity as attorney-in-fact of such entity pursuant to a public instrument executed before Mr. Ignacio Martínez Gil-Vich, a Madrid notary, on November 28, 2006, and recorded in his notarial protocol under No. 4.551.

RECITALS

- (1) The Owner is interested in promoting the installation and operation of a solar park in Albacete, consisting of one hundred (100) Solar Facilities having between 115 and 122 kWp of peak power and 100 kWe at the inverter.
- (2) Tthe Contractor is dedicated to the construction and start-up of facilities of this type, and intends and has the capacity to construct the Solar Park in accordance with the specifications of this Contract.
- (3) The Owner will partially finance the payment of the Contract Price through financing to be made available to the Owner by one or more credit providers (the **“Financial Institutions”**).
- (4) ***
- (5) Now, therefore, the Parties mutually acknowledging the legal capacity required to enter into contract and bind themselves, agree to execute this "turnkey" construction contract (hereinafter, the **“Contract”**) in accordance with the following:

CLAUSES

1. DEFINITIONS

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In this Contract, the terms listed below shall have the meaning established in each instance:

- **Final Start-Up Certificate or Final Start-Up:** means the governmental certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, with respect to each of the Solar Facilities and the Electrical Infrastructure, which allows for the commencement of the commercial operation thereof, including, for the purposes of this Contract, obtaining the final registration of each of such Solar Facilities and Electrical Infrastructures with the Register of Power Facilities included within the Special Regime (*Registro Administrativo de Instalaciones de Producción de Energía en Régimen Especial*), pursuant to the provisions of Section 12 of Royal Decree 661, which grants to the corresponding facilities the status of a production facility accepted under the special regime, in accordance with the terms of this contract.
- **Direct Agreement:** the agreement executed among the Contractor, the Owner and the agent for the institutions providing financing to the Owner, for purposes of, among other things, making the payments contemplated in this Contract, pursuant to the provisions of Clause 17.
- **Scope of Work:** the entirety of all services, supplies and work that the Contractor must provide under this Contract in accordance with the provisions of Clause 2.2 and the specific details contained in Annex 2.
- **Insurance Advisor:** means Willis or any other insurance advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Legal Advisor:** means Gómez-Acebo & Pombo, S.L. Ramón & Cajal Attorneys or any other legal advisor that the Financial Institutions may designate in the context of the financing of the Solar Park
- **Technical Advisor:** means Sylcom Solar or any other technical advisor appointed by the Financial Institutions in the context of the financing of the Solar Park.
- **Performance Bond:** means the bond payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations and which shall be effective as from delivery thereof to the Owner in accordance with the provisions of this contract until the execution of the Solar Park Provisional Acceptance Certificate.
- **Guarantee Bond:** means each of the bonds payable on demand to be delivered by the Contractor in accordance with the provisions of Clause 8.5 to guarantee the performance of its contractual obligations during the Guarantee Period, which shall be effective as from the execution of the Solar Park Provisional Acceptance Certificate through the execution of the Final Acceptance Certificate.

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- **Final Acceptance Certificate (FAC):** means the certificate that shall be executed by the Parties at the end of the Guarantee Period to attest to the final acceptance of the Solar Park by the Owner.
 - **Solar Park Provisional Acceptance Certificate (Park PAC):** means the certificate that shall be executed by the Parties concurrently with the execution of the Provisional Acceptance Certificate for the last Solar Facility forming a part of the Solar Park, to evidence the proper operation of the Solar Park as a result of the Overall Test of all Solar Facilities and the Electrical Infrastructure, as well as the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period.
 - **Solar Facility Provisional Acceptance Certificate (Facility PAC):** means the certificate that shall be executed by the Parties to evidence the proper operation of the equipment as a result of the Performance Tests for each of the Solar Facilities (including the Electrical Infrastructure associated with each Solar Facility) and the Contractor's compliance with the obligations set forth in this Contract, without prejudice to the provisions established for the Guarantee Period. In order to issue a Provisional Acceptance Certificate for a Solar Facility, proper operation of the General Electrical Infrastructure in order to meet the installed capacity of the Solar Facilities in operation at such time must also be verified.
 - **Contractor:** means SUNPOWER ENERGY SYSTEMS SPAIN, S.L. and any other company that may succeed it in its obligations in accordance with the provisions of this Contract.
 - **Contract:** means this contract together with the Annexes hereto. In the event of conflict between the body of this Contract and one or more of the Annexes, the body of this Contract shall prevail.
 - **Maintenance Agreement:** means the Maintenance Agreement entered into by the Contractor and the Owner on even date herewith, providing for the assumption by the Contractor of the maintenance work for the Solar Park upon execution of the Solar Park Provisional Acceptance Certificate.
 - **Systemic Defect:** is an operational failure of the Solar Facilities of the Solar Park occurring during the Production Guarantee Period that (i) is not caused by non-conforming performance of the Work by the Contractor under this Contract, the Technical Specifications, the Construction Model or the regulations applicable to the Work (in accordance with the terms of this Contract), and (ii) that
- § is the same failure or is a failure that affects, at least: 0.5% of the solar modules, 10 or more inverters or their corresponding peripheral systems, 10 or more trackers, or 4 or more transformers (including breakers and switches) supplied by the same manufacturer for the Solar Park; or

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- § the relevant supplier or well-known independent third party in the solar industry reports that at least 1% of worldwide production of the corresponding model of solar module, inverter, tracker or transformer is affected by the same operational failure and advises replacement thereof (in which event the Owner must receive proof in the form of delivery of a document signed by the manufacturer or of a report from an independent third party which confirms the existence of said systemic failure with reference to the model and series of the affected equipment).
- **Business Day:** means any day other than a bank holiday in Madrid and Albacete, with the express provision that Saturday is not a Business Day.
 - **Financial Institutions:** has the meaning set forth in the Recital (3).
 - **Site:** means parcel 36, polygon 27, in the municipality of Albacete, as identified in Annex 13.
 - **Authorized Equipment:** means the list of brands and models of the principal equipment or elements that will make up the Solar Facilities and the Electrical Infrastructures described in Annex 8 hereto.
 - **Technical Specifications:** means the technical conditions for executing the Work that were prepared by the Contractor and delivered to the Owner, and that make up Annex 2.
 - **Delivery Deadline:** means July 15, 2008.
 - ***
 - ***
 - **Payment Milestones:** means the milestones for the payment of the Contract Price, as described in Clause 4.2 below.
 - **Specific Electrical Infrastructure:** means the entirety of the electrical elements permitting the evacuation to the distribution grid of the electrical power produced by each of the Solar Facilities, including from the Solar Facilities to the specific transformer center for such Solar Facility.
 - **General Electrical Infrastructure:** means the entirety of the electrical elements permitting the connection of each of the Solar Facilities, from the specific transformer center, in order to permit the evacuation of electrical power generated by each Solar Facility to the distribution grid, including the Evacuation Line, the distribution and sectioning center and supplemental elements of supervision, monitoring and data collection.

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- **Electrical Infrastructure:** collectively, the General Electrical Infrastructures and the Specific Electrical Infrastructures.
- **Solar Facility:** means the entirety of the electromechanical elements that allow for the generation of low voltage (“LV”) electrical power, including from the solar modules themselves, solar trackers, and inverters, to the LV meter, with a peak unit capacity of between 115 and 122 kWp.
- **Evacuation Lines:** the 20 kV output electrical evacuation line of the distribution center of the General Electrical Infrastructure, necessary to connect such Infrastructures to the substation of the power distribution company (Iberdrola) in Albacete.
- **Change Order:** means a document signed by the Contractor and the Owner pursuant to which a change is agreed upon in the Scope of Work, the Contract Price or the Execution Schedule, or any other modification, as provided in this Contract.
- **Solar Park:** means the entirety of the one hundred (100) Solar Facilities having between 115 and 122 kWp of peak capacity and 100 kWe at the inverter, that must reach a total peak capacity of 11.85 MWp, located at the Site, including the Electrical Infrastructure and any other facilities that, in accordance with the terms of this Contract, may be necessary for its Start-Up.
- **Guarantee Period:** means the period between the signing of the Provisional Acceptance Certificate for the first Solar Facility until satisfaction of the conditions for the execution of the Final Acceptance Certificate.
- **Production Guarantee Period:** means the period between Start-up of the Solar Park until *** following execution of the Solar Park Provisional Acceptance Certificate.
- **Contract Price:** The price payable by the Owner to the Contractor for the performance of the obligations contained in this Contract, the amount of which is set forth in Clause 4 of the Contract. For purposes of this Contract, the price corresponding to an individual Solar Facility shall be the amount obtained by dividing the total Contract Price by the one hundred (100) Solar Facilities.
- **Implementation Schedule:** means the schedule for the implementation of the Scope of Work, which is attached as **Annex 3** to this Contract.
- **Owner:** means NATURENER SOLAR TINAJEROS, S.L.U, as well as any company subrogating to its contractual position in accordance with the provisions of this Contract.
- **Overall Test:** means the test described in **Annex 4**, to be performed as a prerequisite to the execution of the Solar Park Provisional Acceptance Certificate to verify the proper operation of all Solar Facilities and the Electrical Infrastructure. The Overall Test will definitively verify the proper operation of the General Electrical Infrastructure to absorb the power discharged by all Solar Facilities.

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- **Performance Tests:** means the tests described in Annex 4, to be performed as a prerequisite to the execution of each Solar Facility Provisional Acceptance Certificate to verify the proper operation of the corresponding Solar Facility and Electrical Infrastructures. Pursuant to the provisions of Clause 5.2(1), each Performance Test will be performed on a minimum of ten (10) Solar Facilities (with their corresponding Electrical Infrastructures).
- **Production Tests:** means the tests that will be performed at the end of the Production Guarantee Period in order to determine compliance with the Production Guarantee set forth in Clause 8.4, following the protocols set forth in Annex 4.
- **Start-up:** means, with reference to a particular Solar Facility and/or Electrical Infrastructure, the point when all of the work required by this Contract has been completed and all Performance Tests have been passed in accordance with this Contract and the Annexes hereto, the Provisional Acceptance Certificate has been executed and the Owner has received the corresponding Final Start-up Certificate (as confirmed by the Legal Advisor). Reference to Start-up of a Solar Park shall be understood to mean the point when all Solar Facilities and corresponding Electrical Infrastructures have passed the Overall Tests and comply with the above referenced requirements.
- **RD 661:** Royal Decree No. 661/2007, of May 25, which regulates activities involving the production of power under special regime.
- **Subcontractors:** means the subcontractors with which the Contractor subcontracts all or part of the works to be executed under this Contract.
- **Work:** means the work and supplies to be provided by the Contractor pursuant to the provisions of this Contract.

2. PURPOSE AND SCOPE OF WORK

2.1 Purpose of the Contract

The purpose of this Contract is the construction, start-up and delivery of the Solar Park to the Owner pursuant to the terms set forth in this Contract such that, upon issuance of the Final Start-up Certificate, the production of power and sale thereof to the electric distribution grid may commence, in accordance with applicable law and the Technical Specifications.

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This Contract is executed as a "turnkey" contract, and the Contractor is hereby obligated to deliver to the Owner the design, construction and Start-up of the Solar Park for the fixed price and within the fixed time periods established herein, subject to the other terms and conditions set forth in this Contract.

2.2 Scope of Work

(1) According to the terms and conditions of this Contract, the Contractor shall carry out and shall be responsible for all of the equipment, services, supplies and work comprising the Scope of Work. The Scope of Work includes each of the following concepts, as well as all acts that, even if not expressly mentioned in this Contract or in Annex 2, are necessary for the proper operation, performance and commercial exploitation of the Solar Park, in each case in accordance with the customary usage and practices in the industry for a project having these characteristics, this Contract, the Technical Specifications, and applicable law (without prejudice to the provisions of Clause 2.4(4)):

- § Design, engineering (basic and detailed) and required technical schedules.
- § Execution of all aspects of the Scope of Work and the supply of all materials, elements and equipment set forth in Annex 2, and the supply of all materials necessary and appropriate to properly carry out the Scope of Work.
- § Performance of inspections, inventory of materials, performance controls, tests and other analyses required under applicable law and in accordance with the technical specifications and this contract.
- § Transportation to the Site of all materials, equipment, utilities, spare parts, consumables and machinery for which the Contractor is responsible under the Contract.
- § Direct and indirect labor necessary to carry out the Scope of Work and all costs and social charges associated with such labor.
- § Demolition and dismantling of the provisional facilities not required by the Owner and conditioning and cleaning of the Site following issuance of the Solar Park Provisional Acceptance Certificate.
- § Maintenance, protection, security, custody and conservation of the equipment installed or stored at the Site up to the signing of the Solar Park Provisional Acceptance Certificate.

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§ Preparation and delivery to the Owner of all documentation within the scope of this Contract, sufficiently in advance for the utilization thereof by the Owner. In particular, the delivery of the documentation and manuals set forth in Annex 2.

§ ***

§ Training of the Owner's personnel in the operation and maintenance of the materials and equipment acquired in accordance with the terms of Clause 6.7 of this Contract.

§ Construction of all necessary auxiliary facilities, their maintenance, cleaning and security during the performance of the Work, including that performed in compliance with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan; as well as the demolition or dismantling of any temporary facilities not required by the Owner and the conditioning and clearing of the Site following the issuance of the Solar Park Provisional Acceptance Certificate.

§ Supply of spare parts pursuant to the provisions of Clause 6.3.

§ Provision of material and human resources required to comply with the regulations for the Prevention of Occupational Risks and the Social Security and Health Plan, as well as the creation of the Social Security and Health Plan.

2.3 Exclusions

The Scope of Work for this Contract shall not include amounts associated with the purchase or lease of land or easements, or the payment of concessions or any other amounts owed in respect of surface rights to the Site where the Solar Park will be built. Further, it does not include the services associated with the obligations assumed by the Owner in Clause 7, the selection and hiring of personnel by the Owner or the costs and liabilities arising from the selection and hiring of third parties by the Owner for performance of the work consisting of safety and health coordination, or the supervision, external inspection, security, and quality control of the Contractor's work, including the Technical Advisor.

2.4 Changes in the Scope

- (1) Under no circumstances may the Parties make any changes to the Scope of Work contemplated by this Contract (of any kind, whether for expansions, reductions or changes to any portion of the work and/or the items supplied under this Contract), unless a Change Order has previously been signed.

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- (2) At any time prior to Provisional Acceptance, the Owner may propose a change to the Scope of Work by sending the Contractor a notice describing the nature and scope of the change. Upon receipt of such notice, the Contractor must send to the Owner, within a maximum period of ten (10) Business Days, a communication that includes a complete proposal for the changes in the Contract Price, deadlines and form of payment, or any other changes that may be necessary in connection with the changes proposed by the Owner. This communication shall also include a reasoned explanation of the grounds and/or criteria used for the calculation of the new Contract Price and/or deadline. However, the Contractor recognizes that in accordance with the Direct Agreement, the approval of the Financial Institutions is an essential requirement for the validity of the changes.
- (3) Without prejudice to the terms of the Direct Agreement, the Contractor may, at any time during the performance of the Contract, propose changes to the Scope of Work that it deems necessary or appropriate to improve the quality, efficiency or safety of the Solar Park or the facilities or supplies that make up the Solar Park. The Owner, at its discretion, may approve or reject the changes proposed by the Contractor. The Parties will execute a Change Order in the event that the modifications are approved by the Owner.
- (4) In addition, upon the entry into force, promulgation, derogation or change of any mandatory legal provision after the execution of this Contract that affects the Work, the Parties shall sign a document governing the changes that must be made to the purpose of this Contract.
- (5) The Owner and the Contractor shall negotiate in good faith the effects on the deadlines agreed to under this Contract that might occur as a result of the changes requested within the context of the provisions of this Clause. In any event, the prices applicable to any change in the Scope of Work shall consist of the costs of the additional work or supplies arising therefrom (reasonably justified to the Owner) plus ***% as the Contractor's margin.

3. COMMENCEMENT OF WORK

- (1) The Parties agree that the payment by Owner of the amount set forth in Clause 4.2(i) and the delivery by the Contractor of the Performance Bond and the Corporate Guarantee are subject only to the delivery by the Owner to the Contractor of a letter signed by the Financial Institutions in the form of **Annex 12** confirming the availability of the financing and the satisfactory receipt by the Contractor of the permits and authorizations delivered by the Owner in accordance with the terms of subsection (2)(i) below. The payment by the Owner of the amount in accordance with Clause 4.2(i) and the delivery of the Performance Bond and the Corporate Guarantee by the Contractor must be made concurrently on a date between the sixth (6th) and ninth (9th) Business Day following the date the Owner notifies the Contractor that the agreed conditions are satisfied. The date the Owner pays the amount pursuant to Clause 4.2(i) to the Contractor and the Contractor delivers the Performance Bond and the Corporate Guarantee shall be hereinafter referred to as the **“Condition Satisfaction Date.”**

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(2) By executing this Contract, the Owner hereby represents to the Contractor as follows:

- (i) It has obtained all authorizations and licenses necessary for the commencement of construction for the Solar Park, except those that are intrinsic to the construction itself and that are the responsibility of the Contractor in accordance with the terms of Clause 6.6 (having delivered to the Contractor a copy of those that are the responsibility of the Owner). For purposes of clarification, the Owner has obtained the municipal licenses for the work and related activities (to the extent necessary), as well as the administrative authorization, the approval of the Electrical Infrastructures Plan and the interconnection point of the Solar Facilities and has delivered to the Contractor a confirmation issued by the Council for the Environmental and Rural Development (*Consejería de Medio Ambiente y Desarrollo Rural*) of Castilla La Mancha that an Environmental Impact Statement is not required with respect to any of the Solar Facilities of the Solar Park; and
- (ii) The Site is fully accessible and available for the commencement of Work.

Notwithstanding the foregoing, the Owner commits to deliver to the Contractor a copy of the permits and authorizations described in subsection (i) above within four (4) Business Days from the execution of this Contract. Within five (5) Business Days from the date of receipt, the Contractor must declare its acceptance thereof or, if applicable, any changes to the Scope of Work and/or the Contract Price required as a result of conditions imposed in such authorizations and licenses. Such changes must be agreed to by the Parties by executing an appropriate Change Order. However, the Contractor agrees that it shall not proceed with any change that imposes conditions more onerous than those imposed by the permits and authorizations relating to the two contracts executed on the date hereof among the Contractor, Morals Renovables, S.L. and Aluradiel Solar, S.L.

(3) In the event that **(a)** the letter relating the financing described in subsection (1) has not been delivered by November 23, 2007, **(b)** the Condition Satisfaction Date has not occurred by the tenth Business Day following the date the Owner delivered such letter to the Contractor, or **(c)** the Contractor has not received documentary evidence of the receipt of the permits and authorizations referred to in subsection (2)(i) above (or an agreement has not have been reached with respect to the changes required by the conditions imposed in such licenses and authorizations) prior to November 23, 2007, the Contractor and the Owner may terminate the Contract by delivery to the other Party of a notice setting forth its desire to terminate the Contract, and the Parties shall be released from all obligations assumed with respect thereto. The foregoing shall be without prejudice to the purchase orders or requests that the Parties, or companies belonging to their groups, shall have already made or agreed to, as of or following the execution of this Contract. Such purchase orders or requests shall continue in force and effect in accordance with their terms unless the Owner elects to cancel them, in which case the Owner shall pay the Contractor any cancellation costs that the Contractor or any company in its group must pay to any distributor or manufacturer with respect to such orders.

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However, the Contractor may not terminate the Contract if the Owner has confirmed its intention and ability to make the payment described in Clause 4.2(i) and the Condition Satisfaction Date has not have occurred due to the Contractor's failure to deliver the Performance Bond and the Corporate Guarantee.

- (4) The Contractor represents that, prior to the execution of this Contract, it has studied the subterrain, surroundings and access thereto.

The Contractor represents that the Site is adequate and sufficient for the performance of the Work, and that the Contractor is aware of and accepts all the risks and contingencies of the Site that may affect the performance of the Work, including, without limitation, climate conditions (including wind, snow, frost, rain, etc.), hydrographic, hydrological, geotechnical and seismic conditions, any toxic waste or archeological sites that may appear at the Site and in general any other physical, natural or artificial circumstances of the Site and the subsoil thereof. Consequently, the Contractor waives any claim to any supplement to the price of the Contract for an increase in work, delay therein, or additional cost of any kind, and any claim to any extension in the Delivery Deadline or the intermediate deadlines for the Work arising from the Site conditions referred to in this Clause.

However, the Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of Force Majeure in accordance with the terms of the Contract, with application of the provisions of Clause 12.

4. PRICE AND FORM OF PAYMENT

4.1 Contract Price

- (1) The Contract Price payable by the Owner to the Contractor in consideration for the works to be performed by Contractor under this Contract shall be *** Euros. This amount shall be increased by an amount corresponding to Value Added Tax (VAT) pursuant to applicable law at any given time. The Contractor hereby acknowledges and agrees that the Contract Price is a lump-sum, fixed, and final price, and is not subject to any change or revision whatsoever on the basis of any changes in the prices of labor, materials, equipment, exchange rates or any other similar items, including a change in any taxes levied on the scope of the work.

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- (2) The Contract Price includes all the costs and expenses associated with the Contractor's performance of work under the Contract, including those specifically set forth in the Scope of Work. The Contract Price shall be deemed to include, by way of example:
- § taxes, fees, industrial- and intellectual-property royalties on the equipment supplied, Social Security and other encumbrances upon the supplied equipment and materials in their country of origin or destination, including, if applicable, the rights of free circulation in the European Union and any other tax with respect to the importation of the Equipment and the performance of the Work, except for the VAT on the actual Contract Price. For purposes of clarification, the Price does not include legalization fees or costs for permits and authorizations, which are the responsibility of the Owner.
- § payroll costs and the cost of equipment required for the Contractor's performance of the Work or to ensure the protection, security and proper performance thereof.
- § the cost of any insurance that must be taken out by the Contractor pursuant to Clause 11.

However, the Parties agree that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs are not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon the Contractor's delivery to Owner, prior to November 23, 2007, of an offer to perform such works and the issuance of a Change Order agreeing to a new Contract Price that includes such items.

- (3) In the event of changes in the Scope of Work agreed to pursuant to the provisions of this Contract, the price agreed to in the corresponding Change Order shall apply.
- (4) Without prejudice to the foregoing, in consideration for the maintenance and security tasks to be performed by the Contractor prior to the execution of the Solar Park Provisional Acceptance Certificate, the Owner shall pay to the Contractor (in addition to the Contract Price), the portion of the price contemplated in the Maintenance Agreement that is equivalent to the percentage representing the Solar Facilities that have obtained a Provisional Acceptance Certificate with respect to all Solar Facilities contemplated by this Contract.

4.2 Payment Milestones

The Contract Price shall be paid by the Owner to the Contractor pursuant to the payment schedule set forth below (each of the milestones set forth below shall be deemed a **"Payment Milestone"**):

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- (i) On the Condition Satisfaction Date, an amount equal to ***% percent of the Contract Price, i.e., *** euros, upon delivery of the Performance Bond by the Contractor.
- (ii) Based on the monthly progress of the civil works involving earth moving, leveling and foundation laying, measured as 100 kWe Solar Facilities whose foundations are completed, the Owner will pay up to a maximum of *** percent (***) of the Contract Price, i.e., *** euros, upon presentation of the respective invoices by the Contractor.
- (iii) Upon each delivery to the Site of the module supports, inverters and trackers of each Solar Facility and presentation of the corresponding invoices not earlier than two (2) months prior to the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***) percent of the Contract Price corresponding to such Solar Facilities.
- (iv) Upon each delivery of the solar modules of each Solar Facility to the Site and upon presentation of the corresponding invoices not earlier than the dates indicated in the Implementation Schedule, the Owner shall pay up to a maximum of *** (***) percent of the Contract Price corresponding to such Solar Facilities.
- (v) Based on the monthly progress of the mechanical assembly of the module supports, solar trackers and the modules mounted thereon, as well as the installation of the inverters and the transformer center, measured as Solar Facilities of 100 kWe whose facilities up to the transformer center have been completed, the Owner will pay up to a maximum of *** (***) percent of the Contract Price, upon presentation of the respective invoices.
- (vi) Upon the execution of each Provisional Acceptance Certificate for a Facility, the Owner shall pay *** (***) percent of the Contract Price corresponding to such Solar Facility (together with the remaining portion of the Contract Price, if any, that was not previously paid and that corresponds to Work completed by the Contractor under this Contract in respect of such Solar Facility). The last Solar Facility payment shall be made concurrently with the execution of the Solar Park Provisional Acceptance Certificate.

4.3 Invoicing System and Form of Payment

- (1) Once the Contractor deems that a Payment Milestone has been achieved, the Contractor shall give written notice thereof to the Owner and the Technical Advisor, attaching thereto the invoice and any documentation that may be necessary to demonstrate achievement of the corresponding Payment Milestone (including, for this purpose, all of the documentation that must be furnished by the Contractor to the Owner at any time, pursuant to the provisions of Annex 2).

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- (2) Within fifteen (15) Business Days following receipt of the above-mentioned notice, the Owner and the Technical Advisor shall confirm the achievement of the corresponding Payment Milestone. Within such period, the Owner and the Technical Advisor shall communicate in writing to the Contractor: **(i)** their agreement that the corresponding Payment Milestone has been achieved, in which case the Owner and the Technical Advisor shall provide documentary confirmation by approving the corresponding invoice, or **(ii)** that the Payment Milestone has not been fully achieved, in which case the Owner and/or the Technical Advisor must specify in writing to the Contractor a detailed and reasoned explanation of the work pending performance in order for the Payment Milestone to be deemed to have been achieved. In the event that the Owner and/or the Technical Advisor fail to respond to the Contractor within the above-mentioned period of fifteen (15) Business Days, due solely to the failure of the Contractor to provide all documentation required to verify achievement of the Payment Milestone, the Owner and the Technical Advisor agree to request the same within the above period of fifteen (15) Business Days. The Owner and the Technical Advisor will be allotted another ten (10) Business Days to issue their response, counting from the date of receipt of all requested documentation.
- (3) If the Owner and/or the Technical Advisor do not agree that a Payment Milestone has been achieved, the Owner shall be entitled to return the corresponding invoice until the Contractor has completed the work in accordance with the provisions of this Contract. However, if the Parties agree that the disagreement involves only part of the work included in the Payment Milestone, the Owner shall pay the invoice amounts corresponding to the work not affected by the dispute, with the rest remaining subject to full performance and delivery by the Contractor in accordance with the terms of this Contract.
- (4) If, following the period referred to in subsection (2) above, the Owner and/or the Technical Advisor have not responded, the Contractor may send a demand notice to the Owner and the Technical Advisor communicating such fact and allowing an additional period of five (5) Business Days for confirmation of their agreement or disagreement as to the achievement of the respective Payment Milestone. If, upon expiration of such period, the Owner and/or the Technical Advisor still have not responded, achievement of the Payment Milestone shall be deemed accepted by the Owner and the Technical Advisor.
- (5) Under no circumstances shall the Owner's or the Technical Advisor's agreement to a Payment Milestone imply acceptance of the Work associated therewith, which acceptance shall in any event remain conditioned upon passing the Performance Tests and executing the respective Provisional Acceptance Certificate and, ultimately, the Final Acceptance Certificate.
- (6) Payments shall be made by the Owner to the Contractor via bank transfer to the bank account designated by the Contractor within *** Business Days following the date on which the Owner accepted the corresponding Payment Milestone (or on the date on which the Payment Milestone was deemed accepted by the Owner, in accordance with subsection (4) above). On an exceptional basis, the payment corresponding to the first Payment Milestone shall be paid by the Owner on the Condition Satisfaction Date (with respect to such payment, approval of a Payment Milestone by the Contractor and the Owner pursuant to the above provisions is not required) .

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5. IMPLEMENTATION SCHEDULE, TESTS AND PROVISIONAL ACCEPTANCE

5.1 Implementation Schedule. Changes in the Deadline

- (1) The Contractor hereby undertakes to perform the Work in accordance with the Implementation Schedule attached hereto as **Annex 3**, such that the Solar Park shall have all technical attributes required for issuance of the Final Acceptance Certificate (and the same has been requested in accordance with Clause 2.4) no later than the Delivery Deadline.
- (2) The dates for performance specified in the Implementation Schedule and, in particular, the Delivery Deadline, are fixed and final, and may not be postponed, and the performance deadlines may not be extended, except under the following circumstances:
- (i) due to agreed-upon changes in accordance with the provisions of Clause 2.4, provided that such changes include an extension of the deadlines;
 - (ii) due to a breach by the Owner giving rise to a delay in the Work (including, specifically, delays in procuring authorizations and licenses for which it is responsible), provided that such breaches are not attributable to actions, omissions or breaches by the Contractor;
 - (iii) suspension of the Work in accordance with the provisions of Clause 13, except in the event of suspensions attributable to the Contractor; or
 - (iv) the occurrence of an event of *Force Majeure* that reasonably justifies an extension of the deadlines established in the Implementation Schedule.
- (3) The Contractor must inform the Owner of the alleged facts or causes, in writing and within a maximum period of ten (10) Business Days after the Contractor becomes aware thereof, and the communication must be accompanied by all available information and data on such date that substantiate such facts and the consequences thereof on the Work, the extension (if such extension can be determined) proposed by the Contractor, and a detailed explanation of the measures adopted to mitigate the consequences thereof.

The Owner may request any additional information that it deems reasonably necessary to analyze the request and shall make a decision thereon as soon as possible, but in any event no later than fifteen (15) days after receipt of such communication from the Contractor or receipt of the documentation required to evaluate the circumstances, if later. If the Owner accepts the extension proposed by the Contractor, the Parties shall issue a Change Order confirming the changes to the Implementation Schedule.

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5.2 Performance Tests and Provisional Acceptance

- (1) Upon completion of the construction of a group of at least ten (10) Solar Facilities, or of the Solar Park, the Contractor shall notify the Owner so that, within a maximum period of seven (7) Business Days, the Performance Tests or the Overall Test may be commenced . All Tests shall be conducted in accordance with the Test procedures and protocols attached hereto as **Annex 4**. The Contractor agrees that the Performance Tests and the procedures set forth in this Clause shall begin only when at least ten (10) Solar Facilities are ready for provisional acceptance.
- (2) Once the Owner and the Technical Advisor have verified that the Performance Tests (or, if applicable, the Overall Test) have been passed in accordance with the standards set forth in this Contract and that the Owner has received all documentation set forth in the Scope of Work, the Contractor and the Owner shall execute the corresponding Provisional Acceptance Certificate for the Solar Facilities delivered or the Provisional Acceptance Certificate for the Solar Park, as applicable, provided that the following conditions have been met:
- a) The Work corresponding to the applicable Solar Facilities, or, if applicable, the Solar Park, has been satisfactorily completed.

However, if the Performance Tests or the Overall Test have been passed and the remaining conditions specified in this Clause have been met with certain punch list items still pending, the Owner shall sign the corresponding Provisional Acceptance Certificate, acknowledging, in an attached document, the existence of the punch list items and setting a period of thirty (30) Business Days for completion thereof, or another longer period of time agreed by the Parties. If such punch list items have not been completed by the Contractor at the conclusion of the specified time period, the Owner may, at its discretion, (i) demand the completion thereof, or (ii) perform such work itself or through third parties, deducting the direct costs of such punch list items from what is owed to the Contractor, or enforce of the bonds delivered pursuant to this Contract.

The term “punch list items” shall be understood to refer to those tasks pending execution by the Contractor for which the work pertaining to such Work has been completed within the time periods specified in this Contract that do not affect the operation, production or output of the Solar Facilities or the Electrical Infrastructure.

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- b) All of the documentation that the Contractor must submit in accordance with the provisions of **Annex 2** has been submitted to the Owner;
 - c) The spare parts specified in Clause 6.3 have been made available to the Owner;
 - d) With respect to the Solar Park Provisional Acceptance Certificate, the Contractor has delivered to the Owner the Guarantee Bond in the amount specified in Clause 8.5; and
- (3) The deadlines granted to the Contractor for completion of pending punch list items upon execution of a Provisional Acceptance Certificate shall not be considered an extension of the deadlines set forth in this Contract, and the Contractor shall indemnify the Owner for any damages that the Owner may incur as a result thereof pursuant to Clause 5.2(a) above.
- (4) In the event that the Owner does not execute the Provisional Acceptance Certificates for the respective Solar Facilities (or, if applicable, the Solar Park) within seven (7) Business Days of verifying compliance with the stipulated requirements, the Contractor may request in writing that the Owner execute the respective Certificate within an additional period of five (5) Business Days. If the Owner has not executed the new Provisional Acceptance Certificates for the Solar Facilities (or, if applicable, the Solar Park) within said period, the conditions required in this clause for execution of the corresponding Certificate have been satisfied, it shall be understood that provisional acceptance has been achieved, except to the extent discrepancies exist as to the performance of the conditions required by the same, in which event the Parties shall submit the matter to arbitration in accordance with the provisions of Clause 20 (2).
- (5) Within thirty (30) days following the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must: (i) remove from the Site any material used in the construction, as well as any equipment, machinery, tools, vehicles and temporary structures that are not necessary during the Guarantee Period; (ii) clean the Site and remove any debris or waste; and (iii) deliver the “As Built” Plans for the Solar Park.

6. OTHER OBLIGATIONS OF THE CONTRACTOR

6.1 Prevention of Occupational Risks

- (1) The Contractor shall be obligated, in compliance with current legislation, to perform the works under this Contract in such a way as to ensure the safety of workers, and to apply the preventive activity principles set forth in Law 31/1995 and its implementing regulations. Accordingly, the Contractor shall be responsible for designing the construction process in accordance with the provisions of Royal Decree No. 1627/1997, which establish minimum safety and health provisions for construction work, and in its the other implementing or supplemental regulations, such that the safety of the activities that are performed simultaneously or consecutively is ensured, and the safety of third parties present in the vicinity of the work site is also ensured.

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- (2) In particular, as part of the scope of this Contract, the Owner has prepared a Safety and Health Study, and furthermore, in compliance with the provisions of Royal Decree No. 1627/1997, the Contractor must prepare a Workplace Safety and Health Plan, both specifically for the work provided for within the scope of this Contract. The Contractor hereby represents that they contain, or will contain, all requirements of such Royal Decree and its implementing rules and regulations (including the provisions of the autonomous communities that apply, if any).
- (3) Furthermore, the Owner (at the request of the Contractor) shall appoint a safety and health coordinator, who shall have the obligations set forth in Royal Decree 1627/1997, and who shall be responsible for ensuring that all of personnel of the Contractor, the Subcontractors and of the suppliers of equipment or materials under this Contract comply with the safety requirements established in current legislation. Both the Owner and the Contractor shall be obligated to respect and comply with their respective obligations, as imposed by Royal Decree 1627/1997 and other applicable rules and regulations.
- (4) The Owner reserves the right to evaluate security during the construction period. This does not imply that Owner has assumed responsibility with respect to security measures taken or the preparation of documentation or the content of such documentation referred to in this Clause, without prejudice to the obligations and responsibilities under law that attach as a result of Owner's capacity as a developer. To this effect, the Contractor shall provide to the Owner all documentation that Owner may reasonably require in order to confirm the performance of the obligations set forth in this Clause.
- (5) For clarification purposes, in no event shall the Contract Price be increased if, as a result of a security check, legal review or technical risk review, the Contractor is required to take additional measures designed to guarantee compliance with applicable rules and regulations for the prevention of occupational risks.

6.2 Obligation to Provide Access to the Site

The Contractor hereby undertakes to provide to the Owner access to the workshops, warehouses and sites where the Contractor or Subcontractors are performing work, tests or trials; manufacturing equipment; or storing materials for the construction, assembly and Start-up of the Solar Park, provided that the Owner has so requested in writing reasonably in advance and that the visit causes the least possible interruption of the performance of the work by the Contractor, and further provided that the Owner agrees to honor all reasonably necessary confidentiality measures and to respect security measures in force at the Site. The Contractor also undertakes to ensure that the Subcontractors grant access to the Owner under the terms of this subsection, for which purpose the Contractor shall include in the contracts to be entered into with the Subcontractors an obligation imposed upon them consistent with the provisions of this subsection.

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6.3 Minimum Stock and Supply of Spare Parts

At the time of execution of the Solar Park Provisional Acceptance Certificate, The Contractor shall maintain a minimum stock of spare parts in accordance with the provisions of Annex 5. Such minimum stock shall be maintained at all times until the execution of the Final Acceptance Certificate, for which purpose the Contractor undertakes to replace any material or equipment used during such period as promptly as reasonably possible.

Further, Contractor shall be responsible for providing, upon the Owner’s request, spare parts (in particular, modules, inverters and trackers, identical or similar to those covered by this Contract, in accordance with the terms of Annex 5) necessary for the proper operation and maintenance of the Solar Park in accordance with the terms of Clause 8.3.2(8) below.

6.4 Quality Control

The Contractor must perform a quality control inspection of the modules, using standards for acceptance and rejection and testing and measurement protocols that are acceptable to the Technical Advisor. For these purposes, the Contractor must inform the Technical Advisor of the quality control inspections that it is going to use in the performance of this Agreement, and detail the respective acceptance and rejection standards and testing and measurement protocols, such that the Technical Advisor can approve the same prior to the date on which such modules are expected to be received under this Contract.

Once the Technical Advisor has verified the quality control inspection procedures, the Contractor shall follow such quality control inspection procedures for all modules received under this Contract, except with respect to those which are subject to another quality control inspection that has been expressly approved by the Technical Advisor in writing.

6.5 Regulatory Compliance

- (1) The Contractor undertakes to observe and comply with the regulations applicable to the performance of the Work, subject to the provisions of subsection (3) below. In particular, the Contractor must ensure compliance with regulations regarding classified activities, safety, health, and environmental protection. In particular, the Contractor shall be the only responsible party for compliance with applicable law and regulations with respect to (i) ***, and (ii) environmental protection during the period of manufacture, construction, erection and Tests until the Solar Park Provisional Acceptance Certificate has been executed.

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- (2) The Contractor represents that it is current in the payment of wages and Social Security contributions for the professionals hired by the Contractor to perform the services covered by this Contract. Accordingly, the Contractor agrees to show to the Owner all documents that the Owner may reasonably request evidencing compliance with wage, tax and Social Security obligations (including, without limitation, certificates of good standing and compliance with tax obligations and the TC1 and TC2 Social Security dues bulletins).
- (3) In the event of any change in the applicable rules and regulations after the date on which this Contract is signed, the Parties shall proceed in accordance with the provisions of Clause 2.4(4) above. In the event that either Party does not sign the applicable change document, the Contractor shall continue to perform the work in compliance with the rules and regulations previously in force, and shall not assume any responsibility for any breach of the applicable new rules and regulations.

6.6 Permits and Authorizations

- (1) ***. Further, both parties agree to follow the joint application procedure provided for in the last paragraph of subsection 1 of Section 12 of RD 661 and subsection 1 of Section 11 of Decree 299/2003, of November 4, of Castilla-La Mancha, such that the applications for the certificate relating to start-up and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be made jointly. The Parties recognize that making such joint application is an essential element for both Parties. Such application shall be submitted by the Contractor before the Delivery Deadline, although in such submission (a) it shall be the responsibility of the Contractor to provide all information and documentation necessary to apply for the start-up certificate referred to in Sections 115 c) and 132 of Royal Decree 1.955/2000, of December 1, and (b) it shall be the responsibility of the Owner to provide all information and documentation necessary to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power included within the Special Regimen, in accordance with the terms of Section 12 of RD 661. Once presented, the handling of the applications for the start-up certificate and the definitive registration of the Solar Facilities and the Electrical Infrastructure shall be the responsibility of the Owner, without prejudice to the Contractor's obligation to cooperate with the Owner in all respects in accordance with the terms of Clause 6.11.
- (2) For clarification purposes:
 - (i) if, due to causes attributable to the Contractor, the application for the Final Start-up Certificate is not presented in accordance with subsection (1) above with respect to one or more Solar Facilities or to the Solar Park on or before the Delivery Deadline, and/or

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- (ii) prior to September 29, 2008, the Owner has not have obtained the Final Start-up Certificate as a result of design defects, defective or inadequate equipment or performance of the Work or of defects, imprecision or omissions in the documentation or in the technical information delivered by the Contractor,

the Owner shall have the right to terminate the Contract in accordance with the terms of Clause 14.1. Notwithstanding the foregoing, the Owner may not terminate the Contract and the Contractor shall not be held responsible for the consequences occurring as a result of the failure to obtain the Final Start-up Certificate, if this failure was due to (i) the Owner's failure to deliver, or incomplete delivery, of the documentation which Owner was required to furnish in connection with the application for the Final Start-up Certificate (although the Contractor recognizes that the Owner shall not be responsible for failure to provide documentation required by Section 12 of RD 661 when such documentation could not be obtained as a result of the failures, imprecision or omissions contemplated in subsection (ii) above), or (ii) the failure to request, late request or failure to obtain such permits and authorizations that are not the responsibility of the Contractor pursuant to this Contract; or (iii) any other circumstance not attributable to the Contractor, such as delays by the respective administrative entity.

The Owner agrees to cooperate with the Contractor in all respects needed for purposes of the application or the procurement of ***. Further, the Owner agrees to inform the Contractor as soon as possible of any communication, request or requirement received from a competent administrative authority relating to the application for approval of the Final Start-up Certificate.

In any case, even in the event that the application for the Final Start-up Certificate with respect to all of the Solar Facilities and the Electrical Infrastructure has not been presented prior to the Delivery Deadline and, without prejudice to the foregoing, both Parties agree to use their best efforts and to provide all cooperation necessary to obtain the Final Start-up Certificate prior to September 29, 2008.

6.7 Training of the Owner's Personnel

The Contractor must adequately and sufficiently train the Owner's personnel to efficiently operate the Solar Park in all respects. Such training must be provided by the Contractor during the four week period prior to the issuance of the Provisional Acceptance Certificate for the Solar Park and shall have a maximum duration of five (5) Business Days. The personnel designated by the Owner to receive such training shall not exceed five (5) individuals.

6.8 Designation of Project Director

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- (1) The Contractor shall name a Project Director with an officially recognized technical degree and relevant industry experience with similar projects. The appointment of the Project Director must be submitted to the Owner for approval. The Owner may not reject a proposed candidate without just cause.
- (2) The Project Director shall be responsible for overseeing proper performance of the Work and for directing, managing, and supervising all of the activities necessary for the implementation of the services agreed to by the Contractor in accordance with the terms and time periods specified in this Contract. Further, the Project Director shall be the principle contact between the Contractor and the Owner during the term of this Contract.
- (3) Without prejudice to the foregoing subsection, in accordance with the terms of this Contract and applicable law, the Contractor shall be responsible for the actions of the Project Director and any and all consequences arising from such actions.

6.9 Taxes and Import Duties

The Contractor agrees to pay all taxes, including all expenses, interest and surcharges relating thereto, applicable to the supply, manufacture, transportation, services, sales and other services for which the Contractor is responsible under this Contract, except with respect to those whose payment is expressly attributable to the Owner.

6.10 Intellectual and Industrial Property Rights

All of the drawings and designs that the Owner has prepared or supplied to the Contractor, and all of the patents, copyrights, design rights and other intellectual and industrial property rights thereto shall be the property of the Owner.

The Contractor, in turn, grants to the Owner, as part of the Contract Price and at no additional cost, an irrevocable license, not transferable to third parties (except in conjunction with all of the rights and obligations of the Owner under this Contract), and free of any royalties, to use in the Solar Park (and therefore, in no other project) the creations, plans, drawings, specifications, documents, procedures, methods, products, inventions prepared or developed by the Contractor under this Contract, in all cases, subject to any restrictions imposed on such intellectual or industrial rights by third parties. The Contractor represents and warrants to the Owner that the same are owned by the Contractor or that the Contractor has sufficient legal rights to use the same for such purpose. Should any claim or action be brought by a third party alleging an infringement of any intellectual or industrial property right granted by the Contractor to the Owner hereunder, the Contractor shall indemnify the Owner for all liabilities and damages (including costs and expenses) that may arise as a consequence of such infringement of third parties' rights, claim or actions arising there from.

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6.11 Cooperation

The Contractor undertakes to provide to the Owner all of the cooperation that the latter may reasonably request in connection with the implementation of the project for the construction of the Solar Park and compliance with the Owner’s obligations as specified in this Contract, and to submit to the Owner all of the documentation or information that the Owner may reasonably request in connection with the Work and that is available to the Contractor.

7. OBLIGATIONS OF THE OWNER

The Owner undertakes to comply with the obligations set forth in this Contract, those resulting from good faith, and those resulting from the applicable laws and regulations, including, in particular, the following:

- (i) To comply with its payment obligations under this Contract;
- (ii) To provide to the Contractor, its Subcontractors and employees, during the effective term of this Contract, access to the Site to fulfill their contractual obligations, including appropriate access to highways and access roads to perform the Work. For these effects, the Owner will execute, at its cost and expense, agreements with landowners that procure all necessary easements or land use rights;
- (iii) Subject and without prejudice to the obligations of the Contractor under Clauses 6.6 and 2.2 of his Contract, the Owner shall negotiate and obtain, at its own cost and expense, the permits required for Final Start-Up and operation of the Solar Park, including the Final Start-up Certificate. Specifically, with respect to the joint application procedure referred to in Clause 6.6 of this Contract, the Owner agrees to provide all documentation and information required to apply for the definitive registration of the Solar Facilities and the Electrical Infrastructure with the Administrative Register of Solar Facilities Producing Power within the Special Regime, in accordance with the terms of Section 12 of RD 661, upon the terms of such Clause 6.6;
- (iv) To cooperate with the Contractor, to the extent necessary, in order to avoid any impact on the Implementation Schedule or in the performance of the works by the Contractor;
- (v) To appoint a project coordinator to act on behalf of the Owner in the performance of matters associated with the Contract and who must possess sufficient powers to represent the Owner;
- (vi) The Owner undertakes to provide to the Contractor all of the cooperation that the latter may reasonably request in connection with the implementation of the Work and compliance with the Contractor’s obligations under this Contract. The Owner shall submit to the Contractor all documentation or information that the Contractor may reasonably request in connection with the Solar Park and that is available to the Owner.

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8. GUARANTEES

8.1 Solar Module Degradation Guarantee

The Contractor guarantees the durability of the solar modules during the Guarantee Period, in accordance with the schedule of guarantees made by the manufacturer of the modules set forth on **Annex 6** of this Contract. Upon expiration of the Guarantee Period, the Contractor undertakes to assign to the Owner its rights under the module supplier guarantees through the remainder of the 25-year useful life of the modules.

8.2 Solar Module Capacity Guarantee

- (1) The Contractor guarantees that the total peak capacity of the Solar Park is equal to or higher than the contracted capacity of 11,850 kWp (which will be confirmed by the manufacturer's photoflash certificates). In addition, all certificates for each module shall be within the rated peak capacity margin of ***% and all aggregate certificates for each of the Solar Facilities shall be within the rated peak capacity margin of ***% (although the Solar Park aggregate can only have a margin with respect to the above referenced peak capacity of ***%, in which case the Contract Price shall be reduced proportionately in accordance with the final reduced peak capacity and the corresponding amount of the final Payment Milestone contemplated in Clause 4.2 reduced accordingly).
- (2) In the event that (i) the total sum of the certificates is less than the contracted 11,850 kWp (unless it is within the permitted margin for the Solar Park pursuant to subsection (1) above), or (ii) the certificates do not comply with the above referenced margins, the Contractor shall replace, at its expense, solar modules as needed to increase the total peak capacity of the Solar Park to the minimum permitted under subsection (1) above, or those modules whose individual capacity is inferior to the aforementioned tolerance.
- (3) If, as of the date set forth in Clause 14.1(1)(i), the sum of the manufacturer's photoflash certificates demonstrate the peak capacity of the Solar Park is less than the referenced total peak capacity (unless it is within the permitted margin for the Solar Park set forth in subsection (1) above), the Owner may terminate the Contract for Contractor breach in accordance with the terms of Clause 14.1, and pay the indemnity set forth in such Clause.
- (4) The Owner reserves the right to perform capacity tests on the solar module samples that have been provided at the CIEMAT, CENER or IFE-Fraunhofer laboratories, in accordance with the applicable IEC (International Electrotechnical Commission) standard in order to confirm their compliance with the capacity specified by the manufacturer and guaranteed by the Contractor. The results thereof shall be binding on the Parties. In the event that such results confirm that the capacity of the modules does not fall within the tolerance guaranteed by the Contractor, the Contractor shall bear the costs of such tests and shall immediately replace the entire batch of modules corresponding to the tested samples, except to the extent that the modules failing the capacity test can be identified, in which case, only those modules shall be replaced.

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8.3 Design, Assembly and Performance Guarantee. Materials Quality Guarantee.

8.3.1 Design, Assembly and Performance Guarantee

- (1) The Contractor guarantees during the Guarantee Period that the procedures followed for the design of the facilities and for the performance of the work are of the required quality and conform to the specifications contained in this Contract.
- (2) The Contractor is obliged to repair or, if necessary in its opinion, to supply totally new, and reinstall free of charge to the Owner, those parts or components of the facilities included in the Scope of Work that fail during the Guarantee Period due to design, assembly or performance defects.
- (3) The provisions of subsections 8.3(2) to (8) below with respect to the Materials Quality Guarantee shall apply, *mutatis mutandis*, to the guarantee provided under this subsection.

8.3.2 Materials Quality Guarantee

- (1) The Contractor guarantees that all the materials and components used in the manufacture, assembly and Start-up of the Solar Park are of the required quality and conform to the specifications for the equipment and the technical documents contained in the Annexes to this Contract. The Contractor further guarantees a minimum stock of spare parts to the Owner in accordance with the terms of Clause 6.3 and Annex 5 of this Contract.
- (2) The materials quality guarantee will enter into force on the date of issuance of the relevant Solar Park Provisional Acceptance Certificate and shall remain in force until the Solar Park Final Acceptance Certificate is signed. If the Solar Park or a portion thereof, cannot be commercially operated during the Guarantee Period for reasons attributable to the Contractor, the Guarantee Period shall be extended (only as regards the affected facilities) for a period equal to the period during which the corresponding facilities are not operating. For this purpose, the parties shall record in writing the periods during which operation is suspended and the corresponding extensions of the guarantee.
- (3) During the Guarantee Period, the Contractor is required, in its discretion:

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- a) To replace any material and equipment that do not comply with what was agreed upon or required pursuant to this Contract, or that are inadequate or of a deficient quality; and
 - b) To adjust, repair or replace any equipment exhibiting any design, materials, manufacturing, operation, or performance defect. If a Systemic Defect exists with respect to any equipment or components supplied under this Contract, the Contractor shall carry out, at its expense, the redesign and/or modifications necessary to cure such problem in accordance with the Owner's requirements.
- (4) The adjustments, repairs or replacements must be performed within the shortest period that is reasonably possible (and, in any event, no later than fifteen (15) days from the time the defect is detected), in a manner that is least prejudicial to the Owner and taking all action needed to cause the least possible harm to the operation of the overall facilities of the Solar Park.
- If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within the period established in this Clause, the Owner shall so inform the Contractor and shall grant the Contractor a period of five (5) days to complete any such adjustments, repairs or replacements. If the Contractor fails to make the above-mentioned adjustments, repairs, or replacements within such period, the Owner may do so itself or through third parties at the Contractor's expense, which action shall not entail forfeiture of the quality guarantee provided by the Contractor under this Clause. The Contractor shall be also required to pay to the Owner the direct expenses paid to the above-mentioned third parties for such purpose.
- (5) Repairs, adjustments, alterations, replacements or maintenance that may be necessary because of the normal wear and tear of on the facilities provided under this Contract or caused by misuse or negligent use of the equipment by the Owner or by third parties (other than the Contractor or its Subcontractors) or because of the use of the equipment supplied to Owner in a manner that does not conform to the technical specifications, are all excluded from the scope of the guarantee. For clarification purposes, it shall be understood that the Owner (or third parties acting on its behalf) has used equipment in the intended manner when such use conforms to the operation and maintenance manuals delivered to the Owner by the Contractor pursuant to this Contract. This guarantee may not be enforced in the event of the inaccessibility of the Site, provided that the Contractor has notified the Owner of the existence of such inaccessibility, or, in the events of *Force Majeure* (for such time as exist the circumstances preventing the provision thereof).
- (6) The obligations arising from the guarantee set forth in this section shall be fulfilled by the Contractor at its sole cost and expense and free of any charges or expenditures by the Owner, and the Contractor shall bear the expenses arising as a result thereof for the Owner, such as demolition and disassembly, construction, carting, insurance and packaging for returned materials and their replacement, assembly and supervision, taxes and the like.

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- (7) All repaired or replaced material shall carry a new guarantee period of the following duration from the date of repair or replacement:
- (i) if repaired, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer; and
 - (ii) if replaced, *** (***) months or the time remaining until the issuance of the Solar Park Final Acceptance Certificate, whichever is longer.
- (8) The Contractor guarantees the availability of spare parts for the modules, inverters and solar trackers during the Guarantee Period and during the entire useful life of each Solar Facility, in the latter case provided the Maintenance Agreement remains in force. The Contractor shall provide such guarantee on the following terms:
- (i) With respect to the module, inverter or solar tracker spare parts that are manufactured by the Contractor or by companies of its group (currently headed by Sunpower Corporation), the Contractor shall ensure that such spare parts continue to be manufactured or, in the event that the Contractor or the companies of its group do not manufacture spare parts identical to those already installed, that spare parts for modules, inverters or solar trackers of similar characteristics (and, in the case of modules, of equal or greater capacity) are available, provided they do not entail a reduction in the guaranteed performance of the Solar Park.
 - (ii) With respect to the module, inverter or solar tracker spare parts that are not manufactured by the Contractor or by companies of its group, the Contractor shall use reasonable efforts to (a) cause the respective suppliers to continue to manufacture such spare parts or other spare parts with similar characteristics (and, in the case of modules, of equal or greater capacity), provided they do not entail a reduction of the guaranteed performance of the Solar Park, or (b) obtain such spare parts with similar characteristics from other vendors with technical capabilities that are at least similar to the original ones. Should the Contractor become aware that an original vendor intends to stop manufacturing such spare parts, it shall so notify the Owner so that the Owner may order, through the Contractor, the spare parts it deems appropriate, provided they are available on the market.

Such spare parts will be supplied at the Owner's request at the market prices prevailing from time to time (which shall be paid by the Owner) and within such reasonable period as the Parties agree, taking into account the characteristics of the requested spare part.

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8.4 Solar Park Production Guarantee.

- (1) The Contractor guarantees to the Owner that the aggregate electric output of the Solar Park during each of the *** periods included in the Production Guarantee Period shall reach the PR guaranteed pursuant to Annex 10 (the “**Guaranteed PR**”), for each determined irradiance and temperature condition, and that in no event shall it fall beneath the PR minimum set forth in such Annex (the “**Minimum PR**”).

In the event of a partial termination of the Contract in accordance with the provisions of Clause 14.1, the Guaranteed PR and the Minimum PR shall be applied to the electric output of the Solar Facilities that were not rejected by the Owner.

- (2) A Production Test shall be performed at the end of each *** period dividing the Production Guarantee Period in order to confirm the electrical output. For these purposes, within the forty-five (45) days prior to the termination of the *** period following the commencement date of the Production Guarantee Period, and within the forty-five (45) days prior to the termination of the Production Guarantee Period, the Contractor shall notify the Owner of such circumstance so that the Parties may agree upon a date to perform the Production Tests for the corresponding *** period (which, in no event may be later than the date which is fifteen (15) Business Days following the date of termination of the period which is *** following the commencement date of the Production Guarantee Period or the termination date of the Production Guarantee Period, as applicable). The following shall apply to the results of the Production Tests for the Solar Park:
- (a) If the actual measured output of the Solar Park is less than the Guaranteed PR for the corresponding *** period (as such term is defined in Annex 10) but is greater than the Minimum PR for such period, the Contractor shall pay to the Owner the penalties set forth in Annex 10, up to a maximum of ***% of the Contract Price.
 - (b) If the actual measured output of the Solar Park is less than the Minimum PR for the corresponding *** period, the Owner may elect to: (i) return the entire Solar Park to the Contractor (or the part thereof that was not rejected in the event of a partial termination in accordance with the terms of Clause 14.1), the Contractor then being obligated to return the entire Contract Price paid by the Owner pursuant to this Contract and to indemnify the Owner for damages pursuant to Clause 14.1(5), or (ii) return the Solar Facilities causing the failure to achieve the Minimum PR to the Contractor, the Contractor then being obligated to return the portion of the Contract Price corresponding to such Solar Facilities and to indemnify the Owner for damages pursuant to Clause 14.1(5) that correspond to the returned Solar Facilities.

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- (3) If the Guaranteed PR is reached in the Production Tests for each *** period, or if the Contractor shall have paid the required penalties for achieving an output between the Minimum PR and the Guaranteed PR, the Parties shall execute a certificate of agreement. The execution of such certificate corresponding to the second *** period for the Guaranteed Production Period shall grant the Contractor the right to require the Owner to return the Guarantee Bond in force at the time and replace the same with a new Guarantee Bond in an amount equal to ***% of the Contract Price. The same provisions of this subsection shall also be applied to the Solar Facilities, if any, that the Owner did not return in accordance with subsection 8.4(2)(b).
- (4) The Contractor shall not be responsible for breach of the guarantees in the event that such failure was caused by the circumstances described in Clause 8.3.2(5) above or by excessive failures of the grid coupled with the disconnection of the inverters for exceeding the conditions detailed in their technical specifications.

Further, in the event that a Systemic Defect arises during a Production Guarantee Period, the data from the Solar Park as a whole shall not be considered for purposes of the Production Guarantee during the time the Contractor is replacing the equipment affected by such Systemic Defect, up to a maximum of three (3) months. Thus, in the event that the Contractor takes more than three (3) months to replace the Solar Park equipment affected by a Systemic Defect, only that three (3) month period shall remain in the Production Guarantee Period. For this purpose, the parties shall record the suspension periods and corresponding extensions of the Production Guarantee in writing.

For clarification purposes, the appearance of a Systemic Defect shall obligate the Contractor to replace all equipment of the same model and manufacturer, regardless of whether they have manifested such defect at the time of their replacement.

8.5 Bonds

- (1) On the Condition Satisfaction Date, the Contractor shall deliver to the Owner the Performance Bond, as per the form attached hereto as Annex 7, in an amount equivalent to ***% of the Contract Price. The Performance Bond shall guarantee the performance by the Contractor of any payment obligation for which the Contractor is responsible from the commencement of the Work until the date of execution of the Solar Park Provisional Acceptance Certificate (for any reason, including but not limited to the return of the amounts paid by the Owner, under this Contract, and penalties or compensation for damages and losses, including the performance by the Contractor of its obligations during the portion of the Guarantee Period prior to the execution of the Solar Park Provisional Acceptance Certificate).
- (2) As a requirement for the execution of the Solar Park Provisional Acceptance Certificate, the Contractor shall deliver to the Owner the Guarantee Bond (in exchange for the return of the Performance Bond by the Owner), in an amount equal to ***% of the Contract Price. The Guarantee Bond shall conform to the form attached hereto as Annex 7 and shall guarantee the Contractor's compliance with its obligations during the Guarantee Period (beginning from the execution of the Solar Park Provisional Acceptance Certificate). However, once the Performance Tests corresponding to the second *** period of the Production Guarantee Period have been performed and the written agreement referred to in Clause 8.4(3) has been executed, the Contractor shall have the right to replace the Guarantee Bond delivered to the Owner with a new Guarantee Bond in an amount equal to ***% of the Contract Price.

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- (3) The Performance Bond and the Guarantee Bond shall be issued by a financial institution with a minimum “A” rating by Standard & Poor’s Corporation or the equivalent from Moody’s Investors Services Inc., and shall be enforceable, in whole or in part, on demand by the Owner, in the event of the Contractor’s breach of its obligations under this Contract.
- (4) The delivery of the bonds provided under this section shall in no way limit the Contractor's liability under this Contract, as the bonds only constitute a means to guarantee the performance of the obligations assumed by the Contractor.
- (5) If the Contract Price is amended pursuant to Change Orders, the Contractor must update the amount of the Performance Bond. To such end, the Contractor must deliver to the Owner (within fifteen (15) Business Days following the execution of the corresponding Change Order), another bond in the updated amount, in the form attached hereto as **Annex 7**.

9. FINAL ACCEPTANCE OF THE SOLAR PARK

- (1) Within forty-five (45) days prior to the passage of *** from the date on which the Solar Park Final Start-Up Certificate has been obtained, the Contractor shall give notice thereof to the Owner in order for both Parties to agree upon a date to analyze the status and condition of the Solar Park (which shall not occur later than the Guarantee Period expiration date).
- (2) If such inspection does not reveal the presence of defects, the Parties shall proceed to execute the Final Acceptance Certificate, at which time the Owner shall return the Guarantee Bond to the Contractor.
- (3) If such inspection finds that defects are present that affect the Contractor's obligations during the Guarantee Period, the Parties shall sign a certificate specifying the defects, if any, that must be corrected within a period of forty-five (45) days of the date of execution of the corresponding certificate, or within such shorter period that the Parties may agree upon.

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Once such defects have been corrected by the Contractor within the specified period, a new inspection shall be performed, and if the defects have been remedied, the Parties shall proceed to execute the Final Acceptance Certificate, and the Owner shall return the Guarantee Bond to the Contractor.

10. OWNERSHIP OF THE FACILITIES AND TRANSFER OF RISK

- (1) The Owner and the Contractor expressly agree that the actual transfer of ownership of the facilities and equipment covered by this Contract will be made, for all contractual purposes, when each of the same shall have been paid for in full by the Owner. With respect to the solar modules, module supports and trackers, ownership thereof will be transferred to the Owner upon payment of the respective invoice as provided in Clause 4, whereupon the Owner will become the owner of the solar modules, the module supports and the trackers included in such invoice.
- (2) Without prejudice to the foregoing, or to the Contractor's obligations during the Guarantee Period, the possession and the risk of loss of the same shall not be transferred to the Owner until the execution of the Solar Park Provisional Acceptance Certificate.
- (3) Until the execution of the Solar Park Provisional Acceptance Certificate, the Contractor must repair or replace, at its own expense, any equipment, facility or portion of Work that is lost or damaged. Further, the Contractor must assume responsibility for the care and security of the Site and assume responsibility for any loss, theft or damage that may occur with respect to the Contractor's materials or machinery or the equipment delivered pursuant to this Contract.

11. INSURANCE

- (1) At all times during which the Contractor continues performing work under this Contract, the Contractor, at its own cost and expense, shall take out and maintain in force the insurance described below with well-known and solvent insurance companies that are legally authorized to issue policies in Spain, on terms and conditions of coverage satisfactory to the Owner and the Insurance Advisor:
 - a) Occupational Accidents or Social Security Insurance for all its own personnel or for the personnel of the Subcontractors as is legally required during the effective period of the Contract.
 - b) Mandatory Civil Liability Insurance and Voluntary Civil Liability Insurance for the Circulation of Vehicles and Machinery, pursuant to the limits and conditions mandated by the Legislation in force during the effective period of the Contract.

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- c) Civil Liability Insurance covering all activities of the Contractor and the Subcontractors necessary to complete the Work, with a limit of not less than €1,500,000 per occurrence.
 - d) Transportation Insurance covering the transportation of material and machinery to the Site, with a limit of not less than the aggregate value of the transported goods.
 - e) All-Risks Construction and Assembly Insurance, which will specifically include theft and vandalism at the Site, from the unloading of the material at the Site until the transfer of ownership of the Solar Park, including the testing period and covering a maintenance period of not less than 12 months, with an insured amount not less than the Contract Price.
 - f) Any other mandatory insurance.
- (2) The contracting of insurance provided in this clause shall in no event limit the liabilities of the Contractor under this Contract. Additionally, the amounts established as an insurance deductible in each of the insurance policies shall be borne by the Contractor, unless the loss is attributable to the Owner.
- (3) The Owner may require that the Contractor deliver documentation evidencing the contracting of the insurance set forth under this Clause to verify compliance therewith and/or for verification by the Insurance Advisor, and the Contractor undertakes to make such documentation available to the Owner as soon as possible.

12. FORCE MAJEURE

- (1) Neither Party shall be deemed liable for the breach of any of its obligations to the extent that the performance of such obligations is delayed or becomes impossible as a consequence of *Force Majeure*.
- (2) For the purposes of this Contract, events of *Force Majeure* shall be deemed to be the events described in Article 1105 of the Civil Code, provided that they actually prevent compliance by the party invoking it from complying in whole or in part with its obligations under this Contract. The Parties expressly agree that the discovery of archeological ruins at the Site shall be considered an event of *Force Majeure* for purposes of this Contract (without prejudice to the changes, if any, that the Parties may agree to in accordance with subsection (11) below and the consequences set forth therein). By way of example and not limitation, the Contractor may not invoke the following as an event of force majeure:
- (i) Meteorological conditions or phenomena that could have been reasonably foreseen by experienced contractors operating at the Site.

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- (ii) Delays or failures in obtaining materials or labor that are foreseeable or avoidable in advance.
 - (iii) Delays by any Subcontractor, unless such delays are based on any of the events specified in this clause.
 - (iv) Strikes or labor conflicts affecting the Contractor or the Subcontractors, unless they are national, sector-wide or local in scope.
- (3) The Party affected by *Force Majeure* shall give written notice to the other Party as soon as possible within a maximum period of forty-eight (48) hours from the day on which such Party became aware thereof, attaching to such notice all available documents evidencing the event that is deemed to amount to *Force Majeure*, the measures taken up to such point in time, and an estimation, if possible, of the expected duration thereof and its impact on the Work
- (4) The performance of the obligations affected by an event of *Force Majeure* shall be suspended for the duration of such event, the Parties not being entitled to damages as results of such events of *Force Majeure*.
- (5) If the Work is affected by the event of *Force Majeure* and the Contract is suspended for more than one hundred eighty (180) days, either of the Parties may seek termination of the Contract, with the consequences provided in Clause 14.3.
- (6) After cessation of the event of *Force Majeure*, the Parties shall agree upon the corresponding extension of deadlines (in all cases in light of the duration of the event of *Force Majeure* and the mobilization periods), or, if applicable, the measures that must be adopted to recover, in whole or in part, the time lost so as to preserve such dates, if possible. The contractual obligations not affected by *Force Majeure* must be met within the deadlines that were in force prior to the occurrence of the event of *Force Majeure*.
- (7) In any event, upon cessation of the event of *Force Majeure*, the Parties shall take all reasonable measures within their power to resume performance of the obligations under the Contract under optimal conditions and with the least possible delay.
- (8) The expenses incurred as a consequence of the repair, replacement or adjustment of the items damaged by the events of *Force Majeure* shall be borne by the party bearing the risk of loss for such elements at the time of occurrence of the event of *Force Majeure*.
- (9) In the event that an event of *Force Majeure* prevents a Party from complying with a payment obligation required by the Contract, such payment obligation shall not be waived and the other Party may suspend performance of its obligations under the Contract. Such occurrence shall not give either Party a right to indemnification for damages, without prejudice to any interest for delay in payment that might apply.

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- (10) The Party claiming the *Force Majeure* event shall immediately notify the other Party of its cessation. Within seven (7) calendar days following the cessation of the *Force Majeure* event, the Parties shall meet to agree and assess the effects that such situation caused. Such agreement shall be documented in a certificate signed by both Parties describing the changes to the contractual conditions.
- (11) In the event that archeological ruins are discovered at the Site, but the Work may be continued by reducing the size of the Solar Park, the number of Solar Facilities, or by implementing a reconfiguration of the technical configuration of the Solar Park, the Parties shall meet to agree on such changes and shall execute a certificate describing the changes to the contractual conditions. In any event, if the change entails a reduction in the capacity of the Solar Park, or in the number of Solar Facilities, thus requiring a reduction of the Contract Price, the Owner shall have the right to withhold from the remaining Payment Milestones payable after the change, the portion of the Contract Price previously paid by the Owner that corresponds to the Solar Facilities or the equipment affected by the reduction and which, consequently, were not delivered by the Contractor under this Contract.

13. SUSPENSION OF THE WORK

13.1 Suspension by the Owner

- (1) The Owner may at any time give written notice to the Contractor ordering the immediate suspension of the Solar Park, in whole or in part, for any of the following reasons:
- a) If the Contractor is performing the Work in a defective or inappropriate manner or not adhering to uses and practices customary for projects of this type or as established under this Contract, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - b) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with safety standards, avoiding damage to people and things, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.
 - c) If the means and methods used by the Contractor are not appropriate to ensure the performance of the Work in accordance with quality control requirements, provided that the Contractor does not cure such defects within a reasonable period granted by the Owner.

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- d) If the Contractor fails to comply with the instructions issued by the Governmental Authorities for the execution of the Work, to the extent that this may affect the authorizations granted or requested or the successful achievement of the purpose of the Contract.
 - e) By unilateral decision of the Owner.
- (2) The order providing for the suspension of the Work shall specify in writing the portion thereof that is being suspended, the grounds for suspension, the effective date of suspension and the date provided for the resumption of the Work (if applicable).
 - (3) In all the cases provided in subsection (1) above, except for the ones mentioned in subsection (e), the suspension shall last for all the time required and until the Contractor cures the circumstances that gave rise to the suspension of the Work. Additionally, in none of such cases shall the Contractor be entitled to any additional payment whatsoever or to the extension of the periods provided in the Implementation Schedule, except in the case mentioned in subsection (e), where the Contractor shall be entitled to an extension of the deadlines provided in the Implementation Schedule for a period at least equal to the suspension period and to be compensated for the costs resulting from the repair, replacement or adjustment of the items damaged during the suspension period and the costs arising from the suspension and resumption of the Work.
 - (4) If the suspension lasts for a period in excess of one hundred and eighty (180) days, and the reasons are not attributable to the Owner, the Contractor shall reserve the right to terminate the Contract upon the terms of Clause 14.1.

13.2 Suspension by the Contractor

- (1) The Contractor shall be entitled to temporarily suspend the Work as provided under this Contract, applicable law and in the event that the Owner incurs a delay in excess of thirty (30) days in the payments owing to the Contractor, as regards the expiration dates of the relevant invoices (except in the case of the works relating to a Payment Milestone disputed in accordance with Clause 4.3 (3)). In such event, the Owner shall pay to the Contractor its expenses arising from the suspension (including the costs resulting as a consequence of the repair, replacement or adaptation of the damaged elements during the suspension period and the costs arising from the suspension and resumption of the Work) and the Parties shall agree upon an extension of the deadlines for performance based on the effects of the suspension thereon.
- (2) If the suspension for a cause attributable to the Owner (including the one provided under subsection 13.1(1)(e) above) lasts for more than three (3) months or during several consecutive periods totaling more than three (3) months, the Contractor shall be entitled to terminate the Contract upon the terms of Clause 14.2.

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13.3 Suspension by Judicial or Governmental Authority

- (1) In the event of suspension, interruption or stoppage of the Work, in whole or in part, ordered by any judicial or governmental authority, or by the Owner or Contractor following the instructions of any judicial or governmental authority, the financial and contractual consequences of the delay shall be borne by the party that is responsible for performance where the failure to perform or incorrect performance triggered the judicial or governmental action.
- (2) If such suspension, interruption or stoppage does not result from the actions or omissions of any of the Parties, the periods of the Implementation Schedule shall be extended for a period at least equal to the one during which the situation subsisted, and the Owner shall pay to the Contractor the duly verified costs incurred as a result of such interruption. The Contractor undertakes to act diligently to minimize such costs.
- (3) If the suspension ordered by any judicial or governmental order, or by the Owner or the Contractor following the instructions of any judicial or governmental authority, extends for more than six (6) months, either of the Parties will be entitled to terminate the Contract upon the terms of Clause 14.

14. TERMINATION

14.1 Termination for Causes Attributable to the Contractor

- (1) The Owner may terminate the Contract in the cases authorized by the Law, in the instances provided for in this Contract, or upon the occurrence of any of the following events:
 - a) The dissolution or merger (provided it involves a change in control) of the Contractor ***, or when a substantial portion of the assets of the Contractor *** is transferred to another company, provided that such circumstances seriously prejudice the Contractor's *** capacity to perform the obligations under this Contract;
 - b) The voluntary filing by the Contractor of a bankruptcy petition or the allowance of a bankruptcy petition by a third party against the Contractor (or any equivalent action in accordance with the insolvency legislation applicable to the Contractor), or in the case of clear financial difficulties that prevent the Contractor from normally complying with obligations arising under the Contract, unless its obligations are sufficiently guaranteed under this Contract. The occurrence of the same events as regards *** shall also be grounds for termination.

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- c) If the Contractor assigns or subcontracts the Contract, in whole or in part, without complying with the conditions set forth in this document.
 - d) If the Contractor fails to comply with its obligations involving the contracting and maintenance of the insurance provided under the Contract in a manner that might endanger coverage under the relevant policies.
 - e) If the Contractor has been assessed penalties for failure to achieve the Production Guarantee beyond the maximum limits, if applicable, provided under this Contract.
 - f) The Contractor has interrupted the Work or a substantial portion thereof or has abandoned the Solar Park for a period exceeding twenty (20) calendar days without the Owner's authorization, or in the case of interruptions for an aggregate duration of more than thirty (30) days within the same calendar year, provided that the interruptions do not arise from a suspension of the Work provided under Clause 13.2.
 - g) If the application for the Final Start-up Certificate has not been filed together with all required in accordance with the terms of Clause 6.6 on or prior to the Delivery Deadline due to causes attributable to the Contractor, although the Owner cannot effect termination for the reason set forth in this subsection with respect to those Solar Facilities or Electrical Infrastructure for which a Final Start-up Certificate would have been obtained prior to September 29, 2008.
 - h) If the Owner has not obtained the Final Start-up Certificate (with respect to one or more Solar Facilities and/or the Electrical Infrastructure) prior to ***, for the reasons set forth in Clause 6.6(2)(ii).
 - i) If the Provisional Acceptance Certificate for one or more Solar Facilities or the Electrical Infrastructure has not been issued prior to ***.
 - j) ***
 - k) ***
 - l) If there is any other material breach of the obligations assumed by the Contractor under this Contract.
 - m) Any other serious breach of a principal obligation of the Contractor that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
- (2) Upon the occurrence of any of the above events, the Owner may elect to terminate the Contract, in whole or in part, with respect to the Solar Facilities for which the Provisional Acceptance Certificate of a Facility has not been issued as of the date of notice of termination, or for which the Final Start-up Certificate has not been obtained in the case of subsections g) and h) above (hereinafter, the "**Affected Facilities**"), except to the extent that the number of Affected Facilities is less than 40% of the total Solar Facilities, in which case the Owner may only terminate the Contract with respect to such Affected Facilities.

However, if the Affected Facilities represent less than 40% of the Solar Facilities, the Owner may elect to terminate the Contract with respect to the entire Solar Park if one of the termination events set forth in subsections a) or b) has occurred and the Owner reasonably believes that such circumstances pose a material prejudice or risk to the performance of the Contractor's obligations under this Contract during the Guarantee Period. The foregoing shall not apply if the Contractor has provided equipment guarantees, satisfactory to the Owner, sufficient to ensure proper maintenance and replacement of the Solar Park during the Guarantee Period and the Contractor has assigned such guarantees to the Owner pursuant to the terms of this Contract.

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The above shall not prejudice the Owner's option to return the Solar Park in its entirety upon the occurrence of the circumstance set forth in Clause 8.4(2)(b).

- (3) Upon the occurrence of any of the above events, the Owner shall give the Contractor a period of thirty (30) days to remedy the event, or any other longer period that may be agreed upon by the Parties. If within such period the Contractor fails to remedy such grounds for termination to the Owner's satisfaction, the Contract shall be terminated (in whole or in part, as applicable). For clarification purposes, it is noted for the record that in no event will the remedy period provided herein be applicable to the circumstances provided in subsections (1)(b), (e), (f), (g), (h) and (i) of this Clause.
- (4) In the event of a termination of the Contract (in whole or in part) under this subsection, the following shall occur (without prejudice to the provisions of subsection (6)):
- (i) In the event of partial termination, only as to some Solar Facilities in the Solar Park, the Contractor shall be obligated to return to the Owner the portion of the Contract Price that it charged for the Affected Facilities and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of the property comprising such Solar Facilities.
 - (ii) In the event of complete termination, the Contractor shall be obligated to return the aggregate Contract Price charged by the Contractor, and shall be obligated to pay indemnification for any damages pursuant to subsection (5) below. The Contractor shall recover ownership of all the property delivered to the Owner.

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(5) Upon the occurrence of either two events described in the preceding subsection, the Contractor shall be obligated to pay indemnification to the Owner for damages, including:

- (i) The Financial Costs associated with the Affected Facilities or the entire Solar Park, as applicable. “**Financial Costs**” shall be understood to mean all costs, expenses, fees (whether up-front, early termination or of any other type) and interest paid by the Owner in respect of the financing documents entered into by the Owner with the Financial Institutions, including cancellation or breakage fees for any interest rate swap agreements entered into by the Owner with the Financial Institutions.

The Contractor acknowledges the validity of the amount, as determined by the Agent under the financing documents, to be provided in the settlement statement that will be delivered by the Agent to the Owner in which the factors used to calculate the Financing Costs with respect to the Solar Facility or Facilities or the Solar Park, as applicable, will be described.

- (ii) The costs, expenses and damages incurred by the Owner as a result of, or with respect to, the early termination or the breach by the Contractor, duly certified by the Owner, plus an amount equal to *** euros for each Affected Facility (i.e., *** euros in the event of total termination or the amount that corresponds to the Affected Facilities in the event of a partial termination), to cover permitting costs.

Concurrently with the payments provided for in subsections 15.1(4) and 15.1(5), the Owner agrees to take all necessary actions which are in its control to assign to the Contractor, or its designee, ownership title (free of encumbrances and liens) to the permits and authorizations relating to the Affected Facilities (or the Solar Park in its entirety in the event of total termination), as well as corresponding usage rights (free of encumbrances and liens) to the part of the Site on which such Affected Facilities are located and the contractual rights in those contracts relating to the Solar Park with respect to the Affected Facilities. For purposes of this paragraph, it shall be understood that the Owner has assigned (free of encumbrances and liens) all permits and authorizations for the Affected Facilities or the Solar Park, as applicable, upon delivery to the Contractor of all documentation required by the Contractor (and which must be contributed by the grantor) to immediately request the approval by the competent administrative entity for the assignment of such permits and authorizations.

In the event that a special purpose entity holds title to such permits and authorizations and usage rights to the Site, the Owner agrees to transfer to the Contractor, free of encumbrances and liens, all shares or participations representing the entire share capital of such special purpose entity (provided that such entity only holds title to the Affected Facilities).

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For clarification purposes, in no event shall the above-referenced obligation be construed as an obligation to achieve a specific result, and the Owner does not assume any responsibility in the event that the assignment of the permits and authorizations referred to in the previous paragraph cannot be completed as a result of the failure to receive approval (when necessary) for such assignment from the relevant government administration or entity or the Contractor's failure to comply with the requirements imposed on the Contractor by the holders of such permits or authorizations.

- (6) Notwithstanding the provisions of subsections (4) and (5), if the Owner had the right to terminate the Contract, in whole or in part, as a result of the failure to achieve Start-up prior to September 29, 2008 for the reasons set forth in subsections 14.1(g) and 14.1(h) above, the Owner may not elect to return the Affected Facilities, if:
- (i) prior to September 29, 2008 the Contractor pays to the Owner an amount that is sufficient to (a) restore the Debt Service Coverage Ratio (as defined in the financing documents referred to in Clause 14.1(5)(i)) to the Base Case (as defined in the financing documents referred to in Clause 14.1(5)(i)) agreed to by the Financial Institutions and the Owner in such financing documents, and (b) cover the loss of profitability for the Owner's shareholders, taking into account the tariffs which will be received by the Owner from the sale of power from the Solar Park. For such purposes, the Contractor acknowledges and accepts that the amount to be paid to the Owner (for the items set forth in the preceding subsection) will be proposed by the Agent for the Financial Institutions and negotiated between the Owner and the Contractor on the basis of the assumptions in the Base Case developed by the Owner and the Financial Institutions in connection with the financing documents; and
 - (ii) Start-up of the Affected Facilities shall have occurred prior to October 31, 2008.

The Owner may require the return of the Solar Facilities for which the above requirements and Contractor payments have not been met, each in accordance with the provisions of subsection (5) above.

- (7) The Contractor is required to pay the amounts referred to in subsections (4) and (5) above to the Owner within *** days of the date of settlement of the amounts owed.
- (8) In all the foregoing instances, the Owner may, without prejudice to the reservation of rights to take all legal action to which it is entitled for the defense of its rights, adopt any or all of the following measures:

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- a) Offset any payments pending in favor of the Contractor by an amount equivalent to the balance in favor of the Owner (returning, in the event of complete termination, the Performance Bond or the Guarantee Bond, as applicable, once such offset has been made).
- b) Enforce the Performance Bond and/or the Guarantee Bond.
- c) Withhold the Contractor's materials, machinery and items belonging to the Contractor that are in the possession of the Owner, until the Contractor has fully paid all amounts due as a consequence of the termination.

14.2 Termination by the Contractor

- (1) The Contractor may terminate the Contract under the circumstances provided for under applicable law, in this Contract, or upon occurrence of any of the following events:
 - (i) The voluntary filing by the Owner of a bankruptcy petition or the allowance of a bankruptcy petition filed by a third party against the Owner, or in the event of patent financial difficulties that would prevent the Owner from normally complying with the obligations arising under this Contract in cases different from the one provided under subsection (ii) below, unless its obligations are sufficiently guaranteed under this Contract.
 - (ii) A delay in payment for a period in excess of sixty (60) days from the date on which payment should have been made.
 - (iii) Any other serious breach of a principal obligation of the Owner that might affect or prevent the successful conclusion of the Contract, or that is expressly designated herein as grounds for termination.
 - (iv) A suspension of the works and services for causes attributable to the Owner for a period greater than three (3) months.
 - (v) The dissolution of the Owner, or if a substantial portion of the assets of the Owner is transferred to another company, and such circumstance seriously prejudices the Owner's capacity to perform the obligations set forth in this Contract.
- (2) The Contractor shall give to the Owner a period of thirty (30) days to cure the event, or any other longer period that may be agreed upon by the Parties. Such cure period shall not apply if the event giving rise to grounds for termination is one provided for in subsections (i) and (iv) of Clause 14.2(1) above. If the Owner fails to remedy such grounds for termination to the Contractor's satisfaction within such period, the Contract shall be terminated (in whole or in part, as applicable).

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- (3) Upon termination of the Contract for any of the foregoing reasons, the Owner must:
- (i) Pay all of the Contractor's outstanding invoices.
 - (ii) Pay to the Contractor the value of the Work performed before termination and which is not yet included in the invoices. Accordingly, the Owner must pay to the Contractor the cost of the equipment already delivered to the Contractor or that it is legally required to accept under the contracts entered into with its suppliers and manufacturers, which shall become the property of the Owner if they had not already become so.

However, the Contractor undertakes to take such actions necessary or appropriate to minimize the costs referred in this subsection. The Contractor shall include the provisions required to that effect in the contracts with suppliers and subcontractors.
 - (iii) Pay all duly authenticated damages that are sustained by the Contractor as a consequence of the contractual breach or early termination, including direct demobilization costs.
 - (iv) Return to the Contractor the Bonds received from the Contractor.
- (4) Upon the Owner's compliance with the conditions set forth in the above subsection, the Contractor shall abandon the Site within a period of thirty (30) days and the Owner may complete the Work by itself or with another contractor, the Owner being entitled to request the Contractor to assign each and every contract signed by the Contractor and its subcontractors (except contracts entered into for the supply of solar modules, supports and trackers or for the supply of technology and software, which the Owner may not assume). The Contractor is obligated to cooperate in good faith with the Owner to effect such assignments.

14.3 Termination due to *Force Majeure*

In the event of termination of the Contract due to an event of *Force Majeure*, the provisions of subsections 14.2 (3) (i), (ii) and (iv) above shall apply.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Assignment

- (1) The Contractor may not assign or transfer to third parties, in whole or in part, the economic, commercial or financial rights or credits arising under this Contract, or engage in any other transaction involving any type of disposition, encumbrance, commitment and/or transaction, in whole or in part, regarding such rights and credits, unless it has obtained the prior written approval of the Owner and the Financial Institutions. An assignment to other companies within the Contractor's group that have the same technical capacity to perform the contractual obligations and that satisfy the requirements of the Direct Agreement is permitted, ***.

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- (2) The Owner may only assign all or a portion of the rights and obligations arising under this Contract in favor of the Financial Institutions in accordance with Clause 17, or to any other third party with the prior written approval of the Contractor.

15.2 Subcontracting

- (1) The Contractor may subcontract the Work, provided the following conditions are met:
- (i) All the subcontracts executed (except the contracts entered into for the supply and manufacture of solar modules, supports and trackers or for the supply of technology and software, which Owner may not assume) and all guarantees obtained from any of the suppliers or Subcontractors may be assigned at the request of the Owner in the event of termination of this Contract. For such purpose, the Contractor irrevocably undertakes to assign to the Owner and the Financial Institutions the rights arising from all the guarantees and subcontracts obtained from Authorized Subcontractors upon the expiration of the Guarantee Period or in the event of termination of the Contract.
 - (ii) The guarantees or subcontracts executed by the Contractor with Subcontractors or suppliers shall be consistent with the terms and provisions of this Contract.
 - (iii) The Contractor shall deliver to the Owner, within a reasonable period after the request thereof, a copy without prices or other commercial terms, of all the contracts, agreements and guarantees signed with the Subcontractors (containing the waiver referred to in subsection (3) below)
- (2) In no event shall a contractual relationship be implied among the Subcontractors and the Owner. The Contractor shall remain liable for all of the activities of its Subcontractors and suppliers and for all contractual and labor obligations arising from the performance of their work; as well as for the actions, failures and negligence of any of its subcontractors or suppliers and the agents and employees thereof, under the same terms and conditions as if committed or performed by the Contractor itself, its agents or employees.
- (3) The Owner shall not be liable vis-à-vis any Subcontractor or supplier, or vis-à-vis their employees, for any claims arising directly or indirectly from the Contract. For such purpose, the Contractor undertakes to procure an express and written waiver of the rights conferred by Article 1597 of the Civil Code from each Subcontractor.

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16. LIABILITY AND DAMAGES

- (1) The Parties shall have the obligation to provide indemnification for those damages caused to the other Party as a consequence of the breach of this Contract. The Owner's approval of the projects, calculations, drawings or other technical documents prepared by the Contractor, or the conduct of inspections or Tests do not release the Contractor from such liability, and do not imply that such liability must be shared by the Owner.
- Further, the recommendations made by the Owner or its representatives during the performance of the Contract or on occasion of inspections or Tests shall not give rise to an exemption, mitigation or excuse for the Contractor's performance under this Contract, except to the extent such recommendations or observations were implemented despite the Contractor's objection.
- (2) The Contractor shall be liable vis-à-vis the Owner for any loss or physical damage to the equipment, materials or assets owned by the Owner or third parties that is caused by the Contractor through the execution of the relevant Solar Facility Provisional Acceptance Certificate, and thereafter only when the Contractor is within the Site performing the Work, repairs or similar activities and causes the relevant damage.
- If the Contractor fails to hold the Owner or the third parties harmless from the above-mentioned damages, the Owner shall be entitled to redress such damages, deducting the costs of repair from any amounts pending payment to the Contractor, or by enforcement of the Bonds issued pursuant to this Contract.
- (3) By application of Article 1596 of the Civil Code, it is expressly agreed that the Contractor shall also be liable for damages caused by the persons or entities employed by the Contractor in the performance of the Work, whether as employees, technicians, subcontractors or otherwise, from whom the same diligence owed by the Contractor shall be required.
- (4) The Parties expressly agree that in no event will a Party be liable for the so-called consequential or indirect damages, including loss of profits and loss of output, loss of use or loss of any contract or other damages that are considered to be indirect, except for cases involving willful misconduct or gross negligence, and without prejudice to the Contractor's obligation to pay the penalties agreed upon under this Contract.
- (5) The Parties agree that any indemnity received by one of the Parties as beneficiary of any of the insurance taken out by them in connection with the Solar Park will be deducted from the respective claim for damages or, if such indemnity holds the Party in question harmless from the damages sustained, it shall bar such Party from claiming damages and require it to refund the excess, if any. The Party causing the damages shall bear all deductibles, liability limits and any other deductions affecting the indemnities payable to the damaged Party by the insurance companies providing the insurance in accordance with the provisions hereof.

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- (6) The maximum total liability of the Contractor hereunder shall not exceed, in the aggregate, an amount equal to *** (***) percent of the Contract Price. The foregoing shall not affect to the Contractor's obligation to make payments under Clause 14.1 in the event of the termination or partial termination of the Contract.

17. OWNER FINANCING

The Contractor hereby acknowledges as fundamental to this Contract:

- (i) the possibility that the Owner's rights under this Contract may be fully or partially pledged or assigned as security, in one or successive instances, to the Financial Institutions.
- (ii) the possibility that "direct agreements" that provide the Financial Institutions with "step-in" rights will be executed in the form agreed to prior to the execution of this Contract and which are attached hereto as Annex 9;
- (ii) the possibility that the right to receive indemnification to which the Owner may be entitled and which arise under the insurance policies purchased in accordance with the terms of this Contract may be pledged or assigned as security to the Financial Institutions (and the essential nature of subscribing the insurance policies upon the terms of the report issued by the Insurance Advisor in accordance with Clause 11);.
- (iii) that the Financial Institutions and their advisors (including the Technical Advisor and the Insurance Advisor and any others) have the right to access the Site in order to inspect the performance of the work contemplated under this Contract, upon the terms contemplated in Clause 6.2;
- (iv) the Technical Advisor's right to observe all Capacity and Production Tests and the obligation to obtain its prior approval for the issuance of the Solar Park Provisional Acceptance Certificate, each Solar Facility Provisional Acceptance Certificate, the Final Acceptance Certificate and other actions for which the approval of the Technical Advisor is required in accordance with the form of Direct Agreement attached hereto as Annex 9;
- (v) the requirement to obtain the prior approval of the Financial Institutions for any change to the terms of this Contract upon the terms contemplated herein;

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(vi) the Contractor's obligation to pay any amounts owed to the Owner under this Contract to the account, if any, indicated in writing by the Financial Institutions;

All of the foregoing is without prejudice to the other rights expressly granted in favor of the financial Institutions pursuant to other clauses of this Contract.

18. CONFIDENTIALITY

- (1) The Parties agree that this Contract and the Annexes hereto, and any written or electronic information or documentation that any of the Parties furnishes to the other for the performance of this Contract (including, without limitation, technical documentation, plans, information, procedures, patents and licenses) are confidential. Therefore, the Parties undertake to keep the information confidential and to refrain from disclosing, providing to third parties or using such information unless such documentation and information (i) is known by the public without any breach of this confidentiality commitment, (ii) has been legally obtained from a third party, (iii) is requested by a judicial or governmental authority, or (iv) the delivery of such documentation and information is made in compliance with any legal obligations enforced upon the disclosing Party.
- (2) The Parties agree that the above shall not apply to any disclosure of information made by any of the Parties to other entities of their Group (within the meaning of Article 4 of Securities Market Law (*Ley del Mercado de Valores*) 24/1988 of July 28), regulatory, tax or governmental authorities, and their respective advisors and auditors, internal or external, in relation to the information requested by them for the development of the investigations, assessments and works carried out by them, provided that, in each and every one of such cases, the parties receiving the confidential information have assumed commitments of confidentiality vis-à-vis the disclosing party on terms similar to this one. In this case, such entities, authorities, advisors or auditors shall have free access to the books, files, documents and information held by the requested Party, and prior authorization is therefore not required from the other Parties to furnish information to such entities, authorities, advisors and/or auditors regarding this Contract and the Annexes hereto and any other information or written documentation relating hereto.
- (3) In particular, the Owner is authorized to transmit information regarding this Contract to the Owner and the Financial Institutions and to those investors with interests in the construction and commercial operation of the Solar Park who reasonably request information with respect to this Contract, provided that they have assumed vis-à-vis the provider of such information confidentiality undertakings upon terms substantially similar hereto. Further, the Owner hereby authorizes the Contractor to provide such information to the Financial Institutions;

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- (4) The confidentiality commitment must be observed until the passage of two (2) years from the date of execution of the Final Acceptance Certificate or any termination of the Contract, regardless of the cause thereof.

19. NOTICES

- (1) All notices and communications between the Parties for the purposes of this Contract shall be made in writing, by certified mail, fax or courier service, to the following addresses:

To the Contractor:

SunPower Energy Systems España, S.L.

Paseo de la Castellana, 86, 8º
28046 Madrid, Spain
Fax: +34 915644451
Attn: General Manager

With a copy to:

SunPower Systems SA

42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attn: Marco Antonio Northland

To the Owner:

Naturener Solar Tinajeros, S.L.U.

Calle Núñez de Balboa, 120, 7º, 28006, Madrid
Fax: +34 91 562 3593
Attn: Juan Carlos Sirviente Rodrigo

With a copy to:

Sylcom Solar

Laguna del Marquesado 10 - N8
28021 Madrid
Attn: Pablo Valera

- (2) The Parties may change the above addresses by written notice to each other given in the form and to the addresses mentioned above.
- (3) Notices shall be deemed received on the third (3rd) Business Day following the dispatch thereof when sent by courier service (unless there is evidence of earlier receipt) or the Business Day following the date on which there is evidence of the receipt thereof in the case of faxes and certified mail.

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- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation, to which the Contractor and the Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje (CIMA)*) of Madrid in accordance with the Procedural Regulations thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by the Contractor and the other by the Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.
- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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In witness whereof, the Parties execute this Contract in two (2) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above. It is expressly acknowledged that Mr. Marco Antonio Northland, whose signature appears below, has hereby authorized Ms. Nuria Casellas Cabrerizo, having a National Identity Document (DNI) number 43679456H, to review the pages hereof as evidence of the agreement of the Contractor to the content of this document.

NATURENER SOLAR TINAJEROS, S.L.U.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

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SCOPE OF WORK. TECHNICAL SPECIFICATIONS

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IMPLEMENTATION SCHEDULE

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ANNEX 4

TEST PROTOCOLS

Protocol for tests prior to the provisional acceptance of each Solar Facility and of the Solar Park

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ANNEX 5

MINIMUM INVENTORY AND SUPPLY OF SPARE PARTS

The Contractor must make available to the Owner, pursuant to the terms of Clause 6.3, the following inventory of spare parts:

Part	Units per MW	Total quantity
Mechanical part		
Drive bellows boot	0.4	4
Ground braids, torque tube to pier	5	50
Module mounting assemblies	5	50
MC connectors	5	50
Actuator (endless screw)	0.2	2
Low voltage		
Solar panels	10	100
Orientation motor	0.4	4
GPS + PLC + clinometer	0.4	4
SunPower controller (no housing)	0.4	4
Inverter	0.2	2
Communications card for the inverter	0.4	4
Fuse set for the inverter	0.4	4
Set of overvoltage protective devices for the inverter	0.4	4
DC fuses	5	50
Set of overvoltage protective devices for the junction box	0.4	4
Junction box	0.4	4
Fan unit	0.4	4
Set of sensors for the weather station	0.2	2
Communications		
MOXA cards	0.2	2
Routers, switches, hubs, etc.	0.2	2
Medium voltage		
MV fuses (if protective cabinets with fuses are installed)	0.4	4
Protective relay	0.1	1
160 kVA transformer	0.1	1

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ANNEX 6

MODULE DEGRADATION GUARANTEE

The guarantee described in Section 6 of the Technical Specifications, as incorporated into Annex 2.

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FORMS OF SURETY BONDS

Form of Performance Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes to **SUNPOWER ENERGY SYSTEMS, S.L.U.** with a registered address at [I], recorded in [I] (hereinafter the “**Guaranteed Party**”) an irrevocable, absolute, guarantee payable on demand to [I] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on even date herewith with respect to the construction and start-up of a solar park located in [I] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt, and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guarantee Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [I].

This Bond may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All sums due from the BANK under this Bond shall be paid net of any indirect tax, withholding or commission and without any type of offset or deduction. If the BANK, in the performance of this Bond, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholdings) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

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The payment obligations assumed by the BANK under this Guarantee are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Bond shall automatically expire on the date of execution of the Solar Park Provisional Acceptance Certificate, and in any event, on January 31, 2009, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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Form of Guarantee Bond

[*Name of the Bank*] (hereinafter, the “**BANK**”) hereby furnishes an irrevocable, absolute, guarantee payable on demand to **SUNPOWER ENERGY SYSTEMS, S.L.U.**, with a registered address at [1], recorded in [1] (hereinafter, the “**Guaranteed Party**”) in favor of [1] (the “**Beneficiary**”), guaranteeing the performance of all payment obligations assumed by the Guaranteed Party vis-à-vis the Beneficiary (hereinafter, the “**Guaranteed Obligations**”) under the Turnkey Construction Contract entered into by and between the Guaranteed Party and the Beneficiary on [1] with respect to the construction and start-up of a solar park located in [1] (hereinafter, the “**Contract**”).

The BANK understands and acknowledges that the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt (*beneficios de excusión, orden y división*), or any other rights, powers or exceptions that tend to prevent or delay payment to the Beneficiary of the guaranteed amount shall not be applicable to this Bond, waiving such benefits of the right to require the prior exhaustion of the debtor’s assets, the right to require the prior exhaustion of remedies against the debtor, and the benefit of division of the debt and any other rights, powers or exceptions to which the BANK may be entitled. Additionally, the BANK shall attend to its payment obligation upon first demand of the Beneficiary, even in the event of objection to payment by the Guaranteed Party.

The Beneficiary may seek payment directly from the BANK to obtain performance of the Guaranteed Obligations. The BANK shall make payment of the amounts claimed under this Bond upon receipt of the timely requests and without requiring the prior enforcement of any other guarantee furnished in relation to the Guaranteed Obligations or any other action whatsoever. The BANK shall pay the amounts due on sight, without the need to seek any consent from the Guaranteed Party. The BANK shall be liable vis-à-vis the Beneficiary for up to a maximum amount of [1].

This Guarantee may be enforced on one or more occasions, up to the maximum amount set forth above.

Consequently, the BANK shall pay to the Beneficiary any amount up to the guaranteed amount within a period of five (5) Business Days from the date payment is requested by the Beneficiary through a written request in which the Beneficiary confirms the existence of a breach and the cause thereof according to the relevant provision of the Contract, without it being necessary for the Beneficiary to submit any additional documentation or evidence whatsoever.

All the sums due from the BANK under this Guarantee shall be paid net of any indirect tax, withholding or commission and without any type of set-off or deduction. If the BANK, in the performance of this Guarantee, is forced by any rule or governmental or judicial authority to make any kind of offset, tax payment, withholding or deduction from the payments to the Beneficiary, the BANK shall pay to the Beneficiary any additional amount necessary to ensure that the net amount received by the Beneficiary (free of indirect taxes, set-offs, deductions or withholding) is equal to the amount that the Beneficiary would have received if such set-off, deduction or withholding from the BANK’s payment was not required.

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The payment obligations assumed by the BANK under this Bond are of a commercial nature and shall not be affected and shall be fully binding in spite of any circumstances or changes that might affect the Contract, the Guaranteed Party, or the BANK. In particular, they shall remain in full force even if the Guaranteed Party or the BANK is in bankruptcy, court administration or any other similar situation related to their solvency. Furthermore, the Guaranteed Obligations shall not be deemed satisfied and shall remain in full force and effect if the Beneficiary, for any cause and at any time, is required to return the payments made by the BANK under the Bond. Additionally, the BANK represents that the scope of the guarantee granted under this Bond shall not be modified in any way due to any action that the Beneficiary or the BANK may take with respect to approval of any agreement that might result from the bankruptcy of the Guaranteed Party, the BANK's obligation remaining unchanged under the agreed terms as if such action did not occur.

This Guarantee shall automatically expire on the date of execution of the Solar Park Final Acceptance Certificate, and in any event, on January 31, 2012, on which date the right to demand payment shall expire.

The terms of this Guarantee may not be unilaterally amended by the BANK, the written consent of the Beneficiary being necessary for such purpose. The Guaranteed Party may assign or pledge this Guarantee in favor of the financial institutions providing the financing for the payments contemplated in the Contracts.

This Guarantee is subject to Spanish Law and the jurisdiction of the Courts of the city of Madrid, and for such purposes the address for notices is established in Madrid at _____.

This Guarantee has been recorded on even date herewith in the Special Registry of Guarantees of the BANK under No. [1].

In [1], on the [1] day of [1], [1].

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AUTHORIZED EQUIPMENT

Modules:

- Powerlight
- SunPower
- Yingli
- Suntech
- Evergreen Solar
- Sanyo

Trackers:

- Powertracker

Inverters:

- Xantrex
- SMA
- Siemens
- Ingeteam

Medium-Voltage Electrical Power Lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt/)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)

Transformer and Sectioning Stations**1.1 Cells****1.1.1 Encapsulated cells:**

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
MANUFACTURAS ELÉCTRICAS	(www.me-sa.es)
SIEMENS	(www.siemens.es)
VEI ELECTRIC SYSTEMS	(www.vei.it)

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1.1.2 SF6-insulated cells and switchgear in metal housings

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
INAEI	(www.inael.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
VEI ELECTRIC SYSTEMS	(www.vei.it)

1.2 Power transformers

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
IMEFY	(www.imefy.com)
ALKARGO	(www.iberapa.es)
ABB TRAFO	(www.abb.com)
SIEMENS	(www.siemens.es)
INCOESA	(www.incoesa.com)
OASA	(www.oasanet.com)
CONSTRUCCIONES ELÉCTRICAS JARA	(www.trafojara.com)
LAYBOX	(www.laybox.com)

1.3 Prefabricated housings

POSTES NERVIÓN	(www.postesnervion.es/)
PREPHOR	(www.prephor.com)
INAEI	(www.inael.com)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
AREVA T&D	(www.areva-td.com)

Low-voltage lines

BICC GENERAL CABLE	(www.bicc.es)
PRYSMIAN CABLES & SYSTEMS (PIRELLI CABLES Y SISTEMAS)	(www.es.prysmian.com)
NEXANS	(www.nexans.com)
SOLIDAL CONDUCTORES ELÉCTRICOS	(www.solidal.pt)
INCASA	(www.incasa-cables.com)
ECN CABLE GROUP	(www.ecn.es)
CONTECSA	(www.contecsa-spain.com)
CABELTE	(www.cabelte.pt)
MIGUELEZ	(www.miguelez.com)

Low-voltage panels

1.1 Rectifiers – battery chargers

ZIGOR	(www.zigor.com)
SAFT POWER SYSTEMS IBERICA S.L.	(www.spsi.es)
EMISA - EXIDE	(www.exide.com)
ENERTRON	(www.enertron.net)

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1.2 Protective cabinets and A.S. auxiliary services control

PROYECTOS MECA	(www.proymeca.com)
CYMI	(www.cymi.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
CUADRELEC	(www.cuadrelec.com)
PMC Ingeniería	

1.3 Exterior cabinets

PINAZO	(www.pinazo.com)
ELDON	(www.eldon.es)
HIMEL	(www.himel.com)
RITTAL	(www.rittal.es)

Electrical protective devices

1.1 Indirect and direct protective devices for MV cells

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
ORMAZÁBAL Y CÍA	(www.ormazabal.es)
ABB T&D SYSTEMS	(www.abb.com)
AREVA T&D	(www.areva-td.com)
SIEMENS	(www.siemens.es)
GENERAL ELECTRIC	(www.GEIndustrial.com)
TEAM ARTECHE	(www.teamartech.es)
ZIV	(www.ziv.com)

1.2 Direct LV protective devices

SCHNEIDER ELECTRIC (MERLIN GERIN)	(www.merlengerin.es)
MOELLER	(www.moeller.es)
ABB SISTEMAS INDUSTRIALES	(www.abb.com)
GOULD	(www.gould.com)

1.3 Metal-oxide lightning rods

TYCO ELECTRONICS RAYCHEM GMBH	(www.energy.tycoelectronics.com)
IBÉRICA DE APARELLAJES	(www.iberapa.es)
INAEI	(www.inael.es)
ABB	(www.abb.es)
CELSA	(www.celsa.com)

Supervisory System

1.1 PLCs programmable logic controllers

SCHNEIDER ELECTRIC	(www.schneider-electric.com)
BECKHOFF	(www.beckhoff.es)
ROCKWELL AUTOMATION	(www.rockwellautomation.com)
GENERAL ELECTRIC FANUC	(www.gefanuc.com)

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1.2 Industrial communications

HIRSCHMANN	(www.hirschmann.com)
MOXA	(www.moxa.com)

1.3 SCADA system control and data acquisition platforms

WONDERWARE	(www.wonderware.com)
GENERAL ELECTRIC	(www.gefanuc.com)

1.4 Optical fiber

NEXANS	(www.nexans.com)
CORNING	(www.corning.com)
OPTRAL	WWW.OPTRAL.COM

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ANNEX 9

FORM OF DIRECT AGREEMENT

*** CONFIDENTIAL MATERIAL REDACTED AND
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DIRECT AGREEMENT

between

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U

as Contractor

and

NATURENER SOLAR TINAJEROS, S.L.U.

as Owner

and

CAJA CASTILLA LA MANCHA

as Agent

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APPEARING PARTIES

Party of the first part,
(A) SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U. (the “Contractor”)

Party of the second part,
(B) NATURENER SOLAR TINAJEROS, S.L.U. (the “Owner”).

Party of the third part,
(C) CAJA CASTILLA LA MANCHA (the “Agent”).

All of whom are hereinafter referred to collectively as the "Parties."

The persons appearing on behalf of each Party, as well as their powers of representation and corresponding grants of authority are set forth on Annex 1 hereto.

RECITALS

- I. The Owner and the Contractor have executed on even date herewith:
- (i) a “turn-key” construction contract (the “Construction Contract”) for the construction and start-up of a solar park en Albacete, composed of one-hundred (100) solar facilities with a unit capacity at the panels between 115 y 122 kWp y 100 kW at the inverter (the “Solar Park”);
 - (ii) a maintenance agreement (the “Maintenance Agreement”) for the performance by Contractor of the maintenance Work relating to the Solar Park.
- II. In order to finance, among other things, the payments that are the responsibility of the Owner under the Construction Contract, the Owner has entered into the following contracts, on even date herewith, registered as public instruments before the Madrid Notary Mr. [1]:
- (i) a credit agreement in the maximum amount of [1] euros (hereinafter, the “Credit Agreement” or the “Loan”) with the Agent and [1].
 - (ii) an interest rate hedge agreement (CMOF) and its corresponding Schedule with [1], to cover interest rate fluctuation risks relating to the Loan (hereinafter, the master agreement and its Schedule together with the confirmations to be executed in connection therewith, the “Interest Rate Hedge Agreement”).

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[I], together with its successors and assigns with respect to the Interest Rate Hedge Agreement, and the institutions which at any given time make up the credit institutions under the Credit Agreement are hereinafter collectively referred to as the “**Financial Institutions.**”

- III. To guarantee the Owner’s obligations under the Credit Agreement and the Interest Rate Hedge Agreement (hereinafter, collectively, the “**Guaranteed Contracts**”) the Owner has granted on even date herewith (among others) a pledge agreement, registered as a public instrument with the Madrid Notary Mr. [I], pursuant to which the rights under the Construction Contract and the Maintenance Agreement (among others) were pledged to the Financial Institutions (the “**Pledge**”).
- IV. In consideration of the premises, and as a fundamental condition to the execution of the Guaranteed Contracts by the Financial Institutions, the Parties have agreed to execute this Contract whereby the Contractor assumes certain obligations to the Financial Institutions with respect to the Construction Contract, the Maintenance Agreement and the Guaranteed Contracts, as follows.

CLAUSES

1. DEFINED TERMS

Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Construction Contract.

2. PLEDGE

- (1) The Contractor hereby pledges all rights to receive payment from the Owner under the Construction Contract and the Maintenance Agreement.
- (2) As a consequence of the foregoing, except in the event of receipt of a written notice from Agent that the Pledge has been cancelled, the Contractor agrees:
- (i) not to convey or create any type of pledge, charge, lien or other security right over the Contractor’s rights to receive payments under the Construction Contract or the Maintenance Agreement, without the express prior written approval of the Agent;
 - (ii) not to honor any notice or instruction from the Owner that contravenes or modifies the terms of the Pledge or of this Contract;

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- (iii) to immediately notify the Agent of any breach by the Owner of its obligations under the Construction Contract or the Maintenance Agreement;
- (iv) to pay any amounts payable by the Contractor to the Owner under the Construction Contract or the Maintenance Agreement to the Owner's account no. [1] (the "**Principal Account**"), or to such other separate account as the Agent and the Owner may jointly specify in writing. The Contractor acknowledges and agrees that a payment made to any other current account or made in any other manner shall not be considered a full discharge for the Contractor;
- (v) upon receipt of written notice from the Agent declaring the enforcement of the Pledge, to deposit or transfer all funds relating to the payment rights under the Construction Contract and/or the Maintenance Agreement in favor of the Agent to the account designated by the Agent in writing.

3. NOTICE OF EARLY TERMINATION EVENTS. BREACH BY THE OWNER.

- (1) The Contractor agrees to provide notice to the Financial Institutions (through the Agent) of the occurrence of any event of early termination of the Construction Contract and/or the Maintenance Agreement, or of its own intention to terminate either of such Contracts, by sending to the Agent a copy of any notice sent to the Owner (which shall include, at a minimum, the proposed date of termination of the Construction Contract and/or the Maintenance Agreement –subject to the terms of subsection (2) below- and the Contractor's stated basis for such termination).
- (2) The Contractor acknowledges agrees that it may not, under any circumstances, terminate the Construction Contract or the Maintenance Agreement without first giving notice to the Agent as provided for in the above subsection, and that, during the period from the Agent's receipt of such notice until fifteen (15) calendar days from the date on which the Agent received such notice, the Agent may (but is not so obligated), with the prior approval of the Financial Institutions in accordance with the agreed majority voting percentages agreed to among the Financial Institutions, take such measures as are necessary or advisable to cure or eliminate such event of early termination under the Construction Contract and/or the Maintenance Agreement.

4. CHANGES TO THE CONSTRUCTION CONTRACT AND ACTIONS OF THE TECHNICAL ADVISOR

4.1 Changes and roles with respect to the Construction Contract

The Contractor hereby acknowledges and agrees that:

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- (i) it may not agree to any change to the Construction Contract or any Change Order or any other document that contains an agreement to make the changes contemplated by Clauses 2.4(4), 5.1(3) and 6.5(3) of the Construction Contract without receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor's rights under such Clauses);
- (ii) except with respect to the assumed consent contemplated by Clause 4.3 of the Construction Contract, the approval of the Technical Advisor must be obtained in order for the Owner to approve a Payment Milestone contemplated by such Clause;
- (iii) the Technical Advisor must be present to observe the performance of the Performance Tests, the Overall Test, the Production Tests and the inspections required for execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate, in accordance with the notice periods set forth in Clauses 5.2 (1), 8.4(2) and 9(1) of the Construction Contract. The periods provided for in such Clauses may not begin to run if the Technical Advisor has not been invited to observe within the notice periods provided in such Clauses. Results of tests and inspections referred to in this subsection that were obtained prior to the expiration of such periods and without the presence of the Technical Advisor shall be invalid. However, the Technical Advisor's failure to attend despite having been duly invited in the manner and within the notice periods provided for in this subsection shall not delay the periods provided for in the Construction Contract for such tests and inspections, nor shall it invalidate the results of the same;
- (iv) except as provided for in Clause 5.2(4) of the Construction Contract, the execution of the Solar Facilities Provisional Acceptance Certificates, the Solar Park Provisional Acceptance Certificate, and the Final Acceptance Certificate must be accompanied by the approval of the Technical Advisor;
- (v) the Technical Advisor shall have the power to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 6.2 of the Construction Contract;
- (vi) the Technical Advisor must approve quality controls for the solar modules and has the authority to inspect such quality controls in order to confirm its approval; and
- (vii) an order to suspend the Work by the Owner pursuant to Clause 13.1 of the Construction Contract shall not be valid unless it has been countersigned by the Agent on behalf of the Financial Institutions.

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4.2 **Changes and Actions Regarding the Maintenance Agreement**

The Contractor hereby acknowledges and agrees that:

- (i) it may not agree to any change to the Maintenance Agreement or any Change Order or any other document that contains an agreement to make the changes contemplated by Clause 2.4 of the Maintenance Agreement without first receiving the prior approval of the Financial Institutions (the foregoing is without prejudice to the Contractor’s rights under such Clause 2.4);
- (ii) the Technical Advisor must receive the data and registrations at least fifteen (15) calendar days in advance to make the availability calculations referred to in Clause 7 of the Maintenance Agreement;
- (iii) the Technical Advisor shall have the authority to inspect the Site on the same terms, and subject to the same restrictions, to which the Owner is entitled under Clause 4(ii) of the Maintenance Agreement.

5. **CUMULATIVE NATURE OF THE OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT**

The rights of the Financial Institutions contemplated in this Agreement are cumulative with the rights of the Financial Institutions under the Construction Contract or the Maintenance Agreement. Therefore, the terms of this Agreement shall not affect the obligation of the Contractor and the Owner to request the consent of the Financial Institutions for such acts that, in accordance with the terms of the Construction Contract and/or the Maintenance Agreement, require the prior consent of the Financial Institutions.

6. **ASSIGNMENTS**

6.1 **Assignment by the Financial Institutions**

This Contract is delivered for the benefit of the Financial Institutions, and therefore inures to the benefit of their successors or assigns permitted under the Guaranteed Contracts. Therefore, in the event of an assignment, in whole or in part, of the interest of a Financial Institution under the Guaranteed Contracts, or the replacement of the Agent under the terms of the Credit Agreement, all references made in this public document to the Financial Institutions and the Agent shall be understood to include reference to their respective successors or assigns. An assignee must present its position to the Contractor and the Owner, upon request, by delivery of a copy of the document through which such assignment or replacement of the Agent is made. However, the Agent must inform the Contractor of its replacement with sufficient advance notice to permit the Contractor to comply with its obligations under the Construction Contract, the Maintenance Agreement and this Agreement.

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6.1 Assignment by the Contractor

The Contractor may not assign its rights or obligations under the Construction Contract or the Maintenance Agreement except in strict compliance with the terms of Clauses 15.1 and 11.1 of the Construction Contract and the Maintenance Agreement, respectively. However, in the event of an assignment by the Contractor to one of the companies of its Group, under the terms permitted in such Clauses, the Contractor agrees that it shall not effect such assignment unless the assignee concurrently agrees to adhere to the entirety of the Contractor’s responsibilities and agreements under this Agreement.

7. NOTICES

- (1) Except as otherwise expressly provided for, all notices and communications between the Parties for the purposes of this Agreement shall be made in writing, by certified mail, telegram with confirmed receipt, or for urgent matters, by fax with a confirmation letter to be sent within the following five (5) calendar days.
- (2) All notices, requirements or other communications to the Financial Institutions must be delivered to the Agent (notice to the Financial Institutions shall be considered effective upon receipt by the Agent).
- (3) The Parties designate the following addresses for notice, communications and routine matters:

The Agent:

[I]
Fax: +34 [I]
Attention: Mr. [I]

The Contractor:

SunPower Energy Systems España, S.L.
Paseo de la Castellana, 86, 8º
28046 Madrid, España
Fax: +34 915644451
Attention: General Manager

With a copy to:
SunPower Systems SA
42-44 Avenue Cardinal Mermillod 1227 Carouge - Switzerland
Fax: +41 22 304 1405
Attention: Mr. Marco Antonio Northland

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The Owner:

Naturener Solar Tinajeros, S.L.U.

Calle Núñez de Balboa 120, 7º, 28006 Madrid

Fax: +34 91 562 35 93

Attention: Mr. Juan Carlos Sirviente Rodrigo

- (4) Any changes to the above addresses must be communicated to the other Parties by certified mail, and shall only take effect as of the date that the other Party receives such notice.

8. LAW AND JURISDICTION

This Contract shall be exclusively governed by generally applicable Spanish legislation.

The Parties expressly waive any other jurisdiction to which they may be entitled and, without prejudice to applicable law, hereby irrevocably submit to the jurisdiction of the Courts and Tribunals of the city of Madrid.

9. TERM

This Contract shall remain in full force and effect throughout the term of the Construction Contract and the Maintenance Agreement or until the payment in full of the obligations assumed by the Owner under the Guaranteed Contracts. Upon payment in full of said amounts, the Owner may request that the Agent issue a joint notice to the Contractor confirming payment in full of all obligations assumed by the Owner under the Guaranteed Contracts.

10. TAXES AND EXPENSES

All fees, taxes and any other costs and expenses arising from the preparation and delivery of this Contract, including the reasonable fees and expenses of legal counsel shall be borne by the Owner.

In witness whereof, the Parties execute this Contract in three (3) counterparts, each of them being an original and having the same effect, in the place and on the date first set forth above.

NATURENER SOLAR TINAJEROS, S.L.U.

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.U.

CAJA CASTILLA LA MANCHA

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ANNEX 10
MINIMUM P.R. AND PENALTIES FOR NON-COMPLIANCE WITH THE PRODUCTION GUARANTEE

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ANNEX 11
GUARANTEED VALUES

*** CONFIDENTIAL MATERIAL REDACTED AND
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FORM OF LETTER TO BE SIGNED BY THE AGENT

SunPower Energy Systems Spain, S.L.U.
Paseo de la Castellana, 86, 8º [8th floor]
28046 Madrid, Spain
Fax: +34 915644451
Attn.: General Manager

[I] [I], 2007

Gentlemen:

Re: Commercial loan agreement (the “Loan Agreement”) signed by [I] and [I] on [I], converted into a public instrument in the presence of Mr. [I], a notary of Madrid, and recorded in his notarial protocol under No. [I], for the partial financing of (among other things) the payments owed by [I] pursuant to a “turnkey” construction contract signed by such entity with SunPower Energy Systems Spain, S.L.U. on [I] (the “Construction Contract”)

We hereby confirm to you that, pursuant to the Loan Agreement, [I] has obtained from [I] a loan in the total amount of [I] euros, of which sum [I] euros correspond to Tranche A of the Loan Agreement, and [I] euros correspond to Tranche B of the Loan Agreement, with the purpose of such Tranches being to finance, among other things, the Contract Price and the associated VAT to be paid by [I] pursuant to the Construction Contract.

Cordially,

[I]

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ANNEX 13

SITE PLAN

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

In Madrid, on the 21st day of November, 2007

APPEARING PARTIES

- (1) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the “**Contractor**”), with a registered office in Madrid, at calle Pradillo nº 5.
- (2) **NATURENER SOLAR TINAJEROS, S.L.U.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-85128781.
- (3) **MORALAS RENOVABLES, S.L. NATURENER SOLAR TINAJEROS, S.L.U.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-79136636.
- (4) **ALMURADIEL SOLAR, S.L. NATURENER SOLAR TINAJEROS, S.L.U.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-82299587.

Hereinafter, the companies mentioned in paragraphs (1) to (4) above, will be jointly referred to as the “**Parties**”.

ESTATE

That according to the following contracts (hereinafter, the “**Construction Contracts**”):

- Turnkey construction contract entered into between SunPower Energy Systems Spain, S.L. and NATURENER SOLAR TINAJEROS, S.L. on November 6, 2007, for the construction of a solar park in Albacete, consisting of one hundred (100) Solar Facilities of 100kW each.
- Turnkey construction contract entered into between SunPower Energy Systems Spain, S.L. and MORALAS RENOVABLES, S.L. on November 6, 2007, for the construction of a solar park in Manzanares, consisting of fifty (50) Solar Facilities of 100kW each.
- Turnkey construction contract entered into between SunPower Energy Systems Spain, S.L. and ALMURADIEL SOLAR, S.L. on November 6, 2007, for the construction of a solar park in Almuradiel, consisting of twenty five (25) Solar Facilities of 100kW each.

The Parties have decided to replace the date of November 23, 2007 set forth in Section 3(3) of all the Construction Contracts, by the date of November 30, 2007. Consequently as of the date hereof, it will be understood that all references made in Section 3(3) of the Construction Contracts to November 23, 2007, shall be replaced by November 30, 2007.

And in witness whereof, the Parties execute this Contract in the place and on the date first set forth above.

NATURENER SOLAR TINAJEROS, S.L.
MORALAS RENOVABLES, S.L.
ALMURADIEL SOLAR, S.L.
Signed: Mr. Juan Carlos Sirviente Rodrigo

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.
Signed: Mr. Marco Antonio Northland

CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION

In Madrid, on the 29th day of November, 2007

APPEARING PARTIES

- (1) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the “**Contractor**”), with a registered office in Madrid, at calle Pradillo nº 5.
- (2) **ALMURADIEL SOLAR, S.L.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-82299587.

Hereinafter, the companies mentioned in paragraphs (1) and (2) above, will be jointly referred to as the “**Parties**”.

RECITALS

- I. That on November 6, 2007, Contractor and Owner entered into a turnkey construction contract for the construction of a solar park in Almuradiel, consisting of 25 Solar Facilities of 100kW each, which was amended by virtue of another agreement entered into among others, by the Contractor and the Owner on November 21, 2007 (hereinafter, jointly, the “**Construction Contract**”).
- II. That the Construction Contract included:
 - (i) The Owner’s undertaking to provide Contractor with the definitive geotechnical report about the Site, so that Contractor confirms the modifications in the Scope of Work and/or the Contract Price that may arise from the terms of said geotechnical report;
 - (ii) A reference stating that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs were not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon Contractor’s delivery to Owner of an offer to perform such works and the issuance of a Change Order agreeing to a new Contract Price including such items.
 - (iii) The need of reviewing the Technical Specifications attached as Annex 2 to the Construction Contract by Contractor.
- III. That Owner has provided Contractor with the geotechnical report established in paragraph (i) of Recital II above and the Technical Specifications, and that the Parties have reached an agreement on the price of the perimeter fences and the monitoring system (Scada) of the tracker hubs.

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- IV. That in order to formalize the agreement reached by the Parties on the issues mentioned in Recitals II and III above, the Parties have decided to enter into this Contract which shall be ruled by the following

CLAUSES

1. DEFINED TERMS

All capitalized terms which are not expressly herein defined, shall have the same meaning set forth in the Construction Contract.

2. AMENDMENTS AND ADDENDA TO THE CONSTRUCTION CONTRACT

- (1) Geotechnical report: Contractor hereby acknowledges to have received the Site's definitive geotechnical report and to agree with it, and consequently, as of this date, all the representations made in Section 3(4) of the Construction Contract regarding the Site, are enforceable, being those representations hereby granted by Contractor for the benefit of Owner. Nevertheless, Owner accepts that the Site's conditions derived from said geotechnical report require an increase of *** in the Contract Price.
- (2) Perimeter fences and monitoring system: The Parties undertake to increase the Contract Price in ***, which include the price requested by Contractor in order to carry out the perimeter fences (***) and the monitoring system (Scada) of the tracker hubs (***)
- (3) Technical Specifications: Contractor hereby declares to have reviewed the Technical Specifications that were attached as Annex 2 to the Construction Contract, and to agree with them, not requiring their content to carry out any amendment to the Construction Contract.
- (4) As a consequence of the above, the Parties agree to amend the following terms of the Construction Contract:
- (i) References made in Section 4.1(1) of the Construction Contract to the Contract Price, shall be understood to be replaced by ***, being the Contract Price consequently amended for all effects set forth under the Construction Contract.
- (ii) The amount established in Section 4.2(i) of the Construction Contract, shall be understood to be replaced by ***.

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(iii) The amount established in Section 4.2(ii) of the Construction Contract, shall be understood to be replaced by ***.

For purposes of clarification, Contractor acknowledges that the inclusion of the perimeter fences and the monitoring system in the Scope of Work does not imply a different amendment to the one mentioned above (and, particularly it does not imply a modification in the time terms established in the Construction Contract).

3. VALIDITY OF THE CONSTRUCTION CONTRACT

The Construction Contract is fully enforceable for those parts which have not been expressly amended by virtue of this Contract.

4. LAW AND JURISDICTION

- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation (*Ley española común*), to which Contractor and Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje*) (CIMA) of Madrid in accordance with the Procedural Regulations (*Reglamento de Procedimiento*) thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by Contractor and the other by Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.
- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

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In witness whereof, the Parties execute this Contract in the place and on the date first set forth above.

ALMURADIEL SOLAR, S.L.U.
Signed: Mr. Juan Carlos Sirviente Rodrigo

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.
Signed: Mr. Marco Antonio Northland

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CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION

In Madrid, on the 29th day of November, 2007

APPEARING PARTIES

- (1) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the “**Contractor**”), with a registered office in Madrid, at calle Pradillo nº 5.
- (2) **MORALAS RENOVABLES, S.L.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-79136636.

Hereinafter, the companies mentioned in paragraphs (1) and (2) above, will be jointly referred to as the “**Parties**”.

RECITALS

- I. That on November 6, 2007, Contractor and Owner entered into a turnkey construction contract for the construction of a solar park in Manzanares, consisting of 50 Solar Facilities of 100kW each, which was amended by virtue of another agreement entered into among others, by Contractor and Owner on November 21, 2007 (hereinafter, jointly, the “**Construction Contract**”).
- II. That the Construction Contract included:
 - (i) The Owner’s undertaking to provide Contractor with the definitive geotechnical report about the Site, so that Contractor confirms the modifications in the Scope of Work and/or the Contract Price that may arise from the terms of said geotechnical report;
 - (ii) A reference stating that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs were not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon Contractor’s delivery to Owner of an offer to perform such works and the issuance of a Change Order agreeing to a new Contract Price including such items.
 - (iii) The need of reviewing the Technical Specifications attached as Annex 2 to the Construction Contract by Contractor.
- III. That Owner has provided Contractor with the geotechnical report established in paragraph (i) of Recital II above and the Technical Specifications, and that the Parties have reached an agreement on the price of the perimeter fences and the monitoring system (Scada) of the tracker hubs.

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IV. That in order to formalize the agreement reached by the Parties on the issues mentioned in Recitals II and III above, the Parties have decided to enter into this Contract which shall be ruled by the following

CLAUSES

1. DEFINED TERMS

All the capitalized terms which are not herein expressly defined, shall have the same meaning set forth in the Construction Contract.

2. AMENDMENTS AND ADDENDA TO THE CONSTRUCTION CONTRACT

- (1) Geotechnical report: Contractor hereby acknowledges to have received the Site's definitive geotechnical report and to agree with it, and consequently, as of this date, all the representations made in Section 3(4) of the Construction Contract regarding the Site, are enforceable, being those representations hereby granted by Contractor for the benefit of Owner. Likewise, Contractor declares that the Site's conditions do not require to carry out any increase in the Contract Price.
- (2) Perimeter fences and monitoring system: The Parties undertake to increase the Contract Price in *** Euro, which include the price requested by Contractor in order to carry out the perimeter fences (*** Euro) and the monitoring system (Scada) of the tracker hubs (*** Euro).
- (3) Technical Specifications: Contractor hereby declares to have reviewed the Technical Specifications that were attached as Annex 2 to the Construction Contract, and to agree with them, not requiring their content to carry out any amendment to the Construction Contract.
- (4) As a consequence of the above, the Parties agree to amend the following terms of the Construction Contract:
 - (i) References made in Section 4.1(1) of the Construction Contract to the Contract Price, shall be understood to be replaced by ***, being the Contract Price consequently amended for all effects set forth under the Construction Contract.
 - (ii) The amount established in Section 4.2(i) of the Construction Contract, shall be understood to be replaced by ***.
 - (iii) The amount established in Section 4.2(ii) of the Construction Contract, shall be understood to be replaced by ***.

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For purposes of clarification, Contractor acknowledges that the inclusion of the perimeter fences and the monitoring system in the Scope of Work does not imply a different amendment to the one mentioned above (and, particularly it does not imply a modification in the time terms established in the Construction Contract).

- (5) Lastly, the Parties state that they incurred in a mistake defining the Guarantee Period and the Production Guarantee Period in the Construction Contract, as a consequence, they agree on replacing them by the following definitions:

Guarantee Period: means the period between the execution of the first Solar Facility's Provisional Acceptance Certificate until *** (***) years following the execution of the Solar Park's Provisional Acceptance Certificate.

Production Guarantee Period: means the period between Start-up of the Solar Park until *** following said Start-up.

3. VALIDITY OF THE CONSTRUCTION CONTRACT

The Construction Contract is fully enforceable for those parts which have not been expressly amended by virtue of this Contract.

4. LAW AND JURISDICTION

- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation (*Ley española común*), to which Contractor and Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje*) (CIMA) of Madrid in accordance with the Procedural Regulations (*Reglamento de Procedimiento*) thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by Contractor and the other by Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.

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- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

In witness whereof, the Parties execute this Contract in the place and on the date first set forth above.

MORALAS RENOVABLES, S.L.U.
Signed: Mr. Juan Carlos Sirviente Rodrigo

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.
Signed: Mr. Marco Antonio Northland

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CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION

In Madrid, on the 29th day of November, 2007

APPEARING PARTIES

- (1) **SUNPOWER ENERGY SYSTEMS SPAIN, S.L.** (hereinafter, the “**Contractor**”), with a registered office in Madrid, at calle Pradillo nº 5.
- (2) **NATURENER SOLAR TINAJEROS, S.L.U.** (hereinafter, the “**Owner**”), with a registered office at calle Núñez de Balboa, 120, 7º, 28006, Madrid and having Tax Identification Code (CIF) number B-85128781.

Hereinafter, the companies mentioned in paragraphs (1) and (2) above, will be jointly referred to as the “**Parties**”.

RECITALS

- I. That on November 6, 2007, Contractor and Owner entered into a turnkey construction contract for the construction of a solar park in Albacete, consisting of one hundred (100) Solar Facilities of 100kW each, which was amended by virtue of another agreement entered into among others, by the Contractor and Owner on November 21, 2007 (hereinafter, jointly, the “**Construction Contract**”).
- II. That the Construction Contract included:
- (i) The Owner’s undertaking to provide Contractor with a copy of all the licences and authorizations referred to in Section 3(2)(i) of the Construction Contract, so that Contractor shall confirm the amendments to the Scope of Work and/or to the Contract Price that may arise from the terms of said licenses and authorizations;
- (ii) A reference stating that the prices of the perimeter fences and the monitoring system (Scada) of the tracker hubs were not included in the Contract Price and therefore, the inclusion thereof in the Scope of Work shall be conditioned upon Contractor’s delivery to Owner of an offer to perform such works and the issuance of a Change Order agreeing to a new Contract Price including such items.
- III. That Owner has provided Contractor with the documentation established in paragraph (i) of Recital II above, and that the Parties have reached an agreement on the price of the perimeter fences and the monitoring system (Scada) of the tracker hubs.

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- IV. That in order to formalize the agreement reached by the Parties on the issues mentioned in Recitals II and III above, the Parties have decided to enter into this Contract which shall be ruled by the following

CLAUSES

1. DEFINED TERMS

All the capitalized terms which are not herein expressly defined, shall have the same meaning set forth in the Construction Contract.

2. AMENDMENTS AND ADDENDA TO THE CONSTRUCTION CONTRACT

- (1) Authorizations and licenses: Contractor hereby acknowledges to have received from Owner all the authorizations and licenses referred to in Section 3(2)(i) of the Construction Contract, and in particular the following:

- Resolution of the General Directorate of Industry and Energy (*Dirección General de Industria y Energía*) of the Castilla-La Mancha Region Board dated April 24, 2006 by virtue of which the facilities 1 and 100 of the project are included in the special regime (REPE) producing facilities, as well as the previous registration with the Registry of electric energy production facilities included in the special regime (*Registro de Instalaciones de Producción de Energía Eléctrica acogidas al Régimen Especial, "RAIPRE"*).
- Resolution of the General Directorate of Industry and Energy (*Dirección General de Industria y Energía*) of the Castilla-La Mancha Region Board dated February 7, 2007 about administrative authorization and approval of the execution project.
- Resolution of the General Directorate of Industry and Energy (*Dirección General de Industria y Energía*) of the Castilla-La Mancha Region Board dated October 17, 2007 authorizing the transfer of the plant's ownership from Naturener, S.A. to Naturener Solar Tinajeros, S.A.
- Letter from Iberdrola to Naturener, S.A. dated March 13, 2007 in relation with the connection point.
- Agreement entered into between Naturener, S.A. and Iberdrola Distribución Eléctrica, S.A.U. in accordance with the generated energy evacuation, dated September 5, 2007.

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- Agreement dated June 22, 2007 in relation with the reinforcement of the evacuation capacity in the Albacete region's electric subsystem (connection in ST. Romica) entered into among several electric energy's generator included in the special regime and Iberdrola Distribución Eléctrica, S.A.U.
- Letter sent by Naturener, S.A. and Naturener Solar Tinajeros, S.A. to Iberdrola Distribución Eléctrica, S.A.U. in relation with the assignment of the connection point, dated November 13, 2007.
- Registration of Naturener Solar Tinajeros, S.A. in the Registry of dangerous wastes' small producers of Castilla-La Mancha (*Registro de pequeños productores de residuos peligrosos de Castilla-La Mancha*) (fecha indeterminada).
- Local works licence and planning qualification for the implementation of the project granted by the City Council of Albacete on November 21, 2007.
- Resolution of the General Directorate of Patrimony of the the Castilla-La Mancha Region Board, dated January 26, 2007.
- Resolution of the City Council of Albacete dated August 31, 2007 providing Naturener, S.A. with the spill dispensation.
- Resolution of the Regional Authority of Environment and Rural Development (*Delegación Provincial de Medio Ambiente y Desarrollo Rural*) of Albacete dated October 24, 2007 by means of which it is stated that the project' s environmental impact does not need to be evaluated.
- Technical report issued by the Environmental Evaluation Office of the Regional Environment and Rural Development Ministry (*Servicio de Evaluación Ambiental de la Consejería de Medio Ambiente y Desarrollo Rural*) dated November 20, 2007 in relation with the additional documentation about the project submitted by Naturener, S.A.

Contractor hereby declares its agreement with the content of the abovementioned documentation, and therefore undertakes to carry out the Work in accordance with the conditions and requirements set forth in the aforementioned documents (including in particular, but not limited to, the environmental conditions established such as the prohibition of the entry of vehicles in certain places of the Site, and the restrictions in relation with the protection of the natural resources in the area), which, as a consequence, are included as a part of the Construction Contract.

Notwithstanding the above, the Parties have agreed to exclude from the Scope of the Works the reforestation tasks, which implies a decrease of *** in the Contract Price. Contractor declares that the content of the documentation mentioned in this paragraph, does not demand the execution of any additional amendment to the Contract Price. However, Contractor will in no case be liable for the delays that may arise from the reforestation tasks (including but not limited to the delays incurred due to the delay in obtaining the permits and authorizations)

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

- (2) Perimeter fences and monitoring system: The Parties undertake to increase the Contract Price in ***, which include the price requested by Contractor in order to carry out the perimeter fences (***) and the monitoring system (Scada) of the tracker hubs (***)
- (3) As a consequence of the above, the Parties agree to amend the following terms of the Construction Contract:
- (i) References made in Section 4.1(1) of the Construction Contract to the Contract Price, shall be understood to be replaced by ***, being the Contract Price consequently amended for all effects set forth under the Construction Contract.
- (ii) The amount established in Section 4.2(i) of the Construction Contract, shall be understood to be replaced by ***.
- (iii) The amount established in Section 4.2(ii) of the Construction Contract, shall be understood to be replaced by ***.

For purposes of clarification, Contractor acknowledges that the inclusion of the perimeter fences and the monitoring system in the Scope of Works does not imply a different amendment to the one mentioned above (and, particularly it does not imply a modification in the time terms established in the Construction Contract).

- (4) Lastly, the Parties declares that they incurred in a mistake defining the Guarantee Period and the Production Guarantee Period in the Construction Contract, as a consequence, they agree on replacing them by the following definitions:
- Guarantee Period:** means the period between the execution of the first Solar Facility's Provisional Acceptance Certificate until *** (***) years following the execution of the Solar Park's Provisional Acceptance Certificate.

Production Guarantee Period: means the period between Start-up of the Solar Park until *** following said Start-up.

3. **VALIDITY OF THE CONSTRUCTION CONTRACT**

The Construction Contract is fully enforceable for those parts which have not been expressly amended by virtue of this Contract.

4. LAW AND JURISDICTION

- (1) This Contract and all issues that may arise between the Parties in relation hereto or in connection herewith shall be exclusively governed by generally applicable Spanish legislation (*Ley española común*), to which Contractor and Owner expressly submit.
- (2) The Parties agree that any litigation, dispute, issue or claim resulting from the performance or interpretation of this Contract, or directly or indirectly related hereto, shall be definitively resolved by arbitration at law before the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje*) (*CIMA*) of Madrid in accordance with the Procedural Regulations (*Reglamento de Procedimiento*) thereof.
- (3) The Arbitral Tribunal shall be composed of three (3) arbitrators appointed from CIMA's list of arbitrators: one by Contractor and the other by Owner, and the two arbitrators so appointed shall appoint the third one, who shall act as chairman of the arbitral tribunal. Should the two first arbitrators fail to reach an agreement on the appointment of the third arbitrator within ten (10) Business Days following the date of acceptance of office by the second arbitrator, such arbitrator shall be appointed by CIMA.
- (4) The arbitration shall be conducted, and the award shall be rendered, in Madrid (Spain) and in the Spanish language.
- (5) The Parties therefore expressly waive any other jurisdiction to which they may be entitled under Law, and commit to abide by and submit to the arbitration award that may be rendered.
- (6) The Parties expressly waive any other jurisdiction that may apply and submit to the jurisdiction of the Courts and Tribunals of the city of Madrid for any litigation, dispute or claim that by mandate of law may not be resolved by, or submitted to, the arbitration provided under this Clause or, if applicable, for the formalization of the arbitration or the enforcement of the arbitral award.

In witness whereof, the Parties execute this Contract in the place and on the date first set forth above.

NATURENER SOLAR TINAJEROS, S.L.
Signed: Mr. Rafael Sánchez-Castillo Lodaes
Mr. Juan Francisco Quiroga Fernández-Ladreda

SUNPOWER ENERGY SYSTEMS SPAIN, S.L.
Signed: Mr. Marco Antonio Northland

Subsidiaries of SunPower Corporation

Subsidiary Name	Jurisdiction
Greater Sandhill I, LLC	Delaware
Helios Solar Star A-1 Company	Novia Scotia, Canada
Helios Solar Star A-1, L.P.	Novia Scotia, Canada
High Plains Ranch I, LLC	Delaware
High Plains Ranch II, LLC	Delaware
MS Solar Star I, LLC	Delaware
Pluto Acquisition Company LLC	Delaware
Solar Service S.r.l.	Italy
Solar Star ATI Fountain Grove, LLC	Delaware
Solar Star Estancia I, LLC	Delaware
Solar Star HI Air, LLC	Delaware
Solar Star HP I, LLC	Delaware
Solar Star I, LLC	Delaware
Solar Star II, LLC	Delaware
Solar Star Koyo I, LLC	Delaware
Solar Star LC I, LLC	Delaware
Solar Star Mervyns I, LLC	Delaware
Solar Star MW III, LLC	Delaware
Solar Star MW IV, LLC	Delaware
Solar Star MWHI I, LLC	Delaware
Solar Star Rancho CWD I, LLC	Delaware
Solar Star TM Innovations, LLC	Delaware
Solar Star TMI, LLC	Delaware
Solar Star TO, LLC	Delaware
Solar Star YC, LLC	Delaware
SPWR Energias Renovaveis Unipessoal Limitada	Portugal
SunPower Corporation (Switzerland) Sarl	Switzerland
SunPower Corporation, Systems	Delaware
SunPower Energy Systems Canada Corporation	Novia Scotia, Canada
SunPower Energy Systems Italy S.r.l.	Italy
SunPower Energy Systems Spain, S.L.	Spain
SunPower GmbH	Germany
SunPower Italia S.r.l.	Italy
SunPower North America, Inc.	Delaware
SunPower Philippines Ltd. – Regional Operating Headquarters	Cayman Islands
SunPower Philippines Manufacturing Ltd.	Cayman Islands
SunPower Systems SA	Switzerland
SunPower Technology Ltd.	Cayman Islands

Joint Ventures of SunPower Corporation

Joint Venture Name	Jurisdiction
First Philec Solar Corporation	Philippines
Morgan Stanley SunPower Solar 2007 LLC	Delaware
Woongjin Energy Company, Ltd.	Korea

SunPower Corporation, Systems does business under the following names

Subsidiary	dba
SunPower Corporation, Systems	PowerLight Corporation
SunPower Corporation, Systems	SP Energy Systems
SunPower Corporation, Systems	SP Energy Systems Corporation
SunPower Corporation, Systems	SP Corporation, Systems
SunPower Corporation, Systems	SunPower Energy Systems

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (File Nos. 333-140198, 333-140272) and Form S-8 (File Nos. 333-130340, 333-140197, 333-142679) of SunPower Corporation of our report dated March 2, 2008 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California
March 2, 2008

CERTIFICATIONS

I, Thomas H. Werner, Chief Executive Officer of SunPower Corporation, 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: March 3, 2008

/S/THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Emmanuel T. Hernandez, Chief Financial Officer of SunPower Corporation, 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: March 3, 2008

/S/EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer
(Principal Financial and Accounting 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, 2007 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of Thomas H. Werner, Chief Executive Officer, and Emmanuel T. Hernandez, Chief Financial Officer, of the Company, 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 result of operations of the Company.

Dated: March 3, 2008

/S/THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

/S/EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer
(Principal Financial and Accounting 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.