

Proposed Sale Hearing Date: January 24, 2017 at 10:00 a.m. (Prevailing Eastern Time)
Proposed Sale Objection Deadline: January 19, 2017 at 4:00 p.m. (Prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
SUNEDISON, INC., et al.,	:	Case No. 16-10992 (SMB)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
	:	
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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); SunE Minnesota Holdings, LLC (8926); and TerraForm Private Holdings, LLC (5993). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING THE PRIVATE SALE OF
THE COMMERCIAL AND INDUSTRIAL BUSINESS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, AND GRANTING RELATED
RELIEF**

SunEdison, Inc. ("SUNE")² and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") hereby move (the "Sale Motion") this Court for entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Sale Order"): (a) authorizing and approving the entry by Sun Edison LLC and SunEdison, Inc. (together, the "Sellers") into that certain Purchase and Sale Agreement with MyPower Corp. (the "Buyer"),³ dated as of January 5, 2017 and attached hereto as Exhibit B (the "Purchase Agreement", and the transactions in connection therewith, the "Sale Transaction")⁴, as well as certain related contracts, including a Management Services Agreement, substantially in the form attached to the Purchase Agreement as Exhibit B thereto (the "MSA"), and a Transition Services Agreement, substantially in the form attached to the Purchase Agreement as Exhibit H thereto (the "TSA"); (b) authorizing and approving, but not directing, the private sale of the Purchased Assets (as defined in the Purchase Agreement); and (c) granting related relief.

For the avoidance of doubt, the scope of the relief requested in this Sale Motion (and the scope of the relief in the proposed Sale Order) shall only relate to the anticipated sales, licenses, or other dispositions of Debtor assets by Sellers. Such Debtor assets include: (a) Sun Edison LLC's ownership interests in Forefront Power, LLC, a newly-formed, wholly-owned

² The Debtors together with their Non-Debtor affiliates are referred to herein as "SunEdison" or the "Company". For purposes herein, the definition of "SunEdison" and "Company" does not include TerraForm Power, Inc. and TerraForm Global, Inc., and each of their respective direct and indirect subsidiaries, unless otherwise provided.

³ The Buyer is an affiliate of Mitsui & Co., Ltd.

⁴ Consistent with the Sale Guidelines, the Purchase Agreement is attached hereto as Exhibit B.

subsidiary, (b) certain intellectual property assets owned by SunEdison, Inc., and (c) certain books and records relating to the C&I Business owned by SunEdison, Inc.

In support of the Sale Motion, the Debtors rely upon and incorporate by reference (a) the Declaration of J. Eric Ivester to Show Cause (the “Skadden Declaration”),⁵ (b) the Declaration of Emil Giliotti in Support of the Sale Motion (the “Rothschild Declaration”),⁶ and (c) the Declaration of Christopher Gaudet in Support of the Sale Motion (the “Gaudet Declaration”).⁷ In further support of the Sale Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Sale Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 365, 503, and 507, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 6006-1 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) and the Guidelines for the Conduct of Assets Sales promulgated by General Order M-383 of the Bankruptcy Court (the “Sale Guidelines”).

⁵ The Skadden Declaration is being filed substantially contemporaneously herewith.

⁶ The Rothschild Declaration is being filed substantially contemporaneously herewith.

⁷ The Gaudet Declaration is being filed substantially contemporaneously herewith.

BACKGROUND

A. The Chapter 11 Cases

3. On April 21, 2016,⁸ twenty-six of the Debtors commenced cases (the “Initial Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York. On June 1, 2016, an additional six Debtors⁹ filed voluntary petitions for relief under the Bankruptcy Code (the “June 1 Cases”). On July 20, 2016, an additional Debtor¹⁰ filed a voluntary petition for relief under the Bankruptcy Code (the “July 20 Case”). On August 9, 2016, an additional five Debtors¹¹ filed voluntary petitions for relief under the Bankruptcy Code (the “August 9 Cases”), and on August 10, 2016, an additional three Debtors¹² filed voluntary petitions for relief under the Bankruptcy Code (the “August 10 Cases”). On December 16, 2016, an additional Debtor¹³ filed a voluntary petition for relief under the Bankruptcy Code (the “December 16 Case” and together with the Initial Chapter 11 Cases, the June 1 Cases, the July 20 Case, the August 9 Cases, and the August 10 Cases, the “Chapter 11 Cases”). The Debtors’ Chapter 11 Cases have been consolidated for procedural

⁸ References to “Petition Date” refers, with respect to the Initial Chapter 11 Cases, to April 21, 2016, with respect to the June 1 Cases, to June 1, 2016, with respect to the July 20 Case, to July 20, 2016, with respect to the August 9 Cases, to August 9, 2016 and August 10, 2016, and with respect to the December 16 case, to December 16, 2016.

⁹ Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A).

¹⁰ EverStream Holdco Fund I, LLC (9564).

¹¹ Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); and SunE Waiawa Holdings, LLC (9757).

¹² SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); and SunE Minnesota Holdings, LLC (8926).

¹³ TerraForm Private Holdings, LLC (3523).

purposes only and are being jointly administered. The Sellers (as defined below) each filed a petition for relief under the Bankruptcy Code as part of the Initial Chapter 11 Cases.

4. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. On April 29, 2016, the Office of the United States Trustee for the Southern District of New York (the "United States Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee"). No trustee or examiner has been appointed in the Debtors' Chapter 11 Cases.

6. At the time of the Initial Chapter 11 Cases, SunEdison was one of the world's leading developers of renewable-energy solutions. In addition to its development business, SunEdison owned, operated, and/or provided maintenance services for clean power generation assets. SunEdison's businesses are global enterprises with substantial development activities on six continents at the time of filing.

7. Additional factual background information regarding the Debtors when these cases were commenced, including their business operations, their corporate and capital structure, and the events leading to these Chapter 11 Cases, is set forth in detail in the First Day Declaration.

B. The Debtors' Commercial & Industrial Business

8. SUNE and Sun Edison LLC (the "Sellers"), along with certain of their non-Debtor subsidiaries and affiliates, engage in the business of developing distributed generation community solar projects in North America and selling the output of those projects under multiple power purchase agreements to large commercial and industrial organizations, including, among others, municipalities, school districts, and housing authorities (collectively,

the “C&I Business”). The C&I Business also develops on-site behind-the-meter projects such as installations on rooftops, carports, or small ground mounts systems at the host site, where the host then purchases the output directly from the system. SunEdison’s C&I customers are primarily large companies that typically have certain attributes that make them good candidates for SunEdison’s services, such as multiple locations with large rooftops, parking canopies, or unused land, strong credit quality, large electricity consumption requirements, and requisite load usage.

9. Typically SunEdison, through its C&I Business and other business units, identifies and acquires renewable energy projects in the early stages of development, shepherds and funds an acquired project through the development and construction phases, and then transfers the projects to an identified purchaser (or to the customer). Projects in the early stages of development are generally referred to as “pipeline” projects, and typically require intensive capital expenditure, both in terms of manpower and in terms of cash expenditure, in order to develop such projects to a stage where the “pipeline” projects are ready for sale. Throughout the course of these Chapter 11 Cases, SunEdison has continued to develop, construct, and transfer projects in various stages of completion to acquirers. Certain of these transfers (or specific transactions and agreements related to such transfers) have been approved by this Court, or are the subjects of pending motions seeking such Court approval — including, for example, the Company’s sale transactions with Socore MN Acquisition, LLC [Docket No. 1267] (the “Socore Transaction”), and AES Distributed Energy, Inc. [Docket No. 1991] (the “AES Transaction”), as well as its settlements and releases with Onyx Development Group LLC [Dockets No. 1465, 1857] (the “Onyx Transactions”).

10. Since the Petition Date, SunEdison has focused on bringing existing projects (owned by the Company) towards a stage where a sale of such projects would maximize the value of the projects for the benefit of the Debtors and their estates, as well as preserving potentially valuable pipeline projects by expending necessary funds to maintain necessary permits, contracts, and other assets in order to retain the value of such pipeline projects. In utilizing its business judgment to make such determinations, SunEdison carefully evaluated amounts spent on pipeline projects on an ongoing basis, in order to maximize anticipated future returns. SunEdison has not actively engaged in identifying and acquiring additional pipeline projects during the post-petition period.

11. Following the transfers of a majority of its existing C&I projects, as well as the transfers of a substantial majority of those pipeline projects which had achieved sufficient milestones to be independently transferred, SunEdison has determined, in an exercise of its business judgment and for the benefit of the Debtors' creditors and all parties in interest, that the C&I Business, including the few remaining pipeline projects, should be transferred to a buyer or otherwise wound down to reduce continued carrying costs. Approximately thirty-six (36) of the remaining C&I Business pipeline projects require interconnection or other key contractual payments due from the Company to certain counterparties in December 2016 and January 2017. The Company has been successful in extending or deferring such payments (estimated total amount of \$6 million) to January and February 2017 pending a sale of such pipeline projects, but absent payment of such amounts (the majority of which are due by January 31, 2017), the related pipeline projects are at risk of near-total devaluation, to the detriment of the Company and its stakeholders. The Debtors intend to close the Sale Transaction as soon as practicable in order to permit the Buyer to take ownership of the pipeline projects in time to tender the necessary

payments to contract counterparties and preserve the value of the pipeline projects. Absent a rapid sale, the Debtors face the difficult decision of making a payment to preserve value in such pipeline projects, without any related assurance that any interested party will purchase the projects or reimburse the Debtors for such expenditures.

12. Furthermore, during the post-petition period the Debtors have experienced significant difficulty in retaining its key employees,¹⁴ which has further impacted the Debtors' ability to execute on and achieve necessary development tasks for pipeline projects. After taking into consideration the a) near-term expenditures necessary to preserve and develop the pipeline projects, and b) the continued departure of key employees, in conjunction with evaluating other key factors, the Company determined that the C&I Business should be marketed and, if possible, sold intact to a buyer in order to x) maximize value for the benefit of the Company and all of its stakeholders, and y) preserve the C&I Business and provide the remaining employees with certainty and stability. A sale of the C&I Business as a going concern would also result in significant cost savings to the Company, because absent a sale transaction, the Company may incur significant wind-down costs, some of which may be entitled to administrative priority expense status pursuant to the relevant provisions of the Bankruptcy Code.

C. The Debtors' Marketing and Sales Efforts

13. In light of the Company's decision to sell the C&I Business as a whole in a value-maximizing transaction to a third-party buyer, Rothschild identified and developed a list of potentially interested parties and solicited such parties' interest in a sale transaction, including

¹⁴ See, e.g., Debtors' Motion for Order Pursuant to Bankruptcy Code Sections 105(a), 363(b), and 503(c) (I) Approving the Implementation of Their Non-Key Employee Retention Plan, and (II) Approving the Implementation of Certain Sale Incentive Plans [Docket No. 729].

the Buyer.¹⁵ A virtual data room was established containing extensive information about the C&I Business, including documents describing its operations and financial results in considerable detail. Rothschild spoke to twenty-two (22) parties specifically about the C&I Business, and all twenty-two (22) parties executed a non-disclosure agreement (“NDA”).

14. After discussions with the parties that entered into NDAs in connection with the sale of the C&I Business and the evaluation of non-binding and binding offers for the C&I Business by such parties, including the Buyer, the Sellers determined in their business judgment, after considering all relevant factors, that the offer by the Buyer was the highest and/or best offer available for the Purchased Assets. Specifically, the Buyer was the only party who was willing and able to offer the Company a complete transaction which accomplished multiple goals of a) transferring the remaining C&I pipeline projects, b) transferring the platform as a going-concern operation and providing job opportunities to a substantial number of Company employees, and c) entering into a services agreement whereby the Buyer would provide services to the Company post-closing in order to permit the Company to continue to satisfy its ongoing obligations to develop and ultimately transfer projects to various buyers in connection with the Socore Transaction, the Onyx Transaction, and the AES Transaction, thereby permitting the Company to continue to generate revenue from such transactions.

15. From June 2016 through January 2017, the Company and the Buyer conducted numerous telephonic and in-person meetings, engaged in lengthy negotiations with both parties represented by separate advisors and counsel, and ultimately entered into the Purchase Agreement. During that period, Rothschild continued to market the Purchased Assets

¹⁵ On May 20, 2016, this Court entered an Order authorizing the Debtors to retain Rothschild, Inc. (“Rothschild”) as their financial advisor and investment banker to provide general financial advisory services and to assist SunEdison in a restructuring, sale transaction, or financing transaction to the extent pursued.

to other bidders, but no other party proffered a transaction which was likely to result in a higher or better value for the Debtors. In fact, other potential bidders expressed interest in only a small subset of the Purchased Assets, and no other potential bidder were willing to acquire the C&I Business as a going concern or were willing to provide ongoing services to the Company in order to permit the Company to continue to fulfill its obligations (and collect related compensation) under other existing sale transaction agreements.

16. Given these circumstances, the Debtors have determined that the Buyer's offer for the Purchased Assets, pursuant to the Purchase Agreement, is fair, reasonable, and in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and that the proposed Sale Transaction of the Purchased Assets affords the Debtors the best opportunity to maximize value.¹⁶ The Debtors have also determined that, in light of the lengthy postpetition sale process and the dearth of other interested buyers, a private sale transaction is entirely justified and supported under the facts and circumstances described above.

17. Consequently, the Debtors believe that the sale of the Purchased Assets to the Buyer will maximize the value of the Debtors' estates for the benefit of all their creditors, their stakeholders, and other parties in interest.

D. The Proposed Transaction

18. The Purchase Agreement contemplates the sale of the Purchased Assets, which comprise substantially all of the remaining assets of the Company's C&I Business, to the

¹⁶ The Debtors have actively engaged with the respective representatives and advisors for the DIP Agent, Tranche B Lenders/ Steering Committee and the Committee in connection with the relief requested herein. Specifically, the Debtors provided drafts of the Purchase Agreement, the MSA, the TSA, the Proposed Sale Order, and this Motion to the respective representatives and advisors for the DIP Agent, Tranche B Lenders/Steering Committee, and the Committee and included various comments received from such advisors. The Debtors also provided other information to, and answered questions from, the respective representatives and advisors for the DIP Agent, Tranche B Lenders/Steering Committee, and the Committee.

Buyer for a total of at least \$15,000,000 (the “Purchase Price”)¹⁷ payable at the Closing as follows: (i) \$9,500,000 payable in cash (the “Cash Purchase Price”) to the Sellers (subject to adjustment, as described further below), (ii) \$500,000 (the “PSA Escrow Amount”) paid into escrow and to be released to Sellers within twelve (12) months following the Closing if the conditions specified in § 9.1 of the Purchase Agreement are satisfied, (iii) \$5,000,000 (the “MSA Escrow Amount”)¹⁸ paid into escrow and to be used to incentivize Buyer to cause its subsidiary company to complete certain post-Closing services to be provided by such subsidiary to Sellers under a management services agreement (the “MSA”), and (iv) certain Authorized Pipeline Expenses (as defined in the Purchase Agreement) incurred by Sellers or their affiliates during the pre-Closing period in connection with certain pipeline projects, with such Authorized Pipeline Expenses estimated at \$2.8 million. Finally, the Cash Purchase Price is subject to downward adjustment (such adjustment not to exceed \$3 million in the aggregate) for the termination of, or failure by SunEdison to deliver, certain pipeline projects or pipeline contracts at Closing; such adjustment shall be in the amount of 10 cents per watt based upon the capacity of the undelivered pipeline project.

19. The Purchased Assets include, but are not limited to, equity in Forefront LLC (as defined below), certain contracts of the Company (primarily contracts of non-Debtor affiliates of the Sellers), certain intellectual property of the Sellers, and the Sellers’ books and

¹⁷ Absent a claim under the MSA as summarized in footnote 18 below, and assuming that the full PSA Escrow Amount is released to Sellers, the Purchase Price payable to Sellers shall total \$10 million in cash.

¹⁸ Pursuant to the terms and conditions of the MSA, the MSA Escrow Amount is to be disbursed to Buyer on a dollar-for-dollar basis as the Seller receives funds from the Onyx, Socore, and/or AES Transactions. To the extent funds are remaining in the MSA Escrow Amount at the end of the Term (as defined in the MSA), such remaining funds shall revert to Buyer, unless Sellers deliver a notice to Buyer and the escrow agent prior to the end of the Term alleging that Buyer’s subsidiary has breached its obligation to use good faith and commercially reasonable efforts to perform the services set forth in the MSA, in which case such remaining funds shall be held in the escrow account pending resolution of such claims.

records in connection with the C&I Business. The Sale Transaction contemplates the creation of a new wholly-owned limited liability company, Forefront Power, LLC (“Forefront LLC”) which shall be wholly owned by Debtor Sun Edison LLC. Forefront LLC shall receive transfers of certain assets relating to pipeline projects, including but not limited to certain contracts, permits, authorizations, options, leases, and other related assets, from certain Debtor and non-Debtor transferor entities. Upon the closing of the Sale Transaction, (a) Sun Edison LLC will transfer its ownership interests in Forefront LLC to Buyer, (b) SunEdison, Inc. will transfer certain intellectual property assets and books and records relating to the C&I Business to Buyer (or its affiliate), (c) SunEdison, Inc. will license certain intellectual property assets to Buyer (or its affiliate), and (d) a Buyer affiliate will hire certain C&I Business employees from the Company.

20. In connection with certain previously executed and consummated sale transactions for C&I projects, some of which have been approved by this Court, the Company has continued to work towards bringing projects to the “notice to proceed” stage (“NTP”) or the “commercial operation date” stage (“COD”), at which point additional payments are due and owing to the Company under the governing purchase and sale contracts. Following the Closing of the proposed Sale Transaction, the Sellers will continue such work as planned; however, the transfer of the C&I Business to the Buyer will result in certain of the personnel needed to continue the necessary work being employed by Buyer or an affiliate of Buyer. Accordingly, the Sellers and the Buyer have negotiated the MSA, pursuant to which the Buyer, through its affiliate, will make the necessary personnel available to the Company in order to carry out any necessary work under the Socore, AES, and Onyx Transactions, thereby allowing the Company to fulfill remaining obligations and collect remaining NTP payments owed in connection with such Transactions. In return for such services, the Sellers will provide the Buyer’s affiliate with

an aggregate fee which increases based on aggregate proceeds collected, ranging from twelve and a half percent (12.5%) to twenty-three percent (23%) of all subsequent NTP payments, as well as an additional fee to the Buyer to match the first \$5 million of such NTP payments (such fee payable to the Buyer from the MSA Escrow Amount). The Debtors estimate that the remaining NTP payments owed to the Company in connection with the Socore, Onyx, and AES Transactions will total approximately \$44 million¹⁹ in the aggregate (or \$35.73 million following deducts for the MSA fees due to Buyer's affiliate as described above). In the absence of the Sale Transaction, the cost to the Debtors of utilizing its own personnel and resources to provide the necessary services would be \$8.6 million²⁰ in the aggregate after February 15, 2017.

RELIEF REQUESTED

21. By this Sale Motion, the Debtors seek entry of the Sale Order that will approve the sale of the Purchased Assets to the Buyer as a private sale transaction, and grant related relief. For the reasons set forth herein, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

BASIS FOR RELIEF

A. Sound Business Purpose

22. The Sellers have a sound business justification for consummating the Sale Transaction. The Debtors' highest priority in the Chapter 11 Cases is to maximize the value of their estates for the benefit of their creditors and other stakeholders. To that end, the Sellers have

¹⁹ Such aggregate amount assumes that projects are delivered to the Socore, AES and Onyx buyers timely upon NTP, and that Socore, AES and Onyx buyers remit full payment as provided for in the relevant purchase agreements.

²⁰ Such estimate reflects projected operating expenses which would be incurred and payable in connection with the C&I Business.

secured, after extensive negotiations, a compelling offer from the Buyer for the Purchased Assets – specifically, \$9,500,000 in cash payable at the Closing, plus \$500,000 paid into escrow at Closing and subject to release to the Sellers as provided in the Purchase Agreement. An additional escrow amount of \$5,000,000 will incentivize the Buyer to perform its obligations under the MSA, by ensuring that Buyer will receive bargained-for consideration in exchange for performing services which are necessary in order for the Debtors’ estates to maximize the consideration received in connection with the Onyx, AES, and Socore Transactions.

23. Not only does the Purchase Agreement provide the Debtors’ estates with consideration for the C&I Business (and relieve the estates of potential costs associated with winding down the C&I Business or preserving the value of its assets long enough to secure an alternate buyer), but the Sale Transaction also provides a pathway for the Company to perform its continuing obligations under the Onyx, AES, and Socore Transactions.

B. Summary of Certain Terms of the Purchase Agreement²¹

24. A summary of the principal terms of the Purchase Agreement is as follows:

- **Sellers.** Sun Edison, LLC; SunEdison, Inc. See Purchase Agreement, Recitals. The Sellers each filed a petition as part of the Initial Chapter 11 Cases.
- **Purchased Assets.** The Purchased Assets consist of the Sellers’ right, title and interest in, to and under the Assigned Intellectual Property, the Holding Company Equity, and certain Books and Records (together, the “Purchased Assets”). See Purchase Agreement, § 2.1. Buyer shall also license certain Licensed Intellectual Property from the Purchaser (the “Licensed IP”).
- **Purchase Price and Sale of Purchased Assets.** In full consideration for the sale and transfer by Sellers of the Purchased Assets, Buyer will pay the Purchase Price. The

²¹ The following summary is qualified in its entirety by reference to the provisions of the Purchase Agreement. In the event of any inconsistencies between the provisions of the Purchase Agreement and the terms herein, the terms of the Purchase Agreement shall govern. Capitalized terms used in this Section B of the Sale Motion and not otherwise defined shall have the meanings ascribed thereto in the Purchase Agreement.

Purchase Price²² is comprised of (i) \$9,500,000 payable in cash (the “Cash Purchase Price”) to the Sellers (subject to adjustment, as described further below), (ii) \$500,000 (the “PSA Escrow Amount”) paid into escrow and to be released to Sellers within twelve (12) months following the Closing if the conditions specified in § 9.1 of the Purchase Agreement are satisfied, (iii) \$5,000,000 (the “MSA Escrow Amount”)²³ paid into escrow and to be used to facilitate payment to Buyer of certain compensation owed by Sellers to Buyer in connection with certain post-Closing services to be provided under a management services agreement (the “MSA”) by Buyer’s affiliate to Sellers, and (iv) reimbursement for any Authorized Pipeline Expenses paid by or on behalf of Sellers during the Interim Period. See Purchase Agreement, § 3.1. The Cash Purchase Price is subject to downward adjustment (such adjustment not to exceed \$3 million in the aggregate) for a failure by SunEdison to deliver any enumerated pipeline project at closing; such adjustment shall be in the amount of 10 cents per watt based upon the capacity of any undelivered pipeline project. Id., § 3.1.

- **Management Services/Transition Services.** Following the Closing, certain employees of the Company will be hired by Buyer or its affiliated subsidiary Development Company. The Development Company will use good faith, commercially reasonable efforts, using the Company’s former employees, to satisfy the conditions set forth in the relevant documents for the AES, Onyx, and Socore Transactions in order to achieve certain payment targets under such documents, in accordance with (i) prudent industry standards, and (ii) a contemplated schedule for achieving such payment targets. See Management Services Agreement, § 3.2. As compensation for such services, the Sellers will provide Development Company with an aggregate fee which increases based on aggregate proceeds collected, ranging from twelve and a half percent (12.5%) to twenty-three percent (23%) of all subsequent NTP payments, as well as an additional fee to the Buyer to match the first \$5 million of such NTP payments (such additional fee payable from the MSA Escrow Amount). Id., § 5.1. In addition, the Sellers shall provide the Buyer with certain information technology, human resources, finance and accounting, legal, and other support services for a period of up to ninety (90) days following the date of execution of the Transition Services Agreement, at variable rates determined by the services provided. See Transition Services Agreement, Schedule 1. The services provided under the Transition Services Agreement may be terminated by Buyer upon written notice to Sellers, and Buyer shall use commercially reasonable efforts during the term of the

²² Absent a claim under the MSA as summarized in footnote 23 below, and assuming that the full PSA Escrow Amount is released to Sellers, the Purchase Price payable to Sellers shall total \$10 million in cash.

²³ Pursuant to the terms and conditions of the MSA, the MSA Escrow Amount is to be disbursed to Buyer on a dollar-for-dollar basis as the Seller receives funds from the Onyx, Socore, and/or AES Transactions. To the extent funds are remaining in the MSA Escrow Amount at the end of the Term (as defined in the MSA), such remaining funds shall revert to Buyer, unless Sellers deliver a notice to Buyer and the escrow agent prior to the end of the Term alleging that Buyer’s subsidiary has breached its obligation to use good faith and commercially reasonable efforts to perform the services set forth in the MSA, in which case such remaining funds shall be held in the escrow account pending resolution of such claims.

Transition Services Agreement to make a transition of the services provided to the Buyer's own internal organization or to obtain alternate third-party sources to provide the services. Id., § 2.1.

- **Indemnification.** Each of Sellers agrees, jointly and severally, to indemnify the Buyer and its Affiliates against any Losses suffered as a result of breaches of representations and warranties or covenants, to the extent such Losses are based upon or arise out of any actions, inactions, events, facts or circumstances existing prior to Closing, whether known, unknown, absolute, accrued, contingent, fixed, determined, determinable, indeterminate or otherwise, and whether due or to become due, and whether for payment, indemnification, reimbursement, performance or otherwise (in each case, whether or not required under GAAP to be reflected or disclosed on a balance sheet or the notes thereto); provided, however, that Sellers in the aggregate shall not be responsible for Losses in excess of \$500,000; and provided further, however, that in the case of claims for indemnification for breaches by Sellers with respect to the Fundamental Representations, (i) Sellers in the aggregate shall not be responsible to Buyer for Losses in excess of the Purchase Price, and (ii) Buyer shall not bring such a claim until the aggregate amount of all Losses incurred by Buyer from such breach or breaches equals or exceeds \$50,000, in which event Sellers shall be liable for all such Losses from the first dollar. See Purchase Agreement, §§ 9.2(a), 9.3(a), 9.3(b). Buyer agrees to indemnify Sellers and their Affiliates against any Loss suffered as a result of any breach or inaccuracy of representations or warranties or any covenant or agreement of Buyer set forth in the Purchase Agreement; provided, however, that Buyer shall not be responsible for Losses in excess of \$500,000. Id., §§ 9.2(b), 9.3(c).

C. Extraordinary Provisions Under the Sale Guidelines²⁴

25. The proposed Sale Order and the Purchase Agreement contain the following items that may be considered Extraordinary Provisions under the Sale Guidelines:²⁵

- **Private Sale/No Competitive Bidding:** The sale of the Purchased Assets pursuant to the Purchase Agreement does not contemplate an auction or other further competitive bidding process. As described in more detail herein, and in the Giliotti Declaration, the Debtors believe that an expedited sale of the Purchased Assets to the Buyer provides the best opportunity to maximize value of the Purchased Assets, particularly given the extensive marketing process

²⁴ Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the Purchase Agreement.

²⁵ The following list of possible Extraordinary Provisions, as such term is defined in the Sale Guidelines, is not intended to be an admission that any of these items are unusual relief in a sale of significant assets of a large chapter 11 debtor pursuant to Bankruptcy Code section 363. Extraordinary Provisions that are not applicable here have not been included in the following list.

completed postpetition and the continued discussions with potentially interested parties during the six-month period during which the Sellers and the Buyer engaged in negotiations regarding the Sale Transaction. Due to, among the other reasons set forth above, the substantial carrying costs and near-term development costs, the majority of which are due by January 31, 2017, the Debtors believe that the delay resulting from an auction or further bidding process would result in significant value degradation and the failure to achieve a higher or better offer for the Purchased Assets from any other potential purchaser.

- **Agreements with Management:** Buyer shall offer employment to eleven (11) designated Essential Employees and sixteen (16) designated Key Employees of Sellers who provide key services to the C&I Business and that are designated by Buyer in writing at or prior to the Closing. See Purchase Agreement, § 6.7.
- **Employment of Debtors' Employees:** The Purchase Agreement contemplates that (i) each of the eleven (11) Essential Employees listed on Section 1.1(a) of the Buyer Disclosure Schedule, and (ii) no fewer than 85% of the sixteen (16) Key Employees listed on Section 1.1(b) of the Buyer Disclosure Schedule shall have accepted Buyer's offer of employment. See Purchase Agreement, § 7.3(d).
- **Interim Arrangements with Proposed Buyer:** The Sellers are required to comply with certain customary interim operating covenants under the terms of the Purchase Agreement. See Purchase Agreement, § 6.1. In addition, the Sellers shall provide the Buyer with certain information technology, human resources, finance and accounting, legal, and other support services for a period of up to ninety (90) days following the date of execution of the Transition Services Agreement, at variable rates determined by the services provided. See Transition Services Agreement, Schedule 1. The services provided under the Transition Services Agreement may be terminated by Buyer upon written notice to Sellers, and Buyer shall use commercially reasonable efforts during the term of the Transition Services Agreement to make a transition of the services provided to the Buyer's own internal organization or to obtain alternate third-party sources to provide the services. Id., § 2.1.
- **Use of Proceeds:** Buyer shall have the sole right to allocate the Purchase Price and other relevant items among the Purchased Assets. See Purchase Agreement, § 3.4.
- **Good Faith Deposit:** The Purchase Agreement does not require the Buyer to submit a good faith deposit. In light of the Buyer's extensive resources dedicated to the lengthy diligence and negotiation efforts from June 2016 through January 2017, including five separate trips by senior representatives of the Buyer from Japan to the United States to conduct due diligence and negotiate the Purchase Agreement in person, the Debtors submit that the Buyers have demonstrated sufficient commitment to, and investment in, the Sale Transaction to justify the lack of a good faith deposit.

- **Requested Findings as to Successor Liability:** The Debtors seek a finding that the transfer of the Purchased Assets and the assumption of the Assumed Liabilities (including any individual elements of the Sale Transaction) to the Buyer, except as otherwise set forth in the Purchase Agreement, does not, and will not, subject the Buyer to any liability or obligation whatsoever, with respect to the operation of any of the Debtors' businesses or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. See Sale Order ¶ Q.
- **Requested Findings as to Fraudulent Conveyance:** The proposed Sale Order requests findings that the Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. See Sale Order ¶ O.
- **Sale Free and Clear:** The Purchased Assets shall be transferred free and clear of all Encumbrances (as defined below) (other than the Permitted Liens) to the fullest extent permitted by Bankruptcy Code section 363.
- **Record Retention:** Following the Closing, for a period of seven (7) years after the Closing Date, to the extent books, records and other data relating to the business or financial or operating condition of Buyer may be reasonably requested by Sellers in connection with the Bankruptcy Cases, any audit, investigation, Action or any other reasonable business purpose, including relating to Sellers or in connection with its rights hereunder, Buyer will provide such Seller with access to such books, records or other data. Further, Buyer agrees, for a period of seven (7) years after the Closing Date, not to destroy or otherwise dispose of any such books, records, and other data. See Purchase Agreement, § 6.15(a).
- **Relief from Bankruptcy Rule 6004(h):** The Debtors seek relief from the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).

APPLICABLE AUTHORITY

26. Ample authority exists for approval of the Sale Transaction. The Debtors submit that application of the section 363(b) standard for sales outside of the ordinary course of a debtor's business is met here. Section 363(b) of the Bankruptcy Code provides, in relevant part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Bankruptcy Code section 363(b)(1). This Court's power under Bankruptcy Code section 363 is supplemented by Bankruptcy Code section 105(a), which

provides in relevant part: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Bankruptcy Code section 105(a). As set forth below, the Debtors submit they have satisfied the requirements of Bankruptcy Code sections 105, 363, and 365 as those sections have been construed by courts in the Second Circuit.

A. Approval Of The Sale Transaction Is Warranted Under Bankruptcy Code Section 363(b) Because A Sound Business Justification Exists.

27. A debtor should be authorized to sell assets outside of the ordinary course of business pursuant to section 363 of the Bankruptcy Code and prior to obtaining a confirmed plan of reorganization if it demonstrates a sound business purpose for doing so. See, e.g., Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143-45 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); see, e.g., Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-71 (2d Cir. 1983); In Bos. Generating, LLC, 440 B.R. 302, 322 (Bankr. S.D.N.Y. 2010); In re Glob. Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989).

28. The Debtors have articulated a clear business justification for entering into the Sale Transaction. As explained in greater detail above, the Debtors have determined that a private sale will maximize value and is in the best interests of the Debtors, their creditors, their estates, their stakeholders, and other parties in interest, particularly in light of the extensive marketing that has been performed for the Purchased Assets. Further, as noted in the Gaudet Declaration, the Debtors have determined in their business judgment, that a divestiture of the

C&I Business is in line with the Debtors' general strategy, and will provide significant value for the Debtors' estates, their creditors, and all other parties in interest.

29. Once a court has determined there is a sound business justification for a sale outside of a plan, the court must also determine that (i) the debtors have provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the Buyer is proceeding in good faith. See In re Gen. Motors Corp., 407 B.R. 463, 493-94 (Bankr. S.D.N.Y. 2009); In re Betty Owens Sch., No. 96 Civ. 3576 (PKL), 1997 U.S. Dist. LEXIS 5877, at *14 (S.D.N.Y. Apr. 16, 1997); Polvay v. B.O. Acquisitions, Inc. (In re Betty Owens Sch., Inc.), No. 96 Civ. 3576 (PKL), 1997 WL 188127, at *4 (S.D.N.Y. Apr. 17, 1997).

30. All interested parties will be provided with adequate and reasonable notice. Moreover, the sale price is fair and reasonable. To date, as set forth in greater detail above and in the Rothschild Declaration, a virtual data room was established containing extensive information about the C&I Business, including documents describing its operations and financial results in considerable detail. Rothschild spoke to twenty-two (22) parties specifically about the C&I Business, and each of those parties executed a NDA. Further, the Sellers and their advisors have participated in significant negotiations with the Buyer in the formulation of the Purchase Agreement and the Sale Transaction. Thus, the Debtors entered into the Purchase Agreement after a long, fulsome, and deliberate effort to market the Purchased Assets and are confident that the sale price is fair and reasonable.

31. In addition, both the Sellers and the Buyer were represented by practical and experienced advisors and attorneys in the arm's-length negotiation of the Purchase Agreement, and the Buyer is proceeding in good faith. Accordingly, it is a valid exercise of the Debtors' business judgment to seek the relief requested by this Sale Motion.

B. The Proposed Sale Transaction Satisfies The Requirements Of Bankruptcy Code Section 363(f) For A Sale Free And Clear of All Encumbrances, Including Successor Liability Claims

32. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable non-bankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. See Bankruptcy Code section 363(f). Because Bankruptcy Code section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale. See Scherer v. Fed. Nat'l Mortg. Ass'n (In re Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 825 (N.D. Ill. 1993) (sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies).

33. Here, the Debtors submit that Bankruptcy Code sections 363(f)(2) and (5) are met. First, all parties known to have asserted an Encumbrance on the Purchased Assets will receive notice of the Sale Transaction. To the extent they have not objected by **January 19, 2017 at 4:00 p.m. (prevailing Eastern Time)**, they will be deemed to consent to the Sale Transaction free and clear of all Encumbrances. The Sellers propose to sell the Purchased Assets in a commercially reasonable manner and expect that the value of the proceeds from such sales or transfers will fairly reflect the value of the property sold. Second, the Sellers further propose that upon the closing, any party with an Encumbrance shall have a corresponding security interest in the proceeds of the Sale Transaction, as such Encumbrances will attach to the proceeds of the Sale Transaction with the same validity, priority and force and effect as such Encumbrance had immediately prior to the closing of the Sale Transaction. In addition, all such persons could be compelled to accept money satisfaction for their interests. As such, the

requirements of section 363(f) of the Bankruptcy Code would be satisfied for the sale of the Purchased Assets free and clear of all Encumbrances.

34. The Debtors also submit that it is appropriate to sell the C&I Business free and clear of successor liability relating to the C&I Business. Such limitations on successor liability ensure that the Buyer is protected from any claims or lawsuits premised on the theory that the Buyer is a successor in interest to one or more of the Sellers' estates. If such relief is not granted, the purpose of an order purporting to authorize the transfer of assets free and clear of Encumbrances would be frustrated by the potential for claimants to thereafter use the transfer as a basis to assert claims against a buyer arising from a seller's pre-sale conduct.

35. Courts have consistently held that a buyer of a debtor's assets pursuant to a Bankruptcy Code section 363 sale takes free and clear from successor liability relating to the debtor's business. See, e.g., In Matter of Motors Liquidation Co., No. 15-2844-BK(L), 2016 WL 3766237 (2d Cir. July 13, 2016), *12, *13 ("We agree that successor liability claims can be 'interests' when they flow from a debtor's ownership of transferred assets" and holding that "a bankruptcy court may approve a § 363 sale 'free and clear' of successor liability claims if those claims flow from the debtor's ownership of the sold assets. Such a claim must arise from a (1) right to payment (2) that arose before the filing of the petition or resulted from pre-petition conduct fairly giving rise to the claim"); In re Chrysler LLC, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) ("[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction."); Contrarian Funds, LLC v. Westpoint Stevens, Inc. (In re Westpoint Stevens, Inc.), 333 B.R. 30, 50 (S.D.N.Y. 2005) ("Where . . . a sale is to be free and clear of existing liens and interests other than those of the estate, one or

more of the criteria specified in section 363(f) of the statute must also be met.”), rev'd in part on other grounds, 600 F.3d 231 (2d Cir. 2010).

36. Moreover, this Court's authority under Bankruptcy Code section 363 is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Bankruptcy Code section 105(a); see 2 Collier on Bankr. ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2016); see also Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.), 25 F.3d 1132, 1136 (2d Cir. 1994) (“[B]ankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”); Croton River Club, Inc. v. Half Moon Bay Homeowners Ass'n (In re Croton River Club, Inc.), 52 F.3d 41, 45 (2d Cir. 1995) (holding that bankruptcy courts have broad equity power to manage the affairs of debtors); Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court's equitable powers when necessary to carry out the provisions of Title 11.”).

37. For these reasons, the Buyer should not be liable under any theory of successor liability relating to the C&I Business, but instead, should hold the Purchased Assets free and clear of Encumbrances, including successor liability claims.

C. A Buyer Should Be Entitled To The Protections Of Bankruptcy Code Section 363(m) And The Sale Does Not Violate Section 363(n).

38. Bankruptcy Code section 363(m) provides in relevant part that the reversal or modification on appeal of an authorization under section 363(b) of a sale or lease of property does not affect the validity of a sale or lease under such authorization to a buyer who bought or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. See Bankruptcy Code section 363(m). “Although the Bankruptcy Code does not define the meaning of ‘good-faith buyer,’ . . . most courts have adopted a traditional equitable definition: ‘one who purchases the assets for value, in good faith and without notice of adverse claims.’” In re Gucci, 126 F.3d at 390 (citation omitted). The Second Circuit held that “[t]he ‘good faith’ component of the test under § 363(m) speaks ‘to the equity of [the bidder’s] conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’” In Kabro Assocs. Of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor to section 363(m))).

39. As set forth in greater detail in this Sale Motion, the Gaudet Declaration, and the Rothschild Declaration in support thereof, the Purchase Agreement was negotiated at arm’s-length and without collusion, with both parties represented by their own sophisticated counsel. Accordingly, the Sellers request that the Sale Order include a provision that the Buyer for the Purchased Assets, is a “good faith” buyer within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing the Buyer with such protection will

ensure that the maximum price will be received by the Debtors for the Purchased Assets and that the closing of the Sale Transaction will occur promptly. Moreover, neither the Sellers nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. If, following the Auction, the Buyer is not the Buyer, the Sellers will have negotiated a purchase agreement with the Buyer in good faith and at arms' length.

SHORTENED NOTICE SCHEDULING HEARING ON MOTION

40. Contemporaneously with the filing of this Motion, the Debtors have submitted (i) the Declaration of J. Eric Ivester Pursuant to Local Bankruptcy Rule 9077-1(a) in Support of Order to Show Cause Scheduling Hearing on Shortened Notice for Debtors' Motion For An Order Authorizing The Private Sale Of The Commercial And Industrial Business Free And Clear Of All Liens, Claims, Encumbrances, And Interests, And Granting Related Relief, and (ii) the proposed Order to Show Cause Scheduling Hearing on Shortened Notice for Debtors' Motion For An Order Authorizing The Private Sale Of The Commercial And Industrial Business Free And Clear Of All Liens, Claims, Encumbrances, And Interests, And Granting Related Relief (the "Order to Show Cause").

41. Bankruptcy Rule 2002(a)(1) provides that this Court may, "for cause shown," shorten the required notice period for and direct another method of giving notice of a motion. Fed. R. Bankr. P. 2002(a)(1). As set forth more fully in the Skadden Declaration, the Debtors respectfully submit that sufficient "cause" exists for expedited consideration of the relief sought under the Motion. Specifically, the consummation of the Sale Transaction is necessary to prevent a delay in closing which would, among other things, increase the carrying costs of the Debtors in connection with certain payments due in late January and early February to preserve

pipeline projects, and substantially impair the Debtors' ability to retain key employees (which retention is a condition to closing as described above). Absent the consummation of the Sale Transaction, the likely alternative available to the Debtors would be to cease the operations of the C&I Business, a result that will not inure to the benefit of the estates and their stakeholders, and will result in the loss of jobs of existing C&I employees. Furthermore, the proposed hearing date will only shorten the notice period by two days, and the Debtors propose to extend the customary objection deadline from January 17, 2017 to January 19, 2017 to further reduce any impact of the shortened period upon creditors and other parties-in-interest.

42. Accordingly, for the reasons set forth herein and in the Skadden Declaration, the Debtors request that this Court enter an Order to Show Cause, substantially in the proposed form filed by the Debtors concurrently herewith, scheduling consideration of the relief requested under the Motion, for the hearing scheduled for January 24, 2017 at 10:00 a.m. (Prevailing Eastern Time).

43. The Debtors propose to give notice of the Motion, the Skadden Declaration, and the Order to Show Cause in accordance with the provisions set forth in the Order to Show Cause, as entered by this Court.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

44. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets and to avoid the accrual of substantial additional development

costs. Therefore, time is of the essence in consummating the Sale Transaction. Accordingly, the Debtors respectfully request that the Court waive the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

45. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract or unexpired lease with any party subject to this Sale Motion.

NOTICE

46. Notice of this Sale Motion shall be given to (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the administrative agent under the Debtors' prepetition first lien credit agreement; (c) counsel to the Tranche B Lenders/Steering Committee; (d) counsel to the administrative agent under the Debtors' prepetition second lien credit agreement; (e) counsel to the collateral trustee under the Debtors' prepetition second lien credit agreement; (f) counsel to the indenture trustee under each of the Debtors' outstanding bond issuances; (g) the U.S. Attorney for the Southern District of New York; (h) counsel to the administrative agent under the postpetition debtor-in-possession financing facility; (i) counsel to the Committee; (j) counsel to TerraForm Power, Inc. and TerraForm Global, Inc.; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) any party known to have asserted an Encumbrance in any of the Purchased

Assets; (n) all affected federal, state and local regulatory, and taxing authorities; (o) all entities known to have expressed an interest in a transaction with respect to all or part of the Purchased Assets during the six (6) months preceding the date hereof; and (p) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York. The Debtors submit that no other or further notice need be provided.

NO PRIOR REQUEST

47. No previous request for the relief sought herein has been made to this Court or any other court.

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CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter the Proposed Sale Order and grant such other and further relief as is just and proper.

Dated: New York, New York
January 5, 2017

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Counsel for Debtors and Debtors in Possession

EXHIBIT A

PROPOSED SALE ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
SUNEDISON, INC., et al.,	:	Case No. 16-10992 (SMB)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	:	

**ORDER AUTHORIZING THE PRIVATE SALE OF THE COMMERCIAL &
INDUSTRIAL BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS, AND GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Sale Motion”)² dated January 5, 2017 of the above-captioned debtors and debtors-in-possession (the “Debtors”) for, among other things, entry of an order (the “Order”) (i) authorizing (a) SunEdison LLC (“SELLC”) to sell or transfer its equity interests in Forefront Power, LLC and the Books and Records of SELLC and (b) SunEdison, Inc. (“SunEdison”, and together with SELLC, the “Sellers”) to sell or transfer its right, title and interest to the Assigned Intellectual Property and the Books and Records of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enfle Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); SunE Minnesota Holdings, LLC (8926); and TerraForm Private Holdings, LLC (5993). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the Purchase Agreement (as defined herein), as applicable.

SunEdison, in each case free and clear of all liens, hypothecations, encumbrances, claims,³ liabilities, security interests, interests, mortgages, pledges, restrictions or charges (including any conditional sale or other title retention agreement) as of the Closing Date (collectively, the “Encumbrances”), in accordance with that certain Purchase and Sale Agreement, dated as of January 5, 2017, by and between the Sellers,⁴ on the one hand, and MyPower Corp. (“Buyer”) and/or its designees, on the other hand (together with all related agreements, documents or instruments and all exhibits, schedules and supplements to any of the foregoing, the “Purchase Agreement”, and the transactions described therein, the “Sale Transaction”), pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and (ii) granting certain related relief; and the Court having held a hearing on January [____], 2017 (the “Sale Hearing”) to approve the proposed Sale Transaction as set forth in the Purchase Agreement; and the Court having reviewed and considered (a) the Sale Motion, (b) the declarations filed by the Debtors in support of the Sale Motion, (c) the objections to the Sale Motion, if any, (d) all responses to any objections and replies in further support of the Sale Motion, if any, and (e) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors, and other parties in interest; and upon the record of the Sale Hearing and the Chapter 11 Cases; and after

³ For purposes of this Order, the term “claim” shall have the meaning ascribed to such term in Bankruptcy Code section 101(5).

⁴ For the avoidance of doubt, the findings and fact and conclusions of law set forth herein shall only apply to the anticipated sales, licenses, or other dispositions of Debtor assets by Sellers.

due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:⁵

A. **Jurisdiction and Venue.** The court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Sale Motion are sections 105 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002 and 6004.

C. **Petition Date.** On April 21, 2016 (the "Petition Date"), the Sellers each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code.

D. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court finds that there is no just reason for delay in the implementation of this Order and directs entry of this Order as set forth herein.

E. **Notice.** As evidenced by the affidavits of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale Hearing, the Purchase Agreement and the Sale Transaction has been provided in accordance with sections 102(1) and 363 and Bankruptcy Rules 2002, 6004 and 9006, and this Court's case management procedures, (ii) such notice was good, sufficient, and appropriate under the particular circumstances, and (iii)

⁵ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

no other or further notice of the Sale Motion, the Sale Hearing, the Purchase Agreement, or the Sale Transaction is or shall be required.

F. **Corporate Authority.** Each of the Sellers (subject only to entry of this Order) (i) has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement, and (iii) has taken all corporate action and formalities necessary to authorize and approve the Purchase Agreement and the consummation by the Sellers of the transactions contemplated thereby, including, without limitation, as required by their respective organizational documents. No government, regulatory, or other consents or approvals are required for the Sellers to enter into the Purchase Agreement and consummate the Sale Transaction.

G. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including (i) the Debtors, 13736 Riverport Dr., Maryland Heights, MO 63043, Attn: Martin Truong and Sujay Parikh; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: Jay M. Goffman and J. Eric Ivester, jay.goffman@skadden.com and eric.ivester@skadden.com, 155 N. Wacker Drive Chicago, IL 60606, Attn: James J. Mazza, Jr., james.mazza@skadden.com, and 300 S. Grand Ave., Suite 3400, Los Angeles, CA 90071, Attn: Annie Li, annie.li@skadden.com; (iii) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul Schwartzberg, paul.schwartzberg@usdoj.gov; (iv) counsel to the administrative agent under the Debtors' prepetition first lien credit agreement, Latham &

Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Richard Levy and Brad Kotler, richard.levy@lw.com and brad.kotler@lw.com; (v) counsel to the Tranche B Lenders (as defined in the DIP Credit Agreement (defined below)) and the steering committee of the second lien creditors (the “Steering Committee”), Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Arik Preis and Naomi Moss, apreis@akingump.com and nmoss@akingump.com; (vi) counsel to the administrative agent under the Debtors’ prepetition second lien credit agreement, Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, NY 10036-4039, Attn: Daniel S. Brown, daniel.brown@pillsburylaw.com; (vii) counsel to the collateral trustee under the Debtors’ prepetition second lien credit agreement, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919, Attn: Marie C. Pollio, mpollio@goodwin.com; (viii) counsel to the indenture trustee under each of the Debtors’ outstanding bond issuances, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919, Attn: Marie C. Pollio, mpollio@goodwin.com; (ix) counsel to the DIP Agent and DIP Arrangers (as defined in the Final DIP Order (as defined below)), White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036-2787, Attn: Scott Greissman and Elizabeth Feld, sgreissman@whitecase.com and efeld@whitecase.com; (x) counsel to the Committee, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew Barr and Joseph Smolinsky, suneweilbfr@weil.com; (xi) counsel to TerraForm Power, Inc. and TerraForm Global, Inc., Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, Attn: Michael H. Torkin and Andrew G. Dietderich, torkinm@sullcrom.com and dietdericha@sullcrom.com; (xii) counsel for the Buyer, Sidley Austin, LLP, 1501 K Street NW, Washington, D.C. 20005, Attn: David E. Kronenberg, dkronenberg@sidley.com; (xiii) all entities known to have expressed an interest in a

transaction with respect to all or part of the Purchased Assets; (xiv) all entities known to have asserted any Encumbrance in or upon any of the Purchased Assets; and (xiii) all entities filing notices of appearance or requests for notice under Bankruptcy Rule 2002 in these Chapter 11 Cases.

H. **Sale in Best Interest.** Approval of the Sale Motion, the Purchase Agreement, and the transactions contemplated thereby, including, without limitation, the Sale Transaction, is in the best interests of the Sellers, their estates and creditors, and all other parties in interest in these Chapter 11 Cases. The consideration provided by the Buyer under the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair consideration and reasonably equivalent value to the Sellers. The Sale Transaction represents the best opportunity to maximize and realize the value of the Purchased Assets for the Sellers.

I. **Business Justification.** Sound business reasons exist for the Sale Transaction. Entry into the Purchase Agreement, and the consummation of the transactions contemplated thereby, including the Sale Transaction, constitutes each Seller's exercise of sound business judgment and such acts are in the best interests of each Seller, its estate, and all parties in interest. The terms and conditions of the Purchase Agreement, including, without limitation, the consideration to be realized by the Sellers, are fair and reasonable. The Court finds that each Seller has articulated good and sufficient business reasons justifying the Sale Transaction. Such business reasons include, but are not limited to, the following: (i) the Debtors have extensively marketed the Purchased Assets and the Purchase Agreement constitutes the highest and best offer for the Purchased Assets; (ii) the Purchase Agreement and the closing thereon will present the best opportunity to maximize the value of the Purchased Assets and avoid decline and devaluation of the Purchased Assets; (iii) unless the Sale Transaction and all of the other

transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for in the Sale Motion and pursuant to the Purchase Agreement, recoveries to creditors may be diminished; and (iv) any other transaction involving the Purchased Assets would create a substantial risk of delay and a significant reduction in value for the Debtors' estates.

J. **Good Faith Purchaser.** The Buyer is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under Bankruptcy Code section 363(m) and any other applicable or similar bankruptcy and non-bankruptcy law. Specifically, (i) the Buyer recognized that the Debtors were free to deal with any other party interested in purchasing the Purchased Assets; (ii) all payments to be made by the Buyer to the Sellers in connection with the Sale Transaction have been disclosed; (iii) no common identity of directors or officers exists among the Buyer and the Debtors, and neither the Buyer nor any of its affiliates, present or contemplated members, officers, directors or shareholders (or any of their respective successors or assigns) is an "insider" of the Debtors as such term is defined in section 101(31) of the Bankruptcy Code; (iv) the negotiation and execution of the Purchase Agreement was at arm's-length and in good faith, and at all times each of the Buyer and the Debtors were represented by competent counsel of their choosing; (v) the Buyer did not in any way induce or cause the chapter 11 filing of the Debtors; and (vi) the Buyer has not acted in a collusive manner with any person. Neither the Sellers nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement or the Sale Transaction to be avoided or result in the imposition of any costs or damages under Bankruptcy Code section 363(n).

K. **Free and Clear.** The Sellers may sell and assign the Purchased Assets free and clear of all Encumbrances because counsel to the DIP Agent and DIP Arrangers and counsel to the Tranche B Lenders under the DIP Credit Agreement received notice of the Sale Transaction,

and the DIP Lenders have consented to the Sale Transaction on the terms set forth in the Purchase Agreement and this Order, and with respect to each other creditor asserting an Encumbrance, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. The transfer of the Purchased Assets to the Buyer will be free and clear of all Encumbrances and will not subject the Buyer or any of the Buyer's assets to any liability for any Encumbrances whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff, or successor or transferee liability. All parties known to have asserted an Encumbrance on the Purchased Assets have received notice of the Sale Transaction. Those holders of Encumbrances who did not object or who withdrew their objections to the Sale Transaction are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Further, upon the Closing, any Encumbrances will attach to the proceeds of the Sale Transaction with the same validity, priority, force and effect, and subject to the same defenses as existed immediately prior to the Closing.

L. **Vesting of Title.** The Purchased Assets constitute property of the Sellers' estates within the meaning of section 541(a) of the Bankruptcy Code. The transfer of the Purchased Assets to the Buyer will vest the Buyer with good and marketable title to the Purchased Assets, free and clear of all Encumbrances.

M. **Buyer's Reliance.** The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated hereby, including, without limitation, the Sale Transaction, (i) if the transfer of the Purchased Assets were not free and clear of all Encumbrances of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, or (ii) if the Buyer would, or in the future could, be liable for any such Encumbrances and other interests, including, without

limitation, rights or claims based on any taxes or successor or transferee liability. The Buyer will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, unless the Court expressly orders that none of the Buyer, its affiliates, its present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Encumbrances and other interests, including, without limitation, rights or claims based on any taxes, successor, or transferee liability.

N. **Prompt Consummation.** The sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Sellers and the Buyer intend to close the Sale Transaction as soon as reasonably practicable.

O. **No Fraudulent Transfer.** The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. The Buyer is not a mere continuation, and is not holding itself out as mere a continuation, of any of the Debtors or their respective estates, and there is no continuity between the Buyer and the Debtors. The Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of the Buyer and any of the Debtors.

P. **Consideration.** The consideration provided by the Buyer for the Purchased Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv)

constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, or the Uniform Voidable Transaction Act as in effect in any jurisdiction of the United States).

Q. No Successor Liability. The Buyer is not and shall not be deemed a successor to the Sellers as a result of consummation of the Sale Transaction. Except as otherwise set forth in the Purchase Agreement, the transfer of the Purchased Assets pursuant to the Purchase Agreement does not, and will not, subject the Buyer to any liability or obligation whatsoever, with respect to the operation of any of the Debtors' businesses or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. The Buyer (i) does not have a common identity of incorporators, officers, directors, or equity holders with any of the Debtors and (ii) is not holding itself out to the public as a continuation of any of the Debtors or their estates. The Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of the Buyer and any of the Debtors and/or the Debtors' estates and the purpose and intent of the Sale Transaction is not to avoid the Sellers' liabilities or assist the Sellers in avoiding their liabilities. There is no continuity of enterprise between any of the Debtors and the Buyer, the Buyer is not a mere continuation or substantial continuation of any of the Debtors, and the Buyer is not a successor to any of the Debtors.

R. **Purchase Agreement is Reasonable.** The terms of the Purchase Agreement, including any amendments, supplements, and modifications thereto, are fair and reasonable in all respects.

S. **Not a *Sub Rosa* Plan.** The Sale Transaction does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale Transaction neither impermissibly restructures the rights of the Sellers' creditors, nor impermissibly dictates a plan of reorganization or liquidation for the Sellers.

T. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

It is therefore ORDERED, ADJUDGED, AND DECREED THAT:

GENERAL PROVISIONS

1. The Sale Motion is GRANTED to the extent set forth herein.
2. All objections to the Sale Motion or the relief requested therein that have not been adjourned, withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice.

APPROVAL OF THE SALE OF THE PURCHASED ASSETS

3. The Purchase Agreement (in substantially the form attached hereto as Exhibit A), including any amendments, supplements, and modifications thereto, and all of the terms and conditions therein, is hereby approved.

4. Pursuant to Bankruptcy Code section 363(b), the sale of the Purchased Assets to the Buyer free and clear of all Encumbrances and obligations, as set forth in the Purchase Agreement and in this Order, and the transactions contemplated thereby are approved in all respects.

SALE AND TRANSFER OF PURCHASED ASSETS

5. Pursuant to section 363(b) of the Bankruptcy Code, the Sellers are hereby authorized and directed to sell the Purchased Assets to the Buyer and consummate the Sale Transaction in accordance with, and subject to the terms and conditions of, the Purchase Agreement and this Order, and to transfer and assign all right, title, and interest (including common law rights) to all property, licenses, and rights to be conveyed to the Buyer in accordance with and subject to the terms and conditions of the Purchase Agreement and this Order, and are further authorized to execute and deliver, and are empowered to perform under, consummate, and implement, the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, including, without limitation, the related documents, exhibits, and schedules, and to take all further actions as may be reasonably requested by the Buyer for the purposes of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the Sellers' obligations as contemplated by the Purchase Agreement and this Order.

6. Pursuant to Bankruptcy Code sections 363(b) and 363(f), the Purchased Assets shall be transferred to the Buyer upon the Closing Date free and clear of all Encumbrances and obligations of any kind or nature whatsoever as of the Closing Date, including, without limitation, rights or claims based on any taxes or successor or transferee liability, including, without limitation, obligations or Encumbrances arising under ERISA prior to the Closing Date, all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising before or subsequent to the commencement of these Chapter 11 Cases, and whether imposed by agreement, understanding,

law, equity or otherwise, including, without limitation, claims otherwise arising under federal, state, or foreign tax laws or doctrines of successor or transferee liability, with all such Encumbrances to attach to the cash proceeds of the Sale Transaction in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto. In each case, such Encumbrance shall only attach to the portion of the cash proceeds allocable to the particular asset that it had previously encumbered.

7. Following the Closing, the Debtors and/or the Buyer are authorized to execute and file a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all obligations and Encumbrances in the Purchased Assets of any kind or nature whatsoever. On the Closing Date, this Order will be construed as, and constitute for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill (or bills) of sale transferring good and marketable title in such Purchased Assets to the Buyer. Each and every federal, state, local, and foreign governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

8. Except as otherwise provided in orders of the Court, all entities who are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date.

9. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to

the Buyer in accordance with the Purchase Agreement and this Order; *provided, however*, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

10. This Order (a) shall be effective as a determination that, upon the Closing of the Sale Transaction, all interests, claims, and Encumbrances of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing of the Sale Transaction have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, local, and foreign officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets; *provided* that nothing herein shall relieve any entity of the obligation to pay filing fees required to be paid under non-bankruptcy law.

11. Except as expressly permitted by the Purchase Agreement or this Order, all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding Encumbrances or other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, against or in a Debtor or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or

subordinated), in each case arising under or out of, in connection with, or in any way relating to, the Purchased Assets or the operation of the Purchased Assets before the Closing Date, are, as of the Closing Date, forever barred, estopped, and permanently enjoined from asserting against the Buyer, its successors and assigns, its respective property and the Purchased Assets, such persons' or entities' Encumbrances or other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability. Following the Closing Date, no holder of an Encumbrance in the Debtors shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Encumbrance or any actions that the Debtors may take in their Chapter 11 Cases.

12. On the Closing Date, each of the Debtors' creditors is authorized and directed to use commercially reasonable efforts to execute such documents and take all other actions as may be necessary to release its Encumbrances on the Purchased Assets, if any, as such Encumbrances may have been recorded or otherwise exist.

13. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets on account of the filing or pendency of the Chapter 11 Cases or the consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Assumed Contracts.

NO SUCCESSOR LIABILITY

14. The Buyer is not and shall not be deemed to be a "successor" to the Sellers or their estates with respect to the Purchased Assets.

15. The Buyer has given substantial consideration under the Purchase Agreement, which consideration shall constitute valid and valuable consideration for the releases

of any potential claims of successor liability of the Buyer and which shall be deemed to have been given in favor of the Buyer by all holders of Encumbrances in or against the Debtors or the Purchased Assets. The Buyer is not a “successor” to the Debtors or their estates by reason of any theory of law or equity, and the Buyer shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates with respect to the Purchased Assets or otherwise, including, but not limited to, under any bulk sales law, doctrine or theory of successor liability, or similar theory or basis of liability. Upon consummation of the Sale Transaction, the Buyer shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors or their affiliates or incur any liability derived therefrom within the meaning of any foreign, federal, state or local law; (b) have, *de facto* or otherwise, merged with or into any of the Debtors or their affiliates; or (c) be an alter ego or a mere continuation or substantial continuation of any of the Debtors or their affiliates, in each case including, without limitation, within the meaning of any pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 *et seq.*), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), and the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*

16. Except to the extent the Buyer otherwise specifically agreed in the Purchase Agreement or as provided in this Order, the Buyer shall not have any liability, responsibility, or obligation for any claims, liabilities, Encumbrances or other obligations of the Debtors or their estates, including, without limitation, any claims, liabilities, Encumbrances or other obligations related to the Purchased Assets prior to Closing Date. For the purposes of

paragraphs 14 through 16 of this Order, all references to the Buyer shall include its affiliates, subsidiaries, and shareholders.

GOOD FAITH

17. The Buyer has acted without collusion and in good faith in undertaking the Sale Transaction contemplated by the Purchase Agreement. The Sale Transaction may not be avoided, nor may any costs or damages be imposed, under Bankruptcy Code section 363(n), and the Buyer is entitled to all of the protections afforded by Bankruptcy Code section 363(m).

ADDITIONAL PROVISIONS

18. The consideration provided by the Buyer for the Purchased Assets under the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

19. On the Closing Date, the Debtors and the Buyer are authorized to take such actions as may be necessary to obtain a release of any and all Encumbrances on the Purchased Assets. This Order (a) shall be effective as a determination that, on the Closing Date, all Encumbrances of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing Date have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected; and (b) to the greatest extent permitted by applicable law, shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, local, and foreign officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to

report or insure any title or state of title in or to any of the Purchased Assets. The Buyer and the Debtors shall take such further steps and execute such further documents, assignments, instruments, and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph. On the Closing Date, all interests of record as of the date of this Order shall forthwith be deemed removed and stricken as against the Purchased Assets, provided that, upon the Closing, any Encumbrances will attach to the proceeds of the Sale Transaction with the same validity, priority, force and effect, and subject to the same defenses as existed immediately prior to the Closing. On the Closing Date, all entities described in this paragraph are authorized and specifically directed to strike all such recorded Encumbrances against the Purchased Assets from their records, official and otherwise.

20. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances or interests in any of the Purchased Assets does not deliver to the Debtors or the Buyer prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements, and any other documents necessary for the purpose of documenting the release of all other Encumbrances that the person or entity has or may assert with respect to any of the Purchased Assets, the Debtors and/or the Buyer are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of such persons or entity with respect to any of the Purchased Assets.

21. The Debtors will cooperate with the Buyer and the Buyer will cooperate with the Debtors, in each case to ensure that the transactions contemplated in the Purchase Agreement are consummated, and the Debtors will make such modifications or supplements to

any bill of sale or other document executed in connection with the closing to facilitate such consummation as contemplated by the Purchase Agreement.

22. The Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors and their respective affiliates, successors, assigns, estates, and creditors; the Buyer and its affiliates, successors, and assigns; and any affected third parties, including, but not limited to, all persons asserting Encumbrances on the Purchased Assets to be sold to the Buyer pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

23. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

24. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court; *provided* that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates. To the extent that any such proposed modification, amendment, or supplement has a material adverse effect on the Debtors' estates, such proposed modification, amendment, or supplement shall be subject to the consent of the Required Tranche A Lenders and the Tranche B Required Consenting Parties (each as defined in the DIP Credit Agreement).

25. Nothing contained in any plan of reorganization or liquidation confirmed in these Chapter 11 Cases or any order of the Court confirming such plans or in any other order in these Chapter 11 Cases, except the Final DIP Order, including any order entered after any conversion of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, shall alter, conflict with, or derogate, the provisions of the Purchase Agreement or the terms of this Order. The provisions of this Order and the Purchase Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtors, or which may be entered converting these Chapter 11 Cases from chapter 11 to chapter 7 of the Bankruptcy Code, and the terms and provisions of, and the rights and interests granted pursuant to, this Order and the Purchase Agreement shall continue in these Chapter 11 Cases or any superseding case and shall be specifically performable and enforceable against and binding upon the Debtors and their estates and the Buyer and their respective successors and permitted assigns, including any trustee, responsible officer, or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

26. The provisions of this Order are nonseverable and mutually dependent.

27. To the extent applicable, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted, without further order of the court, to the extent necessary (a) to allow the Buyer to give the Debtors any notice provided for in the Purchase Agreement, and (b) to allow the Buyer to take any and all actions permitted by the Purchase Agreement.

28. Other than Rothschild, there are no brokers involved in consummating the Sale Transaction, and no brokers' commissions are due that would be owed by the Buyer.

29. Compliance with Laws relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

30. The Debtors and each other person having duties or responsibilities under the Purchase Agreement or this Order, and their respective agents, representatives, and attorneys, are authorized and empowered to carry out all of the provisions of the Purchase Agreement, to issue, execute, deliver, file, and record, as appropriate, the Purchase Agreement and any related agreements, and to take any action contemplated by the Purchase Agreement or this Order, and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, deeds, bills of sale, assignments, or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the Purchase Agreement and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable business corporation, trust, and other laws of applicable governmental units with respect to the implementation and consummation of the Purchase Agreement and this Order and the transactions contemplated thereby and hereby.

31. Notwithstanding any other provision of this Order, nothing in this Order or the Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations (including, but not limited to, environmental laws or regulations), and any associated liabilities for penalties, damages, cost recovery, or injunctive relief that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the Closing Date. Nothing contained in this Order or in the Purchase Agreement shall in any way diminish the obligation of any entity, including

the Debtors, to comply with environmental laws. Nothing in this Order or the Purchase Agreement authorizes the transfer to the Buyer of any licenses, permits, registrations, or governmental authorizations and approvals without the Buyer's compliance with all applicable legal requirements under non bankruptcy law governing such transfers.

32. Notwithstanding the provisions of Bankruptcy Rule 6004 or any applicable provisions of the Local Bankruptcy Rules, this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal being foreclosed as moot.

33. Notwithstanding anything to the contrary contained herein, any proceeds obtained by the Seller pursuant to the Transactions, or any payment to be made, or authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under the *Final Order (I) Authorizing Debtors to (A) Obtain Senior Secured, Superpriority, Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, and (ii) Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy Code Sections 361, 362, 363 and 364* [Docket No. 523] (the "Final DIP Order"), the DIP Credit Agreement and the other DIP Loan Documents (each as defined in the Final DIP Order).

34. Except as otherwise specifically ordered herein, the Court shall retain exclusive jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the

agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Buyer free and clear of Encumbrances, or compel the performance of other obligations owed by the Buyer or the Debtors, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect the Buyer against (i) claims made related to any of the Excluded Liabilities, (ii) any claims of successor or vicarious liability related to the Purchased Assets or Assumed Contracts, or (iii) any Encumbrances asserted on or in the Debtors or the Purchased Assets, of any kind or nature whatsoever.

35. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Sale Motion.

36. The requirements set forth in Bankruptcy Rules 6003(b) and 6004 have been satisfied or otherwise deemed waived.

37. To the extent that any provision of the Purchase Agreement conflicts with or is in any way inconsistent with any provision of this Order, this Order shall govern and control.

Dated: _____, 2017
New York, New York

HONORABLE STUART M. BERNSTEIN

Exhibit A

Purchase Agreement

(Attached Separately to the Sale Motion)

EXHIBIT B

PURCHASE AGREEMENT

PURCHASE AND SALE AGREEMENT

by and among

SUN EDISON LLC,

SUNEDISON, INC.

and

MYPOWER CORP.

Dated as of January 5, 2017

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of January 5, 2017 by and among Sun Edison LLC, a Delaware limited liability company ("SELLC"), SunEdison, Inc., a Delaware corporation ("SunEdison", and together with SELLC, "Sellers" and each a "Seller"), and MyPower Corp., a Delaware corporation (including its successors and assigns, "Buyer"). Sellers and Buyer are sometimes individually referred to in this Agreement as a "Party" and together as the "Parties."

WHEREAS, SELLC owns one hundred percent (100%) of the outstanding membership interests (the "Holding Company Equity") in Forefront Power, LLC, a Delaware limited liability company ("Holding Company");

WHEREAS, Sellers own the Intellectual Property (as hereinafter defined);

WHEREAS, on or before Closing, Holding Company will take assignment of the Pipeline Assets (as hereinafter defined) to the extent, if such Pipeline Asset is a Holding Company Contract (as hereinafter defined), either Seller or any of its Affiliates is a party to such Holding Company Contract;

WHEREAS, as of the Closing, a development company formed by Buyer or its Affiliates ("Development Company"), will take assignment of or license the Intellectual Property (as hereinafter defined), as applicable, and will employ all of the Essential Employees (as hereinafter defined) and all or certain of the Key Employees (as hereinafter defined);

WHEREAS, on April 21, 2016 and subsequent dates, Sellers and certain of their Affiliates filed voluntary petitions for relief commencing cases (collectively, the "Bankruptcy Cases") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, each Seller continues to operate its business as a debtor-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, in connection with the Bankruptcy Cases and, upon the terms and subject to the conditions set forth in this Agreement and in the Sale Order (as hereinafter defined), (a) SELLC wishes to sell, transfer, convey, assign and deliver to Buyer, and Buyer wishes to purchase and acquire, the Holding Company Equity and the Books and Records of SELLC, (b) SunEdison wishes to sell, transfer, convey assign and deliver to Buyer, and Buyer wishes to purchase and acquire, the Books and Records of SunEdison and (c) SunEdison wishes to convey, assign, transfer and deliver or license, as applicable, the Intellectual Property to Buyer, and Buyer wishes to purchase the Assigned Intellectual Property and license the Licensed Intellectual Property from SunEdison, in each case, free and clear of all Liens (other than Permitted Liens), all in accordance with Sections 105, 363 and 365 and the other applicable provisions of the Bankruptcy Code (the "Purchase"); and

WHEREAS, the execution and delivery of this Agreement and Sellers' ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of an Order of the Bankruptcy Court under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the foregoing and the respective representations, mutual covenants, agreements and understandings contained herein and intending to be legally bound, the Parties agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms have the meanings set forth below:

“Action” shall mean any action, suit, proceedings, arbitration or Governmental Entity investigation.

“Affiliate” of any particular Person shall mean any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, “control” (including the terms “controlling,” “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning set forth in the preamble.

“Alternative Transaction” shall mean any of the following: (a) a transaction or series of transactions pursuant to which Sellers or their Affiliates transfer, purport to transfer or would transfer, in each case, directly or indirectly, any of the Purchased Assets to any Person other than Buyer (or its assigns in accordance with Section 10.4 (b) the filing of a plan of reorganization that does not effectuate the sale of the Purchased Assets to Buyer (or its assigns in accordance with Section 10.4), or (c) any direct or indirect acquisition, sale, liquidation, divestiture, public offering, recapitalization, business combination or reorganization, whether in one transaction or a series of transactions (including by merger, acquisition, business combination or other transaction), of or involving, in each case, directly or indirectly, any of the Purchased Assets, other than the Transactions, in each case other than involving Buyer or an Affiliate of Buyer as purchaser. The first such transaction in a series of transactions described above shall be deemed the Alternative Transaction for purposes of this Agreement.

“Assigned Intellectual Property” shall have the meaning set forth in Section 4.15(a).

“Assignment Agreement” shall mean the Assignment Agreement, dated as of the Closing Date, between Sellers and Buyer, substantially in the form attached hereto as Exhibit A.

“Authorized Pipeline Expenses” shall mean out-of-pocket payments in connection with the Pipeline Projects authorized in writing by Buyer and made by Sellers or any Affiliate of

either Seller during the Interim Period in accordance with (a) written notice by Buyer provided in accordance with Section 6.17 and (b) the budget and schedule set forth on Section 1.1(a) of the Seller Disclosure Schedule, as the same may be revised and updated in accordance with Section 6.17.

“Bankruptcy Cases” has the meaning set forth in the recitals.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure.

“Benefit Plan” shall mean any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), whether or not subject to ERISA, and any other employee benefit plan, program, policy or Contract, including any employment, pension, retirement, profit-sharing, thrift, savings, bonus plan, incentive, stock bonus, stock purchase, stock option or other equity or equity-based compensation, or retention, change in control, severance, deferred compensation, welfare benefit or fringe benefit plan, policy, program, agreement or arrangement.

“Books and Records” shall mean originals, or where not available, copies of all material books and records of each Seller and its Affiliates known to such Seller and primarily relating to the Purchased Assets and the Pipeline Assets, including, but not limited to, books of account, ledgers and general, financial and accounting records, customer files, price lists, supplier lists, research and development files, correspondence, documents and filings with or related to Government Entities, sales and promotional materials, strategic plans and forms and templates typically used in the Business (including, but not limited to, solar power and services agreements, site option agreements, site lease agreements, site license agreements, and storage contracts).

“Business” shall mean, as of the Effective Date, the commercial and industrial solar business consisting of the platform, people and processes under which the Pipeline Projects are developed and the business of enabling commercial and industrial solar sales, installing commercial and industrial photovoltaic solar facilities as a primary contractor and managing customer relationships in direct contractual privity (including as a result of the use of agents or subcontractors) with commercial and industrial customers, in each case, with respect to the Pipeline Projects.

“Business Day” shall mean any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York.

“Buyer” shall have the meaning set forth in the preamble.

“Buyer Disclosure Schedule” shall have the meaning set forth in Article 5.

“Buyer Parent” shall mean Mitsui & Co., Ltd.

“Buyer Parent Guaranty” shall mean the Guaranty given by Buyer Parent on the date of this Agreement supporting Buyer’s obligations under this Agreement.

“Cash Purchase Price” shall have the meaning set forth in Section 3.1(b)(i).

“CFIUS” shall have the meaning set forth in Section 6.11.

“CFIUS Approval” shall have the meaning set forth in Section 7.1(c).

“CFIUS Requested Notices” shall have the meaning set forth in Section 6.11.

“Closing” shall have the meaning set forth in Section 3.3.

“Closing Date” shall have the meaning set forth in Section 3.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Confidential Information” shall mean all information of a confidential or proprietary nature (whether or not specifically labeled or identified as “confidential”), in any form or medium. Confidential Information includes, but is not limited to, the following: (a) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (b) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (c) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (d) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (e) other proprietary rights.

“Consent” shall mean any authorization, approval, consent, ratification, negative clearance, waiver, notice or filing, or a Final Order of the Bankruptcy Court that deems, or renders unnecessary, the same.

“Contract” shall mean all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Controlled Group Liability” shall mean any and all liabilities (a) under Title IV of ERISA, (b) under the minimum funding requirements of Section 302 of ERISA or Section 412 of the Code or (c) under Section 4971 of the Code, other than such liabilities that arise solely out of, or related solely to, the Benefit Plans maintained or sponsored solely by Sellers or one of their Subsidiaries.

“Data Room” shall mean the virtual Intralinks data room entitled “Project Sunrise” located at www.intralinks.com maintained by or on behalf of Sellers (or any of their Affiliates) to which Buyer has been given access.

“Debtor” shall mean, collectively, all debtors in the Sellers’ Bankruptcy Cases.

“Development Company” shall have the meaning set forth in the recitals.

“DIP Administrative Agent” shall mean Deutsche Bank AG New York Branch, in its capacity as Administrative Agent under the DIP Credit Agreement (and any successor thereto).

“DIP Credit Agreement” shall mean that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement among SunEdison, the DIP Administrative Agent, the lenders from time to time party thereto, and the other parties thereto, dated as of April 26, 2016, as has been or may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“DIP Lenders” shall have the meaning given to such term in the DIP Order.

“DIP Order” shall mean the Final Order (a) Authorizing Debtors to (i) Obtain Senior Secured, Superpriority, Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (ii) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, and (b) Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy Code Sections 361, 362, 363 and 364 [Docket No. 523].

“Disclosing Party” shall have the meaning set forth in Section 6.6.

“Effective Date” shall mean the date as of which this Agreement was executed as set forth in the preamble.

“Employee Handbook” shall mean the employee policy and procedures handbook of Sellers, attached hereto as Exhibit I.

“Employees” shall have the meaning set forth in Section 6.7(a).

“Equity Securities” shall mean capital stock, partnership or membership interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of the issuing entity.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Essential Employees” shall mean the employees set forth on Section 1.1(a) of the Buyer Disclosure Schedule.

“Final Order” shall mean an order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Bankruptcy Cases (or the docket of such other court), which is and remains in full force and effect, has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, re-argument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, re-argument or rehearing shall then be pending or (b) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, re-argument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, re-argument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such order, shall not cause an order not to be a Final Order; provided, further, that Sellers reserve the right to seek a waiver of any appeal period for an order or judgment to become a Final Order.

“Fundamental Representations” shall mean the representations and warranties made in Sections 4.5, 4.10 and 4.11.

“GAAP” shall mean generally accepted accounting principles of the United States consistently applied, as in effect from time to time.

“Governmental Entity” shall mean any multinational, United States or non- United States federal, state, territory, provincial or local court (including, for the avoidance of doubt, the Bankruptcy Court), arbitral tribunal, administrative agency, legislature or commission or other governmental, quasi-governmental or regulatory agency or authority (including any bureau, division or department thereof) or any securities exchange.

“Governmental Permits” shall mean material certificates, licenses, permits, authorizations and approvals with respect to the Pipeline Projects that have been issued by a Governmental Entity.

“Holding Company” shall have the meaning set forth in the recitals.

“Holding Company Contracts” shall have the meaning set forth in Section 4.4(a).

“Holding Company Equity” shall have the meaning set forth in the recitals.

“Holding Company Securities” shall have the meaning set forth in Section 4.6(a).

“Indemnified Party” shall mean the party seeking indemnification under Article IX of this Agreement.

“Indemnifying Party” shall mean the party against whom indemnification is to be sought under Article IX of this Agreement.

“Intellectual Property” shall have the meaning set forth in Section 4.15(a).

“Interim Period” shall mean the period of time starting on the date hereof and continuing until the earlier of the Closing Date and the termination of this Agreement.

“Key Employees” shall mean the employees set forth on Section 1.1(b) of the Buyer Disclosure Schedule.

“Knowledge” shall mean with respect to (a) each Seller, the actual knowledge of the individuals set forth in Section 1.1(b) of Seller Disclosure Schedule. Such persons shall not be required to undertake any inquiry of third parties relating to the ownership of the Purchased Assets or the Business for the period of time prior to Sellers’ ownership of the Purchased Assets or the Business, or (b) Buyer, the actual knowledge of the individuals set forth in Section 1.1(c) of Buyer Disclosure Schedule.

“Law” shall mean any statute, law, ordinance, ruling, policy, rule or regulation of any Governmental Entity and all judicial or administrative interpretations thereof and any common law doctrine.

“Liabilities” shall mean any and all indebtedness, losses, charges, debts, damages, obligations, payments, costs and expenses, bonds, indemnities, liabilities and obligations of any nature, including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability, regardless of whether such claim, debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such claim, debt, obligation, duty or liability is immediately due and payable.

“License Agreement” shall mean the License Agreements, dated as of the Closing Date, between SunEdison (or a third party) and Development Company, substantially in the forms attached hereto as Exhibits C-1, C-2 and C-3.

“Licensed Intellectual Property” shall have the meaning set forth in Section 4.15(a).

“Lien” or “Liens” shall mean any lien, hypothecation, encumbrance, claim, liability, security interest, interest, mortgage, pledge, restriction or charge (including any conditional sale or other title retention agreement).

“Loss” or “Losses” shall have the meaning set forth in Section 9.2(a).

“Material Adverse Effect” shall mean any change, development, event, fact, condition, effect or occurrence that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to (a) the value of the Purchased Assets or the Business, taken as a whole, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis, excluding in the case of each of clauses (a) and (b), any change, development, event, fact, condition, effect or occurrence, either alone or in combination, resulting from or arising out of or in connection with (s) the Bankruptcy Cases, including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, licensors, licensees, partners or employees of the Business, (t) changes in general

economic, financial or securities markets or geopolitical conditions, (u) general changes or developments in macroeconomic conditions or the industries and markets in which the Business operates, (v) the entry into this Agreement, the announcement of the acquisition contemplated by this Agreement, the identity of Buyer or the consummation of the transactions contemplated by this Agreement, including termination of, reduction in, or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, licensors, licensees, partners or employees of the Business, (w) any actions required to be taken or omitted by Sellers under this Agreement or any action or omission by Buyer in breach of this Agreement, (x) changes in (or proposals to change) any applicable Laws or applicable accounting regulations or principles or the enforcement or interpretation thereof, (y) any outbreak or escalation of hostilities or war or any act of terrorism or natural disaster or act of God or (z) any failure of the Business to meet any budgets, plans, projections or forecasts (internal or otherwise).

“Material Contract” shall mean any “Holding Company Contract” in respect of a Material Pipeline Project as set forth on Part I of Section 1.1(e) of the Seller Disclosure Schedule.

“Material Pipeline Projects” shall mean the Pipeline Projects listed on Part I of Section 1.1(e) of the Seller Disclosure Schedule, as the same may be revised and updated in accordance with Section 3.2 and Section 6.14.

“MSA” shall mean the Master Services Agreement, to be entered into at or prior to Closing among Buyer, Development Company and the SUNE Parties (as defined therein), substantially in the form attached hereto as Exhibit B.

“MSA Escrow Agent” shall mean Citibank, National Association.

“MSA Escrow Agreement” shall have the meaning set forth in the MSA.

“Nondisclosure Agreement” shall mean the nondisclosure letter from SunEdison to Mitsui & Co. (U.S.A., Inc.) dated as of June 20, 2016.

“Order” shall mean any judgment, order, injunction, decree, writ, permit or license issued or entered by or with any Governmental Entity or any arbitrator, whether preliminary, interlocutory or final, including any order entered by the Bankruptcy Court in the Bankruptcy Cases (including the Sale Order).

“Ordinary Course of Business” shall mean the ordinary course of business, consistent with past practice, including with regard to nature, frequency and magnitude, or as otherwise approved by the Bankruptcy Court.

“Organizational Documents” shall mean, with respect to any Person as of any point in time, any charter, certificate of incorporation, articles of association, bylaws, partnership agreement, operating agreement or similar formation or governing documents and instruments, as amended or modified to such point in time.

“Party” or “Parties” shall have the meaning set forth in the preamble.

“Performance Escrow Account” shall mean an account at MSA Escrow Agent into which the Performance Escrow Amount is deposited at Closing in accordance with Section 3.1(b)(iii) and maintained in accordance with the MSA Escrow Agreement.

“Performance Escrow Amount” shall have the meaning set forth in Section 3.1(b)(iii).

“Permitted Liens” shall mean (a) liens for Taxes not yet due and payable or for Taxes that may thereafter be paid without penalty or which are being contested in good faith by appropriate proceedings, (b) rights of third parties pursuant to licenses, real estate leases or similar agreements that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (c) easements, covenants, conditions, restrictions and other similar matters of record or imperfections of title with respect to real or personal property that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (d) local, county, state and federal ordinances, regulations, building codes or permits, now or hereafter in effect, relating to real property, (e) violations, if any, arising out of the adoption, promulgation, repeal, modification or reinterpretation of any Order or Law which occurs subsequent to the Effective Date, (f) Liens caused by or resulting from the acts or omissions of Buyer or any of its Affiliates, employees, officers, directors, agents, contractors, invitees or licensees, (g) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of real property and that do not materially impair the use of real property for its intended purpose, (h) any Lien that will be extinguished at or prior to Closing and (i) Liens listed or described on Section 1.1(c) of the Seller Disclosure Schedule.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Entity (whether federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

“Pipeline Assets” shall mean certain assets, rights and interests relating to the Pipeline Projects owned or to be owned at Closing by Holding Company listed or described on Section 1.1(d) of the Seller Disclosure Schedule, as the same may be revised and updated in accordance with Section 6.14(a).

“Pipeline Projects” shall mean, together (a) certain commercial and industrial photovoltaic solar facilities listed or described on Part II of Section 1.1(e) of the Seller Disclosure Schedule, as the same may be revised and updated in accordance with Section 6.14(a), and (b) the Material Pipeline Projects.

“PPAs” shall mean the Power Purchase Agreements set forth in Section 4.4 of the Seller Disclosure Schedule, as the same may be revised and updated in accordance with Section 6.14(a).

“PSA Escrow Account” shall mean an account at PSA Escrow Agent into which the PSA Escrow Amount is deposited at Closing in accordance with Section 3.1(b)(ii) and maintained in accordance with the PSA Escrow Agreement.

“PSA Escrow Agent” shall mean Citibank, National Association.

“PSA Escrow Agreement” shall mean an agreement substantially in the form of Exhibit G by and among Buyer, Sellers and the PSA Escrow Agent pursuant to which the PSA Escrow Amount shall be held and distributed.

“PSA Escrow Amount” shall have the meaning set forth in Section 3.1(b)(ii).

“Purchase” shall have the meaning set forth in the recitals.

“Purchase Price” shall have the meaning set forth in Section 3.1(a).

“Purchased Assets” shall mean the Holding Company Equity, the Assigned Intellectual Property, the Licensed Intellectual Property and the Books and Records of each Seller.

“Receiving Party” shall have the meaning set forth in Section 6.6(a).

“Representative” shall mean, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Required Approvals” shall mean, collectively, the Required Buyer Approvals and the Required Seller Approvals.

“Required Buyer Approvals” shall mean the Consents of or filings with Governmental Entities as set forth in Section 5.3 of the Buyer Disclosure Schedule.

“Required Seller Approvals” shall mean the Consents of or filings with Governmental Entities or other parties, in each case, set forth in Section 4.3 of the Seller Disclosure Schedule.

“Sale Hearing” shall mean the hearing at which the Bankruptcy Court considers approval of the Sale Order pursuant to Sections 105, 363 and 365 of the Bankruptcy Code.

“Sale Motion” shall mean a motion filed with the Bankruptcy Court seeking, among other things, approval of the entry of the Sale Order.

“Sale Order” shall mean an Order of the Bankruptcy Court that, among other things, approves and authorizes Seller to enter into this Agreement (or any amended version of such agreement agreed upon by the Parties in writing) and consummate the transactions contemplated by this Agreement, substantially in the form attached hereto as Exhibit D, or otherwise in form and substance reasonably acceptable to Buyer.

“SELLC” shall have the meaning set forth in the preamble.

“Seller” or “Sellers” shall have the meaning set forth in the preamble.

“Seller Disclosure Schedule” shall have the meaning set forth in Article IV.

“SPURR Contract” shall mean the SPURR REAP Master Confirmation, dated December 5, 2014, by and between School Project for Utility Rate Reduction and SELLC, as amended, and all related agreements.

“Straddle Period” shall have the meaning set forth in Section 6.4.

“Subsidiary” shall mean, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a partnership, limited liability company, association or other business entity, either (i) a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof, or (ii) such Person is a general partner, managing member or managing director of such partnership, limited liability company, association or other entity.

“SunEdison” shall have the meaning set forth in the preamble.

“Survival Period Termination Date” shall have the meaning set forth in Section 9.1(a).

“Tax” or “Taxes” shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, governmental fee, governmental assessment or governmental charge of a similar nature, whether computed on a separate or consolidated, unitary or combined basis or in any other manner including any interest, penalties or additions to Tax or additional amounts with respect to the foregoing whether disputed or not.

“Tax Returns” shall mean returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or the administration of any Laws, regulations or administrative requirements relating to any Taxes.

“Transaction Documents” shall mean this Agreement, the Assignment Agreement, the License Agreements (if entered into by SunEdison), the TSA, the MSA, the PSA Escrow Agreement, the MSA Escrow Agreement and the other agreements, instruments and documents expressly required to be delivered at the Closing under this Agreement, the MSA or the TSA.

“Transactions” shall mean the transactions contemplated herein to be consummated at the Closing, including the purchase and sale of the Purchased Assets provided for in this Agreement.

“TSA” shall mean the Transition Services Agreement, to be entered into at or prior to Closing between Buyer and SELLC, substantially in the form attached hereto as Exhibit H.

“United States” and “U.S.” shall mean the United States of America.

“WARN Act” shall mean the Worker Adjustment and Retraining Notification Act of 1988, and any other similar Laws of any state, locality or other Governmental Entity.

“Warranty Breach” shall have the meaning set forth in Section 9.2(a).

ARTICLE II

PURCHASE AND SALE OF PURCHASED ASSETS

2.1 Purchase and Sale of Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, including approval of the Bankruptcy Court pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, and provided that all of the conditions precedent to the obligations of Buyer and Sellers set forth in Article VII have been satisfied or waived by the relevant Parties at or prior to the Closing as described in Article VII, at the Closing, Buyer agrees to (a) purchase from SELLC, and SELLC agrees to sell, convey, assign, transfer and deliver to Buyer, all of its right, title and interest to the Assigned Intellectual Property, Holding Company Equity and the Books and Records of SELLC, and (b) (i) purchase from SunEdison, and SunEdison agrees to sell, convey, assign, transfer and deliver to Buyer, its right, title and interest to the Assigned Intellectual Property and the Books and Records of SunEdison and (ii) cause Development Company to license from SunEdison and SunEdison agrees to license to Development Company, any rights of SunEdison set forth in the License Agreements, to the Licensed Intellectual Property as of the Closing, if any.

ARTICLE III

PURCHASE PRICE; CLOSING

3.1 Purchase Price; Escrow.

(a) The aggregate purchase price (the “Purchase Price”) for all the Purchased Assets shall be an amount in cash equal to the sum of (i) the Cash Purchase Price, as the same may be adjusted pursuant to Section 3.2, (ii) the PSA Escrow Amount, (iii) the Performance Escrow Amount and (iv) the aggregate amount of any Authorized Pipeline Expenses paid by or on behalf of Sellers during the Interim Period.

(b) At the Closing, the Purchase Price shall be paid as follows:

(i) an amount in cash equal to Nine Million Five Hundred Thousand United States Dollars (\$9,500,000.00) (the “Cash Purchase Price”), subject to adjustment in accordance with Section 3.2, by wire transfer of immediately available funds to an account or accounts designated by Sellers in writing not less than three (3) Business Days prior to Closing;

(ii) Five Hundred Thousand Dollars in United States Dollars (\$500,000.00) in cash (such amount, the “PSA Escrow Amount”) to the PSA Escrow Agent, by wire transfer of immediately available funds into the PSA Escrow Account to be held and disbursed in accordance with the PSA Escrow Agreement; and

(iii) Five Million United States Dollars (\$5,000,000.00) in cash (such amount, the “Performance Escrow Amount”) to the MSA Escrow Agent, by wire transfer of immediately available funds into the Performance Escrow Account to be held and disbursed in accordance with the MSA Escrow Agreement.

3.2 Adjustments to the Cash Purchase Price.

(a) If, at any time during the Interim Period, Sellers remove a Material Pipeline Project or a Material Contract from Sections 1.1(e) or 4.4(a) of the Seller Disclosure Schedule, the Cash Purchase Price shall be reduced by an amount equal to Ten Cents (\$0.10) per each watt_{DC} of the capacity of the applicable Material Pipeline Project (as set forth on Part I of Section 1.1(e) of the Seller Disclosure Schedule). For the avoidance of doubt, the removal of a Material Contract from the Seller Disclosure Schedules constitutes the removal of the associated Material Pipeline Project from the Seller Disclosure Schedules. If the aggregate reduction in the Purchase Price made in accordance with this Section 3.2(a) resulting from the removal of Material Pipeline Projects or Material Contracts from the Seller Disclosure Schedules exceeds Three Million United States Dollars (\$3,000,000.00), Buyer may declare a Material Adverse Effect.

(b) For the avoidance of doubt (i) no other adjustment to the Cash Purchase Price shall be made except as expressly set forth in this Section 3.2, and (ii) the only effect of Sellers removing a Material Pipeline Project or a Material Contract from the Seller Disclosure Schedules during the Interim Period is set forth in this Section 3.2.

3.3 Closing; Closing Deliverables.

(a) The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP at 1440 New York Avenue NW, Washington, District of Columbia, 20005, or remotely by facsimile or other electronic means as the Parties may mutually agree, as soon as practicable, but in any event within three (3) Business Days, after the last of the conditions set forth in Article VII is satisfied or waived by the relevant Party (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), or at such other time, date or place as the Parties shall agree in writing (the date and time on which the Closing takes place are referred to collectively herein as the “Closing Date”).

(b) At the Closing, each Seller shall deliver or cause to be delivered to Buyer:

(i) a certificate in the form attached hereto as Exhibit E, signed by an authorized officer of such Seller, dated as of the Closing Date, certifying that each of the conditions set forth in Sections 7.3(a) and (b) have been satisfied;

(ii) a counterpart to the Assignment Agreement, duly executed by Sellers;

(iii) a counterpart to the MSA, duly executed by Sellers, and all deliverables thereunder;

thereto; (iv) a counterpart to the TSA, duly executed by any Seller party

(v) a copy of the Sale Order entered by the Bankruptcy Court;

by Sellers; (vi) a counterpart to the PSA Escrow Agreement, duly executed

(vii) an updated version of the Seller Disclosure Schedules to reflect changes since the Effective Date made in accordance with this Agreement;

(viii) a certificate of non-foreign status, duly executed by each Seller (or its regarded owner, if such Seller is a disregarded entity within the meaning of Treasury Regulation § 1.1445-2(b)(2)(iii)), in form and substance reasonably satisfactory to Buyer, in accordance with Treasury Regulation § 1.1445-2(b); and

(ix) the Books and Records of such Seller.

(c) At the Closing, SunEdison shall deliver or cause to be delivered to Buyer an executed counterpart to each License Agreement.

(d) At the Closing, Buyer shall deliver or cause to be delivered to Sellers:

(i) the Purchase Price, in accordance with Section 3.1(b);

(ii) a certificate in the form attached hereto as Exhibit E, signed by an authorized officer of Buyer, dated as of the Closing Date, certifying that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied;

by Buyer; (iii) a counterpart to the Assignment Agreement, duly executed

by Buyer; (iv) a counterpart to the PSA Escrow Agreement, duly executed

(v) a counterpart to each License Agreement, duly executed by Development Company (if SunEdison is a party to such License Agreement);

(vi) a counterpart to the TSA, duly executed by the Buyer; and

(vii) counterparts to the MSA, duly executed by Development Company and Buyer, and all deliverables thereunder.

3.4 Allocation of the Purchase Price. Buyer shall have the sole right to allocate the Purchase Price and other relevant items among the Purchased Assets.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the disclosure schedule (the “Seller Disclosure Schedule”) delivered by Sellers to Buyer concurrently with the execution of this Agreement (and any update thereof pursuant to Section 6.14 or Section 3.2), each Seller hereby represents and warrants to Buyer that the following are true and correct as of the Effective Date and as of the Closing Date:

4.1 Due Organization, Good Standing and Power of each Seller. Each Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted except where the failure to be so existing and in good standing or to have such power and authority would not, individually or in the aggregate, have a Material Adverse Effect. Each Seller is in good standing under the Laws of each jurisdiction where the character of its assets or properties or the conduct of its business requires such qualification, except where the failure to be in good standing would not reasonably be expected to materially and adversely affect this Agreement and the Purchased Assets, taken as a whole, or prevent or materially delay such Seller’s ability to consummate the transactions contemplated by this Agreement.

4.2 Authorization; Non-Contravention.

(a) Subject to requisite Bankruptcy Court approval and entry of the Sale Order, the execution, delivery and performance by each Seller of this Agreement, the other Transaction Documents and all other instruments and agreements to which such Seller is a party, the consummation by each Seller of the transactions to which such Seller is a party hereby and thereby and the performance of its obligations hereunder and thereunder have been, and in the case of documents required to be delivered at the Closing will be, duly authorized and approved by all necessary corporate, limited liability company, member or other action. Subject to requisite Bankruptcy Court approval, assuming that this Agreement, the other Transaction Documents and all such other instruments and agreements constitute valid and binding obligations of Buyer and any other party hereto and thereto (other than Sellers or any Affiliate thereof), this Agreement, the other Transaction Documents to which such Seller is a party and all such other instruments and agreements to which such Seller is a party constitute valid and binding obligations of such Seller, enforceable against such Seller in accordance with the terms hereof and thereof, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(b) Except as a result of the Bankruptcy Cases and, subject to requisite Bankruptcy Court approval and the Sale Order, the execution and delivery by each Seller of this Agreement and the other Transaction Documents to which such Seller is a party do not, and the consummation of the transactions contemplated hereby and thereby will not:

(i) conflict with any of the provisions of the certificate of formation, operating agreement or similar governance documents of such Seller; or

(ii) result in the creation or imposition of any Lien (other than a Permitted Lien) on any of the Purchased Assets.

4.3 No Conflicts; Consents and Approvals. The execution and delivery by each Seller of this Agreement and, when executed, the Transaction Documents to which such Seller is a party, do not, and the performance by each Seller of its obligations under this Agreement and, when executed, the Transaction Documents to which such Seller is a party, will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Organizational Documents of such Seller or the Organizational Documents of Holding Company;

(b) assuming authorization by the Bankruptcy Court through the Sale Order, be in violation of or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under (with or without the giving of notice, the lapse of time, or both) any Holding Company Contract, except for (i) any such violations, breaches or defaults (or rights of termination, cancellation or acceleration) which would not, individually or in the aggregate, reasonably be expected to (A) result in a Material Adverse Effect, or (B) adversely affect Holding Company or the Purchased Assets in any material respect and (ii) approvals required as a result of the business activities of Buyer and its Affiliates; or

(c) assuming authorization by the Bankruptcy Court through the Sale Order, (i) conflict with, violate or breach any term or provision of any Law applicable to Sellers, Holding Company or the Purchased Assets, except as would not, individually or in the aggregate, reasonably be expected to (A) result in a Material Adverse Effect, or (B) adversely affect Holding Company or the Purchased Assets in any material respect, or (ii) require any Consent or approval of any Governmental Entity, or notice to, or declaration, filing or registration with, any Governmental Entity, under any applicable Law, other than (A) such Consents, approvals, notices, declarations, filings or registrations which, if not made or obtained, would not, individually or in the aggregate, reasonably be expected to (1) result in a Material Adverse Effect or (2) adversely affect Holding Company or the Purchased Assets in any material respect and (B) such approvals required as a result of the business activities of Buyer and its Affiliates.

4.4 Contracts.

(a) Sections 1.1(e) and 4.4(a) of the Seller Disclosure Schedule contain a true, correct and complete list of all material Contracts of the Pipeline Projects, including, without limitation, the SPURR Contract and all amendments and supplements to such Contracts, which (i) Holding Company is a party or will be a party as of Closing, or (ii) are relevant to the Pipeline Projects, but which neither Sellers nor their Affiliates are a party or will be a party as of Closing (collectively, the "Holding Company Contracts"). True, correct and complete copies of the Holding Company Contracts have been delivered or made available to Buyer.

(b) Section 4.4(b) of the Seller Disclosure Schedule identifies (i) the PPAs that provide the counterparty a right to liquidated damages, a termination payment or other

similar payment if a development condition or milestone is not satisfied, (ii) the Pipeline Projects for which interconnection applications are not pending and interconnection agreements have not been entered into, and (iii) the Pipeline Projects for which a lease or an option to lease or other form of site control has not yet been entered into.

(c) On or prior to the Closing, Sellers have obtained required approvals that are necessary to consummate the Transactions from the relevant counterparties to the Holding Company Contracts.

(d) Except for Holding Company Contracts that constitute Letters of Intent as set forth on Section 4.4(d) of the Seller Disclosure Schedule, each Holding Company Contract has been or will be as of Closing (i) duly authorized, executed and delivered by Holding Company, and constitutes or will constitute as of Closing a legal, valid and binding agreement as to Holding Company and, to Seller's Knowledge, the respective counterparties thereto, or (ii) if neither Sellers nor any of their Affiliates are a party to such Holding Company Contract, as of the Closing, a legal, valid and binding agreement, to Seller's Knowledge, as to the respective counterparties thereto; except, in each case, as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(e) (i) Neither Sellers, a Seller Affiliate nor Holding Company has received notice from a third party that any such entity is in material default under any Holding Company Contract that will not be cured as of the Closing Date and (ii) except as set forth on Section 4.4(e) of the Seller Disclosure Schedule, there is no material default by either Seller, a Seller Affiliate or Holding Company, or, to either Seller's Knowledge, any counterparty under any Holding Company Contract, that has not been cured, and no event has occurred that with the passage of time, the giving of notice or both, would become a material default or give rise to a termination right by such Seller, a Seller Affiliate or Holding Company or, to such Seller's Knowledge, any counterparty under a Holding Company Contract.

(f) Neither Seller, a Seller Affiliate nor Holding Company has repudiated any material provision of a Holding Company Contract and neither Seller, a Seller Affiliate nor Holding Company has received oral or written notice that any other party has repudiated any material provision of any such Contract.

4.5 Ownership of Holding Company Equity and Pipeline Assets. As of the date hereof, SELLC is the sole record and beneficial owner of the Holding Company Equity free and clear of any Liens except for Liens that will be extinguished at or prior to Closing. Holding Company will own the Pipeline Assets at Closing free and clear of any Liens other than Permitted Liens.

4.6 Capitalization.

(a) The Holding Company Equity is duly authorized, validly issued, fully paid and nonassessable, and, as of the date hereof, is owned by SELLC free and clear of any Liens except for Liens that will be extinguished at or prior to Closing. There are not (i) any Equity

Securities in Holding Company issued or outstanding, (ii) any securities convertible into or exchangeable or exercisable for Equity Securities of Holding Company, or (iii) any subscriptions, options, warrants, calls, rights, convertible securities or other Contracts of any character obligating Holding Company to issue, transfer or sell any of its Equity Securities (the items in clauses (i), (ii), and (iii), collectively, "Holding Company Securities").

(b) There are no outstanding obligations of Holding Company to repurchase, redeem or otherwise acquire any Holding Company Securities.

4.7 Legal Proceedings.

(a) Other than Sellers' Bankruptcy Case, there are no (i) Actions pending or, to the Knowledge of each Seller, threatened in writing against such Seller, or (ii) outstanding Orders that affect or bind either Seller or any of its properties, which, in each case, in any manner seek to restrain, enjoin, prohibit, make illegal or materially delay the Transactions or the performance by such Seller of its obligations under this Agreement or, when executed, the Transaction Documents to which such Seller is a party.

(b) Except for Sellers' Bankruptcy Case, there are no (i) Actions pending or, to the Knowledge of each Seller, threatened in writing against Holding Company or related to the Purchased Assets or the Pipeline Projects, or (ii) outstanding Orders (other than Orders and requirements of Governmental Entities in the Ordinary Course of Business in association with ordinary permitting, interconnection requests and similar requirements for project development) that adversely affect or bind any of the Purchased Assets or the Pipeline Projects in any material respect, which, in each case, are or are reasonably likely to be materially adverse to Holding Company or the applicable Purchased Assets.

4.8 Compliance with Laws. Each Seller, any applicable Seller Affiliate, and Holding Company is in compliance in all material respects with all Laws applicable to the Purchased Assets, the Pipeline Projects and such Seller or Holding Company.

4.9 No Material Adverse Effect. There is no event, change, circumstance, development, occurrence, condition, effect or state of facts that has occurred and is continuing to have, individually or in the aggregate, a Material Adverse Effect.

4.10 Transactions with Affiliates. Except as set forth in Section 4.10 of the Seller Disclosure Schedule, Holding Company has no Liabilities to or Contracts with Sellers or their Affiliates, and there are no guarantees, grants of Liens or other credit support arrangements by Sellers or their Affiliates in favor of Holding Company or by Holding Company in favor of Sellers or their Affiliates.

4.11 No Undisclosed Liabilities. Holding Company has no Liabilities, other than Liabilities (i) that will be extinguished at or prior to Closing, or (ii) incurred pursuant to the express terms of any Holding Company Contract or Governmental Permit.

4.12 Tax Matters.

(a) All material Tax Returns required to have been filed by or with respect to the Purchased Assets (including Tax Returns required to have been filed by Holding Company and each of its Subsidiaries or with respect to the assets thereof) have been timely filed. All material Taxes (whether or not shown on any Tax Return) payable by or with respect to the Purchased Assets (including Taxes payable by Holding Company or any of its Subsidiaries or with respect to the assets thereof) have been timely paid. Neither Holding Company nor any of its Subsidiaries has any liability for Taxes of another Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law).

(b) There are no, grants or similar amounts that are or could be subject to clawback or recapture as a result of a failure by Holding Company or any of its Subsidiaries, prior to the Closing Date, to satisfy one or more requirements on which the grant or similar amount was conditioned.

(c) At all times since its formation, Holding Company has been properly disregarded as an entity separate from Sellers for U.S. federal income tax purposes.

4.13 Brokers. Neither Seller has any Liability to pay fees or commissions to any broker, finder or agent with respect to the Transactions for which Buyer would be responsible.

4.14 Regulatory Matters. Holding Company is not (a) an “electric utility company” or a “public-utility company” within the meaning of the Public Utility Holding Company Act of 2005, and all rules and regulations adopted thereunder, or (b) a “public utility” within the meaning of and subject to regulation under the Federal Power Act of 1935, as amended, and all rules and regulations adopted by the Federal Energy Regulatory Commission and its successors thereunder.

4.15 Intellectual Property; Software.

(a) Section 4.15 of the Seller Disclosure Schedule contains a true and correct list of the intellectual property that will be assigned to Development Company at Closing pursuant to the Assignment Agreement (the “Assigned Intellectual Property”) and the intellectual property that will be licensed to Development Company at Closing pursuant to the License Agreements (the “Licensed Intellectual Property,” and together with the Assigned Intellectual Property, the “Intellectual Property”).

(b) The Intellectual Property includes all material intellectual property owned by SunEdison as of the date hereof used to operate the Business in accordance with past practice.

(c) No third party has alleged in a written notice to either Seller that SunEdison’s or its Affiliates’ use of any material Intellectual Property infringes the rights of such third party.

4.16 Governmental Permits.

(a) Section 4.16 of the Seller Disclosure Schedule contains a true and correct list of the Governmental Permits and pending applications for Governmental Permits. Sellers or their Affiliates have fulfilled and performed their material obligations under each of the

Governmental Permits, and (i) no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a material breach or default under any such Governmental Permit or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Governmental Permit, or which might materially adversely affect the rights of Sellers or their Affiliates under any such Governmental Permit; (ii) no written notice of cancellation, of default or of any dispute concerning any Governmental Permit, or of any event, condition or state of facts described in the preceding clause, has been received by, or is known to, Sellers; and (iii) each of the Governmental Permits is valid, subsisting and in full force and effect and may be assigned and transferred to Buyer in accordance with this Agreement and will continue in full force and effect thereafter, in each case without (x) the occurrence of any breach, default or forfeiture of rights thereunder, or (y) the consent, approval, or act of, or the making of any filing with, any Governmental Entity.

4.17 Information. All factual information furnished by or on behalf of each Seller and in writing and made available to Buyer and its Affiliates or Representatives on or prior to the date of this Agreement in the Data Room (other than projections, forward-looking statements, estimates, forecasts, plans and other forward-looking business plan information) and the assumptions underlying such projections, forward-looking statements, estimates, forecasts, plans and other forward-looking business plan information, was, to each Seller's Knowledge, true and accurate in all material respects on the date as of which such information is dated or furnished when taken as a whole.

4.18 Restructuring and Assignment. The ownership structure of Holding Company at Closing shall reflect the ownership structure shown on Section 4.18 of the Seller Disclosure Schedule, which shall provide, among other things, that Holding Company will not have any Subsidiaries.

4.19 Employees; Employee Benefits.

(a) There are and have never been any employees of Holding Company and at the Closing there will be no employees of Holding Company. Holding Company does not and has never maintained, sponsored or contributed to, or have or had any liability with respect to or to contribute to, any Benefit Plan including but not limited to (a) any "employee benefit plan" (within in the meaning of Section 3(3) of ERISA) subject to Section 302 or Title IV of ERISA or Section 412 of the Code or (b) a "multiemployer plan" (within the meaning of Section 4001(a)(a)(3) of ERISA). There does not now exist, nor do any circumstances exist that would reasonably be expected to result in, any Controlled Group Liability that would be a liability of Holding Company, Buyer or any of their Affiliates following the Closing.

(b) Each Benefit Plan that has been maintained, established or contributed to by Seller or any of its Affiliates that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service with respect to its qualified status, and to each Seller's Knowledge, no event has occurred and no condition exists that would reasonably be expected to adversely affect the tax qualification of any such Benefit Plan.

(c) Neither the execution or delivery of this Agreement nor the consummation of the Closing will, either alone or in conjunction with any other event (whether contingent or otherwise), (i) result in any material payment or benefit becoming due or payable or required to be provided, to any Essential Employee or any Key Employee, (ii) materially increase the amount or value of any benefit or compensation otherwise payable or required to be provided to any Essential Employee or any Key Employee, (iii) result in the acceleration of the time of payment, vesting or funding of any such benefit or compensation or (iv) result in any amount payable to any Essential Employee or any Key Employee failing to be deductible by reason of Section 280G of the Code.

(d) Except as set forth on Section 4.19(d) of the Seller Disclosure Schedule, neither Sellers nor any of their Affiliates is subject to or bound by any collective bargaining agreement or other labor agreement relating to the Essential Employees, Key Employees or otherwise with respect to the Business; and to Sellers' Knowledge has not been since January 1, 2014. To the Knowledge of Sellers, no Essential Employee or Key Employee is currently, or has been since January 1, 2014, represented by a labor union. There is no pending or, to the Knowledge of Sellers, threatened labor dispute, grievance, strike or work stoppage by any Essential Employee, Key Employee or otherwise with respect to the Business. To the Knowledge of Sellers, there are no currently threatened union organizing or election activities involving any Essential Employees, Key Employees or otherwise with respect to the Business.

(e) There are no pending, or, to the Knowledge of Sellers, Actions threatened in writing by Essential Employees, Key Employees or other employees with respect to the Business alleging violations of any such Laws respecting labor and employment.

(f) All Essential Employees and all Key Employees have been paid any post-petition amounts to which each Essential Employee and Key Employee are legally entitled and which amounts have become due and payable up to the Closing Date.

(g) Seller and its Affiliates are in compliance in all material respects with all Laws relating to labor and employment practices with respect to the Essential Employees or the Key Employees.

4.20 Financial Statement. As of the Closing, Sellers have made available to Buyer a proxy balance sheet on a consolidated basis (the "Financial Statement") that, to each Seller's Knowledge, is true and accurate. The Financial Statement fairly present in all material respects, the financial condition of the entities covered thereby as of the respective dates thereof and for the respective periods covered thereby; provided that the Financial Statement is subject to normal year-end adjustments and lacks footnotes and other presentation items, none of which are material to the Purchased Assets.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Sellers to enter into this Agreement and consummate the transactions contemplated hereby, except as set forth in the disclosure schedule (the "Buyer

Disclosure Schedule”) delivered by Buyer to Sellers concurrently with the execution of this Agreement, Buyer hereby represents and warrants to Sellers that the following are true and correct as of the Effective Date and as of the Closing Date:

5.1 Due Organization, Good Standing and Power of Buyer. Buyer is a Delaware corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Buyer is in good standing under the Laws of each jurisdiction where the character of its assets or properties or the conduct of its business requires such qualification, except where the failure to be in good standing would not reasonably be expected to prevent, materially delay or impair Buyer’s ability to consummate the transactions contemplated by this Agreement.

5.2 Authorization; Non-Contravention.

(a) The execution, delivery and performance by Buyer of this Agreement, the other Transaction Documents and all other instruments and agreements to which Buyer is a party, the consummation by Buyer of the transactions hereby and thereby and the performance of its obligations hereunder and thereunder have been, and in the case of documents required to be delivered at the Closing will be, duly authorized and approved by all necessary corporate action. Assuming that this Agreement, the other Transaction Documents and all such other instruments and agreements constitute valid and binding obligations of Sellers and any other party hereto and thereto (other than Buyer), this Agreement, the other Transaction Documents to which Buyer is a party and all such other instruments and agreements to which Buyer is a party constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with the terms thereof, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(b) The execution and delivery by Buyer of this Agreement and the other Transaction Documents to which Buyer is a party do not, and the consummation of the transactions contemplated hereby and thereby will not:

(i) conflict with any of the provisions of the certificate of formation, limited liability company agreement or similar governance document of Buyer; or

(ii) require any filing with or permit, Consent or approval of, or the giving of any notice to, any Person under, conflict with or result in a breach of, or constitute a default under, or permit any party to terminate or accelerate (with or without the giving of notice or passage of time or any other action) the payment of any obligations or other amounts arising under, any Contract to which Buyer is a party or by which Buyer or any of its properties or assets are bound.

5.3 Governmental Consents and Approvals. Except for the Required Buyer Approvals, no Consent of or filing with any other Governmental Entity must be obtained or

made by Buyer in connection with the execution and delivery of this Agreement or any other Transaction Document by Buyer or the consummation by Buyer of the transactions contemplated by this Agreement or any other Transaction Document.

5.4 Litigation. There are no Actions, suits, proceedings, Orders or investigations pending or, to the Knowledge of Buyer, threatened, that would affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Document or to consummate the transactions contemplated hereby or thereby.

5.5 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer.

5.6 Financing. As of the Effective Date, Buyer has, and on the Closing Date, Buyer will have, sufficient funds available to deliver the Purchase Price to Sellers and consummate the transactions contemplated by this Agreement.

5.7 Other Representations or Warranties.

(a) Buyer acknowledges that, except for the representations and warranties contained in Article IV and the certificates delivered to Buyer pursuant to Section 3.3(b)(i), neither Seller nor any other Person on behalf of Sellers makes any express or implied representation or warranty with respect to Sellers or with respect to any information provided by or on behalf of Sellers to Buyer. Except the Sellers' representation in Section 4.17, neither Seller nor any other Person will have or be subject to any liability or indemnification obligation to Buyer or any other Person resulting from the distribution to Buyer, or use by Buyer, of any such information, in connection with the transactions contemplated by this Agreement or any other Transaction Document.

(b) Buyer has received or may receive from Sellers certain projections, forward-looking statements and other forecasts and certain forward-looking business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and forward-looking plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim against anyone with respect thereto. Accordingly, Buyer acknowledges that Sellers makes no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or forward-looking plans).

5.8 Purchased Assets "AS IS"; Buyer's Acknowledgment Regarding Same. Buyer agrees, warrants, and represents that (a) Buyer is purchasing the Purchased Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Buyer's own investigation of the Purchased Assets and the representations and warranties of Sellers set forth in Article IV and (b) neither Seller nor any real estate broker or other Representative of either Seller has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the

Purchased Assets, the financial performance of the Business, other than the representations and warranties of Sellers set forth in Article IV. Buyer further acknowledges that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Sellers and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Purchased Assets "AS IS" and "WITH ALL FAULTS" subject only to the representations and warranties of Sellers set forth in Article IV. Buyer agrees, warrants and represents that, except as set forth in this Agreement (including the representations and warranties of Sellers set forth in Article IV), Buyer has relied, and shall rely, solely upon Buyer's own investigation of all such matters, and that Buyer assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT (INCLUDING THE REPRESENTATIONS AND WARRANTIES OF SELLERS SET FORTH IN ARTICLE IV), SELLERS MAKE NO EXPRESS WARRANTY, NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE PURCHASED ASSETS.

5.9 Investment Representation. Buyer is purchasing the Holding Company Equity for its own account with the present intention of holding the Holding Company Equity for investment purposes and not with a view to or for sale in connection with any public distribution of the Holding Company Equity in violation of any federal or state securities Laws. Buyer acknowledges that the Holding Company Equity has not been registered under applicable federal and state securities Laws and that the Holding Company Equity may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is registered under applicable federal and state securities Laws or is exempt from registration under applicable federal and state securities Laws.

5.10 Accredited Investor. Buyer (a) is an "accredited investor" as such term is defined in Rule 501(a) under the U.S. Securities Act of 1933, as amended, and (b) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Holding Company Equity.

ARTICLE VI

COVENANTS

6.1 Conduct Pending the Closing. During the Interim Period, except (a) as set forth in Section 6.1(a) of the Seller Disclosure Schedule, (b) as may be contemplated by this Agreement, (c) as required by applicable Law or Order (including the Bankruptcy Code) or by a Governmental Entity or pursuant to any Holding Company Contract, (d) as required or approved by the Bankruptcy Court or (e) as a consequence of or relating to the commencement and continuation of the Bankruptcy Cases, during the Interim Period, each Seller shall not, and shall not permit its Affiliates or Holding Company to take or permit any of the following actions relating to the Business without Buyer's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned):

(a) dispose of any properties (including disposition or issuance of any equity interest) or assign or waive any material rights, or incur any Liens or permit any Liens to be imposed on any property, other than (i) Permitted Liens, (ii) Liens pursuant to express provisions of existing terms of the Holding Company Contracts (other than any Liens arising from any breach of any such Holding Company Contract) or (iii) non-material dispositions in the Ordinary Course of Business;

(b) enter into or amend in any material respect any Contract with any Affiliate or terminate any such Contract;

(c) other than lease payments prior to the termination of any grace or cure period (the obligations in respect of which are separately addressed in clause (e) of this Section 6.1), fail to satisfy when due or otherwise default on (i) any payment obligation of either Seller, its Affiliates or the Holding Company under any Holding Company Contract related to the development, siting, construction, operation or maintenance of the Pipeline Projects or (ii) any payment obligation of either Seller, its Affiliates or the Holding Company under any Holding Company Contract if such default has or could reasonably be expected to have an adverse effect on the Business or the Pipeline Projects; provided that the payments in clauses (i) and (ii) are deemed to be Authorized Pipeline Expenses;

(d) take any material action that could be reasonably expected to cause or result in the incurrence of any Liability at Holding Company (including guarantees of third parties or affiliate debt);

(e) fail to make any lease payments owed by either Seller, its Affiliates or the Holding Company by the termination of any grace or cure period under any Holding Company Contract if such payments are deemed to be Authorized Pipeline Expenses;

(f) enter into any Contract that would materially amend, materially modify or terminate (partially or completely) any Holding Company Contract, in each case, other than (A) in the Ordinary Course of Business and not adverse to Holding Company or Buyer or its Affiliates, (B) renewals or extensions of Holding Company Contracts in accordance with the terms thereof, or (C) amendments that are not adverse or otherwise material to Holding Company or the Business;

(g) change the U.S. federal income tax classification of Holding Company;

(h) enter into any collective bargaining agreement or other labor agreement with respect to the Essential Employees, Key Employees and otherwise with respect to the Business;

(i) make any material change in compensation (including salary or bonus opportunity) of any Essential Employee or Key Employee, other than as required by any Seller Benefit Plan as in effect on the date hereof;

(j) terminate the employment of any Essential Employee or Key Employee, in each case, except for a termination for cause or as provided in Section 6.7(a);

(k) offer employment to or hire any Person without Buyer's prior written consent;

(l) adopt, enter into or materially amend or modify any Benefit Plan (or plan that would be a Benefit Plan if in existence on the date hereof with respect to the Essential Employees or Key Employees) in a manner that disproportionately impacts the benefits available to any Essential Employee or Key Employee (as compared to Sellers' other employees), except as required by applicable Law or any Benefit Plan as in effect on the date hereof; or

(m) fail to comply in any material respect with any applicable Law in a manner that would reasonably be expected to materially and adversely impact any Pipeline Project.

6.2 Buyer Access. During the Interim Period, each Seller will (a) provide Buyer and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the offices, properties and the books and records relating to Holding Company, but only to the extent that such access does not unreasonably interfere with the business and operations of Holding Company and the Business, and (b) instruct and use its commercially reasonable efforts to cause the employees, counsel, accountants, agents and financial advisors of each Seller and Holding Company to cooperate with Buyer in its investigation of Holding Company; provided, however, that (i) each Seller shall have the right to (1) have a Representative present for any communication with employees or officers of such Seller or its Affiliates and (2) impose reasonable restrictions and requirements for safety purposes and (ii) neither Seller shall be required to provide access to any information that (1) could reasonably be expected to be subject to attorney-client privilege, or (2) is prohibited by applicable Law.

6.3 Public Announcements. Each Party shall (a) consult with each other Party before issuing any press release or otherwise making any public statement with respect to the transactions contemplated by this Agreement, (b) provide to the other Parties for review a copy of any such press release or public statement and (c) not issue any such press release or make any such public statement prior to such consultation and review and the receipt of the prior consent of the other Parties; provided, however, that, in the case of each of clauses (a) through (c), if such Party is required by Laws or regulations applicable to such Party or its Affiliates, regulations of any stock exchange applicable to such Party or its Affiliates, or the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, in which case, the Party required to issue the press release or make the public statement or filing shall, prior to issuing such press release or making such public statement or filing, use its commercially reasonable efforts to allow the other Parties reasonable time to comment on such release, statement or filing to the extent practicable and permitted by Law.

6.4 Tax Matters. Buyer and Sellers agree to furnish or cause to be furnished to each other, as promptly as reasonably practicable, such information and assistance relating to Holding Company, any of its Subsidiaries, or the assets of Holding Company or any of its Subsidiaries as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer

of any governmental or regulatory inquiry relating to Tax matters; provided, however, that each Party shall reimburse the other Party for such other Party's reasonable out-of-pocket expenses in connection therewith. For purposes of this Agreement (a) all Taxes that are imposed on a periodic basis (which are not based on income or receipts) with respect to the Holding Company, any of its Subsidiaries, or the assets of the Holding Company or any of its Subsidiaries or any of the other Purchased Assets with respect to any taxable period that begins on or before and ends after the Closing Date (a "Straddle Period") shall be apportioned between the portion of such taxable period ending on or prior to the Closing Date and the portion of such taxable period ending after the Closing Date, proportionally in accordance with the number of days in each such portion of the period and (b) all other Taxes with respect to any Straddle Period shall be apportioned on a "closing of the books" basis. All Taxes imposed with respect to the Holding Company, any of its Subsidiaries, or the assets of the Holding Company or any of its Subsidiaries or any of the other Purchased Assets, that are attributable to a taxable period ending on or before the Closing Date (including any Taxes apportioned in accordance with the preceding sentence to the portion of any Straddle Period ending on the Closing Date) shall be borne and paid by Sellers; all Taxes imposed with respect to the Holding Company, any of its Subsidiaries, or the assets of the Holding Company or any of its Subsidiaries or any of the other Purchased Assets, that are attributable to a taxable period beginning after the Closing Date (including any Taxes apportioned in accordance with the preceding sentence to the portion of any Straddle Period ending after the Closing Date) shall be borne and paid by Buyer.

6.5 Bankruptcy Court Approval.

(a) Sellers and Buyer acknowledge that the effectiveness of this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval.

(b) The Sale Order shall, among other things:

(i) grant the Sale Motion;

(ii) approve and authorize Sellers to enter into this Agreement (or any amended version of such agreement agreed upon by the Parties in writing) and consummate the transactions contemplated herein;

(iii) find that Buyer is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code and grant Buyer the full benefits and protections of Section 363(m) of the Bankruptcy Code;

(iv) find that this Agreement was negotiated, proposed and entered into by Sellers and Buyer without collusion, in good faith and from arm's length bargaining positions;

(v) find that due and adequate notice and an opportunity to be heard in accordance with all applicable Laws were given to the necessary parties in the Bankruptcy Cases;

(vi) determine that the Purchased Assets may be sold free and clear of all Liens and interests in full compliance with Section 363(f) of the Bankruptcy Code;

(vii) authorize and direct Seller to sell the Purchased Assets to Buyer pursuant to this Agreement (or any amended version of such agreement agreed upon by the Parties in writing) and all applicable provisions of the Bankruptcy Code, free and clear of all Liens (including any and all “interests” in the Purchased Assets within the meaning of Section 363(b) of the Bankruptcy Code), other than the Permitted Liens;

(viii) find that the Bankruptcy Court retains jurisdiction to resolve any claim or dispute arising out of or related to this Agreement and the Sale Order; and

(ix) contain findings of fact and conclusions of law that Buyer (A) is not a successor to, or subject to successor liability for, either Seller, (B) has not, de facto or otherwise, merged with or into either Seller, (C) is not an alter ego or a continuation of either Seller and (D) does not have any responsibility for any obligations of either Seller based on any theory of successor or similar theories of liability.

(c) Buyer agrees that it will take such actions as are reasonably requested by either Seller to assist in obtaining entry by the Bankruptcy Court of the Sale Order.

6.6 Confidentiality.

(a) Pre-Closing Confidentiality. Beginning on the Effective Date and ending on, but not including, the earlier of (i) the Closing Date and (ii) the two- (2-) year anniversary of the Effective Date, any Party who receives Confidential Information (such Party, the “Receiving Party”) from the other Party (such Party that discloses any Confidential Information, the “Disclosing Party”), or any Representative or Affiliate on behalf of such Disclosing Party, shall maintain as confidential and shall not disclose to any third party such Confidential Information, except (A) to any of its Representatives or Affiliates who has a need to know the Confidential Information in connection with the consummation of the transactions contemplated by this Agreement and who agrees to comply with the provisions of this Section 6.6(a), (B) as required by Law, (C) as authorized by the Disclosing Party in writing, (D) if the Receiving Party knows such information at the time of disclosure by the Disclosing Party, free of any obligation to keep it confidential, (E) such information is or becomes generally known in the relevant industry without breach of this Agreement by the Receiving Party, (F) the Receiving Party independently develops such information without access to or use of the Confidential Information or (G) the Receiving Party rightfully obtains such information from a third party who has the right to disclose it without violation of any confidentiality obligations. Each Party further agrees to use the same degree of care to protect the Confidential Information it receives from a Disclosing Party from unauthorized use or disclosure as it would use to protect its own information of a similar nature, but in no event will use less than reasonable care. In the event that any Receiving Party is required by Law to disclose any Confidential Information of a Disclosing Party, such Receiving Party shall (x) to the extent reasonably practicable, notify the Disclosing Party in writing of the requirement and the extent of the required disclosure, and (y) reasonably cooperate

with the Disclosing Party, at the Disclosing Party's expense, to preserve the confidentiality of such information consistent with applicable Law.

(b) Post-Closing Confidentiality.

(i) Sellers' Obligations. Beginning on the Closing Date and ending on the two- (2-) year anniversary of the Closing Date, each Seller shall maintain as confidential and shall not disclose to any third party any Confidential Information (A) disclosed or made available to such Seller by Buyer or any of Buyer's Representatives or Affiliates or (B) that relates solely to the Business, except (1) as required by Law, (2) as authorized by Buyer in writing, (3) in the case of Confidential Information disclosed by Buyer to such Seller, if such Seller knows such information at the time of disclosure by Buyer, free of any obligation to keep it confidential, (4) if such information is or becomes generally known in the relevant industry without breach of this Agreement by such Seller, (5) such Seller independently develops such information without access to or use of the Confidential Information of Buyer or (6) such Seller rightfully obtains such information from a third party who has the right to disclose it without violation of any confidentiality obligations. Each Seller further agrees to use the same degree of care to protect such Confidential Information from unauthorized use or disclosure as it would use to protect its own information of a similar nature, but in no event will use less than reasonable care. In the event that either Seller is required by Law to disclose any Confidential Information of Buyer or relating to the Business, such Seller shall (x) to the extent reasonably practicable, notify Buyer in writing of the requirement and the extent of the required disclosure and (y) reasonably cooperate with Buyer, at Buyer's expense, to preserve the confidentiality of such information consistent with applicable Law.

(ii) Buyer's Obligations. Beginning on the Closing Date and ending on the two- (2-) year anniversary of the Closing Date, Buyer shall maintain as confidential and shall not disclose to any third party any Confidential Information disclosed or made available to Buyer by either Seller or any Representative or Affiliate of such Seller and that relates to such Seller or the business of such Seller, except (A) as required by Law, (B) as authorized by the Disclosing Party in writing, (C) if Buyer knows such information at the time of disclosure by the Disclosing Party, free of any obligation to keep it confidential, (D) such information is or becomes generally known in the relevant industry without breach of this Agreement by Buyer, (E) Buyer independently develops such information without access to or use of such Confidential Information or (F) Buyer rightfully obtains such information from a third party who has the right to disclose it without violation of any confidentiality obligations. Buyer further agrees to use the same degree of care to protect the Confidential Information that relates to either Seller or the business of such Seller from unauthorized use or disclosure as it would use to protect its own information of a similar nature, but in no event will use less than reasonable care. In the event that Buyer is required by Law to disclose any Confidential Information that relates to either Seller or the business of such Seller, Buyer shall (x) to the extent reasonably practicable, notify the Disclosing Party in writing of the requirement and the extent of the required disclosure and (y) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, to preserve the confidentiality of such information consistent with applicable Law.

(c) Termination of Nondisclosure Agreement with Respect to Confidential Information. Each of SunEdison and Buyer acknowledges and agrees that as of the Effective Date, all rights and obligations of any party under the Nondisclosure Agreement, solely with respect to the disclosure of Confidential Information in connection with the transactions contemplated by this Agreement, terminate and the provisions of this Section 6.6 constitute the entire agreement with respect to the disclosure of Confidential Information in connection with the transactions contemplated by this Agreement.

6.7 Employees.

(a) Prior to the Closing, Buyer shall cause Development Company to make written offers of employment to each Essential Employee and each Key Employee on an “at will” basis or on the terms and conditions that may be agreed by the Buyer, each Essential Employee and each Key Employee to be effective as of the Closing Date. Prior to the Closing, Buyer shall continue its good faith discussions with Sellers to finalize the terms and conditions of employment applicable to each Essential Employee’s and each Key Employee’s employment with Development Company, and Buyer’s offers of employment shall be consistent with any arrangements arrived at during such discussions. Notwithstanding anything to the contrary in this Section 6.7, employment offer terms will be determined in Buyer’s or Development Company’s sole discretion, and such offers may be made contingent on the Closing and on such individual (i) providing to Buyer or Development Company documentation establishing such individual’s authorization to work in the United States, including, without limitation, a completed I-9 form, and (ii) executing an employee handbook that includes terms substantially similar to the Employee Handbook. Each Seller shall, and shall cause its Affiliates to use commercially reasonable efforts to cooperate with and assist Buyer and Development Company in their efforts to hire any Essential Employee or Key Employee to whom they may make (or may seek to make) offers of employment, subject to the terms of this Agreement. Each Party shall, and shall cause its Affiliates to, not engage in any conduct with or through any Person that could reasonably be expected to constitute an offer of continuing employment with Sellers or its Affiliates and therefore dissuade or prevent any Employee from accepting any offer of employment or engagement made by Buyer or any of its Affiliates. Sellers shall (or shall cause its Affiliates to) terminate the employment, to be effective immediately prior to the Closing, of those Essential Employees and Key Employees to whom Buyer or Development Company make an offer of employment and who accept such an offer prior to the Closing (all such Essential Employees and Key Employees who accept such offer and commence employment with Buyer or Development Company from and after the Closing Date, collectively, the “Employees”). Sellers shall have the sole obligation to provide, and hereby agrees to provide, any notice and other benefits that may be required under the WARN Act to all employees of Sellers or any of their Affiliates who do not become Employees.

(b) For the avoidance of doubt, notwithstanding anything to the contrary in any prior agreement, including the Nondisclosure Agreement, each Seller, for itself and its Affiliates, agrees that, as of the date hereof, Buyer or Development Company are expressly permitted to solicit and/or hire the Key Employees, Essential Employees and other employees of Seller or its Affiliates as contemplated by this Agreement. Each Seller, for itself and its Affiliates, agrees not to assert, and hereby waives, any claim against such former employee or Buyer (or any of its Affiliates) in connection with any such solicitation or hiring.

(c) Sellers (or their Affiliates) shall retain responsibility for all Liabilities (i) that arise, relate to, exist or are incurred on or prior to the Closing Date with respect to all Employees and any employees of the Business, (ii) with respect to all employees providing services to the Business who do not become employees of Development Company (regardless of whether Liabilities arise, related to, exist or are incurred prior to, on or after the Closing Date) and (iii) under any Benefit Plans, collective bargaining agreements or labor agreements, regardless whether such liabilities arise, relate to, exist or are incurred prior to, on or after the Closing Date. Each Seller shall pay each Essential Employee, Key Employee or any other employee of the Business that becomes an employee of Development Company at or prior to the Closing an amount in cash for such employee's accrued but unused vacation time, sick time and earned time off (if any) as of the Closing Date; such payment to be made in accordance with applicable Law on or promptly following such date as required.

6.8 Sales and Transfer Taxes. All sales, use, excise, value-added, goods and services, transfer, recording, documentary, registration, conveyancing and similar taxes that may be imposed in connection with this Agreement and the transactions contemplated hereby (including any stamp, duty or other tax chargeable in respect of any instrument transferring property and any recording fees or other costs and expenses payable in connection with the sale and transfer of the Intellectual Property), together with any and all penalties, interest and additions to tax with respect thereto, shall be paid by Buyer without deduction from the Purchase Price; provided, that, for the avoidance of doubt, Sellers shall be solely liable for any such amounts imposed in connection with the assignment of Contracts related to the Pipeline Projects to Holding Company. Buyer and Sellers shall cooperate in (i) timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable law in connection with the payment of any such taxes described in the immediately preceding sentence and (ii) providing each other with appropriate resale exemption certification and other similar tax and fee documentation.

6.9 Further Transfers. Sellers shall use commercially reasonable efforts to execute and deliver such further instruments of conveyance and transfer and take such additional action as Buyer may reasonably request to effect, consummate, confirm or evidence the transfer to Buyer of (i) the Purchased Assets, (ii) the Government Permits listed in Section 4.16 of the Seller Disclosure Schedule, to the extent possible, and (iii) particular books and records of either Seller and its Affiliates, to the extent available to Sellers, primarily relating to the Purchased Assets and the Pipeline Assets and deemed material by Buyer; provided that nothing in this Section 6.9 shall (a) require Sellers or any of their Affiliates to make any expenditure or incur any obligation on their own or on behalf of Buyer (unless funds in the full amount thereof are advanced to Sellers in cash) or (b) prohibit or delay Sellers or any of its Affiliates from ceasing operations or winding up its affairs following the Closing.

6.10 Regulatory and Other Approvals. Each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement. Each of the Parties shall use commercially reasonable efforts to obtain Consents of all Governmental Entities and other Persons necessary for the consummation of the transactions contemplated by this Agreement,

including the Required Approvals. Each Party shall bear its own costs in connection with obtaining such Consents.

6.11 CFIUS. If the Committee on Foreign Investment in the United States, including its member agencies (collectively, “CFIUS”) requests that any of the Parties file a joint voluntary notice under the authority provided in 31 C.F.R. Part 800 with respect to the transactions contemplated under this Agreement, the Parties shall (i) jointly submit a draft and a final notice to CFIUS (the “CFIUS Requested Notices”) with respect to the transactions contemplated by this Agreement as promptly as practicable; (ii) respond appropriately and timely to any request for information from CFIUS throughout the CFIUS process and in accordance with the CFIUS regulations; (iii) as consistent with any CFIUS requests for confidentiality, cooperate in any meetings with CFIUS member agencies or attend any on-site visit by CFIUS member agencies to a Party’s facility (which meetings and visits each Party shall have appropriate opportunity to participate in) and (iv) cooperate in taking any other necessary action, and cause their Affiliates to take such actions, in furtherance of obtaining the CFIUS Approval. Each Party shall keep the other Party reasonably apprised of the content and status of any communications with, and communications from, CFIUS.

6.12 Notification. During the Interim Period, Sellers shall give reasonably prompt notice to Buyer, of (a) any Knowledge of, or notice or other communication from, any Person alleging that the consent of such Person which is or may be required in connection with the Transactions is not reasonably likely to be obtained prior to the Closing, (b) any written objection or proceeding that challenges the Transactions or the entry of the Sale Order by the Bankruptcy Court or (c) material written notice received by Sellers or their Affiliates with respect to any Holding Company Contract (and provide a copy to Buyer of such notice). To the extent permitted by applicable Law, Sellers shall give prompt notice to Buyer of (w) any material written notice of any alleged violation of Law applicable to the Business and (x) the commencement of any investigation, inquiry or review by any Governmental Entity with respect to the Business or that any such investigation, inquiry or review, to the Knowledge of Seller, is contemplated. Prior to the Closing, each Party shall promptly disclose in writing to the other Party in reasonable detail (i) any material breach of, or material inaccuracy in, any of the representations or warranties of such disclosing Party contained herein, (ii) with respect to Sellers only, the discovery, occurrence or non-occurrence of any change, effect, event, occurrence, state of facts or development that has had or is reasonably likely to have a Material Adverse Effect, (iii) any failure of such disclosing Party, whether through an action, omission or otherwise, to comply with or satisfy any covenant or agreement hereunder or any event or condition that would otherwise result in the nonfulfillment of any of the conditions to such other Party’s obligations hereunder, and (iv) any Action pending or threatened in writing against (x) with respect to Sellers only, Holding Company or (y) Sellers or Buyer, as applicable, in each case relating to this Agreement or the Transactions; provided, however, that, subject to Section 6.14, no such disclosure, or other investigation or Knowledge of Buyer or Seller, as applicable, or any of their respective Affiliates, Representatives or designees, shall affect or be deemed to modify any representations or warranties of the other Party (or any rights, liabilities or obligations of any Party with respect thereto), as applicable, set forth in this Agreement or the conditions to the obligations of Buyer or Seller, as applicable, to consummate the Transactions or the remedies available to any party hereunder.

6.13 Buyer Parent Guaranty. Buyer shall cause the Buyer Parent Guaranty to be in full force and effect at all times in accordance with its terms.

6.14 Schedule Update.

(a) During the Interim Period, Sellers may supplement or amend and deliver updates to the Seller Disclosure Schedule that are necessary to complete or correct any information in such Schedule; provided, however, that Sellers shall not make any additions to Section 1.1(e) of the Seller Disclosure Schedule without Buyer's prior written consent and updates to Section 1.1(a) of the Seller Disclosure Schedule shall be made in accordance with Section 6.17. Except with respect to supplements, amendments or updates to Material Pipeline Projects and Material Contracts, supplements, amendments or updates to the Seller Disclosure Schedule (i) shall be given effect for purposes of determining whether the condition precedent set forth in Section 7.3(a) has been satisfied on and as of the Closing Date unless the matter or matters disclosed in such supplement, amendment or update has a Material Adverse Effect, and (ii) shall not be given effect for purposes of determining Sellers' indemnification obligations pursuant to Section 9.2(a). For the avoidance of doubt, the removal or addition of Pipeline Projects or Holding Company Contracts from the Seller Disclosure Schedules that are not Material Pipeline Projects or Material Contracts, as applicable, shall not result in an adjustment to the Cash Purchase Price pursuant to Section 3.2.

(b) During the Interim Period, by written notice to Sellers, Buyer may cause Sellers to remove any Material Pipeline Project or any Material Contract from the Seller Disclosure Schedules; provided that such removal will not result in (i) an adjustment to the Cash Purchase Price pursuant to Section 3.2 or (ii) a Material Adverse Effect.

6.15 Post-Closing Cooperation.

(a) Each Seller shall have reasonable access, upon reasonable prior notice and during normal business hours, to the offices and properties of Buyer or its Affiliates for a period of seven (7) years after the Closing Date to the extent books, records and other data relating to the business or financial or operating condition of Buyer may be reasonably requested by Sellers in connection with the Bankruptcy Cases, any audit, investigation, Action or any other reasonable business purpose, including relating to Sellers or in connection with its rights hereunder, Buyer will provide such Seller with such books, records or other data. Further, Buyer agrees, for a period of seven (7) years after the Closing Date, not to destroy or otherwise dispose of any such books, records and other data.

(b) Notwithstanding anything to the contrary contained in this Section 6.15, if the Parties are in an adversarial relationship in any Action, the furnishing of information, documents or records in accordance with any provision of this Section 6.15 shall be subject to applicable rules relating to discovery.

6.16 Exclusivity. During the Interim Period, none of SELLC, SunEdison or Holding Company or any of their respective officers, directors, employees, stockholders, representatives, agents, investment bankers and Affiliates shall, directly or indirectly, discuss, pursue, solicit, initiate, participate in, facilitate, encourage or otherwise enter into any discussions, negotiations,

agreements or other arrangements regarding an Alternative Transaction or provide any information to any Person other than Buyer and its Affiliates, representatives, agents and lenders other than information which is traditionally provided in the regular course of the Business to third parties where SELLC, SunEdison or Holding Company and its officers, directors and Affiliates have no reason to believe that such information is being utilized to evaluate any Alternative Transaction. SELLC, SunEdison or Holding Company and any of their Affiliates and any of their respective officers, directors, employees, representatives, agents or investment bankers shall immediately after execution of this Agreement cease and cause to be terminated any and all contacts, discussions and negotiations with any Person other than Buyer and its Affiliates and representatives regarding the foregoing. In the event that the Bankruptcy Court declines to enter the Sale Order absent a public marketing and auction process governed by bidding procedures subject to approval by the Bankruptcy Court, Sellers shall negotiate in good faith with Buyer to promptly finalize a stalking horse purchase and sale agreement (which agreement shall be in all material respects substantially identical to this Agreement), bidding procedures, and bid protections, including a break-up fee and expense reimbursement.

6.17 Authorized Pipeline Expenses. During the Interim Period, if Buyer determines that out-of-pocket payments in connection with the Pipeline Projects that are listed on Section 1.1(a) of the Seller Disclosure Schedule shall be paid by Seller, Buyer shall notify Sellers in writing to pay such Authorized Pipeline Expenses at least ten (10) Business Days prior to the date on which Buyer directs that such payments be made by Sellers, and upon such notification, Sellers shall timely pay such Authorized Pipeline Expenses. Any failure by (a) Buyer to notify Sellers in writing to pay Authorized Pipeline Expenses in accordance with the foregoing sentence or (b) Sellers to timely pay such Authorized Pipeline Expenses when Buyer has not notified Sellers in writing to pay Authorized Pipeline Expenses in accordance with the foregoing sentence, shall not, in either case (i) result in an adjustment to the Cash Purchase Price pursuant to Section 3.2 if the non-payment of an expense results in the removal of a Material Pipeline Project or Material Contract from the Seller Disclosure Schedules, (ii) result in a Material Adverse Effect or (iii) be given effect for purposes of determining whether the condition precedent set forth in Section 7.3(b) has been satisfied on and as of the Closing Date. Sellers shall give reasonably prompt notice to Buyer of any additional out-of-pocket expenses that they propose be authorized by Buyer and added to Section 1.1(a) of the Seller Disclosure Schedule.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 Conditions to the Obligations of Each Party. The respective obligations of the Parties to consummate and cause the consummation of the Purchase shall be subject to the satisfaction (or waiver in writing by the Parties) at or prior to the Closing of each of the following conditions:

(a) Injunctions; Illegality. No Governmental Entity shall have issued, enacted, entered, promulgated or enforced any Law or Order restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and there shall be no proceeding pending by any Governmental Entity seeking any such Order.

(b) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such order shall be a Final Order.

(c) CFIUS Approval. In the event the CFIUS Requested Notices have been requested in accordance with Section 6.11, then either (i) the Parties shall have received a written notice from CFIUS in response to the filing of a joint voluntary notice with CFIUS by the Parties regarding the transactions contemplated by this Agreement to the effect that either (x) the transactions contemplated by this Agreement are not subject to Section 721 of the Defense Production Act of 1950 (50 U.S.C. § 4565) or (y) any review or investigation (as the case may be) of the transactions contemplated by this Agreement has been concluded, and CFIUS has determined that there are no unresolved issues of national security or (ii) (x) the President of the United States shall have issued a decision not to suspend, restrict or prohibit the transactions contemplated by this Agreement, or (y) having received a report from CFIUS requesting the President's decision, the President shall not have taken any action after fifteen (15) days from the date the President received such report from CFIUS (either (i) or (ii), the "CFIUS Approval").

(d) Regulatory Approvals. Any Required Approvals shall have been obtained; provided, however, that this Section 7.1(d) does not apply to the CFIUS Approval.

7.2 Conditions to Obligations of Sellers. The obligations of Sellers to consummate and cause the consummation of the Purchase is subject to the satisfaction (or waiver in writing by Sellers) at or prior to the Closing of each of the following further conditions:

(a) Representations and Warranties. The representations and warranties made by Buyer in Article V shall be true and correct in all material respects as of the Effective Date and the Closing Date with the same effect as though made at that time (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such specified date); provided, however, that, in the event of a breach of a representation or warranty other than a representation or warranty qualified by materiality or material adverse effect, the condition set forth in this Section 7.2(a) shall be deemed satisfied unless the effect of all such breaches of representations or warranties taken together results in a material adverse effect.

(b) Performance. Buyer shall have duly complied in all material respects with all covenants and agreements contained herein required to be complied with by them at or prior to the Closing.

(c) Closing Deliverables. Buyer shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 3.3(d).

(d) Buyer Parent Guaranty. Buyer shall have delivered to Seller the Buyer Parent Guaranty in form and substance reasonably satisfactory to Buyer, the Buyer Parent Guaranty shall be in full force and effect and there shall have been no material adverse change in the financial condition of Buyer Parent.

7.3 Conditions to Obligations of Buyer. The obligations of Buyer to consummate and cause the consummation of the Purchase is subject to the satisfaction (or waiver in writing by Buyer) at or prior to the Closing of each of the following further conditions:

(a) Representations and Warranties. The representations and warranties made by Sellers in Article IV shall be true and correct in all material respects as of the Effective Date and, after taking into account any updates to the Seller Disclosure Schedule permitted by this Agreement, the Closing Date with the same effect as though made at that time (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such specified date); provided, however, that in the event of a breach of a representation or warranty other than a representation or warranty qualified by materiality or Material Adverse Effect, the condition set forth in this Section 7.3(a) shall be deemed satisfied unless the effect of all such breaches of representations or warranties taken together results in a Material Adverse Effect.

(b) Performance. Sellers shall have duly complied in all material respects with all covenants and agreements contained herein required to be complied with by it at or prior to the Closing; provided, however, that in the event of a breach by either Seller of Section 6.12, the condition set forth in this Section 7.3(b) shall be deemed satisfied with respect to such covenant unless the effect of such breach results in a Material Adverse Effect.

(c) Closing Deliverables. Sellers shall have delivered all of the items set forth in Section 3.3(b), and SunEdison shall have delivered to Buyer all of the items set forth in Section 3.3(c).

(d) Acceptance of Employment. At the time that each other condition to Closing set forth in this Article VII shall have been satisfied or waived or shall be capable of being satisfied at the Closing, so long as Buyer has caused Development Company to make written offers of employment to all Essential Employees and all Key Employees in accordance with Section 6.7 within five (5) Business Days after the Effective Date, one hundred percent (100%) of the Essential Employees shall have delivered to Buyer a counterpart to such Essential Employee's employment agreement and eighty-five percent (85%) of the Key Employees shall have delivered to Buyer a counterpart to such Key Employee's employment agreement, in each case, which counterpart shall have been duly executed by such Essential Employee or such Key Employee.

(e) DIP Lender Consent under DIP Order. Buyer shall have received the consent of the DIP Lenders (or subset thereof) to the transactions contemplated under this Agreement as required under the DIP Order, which, for the avoidance of doubt, may be provided verbally on the record at the Sale Hearing and have the same force and effect as written consent.

(f) SPURR Contract. SELLC shall have extended the term of the SPURR Contract prior to the December 31, 2016 termination date.

(g) Intellectual Property. The Intellectual Property has been assigned to, or licensed by, Development Company pursuant to the Assignment Agreement and the License Agreements.

(h) Portfolio Buyer Agreements. Each Portfolio Buyer Agreement (as defined in the MSA) shall have been agreed and the counterpart signature pages shall have been duly executed and delivered by each party thereto.

ARTICLE VIII

TERMINATION

8.1 Termination. This Agreement may be terminated, and the Purchase may be abandoned, at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Seller or Buyer if there shall be any Law or Order that makes consummation of the Transactions illegal or otherwise prohibited, or there shall be in effect an Order of the Bankruptcy Court or a Governmental Entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; it being agreed that the Debtors shall promptly appeal any such adverse determination which is appealable (and pursue such appeal with reasonable diligence); or

(c) by Buyer if there has been a breach by either Seller of any representation, warranty, covenant or agreement contained in this Agreement which (x) would result in a failure of a condition to Closing set forth in Section 7.3(a) or Section 7.3(b) and (y) such breach is incapable of being cured or, if curable, is not cured by such Seller within thirty (30) days after the giving of written notice of such breach or failure; provided that at the time of such termination, Buyer shall not be in material breach of its obligations under this Agreement;

(d) by either Seller, if there has been a breach by Buyer of any representation, warranty, covenant or agreement contained in this Agreement which (x) would result in a failure of a condition to Closing set forth in Section 7.2(a) or Section 7.2(b) and (y) such breach is incapable of being cured or, if curable, is not cured by Buyer within thirty (30) days after the giving of written notice of such breach or failure; provided that at the time of such termination, Sellers shall not be in material breach of their obligations under this Agreement;

(e) by Buyer, if Seller's Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(f) by Buyer, if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of Seller is appointed in any Bankruptcy Case, in each case without the consent of Buyer;

(g) by Buyer, if

(i) the Sale Motion shall not have been filed with the Bankruptcy Court on or prior to January 5, 2017; or

(ii) the Closing shall not have occurred on or prior to the date that is fourteen (14) days after the Sale Hearing.

8.2 Effect of Termination. In the event that this Agreement is terminated pursuant to Section 8.1, this Agreement and the rights and obligations of the Parties hereunder shall immediately become null and void and of no further force or effect without any further action by

any Party; provided, however, that (a) the provisions of Section 6.3 (Public Announcements), Section 6.6 (Confidentiality), Section 8.2 (Effect of Termination) and Article X (Miscellaneous) shall survive any such termination and (b) no termination of this Agreement shall relieve any Party from liability for any breach of this Agreement occurring prior to such termination, or for the breach of any provision hereof that expressly survives the termination of this Agreement.

ARTICLE IX

SURVIVAL REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

9.1 Survival.

(a) The representations and warranties of each Seller contained in Article IV of this Agreement or in any certificate with respect thereto delivered pursuant to this Agreement and the representations and warranties of Buyer contained in Article V of this Agreement shall survive the Closing for twelve (12) months following such Closing (the "Survival Period Termination Date").

(b) If a Party delivers an indemnification notice to the other Party before the expiration of a representation or warranty, then the right to assert a claim for indemnification with respect to the applicable representation or warranty shall survive until the resolution of the matter covered by such notice. No claim for indemnification may be made after the expiration of the Survival Period Termination Date.

9.2 Indemnification.

(a) Subject to the limitations set forth in this Article IX, subsequent to the Closing Date, Sellers shall, jointly and severally indemnify, hold harmless and defend Buyer and its Affiliates (including after Closing, Holding Company and the Development Company) against any liability, loss, cost, expense or reasonable attorneys' fees (collectively, "Losses" and individually, a "Loss") that any of the foregoing suffers as a result of (i) any breach or inaccuracy of the representations and warranties (each such breach a "Warranty Breach") of Sellers set forth in Article IV or (ii) any breach of any covenant or agreement of Sellers contained in this Agreement or in any certificate delivered pursuant to this Agreement; in each case under (i) and (ii), to the extent based upon or arising out of any actions, inactions, events, facts or circumstances existing prior to Closing, whether known, unknown, absolute, accrued, contingent, fixed, determined, determinable, indeterminate or otherwise, and whether due or to become due, and whether for payment, indemnification, reimbursement, performance or otherwise (in each case, whether or not required under GAAP to be reflected or disclosed on a balance sheet or the notes thereto).

(b) Subject to the limitations set forth in this Article IX, subsequent to the Closing Date, Buyer shall indemnify, hold harmless and defend Sellers and their Affiliates against any Loss that any of the foregoing suffers as a result of (i) any breach or inaccuracy of the representations and warranties by Buyer set forth in Article V or (ii) any breach of any covenant or agreement of Buyer contained in this Agreement.

(c) Except as otherwise required by Law, the Parties shall treat for all Tax purposes any indemnification payment made hereunder first as a reimbursement of the item giving rise to such indemnification payment, and any excess as an adjustment to the Purchase Price.

9.3 Limitations on Indemnification.

(a) Except in the case of Warranty Breaches by Sellers with respect to the Fundamental Representations, Sellers in the aggregate shall not be responsible for Losses in excess of Five Hundred Thousand United States Dollars (\$500,000.00) for claims for indemnification pursuant to Section 9.2(a).

(b) In the case of claims for indemnification for Warranty Breaches by Sellers with respect to the Fundamental Representations, (i) Sellers in the aggregate shall not be responsible to Buyer for Losses in excess of the Purchase Price, and (ii) Buyer shall not bring such a claim until the aggregate amount of all Losses incurred by Buyer from such breach or breaches equals or exceeds Fifty Thousand United States Dollars (\$50,000.00), in which event Sellers shall be liable for all such Losses from the first dollar.

(c) Buyer shall not be responsible for Losses in excess of Five Hundred Thousand United States Dollars (\$500,000.00) for claims for indemnification pursuant to Section 9.2(b).

(d) Each Person entitled to indemnification hereunder shall use commercially reasonable efforts to mitigate all Losses upon becoming aware of any event or circumstance that could reasonably be expected to give rise to any Losses that are indemnifiable under this Article IX. If such Indemnified Party mitigates its Losses after the Indemnifying Party has paid the Indemnified Party under any indemnification provision of this Agreement in respect of that loss, the Indemnified Party must notify the Indemnifying Party and pay to the Indemnifying Party the extent of the value of the benefit to the Indemnified Party of that mitigation (less the Indemnified Party's reasonable costs of mitigation) within two (2) Business Days after the benefit is received, but such payment shall not exceed the indemnity payment paid by the Indemnifying Party.

(e) Any indemnifiable claim with respect to any breach by a Party of a representation and warranty shall be net of any insurance proceeds actually received by the Indemnified Party or amounts actually recovered from any other Person alleged to be responsible therefor (net of Taxes, any costs of collection, increased premium or other out-of-pocket costs related to the insurance claim or third-party recovery in respect of Losses). If the Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Losses, subsequent to an indemnification payment by the Indemnifying Party, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party (net of any Taxes, costs of collection, increased premium or other out-of-pocket costs related to the insurance claim or third-party recovery in respect of Losses).

9.4 Manner of Payment; Escrow.

(a) Any indemnification of Sellers or their Affiliates pursuant to this Article IX shall be effected by wire transfer of immediately available funds from Buyer or on its behalf to an account designated in writing by Sellers or an Affiliate of Seller within five (5) days after the final determination thereof. Any indemnification of Buyer or its Affiliates pursuant to this Article IX shall be effected by wire transfer of immediately available funds from the PSA Escrow Account to an account or accounts designated in writing by the applicable Indemnified Party within five (5) days after the final determination thereof. The available funds in the PSA Escrow Account shall be Buyer and its Affiliates' sole and exclusive source of recovery for claims for indemnification pursuant to this Article IX.

(b) Any funds remaining in the PSA Escrow Account as of the Survival Period Termination Date (minus the aggregate amount claimed by Buyer or its Affiliates pursuant to claims made against such funds prior to the Survival Period Termination Date in accordance with this Article IX and the PSA Escrow Agreement, not fully resolved prior to such date and continued to be contested in good faith by Buyer or such Affiliate of Buyer) shall be released to Sellers. At any time following the Survival Period Termination Date, to the extent the funds held in the PSA Escrow Account exceed the aggregate amount claimed by Buyer and its Affiliates pursuant to claims made prior to the Survival Period Termination Date in accordance with this Article IX and the PSA Escrow Agreement, not fully resolved prior to the time of determination and continued to be contested in good faith by Buyer or Affiliate of Buyer, the excess funds shall be promptly released to SunEdison.

(c) SunEdison and Buyer shall promptly (and in any event within two (2) Business Days of a valid request therefor) deliver joint written instructions to the PSA Escrow Agent instructing the PSA Escrow Agent to make any distributions from the PSA Escrow Account expressly provided for herein.

9.5 Remedies Exclusive. From and after the Closing, the indemnification rights of the Parties under this Article IX are the exclusive remedies available to the Parties and any Indemnifying Party with respect to any claims or disputes arising with respect to any and all claims arising out of, in connection with or relating to the subject matter of this Agreement.

ARTICLE X

MISCELLANEOUS

10.1 Expenses. Except as otherwise expressly provided in this Agreement, each Party shall pay all of its own costs and expenses (including attorneys', accountants' and investment bankers' fees and other out-of-pocket expenses) in connection with the negotiation and execution of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby (it being understood by Sellers that, if the Closing occurs, Buyer shall pay all of the costs and expenses of its Affiliates incurred in connection with the transactions contemplated hereby). Without limiting the foregoing, each Party shall pay its own expenses incurred in connection with its efforts to satisfy the conditions to the other Party's obligation to consummate the transactions contemplated hereby.

10.2 Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. Notwithstanding anything herein to the contrary, this Section 10.2 may not be amended, modified or supplemented, or any of its provisions waived, without the prior written consent of the DIP Administrative Agent.

10.3 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three (3) days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to Sellers on the one hand, and Buyer, on the other hand, shall be sent to the addresses indicated below:

Notices to SELLC:

Sun Edison LLC
c/o SunEdison, Inc.
13736 Riverport Drive, Suite 180
Maryland Heights, Missouri 63043
Attn: General Counsel
Facsimile: (866) 773-0791
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Attn: Paul Kraske
Facsimile: (202) 661-9034
Email: paul.kraske@skadden.com

Notices to SunEdison:

SunEdison, Inc.
13736 Riverport Drive, Suite 180
Maryland Heights, Missouri 63043
Attn: General Counsel
Facsimile: (866) 773-0791
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Attn: Paul Kraske
Facsimile: (202) 661-9034
Email: paul.kraske@skadden.com

Notices to Buyer:

MyPower Corp.
c/o Mitsui & Co., Ltd.
Infrastructure Projects Development Division
1-3, Marunouchi 1-chome, Chiyoda-ku
Tokyo 100-8631, Japan
Attn: Hiromu Kayamori
facsimile: +81 3 3285 9795
Email: H.Kayamori@mitsui.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Attn: Ayaz Shaikh
Facsimile: (202) 736-8711
Email: ashaikh@sidley.com

10.4 Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

10.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any Person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

10.6 Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Schedule attached hereto and not otherwise defined therein shall have the meaning set forth in this Agreement. The use of the word “including” herein shall mean “including without limitation.”

Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

10.7 Entire Agreement. This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

10.8 Counterparts. This Agreement may be executed in one or more counterparts (including by means of telecopied or e-mailed signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party.

10.9 Applicable Law; Jurisdiction.

(a) THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF.

(b) EACH PARTY AGREES THAT THE BANKRUPTCY COURT, WHICH SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

(c) EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, (II) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURT OR (III) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURT IS BROUGHT IN AN INCONVENIENT FORUM.

10.10 No Strict Construction. Notwithstanding the fact that this Agreement has been drafted and prepared by one of the Parties, Buyer and Sellers confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

10.11 Specific Performance. Each of the Parties recognizes that if the other Party breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the non-breaching Party for its injuries. Sellers and Buyer shall therefore be entitled, in addition to any other remedies that may be available under applicable law, to obtain specific performance of the terms of this Agreement.

The Parties further agree that neither Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 10.11, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. If any action is brought by Sellers or Buyer to enforce this Agreement, the non-breaching Party shall waive the defense that there is adequate remedy at Law.

10.12 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder; provided, however, that the DIP Administrative Agent shall be a third-party beneficiary of, and shall be entitled to the protections of Section 10.2.

10.13 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

* * * * *

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

Sellers:

SUN EDISON LLC

By: _____

Name:

Title:

SUNEDISON, INC.

By: _____

Name:

Title:

Buyer:

MYPOWER CORP.

By:  _____


Name: Kazuki Shimizu

Title: Authorized Representative

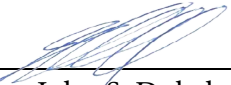
IN WITNESS WHEREOF, the Parties have caused this Purchase and Sale Agreement to be duly executed as of the date and year first written above.

Sellers:

SUN EDISON LLC

By: 
Name: John S. Dubel
Title: Authorized Representative

SUNEDISON, INC.

By: 
Name: John S. Dubel
Title: CEO & CRO

Buyer:

MYPOWER CORP.

By: _____
Name:
Title:

EXHIBIT A

Form of Assignment Agreement

EXHIBIT A

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “**Assignment**”) is made as of [____], 2017 (the “**Effective Date**”), by and among Sun Edison LLC, a Delaware limited liability company (“**SELLC**”), SunEdison, Inc., a Delaware corporation (“**SunEdison**” together with SELLC, “**Sellers**”) and MyPower Corp., a Delaware corporation (“**Buyer**”). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Purchase Agreement (as defined below).

WHEREAS, Buyer and Sellers are parties to that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the “**Purchase Agreement**”), pursuant to which Buyer has agreed to purchase, and (a) SELLC has agreed to sell, convey, assign, transfer and deliver to Buyer, all of SELLC’s right, title and interest in, to and under (i) the Holding Company Equity, (ii) the Books and Records of SELLC, and (iii) the Assigned Intellectual Property set forth on the schedules attached hereto, and (b) SunEdison has agreed to sell, convey, assign, transfer and deliver to Buyer, all of SunEdison’s right, title and interest in, to and under the (i) Books and Records of SunEdison, and (ii) the Assigned Intellectual Property set forth on the schedules attached hereto, in each case, on the terms and conditions set forth in the Purchase Agreement and in accordance with Sections 105, 363 and 365 and the other applicable provisions of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, upon the terms and subject to the conditions set forth in the Purchase Agreement and the Sale Order, it is hereby agreed that:

1. **Assignment**

(a) Effective as of the Effective Date, (i) SELLC hereby sells, conveys, assigns, transfers and delivers to Buyer all of SELLC’s right, title and interest in, to and under (A) the Holding Company Equity, (B) the Books and Records of SELLC, and (C) the Assigned Intellectual Property set forth in Schedule 1 hereto, and (ii) SunEdison hereby sells, conveys, assigns, transfers and delivers to Buyer all of SunEdison’s right, title and interest in, to and under (A) the Books and Records of SunEdison, and (B) Assigned Intellectual Property set forth in Schedule 1 hereto. Effective as of the Effective Date, Buyer hereby accepts the assignment of the Holding Company Equity, the Books and Records and the Assigned Intellectual Property pursuant to the terms of the Purchase Agreement.

(b) Effective as of the Effective Date, (i) SELLC hereby sells, conveys, assigns, transfers and delivers to Buyer all of SELLC’s right, title and interest in, to and under (A) the Assigned Mark set forth in Schedule 2 hereto together with the goodwill symbolized thereby, and (B) all benefits, privileges, causes of action, common law rights, and remedies relating thereto throughout the world including, without limitation, all of

SELLC's rights to: (I) apply for and maintain all registrations, renewals and/or extensions thereof, (II) bring actions and recover damages for past, present and future infringement or other violations thereof, and (III) grant licenses or other interests therein; and (ii) SunEdison hereby sells, conveys, assigns, transfers and delivers to Buyer all of SunEdison's right, title and interest in, to and under (A) the Assigned Mark set forth in Schedule 2 hereto together with the goodwill symbolized thereby, and (B) all benefits, privileges, causes of action, common law rights, and remedies relating thereto throughout the world including, without limitation, all of SunEdison's rights to: (I) apply for and maintain all registrations, renewals and/or extensions thereof, (II) bring actions and recover damages for past, present and future infringement or other violations thereof, and (III) grant licenses or other interests therein.

2. **Terms of the Purchase Agreement.** This Assignment is being delivered pursuant to the Purchase Agreement and is subject to the representations, warranties, conditions, limitations, covenants and agreements set forth in the Purchase Agreement. Buyer and each of the Sellers acknowledge that the representations, warranties, conditions, limitations, covenants and agreements contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. The rights and remedies of Buyer and each of the Sellers under the Purchase Agreement shall not be deemed to be enlarged, modified or in any way altered by the terms of this Assignment. In the event of any conflict between the terms of the Purchase Agreement and the terms of this Assignment, the terms of the Purchase Agreement shall prevail.

3. **General Provisions.** Section 6.9 and Article X (other than Section 10.7) of the Purchase Agreement are incorporated herein by reference.

4. **Entire Agreement.** This Assignment, the Purchase Agreement and the agreements and documents referred to herein and therein collectively contain the entire agreement and understanding among Buyer and Sellers with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

Sellers:

SUN EDISON LLC

By: _____

Name:

Title:

SUNEDISON, INC.

By: _____

Name:

Title:

Buyer:

MYPOWER CORP.

By: _____

Name:

Title:

Schedule 1

All Copyrights and Know-How exclusively related to the Business and embodied in:

- Books and Records
- Procedural Playbooks
- Market Assessment Tool
- Property Assessment Tool
- Prospecting List
- Marketing materials & collateral (including, but not limited to, digital collateral)
- Market research
- Engineering Designs (including, but not limited to, performance tools)
- Engineering Plan (including, but not limited to, the standard design)
- Historical Data related to design, engineering, timing and costing of Commercial & Industrial Business Unit projects (including, but not limited to, performance data);

where “Copyrights and Know-How” means (i) copyrights and copyrightable subject matter, (ii) trade secrets and all other confidential information, data, know-how, formulae, models, and methodologies, and (iii) all rights and remedies related to past, present, and future infringement, misappropriation, or other violations of the foregoing.

Schedule 2

Assigned Mark (which includes the goodwill symbolized thereby):

SIMPLIFYING SOLAR

EXHIBIT B

Form of Master Services Agreement

EXHIBIT B

MASTER SERVICES AGREEMENT

BY AND AMONG

SUN EDISON LLC,

SUNEDISON, INC.,

SUNE MN DEVELOPMENT, LLC,

SUNE ORIGINATION HOLDINGS, LLC,

[DEVELOPMENT COMPANY],

and

MYPOWER CORP.

Dated as of _____, 2017

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MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (as amended, modified or supplemented from time to time, this “**Agreement**”) is dated as of [____], 2017, and is entered into by and among SUN EDISON LLC, a Delaware limited liability company (“**SUNE LLC**”), SUNEDISON, INC., a Delaware corporation (“**SUNEDISON**”), SUNE MN DEVELOPMENT, LLC, a Delaware limited liability company (“**SUNE MN Development**”), SUNE ORIGINATION HOLDINGS, LLC, a Delaware limited liability company (“**SUNE Origination Holdings**”) and, together with SUNE LLC, SUNEDISON and SUNE MN Development, each a “**SUNE Party**” and collectively the “**SUNE Parties**”), [*Insert Name of Development Company under Purchase Agreement*], a [____] [corporation / limited liability company] (“**Development Company**”) and MYPOWER CORP., a Delaware corporation (“**Mitsui**”). Each of SUNE LLC, SunEdison, SUNE MN Development, SUNE Origination Holdings, Development Company and Mitsui are individually referred to herein as a “**Party**” and they are collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, this Agreement is being entered into in connection with the transactions contemplated by that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the “**Purchase Agreement**”), by and among SunEdison, SUNE LLC and Mitsui;

WHEREAS, pursuant to the Purchase Agreement, (a) SUNE LLC has agreed to sell to Mitsui, and Mitsui has agreed to purchase, the Holding Company Equity and the Books and Records of SUNE LLC, (b) SunEdison has agreed to sell to Mitsui, and Mitsui has agreed to purchase, the Books and Records of SunEdison and (c) SUNE LLC and SunEdison have agreed to sell to Mitsui or license, as applicable, and Mitsui has agreed to purchase or license, as applicable, the Intellectual Property;

WHEREAS, pursuant to the Purchase Agreement, Mitsui has agreed to cause Development Company to offer employment to certain employees of SUNE LLC or its Affiliates (such employees who accept employment, the “**Transferring Employees**”);

WHEREAS, each of SUNE MN Development and SUNE Origination Holdings have previously entered into certain Portfolio PSAs, pursuant to which each of such Parties has the right to receive certain payments upon the satisfaction of certain conditions set forth in such Portfolio PSAs; and

WHEREAS, each SUNE Party wishes to receive from Development Company, and Development Company is willing to provide to each SUNE Party, the services set forth in this Agreement in order to support such SUNE Party in satisfying the conditions to the Portfolio PSA Payments under each Portfolio PSA to which it is a party, all in accordance with and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. Capitalized terms used in this Agreement (including in the recitals hereto) and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. Capitalized terms used in this Agreement (including in the recitals hereto) without other definition shall have the following meanings, unless the context clearly requires otherwise:

“**AES**” means AES Distributed Energy, Inc., a Delaware corporation.

“**AES Portfolio Project**” means any Project subject to the AES PSA.

“**AES PSA**” means the Membership Interest Purchase and Sale Agreement to be entered into by and between SUNE MN Development and AES.

“**Agreement**” has the meaning set forth in the Preamble.

“**Approved Development Costs**” has the meaning set forth in Section 5.5(b).

“**Deducted Taxes**” has the meaning set forth in Section 5.6(a).

“**Development Company**” has the meaning set forth in the Preamble.

“**Development Costs**” means (i) all costs, fees and expenses of any kind necessary to develop any Project, including those incurred in connection with taking any action necessary to support the satisfaction of the conditions for achievement of NTP Status in respect of any Project, and (ii) any other cost or expense expressly deemed to be a Development Cost pursuant to the applicable provisions of this Agreement and any other cost or expense that the Parties mutually agree to treat as a Development Cost.

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

“**Final Decision**” means a final decision, order, judgment or decree of a court having jurisdiction over the Parties that is either not subject to appeal or as to which notice of appeal has not been timely filed or served.

“**Force Majeure**” has the meaning set forth in Section 8.1.

“**Indemnified Party**” shall mean the party seeking indemnification under Article 10 of this Agreement.

“**Indemnifying Party**” shall mean the party against whom indemnification is sought under Article 10 of this Agreement.

“**Minnesota Closing Date Payment**” means, with respect to any Minnesota Portfolio Project, payments for achieving milestones from (or on behalf of) SoCore to (or for the benefit of) SUNE MN Development that are designated as a “Closing Date Payment” (as defined in the

Minnesota Portfolio PSA) and that are payable pursuant to Section 2.3.1 of the Minnesota Portfolio PSA upon the “Closing Date” (as defined in the Minnesota Portfolio PSA), or relate to the achievement of a similar milestone, in respect of such Project under the Minnesota Portfolio PSA. For avoidance of doubt, such payment amounts will include only the base price “Closing Date Payment” or payments for achieving similar milestones, in each case, payable in accordance with the foregoing sentence and will exclude any interconnection costs and/or deposit fees that are fully reimbursable to the relevant SUNE Party.

“**Minnesota Portfolio Project**” means any Project subject to the Minnesota Portfolio PSA.

“**Minnesota Portfolio PSA**” means that certain Purchase and Sale Agreement, dated as of August 10, 2016, by and between SUNE MN Development and SoCore.

“**Mitsui**” has the meaning set forth in the Preamble.

“**MSA Escrow Agreement**” means an escrow agreement to be entered into at the Closing by and among Development Company, Mitsui, each SUNE Party and the MSA Escrow Agent, in form and substance satisfactory to each of such parties, pursuant to which funds in the Portfolio PSA Escrow Account and the Performance Escrow Account shall be held and distributed.

“**NTP Status**” means (i) with respect to any Minnesota Portfolio Project, that the conditions to the Minnesota Closing Date Payment in respect of such Minnesota Portfolio Project have been satisfied and such Minnesota Closing Date Payment has become due and payable in accordance with the terms of the Minnesota Portfolio PSA, and (ii) with respect to any Onyx Portfolio Project, that the conditions to the Onyx NTP Payment in respect of such Onyx Portfolio Project have been satisfied and such Onyx NTP Payment has become due and payable in accordance with the terms of the relevant Onyx Portfolio PSA.

“**Onyx**” means Onyx Development Group LLC, a Delaware limited liability company.

“**Onyx NTP Payment**” means, with respect to any Onyx Portfolio Project, payments for achieving milestones from (or on behalf of) Onyx to (or for the benefit of) SUNE Origination Holdings that are designated as an “NTP Payment” or “NTP Steel Payment” (as each is defined in the relevant Onyx Portfolio PSA) and that are payable pursuant to Section 2.2.2 of the relevant Onyx Portfolio PSA upon the “NTP Payment Date” (as defined in the relevant Onyx Portfolio PSA), or relate to the achievement of a similar milestone, in respect of such Project under the relevant Onyx Portfolio PSA. For avoidance of doubt, such payment amounts will include only the base price “NTP Payment”, “NTP Steel Payment” or payments for achieving similar milestones, in each case, payable in accordance with the foregoing sentence and will exclude any interconnection costs and/or deposit fees that are fully reimbursable to the relevant SUNE Party.

“**Onyx Portfolio Project**” means any Project subject to an Onyx Portfolio PSA.

“**Onyx Portfolio PSA**” means each of (i) that certain Purchase and Sale Agreement (West Development Portfolio), dated as of September 9, 2016, by and between SUNE

Origination Holdings and Onyx, and (ii) that certain Purchase and Sale Agreement (East Development Portfolio), dated as of November 18, 2016, by and between SUNE Origination Holdings and Onyx.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Portfolio Buyer**” means each of Onyx and SoCore.

“**Portfolio Buyer Agreement**” has the meaning set forth in Section 5.3(a).

“**Portfolio PSA**” means each of the Minnesota Portfolio PSA and the Onyx Portfolio PSAs.

“**Portfolio PSA Escrow Account**” means an account at the MSA Escrow Agent into which Portfolio PSA Payments are deposited in accordance with Section 5.3(a) and the Portfolio Buyer Agreements and maintained in accordance with the MSA Escrow Agreement.

“**Portfolio PSA Payment**” means each of the following: (i) with respect to each Minnesota Portfolio Project, each Minnesota Closing Date Payment in respect of such Project, and (ii) with respect to each Onyx Portfolio Project, each Onyx NTP Payment in respect of such Project.

“**Project**” means each photovoltaic solar facility listed on Schedule 1.

“**Project Company**” means each project company listed on Schedule 1 next to the Project under development by such project company.

“**Purchase Agreement**” has the meaning set forth in the Recitals.

“**Services**” means the services to be provided by Development Company under this Agreement, as more fully described and referred to in Article 3.

“**SoCore**” means SoCore MN Acquisition LLC, a Delaware limited liability company.

“**SUNE Approval**” means the written approval of the Chief Restructuring Officer of SunEdison.

“**SUNE LLC**” has the meaning set forth in the Preamble.

“**SUNE MN Development**” has the meaning set forth in the Preamble.

“**SUNE Origination Holdings**” has the meaning set forth in the Preamble.

“**SUNE Party**” has the meaning set forth in the Preamble.

“**SunEdison**” has the meaning set forth in the Preamble.

“**Term**” has the meaning set forth in Article 2.

“**Transferring Employees**” has the meaning set forth in the Recitals.

Section 1.2 Interpretation.

(a) When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of or to this Agreement, unless the context requires otherwise.

(b) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(d) Whenever the words “hereof,” “herein,” “hereunder” or “hereto” are used in this Agreement, they shall be deemed to refer to this entire Agreement and not any particular provision.

(e) References in this Agreement to (i) “\$” shall mean United States Dollars, and (ii) the singular shall include the plural, and the plural shall include the singular, unless the context requires otherwise.

(f) References in this Agreement to (i) any agreement, instrument or other document means such agreement, instrument or other document and any attachments, exhibits, annexes and schedules thereto, in each case, as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, or (ii) any statute includes all regulations promulgated under such statute, and any reference to a statute or regulation includes the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

(g) This Agreement shall be construed according to its fair meaning, taken as a whole, as if it had been prepared jointly by the Parties, and not as if it had been prepared by one Party.

**ARTICLE 2
TERM**

This Agreement shall become effective on the Closing Date and, unless terminated earlier in accordance with the provisions of Section 11.2, shall continue in full force and effect until the Services applicable to each Project have been terminated pursuant to Section 11.3 (the “**Term**”).

**ARTICLE 3
SERVICES**

Section 3.1 Applicable Projects. The Services to be provided by Development Company under this Agreement shall apply to the Projects listed on Schedule 1.

(a) Schedule 1 may be amended or modified (i) by any SUNE Party, with the prior written consent of Development Company (which consent shall not be unreasonably withheld, conditioned or delayed), to add to Schedule 1 any project listed on Schedule 2, provided that in all cases, any project listed on Schedule 1 must be subject to a Portfolio PSA, and (ii) by any Party to remove from Schedule 1 any Project if the Services applicable to such Project have been terminated pursuant to Section 11.3(a)(ii).

(b) Provided that the terms and conditions set forth in the fully-executed AES PSA are not materially different than the terms and conditions set forth in the draft AES PSA dated December 20, 2016, after the Closing, the Parties shall amend this Agreement (including Schedule 1) to make the necessary changes as determined by the Parties to include the AES Portfolio Projects in the transactions contemplated by this Agreement, including in respect of the Services and the compensation described in Article 5.

Section 3.2 Scope.

(a) With respect to each Project listed on Schedule 1, Development Company shall use good faith, commercially reasonable efforts, using the personnel referred to in Section 3.2(b), to satisfy the conditions set forth in the relevant Portfolio PSA to (i) in the case of a Minnesota Portfolio Project, any Minnesota Closing Date Payment payable in respect of such Project, and (ii) in the case of an Onyx Portfolio Project, any Onyx NTP Payment payable in respect of such Project, in each case in accordance with (x) prudent industry standards, and (y) the contemplated schedule for the achievement of any such payment payable in respect of such Project as set forth on Schedule 1.

(b) Development Company shall allocate such personnel from among the Transferring Employees as is reasonably necessary to provide the foregoing development work and support. It is expressly understood that the Services are anticipated to be provided by the Transferring Employees.

Section 3.3 Ownership of the Projects. Notwithstanding anything herein to the contrary, each of the Projects and Project Companies shall at all times be owned by either the relevant SUNE Party or the relevant Portfolio Buyer, as the case may be. In no event shall Development Company have any ownership interest, or bear any obligation or liability associated with any ownership interest, in any such Project at any time.

ARTICLE 4 OBLIGATIONS OF THE PARTIES

Section 4.1 Personnel.

(a) Development Company is responsible for all of its personnel (including, after the Closing, the Transferring Employees) in connection with this Agreement and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(b) The SUNE Parties shall (or shall cause their respective Affiliates to) timely pay all amounts owing from any of the SUNE Parties (or their respective Affiliates) to any of the Transferring Employees as compensation, incentive payments or other consideration, including any such compensation, incentive payments or other consideration relating to any Portfolio PSA Payments becoming due and payable. For certainty, neither Development Company nor any of its Affiliates shall bear any liability or responsibility in respect of such payment obligations. None of the entry into this Agreement, the performance of the Services or the compensation described in Article 5 shall be deemed to be an assumption by Development Company of any liability or responsibility in respect of such payment obligations. Further, any such payment obligations of any of the SUNE Parties (or their respective Affiliates) are separate and distinct from the compensation described in Article 5.

Section 4.2 Compliance with Applicable Laws. Development Company shall perform the Services in compliance with all applicable Laws.

ARTICLE 5 COMPENSATION

Section 5.1 Compensation. As compensation for the Services performed hereunder, Development Company shall be entitled to the payments described in Section 5.2 in accordance with the terms of such provisions.

Section 5.2 Portfolio PSA Commissions. Development Company shall be entitled to, and the SUNE Parties shall be obliged to pay, a fee based on Portfolio PSA Payments received from (or on behalf of) Portfolio Buyers in accordance with this Section 5.2. Upon receipt of a Minnesota Closing Date Payment in respect of a Minnesota Portfolio Project, the commission payable to Development Company by the SUNE Parties shall be a percentage of such Minnesota Closing Date Payment. Upon receipt of an Onyx NTP Payment in respect of an Onyx Portfolio Project, the commission payable to Development Company by the SUNE Parties shall be a percentage of such Onyx NTP Payment. The amount of the commission payable to Development Company pursuant to the foregoing shall be determined in accordance with Schedule 3.

Section 5.3 Portfolio PSA Escrow Account.

(a) In order to secure payment of the compensation described in Section 5.2, Development Company and each SUNE Party shall enter into an agreement (each, a “**Portfolio Buyer Agreement**”) with each Portfolio Buyer, which agreement shall be in form and substance satisfactory to each of such parties, pursuant to which each Portfolio Buyer shall agree to deposit to the Portfolio PSA Escrow Account at the MSA Escrow Agent cash in an amount equal to each Portfolio PSA Payment as and when such Portfolio PSA Payment becomes due and payable in accordance with the terms of the relevant Portfolio PSA. Amounts deposited into the Portfolio PSA Escrow Account shall be held and distributed by the MSA Escrow Agent in accordance with the MSA Escrow Agreement.

(b) The MSA Escrow Agreement shall provide that, upon deposit into the Portfolio PSA Escrow Account of any Portfolio PSA Payment (i) cash in an amount equal to the payment to which Development Company is entitled, determined in accordance with Section 5.2 and Schedule 3, shall be released from the Portfolio PSA Escrow Account to Development Company, and (ii) the remainder of such Portfolio PSA Payment shall be released from the Portfolio PSA Escrow Account to the relevant SUNE Party.

(c) The MSA Escrow Agreement shall provide that, upon written notice from Development Company, the MSA Escrow Agent shall release to Development Company, from any funds available in the Portfolio PSA Escrow Account, cash in an amount equal to any Approved Development Costs due and payable in accordance with the provisions of Section 5.5.

(d) The MSA Escrow Agreement shall terminate as to the Portfolio PSA Escrow Account upon the termination of this Agreement.

Section 5.4 Performance Escrow Account and Releases.

(a) Pursuant to Section 3.1(b)(iii) of the Purchase Agreement, at the Closing, Mitsui shall deposit five million United States Dollars 00/100 (\$5,000,000.00) in cash into the Performance Escrow Account at the MSA Escrow Agent. The funds in the Performance Escrow Account shall be held and distributed by the MSA Escrow Agent in accordance with the MSA Escrow Agreement, which shall provide for the release of funds from the Performance Escrow Account in accordance with the terms of this Section 5.4. The funds in the Performance Escrow Account shall be used to facilitate payment to Mitsui of the compensation described in Section 5.4(b) and otherwise shall be released in accordance with Section 5.4(c).

(b) For the first five million United States Dollars 00/100 (\$5,000,000.00) in Portfolio PSA Payments, Mitsui shall be entitled to a payment in cash in an amount equal to each such Portfolio PSA Payment. In order to facilitate payment of such amounts to Mitsui, the MSA Escrow Agreement shall provide that, solely upon deposit into the Portfolio PSA Escrow Account of any Portfolio PSA Payment, cash in an amount equal to such Portfolio PSA Payment shall be released to Mitsui from the Performance Escrow Account, until such time as there are no longer any funds remaining in the Performance Escrow Account. For certainty, the payments described in this Section 5.4(b) are in addition to, and not in lieu of, the compensation described in Section 5.2.

(c) The MSA Escrow Agreement shall terminate as to the Performance Escrow Account upon the earlier of (i) such time as there are no longer any funds remaining in the Performance Escrow Account, or (ii) the termination of this Agreement. If the MSA Escrow Agreement is terminated as to the Performance Escrow Account pursuant to the foregoing clause (ii) and there are funds remaining in the Performance Escrow Account, such remaining funds shall be released to Mitsui, unless, prior to the date of termination, the SUNE Parties have delivered written notice to Development Company, Mitsui and the MSA Escrow Agent alleging that Development Company has

breached its obligation to use good faith and commercially reasonable efforts to perform the Services set forth in Section 3.2(a), in which case such remaining funds shall remain in the Performance Escrow Account pending resolution of such claim. Such remaining funds shall be released to the SUNE Parties only pursuant to a Final Decision finding that the SUNE Parties have demonstrated that Development Company has breached its obligation to use good faith and commercially reasonable efforts to perform the Services set forth in Section 3.2(a).

Section 5.5 Development Costs.

(a) The SUNE Parties shall be responsible for the timely payment of applicable Development Costs during the Term of this Agreement. Development Company shall obtain and promptly submit to the SUNE Parties any third party invoices, statements or other payment requests (and related back-up documents) for the payment of amounts that constitute Development Costs at least ten (10) Business Days prior to the applicable payment date. If Development Company fails to timely deliver any such invoice, statement or payment request, such failure shall not relieve the SUNE Parties of their obligation to pay the relevant Development Costs, provided that the failure by the SUNE Parties to pay such Development Costs by the applicable payment date shall not be a breach if it resulted from Development Company's failure to timely such invoice, statement or payment request. Upon obtaining SUNE Approval, the SUNE Parties shall remit to such applicable third parties payment in respect of such invoices, statements and payment requests.

(b) In the event that, due to time constraints or other reasons, it is reasonably necessary for Development Company to directly pay any amounts that constitute Development Costs, Development Company may request SUNE Approval to pay such amounts (such amounts, only after receiving SUNE Approval, "**Approved Development Costs**"). Upon the payment by Development Company of Approved Development Costs, Development Company shall submit to the SUNE Parties within ten (10) Business Days after payment, a written reimbursement request, together with reasonable documentary evidence for the same. The SUNE Parties shall reimburse Development Company in cash for Approved Development Costs set forth in a reimbursement request within ten (10) Business Days after receipt by the SUNE Parties of such reimbursement request.

Section 5.6 Taxes.

(a) All amounts paid by the SUNE Parties under this Agreement shall be made without deduction or withholding for, or on account of, any Taxes, unless such withholding or deduction is required by applicable Law ("**Deducted Taxes**"). If by operation of Law or otherwise, Deducted Taxes (other than in respect of income Taxes) are required to be deducted or withheld from any amount payable under this Agreement, the Party making such payment shall pay such additional amount as is necessary to ensure that the net amount received by Development Company, after deduction of any such Deducted Taxes imposed with respect to such payment, equals the amount that Development Company would have received if such Deducted Taxes had not been deducted or withheld from such payment. To the extent any SUNE Party pays to an

applicable Governmental Entity any Taxes that gives rise to a gross-up as contemplated by this Section 5.6(a), that Party shall provide Development Company reasonable documentation of the payment of such Taxes within ten (10) days of such payment.

(b) Development Company shall use commercially reasonable efforts to seek a refund of any Taxes contemplated in Section 5.6(a) and required to be paid by any SUNE Party. If Development Company (i) receives a refund of any such Taxes, and (ii) has received an additional payment or amount from any SUNE Party pursuant to Section 5.6(a) in respect of such Taxes, Development Company shall promptly remit to such SUNE Party an amount equal to such refund (up to an amount equal to any such Taxes actually paid by such SUNE Party), net of any reasonable expenses associated with the obtaining of such refund.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that, as of the date hereof:

(a) it is a company duly organized and validly existing under the law of its jurisdiction of organization, and has all requisite company power, capacity and authority to own its assets and to conduct its business as currently conducted and to perform its obligations under this Agreement;

(b) all requisite company action to authorize the execution, delivery and performance by such Party of this Agreement has been taken;

(c) the execution, delivery and performance by such Party of this Agreement do not and will not (i) conflict with any provision of its constitutive or organizational documents, or (ii) contravene or violate any Law applicable to such Party;

(d) this Agreement has been duly and validly executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally; and

(e) there is no pending or, to the knowledge of such Party, threatened Action in writing affecting such Party before any court, Governmental Entity or arbitrator that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement or affect the legality, validity, and enforceability of this Agreement.

Section 6.2 Disclaimer of Additional Warranties. Except as set forth in this Article 6, neither Party makes, and each Party hereby disclaims, any other warranty whatsoever, whether express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

**ARTICLE 7
CONFIDENTIALITY**

Section 7.1 Confidentiality. The provisions set forth in Section 6.6(b) of the Purchase Agreement shall apply *mutatis mutandis* as if Development Company and Mitsui were “Buyer” under such Section 6.6(b) and SUNE Parties were “Seller” thereunder.

**ARTICLE 8
FORCE MAJEURE**

Section 8.1 Force Majeure. Subject to Section 8.2, “**Force Majeure**” means any event or circumstance that (x) is beyond the reasonable control of the Party claiming Force Majeure, (y) could not have been avoided by such Party if it had acted with reasonable foresight and in a reasonable and prudent manner, and (z) renders such Party unable to perform its obligations under this Agreement (except in relation to obligations to make payments due under this Agreement), whether in whole or in part. Without limiting the generality of the foregoing, “Force Majeure” shall include each of the following events and circumstances:

(a) fire, explosion, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, tidal wave, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other natural disaster;

(b) acts of war (whether declared or undeclared), terrorism or threat thereof, riot, civil war, blockade, insurrection, sabotage, act of public enemies, civil disturbance, strike, lockout or other industrial disturbance; and

(c) acts of Governmental Entities or any Law, or taking or confiscation (whether or not action under law) of any facilities which directly affect a Party’s ability to perform its obligations under this Agreement.

Section 8.2 Exclusions. Notwithstanding Section 8.1, Force Majeure shall not include any financial hardship or any inability or failure to pay any money when due or any event arising out of the foregoing.

Section 8.3 No Claim for Breach. Except with respect to obligations to make payments due under this Agreement, no failure by a Party to perform any of its other obligations under this Agreement shall give rise to any claim against such Party or be deemed a breach by such Party of this Agreement to the extent that such failure arises from an event of Force Majeure.

Section 8.4 Notice. In the event that a Party is rendered unable to perform its obligations hereunder, whether in whole or in part, by a Force Majeure event, such Party shall, as soon as reasonably practicable, notify the other Party in writing stating the nature of such Force Majeure event, the date on which it commenced and its expected duration (including the extent of any suspended performance).

Section 8.5 Resumption. The Party affected by Force Majeure shall use commercially reasonable efforts to resume performance of its obligations that are affected by the event of Force Majeure as soon as practicable and will continue performing all of its obligations that are not affected by the event of Force Majeure.

ARTICLE 9 DEFAULTS, REMEDIES AND LIMITATIONS OF LIABILITY

Section 9.1 Events of Default. The occurrence of any of the following events or circumstances shall constitute an event of default under this Agreement (each, an “**Event of Default**”):

(a) Any failure to timely pay and deliver any payment due under this Agreement and such failure is not cured within fifteen (15) days of receipt of notice from any non-defaulting Party notifying the defaulting Party of such failure;

(b) Any material breach by a Party of its representations and warranties contained in this Agreement; and

(c) Any other material breach by a Party of its other covenants and obligations set forth herein and such breach is not cured within thirty (30) days of receipt of notice from any non-defaulting Party notifying the defaulting Party of such breach (or such longer period of time as such non-defaulting Party may permit in writing if cure has been commenced and additional time is reasonably required).

Section 9.2 Remedies. If an Event of Default occurs and is continuing, in addition to remedies expressly provided for in this Agreement, any non-defaulting Party shall be entitled to pursue any or all other remedies available to it at law or in equity, including claims for damages, specific performance and/or injunctive relief.

Section 9.3 No Consequential Damages. Notwithstanding anything herein to the contrary, in no event shall any Party be liable to any other Party for any lost profits or incidental, indirect, speculative, consequential, special, punitive or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with this Agreement, even if advised of such potential damages.

Section 9.4 Disclaimer of Liability. In no event shall Development Company or any of its Affiliates bear, and they hereby disclaim, any liability or responsibility for any obligation owed to (a) any Portfolio Buyer or any other third party arising from or relating to any Portfolio PSA, or (b) any Project counterparty or any other third party arising from or relating to any Project, including as to any contracts or arrangements in respect of such Project. Neither the entry into this Agreement nor the provision of the Services shall constitute or be deemed to constitute an assumption by Development Company of any liability or responsibility for any such obligations.

ARTICLE 10
INDEMNITY; LIMITATION ON LIABILITY

Section 10.1 Indemnification by SUNE Parties. The SUNE Parties shall jointly and severally indemnify, defend and hold harmless Development Company, its Affiliates and its and their respective Representatives from and against any and all Losses suffered or incurred by any of the foregoing Persons resulting or arising from any liability or obligation:

(a) to any Portfolio Buyer or any other third party arising from or relating to any SUNE Party's liabilities or obligations under any Portfolio PSA; and

(b) to any Project counterparty or any other third party arising from or relating to any Project, including as to any contracts or arrangements in respect of such Project; and

(c) to any third party arising from or relating to the performance of this Agreement,

in each case of (a), (b) and (c), except to the extent that such liability or obligation results or arises from any fraudulent or grossly negligent act or omission or the willful misconduct of Development Company, its Affiliates or its and their respective Representatives in the performance of this Agreement.

Section 10.2 Indemnification by Development Company. Development Company shall indemnify, defend and hold harmless any SUNE Party, its Affiliates and its and their respective Representatives from and against any and all Losses suffered or incurred by any of the foregoing Persons resulting or arising from any liability or obligation to any third party for any fraudulent or grossly negligent act or omission or the willful misconduct of Development Company, its Affiliates or its and their respective Representatives in the performance of this agreement.

Section 10.3 Procedures. An Indemnifying Party's obligation to indemnify any Indemnified Party with respect to any third party Action shall be conditioned upon the Indemnified Party: (a) providing the Indemnifying Party with prompt written notice of such Action (provided that the failure to timely notify shall not relieve an Indemnifying Party of its indemnification obligation except to the extent it is prejudiced by such failure); (b) providing the Indemnifying Party with the option to assume and control the defense of such Action and all related settlement negotiations, with counsel chosen by the Indemnifying Party; and (c) cooperating at the Indemnifying Party's request and expense with the defense or settlement of such Action which cooperation shall include providing reasonable assistance and information to that extent that such cooperation does not materially limit or prejudice the Indemnified Party's rights or interests. Notwithstanding the foregoing sentence, the Indemnified Party may take control of any defense of an Action if the Indemnifying Party does not promptly take reasonably adequate steps to prepare a defense against such Action (in the Indemnified Party's reasonable discretion), and the Indemnifying Party will then cooperate with such defense as the Indemnified Party reasonably requests. Nothing herein shall restrict the right of a Indemnified Party or an Indemnifying Party to participate in an Action through its own counsel and at its own expense.

ARTICLE 11
TERMINATION AND SURVIVAL

Section 11.1 Expiration of the Term. This Agreement shall automatically terminate upon the expiration of the Term.

Section 11.2 Early Termination.

(a) This Agreement may be terminated at the option of the Parties upon their mutual written agreement.

(b) If an Event of Default in respect of any SUNE Party occurs and is continuing (other than a failure by the SUNE Parties to pay or reimburse Development Costs in respect of a Project in accordance with the provisions of Section 5.5), Development Company may terminate this Agreement upon written notice to each of the SUNE Parties.

(c) If an Event of Default in respect of Development Company occurs and is continuing, the SUNE Parties may terminate this Agreement upon written notice to Development Company.

Section 11.3 Termination of the Services as to Specific Projects.

(a) The Services applicable to any Project shall automatically terminate upon the occurrence of any of the following:

- (i) NTP Status has been achieved in respect of such Project; or
- (ii) Such Project has been cancelled or removed from the transactions contemplated by the Portfolio PSA applicable to such Project in accordance with the terms of such Portfolio PSA; provided that such cancellation or removal shall not constitute an Event of Default and the SUNE Parties shall have no liability in respect of such cancellation or removal.

(b) The Services applicable to any Project may be terminated, at the option of Development Company, upon written notice to the relevant SUNE Party, if the SUNE Parties fail to timely pay or reimburse any Development Costs in respect of such Project in accordance with the provisions of Section 5.5 (including any such failure due to lack of SUNE Approval), subject to the cure period set forth in Section 9.1(a).

(c) The Services applicable to any Project may be terminated, at the option of the relevant SUNE Party or Development Company, upon written notice to the other Party, if NTP Status in respect of such Project has not been achieved by applicable “Long Stop Date” for such Project, as set forth on Schedule 1.

Section 11.4 Survival. The rights and obligations of the Parties set forth Article 7 (Confidentiality), Article 9 (Defaults and Remedies), Article 10 (Indemnity), Article 12

(*Miscellaneous*), this Section 11.4 and any other provision which by its nature should survive termination of this Agreement (including any provision required to give effect to any rights or obligations that survive termination of this Agreement), and any obligation or liability incurred prior to termination of this Agreement, shall survive any termination of this Agreement and continue in full force and effect.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Expenses. Except as expressly provided otherwise in this Agreement, each Party shall pay all of its own costs and expenses (including attorneys', accountants' and investment bankers' fees and other out-of-pocket expenses) in connection with the negotiation and execution of, and the performance of its obligations under, this Agreement.

Section 12.2 Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion.

Section 12.3 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to each Party shall be sent to the addresses indicated below:

Notices to any SUNE Party:

c/o SunEdison Inc.
13736 Riverport Drive, Suite 180
Maryland Heights, Missouri 63043
Attn: General Counsel
Facsimile: (866) 773-0791
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Attn: Paul Kraske
Facsimile: (202) 661-9034
Email: paul.kraske@skadden.com

Notices to Development Company:

[[*Insert Name of Development Company*]
c/o Mitsui & Co., Ltd.
Infrastructure Projects Development Division
1-3, Marunouchi 1-chome, Chiyoda-ku
Tokyo 100-8631, Japan
Attn: Hiromu Kayamori
Facsimile: +81 3 3285 9795
Email: H.Kayamori@mitsui.com]

Notices to Mitsui:

MyPower Corp.
c/o Mitsui & Co., Ltd.
Infrastructure Projects Development Division
1-3, Marunouchi 1-chome, Chiyoda-ku
Tokyo 100-8631, Japan
Attn: Hiromu Kayamori
Facsimile: +81 3 3285 9795
Email: H.Kayamori@mitsui.com

Section 12.4 Assignment. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of each other Party.

Section 12.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

Section 12.6 Entire Agreement. This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with

respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

Section 12.7 Applicable Law; Jurisdiction.

(a) This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the Laws of the State of New York and the applicable provisions of Chapter 11 of Title 11 of the United States Code, without regard to any conflict of laws rules thereof that would require the application of the Laws of any other jurisdiction.

(b) Each Party agrees that the United States Bankruptcy Court for the Southern District of New York, which shall have exclusive jurisdiction over any and all disputes between the Parties, whether in law or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby and the Parties consent to and agree to submit to the exclusive jurisdiction of such court.

(c) Each of the Parties hereby waives and agrees not to assert in any recognition or enforcement proceeding, to the fullest extent permitted by applicable Law, any defense that (i) such Party is not personally subject to the jurisdiction of such court, (ii) such Party and such Party's property is immune from any legal process issued by such court or (iii) any action or proceeding commenced in such court is brought in an inconvenient forum.

Section 12.8 Waiver of Jury Trial. Each of the Parties hereby irrevocably waives, and shall cause its subsidiaries and Affiliates to waive, all right to a trial by jury in any Action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 12.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

Section 12.10 Relationship of the Parties. The relationship of the Parties is that of independent contractors. Nothing herein shall be construed to create, expressly or by implication, a joint venture, partnership, commercial partnership, agency relationship, fiduciary relationship, or other partnership relationship between any SUNE Party and Development Company.

Section 12.11 Counterparts. This Agreement may be executed in one or more counterparts (including by means of telecopied signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers as of the date first written above.

SUNE MN DEVELOPMENT, LLC

By: _____
Name:
Title:

SUNE ORIGINATION HOLDINGS, LLC

By: _____
Name:
Title:

SUNEDISON LLC

By: _____
Name:
Title:

SUNEDISON, INC.

By: _____
Name:
Title:

**[INSERT NAME OF DEVELOPMENT
COMPANY]**

By: _____

Name:

Title:

MYPOWER CORP.

By: _____

Name:

Title:

SCHEDULE 1

LIST OF PROJECTS AND PROJECT COMPANIES

Minnesota Portfolio Projects

Project	Long Stop Date
MN-13-0032	4/15/2017
MN-14-0028	4/15/2017
MN-14-0030	4/15/2017
MN-14-0031	4/15/2017
MN-14-0038	4/15/2017
MN-14-0046	1/30/2017
MN-14-0092	4/15/2017
MN-14-0137	1/30/2017
MN-14-0178	4/15/2017
MN-15-0021	4/15/2017
MN-15-0215	4/15/2017
MN-15-0304	4/15/2017
MN-15-0306	4/15/2017
MN-15-0309	4/15/2017
MN-15-0310	4/15/2017
MN-15-0312	4/15/2017
MN-15-0313	4/15/2017

Onyx West Portfolio Projects

Project	Long Stop Date
AZ-15-0062	2/10/2017
AZ-15-0063	2/10/2017
AZ-15-0068	2/10/2017
CA-11-0344	1/6/2017
CA-14-0298	2/10/2017
CA-14-0299	2/10/2017

CA-14-0569	1/31/2017
CA-14-0570	1/31/2017
CA-14-0577	1/6/2017
CA-14-0956	1/27/2017
CA-14-0976	1/20/2017
CA-14-0977	1/27/2017
CA-14-0978	1/27/2017
CA-14-0979	1/27/2017
CA-14-0980	1/27/2017
CA-14-0981	2/10/2017
CA-14-0982	2/17/2017
CA-14-0983	2/3/2017
CA-14-0984	2/3/2017
CA-14-0985	2/24/2017
CA-14-0986	2/17/2017
CA-14-0987	2/17/2017
CA-14-0988	1/27/2017
CA-14-0989	2/10/2017
CA-14-0990	2/3/2017
CA-14-0991	2/24/2017
CA-14-0992	2/24/2017
CA-14-0993	2/10/2017
CA-14-0994	2/17/2017
CA-14-0995	2/24/2017
CA-14-0996	1/27/2017
CA-14-0997	2/17/2017
CA-14-0998	2/10/2017
CA-14-0999	2/10/2017
CA-15-0352	12/30/2016
CA-15-0701	1/18/2017
CA-15-0702	1/6/2017

CA-15-0706	4/13/2017
CA-15-0708	4/13/2017
CA-15-0710	4/13/2017
CA-15-0711	4/13/2017
CA-15-0712	1/28/2017
CA-15-0713	1/28/2017
CA-15-0716	1/28/2017
CA-15-0790	1/27/2017
CA-15-0831	4/13/2017
CA-15-0833	4/13/2017
CA-15-0834	4/13/2017
CA-15-0835	4/13/2017
CA-15-0837	4/13/2017
CA-15-0838	2/3/2017
CA-15-0839	2/3/2017
CA-15-0915	1/6/2017
CA-15-0940	4/13/2017
CA-15-0943	4/13/2017
CA-15-0944	4/13/2017
CA-15-0945	4/13/2017
CA-15-0946	4/13/2017
CA-15-0947	4/13/2017
CA-15-0948	4/13/2017
CA-15-0993	1/31/2017
CA-15-1043	1/13/2017
CA-15-1044	1/27/2017
CA-15-1076	4/13/2017
CA-15-1088	1/27/2017
CA-15-1089	1/27/2017
CA-15-1090	1/27/2017
CA-15-1091	1/27/2017

CA-15-1093	1/27/2017
CA-15-1097	1/27/2017
CA-15-1099	1/27/2017
CA-15-1100	1/27/2017
CA-15-1109	4/13/2017
CA-15-1161	2/24/2017
CA-15-1191	1/31/2017
CA-16-0026	1/6/2017
CA-16-0027	1/6/2017
CA-16-0031	1/6/2017
CA-16-0188	2/10/2017
VT-15-0002	1/3/2017
VT-15-0019	1/3/2017
VT-15-0020	1/3/2017
VT-15-0021	4/14/2017

Onyx East Portfolio Projects

Project	Long Stop Date
CA-14-0635	3/10/2017
CA-15-0922	3/10/2017
CA-15-0923	3/10/2017
MA-13-0073	1/13/2017
MA-14-0274	1/27/2017
NJ-11-0060	2/17/2017
NJ-15-0145	3/3/2017
NJ-15-0161	3/3/2017
NJ-15-0162	3/3/2017
NJ-15-0163	2/17/2017
NY-13-0003	1/3/2017

SCHEDULE 2

LIST OF POSSIBLE ADDITIONAL PROJECTS

Project
CA-15-0659
CA-15-0660

SCHEDULE 3

COMPENSATION

Upon the deposit into the Portfolio PSA Escrow Account of any Portfolio PSA Payment, the relevant SUNE Party shall be obliged to pay to Development Company a commission in an amount equal to:

- (a) 12.5% of such Portfolio PSA Payment where the aggregate amount of Portfolio PSA Payments deposited into the Portfolio PSA Escrow Account is between \$0 and \$10 million;
- (b) 15% of such Portfolio PSA Payment where the aggregate amount of Portfolio PSA Payments deposited into the Portfolio PSA Escrow Account is greater than \$10 million but less than or equal to \$20 million; and
- (c) 23% of such Portfolio PSA Payment where the aggregate amount of Portfolio PSA Payments deposited into the Portfolio PSA Escrow Account is greater than \$20 million.

EXHIBIT C-1

Form of License Agreement (SAM)

EXHIBIT C-1

SAM SOFTWARE LICENSE AGREEMENT

by and among

SUNEDISON, INC.,

and

[DEVCO, LLC]

Dated as of [_____], 2017

This License Agreement (this "Agreement"), is made and entered into as of [_____] , 2017 (the "Effective Date") by and among SunEdison, Inc. ("SunEdison"), and [DevCo, LLC], a [Delaware] limited liability company and wholly-owned subsidiary of Buyer (as defined below) (including its successors and assigns, "DevCo"). SunEdison and DevCo are sometimes individually referred to in this Agreement as a "Party" and together as the "Parties."

RECITALS

WHEREAS, SunEdison, Sun Edison LLC, a wholly-owned subsidiary of SunEdison ("Seller"), and MyPower Corp. ("Buyer") have entered into that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the "PSA"), in connection with the sale of the membership interests of Forefront Power, LLC by Seller to Buyer related to the Business (as defined in the PSA);

WHEREAS, the PSA also provides for the execution and delivery of this Agreement;

WHEREAS, SunEdison owns certain software that DevCo requires in order to operate the Purchased Assets;

WHEREAS, DevCo wishes to obtain from SunEdison a license for such software under the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PSA. As used herein, the following terms shall have the following meanings:

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Approvals or Notifications" shall mean any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person.

"Confidential Information" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the business, products, services and/or research and/or development of either Business and/or its respective suppliers, distributors, customers, independent contractors and/or other

business relations. Confidential Information includes, but is not limited to, the following: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) other Intellectual Property. Confidential Information does not include information that (a) is publicly available other than through a breach of this Agreement, or (b) is received by a Party from a third party who is not under a restriction or duty of confidentiality with respect to such information. Specific information shall not be deemed subject to any of the foregoing exceptions merely because it is embraced by more general information subject to one or more of such exceptions, nor shall specific combinations of information be deemed subject to any of the foregoing exceptions merely because the individual items which make up the combination are embraced by one or more of such exceptions. All source code comprising or encompassed in the Licensed Software shall be deemed to be Confidential Information of DevCo.

“DevCo Group” means DevCo and its Affiliates.

“Effective Date” shall have the meaning set forth in the preamble.

“Intellectual Property” means any and all intellectual property and proprietary rights of any kind anywhere in the world and any rights therein including issued patents and pending patent applications, works of authorship, copyrights and registrations and applications therefor, trade secrets, software, inventions (whether or not patentable or reduced to practice), technologies, methods, processes, know-how, improvements, specifications, technical and business information and data, and all trademarks, service marks, logos, trade dress and other indicia of origin.

“License” means the license granted to DevCo pursuant to Section 2.1 hereof.

“Licensed Software” means the software set forth in Exhibit A hereto as it exists on the Effective Date, including object code and source code for such software.

“Licensee” means DevCo or a member of the DevCo Group, as applicable.

“Licensor” means SunEdison or a member of the SunEdison Group, as applicable.

“Person” shall mean an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

“SunEdison Group” means SunEdison and its Affiliates.

1.2 Interpretation. In this Agreement:

1.2.1 words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other genders as the context requires;

1.2.2 the terms “hereof,” “herein,” “herewith” and words of similar import, and the term “Agreement” shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Exhibits hereto) and not to any particular provision of this Agreement;

1.2.3 Article, Section and Exhibit references are to the Articles, Sections and Exhibits to this Agreement unless otherwise specified;

1.2.4 the word “including” and words of similar import when used in this Agreement mean “including, without limitation”;

1.2.5 the word “or” shall not be exclusive; and

1.2.6 unless expressly stated to the contrary in this Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby” and “hereupon” and words of similar import shall all be references to the Effective Date, regardless of any amendment or restatement hereof.

2. LICENSE GRANT

2.1 Grant of License. Subject to the terms and conditions of this Agreement and the PSA, SunEdison hereby grants to DevCo a non-exclusive, non-transferrable (except as otherwise set forth in Section 5.8), non-sublicensable, fully paid-up license to use and modify the Licensed Software solely in connection with the Business.

2.2 No Implied Rights. As between the Parties, all right, title and interest in and to all Licensed Software shall be owned by SunEdison **except as set forth in Section 3.1**, and DevCo shall not acquire, and nothing contained herein shall be construed as conferring, by implication, estoppel or otherwise, any license or other right, title or interest in or to such Licensed Software or any other Intellectual Property owned by SunEdison or of any of its Affiliates hereunder or in connection herewith, except for the License granted to DevCo pursuant to Section 2.1.

3. MAINTENANCE AND ENFORCEMENT

3.1 Maintenance of Licensed Software. Each Party shall have the right, but not the obligation, at its own cost and expense, to maintain the Licensed Software and shall have the right to develop improvements or other modifications thereto without any obligation to disclose any such modifications to the other Party. Each Party may exercise such right itself and/or through its designee. SunEdison acknowledges that DevCo shall own all right, title and interest in and to all improvements or other modifications to the Licensed Software developed by DevCo or its designee pursuant to this Section 3.1, and SunEdison shall not acquire, and nothing contained herein shall be construed as conferring, by implication, estoppel or otherwise, any

license or other right, title or interest in or to such improvements or other modifications developed by DevCo or its designee to the Licensed Software pursuant to this Section 3.1.

3.2 Enforcement of Licensed Software.

3.2.1 DevCo shall have the sole and exclusive right, but not the obligation, itself and/or through its designee, at its own cost and expense, to control the initiation, conduct and settlement or other resolution, solely at its cost and expense and in its sole discretion, of any enforcement claim, demand, action, suit or proceeding, whether civil or criminal or in law or in equity, relating to the improvements or other modifications developed by DevCo pursuant to its rights under Section 3.1.

3.2.2 Subject to DevCo's rights set forth in Section 3.2.1, SunEdison shall have the sole and exclusive right, but not the obligation, itself and/or through its designee, at its own cost and expense, to control the initiation, conduct and settlement or other resolution, solely at its cost and expense and in its sole discretion, of any enforcement claim, demand, action, suit or proceeding, whether civil or criminal or in law or in equity, relating to the Licensed Software. DevCo shall cooperate with SunEdison in any such enforcement as reasonably requested by SunEdison, provided that SunEdison shall pay DevCo for DevCo's cost and expense in providing such cooperation.

4. **TERM AND TERMINATION**

4.1 Term and Termination. This Agreement shall become effective on the Effective Date and shall continue thereafter until expiration of the last copyright for the last item of Licensed Software, unless earlier terminated in accordance with this Section 3.1 (the "Term").

4.2 Termination for Breach. In the event of a material breach of this Agreement, the non-breaching Party shall be entitled to terminate this Agreement by giving the breaching Party, thirty (30) days written notice specifying in reasonable detail the cause of such breach. If such breach is not cured by the breaching Party within such thirty (30) day notice period, this Agreement will terminate without further action required by the non-breaching Party.

4.3 Termination by DevCo. DevCo shall have a right on thirty (30) days written notice to SunEdison to terminate this Agreement for any reason or no reason.

4.4 Effects of Termination. Following termination of this Agreement for any reason, DevCo shall immediately cease any and all use of the Licensed Software and remove all copies of the Licensed Software from its systems.

5. **MISCELLANEOUS**

5.1 Counterparts; Entire Agreement.

5.1.1 This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

5.1.2 This Agreement may be executed in one or more counterparts (including by means of telecopied or e-mailed signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party.

5.2 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

5.3 No Fiduciary Duties. It is expressly understood and agreed that this Agreement is a purely commercial transaction between SunEdison and DevCo and that nothing stated herein shall operate to create any special or fiduciary duty that either Party or any of its Affiliates shall owe to the other Party or vice versa.

5.4 Disclaimer of Warranty; Limitation of Liability.

5.4.1 DevCo agrees, warrants, and represents that (a) DevCo is licensing the Licensed Software on an "AS IS" and "WITH ALL FAULTS" basis based solely on DevCo's own investigation of the Licensed Software, and (b) none of SunEdison or any of its Affiliates has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Licensed Software or any part of the Licensed Software, except as set forth in this Agreement. DevCo further acknowledges that the Fee specified herein has been agreed upon by DevCo and SunEdison after good-faith arms-length negotiation and to license to DevCo the Licensed Software "AS IS" and "WITH ALL FAULTS". EXCEPT AS SET FORTH IN THIS AGREEMENT, SUNEDISON MAKES NO EXPRESS WARRANTY AND HEREBY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

5.4.2 NEITHER SUNEDISON OR ANY MEMBER OF THE SUNEDISONGROUP, ON THE ONE HAND, NOR DEVCO OR ANY MEMBER OF THE DEVCO GROUP, ON THE OTHER HAND, SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER ARISING IN CONNECTION WITH THE EXERCISE OF ANY RIGHT OR LICENSE GRANTED UNDER THIS AGREEMENT.

5.5 Further Assurances. In connection with this Agreement, each Party agrees to execute and deliver such additional documents and instruments as may be required for a Party to exercise the rights and license granted hereunder and to perform such other additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms and provisions of this Agreement. SunEdison covenants and agrees to cause the other members of the SunEdison Group to comply with all applicable terms and conditions set forth in this Agreement and acknowledges it shall be liable for any breach of the terms of this Agreement caused by any member of the SunEdison Group. DevCo covenants and agrees to cause the other members of the DevCo Group to comply with all applicable terms and conditions set forth in this

Agreement and acknowledges it shall be liable for any breach of the terms of this Agreement caused by any member of the DevCo Group.

5.6 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to SunEdison, on the one hand, and DevCo, on the other hand, shall be sent to the addresses indicated below:

Notices to SunEdison:

SunEdison, Inc.
13736 Riverport Drive
Maryland Heights, MO 63043
Attention: Martin Truong, General Counsel
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., NW
Washington, DC 20005
Attention: Paul Kraske and J. Eric Ivester
Email: paul.kraske@skadden.com and eric.ivester@skadden.com

Notices to DevCo:

[DevCo, LLC]
[Address]

Any Party may, by notice to the other Party, change the address and contact person to which any such notices are to be given.

5.7 Applicable Law; Jurisdiction; Waiver of Jury Trial.

5.7.1 THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF.

5.7.2 EACH PARTY AGREES THAT THE BANKRUPTCY COURT, WHICH SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS

CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

5.7.3 EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, (II) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURT OR (III) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURT IS BROUGHT IN AN INCONVENIENT FORUM.

5.7.4 EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.8 Assignability. Neither Party may assign or otherwise transfer this Agreement or assign or otherwise transfer (by owner) any Licensed Software without prior written notice to the other Party, provided that SunEdison may assign or otherwise transfer this Agreement in conjunction with the sale or other transfer of the Licensed Software. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns, including any assignee of Licensed Software. Any assignment or other transfer not in accordance with this Section 5.8 shall be null and void.

5.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

5.10 Amendments. This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion.

5.11 Waiver of Default. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any

subsequent or other default, nor shall it prejudice the rights of such Party. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

5.12 Licensee's Retained Rights. The licensed rights granted herein shall be deemed licenses of "intellectual property" for purposes of the United States Code, Title 11, Section 365(n). In the event of a Licensor's bankruptcy and a subsequent rejection or disclaimer of this Agreement by a bankruptcy trustee or by such Licensor as a debtor-in-possession, whether under the law of the United States or elsewhere, or in the event of a similar action under applicable law, the Licensee may elect to retain its licensed rights, subject to and in accordance with the provisions of the United States Code, Title 11, Section 365(n) or other applicable law.

5.13 Specific Performance. Each of the Parties recognizes that if the other Party breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the non-breaching party for its injuries. SunEdison and DevCo shall therefore be entitled, in addition to any other remedies that may be available under applicable law, to obtain specific performance of the terms of this Agreement. The Parties further agree that neither Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.13, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. If any action is brought by SunEdison or DevCo to enforce this Agreement, the non-breaching party shall waive the defense that there is adequate remedy at Law.

5.14 No Strict Construction. Notwithstanding the fact that this Agreement has been drafted and prepared by one of the Parties, DevCo and SunEdison confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

5.15 Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit attached hereto and not otherwise defined therein shall have the meaning set forth in this Agreement. The use of the word "including" herein shall mean "including without limitation." Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

[Signatures of Parties on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement with effect
as of the Effective Date.

SUNEDISON, INC.

By: _____

Name: _____

Title: _____

[DEVCO, LLC]

By: _____

Name: _____

Title: _____

EXHIBIT A

LICENSED SOFTWARE

LICENSED SOFTWARE	
Tool Name	Asset Type
SunEdison Automation Module	In-house, Proprietary Platform

EXHIBIT C-2

Form of License Agreement (SUNDAT)

EXHIBIT C-2

SUNDAT SOFTWARE LICENSE AGREEMENT

by and among

SUNEDISON, INC.,

and

[DEVCO, LLC]

Dated as of [_____], 2017

This License Agreement (this "Agreement"), is made and entered into as of [____], 2017 (the "Effective Date") by and among SunEdison, Inc. ("SunEdison"), and [DevCo, LLC], a [Delaware] limited liability company and wholly-owned subsidiary of Buyer (as defined below) (including its successors and assigns, "DevCo"). SunEdison and DevCo are sometimes individually referred to in this Agreement as a "Party" and together as the "Parties."

RECITALS

WHEREAS, SunEdison, Sun Edison LLC, a wholly-owned subsidiary of SunEdison ("Seller"), and MyPower Corp. ("Buyer") have entered into that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the "PSA"), in connection with the sale of the membership interests of Forefront Power, LLC by Seller to Buyer related to the Business (as defined in the PSA);

WHEREAS, the PSA also provides for the execution and delivery of this Agreement;

WHEREAS, SunEdison owns certain software that DevCo requires in order to operate the Purchased Assets;

WHEREAS, DevCo wishes to obtain from SunEdison a license for such software under the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PSA. As used herein, the following terms shall have the following meanings:

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Approvals or Notifications" shall mean any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person.

"Confidential Information" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the business, products, services and/or research and/or development of either Business and/or its respective suppliers, distributors, customers, independent contractors and/or other

business relations. Confidential Information includes, but is not limited to, the following: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) other Intellectual Property. Confidential Information does not include information that (a) is publicly available other than through a breach of this Agreement, or (b) is received by a Party from a third party who is not under a restriction or duty of confidentiality with respect to such information. Specific information shall not be deemed subject to any of the foregoing exceptions merely because it is embraced by more general information subject to one or more of such exceptions, nor shall specific combinations of information be deemed subject to any of the foregoing exceptions merely because the individual items which make up the combination are embraced by one or more of such exceptions. All source code comprising or encompassed in the Licensed Software shall be deemed to be Confidential Information of DevCo.

“DevCo Group” means DevCo and its Affiliates.

“Effective Date” shall have the meaning set forth in the preamble.

“FTE Rate” means, with respect to an applicable employee, the aggregate annual cost to SunEdison or its designee, as applicable, of all compensation and benefits and a reasonable allocation for overhead for office space and support staff, divided by [1600].

“Intellectual Property” means any and all intellectual property and proprietary rights of any kind anywhere in the world and any rights therein including issued patents and pending patent applications, works of authorship, copyrights and registrations and applications therefor, trade secrets, software, inventions (whether or not patentable or reduced to practice), technologies, methods, processes, know-how, improvements, specifications, technical and business information and data, and all trademarks, service marks, logos, trade dress and other indicia of origin.

“License” means the license granted to DevCo pursuant to Section 2.1 hereof.

“Licensed Software” means the software set forth in Exhibit A hereto as it exists on the Effective Date, including object code and source code for such software.

“Licensee” means DevCo or a member of the DevCo Group, as applicable.

“Licensor” means SunEdison or a member of the SunEdison Group, as applicable.

“Person” shall mean an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

“SunEdison Group” means SunEdison and its Affiliates.

1.2 Interpretation. In this Agreement:

1.2.1 words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other genders as the context requires;

1.2.2 the terms “hereof,” “herein,” “herewith” and words of similar import, and the term “Agreement” shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Exhibits hereto) and not to any particular provision of this Agreement;

1.2.3 Article, Section and Exhibit references are to the Articles, Sections and Exhibits to this Agreement unless otherwise specified;

1.2.4 the word “including” and words of similar import when used in this Agreement mean “including, without limitation”;

1.2.5 the word “or” shall not be exclusive; and

1.2.6 unless expressly stated to the contrary in this Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby” and “hereupon” and words of similar import shall all be references to the Effective Date, regardless of any amendment or restatement hereof.

2. LICENSE GRANT

2.1 Grant of License. Subject to the terms and conditions of this Agreement and the PSA, SunEdison hereby grants to DevCo a non-exclusive, non-transferrable (except as otherwise set forth in Section 5.8), non-sublicensable royalty-bearing license to use the Licensed Software solely in connection with the Business.

2.2 License Payments: The License shall be royalty-free for a period of twelve (12) months from the Effective Date, after which DevCo shall pay SunEdison a licensing fee (“Fee”) of one hundred and thirty United States dollars (US \$130) per user, per month for the Term of this Agreement. The Fee shall be payable on a monthly basis to SunEdison or its successors or assigns as applicable and shall be paid, [by check to the address set forth for SunEdison in Section 5.6 or to such other address as SunEdison may notify DevCo of from time to time], not later than ten (10) days following the end of the month for which payments are due, such payment to be made without deduction or offset of any kind.

2.3 No Implied Rights. As between the Parties, all right, title and interest in and to all Licensed Software shall be owned by SunEdison, and DevCo shall not acquire, and nothing contained herein shall be construed as conferring, by implication, estoppel or otherwise, any

license or other right, title or interest in or to such Licensed Software or any other Intellectual Property owned by SunEdison or of any of its Affiliates hereunder or in connection herewith, except for the License granted to DevCo pursuant to Section 2.1.

3. MAINTENANCE AND ENFORCEMENT

3.1 Maintenance of Licensed Software. SunEdison hereby retains the sole and exclusive right (a) to maintain the Licensed Software, and (b) to develop any improvements or other modifications thereto. SunEdison may exercise such right itself and/or through its designee, but in all cases, solely at SunEdison's cost and expense unless otherwise set forth in this Section. DevCo may, from time to time, request that SunEdison modify the Licensed Software, and SunEdison or its designee shall use commercially reasonable efforts to make and deliver to DevCo each such modification reasonably requested by DevCo, provided that upon delivery to DevCo of each such modification and Acceptance thereof, DevCo shall pay SunEdison on an hourly basis at the FTE Rate for all work performed by SunEdison and its designee in making such modification, and such modification shall be deemed to be part of the Licensed Software. DEVCO ACKNOWLEDGES THAT NEITHER SUNEDISON NOR ITS DESIGNEE IS IN THE BUSINESS OF SOFTWARE DEVELOPMENT, AND ANY SUCH REQUESTED MODIFICATIONS WILL BE MADE AS AN ACCOMODATION TO DEVCO WITH THE MODIFIED SOFTWARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. "Acceptance" means that, with respect to a modification pursuant to this Section, within [30] days after delivery of such modification to DevCo, DevCo fails to provide written notice to SunEdison specifying the manner in which such modification operates in any material respect other than as requested by DevCo. If Acceptance does not occur with respect to a modification as of the end of the [30]-day period commencing upon delivery of such modification to DevCo, then DevCo shall immediately cease any and all use of such modification and remove all copies of such modification from its systems.

3.2 Enforcement of Licensed Software. SunEdison shall have the sole and exclusive right, but not the obligation, itself and/or through its designee, at its own cost and expense, to control the initiation, conduct and settlement or other resolution, solely at its cost and expense and in its sole discretion, of any enforcement claim, demand, action, suit or proceeding, whether civil or criminal or in law or in equity, relating to the Licensed Software. DevCo shall cooperate with SunEdison in any such enforcement as reasonably requested by SunEdison, provided that SunEdison shall pay DevCo for DevCo's cost and expense in providing such cooperation.

4. TERM AND TERMINATION

4.1 Term and Termination. This Agreement shall become effective on the Effective Date and shall continue thereafter until expiration of the last copyright for the last item of Licensed Software, unless earlier terminated in accordance with this Section 3.1 (the "Term").

4.2 Termination for Breach. In the event of a material breach of this Agreement, the non-breaching Party shall be entitled to terminate this Agreement by giving the breaching Party, thirty (30) days written notice specifying in reasonable detail the cause of such breach. If such

breach is not cured by the breaching Party within such thirty (30) day notice period, this Agreement will terminate without further action required by the non-breaching Party.

4.3 Termination by DevCo. DevCo shall have a right on thirty (30) days written notice to SunEdison to terminate this Agreement for any reason or no reason.

4.4 Effects of Termination. Following termination of this Agreement for any reason, DevCo shall immediately cease any and all use of the Licensed Software and remove all copies of the Licensed Software from its systems.

5. MISCELLANEOUS

5.1 Counterparts; Entire Agreement.

5.1.1 This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

5.1.2 This Agreement may be executed in one or more counterparts (including by means of telecopied or e-mailed signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party.

5.2 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

5.3 No Fiduciary Duties. It is expressly understood and agreed that this Agreement is a purely commercial transaction between SunEdison and DevCo and that nothing stated herein shall operate to create any special or fiduciary duty that either Party or any of its Affiliates shall owe to the other Party or vice versa.

5.4 Disclaimer of Warranty; Limitation of Liability.

5.4.1 DevCo agrees, warrants, and represents that (a) DevCo is licensing the Licensed Software on an "AS IS" and "WITH ALL FAULTS" basis based solely on DevCo's own investigation of the Licensed Software, and (b) none of SunEdison or any of its Affiliates has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Licensed Software or any part of the Licensed Software, except as set forth in this Agreement. DevCo further acknowledges that the Fee specified herein has been agreed upon by DevCo and SunEdison after good-faith arms-length negotiation and to license to DevCo the Licensed Software "AS IS" and "WITH ALL FAULTS". EXCEPT AS SET FORTH IN THIS AGREEMENT, SUNEDISON MAKES NO EXPRESS WARRANTY AND HEREBY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

5.4.2 NEITHER SUNEDISON OR ANY MEMBER OF THE SUNEDISONGROUP, ON THE ONE HAND, NOR DEVCO OR ANY MEMBER OF THE DEVCO GROUP, ON THE OTHER HAND, SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER ARISING IN CONNECTION WITH THE EXERCISE OF ANY RIGHT OR LICENSE GRANTED UNDER THIS AGREEMENT.

5.5 Further Assurances. In connection with this Agreement, each Party agrees to execute and deliver such additional documents and instruments as may be required for a Party to exercise the rights and license granted hereunder and to perform such other additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms and provisions of this Agreement. SunEdison covenants and agrees to cause the other members of the SunEdison Group to comply with all applicable terms and conditions set forth in this Agreement and acknowledges it shall be liable for any breach of the terms of this Agreement caused by any member of the SunEdison Group. DevCo covenants and agrees to cause the other members of the DevCo Group to comply with all applicable terms and conditions set forth in this Agreement and acknowledges it shall be liable for any breach of the terms of this Agreement caused by any member of the DevCo Group.

5.6 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to SunEdison, on the one hand, and DevCo, on the other hand, shall be sent to the addresses indicated below:

Notices to SunEdison:

SunEdison, Inc.
13736 Riverport Drive
Maryland Heights, MO 63043
Attention: Martin Truong, General Counsel
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., NW
Washington, DC 20005
Attention: Paul Kraske and J. Eric Ivester
Email: paul.kraske@skadden.com and eric.ivester@skadden.com

Notices to DevCo:

[DevCo, LLC]
[Address]

Any Party may, by notice to the other Party, change the address and contact person to which any such notices are to be given.

5.7 Applicable Law; Jurisdiction; Waiver of Jury Trial.

5.7.1 THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF.

5.7.2 EACH PARTY AGREES THAT THE BANKRUPTCY COURT, WHICH SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

5.7.3 EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, (II) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURT OR (III) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURT IS BROUGHT IN AN INCONVENIENT FORUM.

5.7.4 EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.8 Assignability. Neither Party may assign or otherwise transfer this Agreement or assign or otherwise transfer (by owner) any Licensed Software without prior written notice to the other Party, provided that SunEdison may assign or otherwise transfer this Agreement in conjunction with the sale or other transfer of the Licensed Software. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns, including any assignee of Licensed Software. Any assignment or other transfer not in accordance with this Section 5.8 shall be null and void.

5.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be

held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

5.10 Amendments. This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion.

5.11 Waiver of Default. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of such Party. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

5.12 Licensee's Retained Rights. The licensed rights granted herein shall be deemed licenses of "intellectual property" for purposes of the United States Code, Title 11, Section 365(n). In the event of a Licensor's bankruptcy and a subsequent rejection or disclaimer of this Agreement by a bankruptcy trustee or by such Licensor as a debtor-in-possession, whether under the law of the United States or elsewhere, or in the event of a similar action under applicable law, the Licensee may elect to retain its licensed rights, subject to and in accordance with the provisions of the United States Code, Title 11, Section 365(n) or other applicable law.

5.13 Specific Performance. Each of the Parties recognizes that if the other Party breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the non-breaching party for its injuries. SunEdison and DevCo shall therefore be entitled, in addition to any other remedies that may be available under applicable law, to obtain specific performance of the terms of this Agreement. The Parties further agree that neither Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.13, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. If any action is brought by SunEdison or DevCo to enforce this Agreement, the non-breaching party shall waive the defense that there is adequate remedy at Law.

5.14 No Strict Construction. Notwithstanding the fact that this Agreement has been drafted and prepared by one of the Parties, DevCo and SunEdison confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement

and understanding of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

5.15 Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit attached hereto and not otherwise defined therein shall have the meaning set forth in this Agreement. The use of the word “including” herein shall mean “including without limitation.” Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

[Signatures of Parties on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement with effect
as of the Effective Date.

SUNEDISON, INC.

By: _____

Name: _____

Title: _____

[DEVCO, LLC]

By: _____

Name: _____

Title: _____

EXHIBIT A

LICENSED SOFTWARE

LICENSED SOFTWARE	
Tool Name	Asset Type
SunDAT	In-house, Proprietary Platform

EXHIBIT C-3

Form of License Agreement (PAVE)

EXHIBIT C-3

PAVE SOFTWARE LICENSE AGREEMENT

by and among

SUNEDISON, INC.,

and

[DEVCO, LLC]

Dated as of [_____], 2017

This License Agreement (this "Agreement"), is made and entered into as of [_____] , 2017 (the "Effective Date") by and among SunEdison, Inc. ("SunEdison"), and [DevCo, LLC], a [Delaware] limited liability company and wholly-owned subsidiary of Buyer (as defined below) (including its successors and assigns, "DevCo"). SunEdison and DevCo are sometimes individually referred to in this Agreement as a "Party" and together as the "Parties."

RECITALS

WHEREAS, SunEdison, Sun Edison LLC, a wholly-owned subsidiary of SunEdison ("Seller"), and MyPower Corp. ("Buyer") have entered into that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the "PSA"), in connection with the sale of the membership interests of Forefront Power, LLC by Seller to Buyer related to the Business (as defined in the PSA);

WHEREAS, the PSA also provides for the execution and delivery of this Agreement;

WHEREAS, SunEdison owns certain software that DevCo requires in order to operate the Purchased Assets;

WHEREAS, DevCo wishes to obtain from SunEdison a license for such software under the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PSA. As used herein, the following terms shall have the following meanings:

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Approvals or Notifications" shall mean any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person.

"Confidential Information" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the business, products, services and/or research and/or development of either Business and/or its respective suppliers, distributors, customers, independent contractors and/or other

business relations. Confidential Information includes, but is not limited to, the following: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) other Intellectual Property. Confidential Information does not include information that (a) is publicly available other than through a breach of this Agreement, or (b) is received by a Party from a third party who is not under a restriction or duty of confidentiality with respect to such information. Specific information shall not be deemed subject to any of the foregoing exceptions merely because it is embraced by more general information subject to one or more of such exceptions, nor shall specific combinations of information be deemed subject to any of the foregoing exceptions merely because the individual items which make up the combination are embraced by one or more of such exceptions. All source code comprising or encompassed in the Licensed Software shall be deemed to be Confidential Information of DevCo.

“DevCo Group” means DevCo and its Affiliates.

“Effective Date” shall have the meaning set forth in the preamble.

“Intellectual Property” means any and all intellectual property and proprietary rights of any kind anywhere in the world and any rights therein including issued patents and pending patent applications, works of authorship, copyrights and registrations and applications therefor, trade secrets, software, inventions (whether or not patentable or reduced to practice), technologies, methods, processes, know-how, improvements, specifications, technical and business information and data, and all trademarks, service marks, logos, trade dress and other indicia of origin.

“License” means the license granted to DevCo pursuant to Section 2.1 hereof.

“Licensed Software” means the software set forth in Exhibit A hereto as it exists on the Effective Date, including object code and source code for such software.

“Licensee” means DevCo or a member of the DevCo Group, as applicable.

“Licensor” means SunEdison or a member of the SunEdison Group, as applicable.

“Person” shall mean an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

“SunEdison Group” means SunEdison and its Affiliates.

1.2 Interpretation. In this Agreement:

1.2.1 words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other genders as the context requires;

1.2.2 the terms “hereof,” “herein,” “herewith” and words of similar import, and the term “Agreement” shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Exhibits hereto) and not to any particular provision of this Agreement;

1.2.3 Article, Section and Exhibit references are to the Articles, Sections and Exhibits to this Agreement unless otherwise specified;

1.2.4 the word “including” and words of similar import when used in this Agreement mean “including, without limitation”;

1.2.5 the word “or” shall not be exclusive; and

1.2.6 unless expressly stated to the contrary in this Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby” and “hereupon” and words of similar import shall all be references to the Effective Date, regardless of any amendment or restatement hereof.

2. LICENSE GRANT

2.1 Grant of License. Subject to the terms and conditions of this Agreement and the PSA, SunEdison hereby grants to DevCo a non-exclusive, non-transferrable (except as otherwise set forth in Section 5.8), non-sublicensable, fully paid-up license to use and modify the Licensed Software solely in connection with the Business.

2.2 No Implied Rights. As between the Parties, all right, title and interest in and to all Licensed Software shall be owned by SunEdison except as set forth in Section 3.1, and DevCo shall not acquire, and nothing contained herein shall be construed as conferring, by implication, estoppel or otherwise, any license or other right, title or interest in or to such Licensed Software or any other Intellectual Property owned by SunEdison or of any of its Affiliates hereunder or in connection herewith, except for the License granted to DevCo pursuant to Section 2.1.

3. MAINTENANCE AND ENFORCEMENT

3.1 Maintenance of Licensed Software. Each Party shall have the right, but not the obligation, at its own cost and expense, to maintain the Licensed Software and shall have the right to develop improvements or other modifications thereto without any obligation to disclose any such modifications to the other Party. Each Party may exercise such right itself and/or through its designee. SunEdison acknowledges that DevCo shall own all right, title and interest in and to all improvements or other modifications to the Licensed Software developed by DevCo or its designee pursuant to this Section 3.1, and SunEdison shall not acquire, and nothing contained herein shall be construed as conferring, by implication, estoppel or otherwise, any

license or other right, title or interest in or to such improvements or other modifications developed by DevCo or its designee to the Licensed Software pursuant to this Section 3.1.

3.2 Enforcement of Licensed Software.

3.2.1 DevCo shall have the sole and exclusive right, but not the obligation, itself and/or through its designee, at its own cost and expense, to control the initiation, conduct and settlement or other resolution, solely at its cost and expense and in its sole discretion, of any enforcement claim, demand, action, suit or proceeding, whether civil or criminal or in law or in equity, relating to the improvements or other modifications developed by DevCo pursuant to its rights under Section 3.1.

3.2.2 Subject to DevCo's rights set forth in Section 3.2.1, SunEdison shall have the sole and exclusive right, but not the obligation, itself and/or through its designee, at its own cost and expense, to control the initiation, conduct and settlement or other resolution, solely at its cost and expense and in its sole discretion, of any enforcement claim, demand, action, suit or proceeding, whether civil or criminal or in law or in equity, relating to the Licensed Software. DevCo shall cooperate with SunEdison in any such enforcement as reasonably requested by SunEdison, provided that SunEdison shall pay DevCo for DevCo's cost and expense in providing such cooperation.

4. **TERM AND TERMINATION**

4.1 Term and Termination. This Agreement shall become effective on the Effective Date and shall continue thereafter until expiration of the last copyright for the last item of Licensed Software, unless earlier terminated in accordance with this Section 3.1 (the "Term").

4.2 Termination for Breach. In the event of a material breach of this Agreement, the non-breaching Party shall be entitled to terminate this Agreement by giving the breaching Party, thirty (30) days written notice specifying in reasonable detail the cause of such breach. If such breach is not cured by the breaching Party within such thirty (30) day notice period, this Agreement will terminate without further action required by the non-breaching Party.

4.3 Termination by DevCo. DevCo shall have a right on thirty (30) days written notice to SunEdison to terminate this Agreement for any reason or no reason.

4.4 Effects of Termination. Following termination of this Agreement for any reason, DevCo shall immediately cease any and all use of the Licensed Software and remove all copies of the Licensed Software from its systems.

5. **MISCELLANEOUS**

5.1 Counterparts; Entire Agreement.

5.1.1 This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

5.1.2 This Agreement may be executed in one or more counterparts (including by means of telecopied or e-mailed signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party.

5.2 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

5.3 No Fiduciary Duties. It is expressly understood and agreed that this Agreement is a purely commercial transaction between SunEdison and DevCo and that nothing stated herein shall operate to create any special or fiduciary duty that either Party or any of its Affiliates shall owe to the other Party or vice versa.

5.4 Disclaimer of Warranty; Limitation of Liability.

5.4.1 DevCo agrees, warrants, and represents that (a) DevCo is licensing the Licensed Software on an "AS IS" and "WITH ALL FAULTS" basis based solely on DevCo's own investigation of the Licensed Software, and (b) none of SunEdison or any of its Affiliates has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Licensed Software or any part of the Licensed Software, except as set forth in this Agreement. DevCo further acknowledges that the Fee specified herein has been agreed upon by DevCo and SunEdison after good-faith arms-length negotiation and to license to DevCo the Licensed Software "AS IS" and "WITH ALL FAULTS". EXCEPT AS SET FORTH IN THIS AGREEMENT, SUNEDISON MAKES NO EXPRESS WARRANTY AND HEREBY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

5.4.2 NEITHER SUNEDISON OR ANY MEMBER OF THE SUNEDISONGROUP, ON THE ONE HAND, NOR DEVCO OR ANY MEMBER OF THE DEVCO GROUP, ON THE OTHER HAND, SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER ARISING IN CONNECTION WITH THE EXERCISE OF ANY RIGHT OR LICENSE GRANTED UNDER THIS AGREEMENT.

5.5 Further Assurances. In connection with this Agreement, each Party agrees to execute and deliver such additional documents and instruments as may be required for a Party to exercise the rights and license granted hereunder and to perform such other additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms and provisions of this Agreement. SunEdison covenants and agrees to cause the other members of the SunEdison Group to comply with all applicable terms and conditions set forth in this Agreement and acknowledges it shall be liable for any breach of the terms of this Agreement caused by any member of the SunEdison Group. DevCo covenants and agrees to cause the other members of the DevCo Group to comply with all applicable terms and conditions set forth in this

Agreement and acknowledges it shall be liable for any breach of the terms of this Agreement caused by any member of the DevCo Group.

5.6 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to SunEdison, on the one hand, and DevCo, on the other hand, shall be sent to the addresses indicated below:

Notices to SunEdison:

SunEdison, Inc.
13736 Riverport Drive
Maryland Heights, MO 63043
Attention: Martin Truong, General Counsel
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., NW
Washington, DC 20005
Attention: Paul Kraske and J. Eric Ivester
Email: paul.kraske@skadden.com and eric.ivester@skadden.com

Notices to DevCo:

[DevCo, LLC]
[Address]

Any Party may, by notice to the other Party, change the address and contact person to which any such notices are to be given.

5.7 Applicable Law; Jurisdiction; Waiver of Jury Trial.

5.7.1 THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF.

5.7.2 EACH PARTY AGREES THAT THE BANKRUPTCY COURT, WHICH SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS

CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

5.7.3 EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, (II) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURT OR (III) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURT IS BROUGHT IN AN INCONVENIENT FORUM.

5.7.4 EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.8 Assignability. Neither Party may assign or otherwise transfer this Agreement or assign or otherwise transfer (by owner) any Licensed Software without prior written notice to the other Party, provided that SunEdison may assign or otherwise transfer this Agreement in conjunction with the sale or other transfer of the Licensed Software. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns, including any assignee of Licensed Software. Any assignment or other transfer not in accordance with this Section 5.8 shall be null and void.

5.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

5.10 Amendments. This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion.

5.11 Waiver of Default. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any

subsequent or other default, nor shall it prejudice the rights of such Party. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

5.12 Licensee's Retained Rights. The licensed rights granted herein shall be deemed licenses of "intellectual property" for purposes of the United States Code, Title 11, Section 365(n). In the event of a Licensor's bankruptcy and a subsequent rejection or disclaimer of this Agreement by a bankruptcy trustee or by such Licensor as a debtor-in-possession, whether under the law of the United States or elsewhere, or in the event of a similar action under applicable law, the Licensee may elect to retain its licensed rights, subject to and in accordance with the provisions of the United States Code, Title 11, Section 365(n) or other applicable law.

5.13 Specific Performance. Each of the Parties recognizes that if the other Party breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the non-breaching party for its injuries. SunEdison and DevCo shall therefore be entitled, in addition to any other remedies that may be available under applicable law, to obtain specific performance of the terms of this Agreement. The Parties further agree that neither Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.13, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. If any action is brought by SunEdison or DevCo to enforce this Agreement, the non-breaching party shall waive the defense that there is adequate remedy at Law.

5.14 No Strict Construction. Notwithstanding the fact that this Agreement has been drafted and prepared by one of the Parties, DevCo and SunEdison confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Person.

5.15 Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit attached hereto and not otherwise defined therein shall have the meaning set forth in this Agreement. The use of the word "including" herein shall mean "including without limitation." Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

[Signatures of Parties on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement with effect
as of the Effective Date.

SUNEDISON, INC.

By: _____

Name: _____

Title: _____

[DEVCO, LLC]

By: _____

Name: _____

Title: _____

EXHIBIT A

LICENSED SOFTWARE

LICENSED SOFTWARE	
Tool Name	Asset Type
Photovoltaic Application for Valuation & Estimating	In-house, Proprietary Platform

EXHIBIT D

Form of Sale Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
SUNEDISON, INC., et al.,	:	Case No. 16-10992 (SMB)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	:	

**ORDER AUTHORIZING THE PRIVATE SALE OF THE COMMERCIAL &
INDUSTRIAL BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS, AND GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Sale Motion”)² dated January [__], 2017 of the above-captioned debtors and debtors-in-possession (the “Debtors”) for, among other things, entry of an order (the “Order”) (i) authorizing (a) SunEdison LLC (“SELLC”) to sell or transfer its equity interests in Forefront Power, LLC and the Books and Records of SELLC and (b) SunEdison, Inc. (“SunEdison”, and together with SELCC, the “Sellers”) to sell or transfer its right, title and interest to the Assigned Intellectual Property and the Books and Records of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enfle Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); SunE Minnesota Holdings, LLC (8926); and TerraForm Private Holdings, LLC (5993). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the Purchase Agreement (as defined herein), as applicable.

SunEdison, in each case free and clear of all liens, hypothecations, encumbrances, claims,³ liabilities, security interests, interests, mortgages, pledges, restrictions or charges (including any conditional sale or other title retention agreement) as of the Closing Date (collectively, the “Encumbrances”), in accordance with that certain Purchase and Sale Agreement, dated as of January 5, 2017, by and between the Sellers,⁴ on the one hand, and MyPower Corp. (“Buyer”) and/or its designees, on the other hand (together with all related agreements, documents or instruments and all exhibits, schedules and supplements to any of the foregoing, the “Purchase Agreement”, and the transactions described therein, the “Sale Transaction”), pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and (ii) granting certain related relief; and the Court having held a hearing on January [___], 2017 (the “Sale Hearing”) to approve the proposed Sale Transaction as set forth in the Purchase Agreement; and the Court having reviewed and considered (a) the Sale Motion, (b) the declarations filed by the Debtors in support of the Sale Motion, (c) the objections to the Sale Motion, if any, (d) all responses to any objections and replies in further support of the Sale Motion, if any, and (e) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors, and other parties in interest; and upon the record of the Sale Hearing and the Chapter 11 Cases; and after

³ For purposes of this Order, the term “claim” shall have the meaning ascribed to such term in Bankruptcy Code section 101(5).

⁴ For the avoidance of doubt, the findings and fact and conclusions of law set forth herein shall only apply to the anticipated sales, licenses, or other dispositions of Debtor assets by Sellers.

due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:⁵

A. **Jurisdiction and Venue.** The court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Sale Motion are sections 105 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002 and 6004.

C. **Petition Date.** On April 21, 2016 (the "Petition Date"), the Sellers each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code.

D. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court finds that there is no just reason for delay in the implementation of this Order and directs entry of this Order as set forth herein.

E. **Notice.** As evidenced by the affidavits of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale Hearing, the Purchase Agreement and the Sale Transaction has been provided in accordance with sections 102(1) and 363 and Bankruptcy Rules 2002, 6004 and 9006, and this Court's case management procedures, (ii) such notice was good, sufficient, and appropriate under the particular circumstances, and (iii)

⁵ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

no other or further notice of the Sale Motion, the Sale Hearing, the Purchase Agreement, or the the Sale Transaction is or shall be required.

F. **Corporate Authority.** Each of the Sellers (subject only to entry of this Order) (i) has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement, and (iii) has taken all corporate action and formalities necessary to authorize and approve the Purchase Agreement and the consummation by the Sellers of the transactions contemplated thereby, including, without limitation, as required by their respective organizational documents. No government, regulatory, or other consents or approvals are required for the Sellers to enter into the Purchase Agreement and consummate the Sale Transaction.

G. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including (i) the Debtors, 13736 Riverport Dr., Maryland Heights, MO 63043, Attn: Martin Truong and Sujay Parikh; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: Jay M. Goffman and J. Eric Ivester, jay.goffman@skadden.com and eric.ivester@skadden.com, 155 N. Wacker Drive Chicago, IL 60606, Attn: James J. Mazza, Jr., james.mazza@skadden.com, and 300 S. Grand Ave., Suite 3400, Los Angeles, CA 90071, Attn: Annie Li, annie.li@skadden.com; (iii) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul Schwartzberg, paul.schwartzberg@usdoj.gov; (iv) counsel to the administrative agent under the Debtors' prepetition first lien credit agreement, Latham &

Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Richard Levy and Brad Kotler, richard.levy@lw.com and brad.kotler@lw.com; (v) counsel to the Tranche B Lenders (as defined in the DIP Credit Agreement (defined below)) and the steering committee of the second lien creditors (the “Steering Committee”), Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Arik Preis and Naomi Moss, apreis@akingump.com and nmoss@akingump.com; (vi) counsel to the administrative agent under the Debtors’ prepetition second lien credit agreement, Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, NY 10036-4039, Attn: Daniel S. Brown, daniel.brown@pillsburylaw.com; (vii) counsel to the collateral trustee under the Debtors’ prepetition second lien credit agreement, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919, Attn: Marie C. Pollio, mpollio@goodwin.com; (viii) counsel to the indenture trustee under each of the Debtors’ outstanding bond issuances, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919, Attn: Marie C. Pollio, mpollio@goodwin.com; (ix) counsel to the DIP Agent and DIP Arrangers (as defined in the Final DIP Order (as defined below)), White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036-2787, Attn: Scott Greissman and Elizabeth Feld, sgreissman@whitecase.com and efeld@whitecase.com; (x) counsel to the Committee, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew Barr and Joseph Smolinsky, suneweilbfr@weil.com; (xi) counsel to TerraForm Power, Inc. and TerraForm Global, Inc., Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, Attn: Michael H. Torkin and Andrew G. Dietderich, torkinm@sullcrom.com and dietdericha@sullcrom.com; (xii) counsel for the Buyer, Sidley Austin, LLP, 1501 K Street NW, Washington, D.C. 20005, Attn: David E. Kronenberg, dkronenberg@sidley.com; (xiii) all entities known to have expressed an interest in a

transaction with respect to all or part of the Purchased Assets; (xiv) all entities known to have asserted any Encumbrance in or upon any of the Purchased Assets; and (xiii) all entities filing notices of appearance or requests for notice under Bankruptcy Rule 2002 in these Chapter 11 Cases.

H. **Sale in Best Interest.** Approval of the Sale Motion, the Purchase Agreement, and the transactions contemplated thereby, including, without limitation, the Sale Transaction, is in the best interests of the Sellers, their estates and creditors, and all other parties in interest in these Chapter 11 Cases. The consideration provided by the Buyer under the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair consideration and reasonably equivalent value to the Sellers. The Sale Transaction represents the best opportunity to maximize and realize the value of the Purchased Assets for the Sellers.

I. **Business Justification.** Sound business reasons exist for the Sale Transaction. Entry into the Purchase Agreement, and the consummation of the transactions contemplated thereby, including the Sale Transaction, constitutes each Seller's exercise of sound business judgment and such acts are in the best interests of each Seller, its estate, and all parties in interest. The terms and conditions of the Purchase Agreement, including, without limitation, the consideration to be realized by the Sellers, are fair and reasonable. The Court finds that each Seller has articulated good and sufficient business reasons justifying the Sale Transaction. Such business reasons include, but are not limited to, the following: (i) the Debtors have extensively marketed the Purchased Assets and the Purchase Agreement constitutes the highest and best offer for the Purchased Assets; (ii) the Purchase Agreement and the closing thereon will present the best opportunity to maximize the value of the Purchased Assets and avoid decline and devaluation of the Purchased Assets; (iii) unless the Sale Transaction and all of the other

transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for in the Sale Motion and pursuant to the Purchase Agreement, recoveries to creditors may be diminished; and (iv) any other transaction involving the Purchased Assets would create a substantial risk of delay and a significant reduction in value for the Debtors' estates.

J. **Good Faith Purchaser.** The Buyer is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under Bankruptcy Code section 363(m) and any other applicable or similar bankruptcy and non-bankruptcy law. Specifically, (i) the Buyer recognized that the Debtors were free to deal with any other party interested in purchasing the Purchased Assets; (ii) all payments to be made by the Buyer to the Sellers in connection with the Sale Transaction have been disclosed; (iii) no common identity of directors or officers exists among the Buyer and the Debtors, and neither the Buyer nor any of its affiliates, present or contemplated members, officers, directors or shareholders (or any of their respective successors or assigns) is an "insider" of the Debtors as such term is defined in section 101(31) of the Bankruptcy Code; (iv) the negotiation and execution of the Purchase Agreement was at arm's-length and in good faith, and at all times each of the Buyer and the Debtors were represented by competent counsel of their choosing; (v) the Buyer did not in any way induce or cause the chapter 11 filing of the Debtors; and (vi) the Buyer has not acted in a collusive manner with any person. Neither the Sellers nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement or the Sale Transaction to be avoided or result in the imposition of any costs or damages under Bankruptcy Code section 363(n).

K. **Free and Clear.** The Sellers may sell and assign the Purchased Assets free and clear of all Encumbrances because counsel to the DIP Agent and DIP Arrangers and counsel to the Tranche B Lenders under the DIP Credit Agreement received notice of the Sale Transaction,

and the DIP Lenders have consented to the Sale Transaction on the terms set forth in the Purchase Agreement and this Order, and with respect to each other creditor asserting an Encumbrance, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. The transfer of the Purchased Assets to the Buyer will be free and clear of all Encumbrances and will not subject the Buyer or any of the Buyer's assets to any liability for any Encumbrances whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff, or successor or transferee liability. All parties known to have asserted an Encumbrance on the Purchased Assets have received notice of the Sale Transaction. Those holders of Encumbrances who did not object or who withdrew their objections to the Sale Transaction are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Further, upon the Closing, any Encumbrances will attach to the proceeds of the Sale Transaction with the same validity, priority, force and effect, and subject to the same defenses as existed immediately prior to the Closing.

L. **Vesting of Title.** The Purchased Assets constitute property of the Sellers' estates within the meaning of section 541(a) of the Bankruptcy Code. The transfer of the Purchased Assets to the Buyer will vest the Buyer with good and marketable title to the Purchased Assets, free and clear of all Encumbrances.

M. **Buyer's Reliance.** The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated hereby, including, without limitation, the Sale Transaction, (i) if the transfer of the Purchased Assets were not free and clear of all Encumbrances of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, or (ii) if the Buyer would, or in the future could, be liable for any such Encumbrances and other interests, including, without

limitation, rights or claims based on any taxes or successor or transferee liability. The Buyer will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, unless the Court expressly orders that none of the Buyer, its affiliates, its present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Encumbrances and other interests, including, without limitation, rights or claims based on any taxes, successor, or transferee liability.

N. **Prompt Consummation.** The sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Sellers and the Buyer intend to close the Sale Transaction as soon as reasonably practicable.

O. **No Fraudulent Transfer.** The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. The Buyer is not a mere continuation, and is not holding itself out as mere a continuation, of any of the Debtors or their respective estates, and there is no continuity between the Buyer and the Debtors. The Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of the Buyer and any of the Debtors.

P. **Consideration.** The consideration provided by the Buyer for the Purchased Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv)

constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, or the Uniform Voidable Transaction Act as in effect in any jurisdiction of the United States).

Q. No Successor Liability. The Buyer is not and shall not be deemed a successor to the Sellers as a result of consummation of the Sale Transaction. Except as otherwise set forth in the Purchase Agreement, the transfer of the Purchased Assets pursuant to the Purchase Agreement does not, and will not, subject the Buyer to any liability or obligation whatsoever, with respect to the operation of any of the Debtors' businesses or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. The Buyer (i) does not have a common identity of incorporators, officers, directors, or equity holders with any of the Debtors and (ii) is not holding itself out to the public as a continuation of any of the Debtors or their estates. The Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of the Buyer and any of the Debtors and/or the Debtors' estates and the purpose and intent of the Sale Transaction is not to avoid the Sellers' liabilities or assist the Sellers in avoiding their liabilities. There is no continuity of enterprise between any of the Debtors and the Buyer, the Buyer is not a mere continuation or substantial continuation of any of the Debtors, and the Buyer is not a successor to any of the Debtors.

R. **Purchase Agreement is Reasonable.** The terms of the Purchase Agreement, including any amendments, supplements, and modifications thereto, are fair and reasonable in all respects.

S. **Not a *Sub Rosa* Plan.** The Sale Transaction does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale Transaction neither impermissibly restructures the rights of the Sellers' creditors, nor impermissibly dictates a plan of reorganization or liquidation for the Sellers.

T. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

It is therefore ORDERED, ADJUDGED, AND DECREED THAT:

GENERAL PROVISIONS

1. The Sale Motion is GRANTED to the extent set forth herein.
2. All objections to the Sale Motion or the relief requested therein that have not been adjourned, withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice.

APPROVAL OF THE SALE OF THE PURCHASED ASSETS

3. The Purchase Agreement (in substantially the form attached hereto as Exhibit A), including any amendments, supplements, and modifications thereto, and all of the terms and conditions therein, is hereby approved.
4. Pursuant to Bankruptcy Code section 363(b), the sale of the Purchased Assets to the Buyer free and clear of all Encumbrances and obligations, as set forth in the

Purchase Agreement and in this Order, and the transactions contemplated thereby are approved in all respects.

SALE AND TRANSFER OF PURCHASED ASSETS

5. Pursuant to section 363(b) of the Bankruptcy Code, the Sellers are hereby authorized and directed to sell the Purchased Assets to the Buyer and consummate the Sale Transaction in accordance with, and subject to the terms and conditions of, the Purchase Agreement and this Order, and to transfer and assign all right, title, and interest (including common law rights) to all property, licenses, and rights to be conveyed to the Buyer in accordance with and subject to the terms and conditions of the Purchase Agreement and this Order, and are further authorized to execute and deliver, and are empowered to perform under, consummate, and implement, the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, including, without limitation, the related documents, exhibits, and schedules, and to take all further actions as may be reasonably requested by the Buyer for the purposes of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the Sellers' obligations as contemplated by the Purchase Agreement and this Order.

6. Pursuant to Bankruptcy Code sections 363(b) and 363(f), the Purchased Assets shall be transferred to the Buyer upon the Closing Date free and clear of all Encumbrances and obligations of any kind or nature whatsoever as of the Closing Date, including, without limitation, rights or claims based on any taxes or successor or transferee liability, including, without limitation, obligations or Encumbrances arising under ERISA prior to the Closing Date, all claims arising in any way in connection with any agreements, acts, or

failures to act, of any of the Debtors or any of the Debtors' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising before or subsequent to the commencement of these Chapter 11 Cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, without limitation, claims otherwise arising under federal, state, or foreign tax laws or doctrines of successor or transferee liability, with all such Encumbrances to attach to the cash proceeds of the Sale Transaction in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto. In each case, such Encumbrance shall only attach to the portion of the cash proceeds allocable to the particular asset that it had previously encumbered.

7. Following the Closing, the Debtors and/or the Buyer are authorized to execute and file a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all obligations and Encumbrances in the Purchased Assets of any kind or nature whatsoever. On the Closing Date, this Order will be construed as, and constitute for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill (or bills) of sale transferring good and marketable title in such Purchased Assets to the Buyer. Each and every federal, state, local, and foreign governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

8. Except as otherwise provided in orders of the Court, all entities who are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets

are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date.

9. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer in accordance with the Purchase Agreement and this Order; *provided, however*, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

10. This Order (a) shall be effective as a determination that, upon the Closing of the Sale Transaction, all interests, claims, and Encumbrances of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing of the Sale Transaction have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, local, and foreign officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets; *provided* that nothing herein shall relieve any entity of the obligation to pay filing fees required to be paid under non-bankruptcy law.

11. Except as expressly permitted by the Purchase Agreement or this Order, all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees,

litigation claimants, and other creditors, holding Encumbrances or other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, against or in a Debtor or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), in each case arising under or out of, in connection with, or in any way relating to, the Purchased Assets or the operation of the Purchased Assets before the Closing Date, are, as of the Closing Date, forever barred, estopped, and permanently enjoined from asserting against the Buyer, its successors and assigns, its respective property and the Purchased Assets, such persons' or entities' Encumbrances or other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability. Following the Closing Date, no holder of an Encumbrance in the Debtors shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Encumbrance or any actions that the Debtors may take in their Chapter 11 Cases.

12. On the Closing Date, each of the Debtors' creditors is authorized and directed to use commercially reasonable efforts to execute such documents and take all other actions as may be necessary to release its Encumbrances on the Purchased Assets, if any, as such Encumbrances may have been recorded or otherwise exist.

13. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets on account of the filing or pendency of the Chapter 11 Cases or the consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Assumed Contracts.

NO SUCCESSOR LIABILITY

14. The Buyer is not and shall not be deemed to be a “successor” to the Sellers or their estates with respect to the Purchased Assets.

15. The Buyer has given substantial consideration under the Purchase Agreement, which consideration shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Buyer and which shall be deemed to have been given in favor of the Buyer by all holders of Encumbrances in or against the Debtors or the Purchased Assets. The Buyer is not a “successor” to the Debtors or their estates by reason of any theory of law or equity, and the Buyer shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates with respect to the Purchased Assets or otherwise, including, but not limited to, under any bulk sales law, doctrine or theory of successor liability, or similar theory or basis of liability. Upon consummation of the Sale Transaction, the Buyer shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors or their affiliates or incur any liability derived therefrom within the meaning of any foreign, federal, state or local law; (b) have, *de facto* or otherwise, merged with or into any of the Debtors or their affiliates; or (c) be an alter ego or a mere continuation or substantial continuation of any of the Debtors or their affiliates, in each case including, without limitation, within the meaning of any pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 *et seq.*), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), and the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*

16. Except to the extent the Buyer otherwise specifically agreed in the Purchase Agreement or as provided in this Order, the Buyer shall not have any liability, responsibility, or obligation for any claims, liabilities, Encumbrances or other obligations of the Debtors or their estates, including, without limitation, any claims, liabilities, Encumbrances or other obligations related to the Purchased Assets prior to Closing Date. For the purposes of paragraphs 14 through 16 of this Order, all references to the Buyer shall include its affiliates, subsidiaries, and shareholders.

GOOD FAITH

17. The Buyer has acted without collusion and in good faith in undertaking the Sale Transaction contemplated by the Purchase Agreement. The Sale Transaction may not be avoided, nor may any costs or damages be imposed, under Bankruptcy Code section 363(n), and the Buyer is entitled to all of the protections afforded by Bankruptcy Code section 363(m).

ADDITIONAL PROVISIONS

18. The consideration provided by the Buyer for the Purchased Assets under the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

19. On the Closing Date, the Debtors and the Buyer are authorized to take such actions as may be necessary to obtain a release of any and all Encumbrances on the Purchased Assets. This Order (a) shall be effective as a determination that, on the Closing Date, all Encumbrances of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing Date have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected; and (b) to the greatest extent permitted by

applicable law, shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, local, and foreign officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets. The Buyer and the Debtors shall take such further steps and execute such further documents, assignments, instruments, and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph. On the Closing Date, all interests of record as of the date of this Order shall forthwith be deemed removed and stricken as against the Purchased Assets, provided that, upon the Closing, any Encumbrances will attach to the proceeds of the Sale Transaction with the same validity, priority, force and effect, and subject to the same defenses as existed immediately prior to the Closing. On the Closing Date, all entities described in this paragraph are authorized and specifically directed to strike all such recorded Encumbrances against the Purchased Assets from their records, official and otherwise.

20. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances or interests in any of the Purchased Assets does not deliver to the Debtors or the Buyer prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements, and any other documents necessary for the purpose of documenting the release of all other Encumbrances that the person or entity has or may assert with respect to any of the Purchased Assets, the Debtors and/or the Buyer are hereby authorized to execute and file

such statements, instruments, releases, and other documents on behalf of such persons or entity with respect to any of the Purchased Assets.

21. The Debtors will cooperate with the Buyer and the Buyer will cooperate with the Debtors, in each case to ensure that the transactions contemplated in the Purchase Agreement are consummated, and the Debtors will make such modifications or supplements to any bill of sale or other document executed in connection with the closing to facilitate such consummation as contemplated by the Purchase Agreement.

22. The Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors and their respective affiliates, successors, assigns, estates, and creditors; the Buyer and its affiliates, successors, and assigns; and any affected third parties, including, but not limited to, all persons asserting Encumbrances on the Purchased Assets to be sold to the Buyer pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

23. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

24. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court; *provided* that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates. To the extent that any such proposed modification,

amendment, or supplement has a material adverse effect on the Debtors' estates, such proposed modification, amendment, or supplement shall be subject to the consent of the Required Tranche A Lenders and the Tranche B Required Consenting Parties (each as defined in the DIP Credit Agreement).

25. Nothing contained in any plan of reorganization or liquidation confirmed in these Chapter 11 Cases or any order of the Court confirming such plans or in any other order in these Chapter 11 Cases, except the Final DIP Order, including any order entered after any conversion of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, shall alter, conflict with, or derogate, the provisions of the Purchase Agreement or the terms of this Order. The provisions of this Order and the Purchase Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtors, or which may be entered converting these Chapter 11 Cases from chapter 11 to chapter 7 of the Bankruptcy Code, and the terms and provisions of, and the rights and interests granted pursuant to, this Order and the Purchase Agreement shall continue in these Chapter 11 Cases or any superseding case and shall be specifically performable and enforceable against and binding upon the Debtors and their estates and the Buyer and their respective successors and permitted assigns, including any trustee, responsible officer, or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

26. The provisions of this Order are nonseverable and mutually dependent.

27. To the extent applicable, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted, without further order of the court, to the extent necessary (a) to

allow the Buyer to give the Debtors any notice provided for in the Purchase Agreement, and
(b) to allow the Buyer to take any and all actions permitted by the Purchase Agreement.

28. Other than Rothschild, there are no brokers involved in consummating the Sale Transaction, and no brokers' commissions are due that would be owed by the Buyer.

29. Compliance with Laws relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

30. The Debtors and each other person having duties or responsibilities under the Purchase Agreement or this Order, and their respective agents, representatives, and attorneys, are authorized and empowered to carry out all of the provisions of the Purchase Agreement, to issue, execute, deliver, file, and record, as appropriate, the Purchase Agreement and any related agreements, and to take any action contemplated by the Purchase Agreement or this Order, and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, deeds, bills of sale, assignments, or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the Purchase Agreement and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable business corporation, trust, and other laws of applicable governmental units with respect to the implementation and consummation of the Purchase Agreement and this Order and the transactions contemplated thereby and hereby.

31. Notwithstanding any other provision of this Order, nothing in this Order or the Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations (including, but not

limited to, environmental laws or regulations), and any associated liabilities for penalties, damages, cost recovery, or injunctive relief that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the Closing Date. Nothing contained in this Order or in the Purchase Agreement shall in any way diminish the obligation of any entity, including the Debtors, to comply with environmental laws. Nothing in this Order or the Purchase Agreement authorizes the transfer to the Buyer of any licenses, permits, registrations, or governmental authorizations and approvals without the Buyer's compliance with all applicable legal requirements under non bankruptcy law governing such transfers.

32. Notwithstanding the provisions of Bankruptcy Rule 6004 or any applicable provisions of the Local Bankruptcy Rules, this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal being foreclosed as moot.

33. Notwithstanding anything to the contrary contained herein, any proceeds obtained by the Seller pursuant to the Transactions, or any payment to be made, or authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under the *Final Order (I) Authorizing Debtors to (A) Obtain Senior Secured, Superpriority, Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, and (ii) Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy*

Code Sections 361, 362, 363 and 364 [Docket No. 523] (the “Final DIP Order”), the DIP Credit Agreement and the other DIP Loan Documents (each as defined in the Final DIP Order).

34. Except as otherwise specifically ordered herein, the Court shall retain exclusive jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Buyer free and clear of Encumbrances, or compel the performance of other obligations owed by the Buyer or the Debtors, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect the Buyer against (i) claims made related to any of the Excluded Liabilities, (ii) any claims of successor or vicarious liability related to the Purchased Assets or Assumed Contracts, or (iii) any Encumbrances asserted on or in the Debtors or the Purchased Assets, of any kind or nature whatsoever.

35. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Sale Motion.

36. The requirements set forth in Bankruptcy Rules 6003(b) and 6004 have been satisfied or otherwise deemed waived.

37. To the extent that any provision of the Purchase Agreement conflicts with or is in any way inconsistent with any provision of this Order, this Order shall govern and control.

Dated: _____, 2017
New York, New York

HONORABLE STUART M. BERNSTEIN

Exhibit A

Purchase Agreement

EXHIBIT E

Form of Seller's Certificate

EXHIBIT E

SELLER

OFFICER'S CERTIFICATE

[•], 2017

Reference is hereby made to that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the "Agreement"), by and among SunEdison, Inc. ("SunEdison"), Sun Edison LLC ("SELLC" together with SunEdison, "Sellers", and individually, "Seller") and MyPower Corp., a Delaware Corporation ("Buyer"). Capitalized terms used herein without definition shall have the meanings set forth in the Agreement. This Officer's Certificate is being delivered to Buyer pursuant to Section 3.3(b)(i) of the Agreement.

The undersigned officer hereby certifies that it is the duly elected, qualified and acting officer of the respective Seller as set forth on the signature page hereto, and hereby further certifies in the name and on behalf of such Seller as follows:

1. The representations and warranties made by such Seller contained in Article IV of the Agreement are true and correct in all material respects as of the date of the Agreement and, after taking into account any update of the Seller Disclosure Schedule pursuant to Section 6.14 of the Agreement, on the date hereof with the same effect as though made on the date hereof (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties are true and correct in all material respects as of such specified date).

2. Such Seller has duly complied in all material respects with all covenants and agreements contained in the Agreement required to be complied with by it at or prior to the date hereof.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Seller Officer's Certificate as of the first date written above.

SUNEDISON, INC.

By: _____
Name:
Title

SUN EDISON LLC

By: _____
Name:
Title:

EXHIBIT F

Form of Buyer's Certificate

EXHIBIT F

BUYER

OFFICER'S CERTIFICATE

[•], 2017

Reference is hereby made to that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the "Agreement"), by and among SunEdison, Inc. ("SunEdison"), Sun Edison LLC ("SELLC"), together with SunEdison, "Sellers", and individually, "Seller") and MyPower Corp., a Delaware Corporation ("Buyer"). Capitalized terms used herein without definition shall have the meanings set forth in the Agreement. This Officer's Certificate is being delivered to Sellers pursuant to Section 3.3(d)(ii) of the Agreement.

The undersigned officer hereby certifies that it is the duly elected, qualified and acting officer of Buyer as set forth on the signature page hereto, and hereby further certifies in the name and on behalf of Buyer as follows:

1. The representations and warranties made by Buyer contained in Article V of the Agreement are true and correct in all material respects as of the date of the Agreement and on the date hereof with the same effect as though made on the date hereof (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties are true and correct in all material respects as of such specified date).

2. Buyer has duly complied in all material respects with all covenants and agreements contained in the Agreement required to be complied with by it at or prior to the date hereof.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Buyer Officer's Certificate as of the first date written above.

MYPOWER CORP.

By: _____
Name:
Title:

EXHIBIT G

Form of PSA Escrow Agreement

EXHIBIT G

ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is executed and effective on [____], 2017 (the "Effective Date"), by and among MYPOWER CORP., a Delaware corporation ("Buyer"), SUN EDISON LLC, a Delaware limited liability company ("SELLC"), SUNEDISON, INC., a Delaware corporation ("SunEdison", and together with SELLC, the "Sellers", and together with SELLC and the Buyer, collectively, the "Escrow Parties" and individually, an "Escrow Party"), and Citibank, National Association, as escrow agent (the "Escrow Agent").

WHEREAS, the Escrow Parties are parties to the Purchase and Sale Agreement, by and among Sellers and Buyer, dated as of January 5, 2017 (as such agreement may be amended, restated or otherwise modified from time to time, the "Purchase Agreement"). Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings given to them in the Purchase Agreement; *provided however*, that it is understood and agreed that the Escrow Agent shall have no knowledge of, nor have any obligation to understand or ascertain the meaning of any term not defined within this Agreement.

WHEREAS, in accordance with Section 3(b)(ii) of the Purchase Agreement, at the Closing, Buyer will deposit, or cause to be deposited, into an account (the "Escrow Account") the amount of \$500,000 (the "Escrow Amount"). At any time, the portion of the Escrow Amount then remaining in the Escrow Account plus any Escrow Income (as defined below) earned hereunder pursuant to this Agreement are referred to collectively as the "Escrow Funds".

WHEREAS, the Escrow Agent has agreed to serve in the capacity set forth herein on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto agree as follows:

1. Appointment of and Acceptance by Escrow Agent. Buyer and Sellers hereby jointly appoint and designate the Escrow Agent to maintain possession of the Escrow Funds and to act as escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment and designation under the terms and conditions set forth herein.

2. Receipt of Deposit; Establishment of Escrow; Interest.

(a) Buyer will deliver to the Escrow Agent on the Effective Date, and the Escrow Agent will acknowledge to Buyer and Sellers via email of its receipt of, the Escrow Amount. The Escrow Agent shall hold, invest and disburse the Escrow Funds in accordance with the terms of this Agreement. Except with respect to amounts otherwise released pursuant to this Agreement, until the termination of this Agreement and the distribution of the Escrow Funds in full, Buyer and Sellers agree that they shall not transfer or attempt to transfer the Escrow Funds

or any beneficial interest they may have in the Escrow Account, Escrow Funds or this Agreement. Any attempt to make any such transfer shall be null and void *ab initio*.

(b) In the absence of joint written direction from the Escrow Parties to the contrary, all income interest, dividends, distributions, increments, gains or other earnings, if any, on or in respect of the Escrow Account (collectively, the “Escrow Income”) shall become part of the Escrow Funds and shall be held in the Escrow Account and reinvested from time to time by the Escrow Agent as provided in this Agreement.

3. Investment of the Escrow Funds. Unless otherwise instructed in writing by the Escrow Parties, the Escrow Agent shall hold the Escrowed Amount in a “noninterest-bearing deposit account” insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Agent will provide a written statement to each Escrow Party at the end of each month prior to the termination of this Agreement pursuant to Section 17 listing the balance of the Escrow Account and detailing any transactions or disbursements during the immediately preceding month.

4. Taxes. Solely for tax purposes, all Escrow Income, if any, shall be allocated to Sellers and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other applicable taxing authority, on IRS Form 1099 and/or 1042-S (or other appropriate form) as income earned from the amounts in the Escrow Account by Sellers whether or not such Escrow Income has been distributed during such year. For the avoidance of doubt, the Escrow Agent shall file IRS Form 1099 or 1042-S (or other appropriate form) with the IRS or any other taxing authority, as required under applicable law, and shall provide copies of such forms to Buyer and Sellers, unless otherwise required by applicable law. Sellers and Buyer acknowledge and agree that any taxes payable with respect to the Escrow Income shall be paid by Sellers. Any other tax returns required to be filed will be prepared and filed by Sellers with the IRS and any other taxing authority as required by law. The Escrow Parties acknowledge and agree that Escrow Agent shall have no responsibility for the preparation and/or filing of any income, franchise or any other tax return with respect to the Escrow Account or any Escrow Income. The Escrow Agent shall withhold any taxes it deems appropriate, including but not limited to required withholdings in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities. The Escrow Parties hereby represent to the Escrow Agent that no other tax reporting of any kind is required given the underlying transaction giving rise to this Agreement.

5. Disbursement.

(a) Subject to Section 5(b), the Escrow Agent shall disburse the Escrow Funds, or any portion thereof, only in accordance with the joint written instructions of an Authorized Representative of each of the Escrow Parties. Each of Buyer, SELLC and SunEdison agrees to prepare and sign joint written instructions that direct the Escrow Agent to distribute the Escrow Funds, or a portion thereof, as promptly as practicable after payments from the Escrow Account are due and payable pursuant to and in accordance with the terms of the Purchase Agreement. Each of Buyer, SELLC and SunEdison agrees that any such joint written instructions shall set

forth sufficient payment instructions for each portion of the Escrow Funds to be distributed from the Escrow Account and that the Escrow Agent shall act solely upon the instructions that it receives and shall not be responsible for determining whether the instructions are in accordance with the terms of the Purchase Agreement.

(b) The Escrow Agent shall also disburse Escrow Funds after receipt of a final, non-appealable judgment, decree or order of a court or other authority of competent jurisdiction (“Court Order”), accompanied by a certificate of such Escrow Party to the effect that such Court Order is final along with written instructions from an Authorized Representative of the instructing Escrow Party given to effectuate such judgment, decree or order, requiring the payment of money in accordance with the terms of the Purchase Agreement presented by one of the Escrow Parties. The Escrow Agent shall be entitled to conclusively rely upon any such certificate and instruction and shall have no responsibility to review the order to which the certificate and instructions refers or to make any determination as to whether such order is final. The Escrow Party submitting any such advice and instruction to the Escrow Agent shall provide the other Escrow Party with five (5) days prior written notice of its intent to make such a submission to the Escrow Agent. Escrow Agent may conclusively presume that such prior delivery has occurred without any requirement to verify or confirm same.

6. Liability and Duties of the Escrow Agent. The Escrow Agent’s duties and obligations under this Agreement shall be determined solely by the express provisions of this Agreement which shall be deemed purely ministerial in nature, and no other duties, including, but not limited to, any fiduciary duty, shall be implied. The Escrow Agent shall be under no obligation to refer to any documents other than this Agreement (and, to the extent expressly referenced in this Agreement, the Purchase Agreement) and the instructions and requests delivered to the Escrow Agent hereunder. The Escrow Agent shall not be obligated to recognize, and shall not have any liability or responsibility arising under, any agreement to which the Escrow Agent is not a party, even though reference thereto may be made herein. Notwithstanding the terms of any other agreement between the Escrow Parties, the terms and conditions of this Agreement shall control the actions of Escrow Agent. With respect to the Escrow Agent’s responsibility, the Escrow Parties further agree that:

(a) The Escrow Agent, including its officers, directors, employees and agents, shall not be liable to anyone whomsoever by reason of any error of judgment or for any act done or step taken or omitted by the Escrow Agent in good faith, or for any mistake of fact or law or anything which the Escrow Agent may do or refrain from doing in connection herewith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent’s gross negligence, willful misconduct or fraud was the primary cause of any direct loss to either Escrow Party. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent may consult with counsel reasonably selected by it and shall have full and complete authorization and protection for any action taken or suffered by the Escrow Agent hereunder in accordance with the opinion of such counsel. The Escrow Parties agree jointly and severally to indemnify, defend and hold the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, managers, attorneys, accountants, experts, agents and employees (the

“Indemnitees”) harmless from and against any and all liability losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs or expenses (including, without limitation, the reasonable and documented fees and expenses of outside counsel and experts and all expense of document location, duplication and shipment) (collectively, “Losses”) which may arise out of or in connection with (a) the Escrow Agent’s execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitee, except to the extent that such Losses are finally adjudicated by a court of competent jurisdiction to be or have been primarily caused by the gross negligence, willful misconduct or fraud of such Indemnitee or (b) its following any joint instructions or other directions from the Escrow Parties, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof; *provided that*, as between the Escrow Parties, all amounts for which they are jointly and severally liable pursuant to the foregoing sentence are intended to be split equally between the two of them and, in the event that either Escrow Party in the first instance pays more than fifty percent (50%) of any such joint and several obligation, such Escrow Party shall have a right of contribution from the other Escrow Party for such amount as will result in an equal split of such joint and several obligation; *provided, further*, that nothing in the foregoing proviso shall prevent Buyer or Sellers, as applicable, from seeking indemnification under the Purchase Agreement for any amounts paid as contribution or indemnification under this Escrow Agreement. The Escrow Parties hereby grant the Escrow Agent a lien on, right of set-off against and security interest in the Escrow Fund for the payment of any claim for indemnification, fees, expenses and amounts due to the Escrow Agent or an Indemnitee. Such indemnification shall survive the Escrow Agent’s resignation, replacement or removal, or the termination of this Agreement.

(b) Each of Buyer, SELLC and SunEdison may examine the Escrow Account and the records pertaining thereto at any time during normal business hours at the Escrow Agent’s office upon twenty-four (24) hours prior notice and pursuant to the reasonable regulations of the Escrow Agent. The Escrow Agent shall provide Buyer and Sellers with monthly statements showing the Escrow Income and disbursements, if any, of the Escrow Account.

(c) This Agreement is a personal one, and the Escrow Agent’s duties hereunder are only to the Escrow Parties, their successors, permitted assigns, heirs and legal representatives, and to no other person whomsoever.

(d) No succession to, or assignment of, the interest of the Escrow Parties shall be binding upon the Escrow Agent unless and until written notice of such succession or assignment has been given to the Escrow Agent in accordance with Section 9 and consented to by the Escrow Agent, which consent shall not be unreasonably withheld or delayed.

(e) The Escrow Agent may assume that any Authorized Representative purporting to give any notice in accordance with the provisions hereof has been duly authorized to do so. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed by the proper Authorized Representative of the

Escrow Party without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due to it or the Escrow Account.

(f) In case any property held by the Escrow Agent shall be attached, garnished or levied upon under a court order, or the delivery thereof shall be stayed or enjoined by a court order, or any writ, order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement or any part thereof, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders, judgments or decrees so entered or issued, and in case the Escrow Agent obeys or complies with any such writ, order, judgment or decree, the Escrow Agent shall not be liable to the Escrow Parties or to any other person by reason of such compliance in connection with such litigation notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(g) The Escrow Agent reserves the right to resign at any time by giving at least thirty (30) days prior written notice of resignation to the Escrow Parties specifying the effective date thereof. Within thirty (30) days after receiving such notice, an Authorized Representative of each of the Escrow Parties jointly shall appoint a successor escrow agent to which the Escrow Agent shall distribute all of the remaining Escrow Funds and any information and/or documents relating to the Escrow Account then held under this Agreement, whereupon the Escrow Agent shall, upon such distribution to a successor escrow agent, be discharged of and from any and all further obligations arising in connection with this Agreement, except for such liability and expenses which result from the Escrow Agent's gross negligence, willful misconduct or fraud. If a successor escrow agent has not been appointed or has not accepted such appointment by the end of such thirty (30) day period, the Escrow Agent may either (i) interplead the Escrow Funds with a court of competent jurisdiction or (ii) appoint a successor escrow agent of its own choice, and the costs, expenses and reasonable attorney's fees which are incurred in connection with such proceeding shall be paid one half by Buyer and one half by the Sellers. Any appointment of a successor escrow agent shall be binding on the Escrow Parties and no appointed successor escrow agent shall be deemed to be an agent of the Escrow Agent. Until a successor escrow agent has accepted such appointment and the Escrow Agent has transferred the Escrow Account to such successor escrow agent, the Escrow Agent's sole responsibility after such thirty (30)-day notice period expires shall be to hold the Escrow Account (without any obligation to reinvest the same) and to deliver the Escrow Account to a designated substitute escrow agent, if any, in accordance with (A) a joint written instruction by an Authorized Representative of each of the Escrow Parties, or (B) a final non-appealable order of a court of competent jurisdiction (it being understood that the Escrow Agent shall be entitled conclusively to rely and act upon any such court order and shall have no obligation to determine whether any such court order is final). Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.

(h) In the event of any disagreement between Buyer and Sellers resulting in

adverse claims or demands being made in connection with the Escrow Account or in the event that the Escrow Agent is in doubt as to what action it should take hereunder, the Escrow Agent shall be entitled to refrain from taking any action until such time as the Escrow Agent shall have received (i) a final non-appealable order of a court of competent jurisdiction or a nationally-recognized, independent accounting firm agreed upon by Buyer and Sellers) that is accompanied by written advice of the Escrow Parties' respective counsel that such order is final and non-appealable (it being understood that the Escrow Agent shall be entitled conclusively to rely and act upon any such order and shall have no obligation to determine whether any such order is final) as well as written instructions executed by an Authorized Representative of the instructing Escrow Party directing delivery of the Escrow Account, or any portion thereof, as applicable, consistent with such order, or (ii) a joint written instruction executed by an Authorized Representative of each of the Escrow Parties directing delivery of the Escrow Account, at which time the Escrow Agent shall disburse the Escrow Account in accordance with such determination or joint written instruction.

(i) The Escrow Agent does not have any interest in the Escrow Account but is serving as escrow holder only and has only possession thereof. If any payments of income from the Escrow Account shall be subject to withholding regulations then in force with respect to United States taxes, Buyer and Sellers agree to provide the Escrow Agent with appropriate forms for or with respect to such withholding. This Section 6(i) shall survive notwithstanding any termination of this Agreement or the Escrow Agent's resignation or removal.

(j) Buyer and Sellers may, upon at least thirty (30) days prior written notice executed by their respective Authorized Representatives delivered to the Escrow Agent, dismiss the Escrow Agent and appoint a successor escrow agent. In such event, the Escrow Agent will promptly account for and deliver to the successor escrow agent named in such notice all of the remaining Escrow Funds and any information and/or documents relating to the Escrow Account then held by the Escrow Agent hereunder. Upon acceptance thereof and of such accounting by such successor escrow agent, and upon reimbursement to the Escrow Agent of all expenses due to it hereunder through the date of such accounting and delivery in accordance with the terms hereof, the Escrow Agent will be discharged of and from any and all further obligations arising in connection with this Agreement, except for such liability and expenses which result from the Escrow Agent's gross negligence, willful misconduct or fraud.

7. Compensation of Escrow Agent. The Escrow Agent shall be entitled to fees and reimbursement for expenses, along with any fees or charges for accounts, including those levied by any governmental authority which the Escrow Agent may impose, charge or pass-through, including, but not limited to, the reasonable and documented fees and costs of attorneys or agents which it may find necessary to engage in the performance of its duties hereunder, in each case in accordance with the fee schedule attached hereto as Exhibit A. Such fees and expenses shall be paid when due and payable (one half by Buyer and one half by Sellers and shall not be prorated for partial years. Each of the Escrow Parties further agrees to the disclosures and agreements set forth in Exhibit A. Any obligation of the Escrow Parties incurred pursuant to this Section 7 prior to the termination of this Agreement or the resignation or removal of the Escrow Agent shall survive notwithstanding such termination, resignation or removal.

8. Funds Transfer Agreement.

(a) Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of the Escrow Funds must be in writing or set forth in a Portable Document Format (“PDF”), executed by the appropriate Escrow Party or Escrow Parties, as evidenced by the signatures of the person or persons signing this Agreement or one of their designated persons as set forth on Schedule I (each, an “Authorized Representative”), and delivered to the Escrow Agent only by confirmed facsimile or confirmed email on a Business Day only at the facsimile number or email address set forth in Section 9.

(b) In the event funds transfer instructions are given in writing in accordance with Section 8(a), the Escrow Agent is authorized to seek confirmation of such instructions by a single telephone call-back to an Authorized Representative of the applicable Escrow Party and the Escrow Agent may rely upon the confirmations of anyone purporting to be one of the Authorized Representatives. The persons and telephone numbers for call-backs may be changed only in a writing by an Authorized Representative of the applicable Escrow Party and actually received by the Escrow Agent via facsimile or a PDF attached to an email. No funds will be disbursed until an Authorized Representative (or an Executive Officer in accordance with this Section 8(b)) is able to confirm such instructions by telephone call-back. It is understood that the Escrow Agent, any intermediary bank and the beneficiary’s bank in any funds transfer may rely upon any identifying number of the beneficiary’s bank or any intermediary bank included in any funds transfer instruction provided by any Escrow Party hereto and confirmed by an Authorized Representative. Further, the beneficiary’s bank in the funds transfer instruction may make payment on the basis of the account number provided in such Escrow Party’s confirmed instruction even though it identifies a person different from the named.

(c) SELLC acknowledges that the Escrow Agent is authorized to use the following funds transfer instructions to disburse any funds due to SELLC, unless otherwise instructed by SELLC to the Escrow Agent in a prior written notice:

SELLC’s bank account information: Bank Name: [____]
 Bank Address: [____]
 ABA Number: [____]
 Account Name: [____]
 Account Number: [____]
 Reference: [____]

(d) SunEdison acknowledges that the Escrow Agent is authorized to use the following funds transfer instructions to disburse any funds due to SunEdison, unless otherwise instructed by SunEdison to the Escrow Agent in a prior written notice:

SunEdison’s bank account information: Bank Name: [____]
 Bank Address: [____]
 ABA Number: [____]
 Account Name: [____]

Account Number: [____]
Reference: [____]

(e) Escrow Parties acknowledge that the Escrow Agent is authorized to use the following funds transfer instructions to disburse any funds due to Buyer under this Agreement, unless otherwise jointly instructed by the Escrow Parties to the Escrow Agent in a prior written notice:

Buyer's bank account information: Bank Name: [____]
Bank Address: [____]
ABA Number: [____]
Account Name: [____]
Account Number: [____]

(f) The Escrow Parties acknowledge that the security procedures set forth in this Section 8 are commercially reasonable.

(g) The Escrow Parties acknowledge that there are certain security, corruption, transmission error and access availability risks associated with using open networks such as the Internet and the Escrow Parties hereby expressly assume such risks.

9. Notices. All communications hereunder shall be in writing or set forth in an executed PDF attached to an email, and all instructions from an Escrow Party or the Escrow Parties to the Escrow Agent shall be executed by an Authorized Representative and shall be executed and delivered with the terms of this Agreement by facsimile, email or via a nationally recognized overnight courier. Notice will be effective when dispatched if delivered by fax or by email or on receipt of delivery by overnight courier service., only to the appropriate fax number, email address, or notice address set forth for each party as follows:

Notices to SELLC:

Sun Edison LLC
13736 Riverport Drive, Suite 180
Maryland Heights, MO 63043
Attention: General Counsel
Facsimile: (866) 773-0791
E-mail: MTruong@sunedison.com

with a copy (which shall not constitute notices to Seller) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Attention: Eric Ivester, Paul Kraske and Jeremy London
Fax: (202) 393-5760
Email: eric.ivester@skadden.com

paul.kraske@skadden.com
jeremy.london@skadden.com

Notices to SunEdison:

SunEdison, Inc.
13736 Riverport Drive, Suite 180
Maryland Heights, MO 63043
Attention: General Counsel
Facsimile: (866) 773-0791
E-mail: MTruong@sunedison.com

with a copy (which shall not constitute notices to Seller) to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Attention: Eric Ivester, Paul Kraske and Jeremy London
Fax: (202) 393-5760
Email: eric.ivester@skadden.com
paul.kraske@skadden.com
jeremy.london@skadden.com

Notices to Buyer:

[____]
Attention: [____]
Facsimile: [____]
Email: [____]

with a copy (which shall not constitute notice to Buyer) to:

[____]
Attention: [____]
Facsimile: [____]
Email: [____]

Notices to the Escrow Agent:

Citibank, N.A.

The Citi Private Bank
153 East 53rd Street, 21st Floor

New York, NY 10022
Attention: John P. Howard
E-mail: john.p.howard@citi.com
Telephone: (212) 783-7109
Facsimile: (212) 783-7131

Any party may change the address to which notices are to be delivered by giving the other parties notice in the manner provided in this Section 9. Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to this Section 9, such communications shall be deemed to have been given on the date received by those representatives of the Escrow Agent listed in this Section 9 or any employee of the Escrow Agent who reports directly to such above-referenced Escrow Agent representative listed in this Section 9. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. “Business Day” shall mean any day other than Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

10. Binding Effect; Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by Buyer or either Seller, without the prior written consent of the Escrow Agent and the other Escrow Party. Any assignment in violation of this Section 10 will be void and of no effect. Subject to the preceding two sentences, this Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. Severability. If any term or provision of this Agreement is held to be illegal, invalid, or incapable of being enforced by any rule of law or public policy, such provision shall be fully severable and all other terms and provisions of this Agreement will remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, this Agreement will be modified so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

12. No Strict Construction. Each of the parties hereto acknowledges that this Agreement has been prepared jointly by the parties hereto and will not be strictly construed against any other party.

13. Headings. The headings used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and will not be deemed to limit, define, extend or describe the scope of this Agreement or otherwise affect the meaning or interpretation of this Agreement.

14. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in two or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement and will become effective

when such counterparts have been signed by each of the parties and delivered to the other parties. Facsimile or PDF signatures set forth in an email will have the same legal effect as manual signatures.

15. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PRINCIPLES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

16. Amendment. This Agreement may not be amended or modified, except by an instrument in writing executed by the Escrow Parties and the Escrow Agent.

17. Termination. This Agreement shall remain in effect unless and until (i) the Escrow Account is distributed in full or (ii) this Agreement is terminated in a written instrument executed by the Escrow Parties, in which event, termination shall take effect no later than twenty (20) days after notice to the Escrow Agent of such termination. Termination of this Agreement shall not impair the obligations of the Escrow Parties set forth in Sections 6(a), 6(i), 7, 9, 15, 21, 22, 23 and 24, which obligations, together with this Section 17, shall survive the termination of this Agreement.

18. Merger or Consolidation. Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the escrow business of the Escrow Agent shall be sold or otherwise transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

19. Entire Agreement. This Agreement and, solely with respect to the Escrow Parties, the Purchase Agreement, constitute the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter of this Agreement.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any person, other than the parties hereto and such permitted successors and assigns, any legal or equitable rights or remedies hereunder.

21. Waiver of Jury Trial. Each of the parties hereto waives any right it may have to trial by jury in respect of any litigation based on, arising out of, under or in connection with this Agreement or any course of conduct, course of dealing, verbal or written statement or action of any party hereto.

22. Jurisdiction. Each of the parties hereto (a) consents to submit itself to the personal jurisdiction of the state and federal courts of the State of New York (a “New York Court”) in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any other court; *provided that* a final judgment obtained from any New York Court may be enforced in any court having jurisdiction over a party or its assets. To the extent that in any jurisdiction either Escrow Party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgment), or other legal process, such Escrow Party shall not claim, and it hereby irrevocably waives, such immunity.

23. Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one (1) remedy will not preclude the exercise of any other remedy.

24. Limited Liability. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

25. Force Majeure. Notwithstanding any other provision of this Agreement, the Escrow Agent shall not be obligated to perform any obligation hereunder and shall not incur any liability for the nonperformance of any obligation hereunder to the extent that the Escrow Agent is delayed in performing, unable to perform such obligation because of acts of god, war, terrorism, fire, floods, strikes, electrical outages, equipment or transmission failures, or other causes beyond its control.

26. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions “Citibank” by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party’s behalf, without the prior written consent of the Escrow Agent.

27. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties each represent, warrant and covenant that (i) each document, notice, instruction or request provided by such Party to Escrow Agent shall comply with applicable

laws and regulations, (ii) such Party has full power and authority to enter into, execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder; and (c) the person(s) executing this Agreement on such Party's behalf and certifying Authorized Representatives in the applicable Schedule 1 have been duly and properly authorized to do so, and each Authorized Representative of such Party has been duly and properly authorized to take the actions specified for such person in the applicable Schedule 1. Except as expressly provided in Section 6(a) above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than Escrow Agent and the Escrow Parties any legal or equitable right, remedy, interest or claim under or in respect of the Fund or this Agreement.

28. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with Federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Escrow Parties hereto agree to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Escrow Parties depositing funds at Citibank pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

* * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

BUYER:

MYPOWER CORP.

By: _____
Name:
Title:

SELLER:

SUN EDISON LLC

By: _____
Name:
Title:

SELLER:

SUNEDISON, INC.

By: _____
Name:
Title:

Signature Page to Escrow Agreement

ESCROW AGENT:

CITIBANK, N.A.
(as Escrow Agent)

By: _____
Name:
Title:

Signature Page to Escrow Agreement

EXHIBIT A

SCHEDULE OF ESCROW AGENT FEES

~~~~~  
**Escrow Agent Services**

**Account Acceptance Fee** . . . . . Waived

To cover the acceptance of the Escrow Agency appointment, the study of the Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

**Administration Fee** . . . . . \$2,500

The annual administration fee covers maintenance of the Escrow Account(s) including safekeeping of assets in the Escrow Account(s), normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent’s records, follow-up of the Agreement’s provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing transaction deposit account, FDIC insured to the applicable limits.

**Tax Preparation Fee**

To cover preparation and mailing of Forms 1099-INT, if applicable for the Escrow Parties for each calendar year:

**Fee: Waived**

**Transaction Fees**

To oversee all required disbursements or release of property from the escrow account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Agreement:

**Fee: Waived**

**Other Fees**

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

**Schedule 1**

**Telephone Number(s) for Call-backs and  
Person(s) Designated to Give and Confirm Funds Transfer Instructions**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Escrow Parties and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of the Escrow Parties. The below listed persons (must list at least two individuals) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s).

**If to Buyer:**

| <u>Name</u> | <u>Telephone Number</u> | <u>Signature</u> |
|-------------|-------------------------|------------------|
| 1. [_____]  | [_____]                 | _____            |
| 2. [_____]  | [_____]                 | _____            |

**If to SELLC:**

| <u>Name</u> | <u>Telephone Number</u> | <u>Signature</u> |
|-------------|-------------------------|------------------|
| 1. [_____]  | [_____]                 | _____            |
| 2. [_____]  | [_____]                 | _____            |

**If to SunEdison:**

| <u>Name</u> | <u>Telephone Number</u> | <u>Signature</u> |
|-------------|-------------------------|------------------|
| 1. [_____]  | [_____]                 | _____            |
| 2. [_____]  | [_____]                 | _____            |

**EXHIBIT H**

**Form of Transition Services Agreement**

**EXHIBIT H**

**TRANSITION SERVICES AGREEMENT**

**BY AND AMONG**

**MYPOWER CORP.**

**AND**

**SUN EDISON LLC**

**Dated as of January \_\_, 2017**

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**Schedules**

Schedule 1 Services



## TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (as amended, modified or supplemented from time to time, this “**Agreement**”) is dated as of January \_\_\_, 2017, and is entered into by and among MYPOWER CORP., a Delaware corporation (“**Buyer**”) and SUN EDISON LLC, a Delaware limited liability company (“**Seller**”). Each of Buyer and Seller are individually referred to herein as a “**Party**” and they are collectively referred to herein as the “**Parties**.”<sup>1</sup>

### RECITALS

WHEREAS, this Agreement is being entered into in connection with the transactions contemplated by that certain Purchase and Sale Agreement, dated as of January 5, 2017 (the “**Purchase Agreement**”), by and among Seller, SunEdison Inc., a Delaware corporation (“**SunEdison**”), and Buyer;

WHEREAS, pursuant to the Purchase Agreement, (a) Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, the Holding Company Equity and the Books and Records of Seller, (b) SunEdison has agreed to sell to Buyer, and Buyer has agreed to purchase, the Books and Records of SunEdison and (c) Seller and SunEdison has agreed to sell to Buyer or license, as applicable, and Buyer has agreed to purchase or license, as applicable, the Intellectual Property;

WHEREAS, pursuant to the Purchase Agreement, Buyer has agreed to cause Development Company to offer employment to certain employees of Seller or its Affiliates; and

WHEREAS, Buyer wishes to receive from Seller, and Seller wishes to provide to Buyer, the services set forth in this Agreement in order to ensure an orderly transition of the Purchased Assets to Buyer, all in accordance with and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions.** Capitalized terms used in this Agreement (including in the recitals hereto) and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. Capitalized terms used in this Agreement (including in the recitals hereto) without other definition shall have the following meanings, unless the context clearly requires otherwise:

“**Agreement**” has the meaning set forth in the Preamble.

---

<sup>1</sup> Note to Draft: Discuss adding SunEdison Inc. as a party, depending on the scope of services to be provided.

“**Buyer**” has the meaning set forth in the Preamble.

“**Event of Default**” has the meaning set forth in Section 8.1.

“**Force Majeure**” has the meaning set forth in Section 7.1.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Purchase Agreement**” has the meaning set forth in the Recitals.

“**Seller**” has the meaning set forth in the Preamble, provided that as used in this Agreement, the term “Seller” shall include any Affiliate of Sun Edison LLC engaged in or necessary for the provision of the Services hereunder.

“**Service End Date**” has the meaning set forth in Section 2.1(d).

“**Services**” means the services to be provided by Seller and its Affiliates under this Agreement, as more fully described and referred to in Article 2.

“**Services Schedule**” has the meaning set forth in Section 2.1(a).

“**Subcontractor**” has the meaning set forth in Section 3.1(b).

“**Term**” has the meaning set forth in Section 10.1.

## **Section 1.2 Interpretation.**

(a) When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of or to this Agreement, unless the context requires otherwise.

(b) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(d) Whenever the words “hereof,” “herein,” “hereunder” or “hereto” are used in this Agreement, they shall be deemed to refer to this entire Agreement and not any particular provision.

(e) References in this Agreement to (i) “\$” shall mean United States Dollars, and (ii) the singular shall include the plural, and the plural shall include the singular, unless the context requires otherwise.

(f) References in this Agreement to (i) any agreement, instrument or other document means such agreement, instrument or other document and any attachments,

exhibits, annexes and schedules thereto, in each case, as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, or (ii) any statute includes all regulations promulgated under such statute, and any reference to a statute or regulation includes the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

(g) This Agreement shall be construed according to its fair meaning, taken as a whole, as if it had been prepared jointly by the Parties, and not as if it had been prepared by one Party.

## **ARTICLE 2 SERVICES**

### **Section 2.1 Scope.**

(a) Seller shall provide, or cause its Affiliates to provide, the Services set forth on Schedule 1 (as such schedule may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement, the “**Services Schedule**”) to Buyer (or its Affiliates) for the respective periods, or until completion of the respective actions, set forth on the Services Schedule, unless terminated earlier in accordance with the terms and conditions of this Agreement.

(b) The Parties shall discuss and cooperate in good faith in order to provide for a smooth transition of the Purchased Assets after the Closing. The Parties may add additional services to the Services Schedule upon written mutual agreement by the Parties. Any such additional services that the Parties mutually agree to add to the Services Schedule, shall constitute Services under this Agreement and shall be subject to the provisions of this Agreement.

(c) The Parties acknowledge the transitional nature of the Services. Accordingly, as promptly as practicable following the execution of this Agreement and during the Term, Buyer agrees to use commercially reasonable efforts to make a transition of each Service to its own internal organization or to obtain alternate third-party sources to provide the Services and Seller agrees to use commercially reasonable efforts to support the transition of each Service.

(d) The obligation of Seller under this Agreement to provide any Service shall terminate with respect to such Service upon the expiration of the respective period, or the completion of the respective actions, specified for such Service on the Services Schedule (a “**Service End Date**”). Notwithstanding the foregoing, Buyer may determine from time to time that it does not require a particular Service for the entire period up to the applicable Service End Date, and may terminate such Service upon written notice to Seller.

**ARTICLE 3  
SELLER OBLIGATIONS**

**Section 3.1 Standard of Service.**

(a) Seller shall perform the Services in a professional manner in accordance with customary industry practices, procedures and standards, and with no less than the same degree of quality, care, skill and diligence with which such Services (or services or actions similar to the Services) have historically been provided by Seller and its Affiliates in respect of the Business.

(b) In providing the Services, Seller may (i) use its employees, (ii) use its Affiliates or (iii) employ the services of third parties (each such third party, a “**Subcontractor**”); provided that Seller must obtain Buyer’s prior written consent (not to be unreasonably withheld, conditioned or delayed) prior to employing a Subcontractor.

(c) If Buyer does not consent to the Subcontractor proposed by Seller, then the Services that were proposed to be performed by such Subcontractor are removed from the Services Schedule, and the obligation of Seller to provide such Services terminates.

**Section 3.2 Personnel.**

(a) All Seller personnel assigned to perform the Services shall possess such skill, experience and qualifications as are required to perform the Services in accordance with the terms of this Agreement.

(b) Seller is responsible for all of its personnel and any Subcontractor in connection with this Agreement and for the payment of their compensation (including any incentive payments), including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments, disability benefits and any other benefits associated with the employment, retention or engagement of such personnel and any such Subcontractor.

**Section 3.3 Compliance with Applicable Laws.** Seller shall perform the Services in compliance with all applicable Laws.

**ARTICLE 4  
COMPENSATION**

Buyer shall, or cause its Affiliates to, pay Seller or its Affiliates the fees set forth in Schedule 1. Seller or its Affiliates shall provide Buyer invoices at the end of each month during the Term, which shall set forth (a) any costs incurred by Seller or its Affiliates, its employees or a Subcontractor, as applicable, in the performance of Services that are reimbursable by Buyer in accordance with Schedule 1 and (b) any fees for the performance of the Services that are payable by Buyer in accordance with Schedule 1, in each case, during the preceding month. Such

invoices shall be payable within thirty (30) days from the date of the receipt of the invoice by Buyer.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

**Section 5.1 Representations and Warranties of Both Parties.** Each Party represents and warrants to the other Party that, as of the date hereof:

(a) it is a company duly organized and validly existing under the law of its jurisdiction of organization, and has all requisite company power, capacity and authority to own its assets and to conduct its business as currently conducted and to perform its obligations under this Agreement;

(b) all requisite company action to authorize the execution, delivery and performance by such Party of this Agreement has been taken;

(c) the execution, delivery and performance by such Party of this Agreement do not and will not (i) conflict with any provision of its constitutive or organizational documents, or (ii) contravene or violate any Law applicable to such Party;

(d) this Agreement has been duly and validly executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally; and

(e) there is no Action pending or, to the knowledge of such Party, threatened in writing affecting such Party before any court, Governmental Entity or arbitrator that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement or affect the legality, validity, and enforceability of this Agreement.

**Section 5.2 Disclaimer of Additional Warranties.** Except as set forth in this Article 5, neither Party makes, and each Party hereby disclaims, any other warranty whatsoever, whether express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

**ARTICLE 6  
CONFIDENTIALITY**

**Section 6.1 Confidentiality.** The provisions set forth in Section 6.6(b) of the Purchase Agreement shall apply *mutatis mutandis*.

**ARTICLE 7  
FORCE MAJEURE**

**Section 7.1 Force Majeure.** Subject to Section 7.2, “Force Majeure” means any event or circumstance that (x) is beyond the reasonable control of the Party claiming Force Majeure, (y) could not have been avoided by such Party if it had acted with reasonable foresight and in a reasonable and prudent manner, and (z) renders such Party unable to perform its obligations under this Agreement (except in relation to obligations to make payments due under this Agreement), whether in whole or in part. Without limiting the generality of the foregoing, “Force Majeure” shall include each of the following events and circumstances:

- (a) fire, explosion, flood, atmospheric disturbance, lightning, storm, typhoon, hurricane, tidal wave, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other natural disaster;
- (b) acts of war (whether declared or undeclared), terrorism or threat thereof, riot, civil war, blockade, insurrection, sabotage, act of public enemies, civil disturbance, strike, lockout or other industrial disturbance; and
- (c) acts of Governmental Entities or any Law, or taking or confiscation (whether or not action under law) of any facilities which directly affect a Party’s ability to perform its obligations under this Agreement.

**Section 7.2 Exclusions.** Notwithstanding Section 7.1, Force Majeure shall not include any financial hardship or any inability or failure to pay any money when due or any event arising out of the foregoing.

**Section 7.3 No Claim for Breach.** Except with respect to obligations to make payments due under this Agreement, no failure by a Party to perform any of its other obligations under this Agreement shall give rise to any claim against such Party or be deemed a breach by such Party of this Agreement to the extent that such failure arises from an event of Force Majeure.

**Section 7.4 Notice.** In the event that a Party is rendered unable to perform its obligations hereunder, whether in whole or in part, by a Force Majeure event, such Party shall, as soon as reasonably practicable, notify the other Party in writing stating the nature of such Force Majeure event, the date on which it commenced and its expected duration (including the extent of any suspended performance).

**Section 7.5 Resumption.** The Party affected by Force Majeure shall use commercially reasonable efforts to resume performance of its obligations that are affected by the

event of Force Majeure as soon as practicable and will continue performing all of its obligations that are not affected by the event of Force Majeure.

## **ARTICLE 8 DEFAULTS AND REMEDIES**

**Section 8.1 Events of Default.** The occurrence of any of the following events or circumstances shall constitute an event of default under this Agreement (each, an “**Event of Default**”):

(a) Any failure to timely pay and deliver any payment due under this Agreement and such failure is not cured within fifteen (15) days of receipt of notice from any non-defaulting Party notifying the defaulting Party of such failure;

(b) Any material breach by a Party of its representations and warranties contained in this Agreement; and

(c) Any other material breach by a Party of its other covenants and obligations set forth herein and such breach is not cured within thirty (30) days of receipt of notice from any non-defaulting Party notifying the defaulting Party of such breach (or such longer period of time as such non-defaulting Party may permit in writing if cure has been commenced and additional time is reasonably required).

**Section 8.2 Remedies.** If an Event of Default occurs and is continuing, in addition to remedies expressly provided for in this Agreement, any non-defaulting Party shall be entitled to pursue any or all other remedies available to it at law or in equity, including claims for damages, specific performance and/or injunctive relief.

**Section 8.3 No Consequential Damages.** Notwithstanding anything herein to the contrary, in no event shall any Party be liable to any other Party for any lost profits or incidental, indirect, speculative, consequential, special, punitive or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with this Agreement, even if advised of such potential damages.

## **ARTICLE 9 LIMITATION ON LIABILITY; INDEMNITY**

**Section 9.1 Indemnity.** Each Party shall indemnify, defend and hold harmless the other Party, its Affiliates and its and their respective Representatives from and against any and all Losses suffered or incurred by any of the foregoing Persons resulting or arising from any fraudulent or grossly negligent act or omission or the willful misconduct of such indemnifying Party, its Affiliates or its and their respective Representatives in the performance of this Agreement.



**Section 9.2 Limitation on Liability.** An indemnifying Party shall not be responsible for Losses in excess of the aggregate amount of all fees and costs paid by Buyer to Seller under this Agreement.

**Section 9.3 Procedures.** An indemnifying Party's obligation to indemnify any indemnified Party with respect to any third party Action shall be conditioned upon the indemnified Party: (a) providing the indemnifying Party with prompt written notice of such Action (provided that the failure to timely notify shall not relieve an indemnifying Party of its indemnification obligation except to the extent it is prejudiced by such failure); (b) providing the indemnifying Party with the option to assume and control the defense of such Action and all related settlement negotiations, with counsel chosen by the indemnifying Party; and (c) cooperating at the indemnifying Party's request and expense with the defense or settlement of such Action which cooperation shall include providing reasonable assistance and information to that extent that such cooperation does not materially limit or prejudice the indemnified party's rights or interests. Notwithstanding the foregoing sentence, the indemnified party may take control of any defense of an Action if the indemnifying does not promptly take reasonably adequate steps to prepare a defense against such Action (in the indemnified Party's reasonable discretion), and the indemnifying Party will then cooperate with such defense as the indemnified Party reasonably requests. Nothing herein shall restrict the right of a Party to participate in an Action through its own counsel and at its own expense.

## **ARTICLE 10 TERM AND TERMINATION; SURVIVAL**

**Section 10.1 Term.** This Agreement shall become effective on the date hereof and, unless terminated earlier in accordance with the provisions of Section 10.2, shall continue in full force and effect until the earlier of (a) the date upon which each of the Services has expired in accordance with the Services Schedule or terminated in accordance with Section 2.1(d), or (b) the date that is ninety (90) days after the Closing Date (such period from the Closing Date until the date of the earlier to occur of clause (a) or (b), the "**Term**"). This Agreement shall automatically terminate upon the expiration of the Term.

### **Section 10.2 Early Termination.**

(a) This Agreement may be terminated at the option of the Parties upon their mutual written agreement.

(b) If an Event of Default occurs and is continuing, the non-defaulting Party may terminate this Agreement upon written notice to the defaulting Party.

**Section 10.3 Survival.** The rights and obligations of the Parties set forth Article 6 (*Confidentiality*), Article 8 (*Defaults and Remedies*), Article 9 (*Indemnity*), Article 11 (*Miscellaneous*), this Section 10.3 and any other provision which by its nature should survive termination of this Agreement (including any provision required to give effect to any rights or obligations that survive termination of this Agreement), and any obligation or liability incurred prior to termination of this Agreement, shall survive any termination of this Agreement and continue in full force and effect for twelve (12) months following such termination.



**ARTICLE 11  
MISCELLANEOUS**

**Section 11.1 Expenses.** Except as expressly provided otherwise in this Agreement, each Party shall pay all of its own costs and expenses (including attorneys', accountants' and investment bankers' fees and other out-of-pocket expenses) in connection with the negotiation and execution of, and the performance of its obligations under, this Agreement.

**Section 11.2 Amendment and Waiver.** This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion.

**Section 11.3 Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to each Party shall be sent to the addresses indicated below:

Notices to Buyer:

MyPower Corp.  
c/o Mitsui & Co., Ltd.  
Infrastructure Projects Development Division  
1-3, Marunouchi 1-chome, Chiyoda-ku  
Tokyo 100-8631, Japan  
Attn: Hiromu Kayamori  
Facsimile: +81 3 3285 9795  
Email: H.Kayamori@mitsui.com

Notices to Seller:

Sun Edison LLC  
c/o SunEdison Inc.  
13736 Riverport Drive, Suite 180  
Maryland Heights, Missouri 63043  
Attn: General Counsel  
Facsimile: (866) 773-0791  
Email: MTruong@sunedison.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005  
Attn: Paul Kraske  
Facsimile: (202) 661-9034  
Email: paul.kraske@skadden.com

**Section 11.4 Assignment.** No Party may assign any of its rights or obligations under this Agreement without the prior written consent of each other Party.

**Section 11.5 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

**Section 11.6 Entire Agreement.** This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

**Section 11.7 Applicable Law; Jurisdiction.**

(a) This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the Laws of the State of New York and the applicable provisions of Chapter 11 of Title 11 of the United States Code, without regard to any conflict of laws rules thereof that would require the application of the Laws of any other jurisdiction.

(b) Each Party agrees that the United States Bankruptcy Court for the Southern District of New York, which shall have exclusive jurisdiction over any and all disputes between the Parties, whether in law or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby and the Parties consent to and agree to submit to the exclusive jurisdiction of such court.

(c) Each of the Parties hereby waives and agrees not to assert in any recognition or enforcement proceeding, to the fullest extent permitted by applicable Law, any defense that (i) such Party is not personally subject to the jurisdiction of such court, (ii) such Party and such Party's property is immune from any legal process issued by

such court or (iii) any action or proceeding commenced in such court is brought in an inconvenient forum.

**Section 11.8 Waiver of Jury Trial.** Each of the Parties hereby irrevocably waives, and shall cause its subsidiaries and Affiliates to waive, all right to a trial by jury in any Action arising out of or relating to this Agreement or the transactions contemplated hereby.

**Section 11.9 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied, shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

**Section 11.10 Relationship of the Parties.** The relationship of the Parties is that of independent contractors. Nothing herein shall be construed to create, expressly or by implication, a joint venture, partnership, commercial partnership, agency relationship, fiduciary relationship, or other partnership relationship between Buyer and Seller.

**Section 11.11 Counterparts.** This Agreement may be executed in one or more counterparts (including by means of telecopied signature pages), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers as of the date first written above.

**MYPOWER CORP.**

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

**SUN EDISON LLC**

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

**SCHEDULE 1**

**SERVICES**

[Attached]

**SCHEDULE 1**

**SERVICES**

**I. INFORMATION TECHNOLOGY SERVICES**

**1. Scope of Services.** The applicable service provider will provide the applicable services to the Employees transferring to Development Company (the “C&I Team”) and to employees who are kept at Seller or one of its Affiliates but render services to Development Company related to the Business (the “Retained Employees,” and collectively with the C&I Team, the “Transition Team”).

**2. Manner of Providing Services.**

**a) Fixed Services**

The Retained Employees will be provided full SunEdison IT services (business as usual), including all the concepts related below, for a term not to exceed ninety (90) days.

For the C&I Team, the applicable service provider shall provide the following services to Buyer or its Affiliates:

| Service Description       | Deliverables                                                                                                                                                                                                                                            | Fees<br>per month <sup>1</sup> | Term       |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|------------|
| Telephone Services        | <ul style="list-style-type: none"> <li>• Telephone with voicemail</li> <li>• Long distance service</li> <li>• Teleconferencing and videoconferencing services using ATT Connect</li> <li>• Phone services support</li> </ul>                            | \$10,036.00                    | 1 month    |
| Wireless services         | <ul style="list-style-type: none"> <li>• Support for SUNE services that are provided through a mobile device (Email, BOX)</li> </ul>                                                                                                                    | \$0                            | 2 months   |
| Wireless carrier services | <ul style="list-style-type: none"> <li>• Support for transfer of C&amp;I issued mobile numbers to personal accounts or an enterprise plan of Buyer or its Affiliates</li> </ul>                                                                         | \$0                            | At Closing |
| Data networking           | <ul style="list-style-type: none"> <li>• Network support</li> <li>• Wired access</li> <li>• Wireless access</li> <li>• Remote connectivity</li> <li>• Solar winds network management</li> <li>• VPN access to internally hosted applications</li> </ul> | \$1,218.53                     | 2 months   |

<sup>1</sup> Note: Fees subject to revision based on total number of Employees transferred to Development Company.

|                                                            |                                                                                                                                                                                                                                                                                                           |             |          |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------|
| ERP/Financial Systems                                      | <ul style="list-style-type: none"> <li>• Oracle EBS access</li> <li>• Break-Fix Support</li> </ul>                                                                                                                                                                                                        | \$17,488.00 | 1 month  |
| Document Management Systems (Box/SharePoint/Shared Drives) | <ul style="list-style-type: none"> <li>• Box</li> <li>• SharePoint</li> <li>• Break-fix support</li> <li>• Shared drives</li> <li>• Transfer of C&amp;I Documents to Buyer or its Affiliates under SOW as outlined in “Statements of Work” section below</li> </ul>                                       | \$759.20    | 2 months |
| Email and Microsoft Office                                 | <ul style="list-style-type: none"> <li>• Outlook 365</li> <li>• Microsoft Office</li> <li>• Access to SharePoint</li> <li>• Break-fix support</li> <li>• Email redirects for ninety (90) days’ post-Closing</li> </ul>                                                                                    | \$1,598.13  | 1 month  |
| Security Software                                          | <ul style="list-style-type: none"> <li>• Anti-Virus Software</li> </ul>                                                                                                                                                                                                                                   | \$1,040.00  | 2 months |
| Laptop Hardware                                            | <ul style="list-style-type: none"> <li>• Usage of SunEdison or its Affiliates Leased hardware</li> <li>• Asset management services</li> </ul>                                                                                                                                                             | \$3,210.13  | 2 months |
| Client services                                            | <ul style="list-style-type: none"> <li>• Help Desk Tickets Administration from 7 AM to 7 PM CST during weekdays</li> <li>• Regional desktop support resources for break/fix</li> <li>• Bomgar remote support</li> </ul>                                                                                   | \$3,739.52  | 2 months |
| Server and Data Center Services                            | <ul style="list-style-type: none"> <li>• OKTA Access</li> <li>• Storage</li> <li>• Security</li> <li>• License Management</li> <li>• Active Directory Access</li> <li>• IT General controls and environments (HVAC, Power, UPC, etc.)</li> <li>• Hardware Maintenance</li> <li>• Cloud Hosting</li> </ul> | \$3,549.58  | 1 month  |
| SAM                                                        | <ul style="list-style-type: none"> <li>• SAM Access</li> <li>• SAM Hosting in AWS</li> <li>• SAM Support</li> </ul>                                                                                                                                                                                       | \$4,033.47  | 1 month  |

**NOTE: ACCESS TO ORACLE WILL ONLY BE PROVIDED TO RETAINED EMPLOYEES.**

Buyer will use commercially reasonable efforts to provide the applicable service provider with at least two (2) weeks advanced notice for the request for Services specified above (which, for the avoidance of doubt, will not commence earlier than the Closing Date).

**b) Statements of Work for Additional Services**

i) Service Request Process:

Buyer will use commercially reasonable efforts to provide the applicable service provider with at least two (2) weeks advanced notice for the request for additional Services under a statement of work (“SOW”). The applicable service provider will use commercially reasonable efforts to provide the Services within the timeframe requested by Buyer in the SOW, but will not have an obligation to do so until a signed SOW is returned to Buyer.

Each SOW for Services shall include a clear statement of requirements, which shall include timing for assistance, the identified issue or problem statement, the expected deliverables to be delivered, the estimated hours of Services required or the cap of hours if such a limitation exists, and the SunEdison or its Affiliates resources to support the Services. Each SOW shall follow the format as provided.

ii) Deliverables:

Deliverables, work-product and the timing for delivery shall be agreed upon between the designated contacts of the Parties in advance of providing the Services and shall be set forth in the applicable SOW. In the absence of a specific request to provide a deliverable, no document, report or tangible documentation shall be required to be provided by the applicable service provider to Buyer. Additionally, in the absence of specific timing for completion of the Services or providing the deliverable, the applicable service provider shall not be obligated to perform its Services within a specific timeframe.

iii) Fees:

Unless otherwise provided in the respective SOW, Buyer or its Affiliates shall pay to the applicable service provider hourly fees based on the Standard Rates plus any additional third party expenses (including but not limited to contractors, consultants, licensing for software, hardware, etc.).

The cost of the services of the employees kept at SunEdison or its Affiliates will be reimbursed to SunEdison or its Affiliates in a cost basis.

iv) Term:

Unless otherwise provided in the respective SOW, each SOW shall terminate at the end of the Term.



## II. HUMAN RESOURCES SERVICES

**SCOPE:** The scope of the Human Resources Services shall include the following list, each of which is specifically detailed in the Sections that follow.

| <b>Service Name:</b>                                                                                                     | <b>Section:</b> |
|--------------------------------------------------------------------------------------------------------------------------|-----------------|
| Payroll, Compensation and Benefits in US                                                                                 | II.A.           |
| Continuance of Global Mobility Support (Visa's, Immigration, etc.) for all Solar Materials Development Company Employees | II.B.           |
| 401K Administration and Transition                                                                                       | II.C.           |
| HR project management support                                                                                            | II.D.           |
| Employee Data Base Support                                                                                               | II.E.           |

These services will be provided to the C&I Team ONLY before being transferred and to the Retained Employees.

This Schedule of Human Resources Services intends to cover C&I personnel that after Closing:

1. Will stay as SunEdison or its Affiliates employees as part of the Transition Team, and hence they need the "business as usual" HR support (expected to be a team of around 2 to 5 people); or
2. Will start transferring to Development Company, and need certain time until the HR infrastructure is set up a ready to enroll the employees in Development Company upon a proper onboarding process.

For the avoidance of doubt, the Interim Period is not covered by this Schedule of Human Resources Services and the Employees will receive the normal HR support during the Interim Period.

**FEES:** Unless otherwise specifically provided in Section below, the following rates shall apply for all Services provided hereunder ("**Standard Rates**"): \$60.00 per hour.

For the Transition Team employees, Buyer or its Affiliates will reimburse to the Seller (in a monthly basis) the fully loaded total cost of the employees.

**A. Payroll, Compensation and Benefits**

**1. Scope of Services.** The applicable service provider will provide Payroll, Compensation and Benefit services to the Buyer or its Affiliates relating to the Transition Team and the Employees transferred to Development Company before being transferred to Buyer or its Affiliates without delay or inaccuracy.

Representative services include, but are not limited to, the following:

- Payroll processing
- Paystubs
- W-2 statements
- PTO, Bereavement, Leave of Absence and other applicable payroll processing items
- Benefit processing to include medical, dental and vision per the benefits provided to all SunEdison employees at the time of service.
- FMLA management, LOA and COBRA administration.
- Other benefits as applicable

**2. Manner of Providing Services.**

**a) Fixed Services**

The applicable service provider shall provide support to Buyer or its Affiliates for the following known matters:

| Project Description                                                                                                                                                              | Deliverables                                                                                                                                     | Fees                                                                                                                                                                                                                            | Term                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <i>Continuation of payroll processing for US.</i>                                                                                                                                | <i>Payroll processing, tax withholdings, paystubs, W-2 Statements, PTO, Bereavement, LOA's and other payroll processing items are necessary.</i> | <i>Direct transfer of costs by employee from Seller or its Affiliates to Buyer or its Affiliates for the Transition Team and C&amp;I Team plus<br/><br/>% of employees time per month until the C&amp;I Team is transferred</i> | <i>Not to exceed 90 days but may be extended per agreement with 30 days written notice.</i> |
| <i>Continuation of all Benefit processing to include medical, dental, vision per benefit plans that are provided by SunEdison or its Affiliates employees at time of service</i> | <i>Medical<br/>Dental<br/>Vision<br/>Other Benefits as they are available<br/><br/>FMLA management, LOA and COBRA administration.</i>            | <i>Direct transfer of costs by employee from Seller or its Affiliates to Buyer or its Affiliates for the Transition Team and C&amp;I Team plus<br/><br/>% of employees time per month until the C&amp;I Team is transferred</i> | <i>Not to exceed 90 days but may be extended per agreement with 30 days written notice.</i> |

**b) Deliverables, Fees and Term**

i) Deliverables:

Deliverables, work-product and the timing for delivery shall be agreed upon between the designated contacts of the Parties in advance of providing the Services. In the absence of a specific request to provide a deliverable, no document, report or tangible documentation shall be required to be provided by the applicable service provider to Buyer or its Affiliates. Additionally, in the absence of specific timing for completion of the Services or providing the deliverable, the applicable service provider shall not be obligated to perform its Services within a specific timeframe.

ii) Fees:

In addition to the cost of the Transition Team, and unless otherwise agreed by the Parties, Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.

| Fees                   | Fee Calculation                                                   | Weekly Fee Total |
|------------------------|-------------------------------------------------------------------|------------------|
| Hourly rate of \$60.00 | 2 Employees x 40 hours per week @ .4 full time equivalent (“FTE”) | \$1,920.00       |

iii) Term:

Unless otherwise agreed by the Parties, the Services shall terminate at the end of the Term.

**c) Miscellaneous Consulting Services**

- i) Description. Either party may request the other party’s support on an ad-hoc basis for various matters for up to ten (10) hours per month.
- ii) Service Request Process. Services to be provided herein must be requested in writing to the applicable service provider’s designated contact upon not less than five (5) days’ notice.
- iii) Fees. Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.
- iv) Term. Services provided on a miscellaneous consulting basis shall commence as of the Effective Date and shall terminate at the end of the Term.

**B. Global Mobility – Visa Processing**

**1. Scope of Services.** The applicable service provider will provide Global Mobility services to the Buyer or its Affiliates relating to its employees at the Transition Team and C&I Team needing assistance with all Global Mobility (including all forms of Visas) without delay or inaccuracy.

Representative services include, but are not limited to, the following:

- All activities related to Global Mobility, visas, relocations, per diems, etc.

**2. Manner of Providing Services.**

**a) Fixed Services**

The applicable service provider shall provide support to Buyer or its Affiliates for the following known matters:

| Project Description                   | Deliverables                               | Fees                                                                        | Term                                                                                        |
|---------------------------------------|--------------------------------------------|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <i>All Global Mobility activities</i> | <i>Visas<br/>Relocations<br/>Per Diems</i> | <i>% of employees time billed to Development Company or its Affiliates.</i> | <i>Not to exceed 90 days but may be extended per agreement with 30 days written notice.</i> |

**b) Deliverables, Fees and Term**

i) Deliverables:

Deliverables, work-product and the timing for delivery shall be agreed upon between the designated contacts of the Parties in advance of providing the Services. In the absence of a specific request to provide a deliverable, no document, report or tangible documentation shall be required to be provided by the applicable service provider to Buyer or its Affiliates. Additionally, in the absence of specific timing for completion of the Services or providing the deliverable, the applicable service provider shall not be obligated to perform its Services within a specific timeframe.

ii) Fees:

Unless otherwise agreed by the Parties, Buyer or its Affiliates shall pay to the applicable service provider hourly fees based on the Standard Rates.

| Fees | Fee Calculation | Weekly Fee Total |
|------|-----------------|------------------|
|------|-----------------|------------------|

|                        |                                         |          |
|------------------------|-----------------------------------------|----------|
| Hourly rate of \$60.00 | 1 Employee x 5 hours per week @ 0.4 FTE | \$120.00 |
|------------------------|-----------------------------------------|----------|

iii) Term:

Unless otherwise agreed by the Parties, the Services shall terminate at the end of the Term.

**c) Miscellaneous Consulting Services**

- i) Description. Either party may request the other party's support on an ad-hoc basis for various matters for up to ten (10) hours per month.
- ii) Service Request Process. Services to be provided herein must be requested in writing to the applicable service provider's designated contact upon not less than five (5) days' notice.
- iii) Fees. Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.
- iv) Term. Services provided on a miscellaneous consulting basis shall commence as of the Effective Date and shall terminate at the end of the Term.

**C. 401K Administration**

**1. Scope of Services.** The applicable service provider will provide 401K processing as specified for SunEdison or its Affiliates employees for services to the Buyer or its Affiliates relating to its Transition Team and C&I Team before being transferred without delay or inaccuracy.

Representative services include, but are not limited to, the following:

- All 401K processing

**2. Manner of Providing Services.**

**a) Fixed Services**

The applicable service provider shall provide support to Buyer or its Affiliates for the following known matters:

| Project Description        | Deliverables                                  | Fees                                                                                                                | Term                                                                                        |
|----------------------------|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <i>401K Administration</i> | <i>401K match, withholdings and reporting</i> | <i>% of employees time billed to Development Company or its Affiliates until C&amp;I employees are transferred.</i> | <i>Not to exceed 90 days but may be extended per agreement with 30 days written notice.</i> |

**b) Deliverables, Fees and Term**

i) Deliverables:

Deliverables, work-product and the timing for delivery shall be agreed upon between the designated contacts of the Parties in advance of providing the Services. In the absence of a specific request to provide a deliverable, no document, report or tangible documentation shall be required to be provided by the applicable service provider to Buyer or its Affiliates. Additionally, in the absence of specific timing for completion of the Services or providing the deliverable, the applicable service provider shall not be obligated to perform its Services within a specific timeframe.

ii) Fees:

Unless otherwise agreed by the Parties, Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.

| Fees | Fee Calculation | Weekly Fee Total |
|------|-----------------|------------------|
|------|-----------------|------------------|

|                                               |                                          |          |
|-----------------------------------------------|------------------------------------------|----------|
| Hourly rate of \$60.00                        | 1 Employees x 20 hours per week @ .1 FTE | \$120.00 |
| Add pass through of costs from Trans America. |                                          |          |

iii) Term:

Unless otherwise agreed by the Parties, the Services shall terminate at the end of the Term.

**c) Miscellaneous Consulting Services**

- i) Description. Either party may request the other party's support on an ad-hoc basis for various matters for up to ten (10) hours per month.
- ii) Service Request Process. Services to be provided herein must be requested in writing to the applicable service provider's designated contact upon not less than five (5) days' notice.
- iii) Fees. Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.
- iv) Term. Services provided on a miscellaneous consulting basis shall commence as of the Effective Date and shall terminate at the end of the Term.

**D. HR Project Management Support**

**1. Scope of Services.** SunEdison or its Affiliates will provide HR Project Management Support services to Buyer or its Affiliates relating to its Transition Team and C&I Team without delay or inaccuracy.

Representative services include, but are not limited to, the following:

- Coordination with the C&I Team and the Professional Employment Organization (PEO) to successfully implement the transition of the C&I Team

**2. Manner of Providing Services.**

**a) Fixed Services**

The applicable service provider shall provide support to Buyer or its Affiliates for the following known matters:

| Project Description | Deliverables                                                     | Fees                                  | Term                                                                                        |
|---------------------|------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------------------------------------|
| <i>HR personnel</i> | <i>Project Management coordination with PEO and C&amp;I Team</i> | <i>% of employees time per month.</i> | <i>Not to exceed 90 days but may be extended per agreement with 30 days written notice.</i> |

**b) Deliverables, Fees and Term**

i) Deliverables:

Deliverables, work-product and the timing for delivery shall be agreed upon between the designated contacts of the Parties in advance of providing the Services. In the absence of a specific request to provide a deliverable, no document, report or tangible documentation shall be required to be provided by the applicable service provider to Buyer or its Affiliates. Additionally, in the absence of specific timing for completion of the Services or providing the deliverable, the applicable service provider shall not be obligated to perform its Services within a specific timeframe.

ii) Fees:

Unless otherwise agreed by the Parties, Buyer or its Affiliates shall pay to the applicable service provider hourly fees based on the Standard Rates.

| Fees                   | Fee Calculation                          | Weekly Fee Total |
|------------------------|------------------------------------------|------------------|
| Hourly rate of \$60.00 | 1 Employees x 80 hours per week @ .3 FTE | \$1,440.00       |



iii) Term:

Unless otherwise agreed by the Parties, the Services shall terminate at the end of the Term.

**c) Miscellaneous Consulting Services**

- i) Description. Either party may request the other party's support on an ad-hoc basis for various matters for up to ten (10) hours per month.
- ii) Service Request Process. Services to be provided herein must be requested in writing to the applicable service provider's designated contact upon not less than five (5) days' notice.
- iii) Fees. Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.
- iv) Term. Services provided on a miscellaneous consulting basis shall commence as of the Effective Date and shall terminate at the end of the Term.

**E. Employee Database Support**

**1. Scope of Services.** The applicable service provider will provide Employee Database Support services to Buyer or its Affiliates relating to its Transition Team and C&I Team without delay or inaccuracy.

Representative services include, but are not limited to, the following:

- U-Connect – Export Data
- Cyber Shift –Export Data

**2. Manner of Providing Services.**

**a) Fixed Services**

The applicable service provider shall provide support to Buyer or its Affiliates for the following known matters:

| Project Description         | Deliverables                                                                    | Fees                                  | Term                                                                                        |
|-----------------------------|---------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------------------------------------|
| <i>Employee data export</i> | <i>Export of all employee data as required for Development Company start-up</i> | <i>% of employees time per month.</i> | <i>Not to exceed 90 days but may be extended per agreement with 30 days written notice.</i> |

**b) Deliverables, Fees and Term**

i) Deliverables:

Deliverables, work-product and the timing for delivery shall be agreed upon between the designated contacts of the Parties in advance of providing the Services. In the absence of a specific request to provide a deliverable, no document, report or tangible documentation shall be required to be provided by the applicable service provider to Buyer or its Affiliates. Additionally, in the absence of specific timing for completion of the Services or providing the deliverable, the applicable service provider shall not be obligated to perform its Services within a specific timeframe.

ii) Fees:

Unless otherwise agreed by the Parties, Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.

| Fees | Fee Calculation | Weekly Fee Total |
|------|-----------------|------------------|
|------|-----------------|------------------|

|                        |                                          |          |
|------------------------|------------------------------------------|----------|
| Hourly rate of \$60.00 | 1 Employees x 20 hours per week @ .3 FTE | \$360.00 |
|------------------------|------------------------------------------|----------|

i) Term:

Unless otherwise agreed by the Parties, the Services shall terminate at the end of the Term.

**c) Miscellaneous Consulting Services**

- i) Description. Either party may request the other party's support on an ad-hoc basis for various matters for up to ten (10) hours per month.
- ii) Service Request Process. Services to be provided herein must be requested in writing to the service provider's designated contact upon not less than five (5) days' notice.
- iii) Fees. Buyer or its Affiliates shall pay the applicable service provider hourly fees based on the Standard Rates.
- iv) Term. Services provided on a miscellaneous consulting basis shall commence as of the Effective Date and shall terminate at the end of the Term.

**III. FINANCE AND ACCOUNTING**

[To come.]

**IV. LEGAL**

[To come.]

**V. OTHER SERVICES**

[To come.]

**EXHIBIT I**

**Employee Handbook**

# SunEdison Employee Handbook



☐ SunEdison Inc.  
501 Pearl Drive, St. Peters, MO 63376  
May 31, 2013



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## Introduction

**W**elcome to the SunEdison family! This Employee Handbook (the “Handbook”) is meant for employees of SunEdison and its wholly and partially owned subsidiaries in the United States (cumulatively, “SunEdison”).

We are pleased you have made the decision to join SunEdison. The purpose of this Handbook is to provide employees with a working guide to the day to day administration of personnel policies and practices at SunEdison. If you have a question, suggestion, request, or need clarification in the interpretation of any SunEdison policies or benefits, please talk to a Human Resources Representative.

SunEdison reserves the right to alter, amend and make exceptions to its policies, procedures and benefits at any time. Only the most current version of this Handbook applies in all instances.

## The Work Environment

### At Will Employment

Employment at SunEdison is at-will. Either an employee or SunEdison can terminate the employment relationship at any time, with or without cause and with or without notice. SunEdison reserves the right to modify or alter an employee’s position (including promotion, demotion, transfer, reclassification or reassignment), or to discipline or take other corrective action in accordance with applicable law and any applicable collective bargaining agreement (“CBA”). Nothing contained in this Handbook or in any other SunEdison policy should be construed as a contract of employment. No contrary statements or promises made by anyone at the time of hire or thereafter are binding on SunEdison in any manner. Any modification of the at-will nature of employment for an individual employee must be in writing, signed by the employee and Chief Executive Officer of SunEdison. Nothing in this statement is intended to affect the rights of employees to collective bargaining under the NLRB.

### Equal Opportunity Employment

SunEdison provides equal employment opportunity to all qualified persons and is committed that there shall be no discrimination against, or harassment of, applicants or employees because of race, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, age, physical or mental disability, veteran status or any other status protected by applicable federal, state or local law. SunEdison recruits, hires, promotes, transfers, takes corrective action and makes all personnel decisions, including those related to compensation and benefits, without discrimination and in accordance with applicable law.

### Child Labor Avoidance

Underage or child labor is prohibited at SunEdison. Minimum age for all regular full time employment with SunEdison is 18 years old. Any exception to the age 18 requirement for regular full time employment, for any special employment program (apprentice, training, internship, etc.) must have prior Corporate Human Resources approval.

## **Freedom of Association**

SunEdison recognizes that open communication and direct engagement between employees and management are the most effective ways to resolve workplace issues and employee disputes. All employees, individually and collectively, have the right to address their concerns and issues to management without fear of intimidation, harassment or retaliation. SunEdison also respects the rights of employees to associate freely, join or not join labor unions, seek lawful representation, and join labor or workers' councils in accordance with local and national laws.

## **Disability Accommodation**

SunEdison complies with the Americans with Disabilities Act, as amended (ADA) and the ADA Amendments Act of 2008 (ADAAA) and related applicable federal, state and local laws. SunEdison ensures equal opportunity in employment for qualified persons with disabilities. SunEdison will take reasonable measures to accommodate an applicant's or employee's disability in order to enable the employee to perform the job. Any accommodation must be medically necessary, effective, reasonable, and not an undue hardship upon SunEdison operations and not a risk of harm to the employee or others. If an employee's medical condition cannot be accommodated to allow the employee to perform his or her original position, SunEdison will attempt to place the employee in a vacant position for which he or she is qualified, if any are available. Such a reassignment may be at the employee's current rate of pay or may be at a lower rate of pay if an equivalent position for which the employee is qualified is not available. If you have a medical condition that you believe requires accommodation in order to perform your job, you should meet with your supervisor and local HR Representative to discuss possible means of accommodation.

## **Anti Harassment Policy**

At SunEdison, we expect that employees will be provided with a work environment that encourages productivity, mutual respect and humane treatment. SunEdison will not tolerate any form of discrimination or harassment of employees based on their race, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, age, physical or mental disability, veteran status or other status protected by applicable Federal, State or local law.

Harassment in violation of this policy can take a verbal form (jokes, ridicule and slurs), visual form (derogatory posters, cartoons, drawings or gestures) or physical form (physical conduct, threats, and demands to submit to certain non-work-related conduct).

Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal, visual or physical conduct when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for an adverse employment decision(s) affecting the individual; or
- Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

No supervisor, co-employee or non-employee shall threaten or suggest that an employee's refusal to submit to sexual advances may adversely affect the employee's employment, wages, advancement, assigned duties, shifts, or any other condition of employment.

Sexual harassment is not limited to conduct motivated by sexual attraction. Sexual harassment may occur between members of the opposite sex or members of the same sex, regardless of their sexual orientation. Sexual harassment also includes offensive non-sexual conduct directed at an employee because of his or her

gender.

### *Reporting Procedure for Harassment or Discrimination*

If an employee believes that he or she is being subjected to harassment or employment discrimination or has witnessed such harassment or discrimination, the employee should report the facts of the incident or incidents in accordance with the procedure set forth below.

Reports of harassment or discrimination should be made to the employee's supervisor or to Human Resources.

The report should include details of the incident or incidents, names of the individuals involved, and names of any witnesses. Supervisors who learn of harassment allegations shall refer all such harassment or discrimination allegations or complaints to Human Resources. Failure of supervisors to report such incidents may result in disciplinary action.

Reports of harassment or discrimination will be promptly investigated in an impartial manner. The steps to be taken during the investigation are not fixed in advance, but instead will vary depending on the allegations. Such investigations will remain confidential to the extent reasonably possible under the circumstances. However, SunEdison will likely need to disclose certain information in connection with the investigation, in order to conduct the investigation.

If the investigation produces evidence that the Anti-Harassment, Equal Opportunity Employment, or other employment policy concerning improper harassment or discrimination was violated, appropriate action will be taken to correct and remedy the problem. Such actions may include, for example, counseling, training, written or verbal warnings, transfer, discipline, and termination of employment.

### *Retaliation*

Employees are protected by law from retaliation for opposing unlawful discriminatory practices, for having in good faith reported harassment or discrimination to their employer, for having assisted another employee to report harassment or discrimination, for filing a complaint with an administrative or regulatory agency, or for otherwise participating in any legal proceeding concerning these matters. Retaliation for exercising any rights or benefits provided by SunEdison will be prohibited. Retaliation will not be tolerated. Retaliation against an employee will result in discipline, up to and including termination of the retaliating employee.

### *Personal Liability for Harassment and Discrimination*

Employees should also take note that an employee who engages in harassment, including any manager who knew about the harassment and took no action to stop it, may be held personally liable for monetary damages.

## **Safety and Security**

Continuing the safe operation of SunEdison means that each of us has a basic obligation to our fellow employees and ourselves to work in the safest manner possible.

SunEdison management is seriously committed to preventing injury and providing protection for employees. Accident prevention is a mutual responsibility. SunEdison will provide proper safety equipment, train employees in safe operating practices, and establish and enforce safety regulations. All employees, in turn, must work safely, follow established safe working procedures, use the proper equipment, and report all unsafe working conditions and all injuries immediately.

Please check the specific additional policies and procedures pertaining to your worksite and your job assignment.

### *Employee Responsibility for Safety*

Every employee has a personal responsibility for keeping informed about applicable safety regulations and instructions and/or complying with good safety practices. Failure to follow safety instructions or regulations will be cause for corrective action, which may include immediate employment termination. Employees are required to comply with the following safety requirements:

- Safety is the first priority in decision making.
- Correct any unsafe acts or unsafe conditions if possible (without taking an unsafe action) and notify a supervisor immediately.
  - Horseplay will not be tolerated.
  - Report all work related injuries immediately for treatment and correction of causes. All injuries must be reported immediately upon occurrence or discovery or, at the latest, within 24 hours, regardless of whether the employee is at work when the injury is discovered.
  - Report to your supervisor (and nurse or ESH supervisor, as appropriate) any non-work injuries, illness, physical limitations or medications (prescription or otherwise) that could affect performance, health, or safety on the job prior to beginning the work shift.
  - Wear protective equipment required for a particular work area and/or for the particular task. Notify your supervisor of any defective or improper protective equipment.
  - If injured or ill, notify your supervisor prior to leaving the work area when possible. If unable to do this prior to leaving the work area, ask a co-worker to contact your supervisor immediately.
  - Every person shall have the responsibility and authority to suspend any operation or deactivate any equipment in the event of imminent danger or injury to life or health.

### *Security*

In a competitive business like SunEdison's, success depends, in part, on staying a "step ahead" of the competition. SunEdison must therefore protect its assets, such as inventions, technology, costs, processes, and personnel. Each employee shares in the responsibility of safeguarding SunEdison assets against loss resulting from unauthorized disclosure to any outside party. Toward this end, all new employees are required to sign a confidentiality agreement as a condition of employment. An employee's obligation not to use or disclose SunEdison confidential information remains in effect after termination of employment with SunEdison.

Any employee desiring to remove material of any kind from SunEdison must obtain an approved material pass from his or her supervisor. Material may be removed only when a properly approved material pass is provided to an authorized representative of SunEdison.

### *Security Inspections*

To protect our employees and ensure the safety and security of our facility, SunEdison reserves the right to ask questions and, if necessary, to search employees and their company-issued or personal belongings (including but not limited to vehicles, purses, pockets, desks, files, computers, telephones, and lockers) while on SunEdison premises.

- The search may occur as part of an investigation when unauthorized possession of property or possession of contraband material is suspected, or in any other circumstances deemed appropriate by SunEdison.
- Employee cooperation in the search procedure is a condition of continued employment. Failure to cooperate in a search or investigation may lead to termination.
- Vehicles, desks, and lockers may be provided for the convenience of employees, but remain the sole property of SunEdison. Unauthorized storage of SunEdison property in employee desks, changing rooms and



lockers is not permitted.

In order to ensure compliance with these rules and in the interest of maintaining a safe, secure and drug-free workplace for all its employees, SunEdison retains the right to access employee desks, changing rooms, and lockers and inspect their contents at any time and without notice.

SunEdison accepts no responsibility for theft or damage to personal property on SunEdison premises, including but not limited to property which has been placed in employee offices, desks, vehicles and lockers.

## **Violence Prevention**

We are committed to providing a safe and healthful workplace. SunEdison strictly prohibits employees, consultants, clients, visitors, anyone on our premises, or anyone engaging in a SunEdison-related activity from behaving in a violent or threatening manner. Moreover, as part of this policy, SunEdison seeks to prevent workplace violence before it begins and reserves the right to deal with behavior suggestive of future violence even prior to any violent behavior occurring.

### *Definition of Workplace Violence*

Workplace violence includes, but is not limited to, the following:

Threats of any kind of harm to the physical or mental well-being of any person, or threats of damage to the property of SunEdison, employees, or others, whether the threat is made in person, orally or in writing, through voicemail, email, computer file, or by any other means;

Threatening, physically aggressive, or violent behavior, including intimidation or any attempt to instill fear in others;

Other behavior that suggests a propensity toward violence, which can include belligerent speech, arguing, swearing, sabotage, or threats of sabotage of property belonging to SunEdison, employees or others or a refusal to follow SunEdison policies and procedures;

Defacing or damaging the property of SunEdison, employees or others, including but not limited to equipment, facilities, products, or materials of SunEdison, or to the vehicles or personal property of any employee, consultant, client, vendor, or customer;

Possessing, using, or transporting weapons, such as guns, knives, ammunition, explosives, or firearms of any kind on SunEdison premises, in SunEdison parking lots, or elsewhere while conducting SunEdison business; or

Encouraging, inciting, or condoning any of the above by any means, including but

not limited to being present at the scene of any workplace violence and failing to report it immediately, or participating in other forms of forbidden activity that create a risk of violence such as gambling, loan sharking, vandalism, theft, receiving stolen property, or abuse of drugs or alcohol.

Threats or acts of violence against SunEdison's employees, temporary agency workers, independent contractors or other persons and/or property will not be tolerated. Such actions will lead to disciplinary action, up to and including immediate termination. Civil and/or criminal penalties also may be imposed.

If you suspect any employee or visitor is in violation of these prohibitions, immediately report the facts to your supervisor or Human Resources Representative. No retaliation will be taken or tolerated against any employee who reports, in good faith, a suspected violation.

Employees are free to contact law enforcement agencies directly when they have reason to believe that doing so is essential to prevent actual or imminent unlawful harm to themselves, others or property. If law enforcement agencies are contacted first, your supervisor and Human Resources Representative should be contacted immediately thereafter.

Once a threat or act of violence has been substantiated, SunEdison will take prompt and effective action. Such

action may include a medical and/or psychological evaluation, referral to the Employee Assistance Program, referral to law enforcement agencies, discipline and/or termination of employment.

## **Visitors in the Workplace**

To provide for the safety and security of employees and facilities of SunEdison, only authorized visitors are allowed in the workplace. Restricting unauthorized visitors helps maintain safety, prevents against theft, protects confidential information, safeguards employee welfare, and avoids potential distractions and disturbances. All visitors should enter SunEdison at the main entrance. Authorized visitors must be escorted to their destination. You are responsible for the conduct and safety of your visitors. If an unauthorized individual is observed on SunEdison premises, you should immediately notify your supervisor or, if necessary, take the individual to the main entrance.

## **Sanitation, Food and Housing at the Workplace**

SunEdison employees will be provided with ready access to clean toilet facilities, potable drinking water and sanitary eating facilities. If provided, all food preparation and storage facilities will be maintained in a clean and sanitary manner. Employee housing or dormitories, if provided either by SunEdison or Labor Agency, will be maintained in a clean and safe manner with reasonable personal space for employees along with appropriate sanitary toilet and bathing facilities, climate control and reasonable entry and exit privileges.

## **Environmental Protection**

SunEdison has established and will maintain an environmental safety and health management system that integrates environmental considerations into our routine operations and recognizes and measures the effects of our presence on the surrounding environment. We are committed to continue to improve our good relationship with the environment by providing all employees with the awareness and resources necessary to perform their activities with environmental considerations. SunEdison policies on fire safety, evacuation procedures, gas safety, chemical safety and other environmental practices can be found on the SunEdison Intranet. It is the responsibility of each employee to be familiar with and follow current environmental practices.

Any chemical substance brought onto SunEdison premises must be reported and a Material Safety Data Sheet (MSDS) for that chemical must be added to those MSDSs in the work area.

## **The Standards of Business Conduct**

### **Code of Business Conduct**

The SunEdison Code of Business Conduct can be found on the SunEdison Internet and Intranet at [imemc.sunedison.com](http://imemc.sunedison.com). It is the responsibility of each employee to be familiar with and follow the Code of Business Conduct. You may also access the Code of Business Conduct through your local Human Resources Department.

## **Confidential Information**

Employees of SunEdison may gain access to confidential and/or proprietary information regarding SunEdison, its personnel and its operations. For the purposes of this policy, Confidential Information means all technical and business information of SunEdison, whether patentable or not, which is of a confidential, trade secret and/or proprietary character. Confidential Information shall also include confidential evaluations of, and the confidential use or non-use by SunEdison of, technical or business information in the public domain. Confidential Information includes, but is not limited to, SunEdison financial and strategic planning information, marketing strategies, salaries and staffing information, research and development information, product plans, products, services, customer lists, customers, markets, software, developments, inventions, processes, formulas, technology,

designs, drawings, engineering, hardware configuration information, personnel information and similar business information relating to SunEdison's operations that is not generally available to the public.

Confidential Information shall be kept confidential and shall not be disclosed, used, copied or removed from SunEdison premises, except as necessary to perform the duties of the job or as specifically directed by SunEdison management. Confidential Information may be disclosed to other employees only on a need-to-know basis.

Employees are required to sign and abide by SunEdison's standard confidentiality agreement as a condition of employment. The obligation to maintain the confidentiality of SunEdison's Confidential Information applies both during and after employment with SunEdison. If an employee is unsure whether certain information is Confidential Information, it is the employee's responsibility to obtain a determination from the employee's supervisor or department head. Failure to abide by the terms of this policy may subject an employee to disciplinary action, including termination, and SunEdison may seek court action to remedy past violations and enjoin future violations. Upon termination of employment, all SunEdison property, including, but not limited to, Confidential Information, must be returned to SunEdison.

## **Conflict of Interest**

SunEdison subscribes to the highest ethical standards. Employees are expected to conduct business legally and ethically and insist that our vendors and business partners do the same. All employees are expected to maintain these standards at all times. Failure to maintain these standards will subject an employee to disciplinary action, up to and including termination of employment from the Company and, where appropriate, civil liability and criminal prosecution.

SunEdison expects all employees to avoid the conflict or appearance of conflict between their personal interest, or those of their immediate family, and the interests of SunEdison in dealing with vendors, customer and other organizations or individuals that do business with SunEdison. Each employee is responsible for reporting, in writing, any actual or potential conflict of interest that may exist between him or her (or a member of his/her immediate family) and SunEdison.

## **Outside Employment**

While employed by SunEdison, it is your obligation to act in the best interest of SunEdison and not allow any personal activity to conflict with or interfere with your service to SunEdison. SunEdison makes every effort to keep its employees as fully employed as possible. When an employee is on the job, this means that 100% of his or her effort is required. The assumption of, or engagement in, any interest, relationship, or activity by a director, officer or employee tending to impair the independence of such person's judgment with respect to the best interest of SunEdison shall constitute a conflict of interest.

Each employee is required to sign an agreement (contained in the standard confidentiality agreement described above) not to engage in any other business or technical activity (or the planning of such business or technical activity) competitive with or in conflict with the business interests of SunEdison.

When you become aware of or involved in an actual or proposed outside business activity, ask yourself the following questions:

- Will the proposed activity conflict or appear to conflict with SunEdison's interests?
- Will the proposed activity conflict or appear to conflict with SunEdison's present or future business?
- Will the proposed activity use any SunEdison or unauthorized third-party confidential, proprietary or trade secret information?
- Will the proposed activity involve the use of SunEdison equipment or facilities?

- Will the proposed activity compete with SunEdison or aid a competitor?
- Will working on the activity interfere with my responsibilities or duties at SunEdison?
- Will the proposed activity relate to the services I perform on behalf of SunEdison?
- Will the proposed activity generate intellectual property that could be owned by SunEdison?

If any of your answers is “yes”, then your proposed activity will not be approved. In cases where you are not sure, provide your supervisor with a written description of the activity you are proposing. If the outside employment or activity is approved, the description, along with management’s approval, will be kept in your employment file. Your supervisor must take action immediately to eliminate a situation that constitutes a conflict of interest.

If management feels that outside employment prohibits an employee from fulfilling their obligations to SunEdison, the employee may be asked to resign from SunEdison or to leave their outside employment.

## **Workplace Solicitation**

To avoid disruption of business activity, SunEdison restricts solicitation activities and the distribution of non-business materials in the workplace. Solicitation by employees that interferes with work is prohibited. Solicitation by non-employees is prohibited at any time on any SunEdison premises.

Solicitation includes, but is not limited to, buying and selling of goods, seeking contributions or signatures, and offering tickets or memberships in organizations. Solicitation between employees is prohibited on working time, or in working areas, or when solicitation might interfere with other employees’ performance of their jobs.

SunEdison maintains bulletin boards to communicate SunEdison related information. These bulletin boards (or any other bulletin board established in the future) are for business purposes only. Employees are not permitted to post on SunEdison bulletin boards without prior approval from Human Resources. Any unapproved material will be removed.

## **Public Communication**

As a publicly traded company, SunEdison must comply with a variety of regulations that govern public communications to investors and the public and promote transparency in financial markets. SunEdison has specific requirements for financial reports and documents that SunEdison files with or submits to the U.S. Securities and Exchange Commission and in other public communications.

Therefore, if you are responsible for preparing such reports or contributing information for such reports, you need to ensure that the disclosures are accurate, reliable and complete.

In addition, only authorized employees may make any public statements on behalf of SunEdison, whether to the media, investors, or in other external forums, including the Internet. If you are contacted by a reporter or the public on a topic on which you are not authorized to speak, refer the inquiry to the Investor Relations Department. All public statements regarding SunEdison made by SunEdison employees or directors must be made in compliance with SunEdison’s Corporate Communications Policy (located at on our intranet at [www.sunedison.com](http://www.sunedison.com)).

## **PC, Email and Internet Usage Policies**

Terms and conditions of employment relating to hardware and software systems and usage, electronic messaging, and internet usage are set forth in several Global Information Technology policy and procedure documents, including the Personal Computer Hardware & Software Policy and the Electronic Communications, Information, and Internet Policy, (located at on our intranet at [www.sunedison.com](http://www.sunedison.com)). In addition, the BlackBerry

and iPhone Usage Policy sets forth additional terms of employment for those employees who are issued cell phones to support their performance of work duties. All employees who are issued, or have access to, electronic systems and media are required to familiarize themselves with, and abide by, these policies. The Global IT policies can be accessed on the SunEdison Intranet or are available from your local Information Technology or Human Resources representatives.

The following information sets forth some important aspects of the Global Information Technology policies governing electronic systems and media. It is important to note, however, that the information set forth below does not cover all provisions of the relevant Global IT policies. Employees must refer to the policy documents for a complete listing of policies and guidelines for electronic system usage. Failure to abide by all of the terms of the Global IT policies may result in disciplinary action, up to and including termination from employment.

### *Personal Computer Hardware and Software Usage*

#### **Policy**

All hardware and software purchases are the responsibility of local IT, based upon the standards set by Corporate IT. Local IT personnel will purchase company hardware and standard software from the local list of approved vendors. Local IT will support all hardware and software that meet company standards and were installed by local IT. Any non-standard or non-business related, unapproved, unlicensed (pirated) software will be removed without prior notice. Violation of the policy may be subject to disciplinary action, up to and including termination of employment. Under no circumstance is an individual authorized to engage in any activity that is illegal under local, state, federal or international law.

#### **Practices**

- Computers, either desktops or laptops, are provided to employees, contractors and/or consultants for the express purpose of conducting company business.
- Employees, contractors and/or consultants are responsible for all usage of the computers and must lock the computer by setting the screensaver when leaving the computer unattended.
- Employees, contractors and/or consultants are required to follow best practices on setting up and changing passwords. Systematic password resets occur every 60 days.
  - Passwords should not be written down or shared unless IT technicians request it to service an issue. Once the issue has been resolved, the user must change the password if shared with the IT technician.
  - Complex passwords are required containing a minimum of 8 alphanumeric, special characters and at least 1 capital.
  - It is recommended you do not use first, last, family member or pet names.
  - Three consecutive failed password attempts will lock the user's ID; call the local Help Desk to have the password reset.
- Employees, contractors and/or consultants may not permit unauthorized use of computers including use by family members and friends.
- Laptop users should lock their computers in their office or file cabinets overnight. Desktops are secured with a lock when installed.
- Personal pictures, videos, music, games, bitmaps, etc are prohibited from being saved on company computers and may be removed by IT Technicians when working on that PC.
- All computers should be turned off when left unattended for 3 hours or more during business hours and at the end of the day.
- Employees, contractors and/or consultants may not violate any copyright laws.

- The company reserves the right to use monitoring software to ensure compliance for any reason and without notice.
- Report any suspicious activity to your immediate supervisor and to the local IT Department Manager.

**Exception Process**

- In general, employees, contractors and/or consultants may not purchase hardware and/or software. Any job-related deviations from this policy must have prior written approval from the department senior management and Director Global IT Operations.
- The employee, contractor and/or consultant must document business justification and obtain their department manager's approval prior to purchasing non-standard hardware and/or software. When this approval is obtained, submit the form to the Director – IT Operations, for approval.
- Purchase the hardware and/or software and retain a copy of the approved exception in the department records.
- Provide a copy of the invoice to the local IT department.
- On-going support for non-standard hardware and/or software is the user's responsibility to work directly with the vendor. Local IT will work with the vendor to ensure system integrity is maintained.

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*Use of Company Network, Hardware, Software, Peripherals and Internet Access*

**Policy**

By using the company network, computer, electronic communications, electronic information or Internet access, personnel consent to all provisions of this policy. Violation of the policy may be subject to disciplinary action, up to and including termination of employment. Violation by a contractor or consultant may result in termination of the contract or assignment with the company. Under no circumstances is an individual authorized to engage in any activity that is illegal under local, state, federal or international law.

**Practices – Computer Equipment & Electronic Information**

- This section addresses the use of computer networks, hardware, software, peripherals and Internet access as well as electronic information generated, transmitted, stored or maintained on company networks or computer equipment used to generate communications, document preparation, spreadsheets and similar material.
- Computer equipment and electronic information are made available to personnel to enhance their performance in achieving company goals and are primarily intended for business use.
- Personnel are prohibited from certain activities, including but not limited to:
  - Copying or downloading of software that has not been appropriately licensed and purchased according to company policies and/or obtaining prior department management and Director IT Operation's approval.
  - Copying or installing the company's licensed software on company equipment without prior documented approval from department management and in accordance with Global IT policies and subject to appropriate licenses.
  - Copying or installing the company's licensed software on any non-company equipment that was not specifically authorized.
  - Copying, storing, or operating company data on unauthorized hardware or through unauthorized software.

- Copying, storing, or transmitting data in an unauthorized encrypted state.
- Attaching computer equipment (including peripheral storage, scanning, and networking devices) to company computer networks and/or existing approved computer equipment without prior documented approval from department management and in accordance with Global IT policies and subject to appropriate licenses.
- Knowingly or recklessly making available company computer networks, hardware, software, peripherals and Internet access as well as electronic information available to unauthorized persons.
- Unauthorized use, retrieval or distribution of copyrighted materials.
  - Using company equipment to attempt to gain unauthorized access to outside computer information services, Intranets, Extranets or other information sites.
  - Using company equipment to transmit, gain access to, to retrieve data or information in violation of this policy, including, but not limited to, the transmission or storage of unlawful, defamatory, discriminatory, offensive, obscene or harassing messages, or information protected by copyright, or information that otherwise compromises the company.
  - Incidental and minimal personal use of the company's computer equipment is permitted as long as the use otherwise complies with Global IT policies, does not interfere with job performance, and is not for the purpose of furthering any non-company related outside business activity. Excessive (other than minimal) or inappropriate personal use is prohibited and can lead to disciplinary action, up to and including termination of employment.

### *Use of Electronic Transmissions, including Telephones, Email and IM*

This section addresses electronic transmissions and the use of all types of electronic transmission of information and data. For example, telephone systems, radio systems, paging systems, wireless messaging systems including, but not limited to, personal digital assistants (PDAs, BlackBerry, etc), e-mail, voice-mail, instant messaging (IM), blogging, and facsimiles by all personnel using equipment and services owned, operated, leased or subscribed to by the company.

- Personnel are prohibited from certain activities, including but not limited to:
  - Excessive use of social networking sites. The company deploys content filtering mechanisms to prevent this activity on all company networks. **All Internet activities are monitored and logged for a period of sixty days to document employee, contractor and consultant utilization of the Internet.**
  - Distribution of chain letters or solicitations for personal businesses, other commercial ventures, outside organizations, or other non-job-related solicitations.
  - Electronic communication systems are not to be used for the intentional spreading of computer viruses or other destructive information or the malicious disruption of computer services.
- Text messaging on company provided devices is permitted although the information is not retained or stored.
- Any non-company computer utilizing VPN or any other technology to gain access to the company computer equipment, Internet, electronic communication systems or information must use a properly configured up-to-date operating system and anti-virus software.
- Personnel are prohibited from saving or storing company electronic information on computers or removable storage devices (USB/zip drives) that are not owned by the company.
- All company computer equipment and electronic information, including hardware, software and any data generated on the computer equipment are the proprietary interest and records of the company.
- Personnel should not have any proprietary interest or expectation of privacy in the computer equipment, Internet, electronic communication systems or electronic information or their use, including hardware, software and any data generated.
- All company computer equipment and electronic information, including hardware, software and any data generated on the computer equipment, are the proprietary interest and records of the company
- All legally privileged and confidential electronic information may not be disclosed to anyone outside the employment of the company unless authorized by the Legal Department.

#### **Exception Process**

- Any job-related deviations or exceptions must be approved by the user's senior management and Director IT Operations or Jerry Barfield Director IT Infrastructure.

### *Mobile Device Usage Policy*

Employees, contractors and/or consultants may be issued a mobile device based on business needs (refer to Employee Role) to determine eligibility and authorization levels.

There are currently 2 options – a company owned or Bring-Your-Own-Device (BYOD). The company provided device with voice and data services to primarily conduct company business.



### **Eligibility**

BYOD devices and phone numbers are owned by the employee, contractor or consultant. Employees, contractors and consultants are responsible for any/all charges incurred. All device maintenance/support is the sole responsibility of the user.

### **Reimbursement and Expenses**

The end user's department will be charged an annual licensing fee once authorization is in place. If the department will not accept the charge the end user may pay the licensing fee on their own.

### **Practices – Company Owned Devices**

The company acknowledges these are representative examples and not an exhaustive listing.

- Each user is responsible for the security and maintenance of the device. Immediately report theft or loss to the Global IT Help Desk (636.474.4357).
- Application and ringtone downloads are permitted provided there are no additional charges to the company.
- Mobile device numbers are company property and will not be transferred to the employee, contractor or consultant when they leave the company.
- Mobile devices are not a replacement for office land line phone usage during normal business hours unless traveling.
- The devices do not replace home phone lines or personal cell phones.
- Cell phone invoices/charges will be reviewed monthly.

### **Practices – Bring-Your-Own Devices**

- Each user is responsible for the security and maintenance of the device. Immediately report theft or loss to the Global IT Help Desk (636.474.4357) to remove company data.

## **Open Door Policy & Complaint Procedure**

It is SunEdison policy to treat all employees with dignity and respect. In any group of people working together, certain differences of opinion regarding job related matters are likely to arise. An open door procedure has been established to handle such situations. It provides a formal procedure for employees to voice their concerns to members of management without fear of retaliation.

Most problems or issues can be and are encouraged to be handled between a supervisor and employee. Nonetheless, from time to time the employee may feel a particular problem should be carried further. The purpose of this procedure is to provide each employee with that avenue for discussion.

In the handling of issues, another employee from that same work group may accompany the complainant in presenting the issue, provided proper arrangements for work relief coverage have been made.

Such discussions may be handled during working hours without loss of pay. In order to ensure fair and prompt handling when issues do occur, the normal steps in presenting an issue are as follows:

- Discuss the matter with your Supervisor or Coach and try to reach an understanding.
- If an understanding is not reached, the matter may be taken to the Operating Supervisor or Department Manager, who will inform, and discuss the issue with, Human Resources. If not resolved at this meeting, the Operating Supervisor has the responsibility of seeing that the issue is put into writing. The write-up should

contain the nature of the complaint and what resolution is being sought.

- A meeting will be arranged for the employee, Operating Supervisor or Department Manager and a Human Resources Representative to discuss the complaint in the attempt to reach a satisfactory conclusion.
- If an agreement still has not been reached, the final step in this Process is to make arrangements for the employee, Department Manager, Human Resources Manager and Plant Manager (or in the absence of the Plant Manager, a designee) to review the issue.

## **Dating and Fraternization**

SunEdison intends to maintain a work environment that is free from intimate, romantic or dating relationships between supervisors and their subordinates or between employees involved in any other power-differentiated relationship. Power-differentiated relationships can lead to sexual harassment, or the appearance of harassment, and adversely affect SunEdison morale, operations, and productivity because of actual or perceived favoritism, bias, or unfair treatment.

A “power-differentiated relationship” is any supervisor-subordinate work relationship or other work relationship in which one employee supervises or manages, directly or indirectly, another employee or makes decisions concerning another employee’s terms, conditions or privileges of employment. SunEdison does not otherwise discourage friendship or social activities among its employees.

In order to effectuate the purposes expressed above, when an intimate, romantic, or dating relationship develops between a supervisor and a subordinate (or other “power-differentiated relationship”), the supervisor involved in the relationship must report it to his/her supervisor or to Human Resources. SunEdison may attempt to modify the power-differentiated work relationship, through transfer within SunEdison or by any other available options. If no options are satisfactory to both SunEdison and the employees, and the employees decide to continue in the relationship, one employee will be required to resign.

## **Relatives in the Workplace**

At no time is an employee allowed to work in an area that is under the supervision of a relative without review and consent by the HR Department. If current employees marry or become relatives due to a marriage in the family, the employee with less seniority may be asked to resign if there are no open positions to match their skills in another area. This applies to all employees as well as temporary and contract labor and is to prevent a conflict of interest, either real or perceived.

## **Smoking**

SunEdison does not allow smoking on SunEdison property, except in designated outdoor smoking areas. It is the employee’s responsibility to dispose of used smoking materials in a proper disposal container.

## **Drug Free Workplace**

SunEdison recognizes alcohol and drug abuse as a potential health, safety and security problem. If you need help in dealing with such problems, you are encouraged to use our health insurance plans and the Employee Assistance Plan. Conscientious efforts to seek help for an alcohol or substance abuse problem will not jeopardize your job (in the absence of conduct violating SunEdison policies) and will not be noted in your personnel records.

It is our policy that no employee will use alcohol or illegal drugs or inhalants, or abuse controlled substance drugs, while at work or come to work under the influence of alcohol, illegal drugs or inhalants, or have these in their possession while on property owned by or leased by SunEdison. As an exception to the above, moderate

consumption of alcohol is permitted at SunEdison-sponsored events where alcohol is served. (See SunEdison Sponsored Events, below.)

No employee is allowed to consume, possess, sell or purchase any alcoholic beverage on any property owned by or leased by SunEdison, or in any vehicle owned by or leased by SunEdison or while conducting SunEdison business.

No employee may use, possess, sell, transfer, purchase or manufacture any drug, inhalant or other controlled substance that may alter an individual's mental or physical capacity on any property owned by or leased by SunEdison, or in any vehicle owned by or leased by SunEdison, or while conducting SunEdison business.

All employees are responsible for reporting evidence of alcohol or drug abuse as described in this policy to a supervisor or a Human Resources Representative immediately.

When there is cause to reasonably suspect that an employee may have reported to work or is working under the influence of alcohol or drugs, the employee may be asked to submit to alcohol and drug testing. Any employee involved in either a job-related accident or incident involving the apparent violation of a safety rule or standard, which did result or could have resulted in injury or property damage, may be asked to submit to random alcohol and drug testing. The Company reserves the right to require alcohol and drug testing in other situations where otherwise permitted by relevant law (e.g., when testing is required under contracts with customers, etc.).

Employees who test positive when tested for alcohol or drug use, or who refuse to submit to testing when required, may be terminated immediately.

## **SunEdison Sponsored Events**

Throughout the year, SunEdison may sponsor events that are designated to promote camaraderie and team spirit. Those who do attend are expected to conduct themselves in a courteous, responsible and respectful manner. Employees are not to become intoxicated at activities sponsored by SunEdison. Minors are not to consume alcohol at events sponsored by SunEdison. SunEdison's personnel policies, including, but not limited to, the harassment, discrimination and weapons policies are in effect at all SunEdison sponsored events, and employees may be disciplined for any violation or other misconduct at any SunEdison sponsored event.

## **Personnel Records & Payroll Practices**

SunEdison maintains a personnel file on each employee. Personnel records are the property of SunEdison and are treated the same as any other SunEdison confidential information.

## **Confidentiality of Personnel Files**

In the course of managing its business, SunEdison collects and maintains information on all of its employees. SunEdison understands the confidentiality of this material and intends to accurately obtain, maintain, manage and release information in a protective manner. Absent special circumstances, information will generally only be released under the specific circumstances described in this policy.

From time to time SunEdison is asked for information on its employees, whether it is for reference checking, medical inquiries, or other business related matters. Some of this information is requested to comply with federal and/or state laws. When responding to these types of requests, SunEdison will take reasonable measures to safeguard the privacy of the information SunEdison maintains.

SunEdison gives law enforcement and other government agencies pursuing a specific investigation supervised access to information that might have a bearing on the investigation. Information is disclosed as required by law for subpoenas, litigation administrative proceedings and court orders.

## **Employee Requests for Review of Personnel Records**

The following provisions apply with respect to an employee's request to review their personnel record maintained by Human Resources:

- An employee wishing to review his/her personnel file must contact Human Resources, which is responsible for coordinating the review of an employee's personnel record with the employee's immediate supervisor.
- A member of Human Resources must be present while the employee reviews their personnel file.
- The employee may take notes, but may not remove, photocopy, deface or otherwise make notations on the documents in their personnel file unless authorized by law.

## **Management Review of Personnel Files**

All information in employee personnel files is considered confidential. This information is generally only available to Human Resources, the Legal Department, senior management personnel and supervisors who are responsible for the employee. The supervisor of the department to which an employee may be transferred may review the employee's file with the approval of the Human Resources.

## **Medical Records**

Your medical records are highly confidential and will be carefully protected by SunEdison. Data requested will be managed in accordance with the ADA, as amended, and the Health Insurance Portability and Accountability Act ("HIPAA"), if applicable. Information contained in or obtained from employee medical records will not be used in a discriminatory manner for employment related matters.

## **Keeping Employee Information Current**

Employees are asked to help keep SunEdison informed about any major life change that may affect their employment or insurance status. Important changes to report include:

- Name.
- Address.
- Telephone numbers.
- Marital status.
- Number of dependents.
- Any important health information, such as reasonable advance notice of the need for leave.
- Emergency contact information.
- Beneficiary election and any change of beneficiary.
- Authorized payroll deductions.
- Additional education and special training courses.

In addition to updating HR, you are also responsible for informing your supervisor of changes to personal contact information, or health conditions or medications that could impair job performance.

## **Timekeeping**

Every non-exempt employee is responsible for accurately reporting actual time worked.

Time cards/time sheets or electronic time records are legal documents and must accurately portray the hours and shifts worked and work codes. Your supervisor will approve the time records upon completion of each pay period. It is important that you complete your time records accurately on a daily basis in order to ensure proper

payment of wages. This includes both hours and work codes.

You should never fill in another employee's time card. Falsification of a time card (whether your own or that of another employee) is a violation of SunEdison policy and is considered a major infraction that will lead to severe corrective action including termination. It is also a serious policy violation for any employee or manager to instruct another employee to incorrectly or falsely report hours worked or to alter another employee's time card/sheet (either to under- or over-report hours worked). If an employee or manager instructs you to incorrectly or falsely report your hours worked, you should report it immediately to the Human Resources department.

## **Pay Periods**

SunEdison pay periods differ by location. See your local HR representative for more information.

## **Hours of Work and Attendance**

### **Employee Categories**

Each job is designated as either non-exempt or exempt by federal and state wage and hour laws. Non-exempt (or "hourly") employees are paid for all hours worked, and paid premium rates for overtime. Generally, employees in non-exempt jobs will receive 1 ½ times their regular hourly wage rate for any hours over 40 worked in one work week. Other rates or practices may apply pursuant to an employee's applicable CBA (if any), state or local laws or local pay practices. Exempt employees are paid a fixed salary for their job, not for a number of hours worked. Exempt employees are paid on a salary basis and SunEdison will not make any deductions from their salary that are prohibited under the Fair Labor Standards Act. Exempt employees are generally expected to work at least 40 hours per week. Exempt employees are not eligible for overtime pay.

All employees belong to a specific employment category or classification based on their normal working schedules. Generally, eligibility for benefits depends upon your classification, as described below, and on coverage provisions set forth in benefit plan documents.

#### *Full-Time*

Employees hired to regularly work 30 hours or more a week are considered full-time for benefit purposes.

#### *Part-Time*

Employees hired to regularly work less than full time (less than 30 hours a week) are considered part-time for benefit purposes.

#### *Temporary*

Employees hired as temporary replacements for full-time or part-time employees, or for short periods of employment such as summer month, peak periods and vacations are considered temporary employees. Temporary employees are not eligible for benefits regardless of the number of hours or weeks worked.

## **Seniority**

Seniority is measured in years, months, and days from the date of most recent employment.

## **Work Hours and Schedules**

Each employee is expected to work the hours needed to meet SunEdison's needs. The nature of our business frequently requires SunEdison to run on a continuous seven-day-a-week operation. This continuous seven-day-a-week operation usually results in the need to operate on holidays. Operational requirements change with

production levels. To accommodate these varying needs, there are a variety of shifts and schedules operating within SunEdison.

A standard regularly scheduled workweek for hourly workers shall not exceed 60 hours per week including overtime, except in emergency or unusual situations. Employees shall be granted at least one (1) day off per standard regularly scheduled seven (7) consecutive day work week, except in emergency or unusual situations.

### *Overtime*

There will be times when overtime is necessary of non-exempt employees in order to meet business demands. The purpose of the overtime procedure is to set forth guidelines to ensure equitable opportunity for overtime for all employees. Overtime needs will be achieved as determined by your department head or site manager in accordance with local procedures.

Unless authorized by your supervisor, a non-exempt employee should not work any hours outside of the approved work schedule. Do not start work early, finish work late, work during an unpaid meal break or perform any other extra or overtime work unless you are authorized to do so and that time is recorded as hours worked on your time card/sheet. Non-exempt employees are prohibited from performing "off-the-clock" work. Off-the-clock work means work performed but not reported on your timesheet. An employee who fails to report, or inaccurately reports, any hours of work will be subject to disciplinary action.

### *Rest and Meal Breaks*

Meal and rest breaks for non-exempt employees will be scheduled by your supervisor in accordance with local site or plant practices and in accordance with federal, state and local laws. Employees are expected back at their workstation ready to start work at the end of each scheduled break and lunch break period.

## **Attendance and Tardiness**

It is important that employees are prompt and regular in attendance. You are responsible for checking your site-specific guidelines, which provide more detailed guidance than the general guidelines below.

### *Attendance*

All employees are expected to report to work on time for each scheduled work day and to remain at work for all scheduled work periods, unless otherwise previously approved by their supervisor for an approved scheduled absence, late arrival or early departure. When an absence cannot be planned in advance (i.e., illness or emergency), you must contact your supervisor as soon as possible to report your absence. Employees are expected to contact their supervisor on each day of any unscheduled absence, unless an extended leave has been approved by Human Resources. Excessive unscheduled absences can lead to termination of employment. An employee's failure to notify his or her supervisor for three continuous workdays of absence is considered by SunEdison to constitute the employee's voluntarily resignation.

### *Tardiness*

If you are unable to report to work on time because of circumstances beyond your control, you are required to contact your supervisor directly as soon as possible. If your tardiness is excessive, you may be subject to corrective action, including termination.

## **Emergency Call In**

Emergency call-in procedures are established locally and in accordance with federal, state and local laws.

## **Emergency SunEdison Closing**

In the event it is necessary to close SunEdison for an emergency due to bad weather or any other reason, your SunEdison location will operate pursuant to its locally established procedures, if any.

## **Employee Development and Corrective Action**

### **Job Opportunities and Assignments**

The job opportunity system is designed so employees have career development opportunities and job openings can be filled in a timely manner with qualified personnel. The job posting system with information on the internal job bidding process is found on the SunEdison Intranet and internet career sections. Human Resources can also be contacted to assist you.

Positions awarded under the job opportunity system are based on expressed employee interest and evaluation of the best-qualified candidates through the job bidding process. Any awarded job requires the successful completion of an orientation period and continued satisfactory performance. Performance during orientation periods will be evaluated by appropriate supervisors. Employees may be disqualified from a bid position due to unsatisfactory performance documented during these evaluations.

Postings/job openings may be closed without notice or selection, as business needs dictate.

### **Performance Evaluations and Goals & Objectives**

SunEdison strives to foster a work environment where supervisors and employees can openly discuss employee performance, progress and development. This requires open and frequent communication on an informal basis between supervisors and employees. These information exchanges should include performance expectations, specific objectives and actions desired to maintain or increase effectiveness, and an assessment of results or accomplishments as appropriate.

It is also necessary that periodic, formal performance and development discussions occur, which will include written evaluations to ensure communication of performance status and to establish future direction. SunEdison conducts annual performance reviews in April of each year.

### **Promotions**

Promotions within SunEdison are generally based on such factors as quality of work, prior job performance, experience, educational background, attendance, safety record and the ability to work well with others.

Our SunEdison policy is to promote from within when we have personnel fully qualified to perform the duties of the open position. However, SunEdison reserves the right to employ external recruitment in conjunction with, or in lieu of, its internal search.

### **Educational Assistance Program**

The Educational Assistance Program supports employee development. SunEdison will share the expense of college credit courses and degree programs for employee continuing education and learning in appropriate circumstances under the program and in accordance with local budgetary guidelines and restrictions. The program is available to full time SunEdison employees. College courses / degree programs must be relevant to the employee's current position or a realistic future position within SunEdison and expense reimbursements must be approved by the employee's immediate supervisor and Department Head. Non-college credit courses of study and certifications are not covered by this

program. If approved for assistance, employees will be reimbursed up to credit hour limits in accordance with local guidelines and requirements. Additional terms and conditions, and application guidelines, are set forth in a formal policy, which you may obtain from your local Human Resources representative.

## Conduct & Corrective Action

A responsible standard of conduct and work performance is expected from all employees. The following is a non-exhaustive list of examples of infractions that may result in the immediate termination of a SunEdison employee:

- Harassment and/or discrimination in any form to any SunEdison employee, customer or business partner, or SunEdison guest.
- Violation of safety rules that endangers the safety of yourself or others.
- Willful destruction of SunEdison property.
- Unauthorized use of SunEdison property or a SunEdison employee's property.
- Knowingly submitting false records on hours worked or other payroll information.
- Defrauding or attempting to defraud SunEdison, including falsification of records.
- Disclosure of SunEdison proprietary or confidential information to unauthorized persons.
- Conflicts of interests, disclosure of proprietary information, or other conduct that brings serious discredit to SunEdison, to its employees, contractors, customers or vendors.
- Misrepresentation or omission of information to obtain employment regardless of when discovered.
- Unauthorized possession of firearms, other weapons or explosives on SunEdison property (including the parking lot), unless permitted by law.
- Assault or battery on a SunEdison employee, contractor, customer or vendor (either on or off-site).
- Consuming or showing signs of the use of intoxicants or drugs on SunEdison property (other than moderate consumption of alcohol at an authorized SunEdison function; see SunEdison Sponsored Events section).
- Illegal possession of or sale of drugs on or off SunEdison property.
- Illegal use of drugs on or off the job.
- Switching or adulterating any urine sample submitted for drug testing, or submitting a false sample for drug testing.
- Refusing consent to be tested for drug, alcohol or other substance use, or refusing to provide a release of information regarding those test results when required by SunEdison.
- Offensive or indecent conduct between SunEdison employees that is disruptive to SunEdison business and/or disruptive to other SunEdison employees.
- Conviction of a serious crime.
- Gross misconduct on SunEdison property.
- Misappropriation or theft.
- Insubordination.
- Sleeping while on the job.
- Inappropriate use of electronic media including e-mail and Internet.
- Conduct which is in violation of the law or accepted standard of decency.

Employees whose performance is contrary to SunEdison policy and practice may be subject to one or more methods of corrective action including oral warnings, written warnings (guidance), suspensions (without pay), probation, or in very serious matters or cases of repeated violation or infractions of a serious nature, termination.

In accordance with SunEdison's at-will policy, either you or SunEdison may terminate your employment relationship at any time with or without any cause or advance notice. At its option, SunEdison may choose to utilize various forms of corrective action, including, for example:



### *Verbal Warning*

- Your supervisor tells you that you need to improve certain performance or conduct.
- Your supervisor may or may not make a note of the date and content of the conversation and enter the note into your personnel file.

### *Written Warning*

A document, signed by your supervisor and you that contains the following:

- Description of the problem(s) with examples.
- Description of desired performance.
- Plans for improvement.
- Specific period of time in which to improve.
- Consequences of not meeting standards.

You may respond to the warning in writing. The consequences of not meeting standards are set forth in the warning, and regardless of what may be defined in the written warning, may include termination.

This policy is not intended to, should not be construed to and does not create a term of employment, and does not limit or modify SunEdison's right to terminate your employment or to alter the terms and conditions of your employment at any time, with or without any cause or advance notice.

Employees may appeal a corrective action or a termination by submitting an appeal in writing to a Human Resources Representative, except that employees subject to a CBA will be reviewed in accordance with the applicable CBA.

## **Wages, Time Off and Benefits**

### **Wages**

Compensation, wages or salary paid to SunEdison employees shall comply with all applicable local, state and national regulations and laws, including those relating to minimum wages, overtime rates and legally mandated benefits. SunEdison shall comply with paying overtime rates that are greater than regular hourly rates in accordance with all applicable local, state and national regulations and laws. SunEdison prohibits the practice or process of deducting wages or other compensation from employees as a means of disciplinary measures or actions. Employees shall be provided an appropriate pay stub, pay slip or other documentation (electronic or paper) detailing the basis of their pay or compensation.

### **Benefits**

SunEdison maintains a broad and comprehensive selection of benefits for employees. These programs vary by location and may include, for example, Paid Time Off (PTO), Medical, Prescription and Dental Insurance plans, Flexible Spending Account, Employee Assistance Program (EAP), Life Insurance (and supplemental insurance for purchase), Retirement Savings Plan (RSP), Accidental Death and Dismemberment (AD&D), Short Term and Long Term Disability, optional supplemental Family Medical Leave (FMLA) and Death in Family Leave (DIF). Please contact your local Human Resources representative for more information about the benefits offerings available in your work location for your position.

SunEdison reserves the right to modify, change or eliminate any of its benefits at any time with or without notice. The terms of the specific plan documents and policies control eligibility, benefits determination and other conditions. Employees are provided copies of summary plan descriptions and other relevant information at the time of hire and during SunEdison's open enrollment period in November or December for the new benefit year in January. Any questions regarding coverage should be directed to your local Human Resources representative.

## **Employment Status Changes and Life Status Changes**

Eligibility for benefits is determined by your employment status. Therefore, an employment status change may affect your participation in SunEdison's benefits. For example, if your employment status changes from regular full-time or regular part-time to special part-time or temporary, you will lose eligibility and your participation in SunEdison's benefits will end. However, if your employment status changes back to regular full-time or regular part-time, you will be able to re-enroll provided you have met all other eligibility requirements. If you lose insurance coverage as a result of an employment status change, you may be eligible to continue medical, prescription and dental coverage under COBRA.

Depending on the state and local laws applicable to your plant or site, the following may be examples of life status changes that could change you or your family's coverage: marriage, divorce, birth or adoption of child, death of a spouse or child, or loss of coverage under a spouse's or domestic partner's benefit plan or a child gains or losses eligibility for coverage under the plan. Contact your Human Resources representative to report any such life status changes.

## **Workers Compensation**

All SunEdison employees are covered by Workers' Compensation Insurance. This insurance provides an employee with compensation for illness, accidental injury, or death suffered in the course of or as a result of their employment with SunEdison.

Benefits are governed by state law. Eligibility for benefits under Workers' Compensation Insurance is automatic and is effective on date of hire. Workers' Compensation provides weekly payments based upon the employee's regular earnings, as well as payments for medical and hospital expenses arising out of an occupational illness or injury.

To ensure that you receive any workers' compensation benefits to which you may be entitled, you will need to:

- Immediately report any work-related injury to the SunEdison Nurse, or if your plant has no nurse, then to the ESH Representative;
- Seek medical treatment and follow-up care if required; and
- Complete a written Employee's Claim Form with the SunEdison Nurse or, if your plant has no nurse, the ESH Representative.

Employees must provide SunEdison with a certification from their health care provider regarding the need for workers' compensation disability leave and the employee's ability to return to work from the leave. Failure to report an on-the-job illness or injury in a timely manner may result in a delay or loss of benefits. It can also result in corrective action up to and including termination.

If you have any questions regarding your rights and responsibilities under Workers' Compensation Insurance, contact Human Resources.

## **Death in the Family**

Supervisors of SunEdison should, when satisfied by evidence presented, grant an employee time off with pay for up to three (3) consecutive days for each occurrence of a death in the employee's immediate family. For the purpose of this rule, immediate family is defined as (and limited to) the employee's spouse, children,

grandchildren, step children, legal wards, parents, grandparents, step parents, siblings, step sibling, in-laws, corresponding relatives of the employee's spouse and other persons who are members of the employee's household. Time off for employees covered by a CBA will be in accordance with the provisions of the CBA.

## **Civic Leave or Jury Duty**

When an employee is called for jury duty, time off with pay will be granted in accordance with local law, up to a maximum of ten (10) days of paid leave (or a longer period if so required by applicable law). SunEdison will pay the difference between the court payment and the employee's regular pay rate. Should the employee's work duties with SunEdison be vital to its operation, the court may be asked to excuse the employee from jury duty. Employees must notify management upon receipt of their summons. A document from the court showing the time and amount to be paid for their service must be given to management. If the court dismisses the jury or witness early, the employee is expected to return to work as soon as possible (and complete an eight hour shift comprised of civic time and time on the job). Employees covered by a CBA should consult the CBA for additional information.

## **Voting**

Employees may receive paid or unpaid time off to vote in general, special, primary, national, state and municipal elections, as required by law, when there is not sufficient time outside of working hours to do so. When an employee's work schedule does not provide at least three hours before or after work for voting, the employee may request time off to vote. Time off for voting must be arranged with management at least three days prior to Election Day.

## **Military Leave**

Employees who volunteer for or are called to active or training duty in the armed forces, are entitled to certain protections with respect to reemployment rights, non-discrimination in employment and employee benefits and coverage. The Company complies fully with the requirements of the Uniformed Services Employment and Re-employment Rights Act of 1994, as amended (USERRA) and any applicable state laws and regulations. If you volunteer for or are called to active service, you are responsible for notifying your supervisor and submitting copies of your military orders as soon as it is practical. You will be granted an unpaid military leave of absence for the period of military service in accordance with applicable state and federal laws. Your benefits while on military leave, and your right to reinstatement are governed by USERRA and any applicable state laws and regulations.

## **Family and Medical Leave Act**

SunEdison recognizes that employees occasionally need to take time away from work to care for important family and medical needs. This policy is designed to meet those needs in a manner that is beneficial to employees, their families and SunEdison. It also represents the intent of SunEdison to comply with the requirements of the Family and Medical Leave Act of 1993 (FMLA), as amended. Some SunEdison locations may not be covered by the FMLA. Please check with your local HR Representative.

Eligible employees may be entitled to take an unpaid leave of absence for the following reasons:

- The birth of a child or the placement in your home of a child for adoption.
- The need to care for your spouse, son, daughter or parent who has a serious health condition.
- You have serious health condition that prohibits you from performing essential functions of your job.
- Because of a Qualifying Exigency arising out of the fact that your spouse, son, daughter or parent is on active duty or call to active duty status as a member of the Armed Forces, including the National Guard or Reserves. Qualifying Exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, attending

post-deployment reintegration briefings, and bonding time for military members on rest and recuperation leave. The maximum amount of time an employee may take under this type of leave is 15 days.

□ You are the spouse, son, daughter or parent or next of kin of a member of the Armed Forces (or an honorably discharged veteran of the Armed Forces if a member of the Armed Forces within five years of requiring care) with a Serious Illness or Injury, defined as: (1) an existing or previously existing serious injury or illness incurred in the line of duty that is aggravated by active duty, who is undergoing medical treatment, recuperation or therapy, or are otherwise on the temporary disability retired list for a serious injury or illness incurred in the line of duty; or (2) a physical or mental condition for which the veteran has received US Department of Veterans Affairs Services Related Disability Rating ("VASRD"); (3) a physical or mental condition that subsequently impairs the veteran's ability to secure a gainful occupation as a result of a disability related to military service, or (4) an injury, including a physiological injury, on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Compensative Assistance for Family Caregivers.

To be eligible for a leave of absence under FMLA you must have been employed at a SunEdison location that is covered by the FMLA for at least 12 months and have worked at least 1,250 hours during the previous 12 months. If the need for leave is foreseeable, an employee must give Human Resources at least 30 days notice. See Human Resources for information on how to apply for FMLA leave.

If you are an eligible employee, FMLA provides up to 12 work weeks of leave during a 12 month period for qualifying situations, except that in the case of care for a covered service member with an existing or previously existing serious injury or illness incurred in the line of duty that is aggravated by active duty, FMLA provides up to 26 weeks of caregiver leave.

SunEdison uses a rolling 12 month period. Accordingly, a request for a leave of absence will not be approved if you have already used 12 work weeks of leave (or 26 weeks of leave in the case of care of a covered service member with a serious injury or illness) under this policy during the 12 months preceding the date you requested to begin your leave.

Where both spouses work for SunEdison, they will be entitled to a combined total of 12 work weeks of leave in any 12-month period for childbirth, placement for adoption or foster care, or the need to care for a parent with a serious health condition, or a combined total of 26 work weeks of leave in any 12-month period in the case of care of a covered service member with a serious injury or illness.

An eligible employee may take leave on an intermittent basis or a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to Qualifying Exigencies may also be taken on an intermittent basis. During intermittent leave, employees are subject to the call in procedures that are in effect for their worksite.

### *Pay During FMLA Leave*

Any accumulated vacation or PTO time will be applied to the time off for FMLA. If an employee does not have accumulated PTO time, the employee will be off during this time without pay.

### *Effects of FMLA on Benefits*

During a leave under this policy, an employee will continue to be covered under SunEdison's group health plan under the same conditions as if the employee had worked continuously during the leave period.

The employee's usual contributions toward insurance premiums, if any, will be required. Premium payments for which the employee is responsible are subject to any change in premium rates while the employee is on leave. Employees on leave will be responsible for remitting a check payable to SunEdison for the amount of their

contribution.

If an employee's premium payment is more than 30 days late, SunEdison may terminate health coverage for the remainder of the leave.

If the employee fails to return from leave for reasons other than the continuation of a serious health condition of the employee or a covered family member or because of other circumstances beyond the employee's control, SunEdison may seek reimbursement from the employee for SunEdison's share of the premiums paid on behalf of that employee.

Benefits other than group health coverage will be suspended during leave. However, no employee who takes a leave under this policy will lose any employment benefit that accrued before the date the leave began.

### *Job Protection under FMLA*

Generally, an employee will be reinstated to his/her former position or to an equivalent position with equivalent pay, benefits, and other terms and conditions following an approved leave. However, no employee will have rights greater than if he or she had not taken leave.

### *Procedure*

#### Notice Requirement

In the event of a foreseeable leave, employees are required to give SunEdison 30 days notice. In unexpected or unforeseeable situations, employees should provide as much notice to SunEdison as is practicable, generally within 2 business days after the need for family/medical leave becomes known.

If such notice is not given and there is no reasonable excuse for the delay, SunEdison may deny the taking of the leave until at least 30 days after the employee provides notice.

#### Request/Certification

For leaves taken because of the employee's or a covered family member's serious health condition, employees must have the appropriate health care provider complete and submit to Human Resources a Certification of Healthcare Provider form. This medical certification must be given within 15 days after requested, or as soon as reasonably possible.

SunEdison may require second or third medical opinions (at its expense) and a fitness-for-duty report to return to work. SunEdison may also require periodic reports on the employee's status and intent to return to work.

**Failure by the employee to provide this certification to the employer within the time required may result in denial of FMLA leave.**

#### SunEdison Response

SunEdison will respond within a reasonable time frame to all requests for Family or Medical Leave.

Other stipulations or restrictions may also apply in granting this leave. In addition, certain states and/or local jurisdictions in which SunEdison operates have enacted varying leave protection laws which may provide different benefits than those under the federal FMLA; SunEdison will comply with all such applicable laws and regulations. The information presented here is only a summary of this policy. If you have questions about eligibility of the FMLA policy, or to obtain forms for a request for leave, please contact your local HR Department. Copies of the policy are also posted on the SunEdison break room bulletin boards.

## **Personal Leave of Absence**

An employee may also request a personal leave of absence without pay from SunEdison that is not covered under the Family and Medical Leave Act. Any request for a leave of absence must be made in writing and must be approved in advance by management.

During any approved leave of absence the following provisions apply:

- The employee is responsible for the payment of all insurance premiums for their individual coverage and dependent health insurance coverage (if applicable). This money should be paid to SunEdison by the first day of each month that the employee is on an approved leave of absence.
- If the personal leave is approved, the employee will retain their original employment date showing no interruption in service.
- If an employee accepts employment with another employer, their employment will be terminated and all their SunEdison benefits will be terminated.
- All accrued PTO hours must be first used. Any leave of absence under this policy is without pay.
- 401 (K) contributions cease.
- Accrual of PTO continues during a paid personal leave of absence. NO PTO hours will be accrued during an unpaid leave of absence.
- An employee is not entitled to reinstatement to his former position, or to any position, upon completion of any non-statutory leave of absence.
- Leaves of absence are granted at the discretion of the company, and are only granted in unusual personal circumstances and when the needs of workload of the employee's department will not be adversely impacted by the leave. An employee granted a non-statutory leave of absence has no assurance of being returned to the

position held prior to the leave or any position with the company. Failure to return from leave on the established return-to-work date will be treated as a voluntary resignation from employment. An employee on a personal leave of absence may not earn income from other employment or self-employment.

## **Termination of Employment**

### **Termination of Employment**

In accordance with SunEdison's at-will policy, either you or SunEdison may terminate your employment relationship at any time with or without any cause or advance notice.

### **Termination - Voluntary or Involuntary**

An employee who voluntarily resigns his or her employment or fails to report to work for three (3) consecutively scheduled workdays without notice to, or approval by, his or her supervisor will be considered to have voluntarily terminated employment with SunEdison.

SunEdison requests that non-exempt employees give at least two (2) weeks written notice before departure and that exempt employees give at least four (4) weeks written notice before departure. This gives SunEdison the opportunity to hire a replacement and/or to adjust the schedules of other employees as necessary. Written notice should be presented to your supervisor and Human Resources.

### **Return of Property Upon Termination of Employment**

All SunEdison-owned property (e.g., vehicles, company documentation, keys, identification badges, credit cards, cell phones, computers, jump drives, etc.) must be returned immediately upon termination of employment.

## **Benefits and Termination**

Medical, dental, and vision group insurance benefits cease as of the end of the month following the termination date and are subject to an elective continuation through COBRA in accordance with all applicable laws or regulations.

Life, accidental death and dismemberment, and short- and long-term disability insurance benefits also cease as of the last day of the month in which employment ends.

## **COBRA**

SunEdison-sponsored group medical, prescription and dental insurance coverage for covered employees expires upon the last day of the month following termination of employment, reduction in an employee's work hours to special part-time or temporary, or other "qualifying event." As described in greater detail in SunEdison's COBRA notice provided to employees who are covered under group medical, prescription and dental insurance at the time of a qualifying event, employees, their spouses and/or their dependents may continue coverage, at their own expense, at the group rates plus a 2% administrative fee, unless they are disqualified because of discharge for gross misconduct.

COBRA coverage is in addition to any continued coverage mandated by state law. See Human Resources for any questions about continued coverage. It is the employee's responsibility to notify HR in a timely manner (generally within 31 days) of any qualifying life event that changes your or your dependent's eligibility status for benefits.

## **Exit Interviews**

In most cases when you leave SunEdison, you will have an exit interview with Human Resources on or before your last day of employment. In the exit interview, Human Resources will review the status of your benefits, the reason you are leaving, and will solicit constructive feedback regarding SunEdison and its policies, work environment and management structure.

## **Reemployment**

If you leave SunEdison and have complied with SunEdison's policies regarding resignation, and if you had satisfactory performance ratings while an employee, you may be eligible for re-employment. It is our general policy that former employees must reapply for open positions and are considered for openings on the same basis as other applicants.

## **References**

All inquiries received about current or past employees should be referred to Human Resources. The policy of SunEdison is to verify titles and dates of employment only, unless the employee provides specific written authorization to release additional information. Letters of reference pertaining to employee work performance may not be issued by management and SunEdison letterhead may not be used for references of any kind, unless reviewed and approved by Human Resources first.

## Employee Handbook Signature Page

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### **Please Read Carefully**

TO BE SIGNED BY ALL EMPLOYEES:

I have received a copy of the SunEdison Employee Handbook and I accept responsibility for reading the Handbook and becoming familiar with the policies and practices of SunEdison. If I have any questions or need more information about any policy, I understand that I should contact Human Resources.

I understand that SunEdison reserves the right to modify, revoke, suspend, terminate, or change any or all policies or procedures (including the ones in this Handbook), in whole or in part, without prior notification. Only the most current version applies in all instances.

I understand the employment relationship between SunEdison and me is not contractual in nature and it does not provide any assurance of continued employment. No oral statements by supervisors or management can alter SunEdison's policies and procedures or create a contract. Both SunEdison and I retain the right to end my employment with or without cause and/or with or without notice at any time. I also understand the Handbook is not an employment contract between SunEdison and me. I understand and agree that no contrary statements or promises made by anyone at the time of hire or thereafter are binding on SunEdison. I understand and agree that any modification of the at-will nature of my employment must be in writing signed by me and the Chief Executive Officer of SunEdison.

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Employee Name (Print)

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Employee Signature

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Date