

**POWER PURCHASE AGREEMENT
(CASTLE PARK MIDDLE SCHOOL)**

Dated as of February 13, 2013

by and between

Solar Star California XXVI, LLC,
as Provider

and

Sweetwater Union High School District,
as Customer

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**POWER PURCHASE AGREEMENT
(CASTLE PARK MIDDLE SCHOOL)**

This POWER PURCHASE AGREEMENT (Castle Park Middle School) (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Agreement”), dated as of February 13, 2012 (the “Effective Date”), is by and between Solar Star California XXVI, LLC, a Limited Liability Company formed under the laws of the State of Delaware (“Provider”), and the Sweetwater Union High School District, a California school district organized and existing under the laws of the State of California (“Customer”).

RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in the County of San Diego in the State of California, as more fully described in each **Exhibit B** attached hereto (the “Site”);

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, the Solar Services (as hereinafter defined), consisting of the delivery of electrical energy (the “Energy”) generated by the System at the Site and other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

1. Definitions.

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation”, (d) references to “Sections” and “Exhibits” shall be to sections and exhibits hereof; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

“Affiliate” means, with respect to any specified Person, any other Person that is a U.S. citizen or U.S. entity directly controlling, controlled by or under common control with such specified Person.”

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

“Annual PPA Rate Escalator” shall mean the percentage set forth in **Exhibit C**.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline,

governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

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

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 14.23.

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

“Customer Default” shall have the meaning set forth in Section 11.1.

“Division of the State Architect” or “DSA” shall mean that division of the State of California charged with providing design and construction oversight for K-12 schools, community colleges and various other state owned and leased facilities.

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

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

“Environmental Attributes” includes, without limitation, SDG&E Settlement Payments, Tradable Renewable Certificates, Green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center for Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentives under the California Solar Initiative or under the federal government’s, any municipality’s or any utility’s solar program or initiative (excluding SDG&E Settlement Payments), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such incentives.

“EPC Contract” shall mean the contract between Provider and a third party for engineering, procurement and construction of the System.

“Estimated Year 1 Production” shall mean, with respect to the System, the amount set forth in each **Exhibit A** hereto.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“General Conditions” shall mean those general conditions attached to the Lease and incorporated by reference herein.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh” shall have the meaning set forth in Section 4.3.1.

“kWh Rates” shall have the meaning set forth in Section 6.1.

“Lease” means the Facilities Lease Agreement (Castle Park Middle School) in respect of the Site entered into by Provider and Customer as of the date hereof and incorporated by reference herein.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.

“Party” shall mean each of Customer and Provider.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble. For purposes of access rights and other rights necessary for Provider to perform its obligations and responsibilities hereunder, the term “Provider” shall include Provider’s authorized agents, contractors and subcontractors.

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar PV systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“SDG&E Settlement Payments” shall mean payments by San Diego Gas & Electric (“SDG&E”) made pursuant to that certain Partial Settlement Agreement on Distribution Demand Charges for Medium and Large Commercial and Industrial Customers, entered into among SDG&E, City of Chula Vista, City of San Diego, San Diego Solar Coalition and Solar Energy Industries Association on October 19, 2012.

“Site” shall have the meaning set forth in the first recital.

“Solar Services” shall mean all services provided to Customer by Provider hereunder, including the provision of Energy.

“Standard System Design Package” shall have the meaning set forth in each Exhibit A.

“Standards” shall have the meaning set forth in Section 3.1.1.

“State Incentive” means revenue originating from state legislation and typically administered by electric utilities, such as the California Solar Initiative program.

“Sweetwater PPA” or “Sweetwater PPAs” means, each and collectively, (a) Amended and Restated Power Purchase Agreement (Olympian High School) dated as of the date hereof between Provider and Customer, (b) Amended and Restated Power Purchase Agreement (Mar Vista High School) dated as of the date hereof between Provider and Customer, (c) Amended and Restated Power Purchase Agreement (San Ysidro High School) dated as of the date hereof between Provider and Customer, (d) Amended and Restated Power Purchase Agreement (Sweetwater High School) dated as of the date hereof between Provider and Customer, (e) Amended and Restated Power Purchase Agreement (Otay Ranch High School) dated as of the date hereof between Provider and Customer, (f) Power Purchase Agreement (Bonita Vista Middle School) dated as of the date hereof between Provider and Customer, (g) Power Purchase Agreement (Chula Vista Junior High School) dated as of the date hereof between Provider and Customer, (h) Power Purchase Agreement (EastLake High School) dated as of the date hereof between Provider and Customer, (i) Power Purchase Agreement (EastLake Middle School) dated as of the date hereof between Provider and Customer, (j) Power Purchase Agreement (Granger Junior High School) dated as of the date hereof between Provider and Customer, (k) Power Purchase Agreement (Hilltop High School) dated as of the date hereof between Provider and Customer, (l) Power Purchase Agreement (Hilltop Middle School) dated as of the date hereof between Provider and Customer, (m) Power Purchase Agreement (Mar Vista Middle School) dated as of the date hereof between Provider and Customer, (n) Power Purchase Agreement (Montgomery Middle School) dated as of the date hereof between Provider and Customer, (o) Power Purchase Agreement (Rancho Del Rey Middle School) dated as of the date hereof between Provider and Customer and (p) Power Purchase Agreement (Southwest Middle School) dated as of the date hereof between Provider and Customer.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in each **Exhibit A** attached hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean for a given System, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date on the applicable **Exhibit D** to this Agreement, under column A or B, as applicable.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.

2. Purchase and Sale of Solar Services

Customer engages Provider to provide the Solar Services to Customer at the Site as set forth in each **Exhibit B**, and Provider agrees to provide the Solar Services to Customer at the Site, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of the Lease. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder.

3. Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the applicable System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement and the Lease. Customer shall have the right to review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the locations where the System is installed on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the applicable Site. Subject to the terms of the Lease including the General Conditions, Provider shall perform installation work at the Site during the times set forth in the applicable **Exhibit A** in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install a System at a Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect with respect to the Site upon written notice from Provider to Customer to that effect.

3.1.1 Standard System Design Package. Each **Exhibit A**, together with incorporation of **Exhibit G** as specified therein, sets forth the standard assumptions made by the Provider regarding the Site conditions, electrical conditions and System attributes (the "Standards") and the known actual conditions for that specific Site and System, including deviations from the Standards. The Standards are such that the described items for a given System will not need repair, replacement, modification or construction beyond that described in the applicable **Exhibit A** in order for Provider to properly construct and install the System. If the construction and installation of any System is required for any reason to deviate from the Standards, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2. If Customer chooses none of these options, Provider will have the right to terminate the Agreement per Section 3.1 above and Customer will be deemed to have waived the right to cure per Section 3.1 above.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

3.1.3 Access to Site. Provider shall have access to the Site in accordance with the following:

- (a) At all times throughout the Term of this Agreement, and at no additional charge to Provider, Provider and its employees, agents, and subcontractors, will have twenty-four (24) hour,

seven (7) day pedestrian and vehicular access to and over the Site, from an open and improved public road to the Site, for the installation, maintenance and operation of the System, provided that such access does not interfere with school classroom activities;

- (b) Except for emergencies, Provider shall give notice to Customer twenty-four (24) hours in advance of any need to access the Site. Provider shall notify Customer of each visit to the Site. All access shall be in full compliance with all Applicable Law including but not limited to any applicable fingerprinting requirements;
- (c) If students are present at the site, Provider shall provide supervision in accordance with Education Code Section 45125.2; and
- (d) Provider shall not drive on artificial track surfaces or artificial turf.

3.2 Conditions Precedent to Commencement of Construction and Installation.

Commencement by the Provider of construction and installation activities with respect to a Site shall be subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

3.2.1 Provider shall have closed full financing for the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, Provider shall have reached written agreement with the U.S. third party financing institution, pursuant to which Provider may assign some or all of its rights and obligations hereunder to such third party (or its designated Affiliate) under an amended and restated version of this Agreement to be negotiated prior to consummation of the financing for the Solar Services;

3.2.2 Provider and Customer shall have executed a Lease for the Site;

3.2.3 Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;

3.2.4 Provider shall have obtained, at its sole expense, the permits, licenses and other approvals required by Applicable Law, including, without limitation, all necessary DSA approvals to be obtained by Provider prior to such commencement; and

3.2.5 Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System at the Site have been accepted and approved by the appropriate governing agency;

provided, however, if the foregoing conditions precedent are not completed by the date that falls two hundred and forty (240) days after the Effective Date, Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to

amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

3.3 Utility Approvals.

Notwithstanding that Provider shall have the primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at any Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in **Exhibit A**, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System at the Site if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

3.4 Energy Delivery.

The date on which the delivery of Energy to the applicable Site commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer that the System is substantially complete and available for commercial operation, (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect, and (c) Customer shall have entered into an interconnection agreement with the local electricity utility which shall occur no later than December 31, 2013.

3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie (the "Interconnection Point") and Customer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to Energy will transfer from Provider to Customer at the Interconnection Point.

3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the System provided by Provider as of the Effective Date and set forth in **Exhibit D** are an estimate and are subject to change by Provider pending final review by Provider's lenders of this Agreement and the credit worthiness of the Customer. Provider shall use its commercially reasonable efforts to submit to its lenders within fifteen (15) business days from the Effective Date, all documentation required by such lender to

process the loan in connection with the System. Within ninety (90) days from the date of such submittal, Provider will notify Customer whether an amendment to the Termination Values set forth herein will be required, and if yes, shall provide Customer with written notice thereof, setting forth in detail the new Termination Values required by Provider. If, after the expiration of such ninety (90) day period, Provider does not notify Customer that new Termination Values shall be required, the Termination Values set forth herein shall be deemed accepted by both Parties. If Provider timely provides new Termination Values, then, upon receipt of the new Termination Values by Customer, Customer shall, within two (2) business days from receipt of such new Termination Values, either accept or reject in writing such new Termination Values. If Customer fails to timely reject such new Termination Values in writing, or if Customer accepts such new Termination Values, this Agreement shall be deemed amended to incorporate such new Termination Values. If Customer timely rejects such new Termination Values, Provider may, within two (2) business days from receipt of Customer's rejection, propose to (i) proceed with the Termination Values as set forth herein; or (ii) propose new Termination Values to Customer, in which case the procedure set forth above shall be repeated one time only. If the Parties are unable to reach agreement with respect to the Termination Values, either Party shall have the right to terminate this Agreement, in which case neither Party shall be deemed in default hereunder and neither Party shall have any further liability to the other Party in connection herewith.

3.7 CSI Fees.

Provider has paid sixty-five thousand dollars (\$65,000.00) ("CSI Fee Payment") for the CSI application fees for the System under this Agreement and certain other projects described in the other Sweetwater PPAs. Customer acknowledges and agrees that payment of the CSI Fee Payment once shall satisfy the obligation to pay the District the CSI Fee Payment under this Agreement and any other Sweetwater PPA. The Customer acknowledges and agrees that it shall assign reimbursement of the CSI Fee Payment to be paid by the California Center for Sustainable Energy ("CCSE") to SunPower, or if such reimbursement is not assignable or if the amount paid by CCSE to SunPower through such assignment is not equal to the CSI Fee Payment, Customer shall reimburse SunPower for the CSI Fee Payment, or portion thereof, so that SunPower has been reimbursed for the complete CSI Fee Payment within ten (10) business days following the Customer's receipt of the CCSE reimbursement or SunPower's notice of CCSE's reimbursement, as applicable.

4. Operation and Maintenance of System.

4.1 O&M Work.

Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the "O&M Work") subject to the terms of the General Conditions. Provider shall maintain during the Term of this Agreement the capability to provide such O&M Work, either directly or under contract with SunPower Corporation, Systems, or a third-party service provider capable of providing comparable services. Provider shall, either directly or through an agreement with respect to such O&M Work, ensure that (a) the

System is capable of delivering Energy in accordance with the specifications set forth in the applicable **Exhibit A** and (b) the O&M Work is performed in accordance with the following guidelines set forth in **Exhibit E** hereto. Provider shall have the obligation to use commercially reasonable efforts to enforce the terms of any O&M agreement and System warranty agreements.

4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of a System or (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in a System.

4.2.2 Provider shall commence repairs to any malfunctioning System and restore the supply of Energy as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 and, subject to the Lease and General Conditions, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Cliff Kalinowski, Vice President of O&M and Customer Service
SunPower Corporation, Systems
1414 Harbour Way South
Richmond, CA 94804
(510) 540-0550

If to Customer:

Paul Woods
Director of Planning and Construction
Sweetwater Union High School District
1130 Fifth Ave
Chula Vista, CA 91911-2896
(619) 691-5553

4.3 Metering.

4.3.1 Maintenance and Testing. Provider shall install and maintain a utility-grade kilowatt-hour ("kWh") meter ("Meter") at the Site where a System is installed for the measurement of Energy provided to Customer at the Site, which shall measure the kWh output of the System on a continuous basis. Upon Customer's written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for each Meter, as well as all metering data and energy production calculations. Provider shall test the Meter in compliance with manufacturer's recommendations and provide the results of such testing to the Customer upon Customer's request.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all such Meter data upon reasonable notice, and any such audit shall be at Customer's sole cost. Customer shall have a right of access to all meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of a Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that such Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace such Meter. Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.4 Title to System; Customer Not Operator.

Provider, or Provider's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider's assigns. The System shall remain the personal property of Provider or Provider's assigns and shall not attach to or be deemed a part of, or fixture to, the Site. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Customer warrants and represents that it shall keep the System free from all liens, claims and encumbrances of its lenders and any other third parties (other than those created by Provider or its creditors). Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate any System or be deemed to operate any System.

4.5 Outages.

Customer shall be permitted twenty-four (24) hours of daylight offline (each, a "Scheduled Outage") per Site per calendar year during the Term, during which hours Customer shall not be obligated to accept, and if not accepted, pay for Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at a given Site exceeds twenty-four (24) hours per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3.

4.6 Compliance with Utility Specifications.

Provider shall ensure that all Energy generated by the System conforms to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and

safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

5. Purchase of Solar Services.

With respect to the System installed on the Site pursuant to this Agreement:

5.1 Purchase Requirement.

Customer agrees to purchase (a) one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement, in each year up to one hundred and five percent (105%) of the estimated year one production provided in Exhibit A with respect to the System and (b) Energy delivered by the System in any year in excess of one hundred and five percent (105%) of such estimated year one production to the extent it consumes such excess Energy. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services is calculated to include all of the above services in the price per kWh of Energy provided to the Site through the System. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System installed at the Site are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System installed at the Site. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee's right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System installed at the Site are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System installed at the Site. At Provider's request and expense,

Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee's right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, each Party shall submit to the other Party for approval any press releases or other publicity regarding Customer's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of such other Party, which approval shall not be unreasonably withheld or delayed. Customer and Provider may by mutual written agreement set forth specific statements that may be used in any press releases that address Customer's use of solar or renewable energy provided pursuant to this Agreement.

5.2.4 Customer shall not take any action or suffer any omission at any Site that would have the effect of impairing the value to the Provider of the Environmental Financial Incentives. Customer shall be solely responsible for notifying Provider of any action or omission that could impair such value and for consulting with Provider as necessary to prevent impairment of the value of Environmental Financial Incentives.

5.2.5 Provider or its assignee will at all times retain all tax credits and depreciation associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rates per kWh (the "kWh Rates") set forth in **Exhibit C**, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. The Parties are not aware of any taxes for which the Customer will be responsible as of the Effective Date of this Agreement. Provider shall invoice Customer for, and Customer shall pay (and shall indemnify and hold Provider harmless on an after-tax basis from and against) all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to

withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed by a taxing authority on the System.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent described in the Lease; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the relevant kWh Rate for Energy relating to the System, which payment shall be made by check to:

Solar Star California XXVI, LLC
c/o SunPower Corporation, Systems
1414 Harbour Way South
Richmond, CA 94804

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's lender, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's lender or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein. Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) days after such initial meeting, such dispute shall be submitted to arbitration administered by the American Arbitration Association in accordance with its then-existing Commercial Arbitration Rules. The arbitration shall take place in San Diego County, California before a single arbitrator selected in accordance with the Commercial Arbitration Rules. The decision of the arbitrator in the matter shall be final and binding upon the Parties and judgment on the award rendered by the arbitrator may be entered in

any court having jurisdiction. The Parties agree that the arbitrator shall have the power to award damages, injunctive relief and reasonable attorneys' fees and expenses to either Party in such arbitration; provided that this arbitration provision does not prevent either Party from seeking interim injunctive relief from a court in order to preserve the status quo.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

7. General Covenants.

7.1 Covenants of Provider.

As a material inducement to Customer's execution and delivery of this Agreement, Provider covenants and agrees to the following:

7.1.1 Permits and Approvals. While providing Solar Services, Provider shall obtain and maintain all approvals, consents, licenses, permits, and inspections from relevant Governmental Authorities, utility personnel, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer within three (3) business days of receipt.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in providing the Solar Services and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

7.1.5 Security. Provider shall provide and take reasonable measures for security of the System.

7.2 Customer's Covenants.

As a material inducement to Provider's execution of this Agreement, Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times after the Commercial Operation Date with respect to a System on a Site maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Notice of Damage. Customer shall at all times after the Commercial Operation Date with respect to a System on a Site promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.3 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to any System or any interest therein. Customer also shall pay promptly before a fine or penalty may attach to any System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2.4 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of all consents, approvals, permits, licenses, and authorizations relating to the performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer's local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider's responsibilities under Section 7.1.1.

7.2.5 Maintenance of Interconnection. Customer shall at all times after the Commercial Operation Date of the System ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.6 Solar Access. Customer shall at all times after the Commercial Operation Date of the System ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. To the extent a System could be shaded by a building, structure or flora on property not under the ownership or control of Customer, Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.3 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

8. Insurance Requirements.

8.1 Provider's Insurance.

Provider shall maintain, at its sole expense, the insurance required by **Exhibit F** attached hereto. Provider shall also provide and maintain "all-risk" property insurance covering the System installed on Customer's Site.

9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event has interfered with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. Notwithstanding anything in this Section 9 to the contrary, no payment obligation of Customer under this Agreement may be excused as the result of a Force Majeure Event. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date (the "Expiration Date") that is twenty (20) years after the Commercial Operation Date (the "Term"), unless and until terminated earlier pursuant to Sections 3.1, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the "Termination Date").

10.2 Customer Options Upon Cessation of Business Operations at Site(s).

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as such event does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax or economic effect, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System(s), which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Financial Incentives. If such alternate Site is available and is acceptable to Provider, the definition of Site set forth herein shall thereafter be deemed amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of any System(s), including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute Site, other costs of deployment at the substitute Site, and lost revenue due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the applicable System(s).

10.2.2 “Move and Pay” Option. So long as such event does not impair or reduce any Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination of Site(s) and Payment of Termination Value. If, beginning in the sixth (6th) year following the applicable Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of **Exhibit D** in respect of the System as liquidated damages, whereupon this Agreement shall terminate with respect to the Site. The Parties agree that actual damages to Provider if this Agreement is terminated with respect to the Site as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement with respect to the Site.

10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date with respect to a System, Customer shall have the option to renew the term of this Agreement with respect to the System for one (1) additional five (5)-year period at the Renewal Rate.

10.3.2 Purchase of System(s). If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer shall have the option to purchase the System by paying Provider the Fair Market Value thereof no later than one-hundred and eighty (180) days prior to the relevant Expiration Date. The “Fair Market Value” of a System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer at Customer’s sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives shall transfer to Customer as-is, where-is.

10.3.3 Return of System(s). If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. Such cost to remove the System shall be borne by the Customer, but the Provider shall use commercially reasonable efforts to mitigate the costs of such removal through salvage. The portion of the Site on which the System was installed shall be returned to its original condition,

except for System support structures, electric/wiring components and ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.4 Customer Purchase Option Prior to Expiration Date.

On the ninth (9th) anniversary of the Commercial Operation Date with respect to a System, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 at Customer's sole cost and expense) and the then-current Termination Value specified in the applicable **Exhibit D**. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Provider's expense.

10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date for any System has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in the applicable **Exhibit D** as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates, as a whole or with respect to a System, prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement either as a whole or with respect to a particular applicable Site upon written notice:

10.6.1 at any time until construction of the System commences;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy to federal or state regulation of prices and/or service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the aggregate annual level of direct beam solar resource availability is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. Such cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for System support structures, electric/wiring components and ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

11. Defaults.

11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. (a) The failure of Customer to pay on any three separate occasions during the Term any amounts owing to Provider on or before the day following the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure each such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider, or (b) if Customer fails to make any payment of amounts owing to Provider and such failure is not cured by Customer within (30) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Perform Other Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days; provided, finally, that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Bankruptcy, Etc. (a) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (b) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (c) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (d) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer’s assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (e) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer’s assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.4 Lease Default. A material default by Customer under the Lease occurs.

11.1.5 Sweetwater PPA Default. A Customer Default under any other Sweetwater PPA occurs.

11.2 Provider Default.

The occurrence at any time of the following event shall constitute a “Provider Default”:

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days;

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider’s assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider’s assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.2.3 Lease Default. A material default by Provider under the Lease occurs.

11.3 Power Output Guarantee. Subject to the terms, limitations and conditions of this Agreement, Provider guarantees to Customer that, during the first 10 years of the Term, the System shall provide at least 23,321kWh in the aggregate (“LEED Guarantee”), on an annual basis and calculated on the first anniversary of the Commercial Operation Date of the System and each anniversary thereafter. If the System’s output drops below the LEED Guarantee for any given year of the term (the kWh output is below the LEED Guarantee, the “LEED Guarantee Shortage”), Provider’s sole liability to Customer in respect of such LEED Guarantee Shortage shall be the payment of an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of the cash flows equal to the product of (a) the LEED Guarantee Shortage and (b) the sum of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, plus (ii) the then-current per kWh value of the Environmental Attributes from a materially similar project in Southern California, provided that in no event shall the sum of (i) and (ii) exceed \$0.30/kWh.

12. Remedies Following Default.

12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default as described in Section 11.2 above has occurred and is continuing, and if Provider fails to correct or cure the conditions causing such Provider Default within ten (10) days after Provider shall have received Customer's written notice of Customer's intent to terminate this Agreement as a result of such Provider Default, then this Agreement shall terminate and be of no further force or effect as of the last day of such ten (10) day period.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider's sole liability to Customer in respect of such Provider Default shall be the payment of an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of the Agreement times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in the applicable **Exhibit A**, adjusted for as-built System, by 365; provided that, for the avoidance of doubt, in the event of a Provider Default with respect to Section 11.3, the remedies with respect to such default shall be governed by the remedies set forth in Section 11.3. Except as provided in Sections 10.2.3 and 12.1.1, Customer shall have no right to terminate this Agreement and shall have no other remedies.

12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default as described in Section 11.1 has occurred and is continuing, and if Customer fails to correct or cure the conditions causing such Customer Default within ten (10) days after the date on which Provider gives Customer written notice of Provider's intent to terminate this Agreement as a result of such Customer Default, then this Agreement shall terminate and be of no further force or effect as of the last day of such ten (10) day period and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value in **Exhibit D** and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.3.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages. Except with respect to indemnification claims under Section 13 and without limiting insurance proceeds, Provider's liability hereunder shall be in all other respects limited to amounts paid to it hereunder during the most recent twenty-fourth (24) month period.

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

13. Indemnification.

13.1 Indemnification by Provider.

13.1.1 Provider shall indemnify the Customer and its employees, agents, successors and assigns (“Customer Indemnitees”) against and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm entity, corporation, political subdivision or other organization for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence, fraud or willful misconduct of Provider or its agents or employees or others under Provider’s control at any Site or (b) a Provider Default, but excluding such actions, claims, damages to persons or property penalties, obligations or liabilities arising from the sole established negligence, fraud or willful misconduct of a Customer Indemnitee. In connection therewith, Provider will (a) defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorneys’ fees incurred in connection therewith and (b) promptly pay any judgment rendered against Provider, and/or the Customer Indemnitees covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations, or activities of Provider hereunder and Provider agrees to save and hold the Customer Indemnitees harmless therefore.

13.1.2 In the event the Customer Indemnitees are made a party to any action or proceeding filed or prosecuted against Provider for such damages or other claims arising out of or in connection with the performance of its obligations hereunder, or operation or activities of Provider hereunder, Provider agrees to pay to the Customer Indemnitees any and all costs and expenses incurred by the Customer Indemnitees in such action or proceeding together with reasonable attorneys’ fees.

13.1.3 Provider shall indemnify, defend and hold harmless the Customer Indemnitees from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, or appliance manufactured or used in the performance of Provider’s obligations under this Agreement.

13.2 Indemnification by Customer.

Subject to Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by the gross negligence or willful misconduct of Customer or its agents or employees at any Site.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the “Indemnified Party”) shall deliver to the other Party (the “Indemnifying Party”) a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a “Claim Notice”). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party’s expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party’s expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star California XXVI, LLC
c/o SunPower Corporation, Systems — its member
1414 Harbour Way South
Richmond, CA 94804
Attention: Julie Williamson
Phone:510-540-0550
Fax:510-540-0552

If to Customer:

Sweetwater Union High School District
1130 Fifth Ave,
Chula Vista, CA 91911-2896
Attn: Director of Planning and Construction

With a copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Ste 300
Cerritos, CA 90703
Attn: Hugh Lee

All notices, communications and waivers to Customer's lenders or other financiers under this Agreement shall be to the name and address specified in a notice from Customer to Provider. All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) Business Day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and

remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);

- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants

that:

- (a) It is a California school district duly organized, validly existing and in good standing under the laws of the state of California and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action by the Customer's Board of Trustees;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No Governmental Approval (other than any Governmental Approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations

hereunder which Customer has reason to believe that it will be unable to obtain in due course;

- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement (i) conflicts with, breaches or contravenes the provisions of any contractual obligation of Customer, or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement other than with its existing utility provider; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

14.3 Assignment.

Customer shall not be permitted to sell, transfer or assign (collectively, an “Assignment”) this Agreement to any entity other than an Affiliate without the prior written consent of the Provider which shall not be unreasonably conditioned, delayed, or denied. Customer may not make an Assignment to any entity, including an Affiliate, with a credit rating lower than that of the Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any Assignment by the Customer not permitted under this Section 14.3 shall be void ab initio.

Provider shall not make an Assignment of this Agreement or any interest therein, without the prior written consent of Customer; provided, however, that, without the prior consent of Customer, Provider may (i) make an Assignment to an Affiliate of Provider that is a U.S. entity or citizen (provided that such Assignment shall not release Provider from its obligations hereunder without the consent of Customer), (ii) make an Assignment through merger, consolidation or sale of all or substantially all of Provider’s stock or assets to a U.S. entity or citizen, (iii) make an Assignment to a lender or financing party that is a U.S. entity or citizen, or (iv) sell, transfer, assign or pledge its interest in the System or any monies due under this Agreement to a U.S. entity or citizen (provided that Customer will not pay to a third party any monies owed hereunder without the advance written direction of Provider). Customer’s consent to any other Assignment shall not be unreasonably withheld if Customer has been provided with reasonable proof that the proposed assignee: (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to Provider’s; (y) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement; and (z) is an entity with whom Customer is permitted to do business. A direct assignee from Provider of this Agreement shall assume in writing, in form and content reasonably satisfactory to Customer, the due performance of all of Provider’s obligations under this Agreement, including any accrued obligations at the time of the Assignment. A copy of the Assignment agreement, fully

executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such Assignment agreement shall be sent to Customer not less than ten (10) days before the contract date of such Assignment.

14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

14.5 Entire Agreement.

This Agreement (including all exhibits attached hereto) and the Lease and the General Conditions represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements. In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall govern and control.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, San Diego County, or the Federal Court for the Southern District of California in San Diego, California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that any amounts payable by one Party to the other as a result of the payor's default shall constitute liquidated damages and not penalties. The Parties further acknowledge that in each case (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by sophisticated and able legal and financial counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of such information or acknowledgement, (b) the giving of such certificates or accommodations, and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request at Provider’s expense; provided, that the foregoing undertaking shall not obligate Customer to change any rights or benefits, or increase any burdens, liabilities or obligations of Customer, under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Provider as a financing party may reasonably request).

14.18 Setoff.

Neither Party shall have the right to setoff amounts arising from or out of this Agreement against amounts arising from or out of the other Sweetwater PPAs. Except as otherwise set forth herein, including Section 6.3.3 hereof, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties.

14.19 Service Contract.

The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

14.20 Provisions Required by Law.

Each and every provision of law and clause required to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement and the Lease (the “Documents”) shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Documents shall forthwith be physically amended to make such insertion or correction.

14.21 Publicity.

The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party.

14.22 Authority

Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

14.23 Trade Secrets.

Provider acknowledges that Customer, as a public entity, is subject to the California Public Records Act contained in Chapter 3.5 of the California Government Code, and as such must disclose all information not exempt from disclosure thereunder. Therefore, only to the extent that such information is exempt from disclosure pursuant to Government Code Section 6254.7(d), (the “Confidential Information”), each Party receiving any Confidential Information from the other Party (the “Receiving Party”) shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. Confidential Information, as described in Government Code Section 6254.7(d) includes any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. In order to be treated as Confidential Information pursuant to this Agreement, such information shall be clearly marked as Confidential Information by the Disclosing Party prior to disclosure and accompanied by a written statement detailing the basis on which such information is to be considered exempt from disclosure pursuant to the California Public Records Act. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party; or (d) information not marked and delivered in accordance with the procedure described above. The Receiving Party shall use a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are

listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

14.24 Estoppel.

Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

- a) That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CALIFORNIA XXVI, LLC

By: SunPower Corporation, Systems
Its Member

By:  _____

Name: Jeffrey Dasovich
Title: Vice President Utilities &
Commercial Americas

CUSTOMER:

SWEETWATER UNION HIGH SCHOOL
DISTRICT

By:  _____

Name: Thomas Calhoun,
Title: Chief Facilities Executive

EXHIBIT A

STANDARD SYSTEM DESIGN PACKAGE

The following are the standard assumptions made by the Provider regarding the existing condition at each Site, including but not limited to the building roof, building structure, ground conditions, and electrical system, including panels, inverter installation location, and security fencing.

Site Name: Castle Park Middle School

System Size: 274.680 kWp

CSI System Output
AC Rating: 243.049 kW_{cec-ac}

Estimated Year 1
Production: 466,417 kWh

System Type: Shade Structure

System Components: PV modules, mechanical attachment to a structural steel system supported by reinforced concrete piers, DC wiring, DC combiner boxes, DC-AC inverters, DC disconnects and interconnection related equipment on the Customer side of the meter including an electrical panel (if required), utility lockable disconnect switches, NGO metering, conduit, and AC wiring. Conduit is EMT with compression fittings for above ground installation, and schedule 40 PVC for below ground installs.

System Description: Fixed-Tilt Shade Structure

Tie-In Location: See Array Layout

System Standards include the qualifications and assumptions included in Parts 1 and 2 of Exhibit G. Additionally, this Agreement assumes an allowance for fifty (50) lineal feet (LF) of trenching for DC conductors from the System to local array inverter/electrical equipment housekeeping pad in accordance with the provisions of the General Conditions.

EXHIBIT B

DESCRIPTION OF SITE

Site Name: Castle Park Middle School

Site Address: 160 Quintard St., Chula Vista, CA 91911

Description of Building and Surrounding Area: Building usage for Education. Urban environment

Description of Electrical Facility: 2500A,208/120V, 65KAIC,3Ø4W, main panel (MSB)

Summary of Twelve Months of Utility Bills: 573,549 kWh

Site Exposure: Exposure Type C

Satellite Picture of Property:

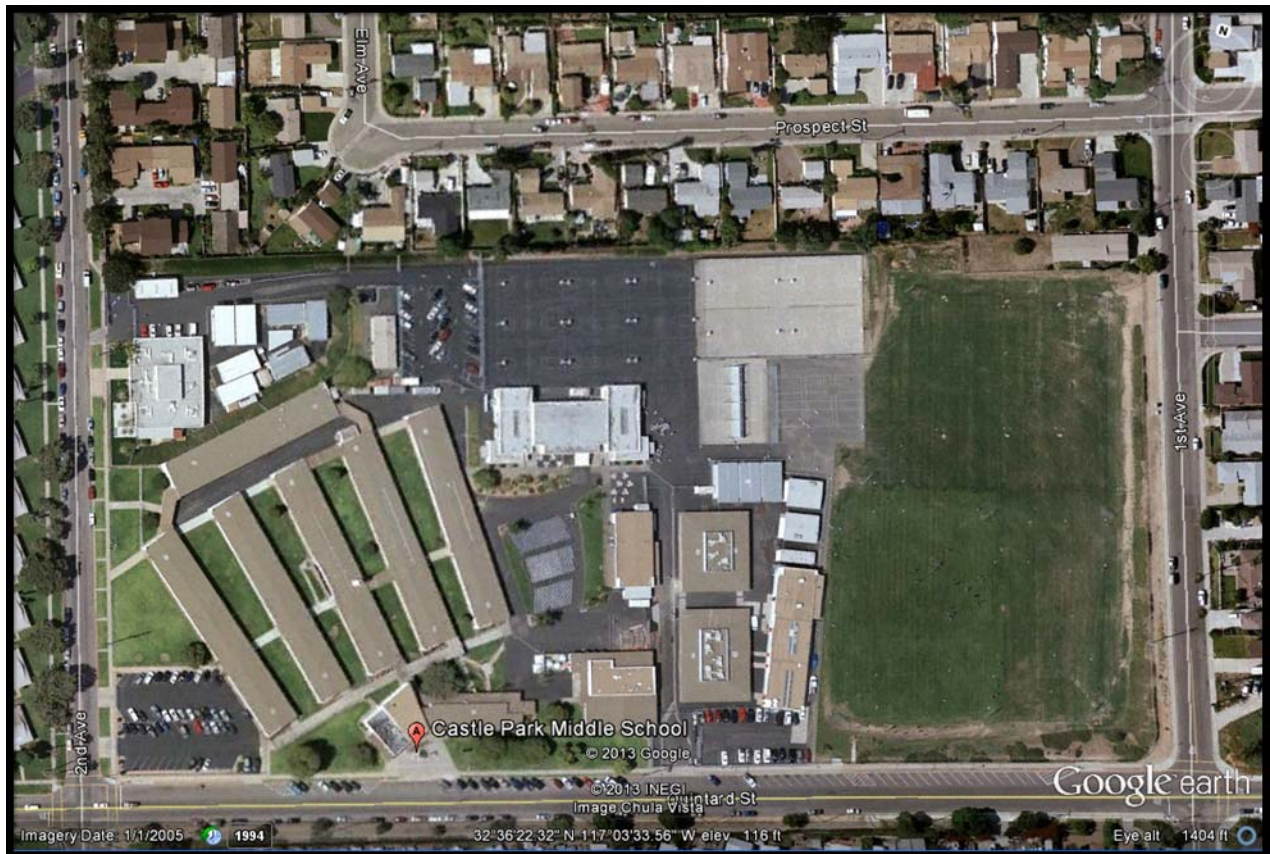


EXHIBIT C

PRICING

The following pricing is based on the Standard System Design Packages.

PPA Rate (\$/kWh)	PPA Term (Years)	Annual PPA Rate Escalator (% / Year)
0.1475 commencing on the Commercial Operation Date	20 after Commercial Operation Date	3.00% on each anniversary of the Commercial Operation Date

EXHIBIT D – Castle Park MS

TERMINATION VALUES

The following Termination Values are based on the Standard System Design Package described in Exhibit A.

(The numbers presented here are only for indicative purposes and are subject to change based on a final review by the financial investor.)

Applicable Date: Commercial Operation Date plus	Column A:
0 Year	1,192,973
1 Year	1,078,382
2 Years	957,403
3 Years	828,364
4 Years	697,746
5 Years	573,273
6 Years	566,731
7 Years	553,051
8 Years	536,842
9 Years	517,761
10 Years	495,468
11 Years	469,995
12 Years	441,440
13 Years	409,371
14 Years	373,372
15 Years	333,009
16 Years	287,715
17 Years	236,864
18 Years	179,767
19 Years	134,949

EXHIBIT E

O&M WORK GUIDELINES

Provider shall have the obligation to use commercially reasonable efforts to enforce the System failure policy for outage within a timeframe not expected to exceed the following:

Initial Response (remote troubleshooting) = 24 hours

Issue Identification (scheduled dispatch if needed) = 2 business days

On-site to performance repairs (if needed) = 5 business days

EXHIBIT F

PROVIDER'S INSURANCE REQUIREMENTS

Provider shall, at all times during the term of an agreement, carry, maintain and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$3,000,000 each occurrence with an aggregate of \$6,000,000, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by the firm(s). Provider shall insure the material hoist where used in the amounts shown above. Said policy or policies shall be issued by an insurer rated in A. M. Best's Insurance Guide with a rating of at least A:X. Provider shall also provide comprehensive auto liability insurance covering personal injury and property damage in the amount of a combined single limit of \$2,000,000 covering "Any Auto" utilized by Provider in performing its services hereunder. Limits referenced above may be satisfied through a combination of primary and umbrella policies.

Provider agrees to maintain in force, at all times, during the performance of work under an agreement, Worker's Compensation Insurance as required by law of the State of California.

Provider agrees to maintain in full force and effect during the performance of work under this Agreement, Professional Liability (Errors and Omissions) insurance in the amount of \$2,000,000. Further, if such insurance is on a claims made basis, Provider agrees to maintain in full force and effect such insurance for one year after the performance of work under this agreement, including warranty periods, is completed.

All insurance policies shall provide that the insurance coverage shall not be canceled or reduced in required limits of liability or amounts of insurance by the insurance carrier without thirty (30) days prior written notice to Provider stating date of cancellation, reduction or other adverse change respecting such insurance. Provider shall provide written notice to the District within five (5) business days of receiving notice that the insurance coverage required herein has been or will be canceled or reduced in required limits of liability or amounts of insurance by the insurance carrier, stating the date of cancellation, reduction or other adverse change respecting such insurance. Provider agrees that it will not cancel or reduce said insurance coverage.

Provider agrees that if they do not keep the aforesaid insurance in full force and effect, Customer may either immediately terminate this agreement or, if insurance is available at a reasonable cost, Customer may take out necessary insurance and pay, at Provider's expense, the premium thereon.

At all times during the term of this Agreement, Provider shall maintain on file with Customer a certificate of insurance, showing that the aforesaid policies are in effect in the required amounts. The policies shall contain an endorsement naming the Customer as an additional insured (except for the workers compensation and professional liability policies) and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions set forth in this Agreement. Upon execution of contract, Provider shall promptly file with Customer such certificate or certificates.

Companies providing insurance coverage shall be acceptable to Customer and shall be authorized to conduct business in the State of California.

The insurance provided by Provider shall be primary to any coverage available to Customer. The insurance policies (other than workers compensation) shall include provisions for waiver of subrogation.

EXHIBIT G

PROVIDER'S QUALIFICATIONS AND ASSUMPTIONS

PART 1: ASSUMPTIONS AND QUALIFICATIONS

General

Provider assumes standard working hours (7 am – 5 pm, Monday-Friday), subject to the provisions contained in Section 1.06C of the General Conditions. Overtime or shift work is excluded. Terms and conditions of this Agreement are based on array layouts and descriptions as provided herein.

Provider assumes standard weather patterns and Site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last three years) or natural disasters may result in delays.

In the event of deviation from the assumptions set forth below, the Parties shall work together using commercially reasonable efforts to minimize costs associated with such deviations.

Provider will strive to utilize the team identified in its proposal. Vendors or subcontractors identified/listed in Provider's proposal shall not be construed as a listing of subcontractors under Public Contract Code. The intent of identifying Provider's proposed team for the executing the project work is to identify the team Provider intends to utilize in executing the work. Due to the design-build nature of the project, it would be difficult to get hard bid costs from vendors or subcontractors without a final design.

Provider will provide to Customer a password protected website called SunPower Monitor, which will be accessible for teacher and student use at the Site. The cost of a Monitoring display at the Site is not included with the System.

Portable toilets are included in this Agreement.

Taxes and Fees

Any taxes or fees, other than sales tax, are excluded from this Agreement. This Agreement is based on a sales tax rate of 8.75%.

Design

As-Built Documentation

Provider assumes Customer will provide uninhibited access to as-built and individual school site record documentation, including electronic files, such as AutoCAD files.

Landscape

Only remedial landscaping by Provider is contemplated by this Agreement. Provider also assumes that Customer will remove trees in areas outside the construction area on the Site if required to prevent shading that will impact power generation of the System.

Electrical

Provider assumes there is no additional customer-side protection or disconnects required by the District or utilities above that provided by the certified inverters.

Provider assumes electrical equipment such as the inverter and AC utility Lockable Disconnect will be installed on the ground with a standard SunPower service concrete pad, located in close proximity to the

System support structures and within a maximum number of feet of the proposed electrical tie-in location as shown on the proposed array layouts. Provider also assumes use of trenching consisting of open trenches, 18 to 24 inches wide and 2 to 4 feet deep, without issues related to underground utilities, and use of EMT conduit with rain-tight compression fittings for above ground installations, exclusive of surveillance camera conduit on structure which shall be rigid, and schedule 40 PVC conduits for below ground installations. Provider shall install lightweight (200 psi) concrete slurry as required by code at all underground duct banks, exclusive of any low voltage duct banks.

Provider assumes all utility-owned electrical equipment serving the campuses have adequate capacity to handle the System output.

Agreement assumes use of cellular modem for communication with a third party monitoring company. All other communication and low voltage infrastructure is excluded from this Agreement. Energy Management System Integration or similar control or SCADA system integrations to the System is excluded from this Agreement.

Structures

Painting of steel System shade structure/canopy support structures is included in this Agreement. All other painting of equipment, special signage, decals, or protective barriers not required by code are excluded. All other metal materials are either factory-finished or non-corrosive and will not need painting for weather protection.

Site

Special drainage requirements and/or drainage design and interconnection to Customer's existing storm drain system or any other storm drain discharge system is excluded from this Agreement.

This Agreement excludes requirements for accessibility upgrades and accessibility design beyond the confines of the System.

Architectural enhancements to the System are not included in this proposal.

Provider assumes a maximum of two (2) fire hydrant flow tests per campus to evaluate adequate fire flow rate of campus for local Fire District (FLS) design review.

Provided that Provider designs the System so that, based on Provider's experience, Provider expects that no additional fire hydrants will be required, this Agreement excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design of the System.

Permitting and Regulatory Approvals

Provider includes duration of forty (40) working days for Phase 1 schools and one hundred (100) working days for Phase 2 Schools for approvals by the Division of State Architect in its project schedule. Provider will not be responsible for construction delays caused by permit and approval requirements outside of its control. Such delays will entitle Provider to a time extension in the amount of time over our plan for obtaining required DSA approvals.

Provider assumes existing site is zoned for solar electric installation per Provider's design requirements and will not have to be re-zoned. Provider also assumes that there will be no issues with any easements (such as roads), right-of-ways, bridges, utility power lines, etc.

Provider assumes all campuses have a max wind speed 85mph 3 sec wind gust.

Special permits, approval requirements, monitoring, compliance requirements, fees and certifications (such as CEQA applications, environmental impact report, wetlands delineation, water quality, archeological, endangered species, water rights, mineral rights, etc.) are excluded.

All DSA and CGS fees are included in this Agreement. All costs for special inspections other than as required by DSA are excluded from this Agreement.

Site Access and Facilities

Provider assumes site access for construction activities during standard working hours as provided in Section 3.1.3 above.

Provider assumes there will be no issues with using onsite water as available for construction at no charge to Provider. Provider also assumes use of onsite bibs for water supply during construction. Provider assumes that District will provide power for onsite construction activities. In the event power is not readily available, Provider shall utilize a portable generator and shall ensure that generator will be of a type that emits low noise, in conformity with the Customer's customary noise restrictions on the Site.

Removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are excluded from this Agreement. Changes to design or construction as a result of utilities and or hazards, underground or above ground, or any undocumented building upgrades are excluded from this Agreement. After Installation, Provider assumes that there is 24/7 access to existing electric utility meter and the future utility lockable disconnect location in accordance with the provisions of Section 4 of the Agreement.

PART 2: ASSUMPTIONS AND QUALIFICATIONS SPECIFIC TO PARKING CANOPY SYSTEMS AND GROUND FIXED-TILT SYSTEMS

This Agreement is based on building the System with 9'-6" foot minimum clearance for parking areas.

Provider assumes all parking lot light standards in direct conflict with installation of the System can be removed. Provider also assumes that those existing lighting circuits can be re-used for the System's lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at the System. In the event that existing lighting circuits are not adequate, new lighting circuit installation is excluded from this Agreement, as well as any required timing circuit reconfiguration. Lighting design and/or installation beyond the System is not included in this Agreement.

Foundations and Equipment Pads

Geotechnical investigation and geohazard report is a part of the preliminary design investigation and is a part of this Agreement. Electrical equipment and equipment housekeeping pad shade structures/canopies are excluded from this Agreement, unless electrical equipment and equipment housekeeping pad are located under the System, in which case the System shall act as the equipment shelter.

This Agreement includes four-sided galvanized chain link electrical equipment pads/enclosures with locking gates. Special provisions for privacy slats, special hardware, or other fencing items are excluded from this Agreement.

System shade structures/parking canopies will utilize a 36" round caisson approximately 3 feet above grade for parking lot conditions.

Provider assumes the existing site soil has the following characteristics:

- IBC or UBC Table 18-I-A, Class 3 equivalent
- Non-hazardous, sandy gravel and/or gravel

- Allowable foundation pressure of 2,000 (psf) 2
- Lateral Bearing strength below grade equal to 200 (Lbs./Sq.Ft./Ft. of depth
- Lateral sliding coefficient is equal to .35
- No sub-grade rocks or rock formations
- Adequate surface drainage
- No to low seismic conditions (Low risk of liquefaction, lateral spreading, or seismically induced settlement; no known risk of fault surface rupture)
- Expansion index of 50 or less
- Low to moderate corrosivity (Electrical resistivity > 1000 Ohm-cm, pH > 5.5, chloride < 500 ppm, sulfate < 2000 ppm)
- Depth to start of passive pressure is 0.5 feet in constrained installations and 1.0 feet in unconstrained installations.

Site Specific Qualifications

Provider will remove, relocate, and replant (at a location on campus of the Customer's choosing) three (3) palms in the outdoor amphitheater area for a Not to Exceed total cost of \$7,500.00.

Provider will remove and reinstall the metal benches in the outdoor amphitheater area for a Not to Exceed total cost of \$8,320.00. Provider assumes that the benches can be efficiently removed and reinstalled without damage or modification.