

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

Form 10-Q

(Mark one)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2022
- or
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission file number: 001-33156



First Solar

First Solar, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

20-4623678

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

350 West Washington Street, Suite 600

Tempe, Arizona 85288

(Address of principal executive offices, including zip code)

(602) 414-9300

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, \$0.001 par value	FSLR	The NASDAQ Stock Market LLC

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>	Non-accelerated filer	<input type="checkbox"/>
Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

As of July 22, 2022, 106,594,563 shares of the registrant's common stock, \$0.001 par value per share, were outstanding.

FIRST SOLAR, INC.

FORM 10-Q FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2022

TABLE OF CONTENTS

	<u>Page</u>	
Part I.	Financial Information	1
Item 1.	Condensed Consolidated Financial Statements (Unaudited)	1
	Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2022 and 2021	1
	Condensed Consolidated Statements of Comprehensive Income for the three and six months ended June 30, 2022 and 2021	2
	Condensed Consolidated Balance Sheets as of June 30, 2022 and December 31, 2021	3
	Condensed Consolidated Statements of Stockholders' Equity for the three and six months ended June 30, 2022 and 2021	4
	Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2022 and 2021	6
	Notes to Condensed Consolidated Financial Statements	7
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	35
Item 3.	Quantitative and Qualitative Disclosures about Market Risk	51
Item 4.	Controls and Procedures	51
Part II.	Other Information	52
Item 1.	Legal Proceedings	52
Item 1A.	Risk Factors	53
Item 6.	Exhibits	55
Signature		56

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (Unaudited)

FIRST SOLAR, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net sales	\$ 620,955	\$ 629,180	\$ 987,995	\$ 1,432,554
Cost of sales	644,155	455,062	999,732	1,073,669
Gross (loss) profit	(23,200)	174,118	(11,737)	358,885
Operating expenses:				
Selling, general and administrative	38,894	36,346	75,622	88,433
Research and development	25,229	23,935	52,337	43,808
Production start-up	13,231	1,715	20,569	13,069
Total operating expenses	77,354	61,996	148,528	145,310
Gain on sales of businesses, net	245,381	(1,745)	247,288	149,150
Operating income	144,827	110,377	87,023	362,725
Foreign currency loss, net	(2,984)	(1,000)	(7,182)	(3,595)
Interest income	2,880	1,288	5,205	2,244
Interest expense, net	(3,236)	(4,623)	(6,101)	(7,619)
Other (expense) income, net	(1,883)	(3,247)	(2,095)	5,201
Income before taxes	139,604	102,795	76,850	358,956
Income tax expense	(83,799)	(20,346)	(64,300)	(66,836)
Net income	\$ 55,805	\$ 82,449	\$ 12,550	\$ 292,120
Net income per share:				
Basic	\$ 0.52	\$ 0.78	\$ 0.12	\$ 2.75
Diluted	\$ 0.52	\$ 0.77	\$ 0.12	\$ 2.73
Weighted-average number of shares used in per share calculations:				
Basic	106,586	106,313	106,500	106,201
Diluted	107,056	106,836	106,965	106,866

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net income	\$ 55,805	\$ 82,449	\$ 12,550	\$ 292,120
Other comprehensive (loss) income:				
Foreign currency translation adjustments	(18,170)	290	(28,295)	(9,426)
Unrealized (loss) gain on marketable securities and restricted marketable securities, net of tax of \$681, \$(34), \$1,927 and \$1,087	(16,967)	115	(39,488)	(16,475)
Unrealized (loss) gain on derivative instruments, net of tax of \$1,541, \$(61), \$1,635 and \$(698)	(5,643)	784	(6,085)	4,166
Other comprehensive (loss) income	(40,780)	1,189	(73,868)	(21,735)
Comprehensive income (loss)	<u>\$ 15,025</u>	<u>\$ 83,638</u>	<u>\$ (61,318)</u>	<u>\$ 270,385</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)
(Unaudited)

	June 30, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash	\$ 1,701,217	\$ 1,450,654
Marketable securities	143,944	375,389
Accounts receivable trade, net	454,431	429,436
Accounts receivable unbilled, net	35,438	25,273
Inventories	810,461	666,299
Other current assets	237,926	244,192
Total current assets	<u>3,383,417</u>	<u>3,191,243</u>
Property, plant and equipment, net	2,988,979	2,649,587
PV solar power systems, net	156,215	217,293
Project assets	29,589	315,488
Deferred tax assets, net	61,732	59,162
Restricted marketable securities	200,266	244,726
Goodwill	14,462	14,462
Intangible assets, net	38,728	45,509
Inventories	239,025	237,512
Other assets	306,956	438,764
Total assets	<u>\$ 7,419,369</u>	<u>\$ 7,413,746</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 160,963	\$ 193,374
Income taxes payable	29,441	4,543
Accrued expenses	344,205	288,450
Current portion of long-term debt	5,150	3,896
Deferred revenue	227,466	201,868
Other current liabilities	36,329	34,747
Total current liabilities	<u>803,554</u>	<u>726,878</u>
Accrued solar module collection and recycling liability	134,146	139,145
Long-term debt	170,017	236,005
Other liabilities	415,825	352,167
Total liabilities	<u>1,523,542</u>	<u>1,454,195</u>
Commitments and contingencies		
Stockholders' equity:		
Common stock, \$0.001 par value per share; 500,000,000 shares authorized; 106,594,255 and 106,332,315 shares issued and outstanding at June 30, 2022 and December 31, 2021, respectively	107	106
Additional paid-in capital	2,868,945	2,871,352
Accumulated earnings	3,197,005	3,184,455
Accumulated other comprehensive loss	(170,230)	(96,362)
Total stockholders' equity	<u>5,895,827</u>	<u>5,959,551</u>
Total liabilities and stockholders' equity	<u>\$ 7,419,369</u>	<u>\$ 7,413,746</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

	Three Months Ended June 30, 2022					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity
	Shares	Amount				
Balance at March 31, 2022	106,583	\$ 107	\$ 2,863,318	\$ 3,141,200	\$ (129,450)	\$ 5,875,175
Net income	—	—	—	55,805	—	55,805
Other comprehensive loss	—	—	—	—	(40,780)	(40,780)
Common stock issued for share-based compensation	12	—	—	—	—	—
Tax withholding related to vesting of restricted stock	(1)	—	(86)	—	—	(86)
Share-based compensation expense	—	—	5,713	—	—	5,713
Balance at June 30, 2022	<u>106,594</u>	<u>\$ 107</u>	<u>\$ 2,868,945</u>	<u>\$ 3,197,005</u>	<u>\$ (170,230)</u>	<u>\$ 5,895,827</u>
	Three Months Ended June 30, 2021					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity
	Shares	Amount				
Balance at March 31, 2021	106,311	\$ 106	\$ 2,853,891	\$ 2,925,433	\$ (84,650)	\$ 5,694,780
Net income	—	—	—	82,449	—	82,449
Other comprehensive income	—	—	—	—	1,189	1,189
Common stock issued for share-based compensation	10	—	—	—	—	—
Tax withholding related to vesting of restricted stock	(2)	—	(121)	—	—	(121)
Share-based compensation expense	—	—	5,338	—	—	5,338
Balance at June 30, 2021	<u>106,319</u>	<u>\$ 106</u>	<u>\$ 2,859,108</u>	<u>\$ 3,007,882</u>	<u>\$ (83,461)</u>	<u>\$ 5,783,635</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

	Six Months Ended June 30, 2022					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2021	106,332	\$ 106	\$ 2,871,352	\$ 3,184,455	\$ (96,362)	\$ 5,959,551
Net income	—	—	—	12,550	—	12,550
Other comprehensive loss	—	—	—	—	(73,868)	(73,868)
Common stock issued for share-based compensation	426	1	—	—	—	1
Tax withholding related to vesting of restricted stock	(164)	—	(11,591)	—	—	(11,591)
Share-based compensation expense	—	—	9,184	—	—	9,184
Balance at June 30, 2022	<u>106,594</u>	<u>\$ 107</u>	<u>\$ 2,868,945</u>	<u>\$ 3,197,005</u>	<u>\$ (170,230)</u>	<u>\$ 5,895,827</u>

	Six Months Ended June 30, 2021					
	Common Stock		Additional Paid-In Capital	Accumulated Earnings	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2020	105,980	\$ 106	\$ 2,866,786	\$ 2,715,762	\$ (61,726)	\$ 5,520,928
Net income	—	—	—	292,120	—	292,120
Other comprehensive loss	—	—	—	—	(21,735)	(21,735)
Common stock issued for share-based compensation	546	—	—	—	—	—
Tax withholding related to vesting of restricted stock	(207)	—	(15,810)	—	—	(15,810)
Share-based compensation expense	—	—	8,132	—	—	8,132
Balance at June 30, 2021	<u>106,319</u>	<u>\$ 106</u>	<u>\$ 2,859,108</u>	<u>\$ 3,007,882</u>	<u>\$ (83,461)</u>	<u>\$ 5,783,635</u>

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2022	2021
Cash flows from operating activities:		
Net income	\$ 12,550	\$ 292,120
Adjustments to reconcile net income to cash used in operating activities:		
Depreciation, amortization and accretion	131,760	128,913
Impairments and net losses on disposal of long-lived assets	62,688	5,264
Share-based compensation	9,267	8,545
Deferred income taxes	(5,576)	(12,317)
Gain on sales of businesses, net	(247,288)	(149,150)
Gains on sales of marketable securities and restricted marketable securities	—	(11,696)
Other, net	(392)	(1,459)
Changes in operating assets and liabilities:		
Accounts receivable, trade and unbilled	145,784	(255,832)
Other current assets	(25,472)	(43,993)
Inventories	(160,456)	(61,942)
Project assets and PV solar power systems	(160,300)	40,558
Other assets	(29,682)	(17,750)
Income tax receivable and payable	42,679	37,158
Accounts payable	(29,875)	(10,795)
Accrued expenses and other liabilities	203,492	(49,853)
Net cash used in operating activities	(50,821)	(102,229)
Cash flows from investing activities:		
Purchases of property, plant and equipment	(353,448)	(180,782)
Purchases of marketable securities	(971,205)	(389,352)
Proceeds from sales and maturities of marketable securities and restricted marketable securities	1,198,254	749,447
Proceeds from sales of businesses, net of cash and restricted cash sold	264,614	297,403
Other investing activities	72	(6,628)
Net cash provided by investing activities	138,287	470,088
Cash flows from financing activities:		
Repayment of long-term debt	(75,879)	(38,471)
Proceeds from borrowings under long-term debt, net of discounts and issuance costs	213,086	45,191
Payments of tax withholdings for restricted shares	(11,591)	(15,810)
Net cash provided by (used in) financing activities	125,616	(9,090)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	39,934	906
Net increase in cash, cash equivalents and restricted cash	253,016	359,675
Cash, cash equivalents and restricted cash, beginning of the period	1,455,837	1,273,594
Cash, cash equivalents and restricted cash, end of the period	\$ 1,708,853	\$ 1,633,269
Supplemental disclosure of noncash investing and financing activities:		
Property, plant and equipment acquisitions funded by liabilities	\$ 178,807	\$ 43,894
Proceeds to be received from sales of businesses	\$ 163,966	\$ 4,482

See accompanying notes to these condensed consolidated financial statements.

FIRST SOLAR, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of First Solar, Inc. and its subsidiaries in this Quarterly Report have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (the “SEC”). Accordingly, these interim financial statements do not include all of the information and footnotes required by U.S. GAAP for annual financial statements. In the opinion of First Solar management, all adjustments (consisting only of normal recurring adjustments) considered necessary for a fair statement have been included. Certain prior period balances have been reclassified to conform to the current period presentation.

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Despite our intention to establish accurate estimates and reasonable assumptions, actual results could differ materially from such estimates and assumptions. Operating results for the three and six months ended June 30, 2022 are not necessarily indicative of the results that may be expected for the year ending December 31, 2022 or for any other period. The condensed consolidated balance sheet at December 31, 2021 has been derived from the audited consolidated financial statements at that date, but does not include all of the information and footnotes required by U.S. GAAP for complete financial statements. These interim financial statements and notes should be read in conjunction with the audited financial statements and notes thereto for the year ended December 31, 2021 included in our Annual Report on Form 10-K, which has been filed with the SEC.

Unless expressly stated or the context otherwise requires, the terms “the Company,” “we,” “us,” “our,” and “First Solar” refer to First Solar, Inc. and its consolidated subsidiaries, and the term “condensed consolidated financial statements” refers to the accompanying unaudited condensed consolidated financial statements contained in this Quarterly Report.

2. Sales of Businesses

Sale of Japan Project Development Business

In May 2022, we entered into various agreements with certain subsidiaries of PAG Real Assets (“PAG”), a private investment firm, for the sale of our Japan project development business. The transaction included our approximately 293 MW_{DC} utility-scale solar project development platform, which comprised the business of developing, contracting for the construction of, and selling utility-scale photovoltaic (“PV”) solar power systems. Additionally, PAG has agreed to certain module purchase commitments.

On June 30, 2022, we completed the sale of our Japan project development business for an aggregate purchase price of ¥66.4 billion (\$488.4 million), subject to certain customary post-closing adjustments. On the closing date, we received proceeds of ¥44.1 billion (\$324.5 million) and transferred cash and restricted cash of ¥8.4 billion (\$61.9 million) to PAG. As a result of this transaction, we recognized a gain of \$245.4 million, net of transaction costs, which was included in “Gain on sales of businesses, net” in our condensed consolidated statements of operations.

Sales of North American and International O&M Operations

In August 2020, we entered into an agreement with a subsidiary of Clairvest Group, Inc. (“Clairvest”) for the sale of our North American operations and maintenance (“O&M”) operations. In March 2021, we completed the transaction and received initial consideration of \$146.0 million. As a result of this transaction, we recognized a gain of \$117.8 million, net of transaction costs, during the six months ended June 30, 2021, which was included in “Gain on sales of businesses, net” in our condensed consolidated statements of operations.

In January 2022, we completed the sale of certain international O&M operations to a separate subsidiary of Clairvest for consideration of \$1.9 million. As a result of this transaction, we recognized a gain of \$1.6 million, net of transaction costs and post-closing adjustments, during the six months ended June 30, 2022, which was included in “Gain on sales of businesses, net” in our condensed consolidated statements of operations.

Sale of U.S. Project Development Business

In January 2021, we entered into an agreement with Leeward Renewable Energy Development, LLC (“Leeward”), a subsidiary of the Ontario Municipal Employees Retirement System, for the sale of our U.S. project development business. In March 2021, we completed the transaction and received consideration of \$151.4 million for the sale of such business. As a result of this transaction, we recognized a gain of \$31.5 million, net of transaction costs, during the six months ended June 30, 2021, which was included in “Gain on sales of businesses, net” in our condensed consolidated statements of operations.

3. Cash and Marketable Securities

Cash and marketable securities consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Cash	\$ 1,701,217	\$ 1,450,654
Marketable securities:		
Foreign debt	52,161	103,317
U.S. debt	8,702	18,627
Time deposits	83,081	253,445
Total marketable securities	143,944	375,389
Total cash and marketable securities	\$ 1,845,161	\$ 1,826,043

The following table provides a reconciliation of cash and restricted cash reported within our condensed consolidated balance sheets as of June 30, 2022 and December 31, 2021 to the total of such amounts as presented in the condensed consolidated statements of cash flows (in thousands):

	Balance Sheet Line Item	June 30, 2022	December 31, 2021
Cash	Cash	\$ 1,701,217	\$ 1,450,654
Restricted cash – current	Other current assets	1,130	1,532
Restricted cash – noncurrent	Other assets	6,506	3,651
Total cash and restricted cash		\$ 1,708,853	\$ 1,455,837

During the six months ended June 30, 2021, we sold marketable securities for proceeds of \$5.5 million and realized gains of less than \$0.1 million on such sales. See Note 8. “Fair Value Measurements” to our condensed consolidated financial statements for information about the fair value of our marketable securities.

The following tables summarize the unrealized gains and losses related to our available-for-sale marketable securities, by major security type, as of June 30, 2022 and December 31, 2021 (in thousands):

	As of June 30, 2022				
	Amortized Cost	Unrealized Gains	Unrealized Losses	Allowance for Credit Losses	Fair Value
Foreign debt	\$ 52,208	\$ 1	\$ 31	\$ 17	\$ 52,161
U.S. debt	10,000	—	1,296	2	8,702
Time deposits	83,102	—	—	21	83,081
Total	\$ 145,310	\$ 1	\$ 1,327	\$ 40	\$ 143,944

	As of December 31, 2021				
	Amortized Cost	Unrealized Gains	Unrealized Losses	Allowance for Credit Losses	Fair Value
Foreign debt	\$ 103,263	\$ 81	\$ 18	\$ 9	\$ 103,317
U.S. debt	19,003	10	384	2	18,627
Time deposits	253,531	—	—	86	253,445
Total	\$ 375,797	\$ 91	\$ 402	\$ 97	\$ 375,389

The following table presents the change in the allowance for credit losses related to our available-for-sale marketable securities for the six months ended June 30, 2022 and 2021 (in thousands):

	Six Months Ended June 30,	
	2022	2021
Allowance for credit losses, beginning of period	\$ 97	\$ 121
Provision for credit losses, net	64	201
Sales and maturities of marketable securities	(121)	(235)
Allowance for credit losses, end of period	\$ 40	\$ 87

The contractual maturities of our marketable securities as of June 30, 2022 were as follows (in thousands):

	Fair Value
One year or less	\$ 135,242
One year to two years	—
Two years to three years	—
Three years to four years	4,548
Four years to five years	—
More than five years	4,154
Total	\$ 143,944

4. Restricted Marketable Securities

Restricted marketable securities consisted of the following as of June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Foreign government obligations	\$ 51,355	\$ 64,855
Supranational debt	9,419	10,997
U.S. debt	120,491	145,326
U.S. government obligations	19,001	23,548
Total restricted marketable securities	<u>\$ 200,266</u>	<u>\$ 244,726</u>

Our restricted marketable securities represent long-term investments to fund the estimated future cost of collecting and recycling modules covered under our solar module collection and recycling program. We have established a trust under which estimated funds are put into custodial accounts with an established and reputable bank, for which First Solar, Inc.; First Solar Malaysia Sdn. Bhd.; and First Solar Manufacturing GmbH are grantors. As of June 30, 2022 and December 31, 2021, such custodial accounts also included noncurrent restricted cash balances of \$4.0 million and \$0.9 million, respectively, which were reported within “Other assets.” Trust funds may be disbursed for qualified module collection and recycling costs (including capital and facility related recycling costs), payments to customers for assuming collection and recycling obligations, and reimbursements of any overfunded amounts. Investments in the trust must meet certain investment quality criteria comparable to highly rated government or agency bonds. As necessary, we fund any incremental amounts for our estimated collection and recycling obligations on an annual basis based on the estimated costs of collecting and recycling covered modules, estimated rates of return on our restricted marketable securities, and an estimated solar module life of 25 years, less amounts already funded in prior years.

During the six months ended June 30, 2021, we sold all our restricted marketable securities for proceeds of \$258.9 million and realized gains of \$11.7 million on such sales. See Note 8. “Fair Value Measurements” to our condensed consolidated financial statements for information about the fair value of our restricted marketable securities.

The following tables summarize the unrealized gains and losses related to our restricted marketable securities, by major security type, as of June 30, 2022 and December 31, 2021 (in thousands):

	As of June 30, 2022				
	Amortized Cost	Unrealized Gains	Unrealized Losses	Allowance for Credit Losses	Fair Value
Foreign government obligations	\$ 63,830	\$ —	\$ 12,465	\$ 10	\$ 51,355
Supranational debt	11,255	—	1,836	—	9,419
U.S. debt	149,179	—	28,658	30	120,491
U.S. government obligations	24,596	—	5,590	5	19,001
Total	<u>\$ 248,860</u>	<u>\$ —</u>	<u>\$ 48,549</u>	<u>\$ 45</u>	<u>\$ 200,266</u>

	As of December 31, 2021				
	Amortized Cost	Unrealized Gains	Unrealized Losses	Allowance for Credit Losses	Fair Value
Foreign government obligations	\$ 66,867	\$ —	\$ 2,002	\$ 10	\$ 64,855
Supranational debt	11,362	—	365	—	10,997
U.S. debt	150,060	—	4,697	37	145,326
U.S. government obligations	24,640	—	1,086	6	23,548
Total	\$ 252,929	\$ —	\$ 8,150	\$ 53	\$ 244,726

The following table presents the change in the allowance for credit losses related to our restricted marketable securities for the six months ended June 30, 2022 and 2021 (in thousands):

	Six Months Ended June 30,	
	2022	2021
Allowance for credit losses, beginning of period	\$ 53	\$ 13
Provision for credit losses, net	(8)	16
Sales of restricted marketable securities	—	(29)
Allowance for credit losses, end of period	\$ 45	\$ —

As of June 30, 2022, the contractual maturities of our restricted marketable securities were between 9 years and 17 years.

5. Consolidated Balance Sheet Details

Accounts receivable trade, net

Accounts receivable trade, net consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Accounts receivable trade, gross	\$ 455,038	\$ 430,100
Allowance for credit losses	(607)	(664)
Accounts receivable trade, net	\$ 454,431	\$ 429,436

Accounts receivable unbilled, net

Accounts receivable unbilled, net consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Accounts receivable unbilled, gross	\$ 35,438	\$ 25,336
Allowance for credit losses	—	(63)
Accounts receivable unbilled, net	\$ 35,438	\$ 25,273

Allowance for credit losses

The following tables present the change in the allowances for credit losses related to our accounts receivable for the six months ended June 30, 2022 and 2021 (in thousands):

	Six Months Ended June 30,	
	2022	2021
Accounts receivable trade		
Allowance for credit losses, beginning of period	\$ 664	\$ 3,009
Provision for credit losses, net	(57)	(433)
Writeoffs	—	(97)
Allowance for credit losses, end of period	<u>\$ 607</u>	<u>\$ 2,479</u>
Accounts receivable unbilled		
Allowance for credit losses, beginning of period	\$ 63	\$ 303
Provision for credit losses, net	(63)	(266)
Allowance for credit losses, end of period	<u>\$ —</u>	<u>\$ 37</u>

Inventories

Inventories consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Raw materials	\$ 397,299	\$ 404,727
Work in process	60,087	65,573
Finished goods	592,100	433,511
Inventories	<u>\$ 1,049,486</u>	<u>\$ 903,811</u>
Inventories – current	\$ 810,461	\$ 666,299
Inventories – noncurrent	\$ 239,025	\$ 237,512

Other current assets

Other current assets consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Spare maintenance materials and parts	\$ 111,188	\$ 112,070
Operating supplies	40,294	41,034
Prepaid expenses	39,125	28,232
Prepaid income taxes	15,791	41,379
Derivative instruments (1)	8,535	5,816
Restricted cash	1,130	1,532
Other	21,863	14,129
Other current assets	<u>\$ 237,926</u>	<u>\$ 244,192</u>

(1) See Note 6. “Derivative Financial Instruments” to our condensed consolidated financial statements for discussion of our derivative instruments.

Property, plant and equipment, net

Property, plant and equipment, net consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Land	\$ 17,924	\$ 18,359
Buildings and improvements	692,785	693,289
Machinery and equipment	2,635,862	2,527,627
Office equipment and furniture	140,171	139,611
Leasehold improvements	40,162	40,517
Construction in progress	803,488	461,708
Property, plant and equipment, gross	4,330,392	3,881,111
Accumulated depreciation	(1,341,413)	(1,231,524)
Property, plant and equipment, net	<u>\$ 2,988,979</u>	<u>\$ 2,649,587</u>

Depreciation of property, plant and equipment was \$60.0 million and \$118.6 million for the three and six months ended June 30, 2022, respectively, and \$58.8 million and \$115.6 million for the three and six months ended June 30, 2021, respectively.

PV solar power systems, net

PV solar power systems, net consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
PV solar power systems, gross	\$ 225,530	\$ 281,660
Accumulated depreciation	(69,315)	(64,367)
PV solar power systems, net	<u>\$ 156,215</u>	<u>\$ 217,293</u>

Depreciation of PV solar power systems was \$2.3 million and \$5.1 million for the three and six months ended June 30, 2022, respectively, and \$2.9 million and \$5.9 million for the three and six months ended June 30, 2021, respectively.

We evaluate our PV solar power systems for impairment under a held and used impairment model whenever events or changes in circumstances arise that may indicate that the carrying amount of a particular system may not be recoverable. Such events or changes may include a significant decrease in the market price of the asset, current-period operating or cash flow losses combined with a history of such losses or a projection of future losses associated with the use of the asset, and changes in expectations regarding our intent to hold the asset on a long-term basis or the timing of a potential asset disposition.

During the three months ended June 30, 2022, we received multiple non-binding offers to purchase our Luz del Norte PV solar power plant and elected to pursue such opportunities in coordination with the project's lenders. As a result of the expected sale in the near term, we compared the undiscounted future cash flows for the project to its carrying value and determined that the project was not recoverable. Accordingly, we measured the fair value of the project using a market approach valuation technique and recorded an impairment loss of \$57.8 million in "Cost of sales" in our condensed consolidated statements of operations. Such impairment loss was comprised of \$55.6 million for PV solar power systems, \$1.3 million for intangible assets, and \$0.9 million for operating lease assets.

Project assets

Project assets consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Project assets – development costs, including project acquisition and land costs	\$ 29,589	\$ 117,407
Project assets – construction costs	—	198,081
Project assets	<u>\$ 29,589</u>	<u>\$ 315,488</u>

In June 2022, we completed the sale of the majority of our project assets to PAG in connection with the sale of our Japan project development business. See Note 2. “Sales of Businesses” to our condensed consolidated financial statements for further information about this transaction.

Goodwill

Goodwill for the relevant reporting unit consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	December 31, 2021	Acquisitions (Impairments)	June 30, 2022
Modules	\$ 407,827	\$ —	\$ 407,827
Accumulated impairment losses	(393,365)	—	(393,365)
Goodwill	<u>\$ 14,462</u>	<u>\$ —</u>	<u>\$ 14,462</u>

Intangible assets, net

Intangible assets, net consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022			
	Gross Amount	Accumulated Amortization	Accumulated Impairments	Net Amount
Developed technology	\$ 99,964	\$ (66,920)	\$ —	\$ 33,044
Power purchase agreements	6,486	(1,784)	(1,300)	3,402
Patents	8,480	(6,198)	—	2,282
Intangible assets, net	<u>\$ 114,930</u>	<u>\$ (74,902)</u>	<u>\$ (1,300)</u>	<u>\$ 38,728</u>

	December 31, 2021			
	Gross Amount	Accumulated Amortization	Accumulated Impairments	Net Amount
Developed technology	\$ 99,964	\$ (61,985)	\$ —	\$ 37,979
Power purchase agreements	6,486	(1,621)	—	4,865
Patents	8,480	(5,815)	—	2,665
Intangible assets, net	<u>\$ 114,930</u>	<u>\$ (69,421)</u>	<u>\$ —</u>	<u>\$ 45,509</u>

Amortization of intangible assets was \$2.8 million and \$5.5 million for the three and six months ended June 30, 2022 and 2021, respectively.

Other assets

Other assets consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Operating lease assets (1)	\$ 101,855	\$ 207,544
Advanced payments for raw materials	86,520	86,962
Income tax receivables	47,235	39,862
Accounts receivable unbilled, net	11,488	20,840
Accounts receivable trade, net	9,076	21,293
Restricted cash	6,506	3,651
Indirect tax receivables	348	21,873
Other	43,928	36,739
Other assets	<u>\$ 306,956</u>	<u>\$ 438,764</u>

(1) See Note 7. “Leases” to our condensed consolidated financial statements for discussion of our lease arrangements.

Accrued expenses

Accrued expenses consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Accrued property, plant and equipment	\$ 154,552	\$ 42,031
Accrued freight	66,199	61,429
Accrued inventory	38,464	42,170
Accrued compensation and benefits	29,476	34,606
Product warranty liability (1)	11,553	13,598
Accrued other taxes	11,307	23,103
Accrued project costs	6,642	48,836
Other	26,012	22,677
Accrued expenses	<u>\$ 344,205</u>	<u>\$ 288,450</u>

(1) See Note 10. “Commitments and Contingencies” to our condensed consolidated financial statements for discussion of our “Product Warranties.”

Other current liabilities

Other current liabilities consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Other taxes payable	\$ 13,165	\$ 8,123
Operating lease liabilities (1)	9,437	12,781
Derivative instruments (2)	7,371	3,550
Other	6,356	10,293
Other current liabilities	<u>\$ 36,329</u>	<u>\$ 34,747</u>

(1) See Note 7. “Leases” to our condensed consolidated financial statements for discussion of our lease arrangements.

(2) See Note 6. “Derivative Financial Instruments” to our condensed consolidated financial statements for discussion of our derivative instruments.

Other liabilities

Other liabilities consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	December 31, 2021
Deferred revenue	\$ 278,176	\$ 95,943
Operating lease liabilities (1)	47,752	145,912
Product warranty liability (2)	35,576	38,955
Deferred tax liabilities, net	23,059	27,699
Other	31,262	43,658
Other liabilities	<u>\$ 415,825</u>	<u>\$ 352,167</u>

(1) See Note 7. “Leases” to our condensed consolidated financial statements for discussion of our lease arrangements.

(2) See Note 10. “Commitments and Contingencies” to our condensed consolidated financial statements for discussion of our “Product Warranties.”

6. Derivative Financial Instruments

As a global company, we are exposed in the normal course of business to interest rate, foreign currency, and commodity price risks that could affect our financial position, results of operations, and cash flows. We use derivative instruments to hedge against these risks and only hold such instruments for hedging purposes, not for speculative or trading purposes.

Depending on the terms of the specific derivative instruments and market conditions, some of our derivative instruments may be assets and others liabilities at any particular balance sheet date. We report all of our derivative instruments at fair value and account for changes in the fair value of derivative instruments within “Accumulated other comprehensive loss” if the derivative instruments qualify for hedge accounting. For those derivative instruments that do not qualify for hedge accounting (i.e., “economic hedges”), we record the changes in fair value directly to earnings. See Note 8. “Fair Value Measurements” to our condensed consolidated financial statements for information about the techniques we use to measure the fair value of our derivative instruments.

The following tables present the fair values of derivative instruments included in our condensed consolidated balance sheets as of June 30, 2022 and December 31, 2021 (in thousands):

	June 30, 2022	
	Other Current Assets	Other Current Liabilities
Derivatives designated as hedging instruments:		
Foreign exchange forward contracts	\$ 1,605	\$ —
Commodity swap contracts	—	6,812
Total derivatives designated as hedging instruments	<u>\$ 1,605</u>	<u>\$ 6,812</u>
Derivatives not designated as hedging instruments:		
Foreign exchange forward contracts	\$ 6,930	\$ 559
Total derivatives not designated as hedging instruments	<u>\$ 6,930</u>	<u>\$ 559</u>
Total derivative instruments	<u>\$ 8,535</u>	<u>\$ 7,371</u>

	December 31, 2021	
	Other Current Assets	Other Current Liabilities
Derivatives designated as hedging instruments:		
Foreign exchange forward contracts	\$ 1,336	\$ 139
Total derivatives designated as hedging instruments	\$ 1,336	\$ 139
Derivatives not designated as hedging instruments:		
Foreign exchange forward contracts	\$ 4,480	\$ 3,411
Total derivatives not designated as hedging instruments	\$ 4,480	\$ 3,411
Total derivative instruments	\$ 5,816	\$ 3,550

The following table presents the pretax amounts related to derivative instruments designated as cash flow hedges affecting accumulated other comprehensive income (loss) and our condensed consolidated statements of operations for the six months ended June 30, 2022 and 2021 (in thousands):

	Foreign Exchange Forward Contracts	Commodity Swap Contracts	Total
Balance as of December 31, 2021	\$ 1,126	\$ —	\$ 1,126
Amounts recognized in other comprehensive income (loss)	545	(6,812)	(6,267)
Amounts reclassified to earnings impacting:			
Cost of sales	(1,453)	—	(1,453)
Balance as of June 30, 2022	\$ 218	\$ (6,812)	\$ (6,594)
Balance as of December 31, 2020	\$ (3,644)	\$ 1,472	\$ (2,172)
Amounts recognized in other comprehensive income (loss)	1,618	1,531	3,149
Amounts reclassified to earnings impacting:			
Cost of sales	1,928	(213)	1,715
Balance as of June 30, 2021	\$ (98)	\$ 2,790	\$ 2,692

During the three and six months ended June 30, 2022, we recognized unrealized gains of less than \$0.1 million and unrealized losses of less than \$0.1 million, respectively, within “Cost of sales” for amounts excluded from effectiveness testing for our foreign exchange forward contracts designated as cash flow hedges. During the three and six months ended June 30, 2021, we recognized unrealized gains of less than \$0.1 million and unrealized losses of less than \$0.1 million, respectively, within “Cost of sales” for amounts excluded from effectiveness testing for our foreign exchange forward contracts designated as cash flow hedges.

The following table presents the pretax amounts related to derivative instruments designated as net investment hedges affecting accumulated other comprehensive income (loss) and our condensed consolidated statements of operations for the six months ended June 30, 2022 (in thousands):

	Foreign Exchange Forward Contracts
Balance as of December 31, 2021	\$ —
Amounts recognized in other comprehensive income (loss)	1,383
Balance as of June 30, 2022	\$ 1,383

During the three months ended June 30, 2022, we recognized unrealized gains of \$0.1 million within “Other (expense) income, net” for amounts excluded from effectiveness testing for our derivative instruments designated as net investment hedges.

The following table presents gains and losses related to derivative instruments not designated as hedges affecting our condensed consolidated statements of operations for the three and six months ended June 30, 2022 and 2021 (in thousands):

Income Statement Line Item		Amount of Gain (Loss) Recognized in Income			
		Three Months Ended June 30,		Six Months Ended June 30,	
		2022	2021	2022	2021
Foreign exchange forward contracts	Cost of sales	\$ 444	\$ (446)	\$ 522	\$ (277)
Foreign exchange forward contracts	Foreign currency loss, net	44,534	(1,277)	63,515	9,019
Interest rate swap contracts	Interest expense, net	—	(691)	—	(691)

Interest Rate Risk

From time to time, we may use interest rate swap contracts to mitigate our exposure to interest rate fluctuations associated with certain of our debt instruments. We do not use such swap contracts for speculative or trading purposes. During the six months ended June 30, 2021, all of our interest rate swap contracts related to project specific debt facilities. Such swap contracts did not qualify for accounting as cash flow hedges in accordance with Accounting Standards Codification (“ASC”) 815 due to our expectation to sell the associated projects before the maturity of their project specific debt financings and corresponding swap contracts. Accordingly, changes in the fair values of these swap contracts were recorded directly to “Interest expense, net.”

Foreign Currency Risk

Cash Flow Exposure

We expect certain of our subsidiaries to have future cash flows that will be denominated in currencies other than the subsidiaries’ functional currencies. Changes in the exchange rates between the functional currencies of our subsidiaries and the other currencies in which they transact will cause fluctuations in the cash flows we expect to receive or pay when these cash flows are realized or settled. Accordingly, we enter into foreign exchange forward contracts to hedge a portion of these forecasted cash flows. As of June 30, 2022 and December 31, 2021, these foreign exchange forward contracts hedged our forecasted cash flows for periods up to 3 months and 11 months, respectively. These foreign exchange forward contracts qualify for accounting as cash flow hedges in accordance with ASC 815, and we designated them as such. We report unrealized gains or losses on such contracts in “Accumulated other comprehensive loss” and subsequently reclassify applicable amounts into earnings when the hedged transaction occurs and impacts earnings. We determined that these derivative financial instruments were highly effective as cash flow hedges as of June 30, 2022 and December 31, 2021.

As of June 30, 2022 and December 31, 2021, the notional values associated with our foreign exchange forward contracts qualifying as cash flow hedges were as follows (notional amounts and U.S. dollar equivalents in millions):

Currency	June 30, 2022	
	Notional Amount	USD Equivalent
U.S. dollar (1)	\$2.7	\$2.7

Currency	December 31, 2021	
	Notional Amount	USD Equivalent
U.S. dollar (1)	\$38.4	\$38.4
British pound	GBP 10.6	\$14.4

(1) These derivative instruments represent hedges of outstanding payables denominated in U.S. dollars at certain of our foreign subsidiaries whose functional currencies are other than the U.S. dollar.

In the following 12 months, we expect to reclassify to earnings \$0.2 million of net unrealized gains related to foreign exchange forward contracts that are included in “Accumulated other comprehensive loss” at June 30, 2022 as we realize the earnings effects of the related forecasted transactions. The amount we ultimately record to earnings will depend on the actual exchange rates when we realize the related forecasted transactions.

Net Investment Exposure

The functional currencies of certain of our foreign subsidiaries are their local currencies. Accordingly, we apply period-end exchange rates to translate their assets and liabilities and daily transaction exchange rates to translate their revenues, expenses, gains, and losses into U.S. dollars. We include the associated translation adjustments as a separate component of “Accumulated other comprehensive loss” within stockholders’ equity. From time to time, we may seek to mitigate the impact of such translation adjustments by entering into foreign exchange forward contracts that are designated as hedges of net investments in certain foreign subsidiaries. In June 2022, we entered into a foreign exchange forward contract with a notional value of ¥8.0 billion (\$60.6 million), which qualifies for and was designated as a hedge of our net investment in a certain foreign subsidiary in Japan. As of June 30, 2022, this foreign exchange forward contract hedged such net investment for a period of 6 months. We report unrealized gains or losses on this contract, which are based on spot exchange rates, as a component of our foreign currency translation adjustments within “Accumulated other comprehensive loss” and subsequently reclassify applicable amounts into earnings when the net investments are sold or substantially liquidated. We determined that this derivative financial instrument was highly effective as a net investment hedge as of June 30, 2022.

Transaction Exposure and Economic Hedging

Many of our subsidiaries have assets and liabilities (primarily cash, receivables, deferred taxes, payables, accrued expenses, operating lease liabilities, and solar module collection and recycling liabilities) that are denominated in currencies other than the subsidiaries’ functional currencies. Changes in the exchange rates between the functional currencies of our subsidiaries and the other currencies in which these assets and liabilities are denominated will create fluctuations in our reported condensed consolidated statements of operations and cash flows. We may enter into foreign exchange forward contracts or other financial instruments to economically hedge assets and liabilities against the effects of currency exchange rate fluctuations. The gains and losses on such foreign exchange forward contracts will economically offset all or part of the transaction gains and losses that we recognize in earnings on the related foreign currency denominated assets and liabilities.

We also enter into foreign exchange forward contracts to economically hedge balance sheet and other exposures related to transactions between certain of our subsidiaries and transactions with third parties. Such contracts are considered economic hedges and do not qualify for hedge accounting. Accordingly, we recognize gains or losses from the fluctuations in foreign exchange rates and the fair value of these derivative contracts in “Foreign currency loss, net” on our condensed consolidated statements of operations.

As of June 30, 2022 and December 31, 2021, the notional values of our foreign exchange forward contracts that do not qualify for hedge accounting were as follows (notional amounts and U.S. dollar equivalents in millions):

Transaction	June 30, 2022		
	Currency	Notional Amount	USD Equivalent
Sell	Chilean peso	CLP 5,034.5	\$5.5
Purchase	Euro	€82.1	\$86.7
Sell	Euro	€32.7	\$34.5
Sell	Indian rupee	INR 12,495.4	\$158.8
Purchase	Japanese yen	¥1,615.2	\$11.9
Sell	Japanese yen	¥62,722.1	\$461.6
Purchase	Malaysian ringgit	MYR 51.6	\$11.7
Sell	Malaysian ringgit	MYR 27.3	\$6.2
Sell	Mexican peso	MXN 34.6	\$1.7
Purchase	Singapore dollar	SGD 1.4	\$1.0

Transaction	December 31, 2021		
	Currency	Notional Amount	USD Equivalent
Purchase	Australian dollar	AUD 3.2	\$2.3
Purchase	Brazilian real	BRL 2.6	\$0.5
Sell	Brazilian real	BRL 2.6	\$0.5
Purchase	British pound	GBP 2.5	\$3.4
Sell	Chilean peso	CLP 4,058.6	\$4.8
Purchase	Euro	€77.6	\$88.0
Sell	Euro	€38.6	\$43.8
Sell	Indian rupee	INR 10,943.0	\$147.1
Purchase	Japanese yen	¥667.5	\$5.8
Sell	Japanese yen	¥31,524.6	\$273.9
Purchase	Malaysian ringgit	MYR 17.0	\$4.1
Sell	Malaysian ringgit	MYR 24.5	\$5.9
Sell	Mexican peso	MXN 34.6	\$1.7
Purchase	Singapore dollar	SGD 5.5	\$4.1

Commodity Price Risk

We use commodity swap contracts to mitigate our exposure to commodity price fluctuations for certain raw materials used in the production of our modules. During the six months ended June 30, 2022, we entered into various commodity swap contracts to hedge a portion of our forecasted cash flows for purchases of aluminum frames between July 2022 and December 2023. Such swaps had an aggregate initial notional value based on metric tons of forecasted aluminum purchases, equivalent to \$62.0 million, and entitles us to receive a three-month average London Metals Exchange price for aluminum while requiring us to pay certain fixed prices. The notional amount of the commodity swap contracts proportionately adjusts with forecasted purchases of aluminum frames.

These commodity swap contracts qualify for accounting as cash flow hedges in accordance with ASC 815, and we designated them as such. We report unrealized gains or losses on such contracts in “Accumulated other comprehensive loss” and subsequently reclassify applicable amounts into earnings when the hedged transactions occur and impact earnings. We determined that these derivative financial instruments were highly effective as cash flow hedges as of June 30, 2022. In the following 12 months, we expect to reclassify into earnings \$5.8 million of net unrealized losses related to these commodity swap contracts that are included in “Accumulated other comprehensive loss” at June 30, 2022 as we realize the earnings effects of the related forecasted transactions.

7. Leases

Our lease arrangements include land associated with our PV solar power systems, our corporate and administrative offices, land for our international manufacturing facilities, and certain of our manufacturing equipment. Such leases primarily relate to assets located in the United States, Malaysia, India, and Vietnam.

The following table presents certain quantitative information related to our lease arrangements for the three and six months ended June 30, 2022 and 2021, and as of June 30, 2022 and December 31, 2021 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Operating lease cost	\$ 4,232	\$ 4,516	\$ 8,609	\$ 8,549
Variable lease cost	604	462	1,203	1,000
Short-term lease cost	221	236	252	607
Total lease cost	<u>\$ 5,057</u>	<u>\$ 5,214</u>	<u>\$ 10,064</u>	<u>\$ 10,156</u>
Payments of amounts included in the measurement of operating lease liabilities			\$ 9,259	\$ 13,122
Lease assets obtained in exchange for operating lease liabilities			\$ 3,754	\$ 17,909
			June 30, 2022	December 31, 2021
Operating lease assets			\$ 101,855	\$ 207,544
Operating lease liabilities – current			9,437	12,781
Operating lease liabilities – noncurrent			47,752	145,912
Weighted-average remaining lease term			7 years	19 years
Weighted-average discount rate			5.0 %	2.8 %

In June 2022, we completed the sale of our Japan project development business to PAG, which included the transfer of various land leases associated with the business. As a result, we derecognized lease assets of \$87.7 million, current lease liabilities of \$3.0 million, and noncurrent lease liabilities of \$77.9 million. See Note 2. “Sales of Businesses” to our condensed consolidated financial statements for further information about this transaction.

As of June 30, 2022, the future payments associated with our lease liabilities were as follows (in thousands):

	Total Lease Liabilities
Remainder of 2022	\$ 5,994
2023	11,732
2024	10,963
2025	9,965
2026	8,528
2027	5,943
Thereafter	14,844
Total future payments	67,969
Less: interest	(10,780)
Total lease liabilities	<u>\$ 57,189</u>

8. Fair Value Measurements

The following is a description of the valuation techniques that we use to measure the fair value of assets and liabilities that we measure and report at fair value on a recurring basis:

- Marketable Securities and Restricted Marketable Securities.** At June 30, 2022 and December 31, 2021, our marketable securities consisted of foreign debt, U.S. debt, and time deposits, and our restricted marketable securities consisted of foreign and U.S. government obligations, supranational debt, and U.S. debt. We value our marketable securities and restricted marketable securities using observable inputs that reflect quoted prices for securities with identical characteristics or quoted prices for securities with similar characteristics and other observable inputs (such as interest rates that are observable at commonly quoted intervals). Accordingly, we classify the valuation techniques that use these inputs as either Level 1 or Level 2 depending on the inputs used. We also consider the effect of our counterparties' credit standing in these fair value measurements.
- Derivative Assets and Liabilities.** At June 30, 2022 and December 31, 2021, our derivative assets and liabilities consisted of foreign exchange forward contracts involving major currencies. At June 30, 2022, our derivative liabilities also included commodity swap contracts involving major commodity prices. Since our derivative assets and liabilities are not traded on an exchange, we value them using standard industry valuation models. As applicable, these models project future cash flows and discount the amounts to a present value using market-based observable inputs, including credit risk, foreign exchange rates, forward and spot prices for currencies, and forward prices for commodities. These inputs are observable in active markets over the contract term of the derivative instruments we hold, and accordingly, we classify the valuation techniques as Level 2. In evaluating credit risk, we consider the effect of our counterparties' and our own credit standing in the fair value measurements of our derivative assets and liabilities, respectively.

At June 30, 2022 and December 31, 2021, the fair value measurements of our assets and liabilities measured on a recurring basis were as follows (in thousands):

	June 30, 2022	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Marketable securities:				
Foreign debt	\$ 52,161	\$ —	\$ 52,161	\$ —
U.S. debt	8,702	—	8,702	—
Time deposits	83,081	83,081	—	—
Restricted marketable securities	200,266	—	200,266	—
Derivative assets	8,535	—	8,535	—
Total assets	<u>\$ 352,745</u>	<u>\$ 83,081</u>	<u>\$ 269,664</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities	<u>\$ 7,371</u>	<u>\$ —</u>	<u>\$ 7,371</u>	<u>\$ —</u>

	December 31, 2021	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Marketable securities:				
Foreign debt	\$ 103,317	\$ —	\$ 103,317	\$ —
U.S. debt	18,627	—	18,627	—
Time deposits	253,445	253,445	—	—
Restricted marketable securities	244,726	—	244,726	—
Derivative assets	5,816	—	5,816	—
Total assets	<u>\$ 625,931</u>	<u>\$ 253,445</u>	<u>\$ 372,486</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities	<u>\$ 3,550</u>	<u>\$ —</u>	<u>\$ 3,550</u>	<u>\$ —</u>

Fair Value of Financial Instruments

At June 30, 2022 and December 31, 2021, the carrying values and fair values of our financial instruments not measured at fair value were as follows (in thousands):

	June 30, 2022		December 31, 2021	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Assets:				
Accounts receivable unbilled, net - noncurrent	\$ 11,488	\$ 10,110	\$ 20,840	\$ 18,846
Accounts receivable trade, net - noncurrent	9,076	7,347	21,293	18,605
Liabilities:				
Long-term debt, including current maturities (1)	\$ 181,186	\$ 155,888	\$ 246,737	\$ 243,865

(1) Excludes unamortized discounts and issuance costs.

The carrying values in our condensed consolidated balance sheets of our current trade accounts receivable, current unbilled accounts receivable, restricted cash, accounts payable, and accrued expenses approximated their fair values due to their nature and relatively short maturities; therefore, we excluded them from the foregoing table. The fair value measurements for our noncurrent unbilled accounts receivable, noncurrent trade accounts receivable, and long-term debt are considered Level 2 measurements under the fair value hierarchy.

Credit Risk

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash, marketable securities, accounts receivable, restricted cash, restricted marketable securities, foreign exchange forward contracts, and commodity swap contracts. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial and derivative instruments. We place these instruments with various high-quality financial institutions and limit the amount of credit risk from any one counterparty. We monitor the credit standing of our counterparty financial institutions. Our net sales are primarily concentrated among a limited number of customers. We monitor the financial condition of our customers and perform credit evaluations whenever considered necessary. Depending upon the sales arrangement, we may require some form of payment security from our customers, including, but not limited to, advance payments, parent guarantees, letters of credit, bank guarantees, or surety bonds.

9. Debt

Our long-term debt consisted of the following at June 30, 2022 and December 31, 2021 (in thousands):

Loan Agreement	Currency	Balance (USD)	
		June 30, 2022	December 31, 2021
Luz del Norte Credit Facilities	USD	\$ 181,186	\$ 183,829
Kyoto Credit Facility	JPY	—	62,908
Long-term debt principal		181,186	246,737
Less: unamortized discounts and issuance costs		(6,019)	(6,836)
Total long-term debt		175,167	239,901
Less: current portion		(5,150)	(3,896)
Noncurrent portion		\$ 170,017	\$ 236,005

Luz del Norte Credit Facilities

In August 2014, Parque Solar Fotovoltaico Luz del Norte SpA (“Luz del Norte”), our indirect wholly-owned subsidiary and project company, entered into credit facilities (the “Luz del Norte Credit Facilities”) with the U.S. International Development Finance Corporation (“DFC”) and the International Finance Corporation (“IFC”) to provide limited-recourse senior secured debt financing for the design, development, financing, construction, testing, commissioning, operation, and maintenance of a 141 MW_{AC} PV solar power plant located near Copiapó, Chile. As of June 30, 2022 and December 31, 2021, the balance outstanding on the DFC loans was \$135.7 million and \$137.7 million, respectively. As of June 30, 2022 and December 31, 2021, the balance outstanding on the IFC loans was \$45.5 million and \$46.1 million, respectively. The DFC and IFC loans mature in June 2037 and are secured by liens over all of Luz del Norte’s assets, a pledge of all of the equity interests in the entity, and certain letters of credit. As of June 30, 2022, we were seeking a waiver for a technical noncompliance related to the credit facilities.

Kyoto Credit Facility

In July 2020, First Solar Japan GK, our wholly-owned subsidiary, entered into a construction loan facility with Mizuho Bank, Ltd. for borrowings up to ¥15.0 billion (\$142.8 million), which are intended to be used for the construction of a 38 MW_{AC} PV solar power plant located in Kyoto, Japan (the “Kyoto Credit Facility”). In May 2022, we repaid the remaining \$73.2 million principal balance on the credit facility.

Momura Credit Facility

In May 2022, FS Japan Project 25 GK (“Momura”), our indirect wholly-owned subsidiary and project company, entered into a credit agreement (the “Momura Credit Facility”) with Nomura Capital Investment Co., Ltd. and Aozora Bank, Ltd. for aggregate borrowings up to ¥21.5 billion (\$168.1 million) for the development and construction of a 53 MW_{AC} PV solar power plant located in Tochigi, Japan. The credit facility consisted of an ¥18.8 billion (\$146.6 million) term loan facility, a ¥1.9 billion (\$15.1 million) consumption tax facility, and a ¥0.8 billion (\$6.4 million) debt service reserve facility. In June 2022, we completed the sale of our Japan project development business, and the credit facility’s outstanding balance of \$107.2 million was assumed by PAG. See Note 2. “Sales of Businesses” to our condensed consolidated financial statements for further information about this transaction.

Yatsubo Credit Facility

In May 2022, FS Japan Project 24 GK (“Yatsubo”), our indirect wholly-owned subsidiary and project company, entered into a credit agreement (the “Yatsubo Credit Facility”) with Nomura Capital Investment Co., Ltd. and Aozora Bank, Ltd. for aggregate borrowings up to ¥10.9 billion (\$85.0 million) for the development and construction of a 26 MW_{AC} PV solar power plant located in Tochigi, Japan. The credit agreement consisted of a ¥9.5 billion (\$74.2 million) term loan facility, a ¥1.0 billion (\$7.6 million) consumption tax facility, and a ¥0.4 billion (\$3.2 million) debt service reserve facility. In June 2022, we completed the sale of our Japan project development business, and the credit facility’s outstanding balance of \$70.0 million was assumed by PAG. See Note 2. “Sales of Businesses” to our condensed consolidated financial statements for further information about this transaction.

Orido Credit Facility

In May 2022, FS Japan Project B5 GK (“Orido”), our indirect wholly-owned subsidiary and project company, entered into a credit agreement (the “Orido Credit Facility”) with Nomura Capital Investment Co., Ltd. and Aozora Bank, Ltd. for aggregate borrowings up to ¥5.3 billion (\$41.3 million) for the development and construction of a 14 MW_{AC} PV solar power plant located in Tochigi, Japan. The credit agreement consisted of a ¥4.6 billion (\$36.0 million) term loan facility, a ¥0.5 billion (\$3.6 million) consumption tax facility, and a ¥0.2 billion (\$1.7 million) debt service reserve facility. In June 2022, we completed the sale of our Japan project development business, and the credit facility’s outstanding balance of \$18.0 million was assumed by PAG. See Note 2. “Sales of Businesses” to our condensed consolidated financial statements for further information about this transaction.

India Credit Facility

In July 2022, FS India Solar Ventures Private Limited, our indirect wholly-owned subsidiary entered into a finance agreement (the “India Credit Facility”) with DFC for aggregate borrowings up to \$500.0 million for the development and construction of an approximately 3.3 GW_{DC} solar module manufacturing facility located in Tamil Nadu, India. The India Credit Facility incurs interest at the U.S. Treasury Constant Maturity Yield plus 1.75% per annum, which is payable semi-annually. Principal on the Credit Facility is payable in scheduled semi-annual installments through the facility’s expected maturity in August 2029. The Credit Facility is guaranteed by First Solar, Inc.

Variable Interest Rate Risk

Our long-term debt agreements bear interest at LIBOR or equivalent variable rates. An increase in these variable rates would increase the cost of borrowing under the debt agreements. Our long-term debt borrowing rates as of June 30, 2022 were as follows:

Loan Agreement	June 30, 2022
Luz del Norte Credit Facilities (1)	Fixed rate loans at bank rate plus 3.50% Variable rate loans at 91-Day U.S. Treasury Bill Yield or LIBOR plus 3.50%

(1) Outstanding balance comprised of \$125.3 million of fixed rate loans and \$55.9 million of variable rate loans as of June 30, 2022.

Future Principal Payments

At June 30, 2022, the future principal payments on our long-term debt were due as follows (in thousands):

	Total Debt
Remainder of 2022	\$ 1,392
2023	6,085
2024	7,020
2025	7,560
2026	7,965
2027	9,199
Thereafter	141,965
Total long-term debt future principal payments	<u>\$ 181,186</u>

10. Commitments and Contingencies**Commercial Commitments**

During the normal course of business, we enter into commercial commitments in the form of letters of credit and surety bonds to provide financial and performance assurance to third parties. As of June 30, 2022, the majority of these commercial commitments supported our module business. As of June 30, 2022, the issued and outstanding amounts and available capacities under these commitments were as follows (in millions):

	Issued and Outstanding	Available Capacity
Bilateral facilities (1)	\$ 77.6	\$ 137.4
Surety bonds	9.3	232.8

(1) Of the total letters of credit issued under the bilateral facilities, \$2.4 million was secured with cash.

Product Warranties

When we recognize revenue for sales of modules or projects, we accrue liabilities for the estimated future costs of meeting our limited warranty obligations for both modules and the balance of the systems. We estimate our limited product warranty liability for power output and defects in materials and workmanship under normal use and service conditions based on return rates for each series of module technology. We make and revise these estimates based primarily on the number of solar modules under warranty installed at customer locations, our historical experience with and projections of warranty claims, and our estimated per-module replacement costs. We also monitor our expected future module performance through certain quality and reliability testing and actual performance in certain field installation sites. From time to time, we have taken remediation actions with respect to affected modules beyond our limited warranties and may elect to do so in the future, in which case we would incur additional expenses. Such potential voluntary future remediation actions beyond our limited warranty obligations may be material to our condensed consolidated statements of operations if we commit to any such remediation actions.

Product warranty activities during the three and six months ended June 30, 2022 and 2021 were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Product warranty liability, beginning of period	\$ 47,016	\$ 94,073	\$ 52,553	\$ 95,096
Accruals for new warranties issued	1,425	4,440	2,273	6,717
Settlements	(1,252)	(2,413)	(7,254)	(5,639)
Changes in estimate of product warranty liability	(60)	(5,042)	(443)	(5,116)
Product warranty liability, end of period	\$ 47,129	\$ 91,058	\$ 47,129	\$ 91,058
Current portion of warranty liability	\$ 11,553	\$ 16,846	\$ 11,553	\$ 16,846
Noncurrent portion of warranty liability	\$ 35,576	\$ 74,212	\$ 35,576	\$ 74,212

Indemnifications

In certain limited circumstances, we have provided indemnifications to customers or other parties, including project tax equity investors, under which we are contractually obligated to compensate such parties for losses they suffer resulting from a breach of a representation, warranty, or covenant; a reduction in tax benefits received, including investment tax credits; the resolution of specific matters associated with a project's development or construction; or guarantees of a third party's payment or performance obligations. Project related tax benefits are, in part, based on guidance provided by the Internal Revenue Service and U.S. Treasury Department, which includes assumptions regarding the fair value of qualifying PV solar power systems. For contracts that have such indemnification provisions, we initially recognize a liability under ASC 460 for the estimated premium that would be required by a guarantor to issue the same indemnity in a standalone arm's-length transaction with an unrelated party. We may base these estimates on the cost of insurance or other instruments that cover the underlying risks being indemnified and may purchase such instruments to mitigate our exposure to potential indemnification payments. We subsequently measure such liabilities at the greater of the initially estimated premium or the contingent liability required to be recognized under ASC 450. We recognize any indemnification liabilities as a reduction of earnings associated with the related transaction.

After an indemnification liability is recorded, we derecognize such amount pursuant to ASC 460 depending on the nature of the indemnity, which derecognition typically occurs upon expiration or settlement of the arrangement, and any contingent aspects of the indemnity are accounted for in accordance with ASC 450. As of June 30, 2022 and December 31, 2021, we accrued \$3.7 million and \$3.8 million of current indemnification liabilities, respectively. As of June 30, 2022, the maximum potential amount of future payments under our indemnifications was \$102.3 million, and we held insurance and other instruments allowing us to recover up to \$28.2 million of potential amounts paid under the indemnifications.

In September 2017, we made an indemnification payment in connection with the sale of one of our projects following the underpayment of anticipated cash grants by the United States government. In February 2018, the associated project entity commenced legal action against the United States government seeking full payment of the cash grants. In May 2021, the parties reached an agreement, pursuant to which the United States government made a settlement payment to the project entity. Under the terms of the indemnification arrangement, we were entitled to a portion of the settlement payment. Accordingly, during the three months ended June 30, 2021, we recorded revenue of \$65.1 million for our portion of the settlement payment.

Solar Module Collection and Recycling Liability

We previously established a module collection and recycling program, which has since been discontinued, to collect and recycle modules sold and covered under such program once the modules reach the end of their service lives. For legacy customer sales contracts that were covered under this program, we agreed to pay the costs for the collection and recycling of qualifying solar modules, and the end-users agreed to notify us, disassemble their solar power systems, package the solar modules for shipment, and revert ownership rights over the modules back to us at the end of the modules' service lives. Accordingly, we recorded any collection and recycling obligations within "Cost of sales" at the time of sale based on the estimated cost to collect and recycle the covered solar modules.

We estimate the cost of our collection and recycling obligations based on the present value of the expected future cost of collecting and recycling the solar modules, which includes estimates for the cost of packaging materials; the cost of freight from the solar module installation sites to a recycling center; material, labor, and capital costs; and by-product credits for certain materials recovered during the recycling process. We base these estimates on our experience collecting and recycling solar modules and certain assumptions regarding costs at the time the solar modules will be collected and recycled. In the periods between the time of sale and the related settlement of the collection and recycling obligation, we accrete the carrying amount of the associated liability and classify the corresponding expense within "Selling, general and administrative" expense on our condensed consolidated statements of operations.

Our module collection and recycling liability was \$134.1 million and \$139.1 million as of June 30, 2022 and December 31, 2021, respectively. See Note 4. "Restricted Marketable Securities" to our condensed consolidated financial statements for more information about our arrangements for funding this liability.

Legal Proceedings

Class Action

On January 7, 2022, a putative class action lawsuit titled City of Pontiac General Employees' Retirement System v. First Solar, Inc., et al., Case No. 2:22-cv-00036-MTL, was filed in the Arizona District Court against the Company and certain of our current officers. The complaint was filed on behalf of a purported class consisting of all purchasers of First Solar common stock between February 22, 2019 and February 20, 2020, inclusive. The complaint asserts violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 based on allegedly false and misleading statements related to the Company's Series 6 solar modules and its project development business. It seeks unspecified damages and an award of costs and expenses. On April 25, 2022, the Arizona District Court issued an order appointing the Palm Harbor Special Fire Control & Rescue District Firefighters' Pension Plan and the Greater Pennsylvania Carpenters' Pension Fund as Lead Plaintiffs. On June 23, 2022, Lead Plaintiffs filed an Amended Complaint that brings the same claims, and Defendants' deadline to file a motion to dismiss the Amended Complaint is August 22, 2022. The Company and its officers intend to vigorously defend this action in all respects. Given the early stage of the litigation, at this time we are not in a position to assess the likelihood of any potential loss or adverse effect on our financial condition or to estimate the amount or range of potential loss, if any, from this action.

Other Matters and Claims

We are party to legal matters and claims in the normal course of our operations. While we believe the ultimate outcome of these matters and claims will not have a material adverse effect on our financial position, results of operations, or cash flows, the outcome of such matters and claims is not determinable with certainty, and negative outcomes may adversely affect us. There have been no material changes to these matters since our Annual Report on Form 10-K for the year ended December 31, 2021 was filed with the SEC on March 1, 2022.

11. Revenue from Contracts with Customers

The following table presents the disaggregation of revenue from contracts with customers for the three and six months ended June 30, 2022 and 2021 along with the reportable segment for each category (in thousands):

Category	Segment	Three Months Ended June 30,		Six Months Ended June 30,	
		2022	2021	2022	2021
Solar modules	Modules	\$ 607,445	\$ 542,956	\$ 962,326	\$ 1,077,626
Energy generation	Other	8,956	7,457	15,249	22,036
O&M services	Other	4,180	4,713	8,077	31,948
Solar power systems	Other	374	73,977	2,343	300,944
EPC services	Other	—	77	—	—
Net sales		<u>\$ 620,955</u>	<u>\$ 629,180</u>	<u>\$ 987,995</u>	<u>\$ 1,432,554</u>

We recognize revenue for module sales at a point in time following the transfer of control of the modules to the customer, which typically occurs upon shipment or delivery depending on the terms of the underlying contracts. Such contracts may contain provisions that require us to make liquidated damage payments to the customer if we fail to ship or deliver modules by scheduled dates. We recognize these liquidated damages as a reduction of revenue in the period we transfer control of the modules to the customer.

We recognize revenue for sales of development projects or completed systems when we enter into the associated sales contract. For certain prior project sales, including sales of solar power systems with engineering, procurement, and construction (“EPC”) services, such revenue included estimated amounts of variable consideration. These estimates may require significant judgment to determine the most likely amount of net contract revenues. The cumulative effect of revisions to estimates is recorded in the period in which the revisions are identified and the amounts can be reasonably estimated. During the three and six months ended June 30, 2021, respectively, revenue increased \$63.4 million and \$65.0 million due to net changes in transaction prices for certain projects we previously sold, which represented 5.3% and 2.8% of the aggregate revenue for such projects. Such changes were primarily due to a \$65.1 million settlement for an outstanding indemnification arrangement associated with the prior sale of one of our projects, which we recorded as revenue during the three months ended June 30, 2021. See Note 10. “Commitments and Contingencies” to our condensed consolidated financial statements for discussion of our indemnification arrangements.

The following table reflects the changes in our contract assets, which we classify as “Accounts receivable unbilled, net” and our contract liabilities, which we classify as “Deferred revenue,” for the six months ended June 30, 2022 (in thousands):

	June 30, 2022	December 31, 2021	Six Month Change	
Accounts receivable unbilled, net (1)	\$ 46,926	\$ 46,113	\$ 813	2 %
Deferred revenue (2)	\$ 505,642	\$ 297,811	\$ 207,831	70 %

(1) Includes \$11.5 million and \$20.8 million of noncurrent accounts receivable unbilled, net classified as “Other assets” on our condensed consolidated balance sheets as of June 30, 2022 and December 31, 2021, respectively.

(2) Includes \$278.2 million and \$95.9 million of noncurrent deferred revenue classified as “Other liabilities” on our condensed consolidated balance sheets as of June 30, 2022 and December 31, 2021, respectively.

During the six months ended June 30, 2022, our contract liabilities increased by \$207.8 million primarily due to advance payments received for sales of solar modules in the current period, partially offset by the recognition of revenue for sales of solar modules for which payment was received in 2021. During the six months ended June 30, 2022 and 2021, we recognized revenue of \$114.4 million and \$111.6 million, respectively, that was included in the corresponding contract liability balance at the beginning of the periods.

As of June 30, 2022, we had entered into contracts with customers for the future sale of 37.3 GW_{DC} of solar modules for an aggregate transaction price of \$10.0 billion, which we expect to recognize as revenue through 2026 as we transfer control of the modules to the customers. Such aggregate transaction price excludes estimates of variable consideration for certain contracts with customers that are associated with future module technology improvements, including new product designs and enhancements to certain energy related attributes. Certain other price adjustments associated with the proposed extension of the U.S. investment tax credit (“ITC”), sales freight, and potential changes to certain commodity prices have also been excluded. While our contracts with customers typically represent firm purchase commitments, these contracts may be subject to amendments made by us or requested by our customers. These amendments may increase or decrease the volume of modules to be sold under the contract, change delivery schedules, or otherwise adjust the expected revenue under these contracts.

12. Share-Based Compensation

The following table presents share-based compensation expense recognized in our condensed consolidated statements of operations for the three and six months ended June 30, 2022 and 2021 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Cost of sales (1)	\$ 446	\$ 173	\$ 944	\$ 81
Selling, general and administrative (1)	4,754	4,737	7,328	9,252
Research and development (2)	561	520	992	(788)
Production start-up	3	—	3	—
Total share-based compensation expense	\$ 5,764	\$ 5,430	\$ 9,267	\$ 8,545

(1) On March 31, 2021, we completed the sales of our North American O&M operations and U.S. project development business, which resulted in the forfeiture of unvested shares for associates (our term for full- and part-time employees) departing the Company as part of the transactions. See Note 2. “Sales of Businesses” to our condensed consolidated financial statements for further information related to these transactions.

(2) Effective March 15, 2021, our former Chief Technology Officer retired from the Company, which resulted in the forfeiture of his unvested shares during the six months ended June 30, 2021.

Share-based compensation expense capitalized in inventory and PV solar power systems was \$0.7 million as of June 30, 2022 and December 31, 2021. As of June 30, 2022, we had \$29.2 million of unrecognized share-based compensation expense related to unvested restricted and performance units, which we expect to recognize over a weighted-average period of approximately 1.5 years.

In July 2019, the compensation committee of our board of directors approved grants of performance units for key executive officers to be earned over a multi-year performance period, which ended in December 2021. Vesting of the 2019 grants of performance units was contingent upon the relative attainment of target cost per watt, module wattage, gross profit, and operating income metrics. In March 2022, the compensation committee certified the achievement of the vesting conditions applicable to the grants, which approximated the maximum level of performance. Accordingly, each participant received one share of common stock for each vested performance unit granted, net of any tax withholdings.

In March 2020, the compensation committee approved additional grants of performance units for key executive officers. Such grants are expected to be earned over a multi-year performance period ending in December 2022. Vesting of the 2020 grants of performance units is contingent upon the relative attainment of target contracted revenue, module wattage, and return on capital metrics.

In May 2021, the compensation committee approved additional grants of performance units for key executive officers. Such grants are expected to be earned over a multi-year performance period ending in December 2023. Vesting of the 2021 grants of performance units is contingent upon the relative attainment of target contracted revenue, cost per watt, incremental average selling price, and operating income metrics.

In March 2022, the compensation committee approved additional grants of performance units for key executive officers. Such grants are expected to be earned over a multi-year performance period ending in December 2024. Vesting of the 2022 grants of performance units is contingent upon the relative attainment of target contracted revenue, cost per watt, and return on capital metrics.

Vesting of performance units is also contingent upon the employment of program participants through the applicable vesting dates, with limited exceptions in case of death, disability, a qualifying retirement, or a change-in-control of First Solar. Outstanding performance units are included in the computation of diluted net income per share based on the number of shares that would be issuable if the end of the reporting period were the end of the contingency period.

In February 2022, First Solar adopted a Clawback Policy (“the Policy”) that applies to the Company’s current and former Section 16 officers. The Policy applies to all incentive compensation, including any performance-based annual incentive awards and performance-based equity compensation. The Policy was adopted to ensure that incentive compensation is paid or awarded based on accurate financial results and the correct calculation of performance against incentive targets.

13. Income Taxes

Our effective tax rate was 83.7% and 18.6% for the six months ended June 30, 2022 and 2021, respectively. The increase in our effective tax rate was primarily driven by higher losses in certain jurisdictions for which no tax benefit could be recorded, the remeasurement of our net deferred tax assets in Vietnam as a result of the new long-term tax incentive described below, the effect of tax law changes associated with the foreign tax credit (“FTC”) regulations described below, and lower relative amounts of income earned in foreign jurisdictions with lower tax rates. Our provision for income taxes differed from the amount computed by applying the U.S. statutory federal income tax rate of 21% primarily due to higher losses in certain jurisdictions for which no tax benefit could be recorded, the remeasurement of our net deferred tax assets in Vietnam mentioned above, the effect of the FTC regulations described below, and changes in our deferred income taxes related to our Malaysian tax holiday.

In December 2021, the U.S. Treasury released final FTC regulations addressing various aspects of the U.S. FTC regime. Among other items, these regulations revised the definition of a creditable foreign income tax and the time at which foreign taxes accrued can be claimed as a credit. These regulations are applicable for tax years beginning on or after December 28, 2021. As a result of these regulations, foreign taxes, which were previously creditable, are now treated as foreign tax deductions at the U.S. statutory federal income tax rate of 21%.

Our Malaysian subsidiary has been granted a long-term tax holiday that expires in 2027. The tax holiday, which generally provides for a full exemption from Malaysian income tax, is conditional upon our continued compliance with certain employment and investment thresholds, which we are currently in compliance with and expect to continue to comply with through the expiration of the tax holiday in 2027.

Our Vietnamese subsidiary had previously been granted a tax incentive that provided a two-year tax exemption, which began in 2020, and reduced annual tax rates through the end of 2025. In May 2022, our Vietnamese subsidiary was granted a new long-term tax incentive that provides an additional two-year tax exemption and reduced annual tax rates through 2036, conditional upon our continued compliance with certain revenue and research and development (“R&D”) spending thresholds, which we are currently in compliance with and expect to continue to comply with through the expiration of the tax holiday.

We account for uncertain tax positions pursuant to the recognition and measurement criteria under ASC 740. It is reasonably possible that \$0.3 million of uncertain tax positions will be recognized within the next 12 months due to the expiration of the statute of limitations associated with such positions.

We are subject to audit by federal, state, local, and foreign tax authorities. We are currently under examination in India, Malaysia, and the state of California. We believe that adequate provisions have been made for any adjustments that may result from tax examinations. However, the outcome of tax examinations cannot be predicted with certainty. If any issues addressed by our tax examinations are not resolved in a manner consistent with our expectations, we could be required to adjust our provision for income taxes in the period such resolution occurs.

14. Net Income per Share

The calculation of basic and diluted net income per share for the three and six months ended June 30, 2022 and 2021 was as follows (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Basic net income per share				
Numerator:				
Net income	\$ 55,805	\$ 82,449	\$ 12,550	\$ 292,120
Denominator:				
Weighted-average common shares outstanding	106,586	106,313	106,500	106,201
Diluted net income per share				
Denominator:				
Weighted-average common shares outstanding	106,586	106,313	106,500	106,201
Effect of restricted stock and performance units	470	523	465	665
Weighted-average shares used in computing diluted net income per share	107,056	106,836	106,965	106,866
Net income per share:				
Basic	\$ 0.52	\$ 0.78	\$ 0.12	\$ 2.75
Diluted	\$ 0.52	\$ 0.77	\$ 0.12	\$ 2.73

The following table summarizes the potential shares of common stock that were excluded from the computation of diluted net income per share for the three and six months ended June 30, 2022 and 2021 as such shares would have had an anti-dilutive effect (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Anti-dilutive shares	45	—	45	—

15. Accumulated Other Comprehensive Loss

The following table presents the changes in accumulated other comprehensive loss, net of tax, for the six months ended June 30, 2022 (in thousands):

	Foreign Currency Translation Adjustment	Unrealized Gain (Loss) on Marketable Securities and Restricted Marketable Securities	Unrealized Gain (Loss) on Derivative Instruments	Total
Balance as of December 31, 2021	\$ (89,452)	\$ (8,036)	\$ 1,126	\$ (96,362)
Other comprehensive loss before reclassifications	(24,386)	(41,415)	(6,267)	(72,068)
Amounts reclassified from accumulated other comprehensive loss	(3,909)	—	(1,453)	(5,362)
Net tax effect	—	1,927	1,635	3,562
Net other comprehensive loss	(28,295)	(39,488)	(6,085)	(73,868)
Balance as of June 30, 2022	<u>\$ (117,747)</u>	<u>\$ (47,524)</u>	<u>\$ (4,959)</u>	<u>\$ (170,230)</u>

The following table presents the pretax amounts reclassified from accumulated other comprehensive loss into our condensed consolidated statements of operations for the three and six months ended June 30, 2022 and 2021 (in thousands):

Comprehensive Income Components	Income Statement Line Item	Three Months Ended June 30,		Six Months Ended June 30,	
		2022	2021	2022	2021
Foreign currency translation adjustment:					
Foreign currency translation adjustment	Gain on sales of businesses, net	\$ 3,756	\$ —	\$ 3,756	\$ —
Foreign currency translation adjustment	Other (expense) income, net	158	—	153	(475)
Total foreign currency translation adjustment		3,914	—	3,909	(475)
Unrealized gain on marketable securities and restricted marketable securities	Other (expense) income, net	—	—	—	11,696
Unrealized gain (loss) on derivative instruments:					
Foreign exchange forward contracts	Cost of sales	893	(799)	1,453	(1,928)
Commodity swap contracts	Cost of sales	—	220	—	213
Total unrealized gain (loss) on derivative instruments		893	(579)	1,453	(1,715)
Total gain (loss) reclassified		<u>\$ 4,807</u>	<u>\$ (579)</u>	<u>\$ 5,362</u>	<u>\$ 9,506</u>

16. Segment Reporting

Our primary segment is our modules business, which involves the design, manufacture, and sale of cadmium telluride (“CdTe”) solar modules, which convert sunlight into electricity. Third-party customers of our modules segment include developers and operators of PV solar power systems. Our residual business operations include certain project development activities and O&M services, which are primarily concentrated in Japan, as well as the results of operations from PV solar power systems we own and operate in certain international regions.

For the year ended December 31, 2021, we changed our reportable segments to align with revisions to our internal reporting structure and long-term strategic plans. Following this change, our modules business represents our only reportable segment. We previously operated our business in two segments, which included our modules and systems businesses. Systems business activities primarily involved (i) project development, (ii) EPC services, and (iii) O&M services, which now comprise our residual business operations and are categorized as “Other” in the tables below. All prior year balances were revised to conform to the current year presentation.

See Note 20. “Segment and Geographical Information” in our Annual Report on Form 10-K for the year ended December 31, 2021 for additional discussion of our segment reporting.

The following tables provide a reconciliation of certain financial information for our reportable segment to information presented in our condensed consolidated financial statements for the three and six months ended June 30, 2022 and 2021 and as of June 30, 2022 and December 31, 2021 (in thousands):

	Three Months Ended June 30, 2022			Three Months Ended June 30, 2021		
	Modules	Other	Total	Modules	Other	Total
Net sales	\$ 607,445	\$ 13,510	\$ 620,955	\$ 542,956	\$ 86,224	\$ 629,180
Gross profit (loss)	31,167	(54,367)	(23,200)	109,347	64,771	174,118
Depreciation and amortization expense	57,810	2,355	60,165	56,688	3,051	59,739

	Six Months Ended June 30, 2022			Six Months Ended June 30, 2021		
	Modules	Other	Total	Modules	Other	Total
Net sales	\$ 962,326	\$ 25,669	\$ 987,995	\$ 1,077,626	\$ 354,928	\$ 1,432,554
Gross profit (loss)	42,356	(54,093)	(11,737)	209,787	149,098	358,885
Depreciation and amortization expense	114,009	5,201	119,210	107,412	6,148	113,560

	June 30, 2022			December 31, 2021		
	Modules	Other	Total	Modules	Other	Total
Goodwill	\$ 14,462	\$ —	\$ 14,462	\$ 14,462	\$ —	\$ 14,462

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Securities Act of 1933, as amended (the "Securities Act"), which are subject to risks, uncertainties, and assumptions that are difficult to predict. All statements in this Quarterly Report on Form 10-Q, other than statements of historical fact, are forward-looking statements. These forward-looking statements are made pursuant to safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements include statements, among other things, concerning: the length and severity of the ongoing COVID-19 (novel coronavirus) outbreak, including its impacts across our businesses on demand, manufacturing operations, construction activities associated with our expanding manufacturing capacity, O&M, financing, and our global supply chains, actions that may be taken by governmental authorities to contain the COVID-19 outbreak or to treat its impacts, and the ability of our customers, suppliers, equipment vendors, and other counterparties to fulfill their contractual obligations to us; effects resulting from certain module manufacturing changes; our business strategy, including anticipated trends and developments in and management plans for our business and the markets in which we operate; future financial results, operating results, revenues, gross margin, operating expenses, products, projected costs (including estimated future module collection and recycling costs), warranties, solar module technology and cost reduction roadmaps, restructuring, product reliability, investments, and capital expenditures; our ability to continue to reduce the cost per watt of our solar modules; the impact of public policies, such as tariffs or other trade remedies imposed on solar cells and modules; the potential impact of proposed legislation intended to encourage renewable energy investments through tax credits; effects resulting from pending litigation; our ability to expand manufacturing capacity worldwide; the impact of supply chain disruptions, further exacerbated by the COVID-19 pandemic, that may affect the procurement of raw materials used in our manufacturing process and the distribution of our modules; research and development ("R&D") programs and our ability to improve the wattage of our solar modules; sales and marketing initiatives; and competition. In some cases, you can identify these statements by forward-looking words, such as "estimate," "expect," "anticipate," "project," "plan," "intend," "seek," "believe," "forecast," "foresee," "likely," "may," "should," "goal," "target," "might," "will," "could," "predict," "continue," "contingent," and the negative or plural of these words, and other comparable terminology.

Forward-looking statements are only predictions based on our current expectations and our projections about future events. All forward-looking statements included in this Quarterly Report on Form 10-Q are based upon information available to us as of the filing date of this Quarterly Report on Form 10-Q and therefore speak only as of the filing date. You should not place undue reliance on these forward-looking statements. We undertake no obligation to update any of these forward-looking statements for any reason, whether as a result of new information, future developments, or otherwise. These forward-looking statements involve known and unknown risks, uncertainties, and other factors that may cause our actual results, levels of activity, performance, or achievements to differ materially from those expressed or implied by these statements. These factors include, but are not limited to, the severity and duration of the COVID-19 pandemic, including its potential impact on the Company's business, financial condition, and results of operations; structural imbalances in global supply and demand for PV solar modules; the market for renewable energy, including solar energy; our competitive position and other key competitive factors; reduction, elimination, or expiration of government subsidies, policies, and support programs for solar energy projects; the impact of public policies, such as tariffs or other trade remedies imposed on solar cells and modules; the passage of proposed legislation intended to encourage renewable energy investments through tax credits; our ability to execute on our long-term strategic plans; our ability to execute on our solar module technology and cost reduction roadmaps; our ability to improve the wattage of our solar modules; interest rate fluctuations and our customers' ability to secure financing; the loss of any of our large customers, or the ability of our customers and counterparties to perform under their contracts with us; the satisfaction of conditions precedent in our sales agreements; our ability to attract new customers and to develop and maintain existing customer and supplier relationships; our ability to convert existing or construct production facilities to support new product lines; general economic and business conditions, including those influenced by U.S., international, and geopolitical events; environmental responsibility, including with respect

to CdTe and other semiconductor materials; claims under our limited warranty obligations; changes in, or the failure to comply with, government regulations and environmental, health, and safety requirements; effects resulting from pending litigation; future collection and recycling costs for solar modules covered by our module collection and recycling program; supply chain disruption, including the availability of shipping containers, port congestion, cancelled shipments by logistic providers, and the cost of fuel, all of which may be exacerbated by the COVID-19 pandemic; our ability to protect our intellectual property; our ability to prevent and/or minimize the impact of cyber-attacks or other breaches of our information systems; our continued investment in research and development (“R&D”); the supply and price of components and raw materials, including CdTe; our ability to attract and retain key executive officers and associates; and the matters discussed in Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2021, elsewhere in this Quarterly Report on Form 10-Q, and our other reports filed with the SEC. You should carefully consider the risks and uncertainties described in these reports.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and the related notes thereto included in this Quarterly Report on Form 10-Q. When referring to our manufacturing capacity, total sales, and solar module sales, the unit of electricity in watts for megawatts (“MW”) and gigawatts (“GW”) is direct current (“DC” or “_{DC}”) unless otherwise noted. When referring to our projects or systems, the unit of electricity in watts for MW and GW is alternating current (“AC” or “_{AC}”) unless otherwise noted.

Executive Overview

We are a leading American solar technology company and global provider of PV solar energy solutions. Developed at our R&D labs in California and Ohio, we manufacture and sell PV solar modules with an advanced thin film semiconductor technology that provide a high-performance, lower-carbon alternative to conventional crystalline silicon PV solar modules. From raw material sourcing through end-of-life module recycling, we are committed to reducing the environmental impacts and enhancing the social and economic benefits of our products across their life cycle. We are the world’s largest thin film PV solar module manufacturer and the largest PV solar module manufacturer in the Western Hemisphere.

Certain of our financial results and other key operational developments for the three months ended June 30, 2022 include the following:

- Net sales for the three months ended June 30, 2022 decreased by 1% to \$621.0 million compared to \$629.2 million for the same period in 2021. The decrease was primarily driven by the prior period settlement of an outstanding indemnification arrangement associated with the sale of one of our projects and a lower average selling price per watt, partially offset by an increase in the volume of modules sold to third parties. See Note 10. “Commitments and Contingencies” to our condensed consolidated financial statements for further discussion of our indemnification arrangements.
- Gross profit for the three months ended June 30, 2022 decreased 31.4 percentage points to (3.7)% from 27.7% for the same period in 2021. The decrease in gross profit was primarily due to a decrease in the average selling price per watt of our modules, the prior period settlement of the indemnification matter mentioned above, an impairment loss for our Luz del Norte PV solar power plant, and an increase in sales freight, partially offset by the higher volume of modules sold. See Note 5. “Consolidated Balance Sheet Details” to our condensed consolidated financial statements for further discussion of the impairment of our Luz del Norte project.
- As of June 30, 2022, we had 8.4 GW_{DC} of total installed Series 6 nameplate production capacity across all our facilities. We produced 2.2 GW_{DC} of solar modules during the three months ended June 30, 2022, which represented a 12% increase in Series 6 module production from the same period in 2021. The increase in production was primarily driven by higher throughput at our manufacturing facilities. We expect to produce between 8.5 GW_{DC} and 9.0 GW_{DC} of Series 6 and Series 6 Plus modules during 2022.

- In May 2022, we entered into various agreements with certain subsidiaries of PAG for the sale of our Japan project development business. In June 2022, we completed the sale for an aggregate purchase price of ¥66.4 billion (\$488.4 million), subject to certain customary post-closing adjustments. On the closing date, we received proceeds of ¥44.1 billion (\$324.5 million) and transferred cash and restricted cash of ¥8.4 billion (\$61.9 million) to PAG. As a result of this transaction, we recognized a gain of \$245.4 million, net of transaction costs, which was included in “Gain on sales of businesses, net” in our condensed consolidated statements of operations. In May 2022, we also entered into an agreement with PAG for the sale of our Japan O&M business. The completion of this transaction is contingent upon the achievement of certain customary closing conditions. Assuming satisfaction of such closing conditions, we expect this portion of the sale to be completed in the second half of 2022.

Market Overview

Solar energy is one of the fastest growing forms of renewable energy with numerous economic and environmental benefits that make it an attractive complement to and/or substitute for traditional forms of energy generation. In recent years, the price of PV solar power systems, and accordingly the cost of producing electricity from such systems, has decreased to levels that are competitive with or below the wholesale price of electricity in many markets. This price decline has opened new possibilities to develop systems in many locations with limited or no financial incentives, thereby promoting the widespread adoption of solar energy. As a result of such market opportunities, we are in the process of expanding our manufacturing capacity by 6.6 GW_{DC} by constructing our third manufacturing facility in the U.S. and our first manufacturing facility in India. These new facilities, which we expect to produce our next generation Series 7 modules, are currently under construction and are expected to commence operations in the first half of 2023 and the second half of 2023, respectively. In the aggregate, we believe manufacturers of solar cells and modules, particularly those in China, have significant installed production capacity, relative to global demand, and the ability for additional capacity expansion. Accordingly, we believe the solar industry may experience periods of structural imbalance between supply and demand (i.e., where production capacity exceeds global demand), and that excess capacity will also put pressure on pricing. In light of such market realities, we continue to focus on our strategies and points of differentiation, which include our advanced module technology, our manufacturing process, our R&D capabilities, the sustainability advantage of our modules, and our financial stability.

The solar industry continues to be characterized by intense pricing competition, both at the module and system levels. This competition may result in an environment in which pricing falls rapidly, thereby potentially increasing demand for solar energy solutions but constraining the ability for project developers and module manufacturers to sustain meaningful and consistent profitability. Although module average selling prices in many global markets have declined for several years, recent module spot pricing has increased, in part, due to elevated commodity and freight costs. For example, polysilicon pricing has been on the rise and, in June 2022, reached its highest level in the past decade due to higher energy prices and reduced operating capacities of silicon metal production in China and rising global demand for polysilicon. Several other commodities, including aluminum, steel, natural gas, and lumber have recently experienced significant price volatility. While the duration of this elevated period of pricing is uncertain, module average selling prices in global markets are expected to continue to decline in the long-term.

Competitive pricing for modules and systems, relative to the cost of traditional forms of energy generation, is expected to contribute to diversification in global electricity generation and further demand for solar energy. Over time, however, declining average selling prices may adversely affect our results of operations. Our results of operations could also be adversely affected if competitors reduce pricing to levels below their costs, bid aggressively low prices for module sale agreements, or are able to operate at minimal or negative operating margins for sustained periods of time. For certain of our competitors, including many in China, these practices may be enabled by their direct or indirect access to sovereign capital or other forms of state-owned support. Additionally, in certain markets an oversupply imbalance at the grid level may reduce short-to-medium term demand for new solar installations relative to prior years, lower pricing for power purchase agreements (“PPAs”), and lower margins on module and system sales to such markets. However, we believe the effects of such imbalance can be mitigated by modern solar

power plants and energy storage solutions that offer a flexible operating profile, thereby promoting greater grid stability and enabling a higher penetration of solar energy. We continue to address these uncertainties, in part, by executing on our module technology improvements and implementing certain other cost reduction initiatives.

We face intense competition from manufacturers of crystalline silicon solar modules. Solar module manufacturers compete with one another on sales price per watt, which may be influenced by several module value attributes, including wattage (through a larger form factor or an improved conversion efficiency), energy yield, degradation, sustainability, and reliability. Sales price per watt may also be influenced by warranty terms and customer payment terms. While conventional solar modules, including the solar modules we currently produce, are monofacial, meaning their ability to produce energy is a function of direct and diffuse irradiance on their front side, most module manufacturers offer bifacial modules that also capture diffuse irradiance on the back side of a module. Bifaciality compromises nameplate efficiency, but by converting both front and rear side irradiance, such technology may improve the overall energy production of a module relative to nameplate efficiency when applied in certain applications, which could potentially lower the overall levelized cost of electricity (“LCOE”) of a system when compared to systems using conventional solar modules, including the modules we currently produce. Additionally, certain module manufacturers have introduced n-type mono-crystalline modules, such as tunnel oxide passivated contact modules, which are expected to provide certain improvements to module efficiency, temperature coefficient, and bifacial performance, and claim to provide certain degradation advantages compared to other mono-crystalline modules.

We believe we are among the lowest cost module manufacturers in the solar industry on a module cost per watt basis, based on publicly available information. This cost competitiveness allows us to compete favorably in markets where pricing for modules and systems is highly competitive. Our cost competitiveness is based in large part on our advanced thin film semiconductor technology, module wattage (or conversion efficiency), proprietary manufacturing process (which enables us to produce a CdTe module in a matter of hours using a continuous and highly automated industrial manufacturing process, as opposed to a batch process), and our focus on operational excellence. In addition, our CdTe modules use approximately 2% of the amount of semiconductor material that is used to manufacture conventional crystalline silicon solar modules. The cost of polysilicon is a significant driver of the manufacturing cost of crystalline silicon solar modules, and the timing and rate of change in the cost of silicon feedstock and polysilicon could lead to changes in solar module pricing levels. In recent years, polysilicon consumption per cell has been reduced through various initiatives, such as the adoption of diamond wire saw technology, which have contributed to declines in our relative manufacturing cost competitiveness over conventional crystalline silicon module manufacturers.

In terms of performance, in many climates our solar modules provide certain energy production advantages relative to competing crystalline silicon solar modules. For example, our CdTe solar technology provides:

- a superior temperature coefficient, which results in stronger system performance in typical high insolation climates as the majority of a system’s generation, on average, occurs when module temperatures are well above 25°C (standard test conditions);
- a superior spectral response in humid environments where atmospheric moisture alters the solar spectrum relative to standard test conditions;
- a better partial shading response than competing crystalline silicon technologies, which may experience significantly lower energy generation than CdTe solar modules when partial shading occurs; and
- an immunity to cell cracking and its resulting power output loss, a common failure often observed in crystalline silicon modules caused by poor manufacturing, handling, weather, or other conditions.

In addition to these technological advantages, we also warrant that our solar modules will produce at least 98% of their labeled power output rating during the first year, with the warranty coverage reducing by a degradation factor between 0.3% and 0.5%, depending on the module series, every year thereafter throughout the limited power output warranty period of up to 30 years. As a result of these and other factors, our solar modules can produce more annual energy in real world operating conditions than conventional crystalline silicon modules with the same nameplate capacity.

While our modules are generally competitive in cost, reliability, and performance attributes, there can be no guarantee such competitiveness will continue to exist in the future to the same extent or at all. Any declines in the competitiveness of our products could result in further declines in the average selling prices of our modules and additional margin compression. We continue to focus on enhancing the competitiveness of our solar modules by accelerating progress along our module technology and cost reduction roadmaps.

Certain Trends and Uncertainties

We believe that our business, financial condition, and results of operations may be favorably or unfavorably impacted by the following trends and uncertainties. See Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2021 for discussions of other risks (the “Risk Factors”) that may affect us.

Our business is evolving worldwide and is shaped by the varying ways in which our offerings can be compelling and economically viable solutions to energy needs in various markets. In addressing electricity demands, we are focused on providing utility-scale module offerings in key geographic markets that we believe have a compelling need for mass-scale PV solar electricity, including markets throughout the United States, India, Europe, and Japan. We closely evaluate and monitor the appropriate level of resources required to support such markets and their associated sales opportunities. When deployed in utility-scale applications, our modules provide energy at a lower LCOE compared to traditional forms of energy generation, making them an attractive alternative to or replacement for aging fossil fuel-based generation resources. Accordingly, future retirements of coal generation plants represent a significant increase in the potential market for solar energy.

This focus on utility-scale module offerings exists within a current market environment that includes rooftop and distributed generation solar. We believe that utility-scale solar will continue to be a compelling offering for companies with technology and cost leadership and will continue to represent an increasing portion of the overall electricity generation mix. However, our module offerings in certain markets may be driven, in part, by future demand for rooftop and distributed generation solar solutions. For example, we continue to evaluate opportunities to develop and leverage other solar cell technologies in multi-junction applications that utilize our thin film CdTe semiconductor as the base layer. We believe such applications have the potential to improve module conversion efficiency up to 25% in the mid-term.

Demand for our solar energy solutions depends, in part, on market factors outside our control. For example, many governments have proposed policies or support programs intended to encourage renewable energy investments to achieve decarbonization objectives and/or establish greater energy independence. While we compete in many markets that do not require solar-specific government subsidies or support programs, our net sales and profits remain subject to variability based on the availability and size of government subsidies and economic incentives. Adverse changes in these factors could increase the cost of utility-scale systems, which could reduce demand for our solar modules. Recently proposed government support programs include the following:

- *United States.* Legislation was recently introduced in the U.S. Congress to incentivize domestic solar manufacturing and accelerate the transition to clean energy by providing tax credits for U.S. solar manufacturers and project developers. Among other things, such proposed legislation is expected to (i) extend the ITC up to 40% for 10 years for solar projects that satisfy certain domestic content, labor, and wage requirements; (ii) introduce certain refundable tax credits for solar module components manufactured in the U.S.; (iii) revive certain tax credits for capital investments in the manufacturing of solar module

components; and (iv) expand the scope of production tax credits for energy storage projects. At this time, it is unclear whether and to what extent such measures will be enacted into law. If such legislation is successfully signed into law, or other similar policies or support programs are enacted, it could positively impact our business, financial condition, and results of operations.

- *India.* In early 2022, the government of India announced an expansion to its Production Linked Incentive (“PLI”) scheme to INR 195 billion (\$2.5 billion), which is intended to promote the manufacturing of high efficiency solar modules in India and to reduce India’s dependency on foreign imports of solar modules. Under the PLI scheme, manufacturers are selected through a competitive bid process and receive certain cash incentives over a five-year period following the commissioning of their manufacturing facilities. Such incentives are expected to be based on, among other things, the efficiency and temperature coefficient of the modules produced, the value of raw materials sourced from the domestic market, the extent to which the manufacturer’s operations are fully integrated within India, and the quantity of modules sold from such manufacturing operations. At this time, it is uncertain whether and to what extent we may qualify for such incentives.

Demand for our solar energy solutions also depends on domestic or international trade policies and government regulations, which may be proposed, revised, and/or enacted across short- and long-term time horizons with varying degrees of impact to our net sales, profit, and manufacturing operations. Changes in these policies and regulations could adversely impact the competitive landscape of solar markets, which could reduce demand for our solar modules. Recent revisions or proposed changes to trade policy and government regulations include the following:

- *United States.* In June 2022, the U.S. President authorized the U.S. Secretary of Commerce to provide a 24-month antidumping and countervailing duty tariff exemption for imported solar panels from certain Southeast Asian countries. For more information about this development, see Item 1A. “Risk Factors.” Separately, the U.S. President also authorized the use of the Defense Production Act (“DPA”) to expand domestic production of clean energy technologies. At this time, it is uncertain what impact, if any, these developments will have on future investments in solar module manufacturing in the United States.
- *United States.* In June 2022, the U.S. Supreme Court issued a ruling in *West Virginia, et al. v. Environmental Protection Agency, et al.*, which limited the Environmental Protection Agency’s (“EPA”) ability to regulate greenhouse gas (“GHG”) emissions under the Clean Air Act using a “generation shifting” approach from coal-fired power plants to renewable energy sources over time. At this time, it is unclear what effect this ruling will have on future EPA regulation of GHG emissions, the U.S. President’s climate change initiatives, internationally agreed-upon climate goals, the extent and timing of future coal plant retirements in the United States, and/or future investments in renewable energy.
- *India.* In May 2022, the government of India, through its Ministry of Environment, Forest and Climate Change and Ministry of New and Renewable Energy (“MNRE”), proposed legislation intended to regulate electronic waste (“e-waste”). Among other things, such proposed legislation expands the scope of India’s existing e-waste regulations to include PV solar modules, including certain recycling obligations for solar module manufacturers, and limits the use of certain hazardous substances, such as cadmium. The MNRE has engaged various stakeholders, including First Solar, in an effort to propose modifications intended to closely align this policy with the European Union’s Waste Electrical and Electronic Equipment Directive. At this time, it is unclear whether and to what extent such policy will be enacted into law. If such legislation is successfully signed into law without modification, it could negatively impact our business, financial condition, and results of operations.

Our ability to provide solar modules on economically attractive terms is also affected by the availability and cost of logistics services associated with the procurement of raw materials or equipment used in our manufacturing process and the shipping, handling, storage, and distribution of our modules. For example, the cost of ocean freight throughout many parts of the world remains at elevated levels due to the limited availability of shipping containers,

port congestion, cancellations of shipments by logistics providers, and elevated fuel costs. Such factors may disrupt our supply chain and adversely impact our manufacturing operations as several of our key raw materials and components are either single-sourced or sourced from a limited number of international suppliers. Due to ongoing schedule reliability issues with many ships, we are adjusting our shipping plans to include additional lead time for module deliveries and utilizing our U.S. distribution network to better meet our customer commitments. We are also employing module contract structures that provide additional consideration to us if the cost of logistics services exceeds a defined threshold. Additionally, our manufacturing capacity expansions in the U.S. and India are expected to bring manufacturing activities closer to customer demand, further mitigating our exposure to the cost of ocean freight. While it is currently unclear how long these issues will persist, they may be further exacerbated by the disruption of major shipping routes or other economic disruptions caused by the COVID-19 pandemic.

We generally price and sell our solar modules on a per watt basis. As of June 30, 2022, we had entered into contracts with customers for the future sale of 37.3 GW_{DC} of solar modules for an aggregate transaction price of \$10.0 billion, which we expect to recognize as revenue through 2026 as we transfer control of the modules to the customers. Such volume includes contracts for the sale of 20.5 GW_{DC} of solar modules that include transaction price adjustments associated with future module technology improvements, including new product designs and enhancements to certain energy related attributes. Based on these potential technology improvements, the contracted module volumes as of June 30, 2022, and the expected timing of module deliveries, such adjustments, if realized, could result in additional revenue of up to \$0.4 billion, the majority of which would be recognized in 2024 and 2025. In addition to these price adjustments, certain of our contracts with customers may also include favorable price adjustments for the proposed extension of the U.S. investment tax credit and sales freight described above. Such contracts may also include price adjustments related to potential changes to certain commodity prices.

We continually evaluate forecasted global demand, competition, and our addressable market and seek to effectively balance manufacturing capacity with market demand and the nature and extent of our competition. We continue to increase the nameplate production capacity of our existing manufacturing facilities by improving our production throughput, increasing module wattage (or conversion efficiency), and improving manufacturing yield losses. Additionally, we are in the process of expanding our manufacturing capacity by 6.6 GW_{DC} by constructing our third manufacturing facility in the U.S. and our first manufacturing facility in India. Such additional capacity, and any other potential investments to add or otherwise modify our existing manufacturing capacity in response to market demand and competition, may require significant internal and possibly external sources of capital, and may be subject to certain risks and uncertainties described in the Risk Factors.

In response to the COVID-19 pandemic, governmental authorities have recommended or ordered the limitation or cessation of certain business or commercial activities in jurisdictions in which we do business or have operations. While some of these orders permit the continuation of essential business operations, or permit the performance of minimum business activities, these orders are subject to continuous revision or may be revoked or superseded, or our understanding of the applicability of these orders and exemptions may change at any time. As a result, we may at any time be ordered by governmental authorities, or we may determine, based on our understanding of the recommendations or orders of governmental authorities or the availability of our personnel, that we have to curtail or cease business operations or activities altogether, including manufacturing, fulfillment, R&D activities, the implementation of our technology roadmap, or construction activities associated with our expanding manufacturing capacity. At this time, such limitations have had a minimal effect on our manufacturing facilities, and we have implemented a wide range of safety measures intended to enable the continuity of our operations and inhibit the spread of COVID-19 at our manufacturing, administrative, and other sites and facilities. While we continue to work with relevant government agencies in Malaysia and Vietnam to allow the essential travel of personnel that support the implementation of our technology roadmap, such implementation may be delayed due to travel restrictions, quarantine requirements, other government orders, or increases in COVID-19 infection rates. Refer to the Risk Factors for more information related to impacts of COVID-19 on our business.

Results of Operations

The following table sets forth our condensed consolidated statements of operations as a percentage of net sales for the three and six months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales	103.7 %	72.3 %	101.2 %	74.9 %
Gross (loss) profit	(3.7)%	27.7 %	(1.2)%	25.1 %
Selling, general and administrative	6.3 %	5.8 %	7.7 %	6.2 %
Research and development	4.1 %	3.8 %	5.3 %	3.1 %
Production start-up	2.1 %	0.3 %	2.1 %	0.9 %
Gain on sales of businesses, net	39.5 %	(0.3)%	25.0 %	10.4 %
Operating income	23.3 %	17.5 %	8.8 %	25.3 %
Foreign currency loss, net	(0.5)%	(0.2)%	(0.7)%	(0.3)%
Interest income	0.5 %	0.2 %	0.5 %	0.2 %
Interest expense, net	(0.5)%	(0.7)%	(0.6)%	(0.5)%
Other (expense) income, net	(0.3)%	(0.5)%	(0.2)%	0.4 %
Income tax expense	(13.5)%	(3.2)%	(6.5)%	(4.7)%
Net income	9.0 %	13.1 %	1.3 %	20.4 %

Segment Overview

Our primary segment is our modules business, which involves the design, manufacture, and sale of CdTe solar modules, which convert sunlight into electricity. Third-party customers of our modules segment include developers and operators of PV solar power systems. Our residual business operations include certain project development activities and O&M services, which are primarily concentrated in Japan, as well as the results of operations from PV solar power systems we own and operate in certain international regions.

For the year ended December 31, 2021, we changed our reportable segments to align with revisions to our internal reporting structure and long-term strategic plans. Following this change, our modules business represents our only reportable segment. We previously operated our business in two segments, which included our modules and systems businesses. Systems business activities primarily involved (i) project development, (ii) EPC services, and (iii) O&M services, which now comprise our residual business operations and are categorized as “Other” in the tables below. All prior year balances were revised to conform to the current year presentation.

Net sales

We generally price and sell our solar modules on a per watt basis. During the three and six months ended June 30, 2022, we sold the majority of our solar modules to developers and operators of systems in the United States, and substantially all of our modules business net sales were denominated in U.S. dollars. We recognize revenue for module sales at a point in time following the transfer of control of the modules to the customer, which typically occurs upon shipment or delivery depending on the terms of the underlying contracts. Net sales from our residual business operations primarily consists of revenue recognized for sales of development projects or completed systems, including any modules installed in such systems and any revenue from energy generated by such systems. In certain prior periods, our residual business operations also included EPC services we provided to third parties.

The following table shows net sales by reportable segment for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Modules	\$ 607,445	\$ 542,956	\$ 64,489	12 %	\$ 962,326	\$ 1,077,626	\$ (115,300)	(11)%
Other	13,510	86,224	(72,714)	(84)%	25,669	354,928	(329,259)	(93)%
Net sales	\$ 620,955	\$ 629,180	\$ (8,225)	(1)%	\$ 987,995	\$ 1,432,554	\$ (444,559)	(31)%

Net sales from our modules segment increased \$64.5 million for the three months ended June 30, 2022 compared to the three months ended June 30, 2021 primarily due to a 27% increase in the volume of watts sold, partially offset by a 12% decrease in the average selling price per watt. Net sales from our residual business operations decreased \$72.7 million for the three months ended June 30, 2022 compared to the three months ended June 30, 2021 primarily due to the prior period settlement of an outstanding indemnification arrangement associated with the sale of one of our projects. Under the terms of the indemnification arrangement, we received \$65.1 million for our portion of the settlement payment, which we recorded as revenue in the prior period. See Note 10. "Commitments and Contingencies" to our condensed consolidated financial statements for discussion of our indemnification arrangements.

Net sales from our modules segment decreased \$115.3 million for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 primarily due to a 13% decrease in the average selling price per watt, partially offset by a 3% increase in the volume of watts sold. Net sales from our residual business operations decreased \$329.3 million for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 primarily due to sales of certain projects in the United States in the prior period and the settlement of the indemnification matter in the prior period described above.

Cost of sales

Our modules business cost of sales includes the cost of raw materials and components for manufacturing solar modules, such as glass, transparent conductive coatings, CdTe and other thin film semiconductors, laminate materials, connector assemblies, edge seal materials, and frames. In addition, our cost of sales includes direct labor for the manufacturing of solar modules and manufacturing overhead, such as engineering, equipment maintenance, quality and production control, and information technology. Our cost of sales also includes depreciation of manufacturing plant and equipment, facility-related expenses, environmental health and safety costs, and costs associated with shipping, warranties, and solar module collection and recycling (excluding accretion). Cost of sales for our residual business operations primarily consists of project-related costs, such as development costs (legal, consulting, transmission upgrade, interconnection, permitting, and other similar costs), EPC costs (consisting primarily of solar modules, inverters, electrical and mounting hardware, project management and engineering, and construction labor), and site-specific costs.

The following table shows cost of sales by reportable segment for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Modules	\$ 576,278	\$ 433,609	\$ 142,669	33 %	\$ 919,970	\$ 867,839	\$ 52,131	6 %
Other	67,877	21,453	46,424	216 %	79,762	205,830	(126,068)	(61)%
Total cost of sales	\$ 644,155	\$ 455,062	\$ 189,093	42 %	\$ 999,732	\$ 1,073,669	\$ (73,937)	(7)%
% of net sales	103.7 %	72.3 %			101.2 %	74.9 %		

Cost of sales increased \$189.1 million, or 42%, and increased 31.4 percentage points as a percent of net sales for the three months ended June 30, 2022 compared to the three months ended June 30, 2021. The increase in cost of sales was driven by a \$142.7 million increase in our modules segment cost of sales primarily due to higher costs of \$109.5 million from an increase in the volume of modules sold and higher sales freight of \$31.4 million. The increase in cost of sales was also driven by a \$46.4 million increase in our residual business operations cost of sales primarily due to the impairment loss in the current period for our Luz del Norte PV solar power plant, partially offset by sales of certain projects in the United States in the prior period. See Note 5. "Consolidated Balance Sheet Details" to our condensed consolidated financial statements for discussion of the impairment of our Luz del Norte project.

Cost of sales decreased \$73.9 million, or 7%, and increased 26.3 percentage points as a percent of net sales for the six months ended June 30, 2022 compared to the six months ended June 30, 2021. The decrease in cost of sales was driven by a \$126.1 million decrease in our residual business operations cost of sales primarily due to sales of certain projects in the United States in the prior period, partially offset by the impairment loss for our Luz del Norte PV solar power plant described above. The decrease in cost of sales was partially offset by a \$52.1 million increase in our modules segment cost of sales primarily due to higher sales freight of \$52.4 million and higher costs of \$22.7 million from an increase in the volume of modules sold, partially offset by continued module cost reductions, which decreased cost of sales by \$21.4 million, and manufacturing related charges of \$7.3 million in the prior period associated with the ongoing COVID-19 pandemic.

Gross (loss) profit

Gross (loss) profit may be affected by numerous factors, including the selling prices of our modules and the selling prices of projects and services included in our residual business operations, our manufacturing costs, project development costs, the capacity utilization of our manufacturing facilities, and foreign exchange rates. Gross (loss) profit may also be affected by the mix of net sales from our modules business and residual business operations.

The following table shows gross (loss) profit for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Gross (loss) profit	\$ (23,200)	\$ 174,118	\$ (197,318)	(113)%	\$ (11,737)	\$ 358,885	\$ (370,622)	(103)%
% of net sales	(3.7)%	27.7%			(1.2)%	25.1%		

Gross profit decreased 31.4 percentage points to (3.7)% during the three months ended June 30, 2022 from 27.7% during the three months ended June 30, 2021 primarily due to a decrease in the average selling price per watt of our modules, the \$65.1 million prior period indemnification matter described above, the impairment loss in the current period for our Luz del Norte PV solar power plant described above, and an increase in sales freight, partially offset by the higher volume of modules sold.

Gross profit decreased 26.3 percentage points to (1.2)% during the six months ended June 30, 2022 from 25.1% during the six months ended June 30, 2021 primarily due to a decrease in the average selling price per watt of our modules, the impairment of our Luz del Norte PV solar power plant described above, the higher volume of projects sold during the prior period, the indemnification matter described above, and an increase in sales freight, partially offset by continued module cost reductions.

Selling, general and administrative

Selling, general and administrative expense consists primarily of salaries and other personnel-related costs, professional fees, insurance costs, and other business development and selling expenses.

The following table shows selling, general and administrative expense for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Selling, general and administrative	\$ 38,894	\$ 36,346	\$ 2,548	7 %	\$ 75,622	\$ 88,433	\$ (12,811)	(14)%
% of net sales	6.3 %	5.8 %			7.7 %	6.2 %		

Selling, general and administrative expense for the three months ended June 30, 2022 was consistent with the three months ended June 30, 2021. Selling, general and administrative expense for the six months ended June 30, 2022 decreased compared to the six months ended June 30, 2021 primarily due to a decrease in employee compensation expense driven by reductions in headcount from the sales of our North American O&M operations and U.S. project development business in the prior period, lower professional fees, lower expected credit losses for our accounts receivable, and higher charges for impairments of certain project assets in the prior period.

Research and development

Research and development expense consists primarily of salaries and other personnel-related costs; the cost of products, materials, and outside services used in our R&D activities; and depreciation and amortization expense associated with R&D specific facilities and equipment. We maintain a number of programs and activities to improve our technology and processes in order to enhance the performance and reduce the costs of our solar modules.

The following table shows research and development expense for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Research and development	\$ 25,229	\$ 23,935	\$ 1,294	5 %	\$ 52,337	\$ 43,808	\$ 8,529	19 %
% of net sales	4.1 %	3.8 %			5.3 %	3.1 %		

Research and development expense for the three months ended June 30, 2022 increased compared to the three months ended June 30, 2021 primarily due to higher employee compensation expense resulting from increases in headcount and increased material and module testing costs.

Research and development expense for the six months ended June 30, 2022 increased compared to the six months ended June 30, 2021 primarily due to increased material and module testing costs, lower share-based compensation expense in the prior period driven by the forfeiture of unvested shares by our former Chief Technology Officer, who retired in March 2021, and increased freight costs.

Production start-up

Production start-up expense consists of costs associated with operating a production line before it is qualified for commercial production, including the cost of raw materials for solar modules run through the production line during the qualification phase, employee compensation for individuals supporting production start-up activities, and applicable facility related costs. Production start-up expense also includes costs related to the selection of a new site and implementation costs for manufacturing process improvements to the extent we cannot capitalize these expenditures.

The following table shows production start-up expense for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Production start-up	\$ 13,231	\$ 1,715	\$ 11,516	>100%	\$ 20,569	\$ 13,069	\$ 7,500	57 %
% of net sales	2.1 %	0.3 %			2.1 %	0.9 %		

During the three and six months ended June 30, 2022, we incurred production start-up expense primarily for our third manufacturing facility in the U.S. and for certain manufacturing upgrades at our Malaysian facilities. During the six months ended June 30, 2021, we incurred production start-up expense primarily for the transition to Series 6 module manufacturing at our second facility in Kulim, Malaysia, which commenced commercial production in early 2021.

Gain on sales of businesses, net

The following table shows gain on sales of businesses, net for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Gain on sales of businesses, net	\$ 245,381	\$ (1,745)	\$ 247,126	>100%	\$ 247,288	\$ 149,150	\$ 98,138	66 %
% of net sales	39.5 %	(0.3)%			25.0 %	10.4 %		

In May 2022, we entered into various agreements with certain subsidiaries of PAG for the sale of our Japan project development business. In June 2022, we completed the sale for an aggregate purchase price of ¥66.4 billion (\$488.4 million), subject to certain customary post-closing adjustments. On the closing date, we received proceeds of ¥44.1 billion (\$324.5 million) and transferred cash and restricted cash of ¥8.4 billion (\$61.9 million) to PAG. As a result of this transaction, we recognized a gain of \$245.4 million, net of transaction costs, during the three months ended June 30, 2022. In January 2022, we completed the sale of certain international O&M operations to a subsidiary of Clairvest for consideration of \$1.9 million. As a result of this transaction, we recognized a gain of \$1.6 million, net of transaction costs and post-closing adjustments, during the six months ended June 30, 2022.

In March 2021, we completed the sale of our North American O&M Operations to a subsidiary of Clairvest and received initial consideration of \$146.0 million. As a result of this transaction, we recognized a gain of \$117.8 million, net of transaction costs, during the six months ended June 30, 2021. In March 2021, we also completed the sale of our U.S. project development business to Leeward and received consideration of \$151.4 million for the sale of such business. As a result of this transaction, we recognized a gain of \$31.5 million, net of transaction costs, during the six months ended June 30, 2021.

See Note 2. "Sales of Businesses" to our condensed consolidated financial statements for further information related to these transactions.

Foreign currency loss, net

Foreign currency loss, net consists of the net effect of gains and losses resulting from holding assets and liabilities and conducting transactions denominated in currencies other than our subsidiaries' functional currencies.

The following table shows foreign currency loss, net for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Foreign currency loss, net	\$ (2,984)	\$ (1,000)	\$ (1,984)	198 %	\$ (7,182)	\$ (3,595)	\$ (3,587)	100 %

Foreign currency loss, net for the three and six months ended June 30, 2022 increased compared to the three and six months ended June 30, 2021 primarily due to higher costs associated with hedging activities related to our subsidiaries in India and the differences between our economic hedge positions and the underlying exposures.

Interest income

Interest income is earned on our cash, marketable securities, restricted cash, and restricted marketable securities. Interest income also includes interest earned from late customer payments.

The following table shows interest income for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Interest income	\$ 2,880	\$ 1,288	\$ 1,592	124 %	\$ 5,205	\$ 2,244	\$ 2,961	132 %

Interest income for the three and six months ended June 30, 2022 increased compared to the three and six months ended June 30, 2021 primarily due to higher interest rates on restricted marketable securities, time deposits, and cash, partially offset by lower average balances associated with marketable securities.

Interest expense, net

Interest expense, net is primarily comprised of interest incurred on long-term debt, settlements of interest rate swap contracts, and changes in the fair value of interest rate swap contracts that do not qualify for hedge accounting in accordance with ASC 815. We may capitalize interest expense to our project assets or property, plant and equipment when such costs qualify for interest capitalization, which reduces the amount of net interest expense reported in any given period.

The following table shows interest expense, net for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Interest expense, net	\$ (3,236)	\$ (4,623)	\$ 1,387	(30)%	\$ (6,101)	\$ (7,619)	\$ 1,518	(20)%

Interest expense, net for the three and six months ended June 30, 2022 decreased compared to the three and six months ended June 30, 2021 primarily due to changes in the fair value of interest rate swap contracts in the prior period, which did not qualify for hedge accounting, lower interest expense associated with project debt, and lower amortization of debt discounts and issuance costs in the current period.

Other (expense) income, net

Other (expense) income, net is primarily comprised of miscellaneous items and realized gains and losses on the sale of marketable securities and restricted marketable securities.

The following table shows other (expense) income, net for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Other (expense) income, net	\$ (1,883)	\$ (3,247)	\$ 1,364	(42)%	\$ (2,095)	\$ 5,201	\$ (7,296)	140 %

Other expense, net for the three months ended June 30, 2022 was consistent with the three months ended June 30, 2021. Other expense, net for the six months ended June 30, 2022 increased compared to the six months ended June 30, 2021 primarily due to higher realized gains from sales of restricted marketable securities in the prior period.

Income tax expense

Income tax expense or benefit, deferred tax assets and liabilities, and liabilities for unrecognized tax benefits reflect our best estimate of current and future taxes to be paid. We are subject to income taxes in both the United States and numerous foreign jurisdictions in which we operate, principally Japan, Malaysia, and Vietnam. Significant judgments and estimates are required to determine our consolidated income tax expense. The statutory federal corporate income tax rate in the United States is 21%, and the tax rates in Japan, Malaysia, and Vietnam are 30.6%, 24%, and 20%, respectively. In Malaysia, we have been granted a long-term tax holiday, scheduled to expire in 2027, pursuant to which substantially all of our income earned in Malaysia is exempt from income tax, conditional upon our continued compliance with certain employment and investment thresholds. In Vietnam, we have been granted a long-term tax incentive, scheduled to expire at the end of 2036, pursuant to which income earned in Vietnam is subject to reduced annual tax rates, conditional upon our continued compliance with certain revenue and R&D spending thresholds.

The following table shows income tax expense for the three and six months ended June 30, 2022 and 2021:

(Dollars in thousands)	Three Months Ended June 30,		Three Month Change	Six Months Ended June 30,		Six Month Change		
	2022	2021		2022	2021			
Income tax expense	\$ (83,799)	\$ (20,346)	\$ (63,453)	312 %	\$ (64,300)	\$ (66,836)	\$ 2,536	(4)%
Effective tax rate	60.0 %	19.8 %			83.7 %	18.6 %		

Our tax rate is affected by recurring items, such as tax rates in foreign jurisdictions and the relative amounts of income we earn in those jurisdictions. The rate is also affected by discrete items that may occur in any given period, but are not consistent from period to period. Income tax expense increased by \$63.5 million during the three months ended June 30, 2022 compared to the three months ended June 30, 2021 primarily due to losses in certain jurisdictions for which no tax benefit could be recorded, higher pretax income in the current period, and the remeasurement of our net deferred tax assets in Vietnam as a result of a new long-term tax incentive granted in May 2022. Income tax expense decreased by \$2.5 million during the six months ended June 30, 2022 compared to the six months ended June 30, 2021 primarily due to lower pretax income in the current period, partially offset by losses in certain jurisdictions for which no tax benefit could be recorded and the remeasurement of our net deferred tax assets in Vietnam mentioned above.

Critical Accounting Policies and Estimates

In preparing our condensed consolidated financial statements in conformity with U.S. GAAP, we make estimates and assumptions that affect the amounts of reported assets, liabilities, revenues, and expenses, as well as the disclosure of contingent liabilities. Some of our accounting policies require the application of significant judgment in the selection of the appropriate assumptions for making these estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. We base our judgments and estimates on our historical experience, our forecasts, and other available information as appropriate. We believe the judgments and estimates involved in accrued solar module collection and recycling, product warranties, accounting for income taxes, and long-lived asset impairments have the greatest potential impact on our condensed consolidated financial statements. The actual results experienced by us may differ materially and adversely from our estimates. To the extent there are material differences between our estimates and the actual results, our future results of operations will be affected. For a description of the accounting policies that require the most significant judgment and estimates in the preparation of our condensed consolidated financial statements, refer to our Annual Report on Form 10-K for the year ended December 31, 2021. There have been no material changes to our accounting policies during the six months ended June 30, 2022.

Recent Accounting Pronouncements

None.

Liquidity and Capital Resources

As of June 30, 2022, we believe that our cash, marketable securities, cash flows from operating activities, and contracts with customers for the future sale of solar modules will be sufficient to meet our working capital and capital expenditure needs for at least the next 12 months. As necessary, we also believe we will have adequate access to the capital markets. We monitor our working capital to ensure we have adequate liquidity, both domestically and internationally. We intend to maintain appropriate debt levels based upon cash flow expectations, our overall cost of capital, and expected cash requirements for operations, such as construction activities and purchases of manufacturing equipment for our manufacturing facility in India. However, our ability to raise capital on terms commercially acceptable to us could be constrained if there is insufficient lender or investor interest due to company-specific, industry-wide, or broader market concerns. Any incremental debt financings could result in increased debt service expenses and/or restrictive covenants, which could limit our ability to pursue our strategic plans. Additionally, given the duration of these and other capital investments and the currency risk relative to the U.S. dollar in certain international markets in which we operate, we continue to explore local financing alternatives. Should these financing alternatives be unavailable or too cost prohibitive, we could be exposed to significant currency risk and our liquidity could be adversely impacted.

As of June 30, 2022 and December 31, 2021, we had \$1.8 billion in cash and marketable securities. Cash receipts from module sales, proceeds from the sale of our Japan project development business, and net proceeds from sales and maturities of marketable securities were offset by purchases of property, plant and equipment, expenditures for the construction of certain projects in Japan, and other operating expenditures. As of June 30, 2022, \$1.0 billion of our cash and marketable securities was held by our foreign subsidiaries and was primarily based in U.S. dollar, Japanese yen, and Indian rupee denominated holdings.

We utilize a variety of tax planning and financing strategies in an effort to ensure that our worldwide cash is available in the locations in which it is needed. If certain international funds were needed for our operations in the United States, we may be required to accrue and pay certain U.S. and foreign taxes to repatriate such funds. We maintain the intent and ability to permanently reinvest our accumulated earnings outside the United States, with the exception of our subsidiaries in Canada and Germany. In addition, changes to foreign government banking regulations may restrict our ability to move funds among various jurisdictions under certain circumstances, which could negatively impact our access to capital, resulting in an adverse effect on our liquidity and capital resources.

We continually evaluate forecasted global demand and seek to balance our manufacturing capacity with such demand. We previously announced our plans to invest approximately \$1.4 billion to expand our solar manufacturing capacity by 6.6 GW_{DC} by constructing our third manufacturing facility in the U.S. and our first manufacturing facility in India. These new facilities are currently under construction and are expected to commence operations in the first half of 2023 and the second half of 2023, respectively. In addition, we continue to increase the nameplate production capacity of our existing manufacturing facilities by improving our production throughput, increasing module wattage (or conversion efficiency), and improving manufacturing yield losses. During 2022, we expect to spend \$0.9 billion to \$1.1 billion for capital expenditures, including the new facilities mentioned above and upgrades to machinery and equipment that we believe will further increase our module wattage and expand capacity and throughput at our manufacturing facilities.

We have also committed and expect to commit significant working capital to purchase various raw materials used in our module manufacturing process. Our failure to obtain raw materials and components that meet our quality, quantity, and cost requirements in a timely manner could interrupt or impair our ability to manufacture our solar modules or increase our manufacturing costs. Accordingly, we may enter into long-term supply agreements to mitigate potential risks related to the procurement of key raw materials and components, and such agreements may be noncancelable or cancelable with a significant penalty. For example, we have entered into long-term supply agreements for the purchase of certain specified minimum volumes of substrate glass and cover glass for our PV solar modules. Our remaining purchases under these supply agreements are expected to be approximately \$1.6 billion of substrate glass and approximately \$346 million of cover glass. We have the right to terminate these agreements upon payment of specified termination penalties (which, in aggregate, are up to \$292 million as of June 30, 2022 and decline over the remaining supply periods).

We have also committed certain financial resources to fulfill our solar module collection and recycling obligations, and have established a trust under which these funds are put into custodial accounts with an established and reputable bank. As of June 30, 2022, such funds were comprised of restricted marketable securities of \$200.3 million and restricted cash balances of \$4.0 million. As of June 30, 2022, our module collection and recycling liability was \$134.1 million. Trust funds may be disbursed for qualified module collection and recycling costs (including capital and facility related recycling costs), payments to customers for assuming collection and recycling obligations, and reimbursements of any overfunded amounts. Investments in the trust must meet certain investment quality criteria comparable to highly rated government or agency bonds. As necessary, we adjust the funded amounts for our estimated collection and recycling obligations on an annual basis based on the estimated costs of collecting and recycling covered modules, estimated rates of return on our restricted marketable securities, and an estimated solar module life of 25 years, less amounts already funded in prior years.

As of June 30, 2022, we had no off-balance sheet debt or similar obligations, other than financial assurance related instruments, which are not classified as debt. We do not guarantee any third-party debt. See Note 10. "Commitments and Contingencies" to our condensed consolidated financial statements for further information about our financial assurance related instruments.

Cash Flows

The following table summarizes key cash flow activity for the six months ended June 30, 2022 and 2021 (in thousands):

	Six Months Ended June 30,	
	2022	2021
Net cash used in operating activities	\$ (50,821)	\$ (102,229)
Net cash provided by investing activities	138,287	470,088
Net cash provided by (used in) financing activities	125,616	(9,090)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	39,934	906
Net increase in cash, cash equivalents and restricted cash	<u>\$ 253,016</u>	<u>\$ 359,675</u>

Operating Activities

The decrease in net cash used in operating activities was primarily driven by higher cash receipts from module sales in the current period and higher operating expenditures in the prior period, partially offset by higher expenditures for the construction of certain projects in Japan and certain advance payments for raw materials in the current period.

Investing Activities

The decrease in net cash provided by investing activities was primarily due to higher purchases of property, plant and equipment, lower net sales and maturities of marketable securities and restricted marketable securities, and proceeds from the sales of our North American O&M operations and U.S. project development business in the prior period, partially offset by proceeds from the sale of our Japan project development business in the current period.

Financing Activities

The increase in net cash provided by financing activities was primarily due to higher net borrowings under project specific debt financings for the construction of certain projects in Japan. Such project specific debt financings were assumed by PAG when we completed the sale of our Japan project development business.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

There have been no material changes to the information previously provided under Item 7A. of our Annual Report on Form 10-K for the year ended December 31, 2021.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our “disclosure controls and procedures” as defined in Exchange Act Rule 13a-15(e) and 15d-15(e). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of June 30, 2022 our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

We also carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of our “internal control over financial reporting” as defined in Exchange Act Rule 13a-15(f) and 15d-15(f) to determine whether any changes in our internal control over financial reporting occurred during the three months ended June 30, 2022 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Based on that evaluation, there were no such changes in our internal control over financial reporting that occurred during the three months ended June 30, 2022.

CEO and CFO Certifications

We have attached as exhibits to this Quarterly Report on Form 10-Q the certifications of our Chief Executive Officer and Chief Financial Officer, which are required in accordance with the Exchange Act. We recommend that this Item 4. be read in conjunction with those certifications for a more complete understanding of the subject matter presented.

Limitations on the Effectiveness of Controls

Control systems, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control systems’ objectives are being met. Further, the design of any system of controls must reflect the fact that there are resource constraints, and the benefits of all controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of error or mistake. Control systems can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

See Note 10. “Commitments and Contingencies” under the heading “Legal Proceedings” of our condensed consolidated financial statements for legal proceedings and related matters.

Item 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2021, which could materially affect our business, financial condition, results of operations, or cash flows. The risks described in our Annual Report on Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently consider immaterial may also materially adversely affect our business, financial condition, results of operations, or cash flows. Except for the risk factor set forth below, there have been no material changes in the risk factors contained in our Annual Report on Form 10-K.

The reduction, elimination, or expiration of government subsidies, economic incentives, tax incentives, renewable energy targets, and other support for on-grid solar electricity applications, or other public policies, such as tariffs or other trade remedies imposed on solar cells and modules, could negatively impact demand and/or price levels for our solar modules and limit our growth or lead to a reduction in our net sales or increase our costs, thereby adversely impacting our operating results.

Although we believe that solar energy will experience widespread adoption in those applications where it competes economically with traditional forms of energy without any support programs, in certain markets our net sales and profits remain subject to variability based on the availability and size of government subsidies and economic incentives. Federal, state, and local governmental bodies in many countries have provided subsidies in the form of feed-in-tariff structures, rebates, tax incentives, and other incentives to end users, distributors, system integrators, and manufacturers of PV solar products. Many of these support programs expire, phase out over time, require renewal by the applicable authority, or may be amended. To the extent these support programs are reduced earlier than previously expected, are changed retroactively, or are not renewed, such changes could negatively impact demand and/or price levels for our solar modules, lead to a reduction in our net sales, and adversely impact our operating results. Another consideration is the effect of governmental land-use planning policies and environmental policies on utility-scale PV solar development. The adoption of restrictive land-use designations or environmental regulations that proscribe or restrict the siting of utility-scale solar facilities could adversely affect the marginal cost of such development.

Changes or threatened changes in U.S. regulatory policy may subject us to significant risks, including the following:

- a reduction or removal of clean energy programs and initiatives and the incentives they provide may diminish the market for future solar energy off-take agreements, slow the retirement of aging fossil fuel plants, including the retirements of coal generation plants, and reduce the ability for solar project developers to compete for off-take agreements, which may reduce PV solar module sales;
- any limitations on the value or availability to potential investors of tax incentives that benefit solar energy projects, such as the ITC, which is currently scheduled to decrease to 22% in 2023 and 10% in 2024, and accelerated depreciation deductions, could result in reducing such investors’ economic returns, causing a reduction in the availability of affordable financing, thereby reducing demand for PV solar modules; and
- any effort to overturn federal and state laws, regulations, or policies that are supportive of solar energy generation or that remove costs or other limitations on other types of electricity generation that compete with solar energy projects could negatively impact our ability to compete with traditional forms of electricity generation and materially and adversely affect our business.

Application of U.S. trade laws, or trade laws of other countries, may also impact, either directly or indirectly, our operating results. In some instances, the application of trade laws is currently beneficial to the Company, and changes in their application could have an adverse impact.

For example, the United States currently imposes different types of tariffs and/or other trade remedies on certain imported crystalline silicon PV modules and cells from various countries. In February 2022, the U.S. President proclaimed a four-year extension of a global safeguard measure imposed pursuant to Section 201 of the Trade Act of 1974 that provides for tariffs on imported crystalline silicon solar modules and a tariff-rate quota on imported crystalline silicon solar cells. Thin film solar cell products, such as our CdTe technology, are specifically excluded from the tariffs. Moreover, the extension measure does not apply tariffs to imports of bifacial modules. The extension measure imposes a 14.75% tariff in the first year, which is scheduled to phase down annually in 0.25 percentage point increments over the four-year term. The extension measure also provides an annual tariff-rate quota, whereby tariffs apply to imported crystalline silicon solar cells above the first 5.0 GW_{DC} of imports.

In addition, the United States currently imposes antidumping and countervailing duties on certain imported crystalline silicon PV cells and modules from China and Taiwan. Such antidumping and countervailing duties can change over time pursuant to annual reviews conducted by the U.S. Department of Commerce (“USDOC”), and a decline in duty rates and USDOC refusals to fully enforce U.S. antidumping and countervailing duty laws could have an adverse impact on our operating results. In March 2022, USDOC initiated inquiries concerning alleged circumvention of antidumping and countervailing duties on Chinese imports by crystalline silicon PV cells and module imports assembled and completed in Cambodia, Malaysia, Thailand, and Vietnam. In June 2022, the U.S. President declared an emergency with respect to threats to electricity generation capacity and authorized the U.S. Secretary of Commerce to consider permitting the importation of crystalline silicon PV products from those four countries free of antidumping and countervailing duties for 24 months, or until the emergency has terminated. USDOC has issued proposed regulations designed to implement that moratorium on antidumping and countervailing duties in the event that it finds circumvention with respect to crystalline silicon PV products assembled and completed in those four countries. We cannot predict what further actions USDOC will take with respect to these circumvention inquiries. Our operating results could be adversely impacted if USDOC makes negative circumvention determinations or refrains from imposing antidumping and countervailing duties on imports covered by affirmative circumvention determinations. Conversely, affirmative circumvention determinations could positively impact our operating results, including if they result in immediate imposition of antidumping and countervailing duty cash deposit requirements.

Moreover, the United States currently imposes tariffs on various articles imported from China at a rate of 25%, including crystalline silicon solar cells and modules, based on an investigation under Section 301 of the Trade Act of 1974. In May 2022, the Office of the United States Trade Representative initiated a statutory four-year review of those tariff actions, which could result in the termination or modification of the tariffs. The review remains pending, and we cannot predict its outcome. Our operating results could be adversely impacted if the review results in a termination or reduction in tariffs on crystalline silicon solar cells and modules from China.

In other instances, the application of U.S. trade laws has had, or could have, an adverse impact on our operating results by increasing our costs or limiting the competitiveness of our products. For example, the United States imposes tariffs on certain imported aluminum and steel articles from certain foreign jurisdictions, generally at rates of 10% and 25%, respectively, under Section 232 of the Trade Expansion Act of 1962. Such tariffs and policies, or any other U.S. or global trade remedies or other trade barriers, may directly or indirectly affect U.S. or global markets for solar energy and our business, financial condition, and results of operations. These examples show that established markets for PV solar development face uncertainties arising from policy, regulatory, and governmental constraints. While the expected potential of the markets we are targeting is significant, policy promulgation and market development are especially vulnerable to governmental inertia, political instability, the imposition or lowering of trade remedies and other trade barriers, geopolitical risk, fossil fuel subsidization, potentially stringent localization requirements, and limited available infrastructure.

Item 6. Exhibits

The following exhibits are filed with this Quarterly Report on Form 10-Q:

Exhibit Number	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation of First Solar, Inc. (incorporated by reference to Exhibit 3.1 to First Solar, Inc.'s Registration Statement on Form S-1 filed on October 25, 2006)
3.2	Amended and Restated Bylaws of First Solar, Inc. (incorporated by reference to Exhibit 3.1 to First Solar, Inc.'s Form 8-K filed on July 23, 2021)
10.1*+§	Business Purchase and Sale Agreement, dated May 12, 2022, among First Solar Japan GK, PAG Renewables Holding Pte. Ltd. and PAG Renewables FM Holding Pte. Ltd.
10.2*+§	First Amendment to Business Purchase and Sale Agreement, dated June 24, 2022, among First Solar Japan GK, PAG Renewables Holding Pte. Ltd. and PAG Renewables FM Holding Pte. Ltd.
10.3*+§	Membership Interests Purchase and Sale Agreement, dated May 12, 2022, among First Solar Japan GK, Kyoto Solar Plant L.P., Yatsubo Solar Plant L.P., Momura Solar Plant L.P., Iwaki Solar Plant L.P., Hita Solar Plant L.P., Shimo Onuki Solar Plant L.P., Orido Solar Plant L.P., Handa Solar Plant L.P. and Tochigi Solar Plant L.P.
10.4*+§	First Amendment to Membership Interests Purchase and Sale Agreement, dated June 24, 2022, among First Solar Japan GK, Kyoto Solar Plant L.P., Yatsubo Solar Plant L.P., Momura Solar Plant L.P., Iwaki Solar Plant L.P., Hita Solar Plant L.P., Shimo Onuki Solar Plant L.P., Orido Solar Plant L.P., Handa Solar Plant L.P. and Tochigi Solar Plant L.P.
10.5*+§	TK Interests Purchase and Sale Agreement, dated May 12, 2022, among TK Investco 7 Pte. Ltd., TK Investco 8 Pte. Ltd., TK Investco 10 Pte. Ltd., TK Investco 11 Pte. Ltd. and Gioia Investment Pte. Ltd.
10.6*+§	First Amendment to TK Interests Purchase and Sale Agreement, dated June 24, 2022, among TK Investco 7 Pte. Ltd., TK Investco 8 Pte. Ltd., TK Investco 10 Pte. Ltd., TK Investco 11 Pte. Ltd. and Gioia Investment Pte. Ltd.
10.7*+§	Finance Agreement between FS India Solar Ventures Private Limited and United States International Development Finance Corporation dated July 27, 2022
31.1*	Certification of Chief Executive Officer pursuant to 15 U.S.C. Section 7241, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to 15 U.S.C. Section 7241, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1†	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document – the instance document does not appear in the Interactive Data file because its XBRL tags are embedded within the Inline XBRL document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover page formatted as Inline XBRL and contained in Exhibit 101

* Filed herewith.

+ Portions of this exhibit have been redacted in compliance with Item 601(b)(10) of Regulation S-K.

§ Exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K.

† Furnished herewith. This exhibit shall not be deemed “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

FIRST SOLAR, INC.

Date: July 28, 2022

By:	<u>/s/ BYRON JEFFERS</u>
Name:	Byron Jeffers
Title:	Chief Accounting Officer

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED INFORMATION IS INDICATED BY [*].**

BUSINESS PURCHASE AND SALE AGREEMENT

dated as of May 12, 2022

among

FIRST SOLAR JAPAN GK,

PAG RENEWABLES HOLDING PTE. LTD.

and

PAG RENEWABLES FM HOLDING PTE. LTD.

TABLE OF CONTENTS

		Page
1	DEFINITIONS; RULES OF INTERPRETATION	2
1.1	Definitions	2
1.2	Rules of Interpretation	15
2	CORPORATE SPLITS; PURCHASE AND SALE	15
2.1	Corporate Splits	15
2.2	Purchase and Sale	16
2.3	Purchase Price	16
2.4	Preliminary Working Capital Statement	17
2.5	Final Working Capital Statement	17
2.6	Disputes Regarding a Final Working Capital Statement	18
2.7	Final Working Capital Adjustment	19
2.8	O&MCo On-sale Transactions	19
3	CLOSING	21
3.1	Closing	21
3.2	Closing Conditions of the Seller	22
3.3	Closing Conditions of each Purchaser	23
3.4	Deliveries and Closing Actions	25
4	PRE-CLOSING COVENANTS	26
4.1	Conduct of Business	26
4.2	Efforts to Close	27
4.3	IT Separation	27
4.4	No Other Contact	28
4.5	Employee Matters	28
4.6	Development Business Continuing Due Diligence	28
4.7	Disclosure Supplements	28
4.8	Notification of Relevant Circumstances	29
4.9	Insurance	29
4.10	Office Lease	29
5	POST-CLOSING COVENANTS	30
5.1	Seller Marks	30
5.2	Treatment of Transferring Employees	30
5.3	Access to Records	30
5.4	Wrong Pockets	31
5.5	O&MCo Outstanding Contracts	32

TABLE OF CONTENTS
(continued)

		Page
5.6	Office Lease	33
5.7	Kyoto Land Exchange Agreement.	34
5.8	Delivery of Data	34
5.9	Further Assurances	34
6	REPRESENTATIONS AND WARRANTIES OF THE SELLER	34
6.1	Organization; Power and Authority; Enforceability	35
6.2	No Conflicts; No Permits	35
6.3	Title	35
6.4	Corporate Split	36
6.5	Other Equity Interests	36
6.6	Transferring Contracts	36
6.7	Related Party Agreements	36
6.8	Real Property	37
6.9	Assets	37
6.10	Insurance	37
6.11	Proceedings	37
6.12	Not Insolvent	37
6.13	Compliance with Law	38
6.14	Environmental Matters	38
6.15	Permits	38
6.16	Financial Statements	39
6.17	Absence of Changes	39
6.18	Absence of Undisclosed Material Liabilities	39
6.19	Employees	39
6.20	Tax Matters	40
6.21	Disclosure of Information	41
6.22	Brokers and Other Advisors	42
6.23	Anti-Corruption	42
6.24	Antisocial Forces	42
7	LIMITATIONS ON REPRESENTATIONS AND WARRANTIES OF THE SELLER	42
7.1	Only Representations and Warranties in Article 6	42
7.2	Disclaimer	42
7.3	Non-reliance	43

TABLE OF CONTENTS
(continued)

		Page
	7.4 No Other Assurances	43
	7.5 Projections	43
8	REPRESENTATIONS AND WARRANTIES OF EACH PURCHASER	43
	8.1 Organization; Power and Authority; Enforceability	43
	8.2 No Conflicts; No Permits	44
	8.3 Proceedings	44
	8.4 Sufficient Funds	44
	8.5 Not Insolvent	44
	8.6 Brokers and Other Advisors	45
	8.7 Anti-Corruption	45
	8.8 Antisocial Forces	45
9	W&I POLICY; INDEMNIFICATION	45
	9.1 Survival	45
	9.2 W&I Policy	45
	9.3 Availability of Indemnification for Warranty Claims	47
	9.4 Indemnification by the Seller	47
	9.5 Indemnification by each Purchaser	47
	9.6 Mitigation	47
	9.7 Indirect Damages	48
	9.8 Indemnity Claims Capped	48
	9.9 Indemnity Claim Procedures	48
	9.10 Further Limitations on Purchaser Indemnity Claims	49
	9.11 Fraud	49
	9.12 No Set-Off	50
	9.13 Tax Treatment	50
	9.14 Exclusive Remedies	50
	9.15 Exclusion of Statutory Liability for Non-Conformity to Contract (“Keiyaku-Futekigo-Sekinin”)	50
	9.16 No Expansion of Liability	50
10	TAX MATTERS	50
	10.1 Cooperation; Information	50
	10.2 Tax Allocation	51
11	CONFIDENTIALITY AND ANNOUNCEMENTS	51
	11.1 Confidentiality	51

TABLE OF CONTENTS
(continued)

			Page
	11.2	Public Announcements and Press	52
12	TERMINATION; EFFECT OF TERMINATION		52
	12.1	Termination	52
	12.2	Effect of Termination	53
13	MISCELLANEOUS		53
	13.1	Notices	53
	13.2	Successors and Assigns	54
	13.3	Governing Law	54
	13.4	Resolution of Disputes	54
	13.5	Severability	55
	13.6	Expenses	55
	13.7	Transfer Taxes	55
	13.8	Entire Agreement; Amendment	56
	13.9	No Waiver	56
	13.10	No Third Party Beneficiaries	56
	13.11	Counterparts	56
Schedule 1 Development Business			59
Schedule 2 O&M Business			60
Schedule 3 Consent Required Contracts			61
Schedule 4 Seller Credit Support			62
Schedule 5 Disclosure Schedule			63
Exhibit A Form of Corporate Split Plan			64
Exhibit B Form of Ishikawa Indemnity			65
Exhibit C Form of Kyoto Land Transfer Agreement			66
Exhibit D Form of Closing Certificate			67
Exhibit E Form of Seller Consent			68
Exhibit F Form of Development Services Agreement			69
Exhibit G Form of DSA Equity Commitment Letter			70

This **BUSINESS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is entered into as of May 12, 2022, by and among First Solar Japan GK, a Japan *godo kaisha* (the “**Seller**”), PAG Renewables Holding Pte. Ltd. (the “**DevCo Purchaser**”) and PAG Renewables FM Holding Pte. Ltd. (the “**O&MCo Purchaser**”), each a Singapore private limited company (each, a “**Purchaser**”). The Seller and the Purchasers are referred to herein individually as a “**Party**” and together as the “**Parties**”.

RECITALS

A. The Seller is engaged in the business of owning, developing, operating and maintaining solar power projects in Japan.

B. The Seller desires to sell to the Purchasers, and the Purchasers desire to purchase from the Seller, the Transferring Business, free from any liens and other encumbrances (other than Permitted Liens), through (a) the transfer of the Development Business from the Seller to PAG Renewables GK, a *godo kaisha* (“**DevCo**”) to be incorporated under the laws of Japan by way of an incorporation-type corporate split (*shinsetsu bunkatsu*), (b) the transfer of the O&M Business from the Seller to PAG Renewables Facilities GK, a *godo kaisha* (“**O&MCo**”, and each of DevCo and O&MCo, a “**NewCo**”) to be incorporated under the laws of Japan by way of an incorporation-type corporate split (*shinsetsu bunkatsu*), (c) the acquisition by the Seller of 100% of the membership interest in each NewCo (each, a “**Membership Interest**”, and together, the “**Membership Interests**”) and (d) the sale by the Seller to the Purchasers of the Membership Interests, in each case on the terms and subject to the conditions set forth in this Agreement.

C. On the date of this Agreement:

a. FSI and the Purchasers have entered into a Business PSA Guarantee for the guarantee of certain obligations and liabilities of the Seller under this Agreement (the “**Business PSA Guarantee**”);

b. one or more funds managed by affiliates of the Purchasers have delivered an equity commitment letter to the Parties to support certain obligations and liabilities of the Purchasers under this Agreement (the “**Business PSA ECL**”);

c. the Seller, Kyoto Solar Plant L.P., Yatsubo Solar Plant L.P., Momura Solar Plant L.P., Iwaki Solar Plant L.P., Hita Solar Plant L.P., Shimo Onuki Solar Plant L.P., Orido Solar Plant L.P., Handa Solar Plant L.P. and Tochigi Solar Plant L.P. have entered into a Membership Interests Purchase and Sale Agreement for the purchase and sale of the membership interests in certain project companies and certain other entities that hold interests in real property (the “**MI PSA**”); and

d. the owners of the tokumei kumiai interests in certain project companies and Gioia Investment Pte. Ltd. have entered into a TK Interests Purchase and Sale Agreement for the purchase and sale of such interests (the “**TK PSA**”).

ACCORDINGLY, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. In addition to the capitalized terms defined elsewhere in this Agreement (including the preamble), the following terms shall have the corresponding meanings set forth below:

“**Affiliate**” of a specified Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For the purposes of this definition, (a) “**control**”, when used with respect to any specified Person, means the possession of the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities or partnership or limited liability company interests, by contract or otherwise, (b) each NewCo shall be deemed not to be an “Affiliate” of the Seller at any time and (c) each NewCo shall be deemed to be an “Affiliate” of the Relevant Purchaser from the Relevant Closing.

“**Antisocial Force**” means an organized crime group (*boryokudan*), a member of an organized crime group, a former member of an organized crime group with less than five years having passed since separation, a quasi-constituent member of an organized crime group, an enterprise related to an organized crime group, a corporate racketeer (*sokaiya*), an extortionist advocating social movement, an extortionist advocating political movement, a special intelligence violence group and other antisocial forces.

“**Bankruptcy Exception**” has the meaning given in Section 6.1.

“**Business Day**” means any day (except Saturday or Sunday) when commercial banks are open for business in Tokyo, Japan and Singapore.

“**Business PSA ECL**” has the meaning given in Recital C.b.

“**Business PSA Guarantee**” has the meaning given in Recital C.a.

“**Claim Notice**” has the meaning given in Section 9.9(a).

“**Claim Response**” has the meaning given in Section 9.9(c).

“**Claimant**” has the meaning given in Section 9.9(a).

“**Confidential Information**” means all information and materials, whether written or oral, relating to the business and affairs of any Party, or any of their respective Affiliates, including any such information or materials relating to either Transferring Business or either NewCo, except to the extent that such information (a) is generally available to the public as of the date hereof or (b) becomes generally available to the public following disclosure by a third party not bound by the confidentiality obligations under Section 11.1.

“**Constituent Documents**” means, with respect to any Person (other than an individual), all charter, organizational and other documents by which such Person establishes its legal existence or which govern its internal affairs, and shall include (a) the certificate of registration, memorandum and articles of association, charter and bylaws or other similar organizing documents of a company or corporation, (b) the certificate of formation and

limited liability company agreement of a limited liability company, (c) the certificate of registration of partnership (if applicable) and agreement of partnership of a partnership, (d) the articles of incorporation of a Japan *kabushiki kaisha* or *godo kaisha* and (e) the comparable documents of any other entities.

“**Contract**” means any contract, lease, license, indenture, note, bond, agreement, concession, franchise or other binding instrument.

“**COVID-19**” means the COVID-19 pandemic, including any evolutions or mutations of the COVID-19 disease, any subsequent waves and any further epidemics or pandemics arising therefrom.

“**COVID-19 Actions**” means any commercially reasonable actions that the Seller or any of its Affiliates (or any of their asset managers, if applicable) determines is necessary or prudent in connection with or in response to (a) COVID-19 and any quarantine, “stay at home”, workforce reduction, furlough, social distancing, shut down, closure, sequester, safety or similar Law, guidelines or requests (including any *yosei*) promulgated by any Governmental Authority or quasi-governmental authority (including the World Health Organization), including ceasing operation, or reinitiating operation, of all or part of the relevant Person’s business or (b) mitigating the adverse effects of the foregoing on such Person’s business.

“**Current Assets**” means cash and deposits, account receivables aged less than 90 days from the invoice date, prepaid expenses and short-term loan receivables, but excluding (a) inter-company account receivables, (b) inter-company loan receivables and (c) any other Excluded Assets.

“**Current Liabilities**” means accounts payable aged less than 90 days from the invoice date, accrued expenses and short-term loan payables, but excluding (a) inter-company account payables, (b) inter-company loan payables and (c) any other Excluded Liabilities.

“**DevCo**” has the meaning given in Recital B.

“**DevCo Assignment**” means the sale of all of the Membership Interest in DevCo by the Seller to the DevCo Purchaser in accordance with the terms of this Agreement.

“**DevCo Closing**” means the Relevant Closing in respect of the DevCo Assignment.

“**DevCo Closing Date**” means the Relevant Closing Date in respect of the DevCo Assignment.

“**DevCo Corporate Split**” means the corporate split for the Development Business on the terms set forth in the DevCo Corporate Split Plan and this Agreement.

“**DevCo Corporate Split Plan**” means a corporate split plan in respect of the Development Business substantially in the form attached as Exhibit A (*Form of Corporate Split Plan*).

“**Development Assets**” has the meaning given in Paragraph 1 (*Development Assets*) of Part 1: Transferring Items of Schedule 1 (*Development Business*).

“**Development Business**” means (a) the business of developing the Transferring Projects conducted by the Seller and (b) the legal, financial planning and analysis / project controls, human resources and project finance administrative functions of the Seller that support such business, in each case as of the DevCo Closing Date.

“**Development Confidential Information**” means any Confidential Information relating to the Development Business or DevCo.

“**Development Contracts**” has the meaning given in Paragraph 2 (*Development Contracts*) of Part 1: Transferring Items of Schedule 1 (*Development Business*).

“**Development Employees**” has the meaning given in Paragraph 3 (*Development Employees*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Development IP**” has the meaning given in Paragraph 1 of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Development Liabilities**” has the meaning given in Paragraph 4 (*Development Liabilities*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Disagreement Notice**” has the meaning given in Section 2.5(c)(ii).

“**Disclosure Sources**” means (a) the VDR as of 11:59 PM Japan Standard Time on the Business Day before the date of this Agreement, (b) the due diligence report(s) provided by the Seller, its Affiliates or their respective representatives to either Purchaser, its Affiliates or their respective representatives before the date of this Agreement, (c) the written information made available by the Seller, its Affiliates or their respective representatives in response to questions raised by either Purchaser, its Affiliates or their respective representatives between August 16, 2021 and 11:59 PM Japan Standard Time on May 11, 2022 and (d) Schedule 5 (*Disclosure Schedule*).

“**Disclosure Supplement**” has the meaning given in Section 4.7.

“**Disputed Items**” has the meaning given in Section 2.5(c)(ii).

“**DSA**” means a Development Services Agreement substantially in the form of Exhibit F (*Form of Development Services Agreement*).

“**DSA ECL**” means a DSA Equity Commitment Letter substantially in the form of Exhibit G (*Form of DSA Equity Commitment Letter*).

“**Employee Succession Act**” means the Act on the Succession to Labor Contracts on Company Split (Act No. 103 of 2000) and the Law Concerning the Partial Amendment to the Commercial Code (Law No. 90 of 2000).

“**Environmental Claim**” means any action, suit, demand letter, claim, lien, notice of non-compliance, notice of violation, notice of liability or proceeding brought by any Governmental Authority under, or Order relating to, Environmental Law.

“**Environmental Law**” means any Law relating to or imposing liability or standards of conduct with respect to pollution, protection of the environment, wildlife or biological

resources or the Release, cleanup or remediation of, or human exposure to, Hazardous Materials.

“**Excluded Assets**” means the Excluded Development Assets and the Excluded O&M Assets.

“**Excluded Development Assets**” has the meaning given in Paragraph 1 (*Excluded Development Assets*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Excluded Development Contracts**” has the meaning given in Paragraph 2 (*Excluded Development Contracts*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Excluded Development Employees**” has the meaning given in Paragraph 3 (*Excluded Development Employees*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Excluded Development Liabilities**” has the meaning given in Paragraph 4 (*Excluded Development Liabilities*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Excluded O&M Assets**” has the meaning given in Paragraph 1 (*Excluded O&M Assets*) of Part 2: Excluded Items of Schedule 2 (*O&M Business*).

“**Excluded O&M Contracts**” has the meaning given in Paragraph 2 (*Excluded O&M Contracts*) of Part 2: Excluded Items of Schedule 2 (*O&M Business*).

“**Excluded O&M Employees**” has the meaning given in Paragraph 3 (*Excluded O&M Employees*) of Part 2: Excluded Items of Schedule 2 (*O&M Business*).

“**Excluded O&M Liabilities**” has the meaning given in in Paragraph 4 (*Excluded O&M Liabilities*) of Part 2: Excluded Items of Schedule 2 (*O&M Business*).

“**Excluded Liabilities**” means the Excluded Development Liabilities and the Excluded O&M Liabilities.

“**Excluded Warranties**” means the representations and warranties made by the Seller in Sections 6.23 (*Anti-Corruption*) and 6.24 (*Antisocial Forces*).

“**Final Auditor**” has the meaning given in Section 2.6(a)(ii).

“**Final Working Capital Review Period**” has the meaning given in Section 2.5(b).

“**FSI**” means First Solar, Inc.

“**Fundamental Warranties**” means the representations and warranties made by the Seller in Sections 6.1 (*Organization; Power and Authority; Enforceability*), 6.2(a) (*No Conflicts; No Permits*), 6.3 (*Title*), 6.4 (*Corporate Split*) and 6.12 (*Not Insolvent*).

“**Government Official**” means (a) any official, employee or representative of, or any other person acting in an official capacity for or on behalf of (i) any Governmental Authority, including any entity owned or controlled by any Governmental Authority, (ii) any political

party or political candidate or (iii) any public international organization and (b) any candidate for political office or any person acting on his or her behalf.

“**Governmental Authority**” means any government or political subdivision or department thereof, any governmental or regulatory body, commission, board, bureau, agency or instrumentality, or any court, in each case whether supranational, national, federal, state, local or foreign.

“**Hazardous Materials**” means any pollutant or contaminant and any other material, substance or waste that is defined, listed or regulated as “hazardous” or “toxic” (or words of similar meaning or intent) under any applicable Environmental Law, including petroleum or petroleum by-products, asbestos, polychlorinated biphenyls and explosive or radioactive materials.

“**ICC**” means the International Chamber of Commerce.

“**Indemnifying Party**” has the meaning given in Section 9.9(a).

“**Indemnity Claim**” means a Purchaser Indemnity Claim or a Seller Indemnity Claim.

“**Insurer**” means AIG Asia Pacific Insurance Pte. Ltd, as primary insurer, and Liberty Specialty Markets Singapore Pte. Limited (trading as Liberty Global Transaction Services), as excess insurer.

“**Intellectual Property**” means all intellectual property and intellectual property rights of every kind and description, including all:

(a) patents, patent applications and invention disclosures, together with all reissues, divisionals, continuations, continuations-in-part, substitutions, extensions and reexaminations thereof;

(b) trademarks, service marks, trade names, trade dress, logos, internet domain names and other similar designations of source or origin, together with all translations, adaptations, derivations and combinations thereof, together with the goodwill symbolized by any of the foregoing;

(c) copyrights and copyrightable subject matter, moral rights and rights of attribution and integrity;

(d) inventions, trade secrets and other confidential information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, methods, models, methodologies, technical data, designs, drawings and specifications);

(e) rights in computer software, whether in source code, object code or other form, data, databases, algorithms, technology supporting the foregoing and all documentation (including comments, user manuals and training materials) related to any of the foregoing; and

(f) applications, registrations and renewals for the foregoing.

“**Interim Financial Statement Date**” means March 31, 2022.

“**Interim Financial Statements**” means, in respect of:

(a) DevCo, the pro forma unaudited balance sheet for DevCo as of the Interim Financial Statement Date; and

(b) O&MCo, (i) the pro forma unaudited balance sheet for O&MCo as of the Interim Financial Statement Date and (ii) the pro forma unaudited profit and loss statement for O&MCo for the 3-month period ended the Interim Financial Statement Date.

“**Ishikawa Indemnity**” means an Ishikawa Indemnity Agreement substantially in the form of Exhibit B (*Form of Ishikawa Indemnity*).

“**IT Separation Plan**” has the meaning given in Section 4.3(b)(i).

“**Knowledge**” means, with respect to (a) the Seller, the actual knowledge of [***] and [***] and (b) either Purchaser, the actual knowledge of [***], [***], [***] and [***].

“**Kyoto Land SPC**” means FS Japan Project37 GK.

“**Kyoto Land Transfer Agreement**” means a Kyoto Land Transfer Agreement substantially in the form of Exhibit C (*Form of Kyoto Land Transfer Agreement*).

“**Land Companies**” means FS Japan Project 22 GK, FS Japan Project 28 GK, FS Japan Project 29 GK, FS Japan Project 30 GK, FS Japan Project 32 GK, FS Japan Project 33 GK, FS Japan Project 34 GK, FS Japan Project 35 GK, FS Japan Project 36 GK, FS Japan Project 37 GK and FS Japan Project 38 GK.

“**Law**” means any law, treaty, act, statute, ordinance, code, rule, regulation, Order or determination of any Governmental Authority.

“**Liabilities**” means any direct or indirect indebtedness, obligations, damages, claims, losses, charges, actions, suits, proceedings, deficiencies, Taxes, interest, penalties, fines, settlements, judgments, costs and expenses (including attorneys’ fees and expenses, fines, penalties and expenses of investigation) and other liabilities, whether (a) present or future, (b) known or unknown, (c) fixed or contingent or (d) required to be reflected on a balance sheet prepared in accordance with US GAAP or otherwise, and “**Liability**” shall mean any one of them.

“**Lien**” means, with respect to any property of any Person, any mortgage, lien, pledge, charge, lease, easement, security interest, attachment, conditional assignment or transfer or other similar encumbrance or restriction (under Law, Contract, Order or otherwise) with respect to such property of such Person.

“**Losses**” means, collectively, any loss, liability, damage, cost, expense (including reasonable attorneys’ and accountants’ fees and expenses), judgment and amount paid in settlement under any Transaction Document.

“**Material Adverse Effect**” means the result of one or more facts, events, circumstances, conditions, changes or effects that, on a stand-alone or cumulative basis, has or is reasonably expected to have, a material adverse effect on the financial condition or results of operation of the Transferring Business, the NewCos and the MI PSA Transferring Companies, taken as a whole, but excluding:

(a) any effect resulting from (i) (A) the Parties entering into this Agreement or (B) the entry into any other Transaction Document by the parties thereto, (ii) any action taken by (A) a Party in accordance with this Agreement or (B) a party to any other Transaction Document in accordance with such Transaction Document, including in each case the consummation of any action contemplated hereby or thereby or requested or consented to by either Purchaser or (iii) the announcement of the Transaction;

(b) any effect resulting from general changes to the economy in Japan or the global economy as a whole, including changes in general regulatory or political conditions;

(c) any effect resulting from any outbreak of hostility, terrorist activities or war, or any similar event or circumstance;

(d) (i) any outbreak of illness or other public health-related events, including any outbreak or event caused by COVID-19 or (ii) the taking of any COVID-19 Action;

(e) changes in or to, or the promulgation of, any applicable Law (including Tax Law);

(f) any change (or changes taken together) or effect generally affecting (i) the national, regional or local electricity generation, transmission or distribution industry or wholesale or retail markets for electric power in Japan, (ii) the regulation of utilities or of the sales of electric power by or within Japan or (iii) the rules established by any independent system operator or regional transmission organization with jurisdiction over any portion of either Transferring Business;

(g) any change in, or failure of either NewCo to meet, any Projections (it being understood that the underlying facts and circumstances giving rise to such change or failure may, if they are not otherwise excluded from the definition of Material Adverse Effect, be deemed to constitute a Material Adverse Effect and may be taken into account in determining whether a Material Adverse Effect has occurred or will occur);

(h) any change or effect (or changes or effects taken together) which is (or are) cured (including by the payment of money) before the earlier of the Relevant Closing Date and the termination of this Agreement;

(i) any change in accounting principles or procedures or in the application or interpretation thereof;

(j) strikes, work stoppages or other labor disputes;

(k) changes in the costs of commodities, services, equipment, materials or supplies, including fuel and other consumables, or changes in the price of energy, capacity or ancillary services;

(l) any act of god or casualty or condemnation event;

(m) any change, financial or otherwise, to the business, affairs or operation of either Purchaser or any of its Affiliates; or

(n) developments arising from any facts that were expressly disclosed to either Purchaser at least one Business Day before the date of this Agreement,

provided, however, that with respect to sub-clauses (b) to (f), (i) and (k), if such change or effect disproportionately affects either NewCo or either Transferring Business compared to other similarly situated businesses, then, to the extent not otherwise excluded from the definition of Material Adverse Effect, only such incremental disproportionate impact or impacts shall be taken into account in determining whether there has been a Material Adverse Effect.

“**Material Contract**” means, in respect of the Relevant Transferring Business, any Contract to which the Seller is a party and in respect of which breach, non-performance, termination or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**Material Liability**” means, in respect of the Relevant Transferring Business, any Liability of such Relevant Transferring Business which could reasonably be expected to have a Material Adverse Effect.

“**Membership Interest**” has the meaning given in Recital B.

“**MI PSA**” has the meaning given in Recital C.c.

“**MI PSA Transferring Company**” means each “Transferring Company” under the MI PSA.

“**Mizuho Construction Loan Facility**” has the meaning given in Paragraph 2 (*Excluded Development Contracts*) of Part 2: Excluded Items of Schedule 1 (*Development Business*).

“**Module Sales Business**” means the photovoltaic module importation, sales and aftersales service business (including export) conducted by the Seller.

“**NewCo**” has the meaning given in Recital B.

“**Non-Transferring IT Systems**” means any information technology systems, hardware, software or applications that are not the Transferring IT Systems.

“**O&M Assets**” has the meaning given in Paragraph 1 (*O&M Assets*) of Part 1: Transferring Items of Schedule 2 (*O&M Business*).

“**O&M Business**” means the business of providing operation and maintenance services to solar power projects in Japan conducted by the Seller as of the O&MCo Closing Date.

“**O&M Confidential Information**” means any Confidential Information related to the O&M Business or O&MCo.

“**O&M Contracts**” has the meaning given in Paragraph 2 (*O&M Contracts*) of Part 1: Transferring Items of Schedule 2 (*O&M Business*).

“**O&M Employees**” has the meaning given in Paragraph 3 (*O&M Employees*) of Part 1: Transferring Items of Schedule 2 (*O&M Business*).

“**O&M Liabilities**” has the meaning given in Paragraph 4 (*O&M Liabilities*) of Part 1: Transferring Items of Schedule 2 (*O&M Business*).

“**O&MCo**” has the meaning given in Recital B.

“**O&MCo Assignment**” means the sale of all of the Membership Interest in O&MCo by the Seller to the O&MCo Purchaser in accordance with the terms of this Agreement.

“**O&MCo Closing Date**” means the Relevant Closing Date in respect of the O&MCo Assignment.

“**O&MCo Corporate Split**” means the corporate split for the O&M Business on the terms set forth in the O&MCo Corporate Split Plan and this Agreement.

“**O&MCo Corporate Split Plan**” means a corporate split plan in respect of the O&M Business substantially in the form attached as Exhibit A (*Form of Corporate Split Plan*).

“**O&MCo On-sale Consideration**” has the meaning given in Section 2.8(d).

“**O&MCo On-sale Transaction**” means any transaction or series of transactions to transfer, directly or indirectly (whether by way of a sale, transfer, merger, corporate split or otherwise) all or any material portion of the equity interests, business or assets of O&MCo or the O&M Business to any Person other than an Affiliate of the O&MCo Purchaser.

“**O&MCo Outstanding Contract**” means each Contract set forth in Part 2: O&MCo Assignment-related Contracts of Schedule 3 (*Consent Required Contracts*) for which the Seller had not received the required consent referred to in Section 3.3(e)(ii)(A) or (B) as of the O&MCo Closing Date.

“**O&M IP**” has the meaning given in Paragraph 1 (*Excluded O&M Assets*) of Part 2: Excluded Items of Schedule 2 (*O&M Business*).

“**Office Lease**” means the Fixed Term Lease Agreement between the Seller and the Office Lessor dated as of April 11, 2022 in respect of the Office Premises.

“**Office Lease Security Deposit**” has the meaning given in Section 5.6(c).

“**Office Lessor**” means Mitsui Fudosan KK.

“**Office Premises**” means the Seller’s premises at 31st Floor, Kasumigaseki Building, 3-2-5 Kasumigaseki, Chiyoda-ku, Tokyo 100-6031, Japan.

“**Order**” means any judgment, decision, order, writ, charge, injunction, stipulation, ruling, decree, award or similar action of a Governmental Authority.

“**Permit**” means (a) any authorization, consent, approval, license, permit, certification, determination, waiver, exemption, filing (but only in jurisdictions where a filing is the regulatory equivalent of a permit) or variance of, by or with or (b) any registration by or with, in each case, any Governmental Authority.

“**Permitted Lien**” means any Lien (a) arising by operation of Law and in the ordinary course of the business of the relevant Person provided the debt or other obligation it secures

is paid when due or contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of the relevant Person or (b) in the case of either NewCo, arising under the Constituent Documents of such Person.

“**Person**” means any individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, Governmental Authority or other entity.

“**Post-Closing Tax Period**” means any taxable period (or portion thereof) beginning after the Relevant Closing Date.

“**Preliminary Working Capital Statement**” has the meaning given in Section 2.4(a).

“**Proceeding**” means any action, arbitration, claim, demand, dispute, investigation, lawsuit or other proceeding.

“**Projections**” has the meaning given in Section 7.5.

“**Purchase Price**” has the meaning given in Section 2.3.

“**Purchaser Confidential Information**” means any Confidential Information related to either Purchaser or its Affiliates (other than each NewCo and each MI PSA Transferring Company) provided to the Seller, its Affiliates or any of their representatives by either Purchaser, its Affiliates or any of their representatives.

“**Purchaser Indemnified Parties**” has the meaning given in Section 9.4.

“**Purchaser Indemnity Claims**” has the meaning given in Section 9.4.

“**Release**” means any release, discharge, disposal, spill, injection, leak, leaching, pumping, dumping, abandoning, discarding, migrating, escaping, emptying, seeping or emission into the environment.

“**Relevant Assignment**” means the DevCo Assignment and the O&MCo Assignment.

“**Relevant Base Consideration**” means, with respect to (a) the DevCo Assignment, ¥10,000,000 and (b) the O&MCo Assignment, ¥823,000,000.

“**Relevant Closing**” means, with respect to either Relevant Assignment, the closing of such Relevant Assignment under Section 2.2.

“**Relevant Closing Date**” means, with respect to either Relevant Assignment, the date on which the Relevant Closing occurs.

“**Relevant Corporate Split**” means, with respect to (a) the DevCo Assignment, the DevCo Corporate Split and (b) the O&MCo Assignment, the O&MCo Corporate Split.

“**Relevant Corporate Split Plan**” means, with respect to (a) the DevCo Assignment, the DevCo Corporate Split Plan and (b) the O&MCo Assignment, the O&MCo Corporate Split Plan.

“**Relevant Estimated Working Capital**” has the meaning given in Section 2.4.

“**Relevant Estimated Working Capital Adjustment Amount**” means, with respect to either Relevant Assignment, an amount (which, for the avoidance of doubt, may be positive or negative) equal to (a) the Relevant Estimated Working Capital, *less* (b) the Relevant Target Working Capital.

“**Relevant Final Working Capital**” means, with respect to either Relevant Assignment, the Relevant Working Capital as of the Relevant Closing and as agreed to (or deemed to be agreed to) by the Relevant Parties in accordance with Section 2.5(c)(ii), 2.5(d) or 2.6(a)(i) or resulting from the determinations made by the Final Auditor in accordance with Section 2.6(a) (in addition to those items already agreed to (or deemed to be agreed to) by the Relevant Parties).

“**Relevant Final Working Capital Adjustment Amount**” means, with respect to either Relevant Assignment, an amount (which, for the avoidance of doubt, may be positive or negative) equal to (a) the Relevant Final Working Capital, *less* (b) the Relevant Target Working Capital.

“**Relevant Final Working Capital Statement**” has the meaning given in Section 2.5(a).

“**Relevant Interim Period**” means, with respect to either Relevant Assignment, the period between the date of this Agreement and the earlier of (a) the date on which this Agreement is terminated in accordance with its terms and (b) the Relevant Closing Date.

“**Relevant Membership Interest**” means, with respect to (a) the DevCo Assignment, the Membership Interest in DevCo and (b) the O&MCo Assignment, the Membership Interest in O&MCo.

“**Relevant NewCo**” means, with respect to (a) the DevCo Assignment, DevCo and (b) the O&MCo Assignment, O&MCo.

“**Relevant Parties**” means, with respect to (a) the DevCo Assignment, the Seller and the DevCo Purchaser and (b) the O&MCo Assignment, the Seller and the O&MCo Purchaser.

“**Relevant Purchase Price**” has the meaning given in Section 2.3.

“**Relevant Purchaser**” means, with respect to (a) the DevCo Assignment, the DevCo Purchaser and (b) the O&MCo Assignment, the O&MCo Purchaser.

“**Relevant Target Working Capital**” means, with respect to (a) the DevCo Assignment, ¥0 and (b) the O&MCo Assignment, ¥200,000,000.

“**Relevant Transferring Business**” means, with respect to (a) the DevCo Assignment, the Development Business and (b) the O&MCo Assignment, the O&M Business.

“**Relevant Working Capital**” means (a) all Current Assets of the Relevant NewCo, *less* (b) all Current Liabilities of the Relevant NewCo, in each case as of the Relevant Closing Date, all as calculated in accordance with US GAAP, consistently applied, using the same accounting methodologies and practices that were used in the preparation of the relevant Interim Financial Statements.

“**Response Period**” has the meaning given in Section 9.9(c).

“**Retention**” has the meaning given in the W&I Policy, being an amount equal to ¥246,500,000.

“**Reverse TSA**” means a Reverse Transition Services Agreement in respect of transition services to be provided by the DevCo Purchaser and/or its Affiliates in a form reasonably acceptable to the Parties.

“**Seller Bank Account**” means the bank account in the name of [***], with account number [***].

“**Seller Borne Retention**” means the latter half of the Retention, i.e. that part of the Retention in excess of the first 50% of the Retention.

“**Seller Confidential Information**” means any Confidential Information related to the Seller or its Affiliates provided to either Purchaser, its Affiliates or any of their representatives by the Seller, its Affiliates or any of their representatives.

“**Seller Credit Support**” means each credit support agreement set forth in Schedule 4 (*Seller Credit Support*).

“**Seller Indemnified Parties**” has the meaning given in Section 9.5.

“**Seller Indemnity Claims**” has the meaning given in Section 9.5.

“**Seller Marks**” has the meaning given in Section 5.1(a).

“**Tax**” means any national, state, local or foreign tax or other governmental charge, fee, levy or assessment of whatever kind or nature, including (a) all national, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, license, excise, franchise, employment, premium, recording, documentary, transfer, back up withholding, turnover, net asset, capital gains, value added, estimated, ad valorem, payroll and employee withholding, stamp, customs, occupation or similar taxes, and any social charges or contributions together with any interest, additions or penalties with respect to these Taxes and any interest in respect of any additions or penalties and (b) any liability in respect of any items described in clause (a) payable by reason of transferee or successor liability, by contract, assumption or operation of Law.

“**Tax Allocation**” has the meaning given in Section 10.2.

“**Tax Authority**” means any Governmental Authority exercising Tax regulatory authority, including any domestic, foreign, national, state, county, regional or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority.

“**Tax Return**” means any return, report, election or other document (including any related or supporting information) filed or required to be filed with any Tax Authority with respect to Taxes, including information returns, claims for refunds of Taxes, and any amendments or supplements to any of the foregoing.

“**TK PSA**” has the meaning given in Recital C.c.

“**Transaction**” means the purchase and sale of all of the Membership Interests in accordance with Section 2.2.

“**Transaction Documents**” means this Agreement, each Relevant Corporate Split Plan, the Business PSA Guarantee, the Business PSA ECL, the MI PSA, the TK PSA, the Ishikawa Indemnity, the Kyoto Land Transfer Agreement, the TSA, the Reverse TSA and such other agreements and documents contemplated to be entered into by the Seller or its Affiliates (excluding each NewCo) on the one hand, and either Purchaser or its Affiliates (including each NewCo) on the other hand, in connection with the Transaction.

“**Transfer Taxes**” has the meaning given in Section 13.7.

“**Transferring Assets**” means the Development Assets and the O&M Assets.

“**Transferring Business**” means the Development Business and the O&M Business.

“**Transferring Contracts**” means the Development Contracts and the O&M Contracts.

“**Transferring Employees**” means the Development Employees and the O&M Employees.

“**Transferring IT Systems**” means the information technology systems, hardware, software and applications owned by the Seller or any of its Affiliates that are used for the purposes of the Transferring Business as of each Relevant Closing Date and not provided as part of the central IT systems of the Seller’s Affiliates.

“**Transferring Liabilities**” means the Development Liabilities and the O&M Liabilities.

“**Transferring Projects**” means (a) each “Project” as defined in the MI PSA, (b) the solar power project known as the “Suo Project” and (c) each “Project” as defined in the Dream Plus – Framework Cost Reimbursement and Transfer Agreement between the Seller and Firebird Holding Pte. Ltd. dated as of March 28, 2022.

“**TSA**” means a Transition Services Agreement in respect of transition services to be provided by the Seller in a form reasonably acceptable to the Parties.

“**US GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“**VDR**” means the (a) [***] virtual data room hosted by [***] and (b) [***] virtual data room hosted by [***], in each case as of the Business Day prior to the date of this Agreement.

“**W&I Policy**” means the buyer-side warranty and indemnity insurance policies issued or to be issued by the Insurer to Kyoto Solar Plant L.P. as named insured.

“**Warranty Claim**” means any Proceeding by either Purchaser arising out of a breach or inaccuracy of any of the representations and warranties of the Seller set forth in Article 6.

“**Wrong Pocket Asset**” has the meaning given in Section 5.4(c).

“**Wrong Pocket Liability**” has the meaning given in Section 5.4(c).

“**Yen**” or “¥” means Japanese yen.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein:

- (a) references in this Agreement to recitals, articles, sections, schedules and exhibits are to Recitals, Articles, Sections, Schedules and Exhibits of or to this Agreement;
- (b) the words “herein”, “hereof”, “hereunder” and other words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular Section or other subdivision;
- (c) the headings in this Agreement are inserted for convenience only and shall not affect its construction;
- (d) references in this Agreement to any statute or statutory provision include a reference to such statute or statutory provision as from time to time amended, modified, re-enacted, extended, consolidated or replaced (whether before or after the date of this Agreement) and to any subordinate legislation made from time to time under such statute or statutory provision;
- (e) references to this Agreement or to any other document is a reference to such document as varied, amended, modified, novated or supplemented from time to time;
- (f) references in this Agreement to any Person shall include, or be deemed to be references to, its respective successors and permitted assignees or permitted transferees (as may be appropriate);
- (g) references in this Agreement to the word “include” or “including” are to be construed without limitation;
- (h) references in this Agreement to “writing” or “written” include any non-transient means of representing or copying words legibly, including by facsimile or email; and
- (i) if any provision of this Agreement requires a negative number to be (i) added to any number, such number shall be reduced by the absolute value of the negative number or (ii) subtracted from any number, such number shall be increased by the absolute value of the negative number.

This Agreement shall not be construed against any Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision or who supplied the form of this Agreement.

2. CORPORATE SPLITS; PURCHASE AND SALE

2.1 Corporate Splits.

- (a) As soon as reasonably practicable after the date of this Agreement, the Seller shall prepare and execute:

(i) the DevCo Corporate Split Plan for the transfer of the Development Business to DevCo by way of an incorporation-type corporate split (*shinsetsu bunkatsu*); and

(ii) the O&MCo Corporate Split Plan for the transfer of the O&M Business to O&MCo by way of an incorporation-type corporate split (*shinsetsu bunkatsu*).

(b) Between the date of this Agreement and each Relevant Closing Date, the Seller shall at its own cost (except to the extent provided otherwise in this Agreement) take all statutorily-required steps to consummate the Relevant Corporate Split in accordance with the Relevant Corporate Split Plan, including (i) the making of relevant notifications to and consulting with relevant Transferring Employees and (ii) the making of all required filings with Governmental Authorities in connection with the Relevant Corporate Split.

(c) Following each Relevant Corporate Split, the Seller shall execute and deliver to the Relevant NewCo such further instruments as such NewCo or the Relevant Purchaser may reasonably request (i) to effectively convey and transfer all of the relevant Transferring Assets, Transferring Contracts, Transferring Employees and Transferring Liabilities to such NewCo and (ii) subject to the services provided under the TSA, to put such NewCo in operational control of the Relevant Transferring Business.

(d) On or before each Relevant Closing Date, the Seller shall take all statutorily-required steps, and otherwise exercise commercially reasonable efforts to (i) transfer the Development Employees (and only such employees) to DevCo and (ii) transfer the O&M Employees (and only such employees) to O&MCo.

(e) The Seller shall be responsible for resolving any objections raised by its creditors in connection with each Relevant Corporate Split and shall at the Seller's cost (in the case of any Liability that will constitute, or would have constituted, an Excluded Liability) or at the Relevant Transferring Business's cost (in the case of any Liability that will constitute, or would have constituted, a Transferring Liability) pay off in full any such creditors, or perform such other actions permitted by the Companies Act of Japan (Act No. 86 of 2005) to resolve such objections, before the Relevant Closing.

2.2 Purchase and Sale. Subject to the other terms and conditions of this Agreement, and effective (i) as of the occurrence of the actions described in Section 3.4, (ii) immediately after the Relevant Corporate Split becomes effective and (iii) in the case of the DevCo Assignment, simultaneously with the "Closing" under each of the MI PSA and the TK PSA becoming effective:

(a) the Seller hereby sells, conveys, assigns and transfers to the Relevant Purchaser all of the Relevant Membership Interest, free from any Liens (other than Permitted Liens), without any representations and warranties of the Seller other than as provided in Article 6; and

(b) the Relevant Purchaser hereby purchases, receives and acquires all of the Relevant Membership Interest, without any representations and warranties of the Seller other than as provided in Article 6.

2.3 Purchase Price. Subject to Sections 2.4 to 2.8, the consideration for the purchase and sale of each Relevant Transferring Business under Section 2.2 (each, a

“**Relevant Purchase Price**”, and together, the “**Purchase Price**”) shall be an amount equal to the sum of:

- (a) the Relevant Base Consideration; *plus*
- (b) the Relevant Final Working Capital Adjustment Amount; *plus*
- (c) an amount equal to the aggregate amount paid by the Seller to resolve any objections raised by its creditors in connection with any non-current Liability that will constitute, or would have constituted, a relevant Transferring Liability; *plus*
- (d) an amount equal to (i) the aggregate amount of Japan fixed asset Taxes (*kotei shisan zei*), including for the avoidance of doubt any depreciable asset Taxes (*shokiyaku shisan zei*), payable by the Seller with respect to the Transferring Assets of the Relevant Transferring Business with respect to the calendar year in which the Relevant Closing occurs, *multiplied by* (ii) the ratio of the number of days from the Relevant Closing Date through December 31 of such calendar year (inclusive) *divided by* 365 days.

2.4 Preliminary Working Capital Statement.

(a) No later than five Business Days before each Relevant Closing Date, the Seller shall deliver to the Relevant Purchaser a statement (each, a “**Preliminary Working Capital Statement**”) setting forth good faith estimates, with reasonable supporting detail, of the Relevant Working Capital (the “**Relevant Estimated Working Capital**”) as of the Relevant Closing. Each Preliminary Working Capital Statement shall be based upon the books and records of the Seller and prepared in accordance with US GAAP.

(b) The Seller shall consider in good faith any comments made by the Relevant Purchaser to any Preliminary Working Capital Statement, and may re-issue any Preliminary Working Capital Statement before a Relevant Closing to account for such comments.

2.5 Final Working Capital Statement.

(a) Within 60 days from each Relevant Closing Date, the Relevant Purchaser shall deliver to the Seller a statement (each, a “**Relevant Final Working Capital Statement**”) setting forth the Relevant Working Capital as of the Relevant Closing together with its calculation in reasonable detail. Each Relevant Final Working Capital Statement shall be based upon the books and records of the Relevant NewCo and calculated in accordance with US GAAP.

(b) During the period 30 Business Days from the date of the Seller’s receipt of each Relevant Final Working Capital Statement (the “**Final Working Capital Review Period**”), upon the Seller’s reasonable request, the Relevant Purchaser shall authorize and permit the Seller and its representatives to have reasonable access, during normal business hours, to:

(i) any books, records and other relevant information relating to the Relevant NewCo’s operations and finances and the work papers of the Relevant Purchaser and its independent accountants; and

(ii) the officers and other employees of the Relevant Purchaser and its Affiliates including, for the avoidance of doubt, the employees responsible for and knowledgeable about the information used in, and the preparation of, such Relevant Final Working Capital Statement, in each case, to the extent reasonably necessary for the Seller and its representatives to review such Relevant Final Working Capital Statement.

(c) Before the expiration of the Final Working Capital Review Period, the Seller may elect to:

(i) confirm in writing to the Relevant Purchaser that it agrees with the Relevant Working Capital shown in such Relevant Final Working Capital Statement; or

(ii) deliver written notice to the Relevant Purchaser (a “**Disagreement Notice**”) setting out in reasonable detail (A) any item that the Seller wishes to dispute (together, the “**Disputed Items**”), (B) the reasons for the dispute and (C) the Seller’s proposed adjustment to each Disputed Item. For the avoidance of doubt, any amounts not specifically disputed in the Disagreement Notice shall be deemed final and binding upon the Relevant Parties for the purposes of this Agreement upon the delivery of the Disagreement Notice.

(d) If the Seller (i) confirms in writing in accordance with Section 2.5(c)(i) that it agrees with the Relevant Working Capital shown in such Relevant Final Working Capital Statement or (ii) fails to deliver a Disagreement Notice within the Final Working Capital Review Period, the Relevant Working Capital shown in such Relevant Final Working Capital Statement shall be final and binding on the Relevant Parties for the purposes of this Agreement.

2.6 Disputes Regarding a Final Working Capital Statement.

(a) If the Seller delivers a Disagreement Notice to the Relevant Purchaser in respect of the Relevant Final Working Capital Statement within the Final Working Capital Statement Review Period, the Relevant Parties shall resolve the Disputed Items as follows:

(i) The Disputed Items shall be submitted first to the senior management of each Relevant Party for friendly resolution by negotiation for a period of up to 30 days from the date of the Relevant Purchaser’s receipt of the Disagreement Notice.

(ii) If the Relevant Parties fail to agree upon the Disputed Items within the period set forth in Section 2.6(a)(i), either Relevant Party may demand that an internationally recognized accounting firm agreed upon between such Parties (the “**Final Auditor**”) determine, with binding effect on such Parties, how the unresolved Disputed Items shall be settled based upon the books and records of the Relevant NewCo and in accordance with US GAAP.

(iii) The Final Auditor shall act as an expert and not as an arbitrator. The Final Auditor’s activities and jurisdiction shall be limited to the Disputed Items. The Final Auditor shall determine any dispute to the extent relevant to resolving the Disputed Items, which may include any issue involving the interpretation of any provision of this

Agreement or the Final Auditor's terms of reference. The Final Auditor's written decision on the matters shall be final and binding on the Parties in the absence of manifest error or fraud.

(iv) Each Relevant Party shall use its commercially reasonable efforts to cause the Final Auditor to resolve the Disputed Items as promptly as practicable, but in any event within 30 Business Days from the date on which the Final Auditor was appointed.

(v) Each Relevant Party shall authorize and permit the Final Auditor to have reasonable access, during normal business hours and upon reasonable notice, to (A) the properties, books, records and other information relating to the Relevant Transferring Business (in the case of the Seller, to the extent retained) and (B) the officers and other employees of such Party and its Affiliates, in each case, to the extent reasonably necessary or appropriate in connection with the resolution of the Disputed Items.

(b) Each Relevant Party shall bear its own costs in relation to the Final Auditor. The Final Auditor's fees and any costs incurred in arriving at the determination (including any fees and costs of any advisers appointed by the Final Auditor) shall be borne by each Relevant Party in proportion to the final allocation made by the Final Auditor of the Disputed Items weighted in relation to the claims made by each such Party, such that the prevailing party pays the lesser proportion of such fees and costs.

2.7 Final Working Capital Adjustment.

(a) If the Relevant Final Working Capital is less than the Relevant Estimated Working Capital, the Seller shall, within five Business Days after the final determination of such amount, pay to the Relevant Purchaser an amount equal to the shortfall, in cash by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by such Purchaser to the Seller.

(b) If the Relevant Final Working Capital is greater than the Relevant Estimated Working Capital, the Relevant Purchaser shall, within five Business Days after the final determination of such amount, pay to the Seller an amount equal to the excess, in cash by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Seller to such Purchaser.

(c) Unless otherwise required by applicable Law, any payment made in accordance with this Section 2.7 shall be treated as an adjustment to the Purchase Price for applicable Tax purposes.

2.8 O&MCo On-sale Transactions.

(a) Sale Process. By the date [***] months from the O&MCo Closing Date, the O&MCo Purchaser shall, or shall cause its Affiliates to, either:

(i) start and thereafter diligently pursue a process pursuant to which it makes and/or its applicable Affiliates make good faith efforts to sell all or substantially all of the O&M Business to a Person other than an Affiliate of the O&MCo Purchaser on commercially reasonable terms and conditions, including by seeking out and negotiating with multiple prospective bidders; or

(ii) pay [***] to the Seller.

(b) Effect of Exit Payment. The remaining rights and obligations under this Section 2.8 shall expire from the date of the Seller's receipt of the amount referred to in Section 2.8(a)(ii) from the O&MCo Purchaser or its Affiliates.

(c) Notification. If the O&MCo Purchaser or any of its Affiliates enters into any agreement or arrangement (whether binding or not) to complete any O&MCo On-sale Transaction, the O&MCo Purchaser shall notify the Seller in writing within five Business Days from the date of entering into such agreement or arrangement. Such notice shall set forth (i) the O&MCo Purchaser's calculation of the O&MCo On-sale Consideration in respect of such O&MCo On-sale Transaction and (ii) reasonable evidence supporting such calculation.

(d) Consideration. In respect of each O&MCo On-sale Transaction, the "**O&MCo On-sale Consideration**" shall be an amount equal to [***] of:

(i) the aggregate consideration paid or payable to the O&MCo Purchaser or any of its Affiliates in respect of such O&MCo On-sale Transaction, including (A) any deferred consideration and (B) the cash value of any non-cash consideration or other benefit received or receivable by the O&MCo Purchaser or any of its Affiliates that (I) may reasonably be regarded as forming part of the consideration for such O&MCo On-sale Transaction or (II) results from the restructuring of any arrangements between O&MCo and any Affiliate of the O&MCo Purchaser (including the reduction in any fees payable under an O&M Contract with any Affiliate of the O&MCo Purchaser); *less*

(ii) that part of the Relevant Purchase Price paid hereunder attributable to the equity interests, business or assets subject of such O&MCo On-sale Transaction (which shall be the Relevant Purchase Price for the O&M Business in the case where the O&MCo Purchaser sells O&MCo or the entire O&M Business in a single O&MCo On-sale Transaction); *less*

(iii) the transaction costs, fees and expenses reasonably incurred by the O&MCo Purchaser exclusively to complete such O&MCo On-sale Transaction.

provided that if the O&MCo On-sale Consideration is a negative number, the O&MCo On-sale Consideration shall be deemed to be zero.

(e) Payment.

(i) In respect of each O&MCo On-sale Transaction, the O&MCo Purchaser shall pay, or cause the payment of, the O&MCo On-sale Consideration to the Seller within 10 Business Days from the date on which such Purchaser or any of its Affiliates receives any part of the consideration referred to in Section 2.8(d)(i); *provided, however*, that if any of the consideration in respect of such O&MCo On-sale Transaction is payable to such Purchaser or any of its Affiliates on deferred terms, payment of the O&MCo On-sale Consideration will be deferred in the same proportion, and such Purchaser shall pay, or cause the payment of, such deferred part of the O&MCo On-sale Consideration to the Seller within 10 Business Days of the date on which such deferred consideration is paid.

(ii) Each payment referred to in Section 2.8(a)(ii) and (e)(i) shall:

(A) be made by wire transfer of immediately available funds, (I) in the case of Section 2.8(a)(ii), in Japanese Yen or (II) in the case of Section 2.8(e)(i), in the original currency of the consideration referred to in Section 2.8(d)(i) or in Japanese Yen (at the Seller's election), in each case to the bank account designated by the Seller, with any bank charges, fees or expenses in respect of such payment being borne by the payer; and

(B) unless otherwise required by applicable Law, be treated as an adjustment to the Purchase Price for applicable Tax purposes.

(f) Covenants. The O&MCo Purchaser shall, and shall cause each of its Affiliates to:

(i) promptly supply the Seller with such information or evidence as the Seller may reasonably request to calculate or review the O&MCo Purchaser's calculation of any O&MCo On-sale Consideration;

(ii) act in good faith in respect of the O&MCo Purchaser's obligations under this Section 2.8;

(iii) not take any action or do any other thing with the intention of (A) avoiding any of the O&MCo Purchaser's obligations under this Section 2.8 or (B) otherwise reducing the amount of any O&MCo On-sale Consideration that may become payable to the Seller; and

(iv) not enter into or effect any O&MCo On-sale Transaction other than on arm's length terms.

(g) Continued Observance. If the O&MCo Purchaser intends to transfer all or any material portion of the equity interests, business or assets of O&MCo or the O&M Business to any Affiliate at a time when any O&MCo On-sale Consideration may become payable to the Seller, then before such transfer, the O&MCo Purchaser shall, and shall cause such Affiliate to, enter into a written agreement with the Seller, in a form reasonably acceptable to the Seller and the O&MCo Purchaser, under which such Affiliate agrees to the provisions of this Section 2.8 as though such Affiliate was the "O&MCo Purchaser". Notwithstanding the foregoing, the O&MCo Purchaser shall continue to be jointly and severally liable with each such Affiliate in respect of the obligations under this Section 2.8.

(h) Data Delivery. The obligations of the O&MCo Purchaser under Section 5.8 shall cease upon any O&MCo On-sale Transaction, and no purchaser under any O&MCo On-sale Transaction will be required to undertake any of the obligations under Section 5.8.

3. CLOSING

3.1 Closing. Provided that this Agreement is not terminated in accordance with Article 12, each Relevant Closing shall take place on (a) the last Business Day of the month in which all of the conditions to such Relevant Closing (other than those conditions that by their nature are to be satisfied at such Relevant Closing) are satisfied or waived in accordance with this Agreement or (b) such other date as may be mutually agreed by the Relevant Parties.

3.2 Closing Conditions of the Seller. The obligation of the Seller to consummate each Relevant Assignment is subject to the satisfaction at or prior to the Relevant Closing of each of the following conditions, any of which may be waived by the Seller:

(a) **Representations and Warranties of the Relevant Purchaser.** (i) The representations and warranties made by the Relevant Purchaser set forth in Sections 8.1 (*Organization; Power and Authority; Enforceability*), 8.2(a) (*No Conflicts; No Permits*), 8.5 (*Not Insolvent*), 8.6 (*Brokers and Other Advisors*) and 8.8 (*Antisocial Forces*) shall be true and correct in all but minimal respects and (ii) the other representations and warranties made by the Relevant Purchaser set forth in Article 8 shall be true and correct in all material respects, in each case (i) and (ii) as of the Relevant Closing Date.

(b) **Obligations of the Relevant Purchaser.** The Relevant Purchaser shall have performed or observed, in all material respects, all of its obligations that are to be performed or observed under this Agreement by the Relevant Closing Date.

(c) **FEFTA Clearance.** The relevant Governmental Authorities shall have granted their clearance in respect of the pre-closing notification made pursuant to the regulations of inward direct investment under the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) in relation to the Transaction, if applicable.

(d) **No Adverse Order.** There shall not have been any Proceedings instituted or Order issued by any Governmental Authority or any change in Law that has the effect of making the Relevant Closing illegal or otherwise restrains in any material respect, prohibits or invalidates the Relevant Closing by either Relevant Party.

(e) **Seller Credit Support.** In respect of the O&MCo Assignment only, the Seller and its Affiliates shall have received (effective as of the Relevant Closing Date) a full release from each counterparty to the Seller Credit Support and/or beneficiary thereof in form and substance reasonably satisfactory to the Seller (but with no amendment, waiver or modification of the related Contracts to which such Seller Credit Support relate without the prior written consent of the O&MCo Purchaser to the extent required by Section 4.1(a)(ii)).

(f) **Reverse TSA.** The Reverse TSA shall have been entered into between the DevCo Purchaser and the Seller.

(g) **DSAs.** In respect of the DevCo Assignment only:

(i) each of FS Japan Project4 GK, FS Japan Project1 GK, FS Japan Project27 GK, FS Japan Project 6 GK and FS Japan Project26 GK shall have entered into a separate DSA with the Seller, dated as of the DevCo Closing Date; and

(ii) the DevCo Purchaser shall have delivered to the Seller, at such Purchaser's cost, a letter or letters of credit sufficient to cover the amounts (including any interest) payable by each of FS Japan Project4 GK, FS Japan Project1 GK and FS Japan Project27 GK under the respective DSA, in each case from a financial institution and in form and substance reasonably satisfactory to the Seller (but in any case first demand and unconditional).

(h) DSA ECLs. In respect of the DevCo Assignment only, the DevCo Purchaser shall have delivered to the Seller a DSA ECL to each of FS Japan Project6 GK and FS Japan Project26 GK, duly executed by SCREP VII, L.P. and dated as of the Closing Date.

(i) Run-Off Insurance. The Relevant Purchaser shall have delivered to the Seller copies of documents evidencing that such Purchaser has obtained, at such Purchaser's cost, a non-cancelable run-off insurance policy:

(i) to provide insurance coverage for six years from the Relevant Closing Date for events, acts or omissions relating to the Relevant Transferring Business occurring on or prior to the Relevant Closing Date for all individuals who were directors, managers or officers of the Seller on or prior to the Relevant Closing Date; and

(ii) which contains terms and conditions no less favorable to the insured individuals than the directors', managers' or officers' liability coverage maintained by the Seller as of the date of this Agreement.

(j) Delivery of Approval Documents. The following documents shall have been delivered by the Relevant Purchaser to the Seller:

(i) copies of the documents evidencing the approval of the execution and performance of this Agreement by the decision making body of the Relevant Purchaser; and

(ii) a certificate by an authorized officer of the Relevant Purchaser substantially in the form of Exhibit D (*Form of Closing Certificate*), dated as of the Relevant Closing Date.

3.3 Closing Conditions of each Purchaser. The obligation of each Purchaser to consummate the Relevant Assignment is subject to the satisfaction at or prior to the Relevant Closing of each of the following conditions, any of which may be waived by such Purchaser:

(a) Representations and Warranties of the Seller. (i) The representations and warranties made by the Seller in connection with the Relevant Assignment set forth in Sections 6.1 (Organization; Power and Authority; Enforceability), 6.2(a) (*No Conflicts; No Permits*), 6.3 (*Title*), 6.4 (*Corporate Split*), 6.12 (*Not Insolvent*), 6.22 (*Brokers and Other Advisors*) and 6.24 (*Antisocial Forces*) shall be true and correct in all but minimal respects and (ii) the other representations and warranties made by the Seller in connection with the Relevant Assignment set forth in Article 6 shall be true and correct except where the failure to be true and correct would not reasonably be expected to have a Material Adverse Effect, in each case (i) and (ii) as of the Relevant Closing Date (except to the extent any such representation and warranty is expressly related to any particular earlier date, in which case as of such date).

(b) Obligations of the Seller. The Seller shall have performed or observed, in all material respects, all of its obligations that are to be performed or observed under this Agreement in connection with the Relevant Assignment by the Relevant Closing Date.

(c) EEFTA Clearance. The relevant Governmental Authorities shall have granted their clearance in respect of the pre-closing notification made pursuant to the

regulations of inward direct investment under the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) in relation to the Transaction.

(d) No Adverse Order. There shall not have been any Proceedings instituted or Order issued by any Governmental Authority or any change in Law that has the effect of making the Relevant Closing illegal or otherwise restrains in any material respect, prohibits or invalidates the Relevant Closing by either Relevant Party.

(e) Third Party Consents.

(i) In respect of the DevCo Assignment only, the Seller shall have received written consent from the relevant counterparties to each Contract set forth in Part 1: DevCo Assignment-related Contracts of Schedule 3 (*Consent Required Contracts*) required in connection with (i) the transfer of such Contract to DevCo upon the Relevant Corporate Split taking effect and/or (ii) the change of control of DevCo upon the Relevant Closing, in each case in form and substance reasonably satisfactory to the DevCo Purchaser.

(ii) In respect of the O&MCo Assignment only, the Seller shall have received written consent from the relevant counterparties to such number of Contracts set forth in Part 2: O&MCo Assignment-related Contracts of Schedule 3 (*Consent Required Contracts*) that account for at least 75% of the revenue attributed to all of the Contracts set forth in such Schedule in the relevant Interim Financial Statements required in connection with:

- (A) the transfer of such Contracts to O&MCo upon the Relevant Corporate Split taking effect;
- (B) the change of control of O&MCo upon the Relevant Closing; and/or
- (C) the subcontracting of such Contracts to O&MCo upon the Relevant Corporate Split or Relevant Closing,

in each case in form and substance reasonably satisfactory to the O&MCo Purchaser.

(f) Kyoto Land Transfer Agreement. In respect of the DevCo Assignment only, the Seller shall have delivered to the DevCo Purchaser the Kyoto Land Transfer Agreement duly executed by the Kyoto Land SPC.

(g) TSA. The TSA shall have been entered into between the Seller and the DevCo Purchaser.

(h) DSAs. In respect of the DevCo Assignment only, each of FS Japan Project4 GK, FS Japan Project1 GK, FS Japan Project27 GK, FS Japan Project 6 GK and FS Japan Project26 GK shall have entered into a separate DSA with the Seller, dated as of the DevCo Closing Date.

(i) Corporate Split. The Relevant Corporate Split shall have taken effect on the terms and conditions set forth in the Relevant Corporate Split Plan.

(j) DevCo Closing. In the case of the O&MCo Assignment only, the DevCo Closing (i) will occur simultaneously with the Relevant Closing of the O&MCo Assignment or (ii) shall have occurred.

(k) Ishikawa Indemnity. In the case of the O&MCo Assignment only, the Seller shall have delivered to the O&MCo Purchaser the Ishikawa Indemnity duly executed by FSI.

(l) Delivery of Documents. The following documents shall have been delivered by the Seller to the Relevant Purchaser:

- (i) copies of the documents evidencing the approval of the execution and performance of this Agreement by the decision making body of the Seller;
- (ii) a certificate by an authorized officer of the Seller substantially in the form of Exhibit D (*Form of Closing Certificate*), dated as of the Relevant Closing Date;
- (iii) the Relevant Corporate Split Plan duly executed by the Seller;
- (iv) an application for commercial registration of the incorporation of the Relevant NewCo in accordance with the Relevant Corporate Split, duly stamped by the legal affairs bureau; and
- (v) a written consent in respect of the Relevant NewCo substantially in the form of Exhibit E (*Form of Seller Consent*), duly stamped by the Seller;
- (vi) a seal certificate of the Seller issued within three months prior to the Relevant Closing Date; and
- (vii) all documents effecting the resignation as of the Relevant Closing Date of the representative member and executive officer of the Relevant NewCo.

3.4 Deliveries and Closing Actions. On each Relevant Closing Date, upon satisfaction of the conditions in respect of the Relevant Assignment set forth in Sections 3.2 and 3.3:

(a) if the Relevant Purchase Price, calculated with reference to the Relevant Estimated Working Capital Adjustment Amount instead of the Relevant Final Working Capital Adjustment Amount, is:

(i) a positive number, the Relevant Purchaser shall pay such amount by wire transfer of immediately available funds, in Japanese Yen, to the Seller Bank Account, with any bank charges, fees or expenses in respect of such payment being borne by such Purchaser; or

(ii) a negative number, the Seller shall pay such amount by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Relevant Purchaser to the Seller, with any bank charges, fees or expenses in respect of such payment being borne by the Seller; and

(b) the Seller shall deliver to the Relevant Purchaser the documents referred to in Section 3.3(l) to the extent such documents have not already been delivered to such Purchaser.

All of the actions to be taken and documents to be executed and delivered at the Relevant Closing (as provided in this Section 3.4) shall be deemed to be taken, executed and delivered simultaneously, and no such action, execution or delivery will be effective until all are complete.

4. PRE-CLOSING COVENANTS

4.1 Conduct of Business.

(a) Subject to Section 4.1(b), and except (x) as otherwise contemplated by this Agreement or (y) as otherwise consented to or approved in advance in writing by the Relevant Purchaser (which consent or approval shall not be unreasonably withheld, conditioned or delayed), during each Relevant Interim Period, the Seller shall:

(i) conduct the Relevant Transferring Business in the ordinary course of business;

(ii) not (A) amend, revise or change in any material respect, (B) waive any material right under or (C) terminate, in each case any Material Contract;

(iii) perform and observe its obligations to be performed and observed under each Material Contract in all material respects;

(iv) to the extent related to the Relevant Transferring Business and the Relevant NewCo, not change, in any material respect, its Tax practices or policies (including making, rescinding or modifying any Tax election, changing any method of accounting or taxable period, settling any Tax controversy, requesting any Tax ruling or incentive, surrendering any right to claim a Tax refund, offset or other reduction in Tax liability, or amending any Tax Return), in each case except (A) as required by applicable Law or US GAAP, (B) in the ordinary course of business consistent with past practice or (C) to make an election to treat the Relevant NewCo as disregarded as a separate entity from its owner for US federal income Tax purposes;

(v) not amend, waive, modify or alter, or make any material determination under, the Relevant Corporate Split Plan; and

(vi) not hire any new employees for the Relevant Transferring Business or materially change or alter the terms of employment of any employee of the Relevant Transferring Business.

(b) The Seller shall not be in breach of Section 4.1(a) if it:

(i) complies with or performs any obligation under any Contract or arrangement entered into by the Seller either (A) before the date of this Agreement, provided that such Contract or arrangement was fairly disclosed to the Relevant Purchaser in any of the Disclosure Sources or (B) during the Relevant Interim Period, provided that such Contract or arrangement was approved by the Relevant Purchaser;

utility;

(ii) takes any action reasonably necessary to comply with (A) applicable Law or (B) any request of a Governmental Authority or

(iii) takes any action reasonably necessary under circumstances that are reasonably likely to (A) endanger the safety of individuals or (B) pose an immediate threat of material damage to any material assets or properties, provided that the Relevant Purchaser is notified as soon thereafter as practicable; or

(iv) takes any action reasonably necessary to give effect to or comply with the terms of the Transaction Documents, which shall include incurring any costs or fees in connection with the consummation of the Transaction.

(c) For the avoidance of doubt, no action taken by the Seller in accordance with Section 4.1(b) shall constitute a waiver of any of the representations or warranties of the Seller in Article 6, nor a waiver of the conditions set forth in Section 3.3.

4.2 Efforts to Close.

(a) Efforts to Consummate. Each Party shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate each Relevant Closing and, in the case of the Seller, each Relevant Corporate Split.

(b) Efforts to Comply. If any objections are asserted with respect to either Relevant Assignment under any Law or if any suit is instituted (or threatened to be instituted) by any Governmental Authority or other Person challenging either Relevant Closing as a violation of any Law or that would otherwise prohibit or materially impair or materially delay either Relevant Closing, each Relevant Party shall use its commercially reasonable efforts to resolve any such objections or suits so as to permit such Relevant Closing without material modification to the terms of this Agreement.

4.3 IT Separation.

(a) IT Separation Objectives. The Parties acknowledge and agree that they intend to achieve the timely and effective separation of the Transferring Business from the Seller and its Affiliates, such that:

(i) each Purchaser and each NewCo may carry on the Relevant Transferring Business on an independent and stand-alone basis from the Relevant Closing Date;

(ii) the relevant Transferring IT Systems can be (A) effectively separated from the Non-Transferring IT Systems of the Seller and its Affiliates without causing disruption to the operation of such Non-Transferring IT Systems and (B) integrated into each Purchaser's and its Affiliates' IT systems with effect from the Relevant Closing Date, other than in respect of Transferring IT Systems that the Seller will grant such Purchaser access to under the TSA; and

(iii) each Purchaser will be responsible for timely setting up any Non-Transferring IT Systems that it requires and will not require any transitional services from the Seller or any of its Affiliates from the Relevant Closing Date other than the services set out in the TSA.

(b) IT Separation Plan.

(i) As soon as reasonably practicable (and in any case no later than 20 Business Days) after the date of this Agreement, the Parties shall agree a written plan (the “**IT Separation Plan**”) that details the individual items and activities to be carried out, and respective responsibilities of the Parties, in connection with achieving the objectives set forth in Section 4.3(a) as from the date of the IT Separation Plan.

(ii) Following finalization of the IT Separation Plan, each Party shall use its commercially reasonable efforts to implement the IT Separation Plan by each Relevant Closing Date.

4.4 No Other Contact. Neither Purchaser shall, and each Purchaser shall cause that its Affiliates and its and its Affiliates’ respective representatives do not, contact or correspond with any manager, employee, supplier, contractor, vendor or other Person associated with the Seller, its Affiliates or the Transferring Business with respect to the Transferring Business in respect of which the Relevant Closing has not occurred, except (a) with the prior written consent of the Seller, such consent not to be unreasonably withheld or delayed or (b) in the circumstances set forth in Sections 4.5 or 4.6.

4.5 Employee Matters. The Parties shall reasonably cooperate to satisfy all appropriate requirements and procedures in connection with any employee information and consultation processes required by applicable Law or the practices of the Seller or its Affiliates in connection with the Transaction, including the making of relevant notices to and consulting with the employees of the Seller as required under the Employee Succession Act.

4.6 Development Business Continuing Due Diligence. During the Relevant Interim Period in respect of the DevCo Assignment, the Seller shall continue to (a) afford the DevCo Purchaser and its authorized representatives (including independent public accountants and attorneys) reasonable access to the employees and business and financial records of the Seller with respect to the Development Business and (b) furnish to the DevCo Purchaser and its authorized representatives (including independent public accountants and attorneys) such additional information concerning the assets, properties and operations of the Development Business, in both cases as reasonably necessary for the DevCo Purchaser to conduct financial due diligence of the Development Business for the purposes of satisfying the conditional exclusion of the Development Business Interim Financial Statements as set forth in the W&I Policy.

4.7 Disclosure Supplements. The Seller may from time to time during each Relevant Interim Period, but in no event later than the fifth Business Day before either Relevant Closing Date, notify the Relevant Purchaser in writing of the existence or happening of any fact, event or occurrence that has occurred after the date of this Agreement and that should be included as an exception to a representation and warranty made by the Seller under Article 6 to make such representation and warranty true and correct as of such Relevant Closing Date (each such written disclosure, a “**Disclosure Supplement**”). With respect to the matters disclosed in any such Disclosure Supplement:

(a) if the Purchasers have the right to, but elect not to, terminate this Agreement with respect to any fact, event or occurrence set forth in a Disclosure Supplement in accordance with Section 12.1(d) or (e), in each case within five Business Days of the Relevant Purchaser’s receipt of such Disclosure Supplement, then the Purchasers shall be

deemed to have waived their right to so terminate this Agreement with respect to the facts, events and occurrences set forth in such Disclosure Supplement;

(b) no fact, event or occurrence set forth in such Disclosure Supplement shall be given any effect for purposes of determining whether the Relevant Purchaser is entitled to indemnification under Article 9 from the Relevant Closing Date; and

(c) any fact, event or occurrence set forth in such Disclosure Supplement shall be treated as an exception to the representations and warranties made by the Seller under Article 6 solely for the purposes of determining whether the conditions set forth in Section 3.3(a) have been satisfied, unless such fact, event or circumstance (i) would, together with all related matters disclosed in a Disclosure Supplement, reasonably be expected to have a Material Adverse Effect or (ii) constitutes a material breach of any of the Fundamental Warranties.

4.8 Notification of Relevant Circumstances. In the event that, at any time during either Relevant Interim Period, the Seller recognizes any (a) material non-performance of its obligations under this Agreement, (b) event or circumstance that makes it impossible to satisfy the conditions set forth in Section 3.3 or (c) event or circumstance that is reasonably expected to cause the foregoing to occur, the Seller shall immediately notify the Relevant Purchaser in writing to such effect and of the details of the same.

4.9 Insurance. Each Purchaser acknowledges and agrees that:

(a) upon the Relevant Closing, all insurance cover provided in relation to the Relevant Transferring Business under the global and/or group insurance policies taken out and maintained by or on behalf of the Seller and its Affiliates will cease to cover such Relevant Transferring Business in respect of the period from the Relevant Closing Date; and

(b) such Purchaser shall have sole responsibility for procuring any insurance in relation to the Relevant Transferring Business in respect of the period from each Relevant Closing Date.

4.10 Office Lease.

(a) No Transfer. The Parties acknowledge that (i) the Office Lease will not transfer to either NewCo under either Relevant Corporate Split and (ii) the Seller will continue to be the tenant under the Office Lease immediately after the DevCo Closing.

(b) Replacement Arrangements. As soon as reasonably practicable after the date of this Agreement, the Parties shall cooperate in good faith and use commercially reasonable efforts to:

(i) enter into or cause the entry into of arrangements (which may be in the form of a sublease or co-occupation agreement) to facilitate the continued use of the Office Premises by each of the Seller, DevCo and O&MCo for such part of the Transferring Business carried on by such Person on or at any time after the DevCo Closing Date; and

(ii) terminate the Office Lease and enter into a new office lease for the Office Premises by and between the Office Lessor and DevCo (on substantially the same terms and conditions as those of the Office Lease) as soon as reasonably practicable after the DevCo Closing Date.

5. POST-CLOSING COVENANTS

5.1 Seller Marks.

(a) Subject to Section 5.1(b), from each Relevant Closing, the Relevant Purchaser shall not, and shall cause the Relevant NewCo not to, use, distribute, display or market any article or instrument of any kind, including signs, invoices, labels, letterheads, business cards, packaging, advertisements or websites, that reflects or includes any logo, trademark, trade name, trade dress, service mark, domain name or website that is confusingly similar to or containing any name, mark or logo of the Seller or its Affiliates (the “**Seller Marks**”). As soon as reasonably practicable after each Relevant Closing Date, the Relevant Purchaser shall return or destroy (as instructed by the Seller) any such articles or instruments in the possession of the Relevant Purchaser or any of its Affiliates.

(b) Notwithstanding Section 5.1(a), the Relevant Purchaser and its Affiliates may use any tangible materials in the possession of the Relevant Purchaser or any of its Affiliates and containing any Seller Mark solely for internal purposes and in a manner consistent with past practice, provided that the Relevant Purchaser shall cause the Relevant NewCo to cease all such use as soon as reasonably practicable after (and in any case no later than the first anniversary of) the Relevant Closing Date.

(c) Neither Purchaser nor any of its Affiliates shall advertise or hold itself out as the Seller or an Affiliate of the Seller.

5.2 Treatment of Transferring Employees.

(a) Each Purchaser shall, and shall cause the Relevant NewCo to:

(i) until the date 24 months from the Relevant Closing Date, maintain (A) the employment terms and conditions of each Transferring Employee at a level that is substantially the same or better as the terms and conditions and (B) the other employee benefits of each Transferring Employee at a level that is substantially comparable to the benefits, in each case of such Transferring Employee in effect immediately before the Relevant Closing (excluding the FSI equity incentive plan); and

(ii) recognize and credit each Transferring Employee with any accrued but unused vacation, sick or personal leave recorded on the books of the Seller as of the Relevant Closing Date.

(b) The Seller shall, and shall cause its Affiliates to, provide all necessary assistance reasonably requested by either Purchaser to such Purchaser and the Relevant NewCo with respect to the transfer of the relevant Transferring Employees to the Relevant NewCo, including by providing the relevant services set forth in the TSA.

5.3 Access to Records.

(a) The Seller shall (i) retain all records and documents relating to either Transferring Business that have not been transferred to the Relevant Purchaser at the Relevant Closing for at least six years from the Relevant Closing Date (or such longer time as may be required by applicable Law) and (ii) make such records and documents available to the Relevant Purchaser and its representatives for inspection and copying, at such Purchaser’s cost, upon reasonable request.

(b) Each Purchaser shall (i) retain all records and documents relating to the Relevant Transferring Business that have transferred to such Purchaser at the Relevant Closing for at least six years from the Relevant Closing Date (or such longer time as may be required by applicable Law) and (ii) make such records and documents available to the Seller and its representatives for inspection and copying, at the Seller's cost, upon reasonable request in connection with (A) the preparation of any Tax Return or accounting records, (B) any audits or similar proceedings, (C) any third party Proceeding relating to the Transferring Business or the Seller, (D) the making of any filing with any Governmental Authority, (E) compliance with this Agreement or (F) compliance with applicable Law.

5.4 Wrong Pockets.

(a) If, after either Relevant Closing, notwithstanding either Relevant Corporate Split, either:

(i) the Seller (A) receives any payment that should properly have been paid to a NewCo or (B) makes any payment that should properly have been paid by a NewCo; or

(ii) a NewCo (A) receives any payment that should properly have been paid to the Seller or (B) makes any payment that should properly have been paid by the Seller,

the Seller or the Relevant Purchaser (as the case may be) shall promptly notify the other Relevant Party in writing, together with reasonable documentation in respect of such payment.

(b) Within 10 Business Days from the end of each calendar month, the Relevant Parties shall consult in good faith in respect of the payments notified in accordance with Section 5.4(a) during such calendar month to calculate the amounts, having made all appropriate set-offs, that should be paid by each such Party and/or a NewCo to the other Relevant Party and/or a NewCo to ensure that neither Relevant Party nor its Affiliates (taken together) benefits or suffers in respect of payments that should properly have been paid to or by the other Relevant Party or a NewCo. Within 10 Business Days from the date on which the Relevant Parties agree upon the amounts that should be so paid, each such Party shall pay, or cause the payment of, the amounts payable by such Party and/or a NewCo to the other Relevant Party or as the other Relevant Party may direct.

(c) If, within 18 months from either Relevant Closing Date, either Relevant Party identifies any asset or liability held by (i) the Seller or its Affiliates that should have transferred to the Relevant NewCo as part of the Relevant Transferring Business at the Relevant Closing in accordance with the terms of this Agreement or (ii) the Relevant NewCo that should have been retained by the Seller or its Affiliates in accordance with the terms of this Agreement (in each case, a "**Wrong Pocket Asset**" or "**Wrong Pocket Liability**" (as the case may be)), such Party shall promptly notify the other in writing.

(d) As soon as reasonably practicable after the receipt of the notice referred to in Section 5.4(c):

(i) in the case of a Wrong Pocket Asset, the Relevant Party that holds or whose Affiliate holds the relevant Wrong Pocket Asset shall transfer or cause the

transfer of such Wrong Pocket Asset to the other Relevant Party or as such Party may direct, and the other Relevant Party shall accept or cause the acceptance of such transfer, in each case, subject to Section 5.4(e), for no additional consideration; or

(ii) in the case of a Wrong Pocket Liability, the Relevant Parties shall cooperate in good faith and exercise commercially reasonable efforts to obtain all consents and approvals required for the transfer of such Wrong Pocket Liability to the Person (being a NewCo, the Seller or an Affiliate of the Seller) that should properly hold such Wrong Pocket Liability. As soon as reasonably practicable after such consents and approvals have been obtained, the Relevant Party that holds or whose Affiliate holds the relevant Wrong Pocket Liability shall transfer or cause the transfer of such Wrong Pocket Liability to the relevant Person, and the other Relevant Party shall accept or cause the acceptance of such transfer, in each case, subject to Section 5.4(e), for no additional consideration.

(e) If any Wrong Pocket Asset or Wrong Pocket Liability was taken into account to calculate a Relevant Estimated Working Capital Adjustment Amount or a Relevant Final Working Capital Adjustment Amount, the Relevant Parties shall consult in good faith to calculate the amounts, having made all appropriate set-offs, that should be paid by each Relevant Party to the other Relevant Party to ensure that neither such Party benefits or suffers in respect of the Relevant Purchase Price that should be, or should have been, paid to or by such Party. Within 10 Business Days from the date on which the Relevant Parties agree upon the amounts that should be so paid, each such Party shall pay the amounts payable by such Party to the other Relevant Party. For the avoidance of doubt, if any amounts are so paid in accordance with this Section 5.4(e) before the calculation of the Relevant Final Working Capital Adjustment Amount, the Relevant Parties shall take such payments into account to calculate the Relevant Final Working Capital Adjustment Amount to ensure that neither such Party benefits or suffers in respect of the Relevant Purchase Price that should be paid to or by such Party.

(f) None of the foregoing Sections 5.4(a) to (e) shall prejudice the rights of either Purchaser or the Seller under Section 9.4(b) or 9.5(b) except to the extent that the Losses incurred by such Party have been reduced.

5.5 O&MCo Outstanding Contracts.

(a) The Seller shall use its commercially reasonable efforts to procure the written consent from the relevant counterparties to each O&MCo Outstanding Contract required in connection with the O&MCo Corporate Split and/or the O&MCo Assignment, in each case in form and substance reasonably satisfactory to the O&MCo Purchaser. The O&MCo Purchaser shall reasonably cooperate with the Seller to procure such consent.

(b) The Seller shall retain each O&MCo Outstanding Contract and its rights, Liabilities and obligations thereunder until the consent referred to in Section 5.5(a) has been procured. As soon as reasonably practicable after such consent has been procured in respect of any O&MCo Outstanding Contract, the Seller shall convey, assign and transfer, and the O&MCo Purchaser shall cause that O&MCo assumes all of the rights, Liabilities and obligations of the Seller under, such Contract.

(c) Until each O&MCo Outstanding Contract has been transferred to O&MCo in accordance with Section 5.5(b), as between themselves, the Seller and the

O&MCo Purchaser shall treat each such Contract as having been transferred to O&MCo on the O&MCo Closing Date, such that in respect of each such Contract:

- (i) the O&MCo Purchaser shall cause O&MCo to perform the Seller's obligations under such Contract as the Seller's subcontractor or otherwise in accordance with the Reverse TSA;
 - (ii) the O&MCo Purchaser shall cause O&MCo to indemnify the Seller against any Losses incurred by the Seller arising from such Contract after the O&MCo Closing Date except to the extent that such Losses arose from the gross negligence or willful misconduct of the Seller;
 - (iii) the Seller shall pay O&MCo the full amount of all payments received by the Seller with respect to such Contract as a subcontracting fee; and
 - (iv) the Seller shall follow O&MCo's instructions regarding the exercise of any rights under such Contract, including the termination of any such Contract.
- (d) In the event that the O&MCo Purchaser completes any O&MCo On-sale Transaction, the Seller shall enter into an agreement with the counterparty to such transaction under which the Seller and such counterparty will agree to take all actions with respect to any O&MCo Outstanding Contract included in such O&MCo On-Sale Transaction on the terms set forth in this Section 5.5.

5.6 Office Lease.

(a) Compliance with Terms and Conditions of Office Lease.

(i) From the DevCo Closing Date and until the Office Lease is terminated, the DevCo Purchaser shall cause DevCo to comply with the terms and conditions of (A) the Office Lease as though it was the tenant thereunder and (B) such other arrangements entered into in connection with DevCo in accordance with Section 4.10(b)(i).

(ii) From the O&MCo Closing Date and until the Office Lease is terminated, the O&MCo Purchaser shall cause O&MCo to comply with terms and conditions of (A) the Office Lease as though it was the tenant thereunder and (B) such other arrangements entered into in connection with O&MCo in accordance with Section 4.10(b)(i).

(b) **Reimbursement of Rent and Other Amounts.** The DevCo Purchaser shall cause DevCo to pay to the Seller a pro rata portion of the rent and other amounts payable under the Office Lease with respect to the use of the Office Premises by DevCo during the period between the DevCo Closing Date and the date on which the Office Lease is terminated. The O&MCo Purchaser shall cause O&MCo to pay to the Seller a pro rata portion of the rent and other amounts payable under the Office Lease with respect to the use of the Office Premises by O&MCo during the period (if any) between the O&MCo Closing Date and the date on which the Office Lease is terminated.

(c) **Reimbursement of Security Deposit.** If the Office Lease has not been terminated within two months from the DevCo Closing Date, the DevCo Purchaser shall, within 10 Business Days after written request therefor from the Seller, pay (or cause to be paid) to the Seller an amount equal to the security deposit (*shikikin*) held by the Office Lessor in connection with the Office Lease at that time (the "**Office Lease Security Deposit**"). In

the event of such a payment, the Seller shall use commercially reasonable efforts to secure the return of the Office Lease Security Deposit as and to the extent it becomes available for return to the Seller, and shall pay any such amount so returned to the DevCo Purchaser (or its designee) within 10 Business Days after the Seller's receipt of any such amount; *provided, however*, that if such amount returned to the Seller is reduced due to a fact attributable to the Seller, the Seller shall pay such amount returned to the Seller together with an amount equal to such reduction.

5.7 Kyoto Land Exchange Agreement

(a) The Parties acknowledge that certain additional land parcels are expected to be transferred to the Kyoto Land SPC under a land exchange agreement among MinamiYamashiro Village, the Kyoto Land SPC and FS Japan Project6 GK.

(b) If the agreement referred to in Section 5.7(a) has not been entered into, or the exchange contemplated thereunder has not been completed, by the DevCo Closing Date, the Seller shall cause the Kyoto Land SPC to:

(i) cooperate in good faith with the DevCo Purchaser and its Affiliates to cause the entry into such agreement and/or the completion of the exchange contemplated thereunder as soon as reasonably practicable after the DevCo Closing Date; and

(ii) comply with any obligation to transfer "Additional Land" under the Kyoto Land Transfer Agreement.

(c) If the agreement referred to in Section 5.7(a) has not been entered into, or the exchange contemplated thereunder has not been completed, by December 31, 2022, the Seller shall, at the option of the DevCo Purchaser, sell, convey, assign and transfer to the DevCo Purchaser or its designee all of the membership interests in the Kyoto Land SPC free and clear of all liens for the price of ¥1.

5.8 Delivery of Data. After the O&MCo Closing Date and prior to any O&MCo On-sale Transaction, the O&MCo Purchaser shall, upon the Seller's request, cause O&MCo to deliver to the Seller any meteorological and other data produced from each facility in respect of which O&MCo provides services under an O&M Contract to the extent permissible under such O&M Contract and applicable Law.

5.9 Further Assurances. Each Relevant Party agrees that from time to time after each Relevant Closing Date and at the written request of the other Relevant Party, it shall execute and deliver such further instruments, and take such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement with respect to the Relevant Closing.

6. REPRESENTATIONS AND WARRANTIES OF THE SELLER

Subject to Section 4.7, Article 7 and the exceptions and qualifications set forth in Schedule 5 (*Disclosure Schedule*), the Seller represents and warrants to the Relevant Purchaser as of the date of this Agreement and as of the Relevant Closing Date (except for those representations and warranties expressly made as of a certain date, in which case, as of such date), in connection with each Relevant Assignment separately from the other Relevant Assignment, as follows:

6.1 **Organization; Power and Authority; Enforceability.** The Seller (a) is a *godo kaisha* duly established and validly existing under the laws of Japan, (b) has full power and authority to execute and deliver the Transaction Documents to which it is or is intended to be a party and to perform all its obligations and exercise all its rights under such Transaction Documents, (c) has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, such Transaction Documents in accordance with their terms and (d) has duly executed and delivered the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made. Assuming the due authorization, execution and delivery by the other parties to the Transaction Documents, the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made constitute valid and legally binding obligations of the Seller, enforceable against the Seller in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights in general or by general principles of equity (the "**Bankruptcy Exception**").

6.2 **No Conflicts; No Permits.**

(a) Subject to the satisfaction of the conditions set forth in Section 3.2, the execution and delivery by the Seller of the Transaction Documents to which it is or is intended to be a party do not, and the consummation of the transactions contemplated by such Transaction Documents (including the completion of the Relevant Corporate Split) does not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of the Seller or the Relevant NewCo under, any provision of (i) the Constituent Documents of the Seller or the Relevant NewCo or (ii) any Law applicable to the Seller, the Relevant NewCo or any of their respective properties or assets, other than, in the case of clause (ii) above, any such items that would not reasonably be expected to, individually or in the aggregate, (A) prevent or materially delay consummation of the Transaction or (B) have a Material Adverse Effect.

(b) Subject to the satisfaction of the conditions set forth in Section 3.2, no Permit is required to be obtained or made by or with respect to the Seller in connection with the execution and delivery of the Transaction Documents to which it is or is intended to be a party or performance by the Seller of the transactions contemplated by such Transaction Documents, other than such items the failure of which to obtain or make would not reasonably be expected to, individually or in the aggregate, (i) prevent or materially delay consummation of the Transaction or (ii) have a Material Adverse Effect.

6.3 **Title.**

(a) Immediately before the Relevant Closing, the Seller will be the sole and legal beneficial owner of the Relevant Membership Interest, and such Membership Interest will be transferred free and clear of all Liens (other than Permitted Liens).

(b) As of the date of the Relevant Corporate Split and the Relevant Closing, there will be no (i) membership interest in the Relevant NewCo other than the Relevant Membership Interest or (ii) outstanding rights, options, warrants, rights of first refusal, calls, preemptive rights, conversion rights, subscriptions, commitments or other

agreements pursuant to which such NewCo is, or may be, obligated to sell or issue any other membership interest in such NewCo.

6.4 Corporate Split. As of the Relevant Closing:

(a) any and all corporate procedures and other acts which are necessary for the authorization, consummation and effectuation of the Relevant Corporate Split will have been completed, and except in respect of the ability of the Relevant NewCo to satisfy its obligations, there will exist no circumstances which constitute a cause to invalidate the Relevant Corporate Split;

(b) any and all procedures required to be taken by the Seller for the transfer of the relevant Transferring Employees will have been taken and completed, including such consultations, notifications and other employee protection procedures required under the Employee Succession Act; and

(c) the Relevant NewCo will be a *godo kaisha* duly established and validly existing under the laws of Japan.

6.5 Other Equity Interests. As of the date of the Relevant Corporate Split and as of the Relevant Closing, the Relevant NewCo will not hold any equity interests in any Person (including any MI PSA Transferring Company), nor will the Relevant NewCo have any obligation to acquire any equity interest in any Person.

6.6 Transferring Contracts.

(a) As of the Relevant Closing Date, the relevant Transferring Contracts will comprise all material Contracts (other than, in the case of the O&MCo Assignment, the O&MCo Outstanding Contracts) to which the Seller is a party as of such date that are (i) primarily related to the Relevant Transferring Business and (ii) together with the TSA and the IT Separation Plan, necessary for the Relevant NewCo to conduct the Relevant Transferring Business in the manner conducted as of the date hereof in all material respects.

(b) True, complete and correct copies of each Material Contract, and all of the amendments, modifications and supplements thereto (other than any Contracts, amendments, modifications and supplements entered into to satisfy the conditions set forth in Section 3.2 or 3.3), have been disclosed in the VDR.

(c) Each Material Contract constitutes valid and legally binding obligations of the Seller or the Relevant NewCo (as applicable) and, to the Knowledge of the Seller, the other parties thereto, enforceable against such parties in accordance with their terms, except (i) as such enforceability may be limited by the Bankruptcy Exception or (ii) where such failure to constitute a valid and legally binding obligation or be enforceable does not have a Material Adverse Effect.

(d) No default by the Seller and/or the Relevant NewCo (as applicable) or, to the Knowledge of the Seller, any other Person, has occurred and is continuing in respect of any Material Contract that has had or would reasonably be expected to have a Material Adverse Effect.

6.7 Related Party Agreements. Immediately before the Relevant Closing, other than the Seller Credit Support and the other Transaction Documents, there will be no credit

support documents or other outstanding Contracts between the Relevant NewCo, on the one hand, and the Seller or any of its current or former officers, directors, investors or Affiliates, on the other hand, other than each Transferring Contract with a MI PSA Transferring Company.

6.8 Real Property. Other than the Office Lease and the Kyoto Land Transfer Agreement, there are no material leases, land purchase agreements or other similar agreements relating to real property to which the Seller or the Relevant NewCo (as the case may be) is a party.

6.9 Assets.

(a) As of the Relevant Closing Date, the relevant Transferring Assets comprise all material assets owned or leased by the Seller as of such date that are (i) primarily used in the Relevant Transferring Business and (ii) together with the TSA and the IT Separation Plan, necessary for the Relevant NewCo to conduct the Relevant Transferring Business in the manner conducted as of the date hereof in all material respects.

(b) As of the date hereof the Seller has, and as of the Relevant Closing the Relevant NewCo will have, good and valid title to, or valid leasehold interests in, all of the relevant Transferring Assets, free and clear of all Liens (other than Permitted Liens).

(c) None of the Relevant Transferring Business assets is stock, membership interests, partnership interests or any other type of equity interest.

6.10 Insurance. All premiums with respect to the material insurance policies maintained by the Seller with respect to the Relevant Transferring Business have been duly paid, and no written notice of default, cancellation, non-renewal, termination, material premium increase or other material change in prospective coverage has been received by the Seller with respect to any such insurance policies and all such insurance policies are in full force and effect.

6.11 Proceedings. There are no:

(a) material Proceedings by or before any court, tribunal or other Governmental Authority or threatened in writing against the Seller or otherwise in respect of the Relevant Transferring Business that, if adversely determined; or

(b) material outstanding Orders in respect of (and which are adverse to) the Seller or the Relevant Transferring Business that,

in each case, would reasonably be expected to (i) prevent, impede or delay the ability of the Seller to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party or (ii) have a Material Adverse Effect.

6.12 Not Insolvent.

(a) The Seller is not insolvent or unable to make payments as and when they come due, and has not suspended payments to its creditors, and no petition has been filed with respect to the Seller for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures), nor does any

cause for such Proceedings exist. The execution or performance of this Agreement will not cause the Seller to become insolvent or to not make or suspend such payments, and to the Knowledge of the Seller, there is no risk that such events would occur.

(b) As of the Relevant Closing, the Relevant NewCo will not have suspended payments to its creditors, and no petition will have been filed with respect to the Relevant NewCo for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures).

6.13 Compliance with Law.

(a) The Seller is in compliance with all Laws applicable to it, except where failure to be in compliance would not reasonably be expected to (i) prevent, impede or delay the ability of the Seller to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party or (ii) have a Material Adverse Effect.

(b) The Relevant Transferring Business is in compliance with all Laws applicable to it as currently conducted by the Seller, except where failure to be in compliance does not have and would not reasonably be expected to have a Material Adverse Effect.

(c) No material notice, charge, claim, action or assertion has been received in writing by the Seller with respect to the Relevant Transferring Business from any Governmental Authority alleging any material violation of any Laws that materially affect such Relevant Transferring Business.

The representations and warranties in this Section 6.13 do not apply to environmental matters (which are governed exclusively by Section 6.14), Permit matters (which are governed exclusively by Section 6.15), employee matters (which are governed exclusively by Section 6.19) or Tax matters (which are governed exclusively by Section 6.20).

6.14 Environmental Matters.

(a) To the Knowledge of the Seller, the Relevant Transferring Business is in compliance with all applicable Environmental Laws, including with all Permits (if any) issued thereunder, except where failure to be in compliance does not have and would not reasonably be expected to have a Material Adverse Effect.

(b) There are no material Environmental Claims pending or threatened in writing in respect of the Relevant Transferring Business by or before any Governmental Authority pursuant to any applicable Environmental Law that has or would reasonably be expected to have a Material Adverse Effect.

(c) The Seller has not received any written notice from any Person, including any Governmental Authority, alleging that the Relevant Transferring Business is in material violation of any applicable Environmental Law or otherwise is materially liable under any Environmental Law.

6.15 Permits. To the Knowledge of the Seller (a) the Seller or the Relevant NewCo (as the case may be) has all material Permits currently required under any Law, including any Environmental Law, to carry on the Relevant Transferring Business in all material respects,

(b) each such Permit has been duly obtained, was validly issued, is in full force and effect in all material respects, and no Proceedings before any Governmental Authority are pending or threatened in writing seeking injunction, material modification or revocation of any such Permit and (c) the Seller is not in material violation of or in material default under any such Permit, in each case of (a), (b) and (c), except as would not reasonably be expected to have a Material Adverse Effect.

6.16 Financial Statements. The Interim Financial Statements of the Relevant NewCo as of the Interim Financial Statement Date:

(a) were prepared in accordance with US GAAP;

(b) fairly present the financial condition of the Relevant NewCo as at the end of, and results of operations for, the periods to which such financial statements relate (subject to (i) normal recurring year-end adjustments (the effect of which are not, individually or in the aggregate, expected to be material) and (ii) the absence of footnote disclosures and other presentation items (that, if presented, are not expected to differ materially from those included in audited statements)); and

(c) disclose all liabilities (contingent or otherwise), and the reserves, if any, for such liabilities and all unrealized or anticipated liabilities and losses arising from commitments entered into in respect of the Relevant Transferring Business, in each case to the extent required to be disclosed in accordance with US GAAP.

6.17 Absence of Changes. Since the Interim Financial Statement Date, the Seller has conducted the Relevant Transferring Business in the ordinary course of business consistent with the Seller's past custom and practice, except, in respect of the period between the date of this Agreement and the Relevant Closing Date, to the extent contemplated by the exceptions set forth in Section 4.1(b). Further, between the Interim Financial Statement Date and the date of this Agreement, there has been no event that has had or is likely to have a Material Adverse Effect.

6.18 Absence of Undisclosed Material Liabilities. There are no Material Liabilities of the Relevant Transferring Business or the Relevant NewCo other than those (a) disclosed or provided for in the Interim Financial Statements (including any related schedules and/or notes), (b) disclosed by the Seller in the Disclosure Sources, (c) incurred in connection with this Agreement or any Transaction Document or (d) incurred by the Relevant Transferring Business since the date of this Agreement in accordance with Section 4.1.

6.19 Employees.

(a) As of the date of this Agreement the relevant Transferring Employees are employed by the Seller and primarily engaged in the Relevant Transferring Business. As of the Relevant Closing Date, the relevant Transferring Employees are employed by the Relevant NewCo.

(b) (i) The Seller has disclosed in the VDR the material particulars of the current terms of employment or engagement and benefits of each of the relevant Transferring Employees as of the date of this Agreement and (ii) since the Interim Financial Statement Date, there has been no material change in such terms.

(c) Except as disclosed in the VDR, neither the Seller, as of the date of this Agreement, nor the Relevant NewCo, as of the Relevant Closing Date, is under any obligation to pay bonuses, pensions, gratuities, allowances or retention, disability or death benefit or any similar payments to any relevant Transferring Employees.

(d) The Seller, as of the date of this Agreement, and the Relevant NewCo, as of the Relevant Closing Date, is in compliance in all material respects with all applicable employment statutes with respect to the payment of over-time services (*zangyo*) to the relevant Transferring Employees. There are no outstanding payment obligations of the Seller or the Relevant NewCo to any relevant Transferring Employee with respect to such over-time services.

(e) To the Knowledge of the Seller, the Seller, as of the date of this Agreement, and the Relevant NewCo, as of the Relevant Closing Date, is in compliance with all applicable Laws pertaining to employment and employment practices, except where failure to be in compliance does not have and would not reasonably be expected to have a Material Adverse Effect.

(f) There are no material Proceedings pending or threatened in writing against the Seller, as of the date of this Agreement, or the Relevant NewCo, as of the Relevant Closing Date, by or before any Governmental Authority pursuant to any applicable Law pertaining to employment and employment practices that has or would reasonably be expected to have a Material Adverse Effect.

(g) Neither the Seller, as of the date of this Agreement, nor the Relevant NewCo, as of the Relevant Closing Date, has received any written notice from any Person, including any Governmental Authority, relevant Transferring Employee or other employee of the Seller, alleging any material violation of any applicable Law pertaining to employment and employment practices in respect of any relevant Transferring Employee or other employee of the Seller.

(h) Neither the Seller, as of the date of this Agreement, nor the Relevant NewCo, as of the Relevant Closing Date, has recognized any trade union or any other organization of employees or their representatives in respect of any of the relevant Transferring Employees.

6.20 Tax Matters.

(a) To the extent related to the Relevant Transferring Business and the Relevant NewCo:

(i) the Seller has filed, or has caused to be filed, all material Tax Returns required to be filed (taking into account all applicable extensions validly obtained), and all such Tax Returns were true, complete and correct;

(ii) the Seller has timely paid, or caused to be paid, all Taxes to the appropriate Tax Authority, whether or not reflected on such Tax Returns. The Seller has correctly withheld and timely remitted (or caused to be correctly withheld and timely remitted) to the appropriate Tax Authority all Taxes required by applicable Law to have been withheld and remitted in connection with amounts paid, distributed or owing to the Seller or any employee, independent contractor, creditor, shareholder, vendor or Affiliate of the Seller;

(iii) the Seller has not granted or caused to be granted any waiver of or agreed to any extension with respect to any statute of limitations on the assessment or collection of any Tax;

(iv) no material audit, examination or administrative proceeding initiated by any Governmental Authority with respect to any Taxes of the Seller or the Relevant NewCo (as the case may be) is currently pending;

(v) no Governmental Authority has asserted in writing any deficiency or assessment, or proposed in writing any adjustment, for any material Taxes of the Seller or the Relevant NewCo (as the case may be) that have not been paid or settled;

(vi) there are no Tax liens upon the assets of the Seller or the Relevant NewCo (as the case may be), other than Permitted Liens; and

(vii) neither the Seller nor the Relevant NewCo has entered into any Tax sharing agreement or similar contractual agreement to share liability with another Person or indemnify another Person for Taxes other than (A) any commercially customary gross-up or indemnification provisions on borrowings, derivatives or leases and (B) any such agreement that addresses responsibility for Taxes in a commercially customary manner and the primary purpose of which is not the sharing or allocation of or indemnity for Tax liabilities.

(b) The Relevant NewCo has not been a member of any affiliated, consolidated, combined, unitary or similar group or participated in any other arrangement whereby any income, revenues, receipts, gain or loss was determined or taken into account for Tax purposes with reference to or in conjunction with any income, revenues, receipts, gain, loss, asset or liability of any other Person except as disclosed in Schedule 5 (*Disclosure Schedule*) or any Disclosure Supplement. Other than liability for Taxes of the Seller in respect of the Relevant Transferring Business, the Relevant NewCo does not have any liability for the Taxes of the Seller or any other Person under Section 1.1502-6 of the U.S. Treasury Regulations (or any similar provision of applicable state, local or non-U.S. Law) as a transferee or successor.

(c) Neither the Seller nor the Relevant NewCo has received notice of any claim by a Governmental Authority in a jurisdiction where the Relevant NewCo or Relevant Transferring Business does not file Tax Returns that such NewCo or Transferring Business is or may be subject to taxation or required to collect and remit Taxes in that jurisdiction. To the Knowledge of the Seller, neither the Relevant NewCo nor the Relevant Transferring Business has, or has ever had, a permanent establishment or engaged in a trade or business for applicable Tax purposes in any country other than Japan.

This Section 6.20 constitutes all of the Seller's representations and warranties with respect to Taxes, and no other representation or warranty in this Agreement shall be construed to apply to any matter relating to Taxes. Nothing in this Section 6.20 or elsewhere in this Agreement shall be construed as a representation or warranty with respect to the amount or availability of any net operating loss, capital loss, tax credit carryover or other Tax asset or attribute of the Seller nor the Relevant NewCo in any Post-Closing Tax Period.

6.21 Disclosure of Information. To the Knowledge of the Seller, the Seller has disclosed to the Relevant Purchaser or its advisors all of the material information in the

possession of the Seller and its Affiliates relating to the Relevant Transferring Business, the Relevant Corporate Split and the Relevant NewCo that would reasonably be expected to materially affect the investment decision by the Relevant Purchaser.

6.22 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Relevant Assignment based upon arrangements made by or on behalf of the Seller, in each case where the Relevant Purchaser or the Relevant NewCo may become liable.

6.23 Anti-Corruption. Neither the Seller nor any of its directors, officers or employees has offered, authorized, made or paid, directly or indirectly, any bribes, kickbacks or other similar payments or offers or transfers of value to any Government Official (or to another Person at the request or with the assent or acquiescence of such Government Official) in connection with obtaining or retaining business or to secure an improper advantage in connection with the Relevant Transferring Business; nor have any of them, directly or indirectly, committed any violation of any applicable Law that relates to bribery, corruption or money laundering, such as the Unfair Competition Prevention Act of Japan (Act No. 47 of 1993) and the US Foreign Corrupt Practices Act 1977.

6.24 Antisocial Forces. Neither the Seller nor any of its directors, officers, shareholders or, to the Knowledge of the Seller, employees or agents, is an Antisocial Force or falls under the definition of Antisocial Force or has any (a) relationships by which its management is considered to be controlled by any Antisocial Force, (b) relationships by which any Antisocial Force is considered to be involved substantially in its management, (c) relationships by which it is considered to unlawfully utilize any Antisocial Force for the purpose of securing unjust advantage for itself or any third party or of causing damage to any third party, (d) relationships by which it is considered to offer funds or provide benefits to any Antisocial Force or (e) persons involved substantially in its management having socially condemnable relationships with any Antisocial Force.

7. LIMITATIONS ON REPRESENTATIONS AND WARRANTIES OF THE SELLER

7.1 Only Representations and Warranties in Article 6. Notwithstanding anything to the contrary in any other provision of this Agreement, it is the intent of each Party that the Seller is not making any representation or warranty whatsoever, express, implied, statutory or otherwise, except for the representations or warranties set forth in Article 6, and each Purchaser acknowledges and agrees that the Relevant Membership Interest, and by virtue of its acquisition of such Membership Interest under this Agreement, the Relevant Transferring Business, are being taken by it subject to all faults, "as is" and "where is", subject only to the representations and warranties of the Seller set forth in Article 6.

7.2 Disclaimer. Except for the representations and warranties of the Seller set forth in Article 6, the Seller expressly disclaims and negates any representation or warranty, express or implied, statutory or otherwise, in particular relating to the condition of the Transferring Business (including any implied or express warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials, or the presence, absence, release, disposal or discharge of any Hazardous Materials).

7.3 Non-reliance. Each Purchaser agrees not to rely on any representation or warranty made by the Seller with respect to the condition, merchantability, quality or state of the Relevant Membership Interest or the Relevant Transferring Business except for those representations and warranties set forth in Article 6. Rather, each Purchaser agrees, except as provided in Article 6, to rely solely and exclusively upon its own evaluation of the Relevant Membership Interest and the Relevant Transferring Business.

7.4 No Other Assurances. This Agreement is the result of extensive negotiations among the Parties and no other assurances, representations or warranties about the condition, merchantability, quality or state of the Membership Interests or the Transferring Business were made by the Seller or any of its Affiliates in the inducement to enter into this Agreement, except as provided in this Agreement.

7.5 Projections. In connection with each Purchaser's due diligence investigation, such Purchaser and its representatives have received from the Seller and its representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, regarding the Transferring Business (together, "**Projections**"). Except as set forth expressly in this Agreement, each Purchaser acknowledges and agrees that:

(a) there are uncertainties inherent in attempting to make such Projections with which such Purchaser is familiar, and that no assurances can be given that such Projections are accurate or will be realized;

(b) such Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Projections so provided (including the reasonableness of the assumptions underlying such Projections), and such Purchaser shall have no claim (and expressly waives any claim) against the Seller or its representatives with respect thereto;

(c) neither the Seller nor its representatives has made or is making any express or implied representation or warranty with respect to such Projections (including the reasonableness of the assumptions underlying such Projections); and

(d) such Purchaser is fully qualified to evaluate the provided information and make its own determination as to whether to proceed with the Transaction and assume the risks contemplated thereby.

8. REPRESENTATIONS AND WARRANTIES OF EACH PURCHASER

Each Purchaser represents and warrants to the Seller as of the date of this Agreement and as of the Relevant Closing Date as follows:

8.1 Organization; Power and Authority; Enforceability. Such Purchaser (a) is an entity duly established and validly existing under the laws of its jurisdiction of establishment, (b) has full power and authority to execute and deliver the Transaction Documents to which it is or is intended to be a party and to perform all its obligations and exercise all its rights under such Transaction Documents, (c) has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, such Transaction Documents in accordance with their terms and (d) has duly executed and delivered the Transaction Documents to which it is or is intended to be a party as of the date

this representation and warranty is made. Assuming the due authorization, execution and delivery by the other parties to the Transaction Documents, the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made constitute valid and legally binding obligations of such Purchaser, enforceable against such Purchaser in accordance with their terms, except as such enforceability may be limited by the Bankruptcy Exception.

8.2 No Conflicts; No Permits.

(a) Subject to the satisfaction of the conditions set forth in Section 3.3, the execution and delivery by such Purchaser of the Transaction Documents to which it is or is intended to be a party do not, and the consummation of the transactions contemplated by such Transaction Documents does not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of such Purchaser under, any provision of (i) the Constituent Documents of such Purchaser or (ii) any Law applicable to such Purchaser or its properties or assets, other than, in the case of clause (ii) above, any such items that would not reasonably be expected to, individually or in the aggregate, prevent or materially delay consummation of the Transaction.

(b) Subject to the satisfaction of the conditions set forth in Section 3.3, no Permit is required to be obtained or made by or with respect to such Purchaser in connection with the execution and delivery of the Transaction Documents to which it is or is intended to be a party or performance by such Purchaser of the transactions contemplated by such Transaction Documents, other than such items the failure of which to obtain or make would not reasonably be expected to, individually or in the aggregate, prevent or materially delay consummation of the Transaction.

8.3 Proceedings. There are no:

(a) material Proceedings by or before any court, tribunal or other Governmental Authority or threatened in writing against such Purchaser that, if adversely determined; or

(b) material outstanding Orders in respect of (and which are adverse to) such Purchaser that,

in each case, would reasonably be expected to prevent, impede or delay the ability of such Purchaser to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party.

8.4 Sufficient Funds. Such Purchaser has sufficient funds on hand, or available to it under the Business PSA ECL or otherwise, to pay the amount payable in accordance with Section 3.4(a) on the Relevant Closing Date.

8.5 Not Insolvent. Such Purchaser is not insolvent or unable to make payments as and when they come due, and has not suspended payments to its creditors, and no petition has been filed with respect to such Purchaser for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures), nor does any cause for such Proceedings exist. The execution or performance of

this Agreement will not cause such Purchaser to become insolvent or to not make or suspend such payments, and to the Knowledge of such Purchaser, there is no risk that such events would occur.

8.6 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transaction based upon arrangements made by or on behalf of such Purchaser, in each case where the Seller may become liable.

8.7 Anti-Corruption. Neither such Purchaser nor any of its directors, officers or employees has offered, authorized, made or paid, directly or indirectly, any bribes, kickbacks or other similar payments or offers or transfers of value to any Government Official (or to another Person at the request or with the assent or acquiescence of such Government Official) in connection with obtaining or retaining business or to secure an improper advantage; nor have any of them, directly or indirectly, committed any violation of any applicable Law that relates to bribery, corruption or money laundering, such as the Unfair Competition Prevention Act of Japan (Act No. 47 of 1993) and the US Foreign Corrupt Practices Act 1977.

8.8 Antisocial Forces. Neither such Purchaser nor any of its directors, officers, shareholders or, to the Knowledge of such Purchaser, employees or agents, is an Antisocial Force or falls under the definition of Antisocial Force or has any (a) relationships by which its management is considered to be controlled by any Antisocial Force, (b) relationships by which any Antisocial Force is considered to be involved substantially in its management, (c) relationships by which it is considered to unlawfully utilize any Antisocial Force for the purpose of securing unjust advantage for itself or any third party or of causing damage to any third party, (d) relationships by which it is considered to offer funds or provide benefits to any Antisocial Force or (e) persons involved substantially in its management having socially condemnable relationships with any Antisocial Force.

9. W&I POLICY; INDEMNIFICATION

9.1 Survival.

(a) Survival of Covenants. All of the covenants or other agreements contained in this Agreement shall survive until the first to occur of (i) the expiration by their terms of the obligations of the applicable Party under such covenant and (ii) such covenant being fully performed or fulfilled, unless non-compliance with such covenants or agreements is expressly waived in writing by each Party entitled to such performance.

(b) Survival of Representations and Warranties. The representations and warranties contained in this Agreement shall survive each Relevant Closing for 12 months, except that the representations and warranties set forth in Section 6.20 shall survive each Relevant Closing for 36 months. Notwithstanding the foregoing, all rights and claims under the W&I Policy are subject to the terms and conditions thereof and are not subject to the limitations set forth in this Section 9.1(b).

9.2 W&I Policy.

(a) The Purchasers shall obtain and maintain the W&I Policy.

(b) Within five Business Days from the date of this Agreement, the Purchasers shall deliver to the Seller a copy of the signed and stamped (if applicable) W&I Policy.

(c) Each Purchaser shall:

(i) take all commercially reasonable steps (which shall not require such Purchaser to initiate any litigation or arbitration) to enforce the terms of the W&I Policy in respect of any Losses that such Purchaser suffers or incurs in relation to any breach or inaccuracy of the representations and warranties of the Seller in this Agreement (other than the Excluded Warranties);

(ii) not agree to any amendment, variation or waiver of the W&I Policy that could reasonably be expected to have an adverse impact on the Seller (or take any other action that has a similar effect) without the prior written consent of the Seller;

(iii) not novate, or otherwise assign its rights under, the W&I Policy (or take any other action that has a similar effect) other than:

(A) with the prior written consent of the Seller; or

(B) to (I) any of its Affiliates or (II) a subsequent purchaser or transferee of all or a substantial portion of either Transferring Business, provided that in each case (I) and (II), each such Person undertakes to the Seller, in a form reasonably acceptable to the Seller, to be bound by the provisions of this Article 9 as though such Person was a "Purchaser";

(iv) satisfy on a timely basis those conditions to coverage explicitly set forth in the W&I Policy, and pay when due all premiums, fees, costs and taxes associated therewith;

(v) not take any action that could reasonably be expected to cause the W&I Policy or the rights of any party thereunder to be terminated, cancelled, amended or limited in a manner that (A) could vitiate the W&I Policy or (B) could otherwise reasonably be expected to have an adverse impact on the Seller; and

(vi) (A) ensure that the W&I Policy (I) includes an express waiver of the Insurer's rights of subrogation, contribution and express rights acquired by assignment against the Seller, except to the extent that any Warranty Claim arises out of or results from fraud of the Seller, in which case the Insurer shall only be entitled to subrogate to the extent of the rights of recovery relating directly to the fraud of the Seller and (II) acknowledges the rights of the Seller as a third party beneficiary in respect of such waiver and (B) not agree to any amendment, variation or waiver of the foregoing (or take any other action that has a similar effect) without the prior written consent of the Seller.

(d) The Purchasers acknowledge and agree that:

(i) the Seller has entered into this Agreement in reliance on the W&I Policy being obtained and maintained by the Purchasers; and

(ii) notwithstanding any other provision in this Agreement or the W&I Policy, the other provisions of this Article 9 shall apply for the benefit of the Seller with

respect to any Warranty Claim despite any vitiation, expiry or termination of, default under or failure to take out or enforce, the W&I Policy.

9.3 Availability of Indemnification for Warranty Claims. Notwithstanding any other provision in this Agreement, the Seller shall not be liable in respect of, and neither Purchaser may make, any Warranty Claim, except to the extent that such Warranty Claim:

- (a) arises out of or results from fraud of the Seller;
- (b) is in respect of any of the Excluded Warranties; or

(c) (i) is in respect of any of the representations and warranties of the Seller (including the Fundamental Warranties) other than the Excluded Warranties and (ii) such Purchaser has first sought recourse against the W&I Policy in respect of such Warranty Claim in accordance with Section 9.2(c)(i).

9.4 Indemnification by the Seller. Subject to the other provisions of this Article 9, from and after each Relevant Closing Date, the Seller shall indemnify, defend and hold harmless the Relevant Purchaser, the Relevant NewCo, their respective Affiliates and each of their respective officers, directors, employees and agents (the "**Purchaser Indemnified Parties**") from and against any Losses incurred by any Purchaser Indemnified Party as a result of (collectively, the "**Purchaser Indemnity Claims**"):

- (a) any breach or inaccuracy of any representation or warranty of the Seller contained in this Agreement;
- (b) any Excluded Liability, whether transferred from the Seller to the Relevant NewCo by operation of Law or otherwise; or
- (c) any breach of any covenant or agreement by the Seller under this Agreement.

9.5 Indemnification by each Purchaser. Subject to the other provisions of this Article 9, from and after each Relevant Closing Date, the Relevant Purchaser shall indemnify, defend and hold harmless the Seller, its Affiliates and each of their respective officers, directors, employees and agents (the "**Seller Indemnified Parties**") from and against any Losses incurred by any Seller Indemnified Party as a result of (collectively, the "**Seller Indemnity Claims**"):

- (a) any breach or inaccuracy of any representation or warranty of such Purchaser contained in this Agreement;
- (b) any Development Liability (in the case of the DevCo Purchaser) or O&M Liability (in the case of the O&MCo Purchaser), whether retained by the Seller by operation of Law or otherwise; or
- (c) any breach of any covenant or agreement by such Purchaser under this Agreement.

9.6 Mitigation. Without prejudice to any rights otherwise provided hereunder, each Party shall reasonably cooperate with each other Party with respect to resolving any claim or liability with respect to which one Party is or may be obligated to indemnify another

under this Agreement, including by making all reasonable efforts to mitigate or resolve any such claim or liability after such Party gains actual knowledge of such claim or liability.

9.7 Indirect Damages. No Indemnifying Party shall have any liability under this Agreement for any punitive, incidental, consequential, special or indirect damages (including lost profits, operating losses and loss of operation time), except to the extent that any such damages are awarded in a third-party claim against an Indemnified Party.

9.8 Indemnity Claims Capped.

(a) Subject to Section 9.8(b), the aggregate liability of the Seller in respect of Losses based upon, arising out of or otherwise in respect of Section 9.4(a) shall be capped at, and may not exceed:

(i) in respect of any of the Excluded Warranties, [***], provided that the aggregate liability of all “Sellers” under the Transaction Documents in respect of all of the “Excluded Warranties” in the Transaction Documents shall not exceed the foregoing amount;

(ii) in respect of any of the Fundamental Warranties, the portion of the Purchase Price allocated to the Relevant Transferring Business with respect to which such Losses were incurred by the Purchaser Indemnified Parties (as allocated pursuant to Section 10.2); and

(iii) in respect of any of the representations and warranties other than the Excluded Warranties and the Fundamental Warranties (A) the extent to which a corresponding claim under the W&I Policy (I) has eroded the Seller Borne Retention or (II) would have eroded the Seller Borne Retention had no claims in respect of the Fundamental Warranties eroded any part of the Retention and (B) in any event, in the aggregate, an amount equal to 50% of the Retention.

(b) Subject to Sections 9.8(a)(i) and (ii), the maximum aggregate liability of the Seller under Sections 9.4(a) and (c) and the Purchasers under Sections 9.5(a) and (c) shall not exceed [***] of the Purchase Price received by the Seller.

9.9 Indemnity Claim Procedures.

(a) **Claim Notice.** As soon as reasonably practicable after any Party becomes aware of any event or condition that could reasonably be expected to result in a Loss for which the Purchaser Indemnified Parties (in the case of a Purchaser) or the Seller Indemnified Parties (in the case of the Seller) are entitled to an Indemnity Claim, such Party (the “**Claimant**”) shall give notice in writing of such Indemnity Claim (a “**Claim Notice**”) to the Seller (in the case where the Claimant is a Purchaser Indemnified Party) or the relevant Purchaser (in the case where the Claimant is a Seller Indemnified Party) (the “**Indemnifying Party**”). A Claim Notice must describe the Indemnity Claim in reasonable detail and must indicate the amount (estimated if necessary, and only to the extent feasible) of the Loss that has been or may be suffered by the Claimant.

(b) **Delay in Claim Notice.** A Claim Notice may only be given in respect of (i) any covenant or other agreement within six months of such covenant or other agreement ceasing to survive in accordance with Section 9.1(a) or (ii) any representation or

warranty while such representation or warranty survives in accordance with Section 9.1(b). Subject to the foregoing, no delay in or failure to give a Claim Notice by the Claimant to the Indemnifying Party under Section 9.9(a) shall adversely affect any of the other rights or remedies that the Claimant has under this Agreement or alter or relieve the Indemnifying Party of its obligation to indemnify the Claimant except to the extent that such delay or failure has prejudiced the Indemnifying Party.

(c) **Claim Response.** The Indemnifying Party shall respond in writing to the Claimant (a “**Claim Response**”) within 30 days after the date that the Claim Notice is sent by the Claimant (the “**Response Period**”). Any Claim Response must specify whether or not the Indemnifying Party disputes the Indemnity Claim described in the Claim Notice. If the Indemnifying Party fails to give a Claim Response within the Response Period, then the Indemnifying Party shall be deemed not to dispute the Indemnity Claim described in the related Claim Notice, and the Indemnifying Party shall be obligated to pay the Claimant the amount of Losses specified in the Claim Notice, subject to the limitations contained in this Article 9. If the Indemnifying Party delivers a Claim Response within the Response Period indicating that it disputes one or more of the matters identified in the Claim Notice, then the Indemnifying Party and the Claimant shall settle the dispute in accordance with Section 13.4.

9.10 Further Limitations on Purchaser Indemnity Claims. No Purchaser Indemnified Party shall be entitled to make any Purchaser Indemnity Claim in connection with any Loss:

(a) to the extent that (i) either Purchaser had Knowledge of a breach of any representation or warranty by the Seller giving rise to such Purchaser Indemnity Claim as of the date of this Agreement or (ii) any information that would cause a breach of any representation or warranty giving rise to such Purchaser Indemnity Claim has been fairly disclosed in any of the Disclosure Sources;

(b) if such Loss arises out of or is increased as a result of the Seller’s compliance with the terms of this Agreement;

(c) if such Loss arises out of or is increased as a result of any action of any Purchaser Indemnified Party after the Relevant Closing Date;

(d) if a claim for such Loss was recovered by any Purchaser Indemnified Party under this Agreement or any other Transaction Document;

(e) if a Purchaser Indemnified Party has received or is reasonably expected to receive any insurance proceeds (including under the W&I Policy) or any indemnity, contribution or other similar payments, in each case in respect of the same Loss (i.e. there shall be no double recovery nor unjust enrichment); or

(f) to the extent that such Loss occurs as the result of (i) any decision of any court or tribunal or the passing or coming into force of or any change in any Law or requirement of any Governmental Authority or utility after the date of this Agreement or (ii) any increase in rates of taxation after the date of this Agreement.

9.11 Fraud. The limitations set forth in this Article 9 shall not apply in respect of any Losses that arise out of or result from the fraud of the Indemnifying Party or its Affiliates.

9.12 No Set-Off. No Party shall have any right to set off any unresolved Indemnity Claim against (a) any payment due under this Agreement or (b) any payment due under any other Transaction Document.

9.13 Tax Treatment. Unless otherwise required by applicable Law, any indemnification payment made in accordance with this Agreement shall be treated as an adjustment to the Purchase Price for applicable Tax purposes.

9.14 Exclusive Remedies. The Parties acknowledge and agree that:

(a) prior to each Relevant Closing Date, the sole and exclusive remedies of each Relevant Party for any breach of the representations, warranties and obligations in connection with the Relevant Assignment in this Agreement shall be to (i) refuse to consummate the Relevant Closing to the extent that its conditions precedent have not been satisfied or waived and (ii) terminate this Agreement to the extent permitted under Article 12 (in which case, the provisions of Section 12.2 shall apply to the extent stated therein);

(b) from and after each Relevant Closing Date, the sole and exclusive remedies of the Parties for any breach of the representations, warranties and obligations in connection with the Relevant Assignment in this Agreement and any certificate delivered in accordance with this Agreement shall be the indemnification obligations under Section 9.4 or 9.5 (as the case may be), other than any breach due to fraud; and

(c) this Section 9.14 is not intended to, and does not, restrict any rights or claims that any Purchaser Indemnified Party may have under the W&I Policy.

9.15 Exclusion of Statutory Liability for Non-Conformity to Contract (“Keiyaku-Futekigo-Sekinin”). Even if the Membership Interests fail to satisfy the type (*shurui*), quality (*hinshitsu*) or quantity (*suryo*) as agreed under this Agreement, or otherwise fails to satisfy the explicit purpose of this Agreement with respect to such type, quality or quantity (collectively, “**Non-Conformity**”), neither Purchaser may seek a remedy against the Seller in the manner set forth in Article 562 of the Civil Code of Japan (Act No. 89 of 1896), to mitigate or otherwise fix or eliminate such Non-Conformity by the repair of the subject properties or assets (*mokuteki-butsu-no-shuho*), the delivery of substitute properties / assets (*daitai-butsu-no-hikiwatashi*), or delivery of any deficient part of such properties / assets (*fusoku-bun-no-hikiwatashi*); *provided, however*, that this Section 9.15 shall not exclude the Seller’s obligations or liability under Section 5.4 or 9.4.

9.16 No Expansion of Liability. Notwithstanding any other provision in this Agreement, despite any novation, assignment or transfer of either original Purchaser’s rights and/or obligations under this Agreement or the W&I Policy, the aggregate liability of the Seller shall not exceed the liability that the Seller would have had if no such novation, assignment or transfer had occurred.

10. TAX MATTERS

10.1 Cooperation; Information. After each Relevant Closing, each Relevant Party shall, and shall cause its Affiliates to, reasonably cooperate and provide the other Relevant Party with such information relating to the Relevant Transferring Business or the Relevant NewCo as such other Relevant Party may reasonably request in connection with (a) filing any

Tax Return or other Tax filing, (b) determining any Tax liability or right to refund of Taxes or (c) conducting or defending any audit or other Proceeding in respect of Taxes.

10.1 Tax Allocation. The Purchase Price shall be allocated among the Membership Interests (and, to the extent required by applicable Law, further among the assets of each applicable NewCo) for all applicable Tax purposes and for the purposes of Section 9.8(a)(ii) in accordance with their respective fair market values in accordance with applicable Law (the "**Tax Allocation**"). Following each Relevant Closing, the Parties shall amend the Tax Allocation to reflect any adjustments to the Purchase Price made pursuant to this Agreement. The Parties shall (a) report the transactions contemplated by this Agreement in a manner consistent with the Tax Allocation unless otherwise required by applicable Law and (b) not take any position inconsistent with the Tax Allocation on any Tax Returns or in the course of any audit or Proceeding by any Tax Authority, Tax review or Tax proceeding relating to any Tax Returns unless required by applicable Law. Each Party shall notify each other Party of any inquiry, audit, investigation or other Proceeding by any Tax Authority, in each case, that relates to the Tax Allocation.

11. CONFIDENTIALITY AND ANNOUNCEMENTS

11.1 Confidentiality.

(a) Each Party agrees that it shall not, and shall cause its Affiliates and its and their respective officers, directors, employees and agents to not, disclose the terms and conditions of this Agreement or the Transaction until the date falling two years after the date of this Agreement.

(b) The Seller agrees that it shall not, and shall cause its Affiliates and their respective officers, directors, employees and agents to not (i) disclose or use any Purchaser Confidential Information, (ii) disclose or use any Development Confidential Information after the DevCo Closing Date or (iii) disclose or use any O&M Confidential Information after the O&MCo Closing Date; *provided, however*, that the Seller, its Affiliates and their respective officers, directors, employees and agents may continue to use data that constitutes Development Confidential Information or O&M Confidential Information, including data disclosed to the Seller in accordance with Section 5.8, for the purposes of assessing and improving the products and services of the Seller and its Affiliates.

(c) Each Purchaser agrees that it shall not, and shall cause its Affiliates and their respective officers, directors, employees and agents to not (i) disclose or use any Seller Confidential Information, (ii) disclose or use any Development Confidential Information until after the DevCo Closing Date or (iii) disclose or use any O&M Confidential Information until after the O&MCo Closing Date.

(d) The foregoing (a) through (c) shall not apply to any disclosure by any Party, its Affiliates or their respective officers, directors, employees or agents:

(i) in the case of either Purchaser, to existing general partners, limited partners, equity holders, members, managers, lenders and investors of such Purchaser and its Affiliates, in each case provided that such Person is informed by such Purchaser or its Affiliates of the confidential nature of such terms;

(ii) to its lenders, Affiliates and third party service providers, and to its and their respective legal, tax, financial or technical advisors for the purposes of receiving legal, tax, financial or technical advice from such advisors, in each case provided that such Person is informed by the applicable Party of the confidential nature of such terms;

(iii) with the prior written consent of the Seller or each Purchaser (as the case may be);

(iv) to the extent permitted in Section 11.2;

(v) to the extent required by applicable Law or the rules of any securities exchange on which such Party or such Party's Affiliates' securities are listed, provided that the disclosing Party provides the Seller or each Purchaser (as the case may be) with a reasonable opportunity to review and comment on such disclosure; or

(vi) in connection with any judicial, administrative or similar proceeding (including in response to oral questions, interrogatories or other requests for information or documents and/or in connection with a proceeding brought under Section 13.4),

provided that each Party shall seek to limit such disclosures to the minimum information reasonably necessary under the circumstances.

(e) Each Party shall be responsible for any breach of Section 11.1(a), the Seller shall be responsible for any breach of Section 11.1(b) and each Purchaser shall be responsible for any breach of Section 11.1(c), in each case by (i) its Affiliates and its and their respective officers, directors, employees and agents and (ii) any other Person to whom such Party discloses information directly or indirectly in accordance with an exception set forth in Section 11.1(d)(i) or (ii), in each case as though each such Person was bound directly by the relevant Sections as a "Party".

11.2 Public Announcements and Press.

(a) Each Party agrees that no public announcement or press release concerning the Transaction shall be issued without the prior written consent of the Seller or each Purchaser (as the case may be) (which consent shall not be unreasonably withheld or delayed), except as such announcement or release may be required by Law or the applicable rules of any securities exchange (provided that the Party required to make such announcement or release provides the Seller or each Purchaser (as the case may be) with a reasonable opportunity to review and comment on such announcement or release).

(b) Following the DevCo Closing, DevCo, the DevCo Purchaser and the DevCo Purchaser's Affiliates will have the right to state publicly that all of the solar power projects developed by the Seller and its Affiliates in Japan were developed by DevCo and the Development Employees, provided that such public statements do not refer to the Seller or "First Solar".

12. TERMINATION; EFFECT OF TERMINATION

12.1 Termination. This Agreement may be terminated at any time before the DevCo Closing:

(a) by mutual agreement among the Parties;

(b) by written notice from the Seller or each Purchaser to each Purchaser or the Seller (as the case may be) if the DevCo Closing has not occurred by the date falling six months after the date of this Agreement, as such date may be extended by mutual agreement among the Parties, provided that the failure of such Relevant Closing to occur by such date is not attributable to the Seller (in the case of termination by the Seller) or either Purchaser (in the case of termination by the Purchasers);

(c) by written notice from the Seller or each Purchaser to each Purchaser or the Seller (as the case may be) if after satisfaction of the requirements of Section 4.2, any court of competent jurisdiction or other Governmental Authority shall have issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of either Relevant Closing, and such order or other action shall not be subject to appeal or shall have become final and unappealable;

(d) by written notice from the Seller to each Purchaser if there shall have been a breach by either Purchaser of any of its representations and warranties in Section 8.8, or by written notice from each Purchaser to the Seller if there shall have been a breach by the Seller of any of its representations and warranties in Section 6.24; or

(e) subject to Section 4.7(a), by written notice from each Purchaser to the Seller if any fact, event or occurrence disclosed in any Disclosure Supplement (i) has had or would reasonably be expected to have, together with any related matter disclosed in any Disclosure Supplement, a Material Adverse Effect or (ii) constitutes a material breach of any of the Fundamental Warranties.

12.2 Effect of Termination. If this Agreement is terminated in accordance with Section 12.1, all rights and obligations of the Parties under this Agreement shall terminate without any liability on the part of any Party, except that (a) Article 11 (*Confidentiality and Announcements*), this Article 12 (*Termination; Effect of Termination*) and Article 13 (*Miscellaneous*) shall continue in effect and (b) nothing in this Article 12 shall relieve any Party from liability to any other Party for any breach of this Agreement arising prior to its termination, nor preclude any Party from seeking remedies under this Agreement or applicable Law.

13. MISCELLANEOUS

13.1 Notices. All notices, requests, consents, agreements or other communications under this Agreement must be in writing to be effective and, without limiting any other means by which a Party may be able to prove that a notice has been received by another Party, shall take effect (or be deemed to have been given or delivered, as the case may be) (a) when delivered by hand, facsimile transmission (with confirmation of receipt) or email (i) during normal business hours of the recipient, on the Business Day of sending or (ii) outside normal business hours of the recipient, on the Business Day following the Business Day of sending or (b) when delivered by internationally recognized overnight courier, on the third Business Day following the Business Day of sending, in each case to such Party at its address (or number) set forth below or such other address (or number) as the Party may specify by notice:

If to the Seller: 350 West Washington Street, Suite 600
Tempe, Arizona 85281 USA
Attention: General Counsel
Email: [***]

If to either Purchaser: 20F Toranomon Towers Office
4-1-28 Toranomon, Minato-ku
Tokyo 105-0001, Japan
Attention: [***]
Facsimile: [***]
Email: [***]

13.2 Successors and Assigns.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement is personal to the Parties and, subject to Sections 13.2(b) and (c), no Party may assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Seller (in the case of an assignment or transfer by a Purchaser) or each Purchaser (in the case of an assignment or transfer by the Seller). Assignments or delegations made in violation of this Section 13.2(a) shall be null and void.

(b) Before either Relevant Closing, the Relevant Purchaser may assign all of its rights under this Agreement, together with all of its obligations under this Agreement, in respect of the Relevant Assignment to an Affiliate that continues to be supported by the Business PSA ECL to the same extent as the original Relevant Purchaser under this Agreement.

(c) After either Relevant Closing, the Relevant Purchaser may assign any of its rights and/or obligations under this Agreement in respect of the Relevant Assignment to any of its Affiliates, provided that such Purchaser shall continue to be jointly and severally liable with each such Affiliate in respect of any obligations assigned in accordance with this Section 13.2(c).

13.3 Governing Law. This Agreement (including Section 13.4) is governed by, and shall be construed in accordance with, the laws of Japan, without giving effect to any conflicts of law or choice of law principles.

13.4 Resolution of Disputes.

(a) Subject to Section 2.6, all disputes based upon, arising out of or related to this Agreement shall be submitted first to the senior management of each relevant Party for friendly resolution by negotiation for a period of up to 30 days. If such negotiation fails to resolve the dispute, the dispute shall finally be settled by arbitration conducted under the auspices of the ICC by a panel of three arbitrators appointed in accordance with, and the arbitration shall be conducted pursuant to, the ICC rules in effect on the date of arbitration.

(b) The seat and venue of the arbitration shall be, and the award shall be rendered in, Singapore. The arbitration shall be confidential and conducted in English. Any arbitration award made by the panel shall be binding and non-appealable and shall be the sole and exclusive dispute resolution mechanism used by the Parties with respect to any

controversies, claims and disputes between or among them, provided the foregoing is without prejudice to a Party's right to seek injunctive and equitable relief in a court of competent jurisdiction as available. The arbitrators will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or vacate the award. Judgment upon the award may be entered in any court of competent jurisdiction.

(c) The out-of-pocket costs incurred in connection with the arbitration, such as the arbitrators' fees and any administrative fees paid to the ICC, shall be shared equally by the claimant(s) and the respondent(s). All other costs of the arbitration, including attorneys' fees and costs of investigation, shall be paid solely by the Party incurring such costs unless an award of attorneys' fees or costs is expressly mandated by statute and the arbitrators specifically include an award of attorneys' fees or costs in the award.

(d) The Parties waive the right to seek any punitive, incidental, consequential, special or indirect damages, and the arbitrators shall have no authority to award such damages, except as expressly provided in Article 9.

(e) The Parties expressly agree that (i) any claims arising out of or in connection with this Agreement and the other Transaction Documents may be made in a single arbitration and (ii) multiple arbitrations commenced under any such document may, at the request of a party, be consolidated into a single arbitration.

13.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

13.6 Expenses. Except as otherwise provided in this Agreement, each Party agrees to pay, without right of reimbursement from any other Party, all costs and expenses incurred by it in connection with (a) the preparation and negotiation of the Transaction Documents and (b) the consummation of the Transaction, including the fees and disbursements of counsel, accountants, financial advisors, experts and consultants employed by the respective Party.

13.7 Transfer Taxes. All (a) transfer, real estate transfer, stamp, documentary, sales, use, registration, value-added and other similar Taxes in connection with the Transaction and (b) fees levied by any Governmental Authority in connection with the making of any filing required to satisfy any of the conditions set forth in Section 3.2(c) or 3.3(c) (together, "**Transfer Taxes**") shall be borne and paid by the Purchasers. The Purchasers shall file or cause to be filed in a timely manner all necessary documents (including all Tax Returns) with respect to such Transfer Taxes.

13.8 Entire Agreement; Amendment.

(a) This Agreement contains the entire agreement among the Parties with respect to the transactions contemplated in this Agreement, and supersedes all prior written agreements and negotiations and oral understandings, if any, with respect thereto.

(b) Subject to Section 13.8(c), this Agreement (including its schedules and exhibits) may not be amended, supplemented or discharged except by an instrument in writing signed by each Party.

(c) If any amendment, supplement or discharge of or to this Agreement (including its schedules and exhibits) relates only to the rights and/or obligations of the Seller in respect of any one Purchaser and/or any one Purchaser in respect of the Seller, the instrument in writing to effect any such amendment, supplement or discharge shall be effective if signed at least by the Seller and such Purchaser.

13.9 No Waiver. No failure to exercise and no delay in exercising any right, power or privilege of a Party shall operate as a waiver nor a consent to the modification of the terms of this Agreement unless given by that Party in writing.

13.10 No Third Party Beneficiaries. Nothing herein, express or implied, is intended to or shall confer upon any Person other than the Parties any legal or equitable right, benefit or remedy of any nature whatsoever.

13.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of page intentionally left blank]

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

Seller:

FIRST SOLAR JAPAN GK

By:

Name:

Title:

[Business Purchase and Sale Agreement]

Purchasers:

PAG RENEWABLES HOLDING PTE. LTD.

By:

Name:

Title:

PAG RENEWABLES FM HOLDING PTE. LTD.

By:

Name:

Title:

[Business Purchase and Sale Agreement]

**SCHEDULE 1
DEVELOPMENT BUSINESS**

[Omitted]

**SCHEDULE 2
O&M BUSINESS**

[Omitted]

**SCHEDULE 3
CONSENT REQUIRED CONTRACTS**

[Omitted]

**SCHEDULE 4
SELLER CREDIT SUPPORT**

[Omitted]

**SCHEDULE 5
DISCLOSURE SCHEDULE**

[Omitted]

EXHIBIT A
FORM OF CORPORATE SPLIT PLAN

[Omitted]

EXHIBIT B
FORM OF ISHIKAWA INDEMNITY

[Omitted]

EXHIBIT C
FORM OF KYOTO LAND TRANSFER AGREEMENT

[Omitted]

EXHIBIT D
FORM OF CLOSING CERTIFICATE

[Omitted]

EXHIBIT E
FORM OF SELLER CONSENT

[Omitted]

EXHIBIT F
FORM OF DEVELOPMENT SERVICES AGREEMENT

[Omitted]

EXHIBIT G
FORM OF DSA EQUITY COMMITMENT LETTER

[Omitted]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE
EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE
REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED
INFORMATION IS INDICATED BY [***].

FIRST AMENDMENT
TO BUSINESS PURCHASE AND SALE AGREEMENT

This FIRST AMENDMENT TO BUSINESS PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is entered into as of June 24, 2022, by and among First Solar Japan GK, a Japan *godo kaisha* (the “**Seller**”) and PAG Renewables Holding Pte. Ltd. (the “**DevCo Purchaser**”) and PAG Renewables FM Holding Pte. Ltd., each a Singapore private limited company (each, a “**Purchaser**”, and together, the “**Purchasers**”). The Seller and the Purchasers are referred to herein individually as a “**Party**” and together as the “**Parties**”.

RECITALS

A. The Parties entered into that certain Business Purchase and Sale Agreement dated May 12, 2022 (the “**Agreement**”).

B. In anticipation of each Relevant Closing, the Parties now desire to set forth their agreement regarding certain amendments to, and acknowledgments and agreements in respect of, the Agreement.

ACCORDINGLY, the Parties agree as follows:

1. Defined Terms; Rules of Interpretation

Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Agreement. The rules of interpretation set forth in section 1.2 (*Rules of Interpretation*) of the Agreement shall apply to this Amendment *mutatis mutandis*.

2. O&MCo Base Consideration

The definition of “Relevant Base Consideration” in the Agreement shall be amended to replace “¥823,000,000” in respect of the O&MCo Assignment with “¥713,000,000”.

3. O&MCo On-sale Transactions

Section 2.8(a)(ii) (*O&MCo On-sale Transactions*) of the Agreement shall be amended to replace [***] with [***].

4. Payment of Relevant Purchase Price

(a) For the purposes of section 3.4(a)(i) (*Deliveries and Closing Actions*) of the Agreement, each Purchaser shall be deemed to have paid the Relevant Purchase Price to the Seller Bank Account when such amount has been received by the Seller in the Seller Bank Account.

(b) In respect of the DevCo Assignment only, if each “Relevant Purchase Price” payable to each “Seller” under the TK PSA is not received by each such “Seller” in its

“Relevant Seller Bank Account” by the Business Day after the Relevant Closing Date, then the Seller may, by delivering written notice to the DevCo Purchaser and at such Purchaser’s cost, require that the Transaction in its entirety be promptly unwound in accordance with article 545 of the Civil Code.

5. Schedule Amendments

(a) The reference to “Agreement on Secondment with Toshiba Energy System Co., Ltd., dated February 29, 2020” in Annex I (*Specified Transferring O&M Contracts*) to Schedule 2 (*O&M Business*) to the Agreement shall be amended to replace “February 29, 2020” with “February 7, 2022”.

(b) Schedule 3 (*Consent Required Contracts*) to the Agreement shall be amended by:

(i) moving the Contract referred to as the “Master Agreement for Temporary Work Services with Adecco Ltd., dated March 17, 2015” from Part 1 (*DevCo Assignment-Related Contracts*) to Part 2 (*O&MCo Assignment-Related Contracts*) of such Schedule; and

(ii) removing the “Automotive Insurance” Contracts from Schedule 3, Part 2.

6. Kyoto Land Transfer and Designation Agreement

(a) Exhibit C (*Form of Kyoto Land Transfer Agreement*) to the Agreement shall be amended to replace such Exhibit with the Exhibit (*Form of Kyoto Land Transfer and Designation Agreement*) to this Amendment.

(b) The Agreement shall be amended by replacing each reference to “Kyoto Land Transfer Agreement” with “Kyoto Land Transfer and Designation Agreement”.

7. Affirmation

Except as set forth in this Amendment, the Agreement shall remain in full force and effect.

8. Governing Law

This Amendment is governed by, and shall be construed in accordance with, the laws of Japan.

9. Counterparts

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

Seller:

FIRST SOLAR JAPAN GK

By:

Name:

Title:

[First Amendment to Business Purchase and Sale Agreement]

Purchasers:

PAG RENEWABLES HOLDING PTE. LTD.

By:

Name:

Title:

PAG RENEWABLES FM HOLDING PTE. LTD.

By:

Name:

Title:

[First Amendment to Business Purchase and Sale Agreement]

EXHIBIT
FORM OF KYOTO LAND TRANSFER AND DESIGNATION AGREEMENT

[Omitted]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED INFORMATION IS INDICATED BY [*].**

MEMBERSHIP INTERESTS PURCHASE AND SALE AGREEMENT

dated as of May 12, 2022

among

FIRST SOLAR JAPAN GK

and

**KYOTO SOLAR PLANT L.P., YATSUBO SOLAR PLANT L.P.,
MOMURA SOLAR PLANT L.P., IWAKI SOLAR PLANT L.P.,
HITA SOLAR PLANT L.P., SHIMO ONUKI SOLAR PLANT L.P.,
ORIDO SOLAR PLANT L.P., HANDA SOLAR PLANT L.P. and
TOCHIGI SOLAR PLANT L.P.**

TABLE OF CONTENTS

		Page
1	DEFINITIONS; RULES OF INTERPRETATION	1
1.1	Definitions	1
1.2	Rules of Interpretation	12
2	PURCHASE AND SALE	13
2.1	Purchase and Sale	13
2.2	Purchase Price	13
2.3	Adjustment Statement	14
2.4	Adjustment Disputes.	14
2.5	Finance Project Adjustment.	16
2.6	Equity Adjustments.	16
2.7	Producer-Side Base Charges Regime.	17
2.8	Earn-out Mechanisms.	18
3	CLOSING	19
3.1	Closing	19
3.2	Closing Conditions of the Seller	19
3.3	Closing Conditions of the Purchasers	21
3.4	Deliveries and Closing Actions	23
4	PRE-CLOSING COVENANTS	23
4.1	Conduct of Business.	23
4.2	No Other Contact	25
4.3	Lender Discussions.	25
4.4	Efforts to Close	25
4.5	Continuing Due Diligence	25
4.6	Disclosure Supplements	26
4.7	Notification of Relevant Circumstances	26
5	POST-CLOSING COVENANTS	26
5.1	Further Assurances	26
5.2	Inter-Company Payables	26
6	REPRESENTATIONS AND WARRANTIES OF THE SELLER	27
6.1	Organization; Power and Authority; Enforceability	27
6.2	No Conflicts; No Permits.	27
6.3	Title.	28
6.4	Constitution.	28
6.5	Other Equity Interests	28

TABLE OF CONTENTS
(continued)

		Page
6.6	Material Contracts.	28
6.7	Related Party Agreements	29
6.8	Real Property.	29
6.9	Assets	30
6.10	Insurance	30
6.11	Proceedings.	30
6.12	Not Insolvent	30
6.13	Compliance with Law.	30
6.14	Environmental Matters.	31
6.15	Permits	31
6.16	Financial Statements	31
6.17	Absence of Changes	32
6.18	Tax Matters.	32
6.19	Limited Purpose Entity / No Employees	33
6.20	FIT	33
6.21	Disclosure of Information	34
6.22	Brokers and Other Advisors	34
6.23	Anti-Corruption	34
6.24	Antisocial Forces	34
7	LIMITATIONS ON REPRESENTATIONS AND WARRANTIES OF THE SELLER	35
7.1	Only Representations and Warranties in Article 6	35
7.2	Disclaimer	35
7.3	Non-reliance	35
7.4	No Other Assurances	35
7.5	Projections	35
8	REPRESENTATIONS AND WARRANTIES OF EACH PURCHASER	36
8.1	Organization; Power and Authority; Enforceability	36
8.2	No Conflicts; No Permits.	36
8.3	Proceedings	37
8.4	Sufficient Funds	37
8.5	Not Insolvent	37
8.6	Brokers and Other Advisors	37
8.7	Anti-Corruption	37

TABLE OF CONTENTS
(continued)

		Page
	8.8 Antisocial Forces	37
9	W&I POLICY; INDEMNIFICATION	38
	9.1 Survival.	38
	9.2 W&I Policy	38
	9.3 Availability of Indemnification for Warranty Claims	39
	9.4 Indemnification by the Seller	39
	9.5 Indemnification by each Purchaser	40
	9.6 Mitigation	40
	9.7 Indirect Damages	40
	9.8 Indemnity Claims Capped.	40
	9.9 Indemnity Claim Procedures.	41
	9.10 Further Limitations on Purchaser Indemnity Claims	42
	9.11 Fraud	42
	9.12 No Set-Off	42
	9.13 Tax Treatment	42
	9.14 Exclusive Remedies	42
	9.15 Exclusion of Statutory Liability for Non-Conformity to Contract (“Keiyaku-Futekigo-Sekinin”)	43
	9.16 No Expansion of Liability	43
10	TAX MATTERS	43
	10.1 Cooperation; Information	43
	10.2 Tax Allocation	43
11	CONFIDENTIALITY AND ANNOUNCEMENTS	44
	11.1 Confidentiality	44
	11.2 Public Announcements and Press	45
12	TERMINATION; EFFECT OF TERMINATION	45
	12.1 Termination	45
	12.2 Automatic Termination	45
	12.3 Effect of Termination	46
13	MISCELLANEOUS	46
	13.1 Notices	46
	13.2 Successors and Assigns	46
	13.3 Governing Law	47
	13.4 Resolution of Disputes	47

TABLE OF CONTENTS
(continued)

	Page
13.5 Severability	47
13.6 Expenses	48
13.7 Transfer Taxes	48
13.8 Entire Agreement; Amendment	48
13.9 No Waiver	48
13.10 No Third Party Beneficiaries	48
13.11 Counterparts	48
SCHEDULE 1 PROJECTS	51
Part 1: Kyoto Project	51
Part 2: Yatsubo Project	53
Part 3: Momura Project	55
Part 4: Iwaki Watanabe Project	57
Part 5: Hitakokusai Project	59
Part 6: Shimo-Onuki Project	61
Part 7: Orido Project	63
Part 8: Handa Project	65
Part 9: Orido (Small) Project	67
Part 10: Kogashi Project	69
Part 11: Minami Ueno-Cho Project	71
Part 12: Kanuma Daini Project	73
Part 13: Kanuma Moro Project	75
Part 14: Kamiishikawa Project	77
SCHEDULE 2 DISCLOSURE SCHEDULE	79
EXHIBIT A FORM OF MODULE PROCUREMENT UNDERTAKING	80
EXHIBIT B FORM OF CLOSING CERTIFICATE	81
EXHIBIT C FORM OF SELLER CONSENT	82
EXHIBIT D FORM OF MODULE WARRANTY AMENDMENT	83
EXHIBIT E FORM OF DEVELOPMENT SERVICES AGREEMENT	84

This **MEMBERSHIP INTERESTS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is entered into as of May 12, 2022, by and among First Solar Japan GK, a Japan *godo kaisha* (the “**Seller**”) and Kyoto Solar Plant L.P., Yatsubo Solar Plant L.P., Momura Solar Plant L.P., Iwaki Solar Plant L.P., Hita Solar Plant L.P., Shimo Onuki Solar Plant L.P., Orido Solar Plant L.P., Handa Solar Plant L.P. and Tochigi Solar Plant L.P., each a Cayman Islands exempted limited partnership (each, a “**Purchaser**”). The Seller and the Purchasers are referred to herein individually as a “**Party**” and together as the “**Parties**”.

RECITALS

A. The Seller holds 100% of the membership interest (each, a “**Membership Interest**”, and together, the “**Membership Interests**”) in each Japan *godo kaisha* identified in Schedule 1 (*Projects*) as a “Project Company” (each, a “**Transferring Company**”).

B. The Seller desires to sell to the Purchasers, and the Purchasers desire to purchase from the Seller, all of the Membership Interests, free from any liens and other encumbrances (other than Permitted Liens) on the terms and subject to the conditions set forth in this Agreement.

C. On the date of this Agreement:

a. First Solar, Inc. and the Purchasers have entered into a MI PSA Guarantee for the guarantee of certain obligations and liabilities of the Seller under this Agreement (the “**MI PSA Guarantee**”);

b. one or more funds managed by affiliates of the Purchasers have delivered an equity commitment letter to the Parties to support certain obligations and liabilities of the Purchasers under this Agreement (the “**MI PSA ECL**”);

c. the owners of the *tokumei kumiai* interests in certain Transferring Companies and Gioia Investment Pte. Ltd. (the “**TK PSA Purchaser**”), have entered into a TK Interests Purchase and Sale Agreement for the purchase and sale of such interests (the “**TK PSA**”); and

d. the Seller, PAG Renewables Holding Pte. Ltd. and PAG Renewables FM Holding Pte. Ltd. have entered into a Business Purchase and Sale Agreement for the purchase and sale of certain businesses of the Seller (the “**Business PSA**”).

ACCORDINGLY, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. In addition to the capitalized terms defined elsewhere in this Agreement (including the preamble), the following terms shall have the corresponding meanings set forth below:

“**2016 Act to Amend FIT Act**” means the Act for Partial Amendment of the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (2016 Act No. 59).

“**Affiliate**” of a specified Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For the purposes of this definition, “**control**”, when used with respect to any specified Person, means the possession of the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities or partnership or limited liability company interests, by contract or otherwise.

“**Antisocial Force**” means an organized crime group (*boryokudan*), a member of an organized crime group, a former member of an organized crime group with less than five years having passed since separation, a quasi-constituent member of an organized crime group, an enterprise related to an organized crime group, a corporate racketeer (*sokaiya*), an extortionist advocating social movement, an extortionist advocating political movement, a special intelligence violence group and other antisocial forces.

“**Bankruptcy Exception**” has the meaning given in Section 6.1.

“**Business Day**” means any day (except Saturday or Sunday) when commercial banks are open for business in Tokyo, Japan and Singapore.

“**Business Plan**” means, with respect to each Project, the renewable energy business plan set forth in Article 9 Paragraph 1 of the FIT Act with regard to the execution of such Project submitted by a Transferring Company or the previous owner to the Minister of Economy, Trade and Industry under Article 4 Paragraph 2 of the Supplementary Provisions for the 2016 Act to Amend FIT Act (including the documents set forth in Article 4 Paragraph 2 of the Supplementary Provisions for the 2016 Act to Amend FIT Act).

“**Business Plan Authorization**” means, with respect to any Business Plan, accreditation under Article 9 Paragraph 3 and Article 10 Paragraph 1 of the FIT Act.

“**Business PSA**” has the meaning given in Recital C.d.

“**Cash Contribution**” has the meaning given in Section 2.6(c).

“**Claim Notice**” has the meaning given in Section 9.9(a).

“**Claim Response**” has the meaning given in Section 9.9(c).

“**Claimant**” has the meaning given in Section 9.9(a).

“**Closing**” has the meaning given in Section 3.1.

“**Closing Date**” has the meaning given in Section 3.1.

“**Closing IC Payables**” has the meaning given in Section 5.2.

“**Confidential Information**” means all information and materials, whether written or oral, relating to the business and affairs of any Party, or any of their respective Affiliates, including any such information or materials relating to any Transferring Company or Transferring Business, except to the extent that such information (a) is generally available to the public as of the date hereof or (b) becomes generally available to the public following disclosure by a third party not bound by the confidentiality obligations under Section 11.1.

“**Constituent Documents**” means, with respect to any Person (other than an individual), all charter, organizational and other documents by which such Person establishes its legal existence or which govern its internal affairs, and shall include (a) the certificate of registration, memorandum and articles of association, charter and bylaws or other similar organizing documents of a company or corporation, (b) the certificate of formation and limited liability company agreement of a limited liability company, (c) the certificate of registration of partnership (if applicable) and agreement of partnership of a partnership, (d) the articles of incorporation of a Japan *kabushiki kaisha* or *godo kaisha* and (e) the comparable documents of any other entities.

“**Contract**” means any contract, lease, license, indenture, note, bond, agreement, concession, franchise or other binding instrument.

“**COVID-19**” means the COVID-19 pandemic, including any evolutions or mutations of the COVID-19 disease, any subsequent waves and any further epidemics or pandemics arising therefrom.

“**COVID-19 Actions**” means any commercially reasonable actions that the Seller or any of its Affiliates (or any of their asset managers, if applicable) determines is necessary or prudent in connection with or in response to (a) COVID-19 and any quarantine, “stay at home”, workforce reduction, furlough, social distancing, shut down, closure, sequester, safety or similar Law, guidelines or requests (including any *yosei*) promulgated by any Governmental Authority or quasi-governmental authority (including the World Health Organization), including ceasing operation, or reinitiating operation, of all or part of the relevant Person’s business or (b) mitigating the adverse effects of the foregoing on such Person’s business.

“**Designated Hazardous Substances**” means the designated hazardous substances as defined in Article 2 Paragraph 1 of the Soil Contamination Countermeasures Act (Act No. 53 of 2002).

“**Development Project**” means each Finance Project and each Pre-Finance Project.

“**Disagreement Notice**” has the meaning given in Section 2.4(a).

“**Disclosure Sources**” means (a) the VDR as of 11:59 PM Japan Standard Time on the Business Day before the date of this Agreement, (b) the due diligence report(s) provided by the Seller, its Affiliates or their respective representatives to any Purchaser, its Affiliates or their respective representatives before the date of this Agreement, (c) the written information made available by the Seller, its Affiliates or their respective representatives in response to questions raised by any Purchaser, its Affiliates or their respective representatives between August 16, 2021 and 11:59 PM Japan Standard Time on May 11, 2022 and (d) Schedule 2 (*Disclosure Schedule*).

“**Disclosure Supplement**” has the meaning given in Section 4.6.

“**Disputed Items**” has the meaning given in Section 2.4(a).

“**DSA**” means a Development Services Agreement substantially in the form of Exhibit E (*Form of Development Services Agreement*).

“**Earn-out Amount**” has the meaning given in Section 2.8(a).

“**Earn-out Liquidity Event**” means, in respect of each Earn-out Project, if (a) Project26 receives a disbursement attributable to such Project under any financing provided by any third party banks or other financial institutions or (b) the Project26 Purchaser or any of its Affiliates receives any proceeds from any transaction or series of transactions to transfer, directly or indirectly (whether by way of a sale, transfer, merger, corporate split or otherwise) all or any material portion of the business or assets of such Project (or any interest therein, including *tokumei kumiai* interests) to any Person other than an Affiliate of the Project26 Purchaser.

“**Earn-out Outside Date**” has the meaning given in Section 2.8(a).

“**Earn-out Project**” means each Project conducted by Project26 other than the Minami Ueno-Cho Project.

“**Earn-out Trigger Event**” has the meaning given in Section 2.8(a).

“**Environmental Claim**” means any action, suit, demand letter, claim, lien, notice of non-compliance, notice of violation, notice of liability or proceeding brought by any Governmental Authority under, or Order relating to, Environmental Law.

“**Environmental Law**” means any Law relating to or imposing liability or standards of conduct with respect to pollution, protection of the environment, wildlife or biological resources or the Release, cleanup or remediation of, or human exposure to, Hazardous Materials.

“**Excluded Warranties**” means the representations and warranties made by the Seller in Sections 6.23 (*Anti-Corruption*) and 6.24 (*Antisocial Forces*).

“**Final Auditor**” has the meaning given in Section 2.4(b)(ii).

“**Finance Adjustment Notice**” has the meaning given in Section 2.5(a).

“**Finance Consent and Release**” has the meaning given in Section 3.2(d).

“**Finance Documents**” means, in respect of each Finance Project, any facilities agreement entered into in accordance with Section 2.5(a), and all security documents, hedging agreements, credit support agreements and similar agreements related thereto and required thereunder.

“**Finance Parties**” means, in respect of each Finance Project, the third party banks or other financial institutions that are providing financing to the relevant Transferring Company pursuant to the relevant Finance Documents.

“**Finance Project**” means each of the Yatsubo Project, the Orido Project and the Momura Project.

“**Financial Statements**” means the financial statements for the last three fiscal years of each Transferring Company as disclosed in the VDR (VDR references 5.1.11, 5.2.11, 5.3.11, 5.4.11, 5.5.11, 5.6.11, 5.7.12, 5.8.11 and 5.9.11).

“**FIT Act**” means the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (Act No. 108 of 2011).

“**Fundamental Warranties**” means the representations and warranties made by the Seller in Sections 6.1 (*Organization; Power and Authority; Enforceability*), 6.2(a) (*No Conflicts; No Permits*), 6.3 (*Title*) and 6.12 (*Not Insolvent*).

“**Government Official**” means (a) any official, employee or representative of, or any other person acting in an official capacity for or on behalf of (i) any Governmental Authority, including any entity owned or controlled by any Governmental Authority, (ii) any political party or political candidate or (iii) any public international organization and (b) any candidate for political office or any person acting on his or her behalf.

“**Governmental Authority**” means any government or political subdivision or department thereof, any governmental or regulatory body, commission, board, bureau, agency or instrumentality, or any court, in each case whether supranational, national, federal, state, local or foreign.

“**Grid Charge Adjustment Amount**” has the meaning given in Section 2.7(a)(ii).

“**Hazardous Materials**” means any pollutant or contaminant and any other material, substance or waste that is defined, listed or regulated as “hazardous” or “toxic” (or words of similar meaning or intent) under any applicable Environmental Law, including petroleum or petroleum by-products, asbestos, polychlorinated biphenyls and explosive or radioactive materials.

“**ICC**” means the International Chamber of Commerce.

“**Indemnifying Party**” has the meaning given in Section 9.9(a).

“**Indemnity Claim**” means a Purchaser Indemnity Claim or a Seller Indemnity Claim.

“**Insurer**” means AIG Asia Pacific Insurance Pte. Ltd, as primary insurer, and Liberty Specialty Markets Singapore Pte. Limited (trading as Liberty Global Transaction Services), as excess insurer.

“**Interim Period**” means the period between the date of this Agreement and the earlier of (a) the date on which this Agreement is terminated in accordance with its terms and (b) the Closing Date.

“**J-GAAP**” means generally accepted accounting principles in Japan, as in effect from time to time.

“**Knowledge**” means, with respect to (a) the Seller, the actual knowledge of [***] and [***] and (b) any Purchaser, the actual knowledge of [***], [***], [***] and [***].

“**Land Companies**” means FS Japan Project 22 GK, FS Japan Project 28 GK, FS Japan Project 29 GK, FS Japan Project 30 GK, FS Japan Project 32 GK, FS Japan Project 33 GK, FS Japan Project 34 GK, FS Japan Project 35 GK, FS Japan Project 36 GK, FS Japan Project 37 GK and FS Japan Project 38 GK.

“**Law**” means any law, treaty, act, statute, ordinance, code, rule, regulation, Order or determination of any Governmental Authority.

“**Leakage**” means, in respect of each Transferring Company and without duplication:

(a) any management charge, service fee or other similar fee levied by, or for the account of, the Seller or any of its Leakage Affiliates against such Transferring Company, except for fees paid in accordance with any Contract disclosed in the VDR;

(b) any assets transferred or surrendered from such Transferring Company to the Seller or any of its Leakage Affiliates, other than (i) cash, (ii) in accordance with the Land Purchase and Sale Agreement dated as of April 22, 2022 between FS Japan Project1 GK and FS Japan Project36 GK or (iii) the lease agreement between FS Japan Project1 GK and Nippon Renewable Energy Generation 2017-3 GK in respect of the land subject of the agreement referred to in clause (ii);

(c) any assumption, indemnification or discharge by such Transferring Company of any liability of the Seller or any of its Leakage Affiliates;

(d) any payment by such Transferring Company to any of the relevant Finance Parties under the Finance Documents (if any), or the assumption of any indebtedness, liability or obligation by such Transferring Company to such Persons, in either case in connection with the agreement of such Persons to provide the relevant Finance Consent and Release;

(e) the waiver by such Transferring Company of any right to any benefit due from the Seller or any of its Leakage Affiliates, except the waiver or termination of any right or benefit contemplated hereby; and

(f) any increase or additional Tax arising to such Transferring Company in connection with any of the matters referred to in paragraphs (a) to (e) above or any payment with respect to any such Tax,

in each case (x) during the period from (but exclusive of) the Reference Financial Statement Date to the Closing and (y) except to the extent budgeted for in the Relevant Financial Model.

“**Leakage Affiliates**” means, in respect of the Seller, its Affiliates other than (a) each Transferring Company and (b) each NewCo.

“**Leased Real Property**” means any real property over which a Transferring Company has lease, superficies or other usage rights pursuant to a Leased Real Property Agreement.

“**Leased Real Property Agreements**” means the agreements specified in the Excel spreadsheets attached to the email titled “Dream - Leased Real Property Agreements” sent by representatives of the Seller to representatives of the Purchaser on May 10, 2022.

“**Lien**” means, with respect to any property of any Person, any mortgage, lien, pledge, charge, lease, easement, security interest, attachment, conditional assignment or transfer or other similar encumbrance or restriction (under Law, Order, Contract or otherwise) with respect to such property of such Person.

“**Losses**” means, collectively, any loss, liability, damage, cost, expense (including reasonable attorneys’ and accountants’ fees and expenses), judgment and amount paid in settlement under any Transaction Document.

“**Material Adverse Effect**” means the result of one or more facts, events, circumstances, conditions, changes or effects that, on a stand-alone or cumulative basis, has or is reasonably expected to have, a material adverse effect on the financial condition or results of operation of the Transferring Companies and the “Transferring Business” as defined in the Business PSA, taken as a whole, but excluding:

(a) any effect resulting from (i) (A) the Parties entering into this Agreement or (B) the entry into any other Transaction Document by the parties thereto, (ii) any action taken by (A) any Party in accordance with this Agreement or (B) a party to any other Transaction Document in accordance with such Transaction Document, including in each case the consummation of any action contemplated hereby or thereby or requested or consented to by any Purchaser or the TK PSA Purchaser or (iii) the announcement of the Transaction;

(b) any effect resulting from general changes to the economy in Japan or the global economy as a whole, including changes in general regulatory or political conditions;

(c) any effect resulting from any outbreak of hostility, terrorist activities or war, or any similar event or circumstance;

(d) (i) any outbreak of illness or other public health-related events, including any outbreak or event caused by COVID-19 or (ii) the taking of any COVID-19 Action;

(e) changes in or to, or the promulgation of, any applicable Law (including Tax Law);

(f) any change (or changes taken together) or effect generally affecting (i) the national, regional or local electricity generation, transmission or distribution industry or wholesale or retail markets for electric power in Japan, (ii) the regulation of utilities or of the sales of electric power by or within Japan or (iii) the rules established by any independent system operator or regional transmission organization with jurisdiction over any portion of any Transferring Company or any Transferring Business;

(g) any change in, or failure of any Transferring Company or any Transferring Business to meet, any Projections (it being understood that the underlying facts and circumstances giving rise to such change or failure may, if they are not otherwise excluded from the definition of Material Adverse Effect, be deemed to constitute a Material Adverse Effect and may be taken into account in determining whether a Material Adverse Effect has occurred or will occur);

(h) any change or effect (or changes or effects taken together) which is (or are) cured (including by the payment of money) before the earlier of the Closing Date and the termination of this Agreement;

(i) any change in accounting principles or procedures or in the application or interpretation thereof;

(j) strikes, work stoppages or other labor disputes;

(k) changes in the costs of commodities, services, equipment, materials or supplies, including fuel and other consumables, or changes in the price of energy, capacity or ancillary services;

- (l) any act of god or casualty or condemnation event;
- (m) any change, financial or otherwise, to the business, affairs or operation of any Purchaser or any of its Affiliates; or
- (n) developments arising from any facts that were expressly disclosed to any Purchaser at least one Business Day before the date of this Agreement,

provided, however, that with respect to sub-clauses (b) to (f), (i) and (k), if such change or effect disproportionately affects any Transferring Company or any Transferring Business compared to other similarly situated businesses, then, to the extent not otherwise excluded from the definition of Material Adverse Effect, only such incremental disproportionate impact or impacts shall be taken into account in determining whether there has been a Material Adverse Effect.

“**Material Contract**” means any Contract to which the Seller or a Transferring Company is a party and in respect of which breach, non-performance, termination or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**Membership Interest**” has the meaning given in Recital A.

“**METI**” means the Ministry of Economy, Trade and Industry of Japan.

“**METI Wheeling Regulations**” has the meaning given in Section 2.7(b)(i).

“**MI PSA ECL**” has the meaning given in Recital C.b.

“**MI PSA Guarantee**” has the meaning given in Recital C.a.

“**Module Procurement Undertaking**” means a Module Procurement Undertaking substantially in the form of Exhibit A (*Form of Module Procurement Undertaking*).

“**NewCo**” has the meaning given in the Business PSA.

“**Order**” means any judgment, decision, order, writ, charge, injunction, stipulation, ruling, decree, award or similar action of a Governmental Authority.

“**Permit**” means (a) any authorization, consent, approval, license, permit, certification, determination, waiver, exemption, filing (but only in jurisdictions where a filing is the regulatory equivalent of a permit) or variance of, by or with or (b) any registration by or with, in each case, any Governmental Authority.

“**Permitted Lien**” means any Lien (a) created pursuant to (or contemplated to be required under) any Finance Document, (b) permitted to exist pursuant to the terms of any Finance Document, (c) arising by operation of Law and in the ordinary course of the business of the relevant Person provided the debt or other obligation it secures is paid when due or contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of the relevant Person or (d) in the case of each Transferring Company, arising under the Constituent Documents of such Person.

“**Person**” means any individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, Governmental Authority or other entity.

“**Post-Closing Tax Period**” means any taxable period (or portion thereof) beginning after the Closing Date.

“**Pre-Finance Project**” means each of the Kyoto Project, the Iwaki Watanabe Project, the Hitakokusai Project, the Shimo-Onuki Project, the Handa Project and the Minami Ueno-Cho Project.

“**Proceeding**” means any action, arbitration, claim, demand, dispute, investigation, lawsuit or other proceeding.

“**Producer-Side Base Charges**” has the meaning given in Section 2.7(a).

“**Project26**” means FS Japan Project26 GK.

“**Project26 Purchaser**” means Tochigi Solar Plant L.P.

“**Projections**” has the meaning given in Section 7.5.

“**Projects**” means each “Project” specified in Schedule 1 (*Projects*).

“**Purchase Price**” has the meaning given in Section 2.2.

“**Purchaser Confidential Information**” means any Confidential Information related to any Purchaser or its Affiliates (other than each Transferring Company and each NewCo) provided to the Seller, its Affiliates or any of their representatives by any Purchaser, its Affiliates or any of their representatives.

“**Purchaser Indemnified Parties**” has the meaning given in Section 9.4.

“**Purchaser Indemnity Claims**” has the meaning given in Section 9.4.

“**Reference Financial Statement Date**” means December 31, 2021.

“**Release**” means any release, discharge, disposal, spill, injection, leak, leaching, pumping, dumping, abandoning, discarding, migrating, escaping, emptying, seeping or emission into the environment.

“**Relevant Adjusted Net Producer-Side Charges Reduction Amount**” has the meaning given in Section 2.7(b)(i).

“**Relevant Assumed Net Producer-Side Charges Reduction Amount**” means, in respect of each Project, the amount specified as the “Assumed Net Producer-Side Charges Reduction Amount” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Base Consideration**” means, in respect of each Project, the amount specified as the “Base Consideration” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Closing Equity Amount**” means, with respect to each Pre-Finance Project, (a) the actual amount of the membership interest in the relevant Transferring

Company to be held by the Seller on the Closing Date and (b) the actual amount of the *tokumei kumiai* interests of the relevant Transferring Company to be held by the relevant TK PSA Seller on the Closing Date.

“**Relevant Equity Adjustment Amount**” has the meaning given in Section 2.6(b).

“**Relevant Financial Model**” means, in respect of each Project, the financial model for such Project set forth in the Excel spreadsheet named [***] sent by [***] to representatives of the Purchaser by email on May 10, 2022 at 8:52 PM Japan Standard Time.

“**Relevant Maximum Debt Amount**” means, with respect to (a) each Finance Project, the maximum amount of indebtedness to be borrowed by the relevant Transferring Company under the term loan facility pursuant to the relevant Finance Documents as of the Closing Date (and, for the avoidance of doubt, excluding any indebtedness under the consumption tax facility or debt service reserve facility), as specified as the “Maximum Debt Amount” in the relevant Part of Schedule 1 (*Projects*) and (b) each Pre-Finance Project, the amount specified as the “Maximum Debt Amount” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Membership Interest**” means, in respect of each Purchaser, the Membership Interest in the Transferring Company for which such Purchaser is identified as the “Purchaser” in Schedule 1 (*Projects*).

“**Relevant Net Producer-Side Charges Reduction Amount**” has the meaning given in Section 2.7(a).

“**Relevant Parties**” has the meaning given in Section 2.4(b).

“**Relevant Producer-Side Charges Adjustment Amount**” has the meaning given in Section 2.7(b)(ii).

“**Relevant Project Spend**” means, with respect to each Pre-Finance Project, the aggregate amount of all bona fide expenditures made (a) with respect to such Project, (b) pursuant to a Contract disclosed in the VDR and (c) during the period between the inception of such Project and the Closing.

“**Relevant Purchase Price**” has the meaning given in Section 2.2.

“**Relevant Purchaser**” means, in respect of each Transferring Company and Project, the Purchaser identified as the “Purchaser” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Required Equity Amount**” means, with respect to each Development Project, (a) the amount of the membership interest in the relevant Transferring Company required to be held by the Seller on the Closing Date and (b) the amount of *tokumei kumiai* interests in the relevant Transferring Company required to be held by the relevant TK PSA Seller on the Closing Date, in each case as specified as the “Required Equity Amount” in the relevant Part of Schedule 1 (*Projects*).

“**Response Period**” has the meaning given in Section 9.9(c).

“**Retention**” has the meaning given in the W&I Policy, being an amount equal to ¥246,500,000.

“**Seller Bank Account**” means the bank account in the name of [***] at [***], with account number [***] [***].

“**Seller Borne Retention**” means the latter half of the Retention, i.e. that part of the Retention in excess of the first 50% of the Retention.

“**Seller Confidential Information**” means any Confidential Information related to the Seller or its Affiliates provided to any Purchaser, its Affiliates or any of their representatives by the Seller, its Affiliates or any of their representatives.

“**Seller Credit Support**” means the indemnity agreement in respect of mortgage registration to be issued by the Seller to the Finance Parties (or their agent(s) on their behalf) in respect of each of the Finance Projects, in each case on or about the date of the relevant facilities agreement that constitutes a Finance Document in respect of such Project.

“**Seller Indemnified Parties**” has the meaning given in Section 9.5.

“**Seller Indemnity Claims**” has the meaning given in Section 9.5.

“**Tax**” means any national, state, local or foreign tax or other governmental charge, fee, levy or assessment of whatever kind or nature, including (a) all national, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, license, excise, franchise, employment, premium, recording, documentary, transfer, back up withholding, turnover, net asset, capital gains, value added, estimated, ad valorem, payroll and employee withholding, stamp, customs, occupation or similar taxes, and any social charges or contributions together with any interest, additions or penalties with respect to these Taxes and any interest in respect of any additions or penalties and (b) any liability in respect of any items described in clause (a) payable by reason of transferee or successor liability, by contract, assumption or operation of Law.

“**Tax Allocation**” has the meaning given in Section 10.2.

“**Tax Authority**” means any Governmental Authority exercising Tax regulatory authority, including any domestic, foreign, national, state, county, regional or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority.

“**Tax Return**” means any return, report, election or other document (including any related or supporting information) filed or required to be filed with any Tax Authority with respect to Taxes, including information returns, claims for refunds of Taxes, and any amendments or supplements to any of the foregoing.

“**TK PSA**” has the meaning given in Recital C.c.

“**TK PSA Purchaser**” has the meaning given in Recital C.c.

“**TK PSA Seller**” means each of the “Sellers” under the TK PSA.

“**Transaction**” means the purchase and sale of all of the Membership Interests in accordance with Section 2.1.

“**Transaction Documents**” means this Agreement, the MI PSA Guarantee, the MI PSA ECL, the TK PSA, the Business PSA, each Module Procurement Undertaking and such other agreements and documents contemplated to be entered into by the Seller or its Affiliates (excluding each NewCo) on the one hand, and any Purchaser or its Affiliates (including each NewCo) on the other hand, in connection with the Transaction.

“**Transfer Taxes**” has the meaning given in Section 13.7.

“**Transferring Business**” means, in respect of each Transferring Company, each Project and the associated solar power business conducted by such Transferring Company.

“**Transferring Company**” has the meaning given in Recital A.

“**Transferring Company Confidential Information**” means any Confidential Information relating to any Transferring Company or Transferring Business.

“**VDR**” means the [***] virtual data room hosted by [***]

“**W&I Policy**” means the buyer-side warranty and indemnity insurance policies issued or to be issued by the Insurer to Kyoto Solar Plant L.P. as named insured.

“**Warranty Claim**” means any Proceeding by any Purchaser arising out of a breach or inaccuracy of any of the representations and warranties of the Seller in this Agreement.

“**Yen**” or “¥” means Japanese yen.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein:

(a) references in this Agreement to recitals, articles, sections, schedules and exhibits are to Recitals, Articles, Sections, Schedules and Exhibits of or to this Agreement;

(b) the words “herein”, “hereof”, “hereunder” and other words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular Section or other subdivision;

(c) the headings in this Agreement are inserted for convenience only and shall not affect its construction;

(d) references in this Agreement to any statute or statutory provision include a reference to such statute or statutory provision as from time to time amended, modified, re-enacted, extended, consolidated or replaced (whether before or after the date of this Agreement) and to any subordinate legislation made from time to time under such statute or statutory provision;

(e) references to this Agreement or to any other document is a reference to such document as varied, amended, modified, novated or supplemented from time to time;

(f) references in this Agreement to any Person shall include, or be deemed to be references to, its respective successors and permitted assignees or permitted transferees (as may be appropriate);

(g) references in this Agreement to the word “include” or “including” are to be construed without limitation;

(h) references in this Agreement to “writing” or “written” include any non-transient means of representing or copying words legibly, including by facsimile or email; and

(i) if any provision of this Agreement requires a negative number to be (i) added to any number, such number shall be reduced by the absolute value of the negative number or (ii) subtracted from any number, such number shall be increased by the absolute value of the negative number.

This Agreement shall not be construed against any Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision or who supplied the form of this Agreement.

2. PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the other terms and conditions of this Agreement, and effective (x) as of the occurrence of the actions described in Section 3.4 and (y) simultaneously with the “DevCo Closing” under the Business PSA and the “Closing” under the TK PSA becoming effective:

(a) the Seller hereby sells, conveys, assigns and transfers to each Purchaser all of the Relevant Membership Interest, free from any Liens (other than Permitted Liens), without any representations and warranties of the Seller other than as provided in Article 6; and

(b) each Purchaser hereby purchases, receives and acquires all of the Relevant Membership Interest, without any representations and warranties of the Seller other than as provided in Article 6.

2.2 Purchase Price. Subject to Sections 2.3 to 2.8, the aggregate consideration for each Membership Interest (each, a “**Relevant Purchase Price**”, and together, the “**Purchase Price**”) shall be an amount equal to the sum of:

(a) an amount equal to the aggregate Relevant Base Consideration for the relevant Transferring Company (as adjusted, if applicable, pursuant to Section 2.5(c)); *plus*

(b) for each Transferring Company that holds a Pre-Finance Project, an amount equal to the Relevant Equity Adjustment Amount for such Transferring Company; *plus*

(c) for each Transferring Company for which a Cash Contribution was made by the Seller pursuant to Section 2.6(c), an amount equal to such Cash Contribution; *plus*

(d) an amount equal to 1% of (i) the aggregate amount of Japan fixed asset Taxes (*kotei shisan zei*), including for the avoidance of doubt any depreciable asset Taxes (*shokyaku shisan zei*), paid by the relevant Transferring Company before the Closing with respect to the calendar year in which the Closing occurs, *less* (ii) (A) the aggregate amount of Japan fixed asset Taxes (*kotei shisan zei*), including for the avoidance of doubt any

depreciable asset Taxes (*shokyaku shisan zeii*), payable by such Transferring Company with respect to such calendar year, *multiplied by* (B) the ratio of the number of days from January 1 of such calendar year through the Closing Date (inclusive) *divided by* 365 days.

2.3 Adjustment Statement. No later than five Business Days before the Closing Date, the Seller shall deliver to each Purchaser a statement setting forth as of the Closing (a) for each Transferring Company, the amounts referred to in Sections 2.2(c) and (d) and (b) for each Transferring Company that holds a Pre-Finance Project, the amount referred to in Section 2.2(b).

2.4 Adjustment Disputes.

(a) Within [***] Business Days from the Closing Date, any Purchaser may deliver written notice to the Seller (a “**Disagreement Notice**”) setting out in reasonable detail (i) any item in respect of (A) the statement delivered in accordance with Section 2.3 or (B) the satisfaction of any condition set forth in Section 3.3(e), (f) or (g) by the Seller, in either case that such Purchaser wishes to dispute (together, the “**Disputed Items**”), (ii) the reasons for the dispute and (iii) such Purchaser’s proposed adjustment to each Disputed Item. For the avoidance of doubt, any amounts not specifically disputed in the Disagreement Notice shall be deemed final and binding upon the Seller and such Purchaser for the purposes of this Agreement upon the delivery of the Disagreement Notice.

(b) If a Purchaser delivers a Disagreement Notice to the Seller within the period referred to in Section 2.4(a), the Seller and such Purchaser (the “**Relevant Parties**”) shall resolve the Disputed Items as follows:

(i) The Disputed Items shall be submitted first to the senior management of each Relevant Party for friendly resolution by negotiation for a period of up to 30 days from the date of the Seller’s receipt of the Disagreement Notice.

(ii) If the Relevant Parties fail to agree upon the Disputed Items within the period set forth in Section 2.4(b)(i), either such Party may demand that an internationally recognized accounting firm agreed upon between such Parties (the “**Final Auditor**”) determine, with binding effect on such Parties, how the unresolved Disputed Items shall be settled based upon the books and records of each Transferring Company and in accordance with J-GAAP.

(iii) The Final Auditor shall act as an expert and not as an arbitrator. The Final Auditor’s activities and jurisdiction shall be limited to the Disputed Items. The Final Auditor shall determine any dispute to the extent relevant to resolving the Disputed Items, which may include any issue involving the interpretation of any provision of this Agreement or the Final Auditor’s terms of reference. The Final Auditor’s written decision on the matters shall be final and binding on the Relevant Parties in the absence of manifest error or fraud.

(iv) Each Relevant Party shall use its commercially reasonable efforts to cause the Final Auditor to resolve the Disputed Items as promptly as practicable, but in any event within 30 Business Days from the date on which the Final Auditor was appointed.

(v) Each Relevant Party shall authorize and permit the Final Auditor to have reasonable access, during normal business hours and upon reasonable notice, to (A) the properties, books, records and other information relating to each Transferring Business (in the case of the Seller, to the extent retained) and (B) the officers and other employees of such Party and its Affiliates, in each case, to the extent reasonably necessary or appropriate in connection with the resolution of the Disputed Items.

(c) Each Relevant Party shall bear its own costs in relation to the Final Auditor. The Final Auditor's fees and any costs incurred in arriving at the determination (including any fees and costs of any advisers appointed by the Final Auditor) shall be borne by each Relevant Party in proportion to the final allocation made by the Final Auditor of the Disputed Items weighted in relation to the claims made by each such Party, such that the prevailing party pays the lesser proportion of such fees and costs.

(d) In respect of each Membership Interest, without duplication of any amount paid in accordance with Section 2.4(e), if the amount equal to (x) the Relevant Purchase Price after reflecting the adjustments determined in accordance with Section 2.4(b), less (y) the amount paid by the Relevant Purchaser to the Seller on the Closing Date in accordance with Section 3.4(a)(i), or plus (z) the amount paid by the Seller to the Relevant Purchaser on the Closing Date in accordance with Section 3.4(a)(ii) (in respect of (y) and (z), as the case may be), is:

(i) a negative number, the Seller shall, within five Business Days after the final determination of such amount, pay to the Relevant Purchaser such amount in cash by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by such Purchaser to the Seller; or

(ii) a positive number, the Relevant Purchaser shall, within five Business Days after the final determination of such amount, pay to the Seller such amount in cash by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Seller to such Purchaser.

(e) In respect of each Membership Interest, without duplication of any amount paid in accordance with Section 2.4(d), (i) if any of the membership interest specified in Section 3.3(e) is less than the "GK Membership Interests" part of the Relevant Required Equity Amount required on the Closing Date, the Seller shall pay such shortfall to the Relevant Purchaser, (ii) if any indebtedness specified in Section 3.3(f) is more than the Relevant Maximum Debt Amount as of the Closing Date, the Seller shall pay 1% of such excess to the Relevant Purchaser and (iii) if the requirements specified in Section 3.3(g) are not satisfied, the Seller shall pay the amount of any Leakage or, if there are *tokumei kumiai* interests in the relevant Transferring Company, 1% of such Leakage, to the Relevant Purchaser. Any such payment shall be reduced by any adjustment to the Purchase Price agreed by the Seller and the Relevant Purchaser on the Closing Date, and shall otherwise be paid within five Business Days after the final determination of such amount, by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Relevant Purchaser to the Seller.

(f) Unless otherwise required by applicable Law, any payment made in accordance with Section 2.4(d) shall be treated as an adjustment to the Relevant Purchase Price for applicable Tax purposes.

2.5 Finance Project Adjustment.

(a) For each Finance Project, the Seller shall deliver to the Relevant Purchaser a copy of (i) a version of the facilities agreement that the Seller reasonably expects reflects the final terms and conditions of the facilities agreement for such Project at least two Business Days prior to the date it is executed and at least 10 Business Days prior to the Closing and (ii) the executed version of such facilities agreement no later than the next Business Day after the date it is executed. Within two Business Days from the delivery of such executed version to the Relevant Purchaser, the Seller or the Relevant Purchaser may notify the other in writing that the financial terms of such executed version differ from the financial terms for the financing assumed for the purposes of preparing the Relevant Financial Model for the relevant Project (any such notice, a “**Finance Adjustment Notice**”).

(b) By no more than three Business Days after the delivery of a Finance Adjustment Notice, the Seller and the Relevant Purchaser shall consult in good faith and amend the Relevant Financial Model for the relevant Project to reflect the financial terms of the relevant facilities agreement and, in implementing such amendments, shall use the same methodology as originally used to prepare such Relevant Financial Model (with the only difference being the value inputs of such different financial terms). Such amended model shall be treated as the Relevant Financial Model for all purposes of this Agreement from the date of this Agreement.

(c) By no more than three Business Days after amending the Relevant Financial Model for the relevant Project pursuant to Section 2.5(b), the Seller and the Relevant Purchaser shall consult in good faith to amend the Relevant Base Consideration, the Relevant Assumed Net Producer-Side Charges Reduction Amount, the Relevant Maximum Debt Amount and the Relevant Required Equity Amount, in each case to the extent required to reflect the amended Relevant Financial Model. For such mutual consultation, such Parties shall use the same methodology as originally used to prepare the amounts specified as the “Base Consideration”, “Assumed Net Producer-Side Charges Reduction Amount”, “Maximum Debt Amount” and “Required Equity Amount” for the relevant Project in Schedule 1 (*Projects*) (with the only differences being the amendments to the Relevant Financial Model implemented in accordance with Section 2.5(b)).

2.6 Equity Adjustments.

(a) No later than five Business Days before the Closing Date, the Seller shall deliver to the Relevant Purchaser of each Pre-Finance Project reasonable evidence, such as invoices, transfer records, receipts or other evidence, for (i) all Relevant Project Spend in the following categories for each such Project: (A) engineering, procurement and/or construction; (B) interconnection; (C) insurance; and (D) solar modules and (ii) no less than 50% (in aggregate value) of all other Relevant Project Spend for each such Project related to development costs that are not included in (i). At any time during the Interim Period, each Relevant Purchaser may request the Seller to provide reasonable evidence of any other material Relevant Project Spend incurred with respect to a Pre-Finance Project, and the Seller shall use reasonable efforts to promptly provide such evidence to the Relevant Purchaser.

(b) With respect to each Transferring Company that holds a Pre-Finance Project, the “**Relevant Equity Adjustment Amount**” shall mean an amount equal to 1% of (i) the amount of the Relevant Closing Equity Amount attributable to (A) Relevant Project Spend and (B) cash held by such Transferring Company (excluding any cash contributed to such Transferring Company pursuant to Section 2.6(c) and any cash contributed to such Transferring Company pursuant to section 2.6(c) (*Equity Adjustments*) of the TK PSA), less (ii) the Relevant Required Equity Amount, in each case as of the Closing.

(c) At any time during the Interim Period, each Purchaser may request the Seller to contribute additional cash to the relevant Transferring Company to fund a reasonable amount of anticipated post-Closing expenditures. The Seller shall consider any such request in good faith and in the event that the Seller and the Relevant Purchaser agree, the Seller shall contribute such amount in cash to the relevant Transferring Company prior to the Closing (any such contribution, a “**Cash Contribution**”).

2.7 **Producer-Side Base Charges Regime.**

(a) **Charges Reflected.** The Parties acknowledge that the Relevant Base Consideration for each Transferring Business used to calculate each Relevant Purchase Price reflects a reduction in respect of the expected net impact of certain power producer-side base charges (*hatsuden gawa kakin*) (the “**Producer-Side Base Charges**”) on the relevant Project (the “**Relevant Net Producer-Side Charges Reduction Amount**”) equal to the Relevant Assumed Net Producer-Side Charges Reduction Amount, on the basis of the following assumptions:

(i) Producer-Side Base Charges will apply in respect of the relevant Project in an amount calculated by the formula of ¥75/kW per month and ¥0.25/kWh;

(ii) an adjustment amount (such as that shown in the slides distributed at the 32nd Massive Renewable Introduction Committee of METI’s official council held on May 12, 2021) will be deducted from the Producer-Side Base Charges (the “**Grid Charge Adjustment Amount**”) in an amount calculated by the formula of ¥0.5/kWh; and

(iii) the applicable period of the Producer-Side Base Charges and the Grid Charge Adjustment Amount is the period between April 1, 2024 and the end of the applicable FIT procurement period.

(b) **Post-Closing Adjustments for Producer-Side Base Charges Regime.**

(i) If METI adopts definitive regulations with respect to the Producer-Side Base Charges and the Grid Charge Adjustment Amount (the “**METI Wheeling Regulations**”) on or before the date 18 months from the date of this Agreement, and the parameters applicable under such METI Wheeling Regulations differ from the assumptions set forth in Section 2.7(a) (including, for the avoidance of doubt, if no Producer-Side Base Charges and/or Grid Charge Adjustment Amount are applicable to the Projects under such METI Wheeling Regulations), then the Parties shall, as soon as reasonably practicable after such date, consult in good faith to recalculate each Relevant Net Producer-Side Charges Reduction Amount under the METI Wheeling Regulations (each such recalculated amount, the “**Relevant Adjusted Net Producer-Side Charges Reduction Amount**”). For such mutual consultation, the Parties shall use a methodology similar to the methodology used to calculate the Relevant Assumed Net Producer-Side Charges Reduction Amount to the extent possible.

(ii) In respect of each Project, if the difference between the Relevant Adjusted Net Producer-Side Charges Reduction Amount and the Relevant Assumed Net Producer-Side Charges Reduction Amount (the “**Relevant Producer-Side Charges Adjustment Amount**”) (A) is a positive amount, the Seller shall pay such amount to the Relevant Purchaser or (B) is a negative amount, the Relevant Purchaser shall pay such amount to the Seller, in each case by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated by such Purchaser or the Seller (as the case may be), with any bank charges, fees or expenses in respect of such payment being borne by the payer, within 30 Business Days from the date on which the Relevant Producer-Side Charges Adjustment Amount is agreed between the Seller and such Purchaser, provided that the Relevant Producer-Side Charges Adjustment Amount to be paid under this Section 2.7(b)(ii) by the Seller or the Relevant Purchaser in respect of each Project shall not exceed the “Maximum Producer-Side Charges Adjustment Amount” set forth in the relevant Part of Schedule 1 (*Projects*).

(iii) For the avoidance of doubt, if METI does not adopt the METI Wheeling Regulations on or before the date 18 months from the date of this Agreement, then no Relevant Adjusted Net Producer-Side Charges Reduction Amount shall be calculated and no Relevant Producer-Side Charges Adjustment Amount shall be payable under this Section 2.7(b).

(c) Continued Observance. If any Purchaser intends to transfer all or any material portion of the equity interests, business or assets of any Transferring Company or Project to any Person at a time when any Relevant Producer-Side Charges Adjustment Amount may become payable to the Seller in respect of any Project then held by such Transferring Company (in the case of a transfer of the equity interests of a Transferring Company) or such Project (in the case of a transfer of the business or assets of any Project), then before such transfer, such Purchaser shall, and shall cause such Person to, enter into a written agreement with the Seller, in a form reasonably acceptable to the Seller and such Purchaser, under which such Person agrees to the provisions of this Section 2.7 as though such Person was the “Purchaser” of each Project then held by such Transferring Company (in the case of a transfer of the equity interests of a Transferring Company) or such Project (in the case of a transfer of the business or assets of any Project). Notwithstanding the foregoing, the relevant Purchaser shall continue to be jointly and severally liable with each such Person in respect of the obligations under this Section 2.7.

2.8 Earn-out Mechanisms

(a) Project26 Accelerated NTP. If a “notice to proceed” is delivered or work otherwise commences under any engineering, procurement and/or construction contract for an Earn-out Project (each, an “**Earn-out Trigger Event**”) before [***] (the “**Earn-out Outside Date**”), the Project26 Purchaser shall pay to the Seller on the date determined in accordance with Section 2.8(b) an amount equal to the “Accelerated NTP Earn-out Amount” for such Project as set forth in the relevant Part of Schedule 1 (*Projects*) (each, an “**Earn-out Amount**”).

(b) Payment. In the event that an Earn-out Trigger Event has occurred for any Earn-out Project before the Earn-out Outside Date, the Project26 Purchaser shall pay the Earn-out Amount with respect to such Earn-out Project within 10 Business Days from the earlier of (i) the date on which an Earn-out Liquidity Event has occurred in respect of such Project and (ii) the Earn-out Outside Date, by wire transfer of immediately available funds, in

Japanese Yen, to the bank account designated by the Seller, with any bank charges, fees or expenses in respect of such payment being borne by the Project26 Purchaser. Unless otherwise required by applicable Law, any such payment shall be treated as an adjustment to the Relevant Purchase Price in respect of Project26 for applicable Tax purposes.

(c) Covenants. The Project26 Purchaser shall, and shall cause each of its Affiliates to:

(i) promptly supply the Seller with such information or evidence as the Seller may reasonably request from time to time to (A) establish whether any Earn-out Trigger Event or Earn-out Liquidity Event has occurred or (B) calculate or review the Project26 Purchaser's calculation of any amount payable in connection with any Earn-out Trigger Event;

(ii) act in good faith in respect of the Project26 Purchaser's obligations under this Section 2.8; and

(iii) not take any action or do any other thing with the primary intention of (A) avoiding any of the Project26 Purchaser's obligations under this Section 2.8 or (B) otherwise reducing any amount that may become payable to the Seller in accordance with this Section 2.8.

(d) Continued Observance. If (i) the Project26 Purchaser intends to transfer all or any material portion of the equity interests, business or assets of Project26 or any Earn-out Project to any Person and (ii) no Earn-out Amount would be payable to the Seller upon such transfer but (iii) an Earn-out Amount may become payable to the Seller in respect of any Earn-out Project then held by Project26 (in the case of a transfer of the equity interests of Project26) or such Project (in the case of a transfer of the business or assets of any Earn-out Project), then before such transfer, the Project26 Purchaser shall, and shall cause such Person to, enter into a written agreement with the Seller, in a form reasonably acceptable to the Seller and the Project26 Purchaser, under which such Person agrees to the provisions of this Section 2.8 as though such Person was the "Purchaser" of each Earn-out Project then held by Project26 in respect of which an Earn-out Amount may become payable to the Seller (in the case of a transfer of the equity interests of Project26) or such Project (in the case of a transfer of the business or assets of any Earn-out Project). Notwithstanding the foregoing, the Project26 Purchaser shall continue to be jointly and severally liable with each such Person in respect of the obligations under this Section 2.8.

3. CLOSING

3.1 Closing. Provided that this Agreement is not terminated in accordance with Article 12, the purchase and sale of the Membership Interests pursuant to Section 2.1 (the "Closing") shall take place simultaneously on the "DevCo Closing Date" under the Business PSA (the "Closing Date").

3.2 Closing Conditions of the Seller. The obligation of the Seller to consummate the Transaction is subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived by the Seller:

(a) Representations and Warranties of each Purchaser. (i) The representations and warranties made by each Purchaser set forth in Sections 8.1

(Organization; Power and Authority; Enforceability), 8.2(a) (No Conflicts; No Permits), 8.5 (Not Insolvent), 8.6 (Brokers and Other Advisors) and 8.8 (Antisocial Forces) shall be true and correct in all but minimal respects and (ii) the other representations and warranties made by each Purchaser set forth in Article 8 shall be true and correct in all material respects, in each case (i) and (ii) as of the Closing Date.

(b) Obligations of each Purchaser. Each Purchaser shall have performed or observed, in all material respects, all of its obligations that are to be performed or observed under this Agreement by the Closing Date.

(c) No Adverse Order. There shall not have been any Proceedings instituted or Order issued by any Governmental Authority or any change in Law that has the effect of making the Closing illegal or otherwise restrains in any material respect, prohibits or invalidates the Closing by any Party.

(d) Financing Arrangements.

(i) (A) Each relevant Transferring Company holding a Finance Project shall have entered into a facilities agreement as required under and in accordance with Section 2.5(a) and (B) a disbursement under each such agreement shall have been made to the relevant Transferring Company.

(ii) For each Finance Adjustment Notice delivered pursuant to Section 2.5(a) (if any), the Seller and the Relevant Purchaser shall have agreed upon amendments to the Relevant Financial Model in accordance with Section 2.5(b) and amendments to the Relevant Base Consideration, the Relevant Assumed Net Producer-Side Charges Reduction Amount, the Relevant Maximum Debt Amount and the Relevant Required Equity Amount in accordance with Section 2.5(c).

(iii) The Finance Parties under the Finance Documents for each relevant Transferring Company shall have granted all consents and approvals required for (i) the execution and performance of this Agreement by the Seller and (ii) the release of the Seller and its Affiliates (other than the Transferring Companies) from any and all obligations under such Finance Documents (including the Seller Credit Support), in each case without (A) resulting in any breach, event of default or acceleration under such Finance Documents or (B) requiring any amendment, waiver or modification to such Finance Documents that is adverse to any Transferring Company or Purchaser in any material respect (in respect of each Project, the “**Finance Consent and Release**”).

(e) Seller Credit Support. The Purchasers or their Affiliates shall have assumed (effective as of the Closing Date) all of the obligations of the Seller and its Affiliates (other than the Transferring Companies) under the Seller Credit Support and (ii) the Seller shall have received (effective as of the Closing Date) a full release from each counterparty thereto and/or beneficiary thereof in form and substance reasonably satisfactory to the Seller.

(f) Run-Off Insurance. The Purchasers shall have delivered to the Seller copies of documents evidencing that the Purchasers have obtained, at the Purchasers’ cost, a non-cancelable run-off insurance policy:

(i) to provide insurance coverage for six years (i) from the Closing Date for events, acts or omissions relating to any Transferring Business occurring on or prior

to the Closing Date for all individuals who were directors, managers or officers of any Transferring Company on or prior to the Closing Date; and

(ii) which contains terms and conditions no less favorable to the insured individuals than the directors', managers' or officers' liability coverage maintained by the Seller or any Transferring Company as of the date of this Agreement.

(g) DSAs. Each of FS Japan Project4 GK, FS Japan Project1 GK, FS Japan Project27 GK, FS Japan Project 6 GK and FS Japan Project26 GK shall have entered into a separate DSA with the Seller, dated as of the Closing Date.

(h) Delivery of Approval Documents. The following documents shall have been delivered by each Purchaser to the Seller:

(i) copies of the documents evidencing the approval of the execution and performance of this Agreement by the decision making body of such Purchaser; and

(ii) a certificate by an authorized officer of such Purchaser substantially in the form of Exhibit B (*Form of Closing Certificate*), dated as of the Closing Date.

3.3 Closing Conditions of the Purchasers. The obligation of the Purchasers to consummate the Transaction is subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived by the Purchasers:

(a) Representations and Warranties of the Seller. (i) The representations and warranties made by the Seller set forth in Sections 6.1 (*Organization; Power and Authority; Enforceability*), 6.2(a) (*No Conflicts; No Permits*), 6.3 (*Title*), 6.12 (*Not Insolvent*), 6.22 (*Brokers and Other Advisors*) and 6.24 (*Antisocial Forces*) shall be true and correct in all but minimal respects and (ii) the other representations and warranties made by the Seller set forth in Article 6 shall be true and correct except where the failure to be true and correct would not reasonably be expected to have a Material Adverse Effect, in each case (i) and (ii) as of the Closing Date (except to the extent any such representation and warranty is expressly related to any particular earlier date, in which case as of such date).

(b) Obligations of the Seller. The Seller shall have performed or observed, in all material respects, all of its obligations that are to be performed or observed under this Agreement by the Closing Date.

(c) No Adverse Order. There shall not have been any Proceedings instituted or Order issued by any Governmental Authority or any change in Law that has the effect of making the Closing illegal or otherwise restrains in any material respect, prohibits or invalidates the Closing by any Party.

(d) Financing Arrangements.

(i) (A) Each relevant Transferring Company holding a Finance Project shall have entered into a facilities agreement as required under and in accordance with Section 2.5(a) and (B) a disbursement under each such agreement shall have been made to the relevant Transferring Company.

(ii) For each Finance Adjustment Notice delivered pursuant to Section 2.5(a) (if any), the Seller and the Relevant Purchaser shall have agreed upon amendments to the Relevant Financial Model in accordance with Section 2.5(b) and amendments to the Relevant Base Consideration, the Relevant Assumed Net Producer-Side Charges Reduction Amount, the Relevant Maximum Debt Amount and the Relevant Required Equity Amount in accordance with Section 2.5(c).

(iii) The Finance Parties under the Finance Documents for each relevant Transferring Company shall have granted a Finance Consent and Release.

(e) Funding of Required Amounts. For each Finance Project, neither (i) the membership interest in the relevant Transferring Company held by the Seller on the Closing Date nor (ii) the *tokumei kumiai* interests in the relevant Transferring Company held by the relevant TK PSA Seller on the Closing Date, shall be less than the Relevant Required Equity Amount.

(f) Maximum Debt. For each Development Project, the maximum indebtedness for borrowed money owed by the relevant Transferring Company as of the Closing Date shall not be more than the Relevant Maximum Debt Amount.

(g) Leakage. No Leakage shall have occurred in respect of any Transferring Company between the date of this Agreement and the Closing.

(h) Module Procurement Undertaking. The Seller shall have delivered to each Purchaser other than the Project26 Purchaser a Module Procurement Undertaking duly executed by First Solar, Inc.

(i) Module Purchase Change Order / Warranty Amendment. The Seller shall have delivered to the Relevant Purchaser of each of the Kyoto Project, the Hitakokusai Project, the Shimo-Onuki Project, the Handa Project and the Minami Ueno-Cho Project (i) a change order to the module purchase orders for each such Project (other than the Hitakokusai Project), reflecting the updated prices for such purchase orders as shown in the Relevant Financial Model and (ii) an amendment to the First Solar Limited Warranty Terms and Conditions for such Project substantially in the form of Exhibit D (*Form of Module Warranty Amendment*), each duly executed by the Seller.

(j) Extensions of Leased Real Property Agreements. The Seller shall have delivered to each Relevant Purchaser (i) extensions of the Leased Real Property Agreements executed by the relevant Land Companies for the Yatsubo Project, the Momura Project and the Shimo-Onuki Project whereby the term is extended to at least 30 years from the expected commercial operation date and (ii) such documents necessary for the registration of such extensions in the relevant real property registry, in each case in form and substance (including the term of the extension) reasonably satisfactory to the Seller and each Relevant Purchaser.

(k) DSAs. Each of FS Japan Project4 GK, FS Japan Project1 GK, FS Japan Project27 GK, FS Japan Project 6 GK and FS Japan Project26 GK shall have entered into a separate DSA with the Seller, dated as of the Closing Date.

(l) Delivery of Documents. The following documents shall have been delivered by the Seller to the Purchasers:

- body of the Seller;
- (i) copies of the documents evidencing the approval of the execution and performance of this Agreement by the decision making of the Closing Date;
- (ii) a certificate by an authorized officer of the Seller substantially in the form of Exhibit B (*Form of Closing Certificate*), dated as stamped by the Seller; and
- (iii) a written consent in respect of each Transferring Company substantially in the form of Exhibit C (*Form of Seller Consent*), duly stamped by the Seller; and
- (iv) a seal certificate of the Seller issued within three months prior to the Closing Date.

3.4 Deliveries and Closing Actions. On the Closing Date, upon satisfaction of the conditions set forth in Sections 3.2 and 3.3:

- (a) in respect of each Membership Interest, if the Relevant Purchase Price is:
- (i) a positive number, the Relevant Purchaser shall pay such amount by wire transfer of immediately available funds, in Japanese Yen, to the Seller Bank Account, with any bank charges, fees or expenses in respect of such payment being borne by such Purchaser; or
- (ii) a negative number, the Seller shall pay such amount by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Relevant Purchaser to the Seller, with any bank charges, fees or expenses in respect of such payment being borne by the Seller; and
- (b) the Seller shall deliver to the Purchasers the documents referred to in Section 3.3(k) to the extent such documents have not already been delivered to the Purchasers.

All of the actions to be taken and documents to be executed and delivered at the Closing (as provided in this Section 3.4) shall be deemed to be taken, executed and delivered simultaneously, and no such action, execution or delivery will be effective until all are complete.

4. PRE-CLOSING COVENANTS

4.1 Conduct of Business.

- (a) Subject to Section 4.1(b), and except (x) as otherwise contemplated by this Agreement or (y) as otherwise consented to or approved in advance in writing by the Relevant Purchaser (which consent or approval shall not be unreasonably withheld, conditioned or delayed), during the Interim Period, in respect of each Transferring Company, the Seller shall, and shall cause such Transferring Company to:
- (i) conduct the Transferring Business in the ordinary course of business;

(ii) not (A) amend, revise or change in any material respect, (B) waive any material right under or (C) terminate, in each case any Finance Document or other Material Contract, other than the amendments referred to in Section 3.3(i);

(iii) perform and observe its obligations to be performed and observed under each Material Contract in all material respects;

(iv) not submit any application to METI for a change in the Business Plan of any Project other than the “Business Plan Change Applications” identified as “Expected” in the relevant Part of Schedule 1 (*Projects*);

(v) in the case of such Transferring Company only, not amend or restate any of its Constituent Documents;

(vi) not incur any Leakage;

(vii) not deviate in any material respect from the investments, expenditures and costs set forth in the Relevant Financial Model; and

(viii) in the case of such Transferring Company only, except as required by applicable Law or J-GAAP, not change, in any material respect, its Tax practices or policies (including making, rescinding or modifying any Tax election, changing any method of accounting or taxable period, settling any Tax controversy, requesting any Tax ruling or incentive, surrendering any right to claim a Tax refund, offset or other reduction in Tax liability, or amending any Tax Return), in each case except in the ordinary course of business consistent with past practice.

(b) The Seller shall not be in breach of Section 4.1(a) if it or any Transferring Company:

(i) enters into any Contract or arrangement with MinamiYamashiro Village in connection with land parcels relating to the Kyoto Project on terms substantially similar to those set forth in the draft land exchange agreement with MinamiYamashiro Village disclosed in the VDR;

(ii) complies with or performs any obligation under any Contract or arrangement entered into by the Seller or such Transferring Company either (A) before the date of this Agreement, provided that such Contract or arrangement was fairly disclosed to the Relevant Purchaser in any of the Disclosure Sources or (B) during the Interim Period, provided that such Contract or arrangement was (I) approved by the Relevant Purchaser or (II) entered into in accordance with Section 4.1(b)(i);

(iii) repays, or causes the repayment of, any amounts payable by FS Japan Project24 GK or FS Japan Project25 GK to the Seller under any intercompany loan Contract disclosed in the VDR using proceeds from cash contributions made to such Transferring Company during the Interim Period;

(iv) takes any action reasonably necessary to comply with (A) applicable Law or (B) any request of a Governmental Authority or utility;

(v) takes any action reasonably necessary under circumstances that are reasonably likely to (A) endanger the safety of individuals or (B) pose an immediate

threat of material damage to any material assets or properties, provided that the Relevant Purchaser is notified as soon thereafter as practicable; or

(vi) takes any action reasonably necessary to give effect to or comply with the terms of the Transaction Documents, which shall include incurring any costs or fees in connection with the consummation of the Transaction.

(c) For the avoidance of doubt, no action taken by the Seller in accordance with Section 4.1(b) shall constitute a waiver of any of the representations or warranties of the Seller in Article 6, nor a waiver of the conditions set forth in Section 3.3.

4.2 No Other Contact. During the Interim Period, no Purchaser shall, and each Purchaser shall cause that its Affiliates and its and its Affiliates' respective representatives do not, contact or correspond with any manager, employee, supplier, contractor, vendor or other Person associated with the Seller, its Affiliates or the Transferring Business with respect to the Transferring Business, except (a) with the prior written consent of the Seller, such consent not to be unreasonably withheld or delayed or (b) in the circumstances set forth in Section 4.3.

4.3 Lender Discussions.

(a) During the Interim Period, the Seller shall facilitate the Relevant Purchaser's participation in any discussions with any potential lender to any Transferring Company that has not entered into project financing.

(b) As soon as reasonably practicable after the date of this Agreement, the Seller shall introduce the Relevant Purchaser to the relevant Finance Parties in respect of each Finance Project for the purpose of satisfying the conditions set forth in Sections 3.2(d) and (e) and 3.3(d), provided that such Purchaser shall facilitate the Seller's participation in any subsequent discussions with such Finance Parties in respect of satisfying such conditions.

4.4 Efforts to Close.

(a) Efforts to Consummate. Each Party shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the Closing.

(b) Efforts to Comply. If any objections are asserted with respect to the Transaction under any Law or if any suit is instituted (or threatened to be instituted) by any Governmental Authority or other Person challenging the Closing as a violation of any Law or that would otherwise prohibit or materially impair or materially delay the Closing, each Party shall use its commercially reasonable efforts to resolve any such objections or suits so as to permit the Closing without material modification to the terms of this Agreement.

4.5 Continuing Due Diligence. During the Interim Period, the Seller shall continue to (a) afford the Purchasers and their authorized representatives (including independent public accountants and attorneys) reasonable access to the employees and business and financial records of the Transferring Companies and (b) furnish to the Purchasers and their authorized representatives (including independent public accountants and attorneys) such additional information concerning the assets, properties and operations of the Transferring Companies, in both cases as reasonably necessary for the Purchasers to

conduct financial due diligence of the Transferring Companies for the purposes of satisfying the conditional exclusion of the financial statements of the Transferring Companies as set forth in the W&I Policy.

4.6 Disclosure Supplements. The Seller may from time to time during the Interim Period, but in no event later than the fifth Business Day before the Closing Date, notify the Purchasers in writing of the existence or happening of any fact, event or occurrence that has occurred after the date of this Agreement and that should be included as an exception to a representation and warranty made by the Seller under Article 6 to make such representation and warranty true and correct as of the Closing Date (each such written disclosure, a “**Disclosure Supplement**”). With respect to the matters disclosed in any such Disclosure Supplement:

(a) if the Purchasers have the right to, but elect not to, terminate this Agreement with respect to any fact, event or occurrence set forth in a Disclosure Supplement in accordance with Section 12.1(d) or (e), in each case within five Business Days of its receipt of such Disclosure Supplement, then the Purchasers shall be deemed to have waived their right to so terminate this Agreement with respect to the facts, events and occurrences set forth in such Disclosure Supplement;

(b) no fact, event or occurrence set forth in such Disclosure Supplement shall be given any effect for purposes of determining whether any Purchaser is entitled to indemnification under Article 9 from the Closing Date; and

(c) any fact, event or occurrence set forth in such Disclosure Supplement shall be treated as an exception to the representations and warranties made by the Seller under Article 6 solely for the purposes of determining whether the conditions set forth in Section 3.3(a) have been satisfied, unless such fact, event or circumstance (i) would, together with all related matters disclosed in a Disclosure Supplement, reasonably be expected to have a Material Adverse Effect or (ii) constitutes a material breach of any of the Fundamental Warranties.

4.7 Notification of Relevant Circumstances. In the event that, at any time during the Interim Period, the Seller recognizes any (a) material non-performance of its obligations under this Agreement, (b) event or circumstance that makes it impossible to satisfy the conditions set forth in Section 3.3 or (c) event or circumstance that is reasonably expected to cause the foregoing to occur, the Seller shall immediately notify the Purchasers in writing to such effect and of the details of the same.

5. POST-CLOSING COVENANTS

5.1 Further Assurances. Each Party agrees that from time to time after the Closing Date and at the written request of any other Party, it shall execute and deliver such further instruments, and take such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement with respect to the Closing.

5.2 Inter-Company Payables. To the extent that the Seller is unable to extinguish by the Closing all accounts payable owed to the Seller by any Transferring Company that holds a Pre-Finance Project, then within 15 Business Days after the Closing Date, for each such Transferring Company, the Seller shall deliver to the Relevant Purchaser a statement setting forth with reasonable evidence therefor all expenditures made by the Seller on behalf

of the relevant Transferring Company that were still owed by such Transferring Company to the Seller as of the Closing (the “Closing IC Payables”). By no more than five Business Days after the delivery of such statement and the evidence therefor to the Relevant Purchaser, the Seller and the Relevant Purchaser shall consult in good faith and finalize the Closing IC Payables. Within five Business Days after finalization of the Closing IC Payables, the Relevant Purchaser shall pay the Seller for all such Closing IC Payables, by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Seller to the Relevant Purchaser. Unless otherwise required by applicable Law, any payment made in accordance with this Section 5.2 shall be treated as an adjustment to the Relevant Purchase Price for applicable Tax purposes.

6. REPRESENTATIONS AND WARRANTIES OF THE SELLER

Subject to Section 4.6, Article 7 and the exceptions and qualifications set forth in Schedule 2 (*Disclosure Schedule*), the Seller represents and warrants to each Purchaser as of the date of this Agreement and as of the Closing Date (except for those representations and warranties expressly made as of a certain date, in which case, as of such date) as follows:

6.1 Organization; Power and Authority; Enforceability. The Seller (a) is a *godo kaisha* duly established and validly existing under the laws of Japan, (b) has full power and authority to execute and deliver the Transaction Documents to which it is or is intended to be a party and to perform all its obligations and exercise all its rights under such Transaction Documents, (c) has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, such Transaction Documents in accordance with their terms and (d) has duly executed and delivered the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made. Assuming the due authorization, execution and delivery by the other parties to the Transaction Documents, the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made constitute valid and legally binding obligations of the Seller, enforceable against the Seller in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors’ rights in general or by general principles of equity (the “**Bankruptcy Exception**”).

6.2 No Conflicts; No Permits.

(a) Subject to the satisfaction of the conditions set forth in Section 3.2 and section 3.2 (*Closing Conditions of the Seller*) of the Business PSA, the execution and delivery by the Seller of the Transaction Documents to which it is or is intended to be a party do not, and the consummation of the Transaction and all other transactions contemplated by such Transaction Documents will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of the Seller under, any provision of (i) the Constituent Documents of the Seller or (ii) any Law applicable to the Seller or its properties or assets, other than, in the case of clause (ii) above, any such items that would not reasonably be expected to, individually or in the aggregate, (A) prevent or materially delay consummation of the Transaction or (B) have a Material Adverse Effect.

(b) Subject to the satisfaction of the conditions set forth in Section 3.2 and section 3.2 (*Closing Conditions of the Seller*) of the Business PSA, no Permit is required to

be obtained or made by or with respect to the Seller in connection with the execution and delivery of the Transaction Documents to which it is or is intended to be a party or performance by the Seller of the Transaction and all other transactions contemplated by such Transaction Documents, other than such items the failure of which to obtain or make would not reasonably be expected to, individually or in the aggregate, (i) prevent or materially delay consummation of the Transaction or (ii) have a Material Adverse Effect.

6.3 Title.

(a) The Seller is the sole and legal beneficial owner of 100% of the Membership Interests, and is transferring all such Membership Interests to the Purchasers free and clear of any Liens (other than Permitted Liens).

(b) There are no (i) membership interests in any Transferring Company other than the Membership Interests owned by the Seller and transferred hereunder or (ii) outstanding rights, options, warrants, rights of first refusal, calls, preemptive rights, conversion rights, subscriptions, commitments or other agreements pursuant to which the Seller or any Transferring Company is, or may be, obligated to sell or issue any other membership interest in any Transferring Company.

6.4 Constitution.

(a) Each Transferring Company is (i) a *godo kaisha* duly formed and validly existing under the laws of Japan and has the corporate power and authority to own, lease or otherwise hold its properties and assets and to carry on the relevant Transferring Business and (ii) duly qualified to do business in each jurisdiction in which the nature of its business or properties makes such qualification necessary, except for those jurisdictions where the failure to be so qualified would not have a Material Adverse Effect.

(b) As of the date of this Agreement, the amount of capital contributions in relation to the Membership Interest of (i) each Transferring Company other than Project26 is as set forth in the relevant Part of Schedule 1 (*Projects*) and (ii) Project26 is [***].

(c) As of the date of this Agreement, the amount of *tokumei kumiai* contributions to each Transferring Company is as specified in the relevant Part of Schedule 1 (*Projects*).

6.5 Other Equity Interests. No Transferring Company holds any equity interests in any Person.

6.6 Material Contracts.

(a) True, complete and correct copies of each Material Contract, and all of the amendments, modifications and supplements thereto (other than any (i) Contracts, amendments, modifications and supplements entered into to satisfy the conditions set forth in Section 3.2 or 3.3 or any other Transaction Document or (ii) other Transaction Document), have been disclosed in the VDR.

(b) Each Material Contract constitutes valid and legally binding obligations of the Seller or a Transferring Company (as applicable) and, to the Knowledge of the Seller, the other parties thereto, enforceable against such parties in accordance with their terms, except (i) as such enforceability may be limited by the Bankruptcy Exception,

(ii) where the rights and obligations thereunder may be subordinated or otherwise limited or restricted under the terms of the Finance Documents or (iii) where such failure to constitute a valid and legally binding obligation or be enforceable does not have a Material Adverse Effect.

(c) No default by the Seller and/or a Transferring Company (as applicable) or, to the Knowledge of the Seller, any other Person, has occurred and is continuing in respect of any Material Contract that has had or would reasonably be expected to have a Material Adverse Effect.

6.7 Related Party Agreements. Immediately before the Closing, other than the Seller Credit Support, each Module Procurement Undertaking, each module supply Contract and each DSA between the Seller and certain Transferring Companies, the other Transaction Documents, each Contract that has been or will be transferred to a NewCo in accordance with the Business PSA and any Closing IC Payables, there will be no credit support documents or other outstanding Contracts, loans, accounts payable, accounts receivable or other amounts owed between any Transferring Company, on the one hand, and the Seller or any of its current or former officers, directors, investors or Affiliates (other than each Leased Real Property Agreement with a Land Company), on the other hand.

6.8 Real Property.

(a) Each Transferring Company has lawful surface rights, easements or other rights of use and access to its Leased Real Property necessary to conduct its business as currently conducted, except as would not reasonably be expected to have a Material Adverse Effect.

(b) There are no Proceedings pending or threatened in writing to (i) condemn or take any Leased Real Property, (ii) declare any Leased Real Property or any material part of it a nuisance or (iii) exercise the power of eminent domain or a similar power with respect to all or any material part of any Leased Real Property. To the Knowledge of the Seller, the Leased Real Property does not contain any site for city planning roads or other city facilities for which a city planning decision has been made.

(c) The spreadsheets identified in the definition of "Leased Real Property Agreements" contain complete and accurate legal descriptions of all Leased Real Property Agreements.

(d) Each Leased Real Property Agreement was concluded and perfected, and is existing, validly and legally, free and clear of all Liens other than Permitted Liens. There are no grounds for the cancellation or termination of any Leased Real Property Agreement.

(e) Except as set forth in the spreadsheets identified in the definition of "Leased Real Property Agreements", there are no material leases, land purchase agreements or other similar agreements relating to real property to which any Transferring Company is a party.

(f) There is no unlawful infringement on any Leased Real Property by the buildings or structures of the adjacent lands. There is no unlawful infringement on

the adjacent lands by any Transferring Company or the buildings or structures of any Transferring Company.

As of the Closing Date, each representation and warranty in this Section 6.8 made in respect of the Kyoto Project and FS Japan Project 6 GK is subject to the exception and qualification that the land used by the Kyoto Project will transfer to an Affiliate of Kyoto Solar Plant L.P. on or around the Closing Date under the "Kyoto Land Transfer Agreement" as defined in the Business PSA.

6.9 Assets. Each Transferring Company has good and valid title to, or valid leasehold interests in, all material tangible assets currently being used by it, in each case duly perfected under applicable Laws (to the extent such perfection is legally possible, reasonably practicable and reasonably necessary) free and clear of all Liens (other than Permitted Liens). To the Knowledge of the Seller, there is no defect (including legal defect) in any assets of any Transferring Company that could reasonably be expected to have a Material Adverse Effect.

6.10 Insurance. All premiums with respect to the material insurance policies maintained by the Transferring Companies with respect to the Transferring Businesses have been duly paid, and no written notice of default, cancellation, non-renewal, termination, material premium increase or other material change in prospective coverage has been received by any Transferring Company with respect to any such insurance policies and all such insurance policies are in full force and effect.

6.11 Proceedings.

(a) There are no (i) material Proceedings by or before any court, tribunal or other Governmental Authority or threatened in writing against the Seller or otherwise in respect of any Transferring Company or Transferring Business that, if adversely determined or (ii) material outstanding Orders in respect of (and which are adverse to) the Seller, any Transferring Company or any Transferring Business that, in each case (i) and (ii), would reasonably be expected to (x) prevent, impede or delay the ability of the Seller to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party or (y) have a Material Adverse Effect. To the Knowledge of the Seller, there is no reasonable expectation that the foregoing (i) or (ii) will be filed or commenced.

(b) To the Knowledge of the Seller, there has been no event giving rise to a right to claim for indemnification under any product warranty or performance warranty given by the supplier of a solar battery module, power conditioner, mount or any other part of any Project.

6.12 Not Insolvent. Neither the Seller nor any Transferring Company is insolvent or unable to make payments as and when they come due, nor has it suspended payments to its creditors, and no petition has been filed with respect to the Seller or any Transferring Company for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures), nor does any cause for such Proceedings exist. The execution or performance of this Agreement will not cause the Seller or any Transferring Company to become insolvent or to not make or suspend such payments, and to the Knowledge of the Seller, there is no risk that such events would occur.

6.13 Compliance with Law.

(a) The Seller is in compliance with all Laws applicable to it, except where failure to be in compliance would not reasonably be expected to (i) prevent, impede or delay the ability of the Seller to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party or (ii) have a Material Adverse Effect.

(b) Each Transferring Company is in compliance with all Laws applicable to it, except where failure to be in compliance does not have and would not reasonably be expected to have a Material Adverse Effect.

(c) No material notice, charge, claim, action or assertion has been received in writing by the Seller or any Transferring Company from any Governmental Authority alleging any material violation of any Laws that materially affect any Transferring Company.

The representations and warranties in this Section 6.13 do not apply to environmental matters (which are governed exclusively by Section 6.14), Permit matters (which are governed exclusively by Section 6.15) or Tax matters (which are governed exclusively by Section 6.18).

6.14 Environmental Matters.

(a) To the Knowledge of the Seller, (i) each Transferring Business is in compliance with all applicable Environmental Laws, including with all Permits (if any) issued thereunder and (ii) the Leased Real Property is free from soil contamination by any Designated Hazardous Substances, except in each case (i) and (ii), as does not have and would not reasonably be expected to have a Material Adverse Effect.

(b) There are no material Environmental Claims pending or threatened in writing in respect of any Transferring Business by or before any Governmental Authority pursuant to any applicable Environmental Law that has or would reasonably be expected to have a Material Adverse Effect.

(c) Neither the Seller nor any Transferring Company has received any written notice from any Person, including any Governmental Authority, alleging that any Transferring Business is in material violation of any applicable Environmental Law or otherwise is materially liable under any Environmental Law.

6.15 Permits. (a) Each Transferring Company has all material Permits currently required under any Law (including, to the Knowledge of the Seller, any Environmental Law) to carry on its Transferring Business in all material respects, (b) each such Permit has been duly obtained, was validly issued, is in full force and effect in all material respects, and no Proceedings before any Governmental Authority are pending or threatened in writing seeking injunction, material modification or revocation of any such Permit, (c) no Transferring Company is in material violation of or in material default under any such Permit, (d) to the Knowledge of the Seller, grounds for revocation of such Permits have not occurred and (e) to the Knowledge of the Seller, there are no events or circumstances that would reasonably be expected to result in any Transferring Company not receiving the Permits necessary to conduct the Transferring Business, in each case of (a) to (e), except as would not reasonably be expected to have a Material Adverse Effect.

6.16 Financial Statements. The Financial Statements provided to the Purchasers:

(a) were prepared in accordance with J-GAAP;

(b) give a true and fair view of (if audited) or fairly present (if unaudited) the financial condition of the Transferring Companies as at the end of, and results of operations for, the periods to which such financial statements relate (in the case of unaudited financial statements, subject to (i) normal recurring year-end adjustments (the effect of which are not, individually or in the aggregate, expected to be material) and (ii) the absence of footnote disclosures and other presentation items (that, if presented, are not expected to differ materially from those included in audited statements)); and

(c) disclose all liabilities (contingent or otherwise), and the reserves, if any, for such liabilities and all unrealized or anticipated liabilities and losses arising from commitments entered into by the Transferring Companies, in each case to the extent required to be disclosed in accordance with J-GAAP.

6.17 Absence of Changes. Since the Reference Financial Statement Date, each Transferring Company has conducted its Transferring Business in the ordinary course of business consistent with its past custom and practice, except, in respect of the period between the date of this Agreement and the Closing Date, to the extent contemplated by the exceptions set forth in Section 4.1(b). Further, between the Reference Financial Statement Date and the date of this Agreement, there has been no event that has had or is likely to have a Material Adverse Effect.

6.18 Tax Matters.

(a) Each Transferring Company has filed, or has caused to be filed, all material Tax Returns that it is required to have filed (taking into account all applicable extensions validly obtained), and all such Tax Returns were true, complete and correct.

(b) Each Transferring Company has timely paid all Taxes to the appropriate Tax Authority, whether or not reflected on such Tax Returns (other than those Taxes that it is contesting in good faith by appropriate proceedings which are disclosed in Schedule 2 (*Disclosure Schedule*) and for which adequate reserves have been recorded on the financial statements in accordance with J-GAAP). Each Transferring Company has correctly withheld and timely remitted to the appropriate Tax Authority all Taxes required by applicable Law to have been withheld and remitted in connection with amounts paid, distributed or owing to the Seller or any employee, independent contractor, creditor, shareholder, vendor or Affiliate of the Seller or any "Seller" under the TK PSA.

(c) No Transferring Company has granted any waiver of or agreed to any extension with respect to any statute of limitations on the assessment or collection of any Tax.

(d) No material audit, examination or administrative proceeding initiated by any Governmental Authority with respect to any Taxes of any Transferring Company is currently pending.

(e) No Governmental Authority has asserted in writing any deficiency or assessment, or proposed in writing any adjustment, for any material Taxes of any Transferring Company that have not been paid or settled.

(f) There are no Tax liens upon the assets of any Transferring Company, other than Permitted Liens.

(g) No Transferring Company has entered into any Tax sharing agreement or similar contractual agreement to share liability with another Person or indemnify another Person for Taxes other than (i) any commercially customary gross-up or indemnification provisions on borrowings, derivatives or leases and (ii) any such agreement that addresses responsibility for Taxes in a commercially customary manner and the primary purpose of which is not the sharing or allocation of or indemnity for Tax liabilities.

(h) No Transferring Company has been a member of any affiliated, consolidated, combined, unitary or similar group or participated in any other arrangement whereby any income, revenues, receipts, gain or loss was determined or taken into account for Tax purposes with reference to or in conjunction with any income, revenues, receipts, gain, loss, asset or liability of any other Person except as disclosed in Schedule 2 (*Disclosure Schedule*) or any Disclosure Supplement. No Transferring Company has any liability for the Taxes of any other Person under Section 1.1502-6 of the U.S. Treasury Regulations (or any similar provision of applicable state, local or non-U.S. Law) or as a transferee or successor.

(i) Neither the Seller nor any Transferring Company has received notice of any claim by a Governmental Authority in a jurisdiction where a Transferring Company or Transferring Business does not file Tax Returns that such Transferring Company or Transferring Business is or may be subject to taxation or required to collect and remit Taxes in that jurisdiction. To the Knowledge of the Seller, no Transferring Company or Transferring Business has, or has ever had, a permanent establishment or engaged in a trade or business for applicable Tax purposes in any country other than Japan.

(j) For U.S. federal income Tax purposes each Transferring Company is treated as a partnership or is disregarded as a separate entity from its owner.

Subject to Sections 6.16 and 6.17, this Section 6.18 constitutes all of the Seller's representations and warranties with respect to Taxes, and no other representation or warranty in this Agreement shall be construed to apply to any matter relating to Taxes. Nothing in this Section 6.18 or elsewhere in this Agreement shall be construed as a representation or warranty with respect to the amount or availability of any net operating loss, capital loss, tax credit carryover or other Tax asset or attribute of the Seller nor any Transferring Company in any Post-Closing Tax Period.

6.19 Limited Purpose Entity / No Employees. Each Transferring Company at all times has engaged only in the solar power business and has not engaged in any other business. No Transferring Company has or has ever had any employees. No Transferring Company has maintained, sponsored, administered or participated in any employee benefit plan or arrangement. No Transferring Company has any liability to any past or present employee, officer, director, manager or agent of such Transferring Company or any of its Affiliates.

6.20 FIT.

(a) The procurement period and feed-in-tariff of each Project under the FIT Act is as set forth in the relevant Part of Schedule 1 (*Projects*). There are no grounds or, to the Knowledge of the Seller, reasonable expectation of any grounds, for modification or

cancellation of such procurement period or feed-in-tariff. Without limiting the generality of the foregoing, with respect to the Yatsubo Project and Orido Project only, to the Knowledge of the Seller, there are no grounds or reasonable expectation of any grounds for the relevant utility to require the relevant Transferring Company to resubmit an application for the grid connection for the relevant Project.

(b) The Business Plan for each Project has obtained accreditation from the Minister of Economy, Trade and Industry as set forth in Article 9 Paragraph 3 of the FIT Act (or is deemed to have obtained accreditation pursuant to Article 4 Paragraph 1 of the Supplementary Provisions for the 2016 Act to Amend FIT Act). Such accreditation is valid, and there are no grounds or, to the Knowledge of the Seller, any reasonable expectation of grounds, for the modification or rescission of such accreditation.

(c) All pending applications to METI for a change in the Business Plan of any Project are described in Schedule 1 (*Projects*), and no such change, if approved, could reasonably be expected to result in any modification or cancellation of the procurement period or feed-in-tariff for such Project.

(d) To the Knowledge of the Seller, no grounds for rescission of recognition, as set forth in each of the items in Article 15 of the FIT Act, exist with respect to any Business Plan Authorization.

(e) With respect to the Yatsubo Project and Orido Project only, the Seller has been informed orally by the relevant utility that the grid connection date is expected to occur in February 2023.

6.21 Disclosure of Information. To the Knowledge of the Seller, the Seller has disclosed to the Purchasers or their advisors all of the material information in the possession of the Seller and its Affiliates relating to the Transferring Companies and the Transferring Businesses that would reasonably be expected to materially affect the investment decision by the Purchasers.

6.22 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transaction based upon arrangements made by or on behalf of the Seller, in each case where any Purchaser or Transferring Company may become liable.

6.23 Anti-Corruption. None of the Seller, any Transferring Company nor any of their respective directors, officers or employees has offered, authorized, made or paid, directly or indirectly, any bribes, kickbacks or other similar payments or offers or transfers of value to any Government Official (or to another Person at the request or with the assent or acquiescence of such Government Official) in connection with obtaining or retaining business or to secure an improper advantage in connection with any Transferring Business; nor have any of them, directly or indirectly, committed any violation of any applicable Law that relates to bribery, corruption or money laundering, such as the Unfair Competition Prevention Act of Japan (Act No. 47 of 1993) and the US Foreign Corrupt Practices Act 1977.

6.24 Antisocial Forces. None of the Seller, any Transferring Company nor any of their respective directors, officers, shareholders or, to the Knowledge of the Seller, employees

or agents, is an Antisocial Force or falls under the definition of Antisocial Force or has any (a) relationships by which its management is considered to be controlled by any Antisocial Force, (b) relationships by which any Antisocial Force is considered to be involved substantially in its management, (c) relationships by which it is considered to unlawfully utilize any Antisocial Force for the purpose of securing unjust advantage for itself or any third party or of causing damage to any third party, (d) relationships by which it is considered to offer funds or provide benefits to any Antisocial Force or (e) persons involved substantially in its management having socially condemnable relationships with any Antisocial Force.

7. LIMITATIONS ON REPRESENTATIONS AND WARRANTIES OF THE SELLER

7.1 Only Representations and Warranties in Article 6. Notwithstanding anything to the contrary in any other provision of this Agreement, it is the intent of each Party that the Seller is not making any representation or warranty whatsoever, express, implied, statutory or otherwise, except for the representations or warranties set forth in Article 6, and the Purchasers acknowledge and agree that the Membership Interests, and by virtue of their acquisition of the Membership Interests under this Agreement, each Transferring Company, each Transferring Business and its equipment and other assets, are being taken by them subject to all faults, “as is” and “where is”, subject only to the representations and warranties of the Seller set forth in Article 6.

7.2 Disclaimer. Except for the representations and warranties of the Seller set forth in Article 6, the Seller expressly disclaims and negates any representation or warranty, express or implied, statutory or otherwise, in particular relating to the condition of each Transferring Company, each Transferring Business and its equipment and other assets (including any implied or express warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials, or the presence, absence, release, disposal or discharge of any Hazardous Materials).

7.3 Non-reliance. The Purchasers agree not to rely on any representation or warranty made by the Seller with respect to the condition, merchantability, quality or state of the Membership Interests, any Transferring Company or any Transferring Business or its equipment and other assets except for those representations and warranties set forth in Article 6. Rather, the Purchasers agree, except as provided in Article 6, to rely solely and exclusively upon their own evaluation of the Membership Interests, each Transferring Company and each Transferring Business and its equipment and other assets.

7.4 No Other Assurances. This Agreement is the result of extensive negotiations among the Parties and no other assurances, representations or warranties about the condition, merchantability, quality or state of the Membership Interests, any Transferring Company or any Transferring Business or its equipment and other assets were made by the Seller, any Transferring Company or any of their respective Affiliates in the inducement to enter into this Agreement, except as provided in this Agreement.

7.5 Projections. In connection with the Purchasers’ due diligence investigation, the Purchasers and their representatives have received from the Seller and its representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, regarding each Transferring Company and each

Transferring Business (together, “**Projections**”). Except as set forth expressly in this Agreement, the Purchasers acknowledge and agree that:

- (a) there are uncertainties inherent in attempting to make such Projections with which the Purchasers are familiar, and that no assurances can be given that such Projections are accurate or will be realized;
- (b) the Purchasers are taking full responsibility for making their own evaluation of the adequacy and accuracy of all Projections so provided (including the reasonableness of the assumptions underlying such Projections), and the Purchasers shall have no claim (and expressly waives any claim) against the Seller or its representatives with respect thereto;
- (c) neither the Seller nor its representatives has made or is making any express or implied representation or warranty with respect to such Projections (including the reasonableness of the assumptions underlying such Projections); and
- (d) the Purchasers are fully qualified to evaluate the provided information and make their own determination as to whether to proceed with the Transaction and assume the risks contemplated thereby.

8. REPRESENTATIONS AND WARRANTIES OF EACH PURCHASER

Each Purchaser represents and warrants to the Seller as of the date of this Agreement and as of the Closing Date as follows:

8.1 Organization; Power and Authority; Enforceability. Such Purchaser (a) is an entity duly established and validly existing under the laws of its jurisdiction of establishment, (b) has full power and authority to execute and deliver the Transaction Documents to which it is or is intended to be a party and to perform all its obligations and exercise all its rights under such Transaction Documents, (c) has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, such Transaction Documents in accordance with their terms and (d) has duly executed and delivered the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made. Assuming the due authorization, execution and delivery by the other parties to the Transaction Documents, the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made constitute valid and legally binding obligations of such Purchaser, enforceable against such Purchaser in accordance with their terms, except as such enforceability may be limited by the Bankruptcy Exception.

8.2 No Conflicts; No Permits.

(a) Subject to the satisfaction of the conditions set forth in Section 3.3 and section 3.3 (*Closing Conditions of each Purchaser*) of the Business PSA, the execution and delivery by such Purchaser of the Transaction Documents to which it is or is intended to be a party do not, and the consummation of the Transaction and all other transactions contemplated by such Transaction Documents will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of such

Purchaser under, any provision of (i) the Constituent Documents of such Purchaser or (ii) any Law applicable to such Purchaser or its properties or assets, other than, in the case of clause (ii) above, any such items that would not reasonably be expected to, individually or in the aggregate, prevent or materially delay consummation of the Transaction.

(b) Subject to the satisfaction of the conditions set forth in Section 3.3 and section 3.3 (*Closing Conditions of each Purchaser*) of the Business PSA, no Permit is required to be obtained or made by or with respect to such Purchaser in connection with the execution and delivery of the Transaction Documents to which it is or is intended to be a party or performance by such Purchaser of the Transaction and all other transactions contemplated by such Transaction Documents, other than such items the failure of which to obtain or make would not reasonably be expected to, individually or in the aggregate, prevent or materially delay consummation of the Transaction.

8.3 Proceedings. There are no (a) material Proceedings by or before any court, tribunal or other Governmental Authority or threatened in writing against such Purchaser that, if adversely determined or (b) material outstanding Orders in respect of (and which are adverse to) such Purchaser that, in each case (a) and (b), would reasonably be expected to prevent, impede or delay the ability of such Purchaser to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party.

8.4 Sufficient Funds. Such Purchaser has sufficient funds on hand or available to it under the MI PSA ECL or otherwise to pay the Relevant Purchase Price on the Closing Date.

8.5 Not Insolvent. Such Purchaser is not insolvent or unable to make payments as and when they come due, and has not suspended payments to its creditors, and no petition has been filed with respect to such Purchaser for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures), nor does any cause for such Proceedings exist. The execution or performance of this Agreement will not cause such Purchaser to become insolvent or to not make or suspend such payments, and to the Knowledge of such Purchaser, there is no risk that such events would occur.

8.6 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transaction based upon arrangements made by or on behalf of such Purchaser, in each case where the Seller may become liable.

8.7 Anti-Corruption. Neither such Purchaser nor any of its directors, officers or employees has offered, authorized, made or paid, directly or indirectly, any bribes, kickbacks or other similar payments or offers or transfers of value to any Government Official (or to another Person at the request or with the assent or acquiescence of such Government Official) in connection with obtaining or retaining business or to secure an improper advantage; nor have any of them, directly or indirectly, committed any violation of any applicable Law that relates to bribery, corruption or money laundering, such as the Unfair Competition Prevention Act of Japan (Act No. 47 of 1993) and the US Foreign Corrupt Practices Act 1977.

8.8 Antisocial Forces. Neither such Purchaser nor any of its directors, officers, shareholders or, to the Knowledge of such Purchaser, employees or agents, is an Antisocial

Force or falls under the definition of Antisocial Force or has any (a) relationships by which its management is considered to be controlled by any Antisocial Force, (b) relationships by which any Antisocial Force is considered to be involved substantially in its management, (c) relationships by which it is considered to unlawfully utilize any Antisocial Force for the purpose of securing unjust advantage for itself or any third party or of causing damage to any third party, (d) relationships by which it is considered to offer funds or provide benefits to any Antisocial Force or (e) persons involved substantially in its management having socially condemnable relationships with any Antisocial Force.

9. W&I POLICY; INDEMNIFICATION

9.1 Survival.

(a) Survival of Covenants. All of the covenants or other agreements contained in this Agreement shall survive until the first to occur of (i) the expiration by their terms of the obligations of the applicable Party under such covenant and (ii) such covenant being fully performed or fulfilled, unless non-compliance with such covenants or agreements is expressly waived in writing by each Party entitled to such performance.

(b) Survival of Representations and Warranties. The representations and warranties contained in this Agreement shall survive the Closing for 12 months, except that the representations and warranties set forth in Section 6.18 shall survive the Closing for 36 months. Notwithstanding the foregoing, all rights and claims under the W&I Policy are subject to the terms and conditions thereof and are not subject to the limitations set forth in this Section 9.1(b).

9.2 W&I Policy.

(a) The Purchasers shall obtain and maintain the W&I Policy.

(b) Within five Business Days from the date of this Agreement, the Purchasers shall deliver to the Seller a copy of the signed and stamped (if applicable) W&I Policy.

(c) Each Purchaser shall:

(i) take all commercially reasonable steps (which shall not require the Purchaser to initiate any litigation or arbitration) to enforce the terms of the W&I Policy in respect of any Losses that such Purchaser suffers or incurs in relation to any breach or inaccuracy of the representations and warranties of the Seller in this Agreement (other than the Excluded Warranties);

(ii) not agree to any amendment, variation or waiver of the W&I Policy that could reasonably be expected to have an adverse impact on the Seller (or take any other action that has a similar effect) without the prior written consent of the Seller;

(iii) not novate, or otherwise assign its rights under, the W&I Policy (or take any other action that has a similar effect) other than:

(A) with the prior written consent of the Seller; or

(B) to (I) any of its Affiliates or (II) a subsequent purchaser or transferee of all or a substantial portion of any Transferring Business, provided that in each case (I) and (II), each such Person undertakes to the Seller, in a form reasonably acceptable to the Seller, to be bound by the provisions of this Article 9 as though such Person was a "Purchaser";

(iv) satisfy on a timely basis those conditions to coverage explicitly set forth in the W&I Policy, and pay when due all premiums, fees, costs and taxes associated therewith;

(v) not take any action that could reasonably be expected to cause the W&I Policy or the rights of any party thereunder to be terminated, cancelled, amended or limited in a manner that (A) could vitiate the W&I Policy or (B) could otherwise reasonably be expected to have an adverse impact on the Seller; and

(vi) (A) ensure that the W&I Policy (I) includes an express waiver of the Insurer's rights of subrogation, contribution and express rights acquired by assignment against the Seller, except to the extent that any Warranty Claim arises out of or results from fraud of the Seller, in which case the Insurer shall only be entitled to subrogate to the extent of the rights of recovery relating directly to the fraud of the Seller and (II) acknowledges the rights of the Seller as a third party beneficiary in respect of such waiver and (B) not agree to any amendment, variation or waiver of the foregoing (or take any other action that has a similar effect) without the prior written consent of the Seller.

(d) The Purchasers acknowledge and agree that:

(i) the Seller has entered into this Agreement in reliance on the W&I Policy being obtained and maintained by the Purchasers; and

(ii) notwithstanding any other provision in this Agreement or the W&I Policy, the other provisions of this Article 9 shall apply for the benefit of the Seller with respect to any Warranty Claim despite any vitiation, expiry or termination of, default under or failure to take out or enforce, the W&I Policy.

9.3 Availability of Indemnification for Warranty Claims. Notwithstanding any other provision in this Agreement, the Seller shall not be liable in respect of, and no Purchaser may make, any Warranty Claim, except to the extent that such Warranty Claim:

(a) arises out of or results from fraud of the Seller;

(b) is in respect of any of the Excluded Warranties; or

(c) (i) is in respect of any of the representations and warranties of the Seller (including the Fundamental Warranties) other than the Excluded Warranties and (ii) such Purchaser has first sought recourse against the W&I Policy in respect of such Warranty Claim in accordance with Section 9.2(c)(i).

9.4 Indemnification by the Seller. Subject to the other provisions of this Article 9, from and after the Closing Date, the Seller shall indemnify, defend and hold harmless the Purchasers, the Transferring Companies, their respective Affiliates and each of their respective officers, directors, employees and agents (the "**Purchaser Indemnified**")

Parties”) from and against any Losses incurred by any Purchaser Indemnified Party as a result of (collectively, the “**Purchaser Indemnity Claims**”):

- (a) any breach or inaccuracy of any representation or warranty of the Seller contained in this Agreement; or
- (b) any breach of any covenant or agreement by the Seller under this Agreement.

9.5 Indemnification by each Purchaser. Subject to the other provisions of this Article 9, from and after the Closing Date, each Purchaser shall indemnify, defend and hold harmless the Seller, its Affiliates and each of their respective officers, directors, employees and agents (the “**Seller Indemnified Parties**”) from and against any Losses incurred by any Seller Indemnified Party as a result of (collectively, the “**Seller Indemnity Claims**”):

- (a) any breach or inaccuracy of any representation or warranty of such Purchaser contained in this Agreement; or
- (b) any breach of any covenant or agreement by such Purchaser under this Agreement.

9.6 Mitigation. Without prejudice to any rights otherwise provided hereunder, each Party shall reasonably cooperate with each other Party with respect to resolving any claim or liability with respect to which one Party is or may be obligated to indemnify another under this Agreement, including by making all reasonable efforts to mitigate or resolve any such claim or liability after such Party gains actual knowledge of such claim or liability.

9.7 Indirect Damages. No Indemnifying Party shall have any liability under this Agreement for any punitive, incidental, consequential, special or indirect damages (including lost profits, operating losses and loss of operation time), except to the extent that any such damages are (a) awarded in a third-party claim against an Indemnified Party or (b) damages (excluding any punitive, incidental, consequential, special or indirect damages (including lost profits, operating losses and loss of operation time)) incurred by any “Purchaser” under any other Transaction Document arising or resulting from a breach of this Agreement.

9.8 Indemnity Claims Capped.

(a) Subject to Section 9.8(b), the aggregate liability of the Seller in respect of Losses based upon, arising out of or otherwise in respect of Section 9.4(a) shall be capped at, and may not exceed:

(i) in respect of any of the Excluded Warranties, [***], provided that the aggregate liability of all “Sellers” under the Transaction Documents in respect of all of the “Excluded Warranties” in the Transaction Documents shall not exceed the foregoing amount;

(ii) in respect of any of the Fundamental Warranties, the “Fundamental Indemnification Cap” specified in the relevant Part of Schedule 1 (*Projects*) for the relevant Transferring Business, provided that the aggregate liability of all “Sellers” under the Transaction Documents in respect of all of the “Fundamental Warranties” in the Transaction Documents shall not exceed the foregoing amount with respect to such Transferring Business; and

(iii) in respect of any of the representations and warranties other than the Excluded Warranties and the Fundamental Warranties (A) the extent to which a corresponding claim under the W&I Policy (I) has eroded the Seller Borne Retention or (II) would have eroded the Seller Borne Retention had no claims in respect of the Fundamental Warranties eroded any part of the Retention and (B) in any event, in the aggregate, an amount equal to 50% of the Retention.

(b) Subject to Sections 9.8(a)(i) and (ii), the maximum aggregate liability of the Seller under Section 9.4 and of the Purchasers under Section 9.5 shall not, in either case, exceed [***] of an amount equal to (i) the Purchase Price hereunder, *plus* (ii) the “Relevant Purchase Price” paid to each “Seller” under any other Transaction Document with respect to any Transferring Company or its Transferring Business, *less* (iii) the aggregate amount of all Cash Contributions (if any).

9.9 Indemnity Claim Procedures.

(a) Claim Notice. As soon as reasonably practicable after any Party becomes aware of any event or condition that could reasonably be expected to result in a Loss for which the Purchaser Indemnified Parties (in the case of a Purchaser) or the Seller Indemnified Parties (in the case of the Seller) are entitled to an Indemnity Claim, such Party (the “**Claimant**”) shall give notice in writing of such Indemnity Claim (a “**Claim Notice**”) to the Seller (in the case where the Claimant is a Purchaser Indemnified Party) or the relevant Purchaser (in the case where the Claimant is a Seller Indemnified Party) (the “**Indemnifying Party**”). A Claim Notice must describe the Indemnity Claim in reasonable detail and must indicate the amount (estimated if necessary, and only to the extent feasible) of the Loss that has been or may be suffered by the Claimant.

(b) Delay in Claim Notice. A Claim Notice may only be given in respect of (i) any covenant or other agreement within six months of such covenant or other agreement ceasing to survive in accordance with Section 9.1(a) or (ii) any representation or warranty while such representation or warranty survives in accordance with Section 9.1(b). Subject to the foregoing, no delay in or failure to give a Claim Notice by the Claimant to the Indemnifying Party under Section 9.9(a) shall adversely affect any of the other rights or remedies that the Claimant has under this Agreement or alter or relieve the Indemnifying Party of its obligation to indemnify the Claimant except to the extent that such delay or failure has prejudiced the Indemnifying Party.

(c) Claim Response. The Indemnifying Party shall respond in writing to the Claimant (a “**Claim Response**”) within 30 days after the date that the Claim Notice is sent by the Claimant (the “**Response Period**”). Any Claim Response must specify whether or not the Indemnifying Party disputes the Indemnity Claim described in the Claim Notice. If the Indemnifying Party fails to give a Claim Response within the Response Period, then the Indemnifying Party shall be deemed not to dispute the Indemnity Claim described in the related Claim Notice, and the Indemnifying Party shall be obligated to pay the Claimant the amount of Losses specified in the Claim Notice, subject to the limitations contained in this Article 9. If the Indemnifying Party delivers a Claim Response within the Response Period indicating that it disputes one or more of the matters identified in the Claim Notice, then the Indemnifying Party and the Claimant shall settle the dispute in accordance with Section 13.4.

9.10 Further Limitations on Purchaser Indemnity Claims. No Purchaser Indemnified Party shall be entitled to make any Purchaser Indemnity Claim in connection with any Loss:

(a) to the extent that (i) any Purchaser had Knowledge of a breach of any representation or warranty by the Seller giving rise to such Purchaser Indemnity Claim as of the date of this Agreement or (ii) any information that would cause a breach of any representation or warranty giving rise to such Purchaser Indemnity Claim has been fairly disclosed in any of the Disclosure Sources;

(b) if such Loss arises out of or is increased as a result of the Seller's compliance with the terms of this Agreement;

(c) if such Loss arises out of or is increased as a result of any action of any Purchaser Indemnified Party after the Closing Date;

(d) if a claim for such Loss was recovered by any Purchaser Indemnified Party under this Agreement or any other Transaction Document;

(e) if a Purchaser Indemnified Party has received or is reasonably expected to receive any insurance proceeds (including under the W&I Policy) or any indemnity, contribution or other similar payments, in each case in respect of the same Loss (i.e. there shall be no double recovery nor unjust enrichment); or

(f) to the extent that such Loss occurs as the result of (i) any decision of any court or tribunal or the passing or coming into force of or any change in any Law or requirement of any Governmental Authority or utility after the date of this Agreement or (ii) any increase in rates of taxation after the date of this Agreement.

9.11 Fraud. The limitations set forth in this Article 9 shall not apply in respect of any Losses that arise out of or result from the fraud of the Indemnifying Party or its Affiliates.

9.12 No Set-Off. No Party shall have any right to set off any unresolved Indemnity Claim against (a) any payment due under this Agreement or (b) any payment due under any other Transaction Document.

9.13 Tax Treatment. Unless otherwise required by applicable Law, any indemnification payment made in accordance with this Agreement shall be treated as an adjustment to the Relevant Purchase Price for applicable Tax purposes.

9.14 Exclusive Remedies. The Parties acknowledge and agree that:

(a) prior to the Closing Date, the sole and exclusive remedies of each Party for any breach of the representations, warranties and obligations in this Agreement shall be to (i) refuse to consummate the Closing to the extent that its conditions precedent have not been satisfied or waived and (ii) terminate this Agreement to the extent permitted under Article 12 (in which case, the provisions of Section 12.3 shall apply to the extent stated therein);

(b) from and after the Closing Date, the sole and exclusive remedies of the Parties for any breach of the representations, warranties and obligations in this Agreement

and any certificate delivered in accordance with this Agreement shall be the indemnification obligations under Section 9.4 or 9.5 (as the case may be), other than any breach due to fraud; and

(c) this Section 9.14 is not intended to, and does not, restrict any rights or claims that any Purchaser Indemnified Party may have under the W&I Policy.

9.15 Exclusion of Statutory Liability for Non-Conformity to Contract (“Keiyaku-Futekigo-Sekin’in”). Even if the Transferring Companies, the Transferring Businesses or the Membership Interests fail to satisfy the type (*shurui*), quality (*hinshitsu*) or quantity (*suryo*) as agreed under this Agreement, or otherwise fail to satisfy the explicit purpose of this Agreement with respect to such type, quality or quantity (collectively, “Non-Conformity”), no Purchaser may seek a remedy against the Seller in the manner set forth in Article 562 of the Civil Code of Japan (Act No. 89 of 1896), to mitigate or otherwise fix or eliminate such Non-Conformity by the repair of the subject properties or assets (*mokuteki-butsu-no-shuho*), the delivery of substitute properties / assets (*daitai-butsu-no-hikiwatashi*), or delivery of any deficient part of such properties / assets (*fusoku-bun-no-hikiwatashi*); *provided, however*, that this Section 9.15 shall not exclude the Seller’s liability under Section 9.4.

9.16 No Expansion of Liability. Notwithstanding any other provision in this Agreement, despite any novation, assignment or transfer of any Purchaser’s rights and/or obligations under this Agreement or the W&I Policy, the aggregate liability of the Seller shall not exceed the liability that the Seller would have had if no such novation, assignment or transfer had occurred.

10. TAX MATTERS

10.1 Cooperation; Information. After the Closing, each Party shall, and shall cause its Affiliates to, reasonably cooperate and provide each other Party with such information relating to the Transferring Business or any Transferring Company as such other Party may reasonably request in connection with (a) filing any Tax Return or other Tax filing, (b) determining any Tax liability or right to refund of Taxes or (c) conducting or defending any audit or other Proceeding in respect of Taxes.

10.2 Tax Allocation. The Purchase Price shall be allocated among the Membership Interests (and, to the extent required by applicable Law, further among the assets of each applicable Transferring Company) for all applicable Tax purposes and for the purposes of Section 9.8(a)(ii) in accordance with their respective fair market values in accordance with applicable Law (the “**Tax Allocation**”). Following the Closing, the Parties shall amend the Tax Allocation to reflect any adjustments to any Relevant Purchase Price made pursuant to this Agreement. The Parties shall (a) report the transactions contemplated by this Agreement in a manner consistent with the Tax Allocation unless otherwise required by applicable Law and (b) not take any position inconsistent with the Tax Allocation on any Tax Returns or in the course of any audit or Proceeding by any Tax Authority, Tax review or Tax proceeding relating to any Tax Returns unless required by applicable Law. Each Party shall notify each other Party of any inquiry, audit, investigation or other Proceeding by any Tax Authority, in each case, that relates to the Tax Allocation.

11. CONFIDENTIALITY AND ANNOUNCEMENTS

11.1 Confidentiality.

(a) Each Party agrees that it shall not, and shall cause its Affiliates and its and their respective officers, directors, employees and agents to not, disclose the terms and conditions of this Agreement or the Transaction until the date falling two years after the date of this Agreement.

(b) The Seller agrees that it shall not, and shall cause its Affiliates and their respective officers, directors, employees and agents to not (i) disclose or use any Purchaser Confidential Information or (ii) disclose or use any Transferring Company Confidential Information after the Closing; *provided, however,* that the Seller, its Affiliates and their respective officers, directors, employees and agents may continue to use data that constitutes Transferring Company Confidential Information for the purposes of assessing and improving the products and services of the Seller and its Affiliates.

(c) Each Purchaser agrees that it shall not, and shall cause its Affiliates and their respective officers, directors, employees and agents to not (i) disclose or use any Seller Confidential Information or (ii) disclose or use any Transferring Company Confidential Information until after the Closing.

(d) The foregoing (a) through (c) shall not apply to any disclosure by any Party, its Affiliates or their respective officers, directors, employees or agents:

(i) in the case of each Purchaser, to existing general partners, limited partners, equity holders, members, managers, lenders and investors of such Purchaser and its Affiliates, in each case provided that such Person is informed by such Purchaser or its Affiliates of the confidential nature of such terms;

(ii) to its lenders, Affiliates and third party service providers, and to its and their respective legal, tax, financial or technical advisors for the purposes of receiving legal, tax, financial or technical advice from such advisors, in each case provided that such Person is informed by the applicable Party of the confidential nature of such terms;

(iii) with the prior written consent of the Seller or each Purchaser (as the case may be);

(iv) to the extent permitted in Section 11.2;

(v) to the extent required by applicable Law or the rules of any securities exchange on which such Party or such Party's Affiliates' securities are listed, provided that the disclosing Party provides the Seller or each Purchaser (as the case may be) with a reasonable opportunity to review and comment on such disclosure; or

(vi) in connection with any judicial, administrative or similar proceeding (including in response to oral questions, interrogatories or other requests for information or documents and/or in connection with a proceeding brought under Section 13.4),

provided that each Party shall seek to limit such disclosures to the minimum information reasonably necessary under the circumstances.

(e) Each Party shall be responsible for any breach of Section 11.1(a), the Seller shall be responsible for any breach of Section 11.1(b) and each Purchaser shall be responsible for any breach of Section 11.1(c), in each case by (i) its Affiliates and its and their respective officers, directors, employees and agents and (ii) any other Person to whom such Party discloses information directly or indirectly in accordance with an exception set forth in Section 11.1(d)(i) or (ii), in each case as though each such Person was bound directly by the relevant Sections as a “Party”.

11.2 Public Announcements and Press. Each Party agrees that no public announcement or press release concerning the Transaction shall be issued without the prior written consent of the Seller or each Purchaser (as the case may be) (which consent shall not be unreasonably withheld or delayed), except as such announcement or release may be required by Law or the applicable rules of any securities exchange (provided that the Party required to make such announcement or release provides the Seller or each Purchaser (as the case may be) with a reasonable opportunity to review and comment on such announcement or release).

12. TERMINATION; EFFECT OF TERMINATION

12.1 Termination. This Agreement may be terminated at any time before the Closing:

(a) by mutual agreement among the Parties;

(b) by written notice from the Seller or each Purchaser to each Purchaser or the Seller (as the case may be) if the Closing has not occurred by the date falling six months after the date of this Agreement, as such date may be extended by mutual agreement among the Parties, provided that the failure of the Closing to occur by such date is not attributable to the Seller (in the case of termination by the Seller) or any Purchaser (in the case of termination by the Purchasers);

(c) by written notice from the Seller or each Purchaser to each Purchaser or the Seller (as the case may be) if after satisfaction of the requirements of Section 4.4, any court of competent jurisdiction or other Governmental Authority shall have issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the Closing, and such order or other action shall not be subject to appeal or shall have become final and unappealable;

(d) by written notice from the Seller to each Purchaser if there shall have been a breach by any Purchaser of any of its representations and warranties in Section 8.8, or by written notice from each Purchaser to the Seller if there shall have been a breach by the Seller of any of its representations and warranties in Section 6.24; or

(e) subject to Section 4.6(a), by written notice from each Purchaser to the Seller if any fact, event or occurrence disclosed in any Disclosure Supplement (i) has had or would reasonably be expected to have, together with any related matter disclosed in any Disclosure Supplement, a Material Adverse Effect or (ii) constitutes a material breach of any of the Fundamental Warranties.

12.2 Automatic Termination. This Agreement shall terminate automatically if the Business PSA is terminated in accordance with its terms.

12.3 Effect of Termination. If this Agreement is terminated in accordance with Section 12.1 or 12.2, all rights and obligations of the Parties under this Agreement shall terminate without any liability on the part of any Party, except that (a) Article 11 (*Confidentiality and Announcements*), this Article 12 (*Termination; Effect of Termination*) and Article 13 (*Miscellaneous*) shall continue in effect and (b) nothing in this Article 12 shall relieve any Party from liability to any other Party for any breach of this Agreement arising prior to its termination, nor preclude any Party from seeking remedies under this Agreement or applicable Law.

13. MISCELLANEOUS

13.1 Notices. All notices, requests, consents, agreements or other communications under this Agreement must be in writing to be effective and, without limiting any other means by which a Party may be able to prove that a notice has been received by another Party, shall take effect (or be deemed to have been given or delivered, as the case may be) (a) when delivered by hand, facsimile transmission (with confirmation of receipt) or email (i) during normal business hours of the recipient, on the Business Day of sending or (ii) outside normal business hours of the recipient, on the Business Day following the Business Day of sending or (b) when delivered by internationally recognized overnight courier, on the third Business Day following the Business Day of sending, in each case to such Party at its address (or number) set forth below or such other address (or number) as the Party may specify by notice:

If to the Seller: 350 West Washington Street, Suite 600
Tempe, Arizona 85281 USA
Attention: General Counsel
Email: [***]

If to any Purchaser: 20F Toranomom Towers Office
4-1-28 Toranomom, Minato-ku
Tokyo 105-0001, Japan
Attention: [***]
Facsimile: [***]
Email: [***]

13.2 Successors and Assigns.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement is personal to the Parties and, subject to Sections 13.2(b) and (c), no Party may assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Seller (in the case of an assignment or transfer by a Purchaser) or each Purchaser (in the case of an assignment or transfer by the Seller). Assignments or delegations made in violation of this Section 13.2(a) shall be null and void.

(b) Before the Closing, any Purchaser may assign all of its rights under this Agreement, together with all of its obligations under this Agreement, to an Affiliate that continues to be supported by the MI PSA ECL to the same extent as the original Purchaser under this Agreement.

(c) After the Closing, any Purchaser may assign any of its rights and/or obligations under this Agreement to any of its Affiliates, provided that such Purchaser shall continue to be jointly and severally liable with each such Affiliate in respect of any obligations assigned in accordance with this Section 13.2(c).

13.3 Governing Law. This Agreement (including Section 13.4) is governed by, and shall be construed in accordance with, the laws of Japan, without giving effect to any conflicts of law or choice of law principles.

13.4 Resolution of Disputes.

(a) Subject to Section 2.4, all disputes based upon, arising out of or related to this Agreement shall be submitted first to the senior management of each relevant Party for friendly resolution by negotiation for a period of up to 30 days. If such negotiation fails to resolve the dispute, the dispute shall finally be settled by arbitration conducted under the auspices of the ICC by a panel of three arbitrators appointed in accordance with, and the arbitration shall be conducted pursuant to, the ICC rules in effect on the date of arbitration.

(b) The seat and venue of the arbitration shall be, and the award shall be rendered in, Singapore. The arbitration shall be confidential and conducted in English. Any arbitration award made by the panel shall be binding and non-appealable and shall be the sole and exclusive dispute resolution mechanism used by the Parties with respect to any controversies, claims and disputes between or among them, provided the foregoing is without prejudice to a Party's right to seek injunctive and equitable relief in a court of competent jurisdiction as available. The arbitrators will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or vacate the award. Judgment upon the award may be entered in any court of competent jurisdiction.

(c) The out-of-pocket costs incurred in connection with the arbitration, such as the arbitrators' fees and any administrative fees paid to the ICC, shall be shared equally by the claimant(s) and the respondent(s). All other costs of the arbitration, including attorneys' fees and costs of investigation, shall be paid solely by the Party incurring such costs unless an award of attorneys' fees or costs is expressly mandated by statute and the arbitrators specifically include an award of attorneys' fees or costs in the award.

(d) The Parties waive the right to seek any punitive, incidental, consequential, special or indirect damages, and the arbitrators shall have no authority to award such damages, except as expressly provided in Article 9.

(e) The Parties expressly agree that (i) any claims arising out of or in connection with this Agreement and the other Transaction Documents may be made in a single arbitration and (ii) multiple arbitrations commenced under any such document may, at the request of a party, be consolidated into a single arbitration.

13.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall

negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

13.6 Expenses. Except as otherwise provided in this Agreement, each Party agrees to pay, without right of reimbursement from any other Party, all costs and expenses incurred by it in connection with (a) the preparation and negotiation of the Transaction Documents and (b) the consummation of the Transaction, including the fees and disbursements of counsel, accountants, financial advisors, experts and consultants employed by the respective Party.

13.7 Transfer Taxes. All transfer, real estate transfer, stamp, documentary, sales, use, registration, value-added and other similar Taxes in connection with the Transaction (“**Transfer Taxes**”) shall be borne and paid by the Purchasers. The Purchasers shall file or cause to be filed in a timely manner all necessary documents (including all Tax Returns) with respect to such Transfer Taxes.

13.8 Entire Agreement; Amendment.

(a) This Agreement contains the entire agreement among the Parties with respect to the transactions contemplated in this Agreement, and supersedes all prior written agreements and negotiations and oral understandings, if any, with respect thereto.

(b) Subject to Section 13.8(c), this Agreement (including its schedules and exhibits) may not be amended, supplemented or discharged except by an instrument in writing signed by each Party.

(c) If any amendment, supplement or discharge of or to this Agreement (including its schedules and exhibits) relates only to the rights and/or obligations of the Seller in respect of any one Purchaser and/or any one Purchaser in respect of the Seller, the instrument in writing to effect any such amendment, supplement or discharge shall be effective if signed at least by the Seller and such Purchaser.

13.9 No Waiver. No failure to exercise and no delay in exercising any right, power or privilege of a Party shall operate as a waiver nor a consent to the modification of the terms of this Agreement unless given by that Party in writing.

13.10 No Third Party Beneficiaries. Nothing herein, express or implied, is intended to or shall confer upon any Person other than the Parties any legal or equitable right, benefit or remedy of any nature whatsoever.

13.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of page intentionally left blank]

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

Seller:

FIRST SOLAR JAPAN GK

By:

Name:

Title:

[Membership Interests Purchase and Sale Agreement]

Purchasers:

KYOTO SOLAR PLANT L.P.

By: Kyoto Solar Plant Ltd., its General Partner

By:

Name:

Title:

YATSUBO SOLAR PLANT L.P.

By: Yatsubo Solar Plant Ltd., its General Partner

By:

Name:

Title:

MOMURA SOLAR PLANT L.P.

By: Momura Solar Plant Ltd., its General Partner

By:

Name:

Title:

IWAKI SOLAR PLANT L.P.

By: Iwaki Solar Plant Ltd., its General Partner

By:

Name:

Title:

HITA SOLAR PLANT L.P.

By: Hita Solar Plant Ltd., its General Partner

By:

Name:

Title:

SHIMO ONUKI SOLAR PLANT L.P.

By: Shimo Onuki Solar Plant Ltd., its General Partner

By:

Name:

Title:

ORIDO SOLAR PLANT L.P.

By: Orido Solar Plant Ltd., its General Partner

By:

Name:

Title:

HANDA SOLAR PLANT L.P.

By: Handa Solar Plant Ltd., its General Partner

By:

Name:

Title:

TOCHIGI SOLAR PLANT L.P.

By: Tochigi Solar Plant Ltd., its General Partner

By:

Name:

Title:

**SCHEDULE 1
PROJECTS**

Part 1: KYOTO PROJECT

Project Company	FS Japan Project 6 GK
Purchaser	Kyoto Solar Plant L.P.
Base Consideration	¥118,356,500
Assumed Net Producer-Side Charges Reduction Amount	¥983,144
Maximum Producer-Side Charges Adjustment Amount	¥983,144
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥11,835,650,000
Project	The approximately 37.5 MW-ac solar power project referred to as the “Kyoto Project” that is located in Kyoto and Mie prefectures and the subject of the METI Approval described below

METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 20, 2014 (METI ID: A781659D24)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥36/kWh; from Expected Commercial Operation Date to September 30, 2040
Expected Commercial Operation Date	March 31, 2023

Part 2: YATSUBO PROJECT

Project Company	FS Japan Project24 GK
Purchaser	Yatsubo Solar Plant L.P.
Base Consideration	¥31,834,565
Assumed Net Producer-Side Charges Reduction Amount	¥1,415,287
Maximum Producer-Side Charges Adjustment Amount	¥1,415,287
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥3,256,598,541
Project	The approximately 25.5 MW-ac solar power project referred to as the “Yatsubo Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 19, 2015 (METI ID: AF76968C09)

Business Plan Change Applications	<u>Pending:</u> [***] <u>Expected:</u> [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 22, 2023

Part 3: MOMURA PROJECT

Project Company	FS Japan Project25 GK
Purchaser	Momura Solar Plant L.P.
Base Consideration	¥63,420,737
Assumed Net Producer-Side Charges Reduction Amount	¥3,000,314
Maximum Producer-Side Charges Adjustment Amount	¥3,000,314
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥6,425,022,209
Project	Together, the approximately: <ul style="list-style-type: none"> • <u>Momura North</u>: 28.5 MW-ac solar power project referred to as the “Momura North Project”; and • <u>Momura South</u>: 24.0 MW-ac solar power project referred to as the “Momura South Project”, in each case that is located in Tochigi prefecture and the subject of the METI Approval described below

METI Approval	<ul style="list-style-type: none"> • <u>Momura North</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 19, 2015 (METI ID: AF77776C09) • <u>Momura South</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 19, 2015 (METI ID: AF77777C09)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 29, 2023

Part 4: IWAKI WATANABE PROJECT

Project Company	FS Japan Project40 GK
Purchaser	Iwaki Solar Plant L.P.
Base Consideration	¥17,972,940
Assumed Net Producer-Side Charges Reduction Amount	¥997,297
Maximum Producer-Side Charges Adjustment Amount	¥997,297
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥2,277,530,146
Project	The approximately 21.0 MW-ac solar power project referred to as the “Iwaki Watanabe Project” that is located in Fukushima prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 4, 2020 (METI ID: A847548B07)

Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥12.85/kWh; for 20 years from Expected Commercial Operation Date (provided that the feed-in-tariff purchase period end date shall be no later than March 3, 2043)
Expected Commercial Operation Date	February 15, 2023

Part 5: HITAKOKUSAI PROJECT

Project Company	FS Japan Project4 GK
Purchaser	Hita Solar Plant L.P.
Base Consideration	¥69,580,333
Assumed Net Producer-Side Charges Reduction Amount	¥1,073,076
Maximum Producer-Side Charges Adjustment Amount	¥1,073,076
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥6,668,108,444
Project	The approximately 18.9 MW-ac solar power project referred to as the “Hitakokusai Project” that is located in Oita prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: A937919H44)

Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥36/kWh; for 20 years from Expected Commercial Operation Date (provided that the feed-in-tariff purchase period end date shall be no later than September 8, 2043)
Expected Commercial Operation Date	April 14, 2023

Part 6: SHIMO-ONUKE PROJECT

Project Company	FS Japan Project1 GK
Purchaser	Shimo Onuki Solar Plant L.P.
Base Consideration	¥52,293,359
Assumed Net Producer-Side Charges Reduction Amount	¥1,370,255
Maximum Producer-Side Charges Adjustment Amount	¥1,370,255
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥5,315,815,035
Project	Together, the approximately: <ul style="list-style-type: none"> • <u>SHV</u>: 19.25 MW-ac solar power project referred to as the “SHV Project”; • <u>HV1</u>: 1.99 MW-ac solar power project referred to as the “HV1 Project”; • <u>HV2</u>: 1.99 MW-ac solar power project referred to as the “HV2 Project”; and • <u>HV4</u>: 1.0 MW-ac solar power project referred to as the “HV4 Project”;

Project	in each case that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	<ul style="list-style-type: none"> • <u>SHV</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00835C09) • <u>HV1</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00809C09) • <u>HV2</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00810C09) • <u>HV4</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00812C09)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥36/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	June 14, 2023 (for HV1, HV2 and HV4) July 31, 2024 (for SHV)

Part 7: ORIDO PROJECT

Project Company	FS Japan Project B5 GK
Purchaser	Orido Solar Plant L.P.
Base Consideration	¥11,126,046
Assumed Net Producer-Side Charges Reduction Amount	¥746,308
Maximum Producer-Side Charges Adjustment Amount	¥746,308
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥1,174,896,374
Project	The approximately 13.5 MW-ac solar power project referred to as the “Orido Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37785C09)

Business Plan Change Applications	<u>Pending:</u> [***] <u>Expected:</u> [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 30, 2023

Part 8: HANDA PROJECT

Project Company	FS Japan Project27 GK
Purchaser	Handa Solar Plant L.P.
Base Consideration	¥35,870,506
Assumed Net Producer-Side Charges Reduction Amount	¥913,903
Maximum Producer-Side Charges Adjustment Amount	¥913,903
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥3,440,158,294
Project	The approximately 21.0 MW-ac solar power project referred to as the “Handa Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37783C09)

Business Plan Change Applications	<u>Pending:</u> [***] <u>Expected:</u> [***]
Capital Contribution Amount	[***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 27, 2023

Part 9: ORIDO (SMALL) PROJECT

Project Company	FS Japan Project26 GK
Purchaser	Tochigi Solar Plant L.P.
Base Consideration	¥1
Assumed Net Producer-Side Charges Reduction Amount	¥0
Maximum Producer-Side Charges Adjustment Amount	¥0
Accelerated NTP Earn-out Amount	[***]
Fundamental Indemnification Cap	¥1
Project	The approximately 1.0 MW-ac solar power project referred to as the “Orido (Small) Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF51570C09)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]

TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	To be determined

Part 10: KOGASHI PROJECT

Project Company	FS Japan Project26 GK
Purchaser	Tochigi Solar Plant L.P.
Base Consideration	¥1
Assumed Net Producer-Side Charges Reduction Amount	¥0
Maximum Producer-Side Charges Adjustment Amount	¥0
Accelerated NTP Earn-out Amount	[***]
Fundamental Indemnification Cap	¥1
Project	The approximately 1.99 MW-ac solar power project referred to as the “Kogashi Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF53468C09)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]

TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	To be determined

Part 11: MINAMI UENO-CHO PROJECT

Project Company	FS Japan Project26 GK
Purchaser	Tochigi Solar Plant L.P.
Base Consideration	¥14,876,074
Assumed Net Producer-Side Charges Reduction Amount	¥272,621
Maximum Producer-Side Charges Adjustment Amount	¥272,621
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥1,296,907,790
Project	The approximately 6.0 MW-ac solar power project referred to as the “Minami Ueno-Cho Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37781C09)

Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]
TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 30, 2023

Part 12: KANUMA DAINI PROJECT

Project Company	FS Japan Project26 GK
Purchaser	Tochigi Solar Plant L.P.
Base Consideration	¥1
Assumed Net Producer-Side Charges Reduction Amount	¥0
Maximum Producer-Side Charges Adjustment Amount	¥0
Accelerated NTP Earn-out Amount	[***]
Fundamental Indemnification Cap	¥1
Project	The approximately 1.0 MW-ac solar power project referred to as the “Kanuma Daini Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF51575C09)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]

TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	To be determined

Part 13: KANUMA MORO PROJECT

Project Company	FS Japan Project26 GK
Purchaser	Tochigi Solar Plant L.P.
Base Consideration	¥1
Assumed Net Producer-Side Charges Reduction Amount	¥0
Maximum Producer-Side Charges Adjustment Amount	¥0
Accelerated NTP Earn-out Amount	[***]
Fundamental Indemnification Cap	¥1
Project	The approximately 1.99 MW-ac solar power project referred to as the “Kanuma Moro Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF51569C09)
Business Plan Change Applications	<u>Pending:</u> [***] <u>Expected:</u> [***]

TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	To be determined

Part 14: KAMIISHIKAWA PROJECT

Project Company	FS Japan Project26 GK
Purchaser	Tochigi Solar Plant L.P.
Base Consideration	¥1
Assumed Net Producer-Side Charges Reduction Amount	¥0
Maximum Producer-Side Charges Adjustment Amount	¥0
Accelerated NTP Earn-out Amount	[***]
Fundamental Indemnification Cap	¥1
Project	The approximately 1.5 MW-ac solar power project referred to as the “Kamiishikawa Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37784C09)
Business Plan Change Applications	<u>Pending</u> : [***] <u>Expected</u> : [***]

TK Contributions	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	To be determined

**SCHEDULE 2
DISCLOSURE SCHEDULE**

[Omitted]

EXHIBIT A
FORM OF MODULE PROCUREMENT UNDERTAKING

[Omitted]

EXHIBIT B
FORM OF CLOSING CERTIFICATE

[Omitted]

**EXHIBIT C
FORM OF SELLER CONSENT**

[Omitted]

EXHIBIT D
FORM OF MODULE WARRANTY AMENDMENT

[Omitted]

EXHIBIT E
FORM OF DEVELOPMENT SERVICES AGREEMENT

[Omitted]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE
EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE
REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED
INFORMATION IS INDICATED BY [***].

FIRST AMENDMENT
TO MEMBERSHIP INTERESTS PURCHASE AND SALE AGREEMENT

This FIRST AMENDMENT TO MEMBERSHIP INTERESTS PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is entered into as of June 24, 2022, by and among First Solar Japan GK, a Japan *godo kaisha* (the “**Seller**”) and Kyoto Solar Plant L.P., Yatsubo Solar Plant L.P., Momura Solar Plant L.P., Iwaki Solar Plant L.P., Hita Solar Plant L.P., Shimo Onuki Solar Plant L.P., Orido Solar Plant L.P., Handa Solar Plant L.P. and Tochigi Solar Plant L.P., each a Cayman Islands exempted limited partnership (each, a “**Purchaser**”, and together, the “**Purchasers**”). The Seller and the Purchasers are referred to herein individually as a “**Party**” and together as the “**Parties**”.

RECITALS

A. The Parties entered into that certain Membership Interests Purchase and Sale Agreement dated May 12, 2022 (the “**Agreement**”).

B. In anticipation of the Closing, the Parties now desire to set forth their agreement regarding certain amendments to, and acknowledgments and agreements in respect of, the Agreement.

ACCORDINGLY, the Parties agree as follows:

1. Defined Terms; Rules of Interpretation

Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Agreement. The rules of interpretation set forth in section 1.2 (*Rules of Interpretation*) of the Agreement shall apply to this Amendment *mutatis mutandis*.

2. Financial Model-Related Amendments

(a) The definition of “Relevant Financial Model” set forth in section 1.1 (*Definitions*) of the Agreement shall be amended to read in its entirety as follows:

“**Relevant Financial Model**” means, in respect of each Project, the financial model for such Project set forth in the Excel spreadsheet named [***] sent by [***] to representatives of the Purchasers by email on June 20, 2022 at 2.40pm Japan Standard Time.

(b) Following the amendment under Section 2(a), each such amended financial model shall be treated as the Relevant Financial Model for all purposes of the Agreement from the date of the Agreement.

(c) Schedule 1 (*Projects*) to the Agreement shall be amended by replacing the relevant rows of each Project referred to below with the following:

PART 1: KYOTO PROJECT	
Base Consideration	¥117,276,500
Assumed Net Producer-Side Charges Reduction Amount	¥983,162
Maximum Producer-Side Charges Adjustment Amount	¥983,162
PART 2: YATSUBO PROJECT	
Base Consideration	¥31,948,670
Assumed Net Producer-Side Charges Reduction Amount	¥1,415,200
Maximum Producer-Side Charges Adjustment Amount	¥1,415,200
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 3: MOMURA PROJECT	
Base Consideration	¥64,326,909
Assumed Net Producer-Side Charges Reduction Amount	¥2,994,326
Maximum Producer-Side Charges Adjustment Amount	¥2,994,326
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 4: IWAKI WATANABE PROJECT	
Base Consideration	¥18,285,611
Assumed Net Producer-Side Charges Reduction Amount	¥992,827
Maximum Producer-Side Charges Adjustment Amount	¥992,827

PART 7: ORIDO PROJECT	
Base Consideration	¥12,301,569
Assumed Net Producer-Side Charges Reduction Amount	¥739,528
Maximum Producer-Side Charges Adjustment Amount	¥739,528
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 8: HANDA PROJECT	
Base Consideration	¥35,990,876
Assumed Net Producer-Side Charges Reduction Amount	¥908,964
Maximum Producer-Side Charges Adjustment Amount	¥908,964
PART 9: ORIDO (SMALL) PROJECT	
Accelerated NTP Earn-out Amount	[***]
PART 10: KOGASHI PROJECT	
Accelerated NTP Earn-out Amount	[***]
PART 11: MINAMI UENO-CHO PROJECT	
Base Consideration	¥11,814,351
Assumed Net Producer-Side Charges Reduction Amount	¥272,267
Maximum Producer-Side Charges Adjustment Amount	¥272,267
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 12: KANUMA DAINI PROJECT	

Accelerated NTP Earn-out Amount	[***]
PART 13: KANUMA MORO PROJECT	
Accelerated NTP Earn-out Amount	[***]
PART 14: KAMIISHIKAWA PROJECT	
Accelerated NTP Earn-out Amount	[***]

(d) Each Party:

(i) waives any breach by any other Party of section 2.5(b) or (c) (*Finance Project Adjustment*) of the Agreement in connection with the failure to agree to the amendments referred to in those sections within the periods specified for such amendments; and

(ii) agrees that the condition set forth in section 3.2(d)(ii) (*Financing Arrangements*) (in the case of the Seller) and section 3.3(d)(ii) (*Financing Arrangements*) (in the case of each Purchaser) of the Agreement shall be deemed satisfied by the execution of this Amendment.

3. Purchase Price Adjustments

(a) The Parties acknowledge that the Relevant Equity Adjustment Amount for the purposes of section 2.2(b) (*Purchase Price*) of the Agreement shall be zero for each Transferring Company that holds a Pre-Finance Project.

(b) Each Party agrees that no adjustments will be made for the purposes of sections 2.2(c) and (d) (*Purchase Price*) of the Agreement.

(c) Each Party agrees that this Section 3 shall be deemed to be the statement delivered in accordance with section 2.3 (*Adjustment Statement*) of the Agreement. Each Purchaser waives any breach by the Seller of section 2.3 of the Agreement in connection with the failure to deliver the statements referred to in such section within the period specified for such delivery.

4. Extensions of Leased Real Property Agreements

(a) The Parties acknowledge that in respect of the condition set forth in section 3.3(j) (*Extensions of Leased Real Property Agreements*) of the Agreement, the Seller has delivered to each Relevant Purchaser:

(i) extensions of the Leased Real Property Agreements executed by the relevant Land Companies for the Yatsubo Project, the Momura Project and the Shimo-Onuki Project whereby the term is extended to at least 30 years from the expected commercial operation date; and

(ii) documents evidencing (A) the registration of such extensions or (B) applications having been made for the registration of such extensions, in each case in the relevant real property registry.

(b) The Purchasers agree that the condition set forth in section 3.3(j) (*Extensions of Leased Real Property Agreements*) shall be deemed satisfied as of the date of this Amendment.

5. Closing IC Payables

(a) Section 1.1 (*Definitions*) of the Agreement shall be amended by including the following definition:

“**Project26 Payables**” means the amounts owed by Project26 to the Seller under the Intercompany Loan Agreement dated as of June 20, 2022 between the Seller and Project26.

(b) The first sentence of section 5.2 (*Inter-Company Payables*) of the Agreement shall be amended to read in its entirety as follows:

To the extent that the Seller is unable to extinguish by the Closing all accounts payable owed to the Seller by any Transferring Company that holds a Pre-Finance Project, then within 15 Business Days after the Closing Date, for each such Transferring Company, the Seller shall deliver to the Relevant Purchaser a statement setting forth with reasonable evidence therefor all expenditures made by the Seller on behalf of the relevant Transferring Company that were still owed by such Transferring Company to the Seller as of the Closing (such amounts, together with the Project26 Payables, the “**Closing IC Payables**”).

6. Kyoto Land R&Ws Exception and Qualification

The exception and qualification set forth in the last paragraph of section 6.8 (*Real Property*) of the Agreement shall be amended to read in its entirety as follows:

As of the Closing Date, each representation and warranty in this Section 6.8 made in respect of the Kyoto Project and FS Japan Project 6 GK is subject to the exception and qualification that land used by the Kyoto Project will transfer to an Affiliate of Kyoto Solar Plant L.P., and certain designations will be made, on or around the Closing Date under the “Kyoto Land Transfer and Designation Agreement” as defined in the Business PSA.

7. Leased Real Property Post-Closing Cooperation

From and after the Closing, for so long as the Seller or its Affiliates own or control any Leased Real Property, the Seller will, and will cause its relevant Affiliates to, timely provide such cooperation as may be reasonably requested by the relevant Transferring Company from time to time with respect to such Leased Real Property; *provided, however*, that the Seller’s obligation under this Section 7 is subject to the relevant Transferring Company reimbursing the Seller or its relevant Affiliate, as the case may be, for any costs incurred in connection therewith, and each Purchaser shall cause its relevant Transferring Company to reimburse such costs.

8. Payment of Relevant Purchase Price

(a) For the purposes of section 3.4(a)(i) (*Deliveries and Closing Actions*) of the Agreement, each Purchaser shall be deemed to have paid the Relevant Purchase Price to the Seller Bank Account when such amount has been received by the Seller in the Seller Bank Account.

(b) If each “Relevant Purchase Price” payable to each TK PSA Seller under the TK PSA is not received by each such TK PSA Seller in its “Relevant Seller Bank Account” by the Business Day after the Closing Date, then the Seller may, by delivering written notice to each Purchaser and at the Purchasers’ cost, require that the Transaction in its entirety be promptly unwound in accordance with article 545 of the Civil Code.

9. Affirmation

Except as set forth in this Amendment, the Agreement shall remain in full force and effect.

10. Governing Law

This Amendment is governed by, and shall be construed in accordance with, the laws of Japan.

11. Counterparts

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

Seller:

FIRST SOLAR JAPAN GK

By:

Name:

Title:

[First Amendment to Membership Interests Purchase and Sale Agreement]

Purchasers:

KYOTO SOLAR PLANT L.P.

By: Kyoto Solar Plant Ltd., its General Partner

By:

Name:

Title:

MOMURA SOLAR PLANT L.P.

By: Momura Solar Plant Ltd., its General Partner

By:

Name:

Title:

HITA SOLAR PLANT L.P.

By: Hita Solar Plant Ltd., its General Partner

By:

Name:

Title:

ORIDO SOLAR PLANT L.P.

By: Orido Solar Plant Ltd., its General Partner

By:

Name:

Title:

TOCHIGI SOLAR PLANT L.P.

By: Tochigi Solar Plant Ltd., its General Partner

By:

Name:

Title:

YATSUBO SOLAR PLANT L.P.

By: Yatsubo Solar Plant Ltd., its General Partner

By:

Name:

Title:

IWAKI SOLAR PLANT L.P.

By: Iwaki Solar Plant Ltd., its General Partner

By:

Name:

Title:

SHIMO ONUKI SOLAR PLANT L.P.

By: Shimo Onuki Solar Plant Ltd., its General Partner

By:

Name:

Title:

HANDA SOLAR PLANT L.P.

By: Handa Solar Plant Ltd., its General Partner

By:

Name:

Title:

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED INFORMATION IS INDICATED BY [*].**

TK INTERESTS PURCHASE AND SALE AGREEMENT

dated as of May 12, 2022

among

TK INVESTCO 7 PTE. LTD.,

TK INVESTCO 8 PTE. LTD.,

TK INVESTCO 10 PTE. LTD.,

TK INVESTCO 11 PTE. LTD.

and

GIOIA INVESTMENT PTE. LTD.

TABLE OF CONTENTS

		Page
1	DEFINITIONS; RULES OF INTERPRETATION	2
1.1	Definitions	2
1.2	Rules of Interpretation	12
2	PURCHASE AND SALE	13
2.1	Purchase and Sale	13
2.2	Purchase Price	13
2.3	Adjustment Statement	14
2.4	Adjustment Disputes.	14
2.5	Finance Project Adjustment.	16
2.6	Equity Adjustments.	16
2.7	Producer-Side Base Charges Regime.	17
3	CLOSING	18
3.1	Closing	18
3.2	Closing Conditions of each Seller	18
3.3	Closing Conditions of the Purchaser	19
3.4	Deliveries and Closing Actions	21
4	PRE-CLOSING COVENANTS	21
4.1	TK Agreements	21
4.2	Efforts to Close	22
4.3	Continuing Due Diligence	22
4.4	Disclosure Supplements	22
4.5	Notification of Relevant Circumstances	23
5	POST-CLOSING COVENANTS	23
5.1	Liabilities and Obligations	23
5.2	Further Assurances	23
6	REPRESENTATIONS AND WARRANTIES OF EACH SELLER	23
6.1	Organization; Power and Authority; Enforceability	23
6.2	No Conflicts; No Permits.	24
6.3	Title	24
6.4	Relevant TK Interests.	24
6.5	Constitution	25
6.6	Material Contracts.	25
6.7	Related Party Agreements	25
6.8	Real Property.	26

TABLE OF CONTENTS
(continued)

		Page
6.9	Assets	26
6.10	Insurance	27
6.11	Proceedings.	27
6.12	Not Insolvent	27
6.13	Compliance with Law.	27
6.14	Environmental Matters.	28
6.15	Permits	28
6.16	Financial Statements	28
6.17	Absence of Changes	29
6.18	Tax Matters.	29
6.19	Limited Purpose Entity / No Employees	30
6.20	FIT	30
6.21	Disclosure of Information	31
6.22	Brokers and Other Advisors	31
6.23	Anti-Corruption	31
6.24	Antisocial Forces	31
7	LIMITATIONS ON REPRESENTATIONS AND WARRANTIES OF EACH SELLER	32
7.1	Only Representations and Warranties in Article 6	32
7.2	Disclaimer	32
7.3	Non-reliance	32
7.4	No Other Assurances	32
7.5	Projections	32
8	REPRESENTATIONS AND WARRANTIES OF THE PURCHASER	33
8.1	Organization; Power and Authority; Enforceability	33
8.2	No Conflicts; No Permits.	33
8.3	Proceedings	34
8.4	Sufficient Funds	34
8.5	Not Insolvent	34
8.6	Brokers and Other Advisors	34
8.7	Anti-Corruption	34
8.8	Antisocial Forces	34
9	W&I POLICY; INDEMNIFICATION	35
9.1	Survival.	35

TABLE OF CONTENTS
(continued)

		Page
9.2	W&I Policy	35
9.3	Availability of Indemnification for Warranty Claims	36
9.4	Indemnification by each Seller	36
9.5	Indemnification by the Kyoto Seller	37
9.6	Indemnification by the Purchaser	37
9.7	Mitigation	37
9.8	Indirect Damages	37
9.9	Indemnity Claims Capped.	38
9.10	Indemnity Claim Procedures.	38
9.11	Further Limitations on Purchaser Indemnity Claims	39
9.12	Fraud	40
9.13	No Set-Off	40
9.14	Tax Treatment	40
9.15	Exclusive Remedies	40
9.16	Exclusion of Statutory Liability for Non-Conformity to Contract (“Keiyaku-Futekigo-Sekinin”)	40
9.17	No Expansion of Liability	40
10	TAX MATTERS	41
10.1	Cooperation; Information	41
10.2	Tax Allocation	41
11	CONFIDENTIALITY AND ANNOUNCEMENTS	41
11.1	Confidentiality	41
11.2	Public Announcements and Press	42
12	TERMINATION; EFFECT OF TERMINATION	42
12.1	Termination	42
12.2	Automatic Termination	43
12.3	Effect of Termination	43
13	MISCELLANEOUS	43
13.1	Notices	43
13.2	Successors and Assigns	44
13.3	Governing Law	44
13.4	Resolution of Disputes	44
13.5	Severability	45
13.6	Expenses	45

TABLE OF CONTENTS
(continued)

	Page
13.7 Transfer Taxes	45
13.8 Entire Agreement; Amendment	45
13.9 No Waiver	46
13.10 No Third Party Beneficiaries	46
13.11 Separate Liability	46
13.12 Counterparts	46
Schedule 1 Projects	49
Part 1: Kyoto Project	49
Part 2: Yatsubo Project	51
Part 3: Momura Project	53
Part 4: Iwaki Watanabe Project	55
Part 5: Hitakokusai Project	57
Part 6: Shimo-Onuki Project	59
Part 7: Orido Project	61
Part 8: Handa Project	63
Part 9: Minami Ueno-Cho Project	65
Schedule 2 Relevant Seller Bank Accounts	67
Schedule 3 Disclosure Schedule	68
Exhibit A Form of Closing Certificate	69
Exhibit B Form of Written Assignment Approval	70

This **TK INTERESTS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is entered into as of May 12, 2022, by and among TK Investco 7 Pte. Ltd., TK Investco 8 Pte. Ltd., TK Investco 10 Pte. Ltd. and TK Investco 11 Pte. Ltd., each a Singapore private limited company (each, a “**Seller**”, and together, the “**Sellers**”) and Gioia Investment Pte. Ltd., a Singapore private limited company (the “**Purchaser**”). The Sellers and the Purchaser are referred to herein individually as a “**Party**” and together as the “**Parties**”.

RECITALS

A. Each Japan *godo kaisha* identified in Schedule 1 (*Projects*) as a “Project Company” (each, a “**Project Company**”) and the Seller specified as the “Seller” with respect to such Project Company in such Schedule entered into the “TK Agreement” identified in the relevant Part of such Schedule (each, a “**TK Agreement**”).

B. Each Seller desires to sell, convey and assign to the Purchaser all of its contractual status as *tokumei kumiai'in* under each Relevant TK Agreement, including all of its rights, title and interest therein and obligations thereunder, corresponding to a 99% interest in the Relevant Business (in respect of the Relevant Business of each Project Company, collectively, the “**TK Interests**”), free from any liens and other encumbrances (other than Permitted Liens) on the terms and subject to the conditions set forth in this Agreement.

C. The Purchaser desires to acquire, receive and assume the TK Interests, including each Seller’s obligations under each TK Agreement, on the terms and subject to the conditions set forth in this Agreement.

D. On the date of this Agreement:

a. First Solar, Inc. and the Purchaser have entered into a TK PSA Guarantee for the guarantee of certain obligations and liabilities of the Sellers under this Agreement (the “**TK PSA Guarantee**”);

b. one or more funds managed by affiliates of the Purchaser have delivered an equity commitment letter to the Parties to support certain obligations and liabilities of the Purchaser under this Agreement (the “**TK PSA ECL**”);

c. First Solar Japan GK (“**FSJ**”), being the owner of the membership interest in each Project Company, and Kyoto Solar Plant L.P., Yatsubo Solar Plant L.P., Momura Solar Plant L.P., Iwaki Solar Plant L.P., Hita Solar Plant L.P., Shimo Onuki Solar Plant L.P., Orido Solar Plant L.P., Handa Solar Plant L.P. and Tochigi Solar Plant L.P. (each, a “**MI PSA Purchaser**”), have entered into a Membership Interests Purchase and Sale Agreement for the purchase and sale of such interests and membership interests in certain other project companies (the “**MI PSA**”); and

d. FSJ, PAG Renewables Holding Pte. Ltd. and PAG Renewables FM Holding Pte. Ltd. have entered into a Business Purchase and Sale Agreement for the purchase and sale of certain businesses of FSJ (the “**Business PSA**”).

ACCORDINGLY, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. In addition to the capitalized terms defined elsewhere in this Agreement (including the preamble), the following terms shall have the corresponding meanings set forth below:

“**2016 Act to Amend FIT Act**” means the Act for Partial Amendment of the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (2016 Act No. 59).

“**Affiliate**” of a specified Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For the purposes of this definition, “**control**”, when used with respect to any specified Person, means the possession of the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities or partnership or limited liability company interests, by contract or otherwise.

“**Antisocial Force**” means an organized crime group (*boryokudan*), a member of an organized crime group, a former member of an organized crime group with less than five years having passed since separation, a quasi-constituent member of an organized crime group, an enterprise related to an organized crime group, a corporate racketeer (*sokaiya*), an extortionist advocating social movement, an extortionist advocating political movement, a special intelligence violence group and other antisocial forces.

“**Bankruptcy Exception**” has the meaning given in Section 6.1.

“**Business Day**” means any day (except Saturday or Sunday) when commercial banks are open for business in Tokyo, Japan and Singapore.

“**Business Plan**” means, with respect to each Project, the renewable energy business plan set forth in Article 9 Paragraph 1 of the FIT Act with regard to the execution of such Project submitted by a Project Company or the previous owner to the Minister of Economy, Trade and Industry under Article 4 Paragraph 2 of the Supplementary Provisions for the 2016 Act to Amend FIT Act (including the documents set forth in Article 4 Paragraph 2 of the Supplementary Provisions for the 2016 Act to Amend FIT Act).

“**Business Plan Authorization**” means, with respect to any Business Plan, accreditation under Article 9 Paragraph 3 and Article 10 Paragraph 1 of the FIT Act.

“**Business PSA**” has the meaning given in Recital D.d.

“**Cash Contribution**” has the meaning given in Section 2.6(c).

“**Claim Notice**” has the meaning given in Section 9.10(a).

“**Claim Response**” has the meaning given in Section 9.10(c).

“**Claimant**” has the meaning given in Section 9.10.

“**Closing**” has the meaning given in Section 3.1.

“**Closing Date**” has the meaning given in Section 3.1.

“**Confidential Information**” means all information and materials, whether written or oral, relating to the business and affairs of any Party, or any of their respective Affiliates, including any such information or materials relating to any Project Company or any Relevant Business, except to the extent that such information (a) is generally available to the public as of the date hereof or (b) becomes generally available to the public following disclosure by a third party not bound by the confidentiality obligations under Section 11.1.

“**Constituent Documents**” means, with respect to any Person (other than an individual), all charter, organizational and other documents by which such Person establishes its legal existence or which govern its internal affairs, and shall include (a) the certificate of registration, memorandum and articles of association, charter and bylaws or other similar organizing documents of a company or corporation, (b) the certificate of formation and limited liability company agreement of a limited liability company, (c) the certificate of registration of partnership (if applicable) and agreement of partnership of a partnership, (d) the articles of incorporation of a Japan *kabushiki kaisha* or *godo kaisha* and (e) the comparable documents of any other entities.

“**Contract**” means any contract, lease, license, indenture, note, bond, agreement, concession, franchise or other binding instrument.

“**COVID-19**” means the COVID-19 pandemic, including any evolutions or mutations of the COVID-19 disease, any subsequent waves and any further epidemics or pandemics arising therefrom.

“**COVID-19 Actions**” means any commercially reasonable actions that the Relevant Seller or any of its Affiliates (or any of their asset managers, if applicable) determines is necessary or prudent in connection with or in response to (a) COVID-19 and any quarantine, “stay at home”, workforce reduction, furlough, social distancing, shut down, closure, sequester, safety or similar Law, guidelines or requests (including any *yosei*) promulgated by any Governmental Authority or quasi-governmental authority (including the World Health Organization), including ceasing operation, or reinitiating operation, of all or part of the relevant Person’s business or (b) mitigating the adverse effects of the foregoing on such Person’s business.

“**Designated Hazardous Substances**” means the designated hazardous substances as defined in Article 2 Paragraph 1 of the Soil Contamination Countermeasures Act (Act No. 53 of 2002).

“**Disagreement Notice**” has the meaning given in Section 2.4(b).

“**Disclosure Sources**” means (a) the VDR as of 11:59 PM Japan Standard Time on the Business Day before the date of this Agreement, (b) the due diligence report(s) provided by the Relevant Seller, its Affiliates or their respective representatives to the Purchaser, its Affiliates or their respective representatives before the date of this Agreement, (c) the written information made available by the Relevant Seller, its Affiliates or their respective representatives in response to questions raised by the Purchaser, its Affiliates or their

respective representatives between August 16, 2021 and 11:59 PM Japan Standard Time on May 11, 2022 and (d) Schedule 3 (*Disclosure Schedule*).

“**Disclosure Supplement**” has the meaning given in Section 4.4.

“**Disputed Items**” has the meaning given in Section 2.4(b).

“**Environmental Claim**” means any action, suit, demand letter, claim, lien, notice of non-compliance, notice of violation, notice of liability or proceeding brought by any Governmental Authority under, or Order relating to, Environmental Law.

“**Environmental Law**” means any Law relating to or imposing liability or standards of conduct with respect to pollution, protection of the environment, wildlife or biological resources or the Release, cleanup or remediation of, or human exposure to, Hazardous Materials.

“**Excluded Warranties**” means, in respect of each Seller and each Relevant Assignment, the representations and warranties made by such Seller in connection with such Relevant Assignment set forth in Sections 6.23 (*Anti-Corruption*) and 6.24 (*Antisocial Forces*).

“**Final Auditor**” has the meaning given in Section 2.4(c)(ii).

“**Finance Adjustment Notice**” has the meaning given in Section 2.5(a).

“**Finance Consent and Release**” has the meaning given in Section 3.2(d).

“**Finance Documents**” means, in respect of each Finance Project, any facilities agreement entered into in accordance with Section 2.5(a), and all security documents, hedging agreements, credit support agreements and similar agreements related thereto and required thereunder.

“**Finance Parties**” means, in respect of each Finance Project, the third party banks or other financial institutions that are providing financing to the relevant Project Company pursuant to the relevant Finance Documents.

“**Finance Project**” means each of the Yatsubo Project, the Orido Project and the Momura Project.

“**Financial Statements**” means the financial statements for the last three fiscal years of each Project Company as disclosed in the VDR (VDR references 5.1.11, 5.2.11, 5.3.11, 5.4.11, 5.5.11, 5.6.11, 5.7.12, 5.8.11 and 5.9.11).

“**FIT Act**” means the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (Act No. 108 of 2011).

“**FSJ**” has the meaning given in Recital D.c.

“**Fundamental Warranties**” means, in respect of each Seller and each Relevant Assignment, the representations and warranties made by such Seller in connection with such Relevant Assignment set forth in Sections 6.1 (*Organization; Power and Authority*);

Enforceability), 6.2(a) (*No Conflicts; No Permits*), 6.3 (*Title*), 6.4(a) to (e) (*Relevant TK Interests*) and 6.12 (*Not Insolvent*).

“**Government Official**” means (a) any official, employee or representative of, or any other person acting in an official capacity for or on behalf of (i) any Governmental Authority, including any entity owned or controlled by any Governmental Authority, (ii) any political party or political candidate or (iii) any public international organization and (b) any candidate for political office or any person acting on his or her behalf.

“**Governmental Authority**” means any government or political subdivision or department thereof, any governmental or regulatory body, commission, board, bureau, agency or instrumentality, or any court, in each case whether supranational, national, federal, state, local or foreign.

“**Grid Charge Adjustment Amount**” has the meaning given in Section 2.7(a)(ii).

“**Hazardous Materials**” means any pollutant or contaminant and any other material, substance or waste that is defined, listed or regulated as “hazardous” or “toxic” (or words of similar meaning or intent) under any applicable Environmental Law, including petroleum or petroleum by-products, asbestos, polychlorinated biphenyls and explosive or radioactive materials.

“**ICC**” means the International Chamber of Commerce.

“**Indemnifying Party**” has the meaning given in Section 9.10(a).

“**Indemnity Claim**” means a Purchaser Indemnity Claim or a Seller Indemnity Claim.

“**Insurer**” means AIG Asia Pacific Insurance Pte. Ltd, as primary insurer, and Liberty Specialty Markets Singapore Pte. Limited (trading as Liberty Global Transaction Services), as excess insurer.

“**Interim Period**” means the period between the date of this Agreement and the earlier of (a) the date on which this Agreement is terminated in accordance with its terms and (b) the Closing Date.

“**J-GAAP**” means generally accepted accounting principles in Japan, as in effect from time to time.

“**Knowledge**” means, with respect to (a) each Seller, the actual knowledge of [***] and [***] and (b) the Purchaser, the actual knowledge of [***], [***], [***] and [***].

“**Kyoto EPC Change Requests**” has the meaning given in Section 9.5(a).

“**Kyoto Seller**” means TK Investco 7 Pte. Ltd.

“**Land Company**” means each of FS Japan Project 22 GK, FS Japan Project 28 GK, FS Japan Project 29 GK, FS Japan Project 30 GK, FS Japan Project 32 GK, FS Japan Project 33 GK, FS Japan Project 34 GK, FS Japan Project 35 GK, FS Japan Project 36 GK, FS Japan Project 37 GK and FS Japan Project 38 GK.

“**Law**” means any law, treaty, act, statute, ordinance, code, rule, regulation, Order or determination of any Governmental Authority.

“**Leakage**” means, in respect of each Project and without duplication:

(a) any management charge, service fee or other similar fee levied by, or for the account of, the Relevant Seller or any of its Leakage Affiliates against the Relevant Project Company, except for fees paid in accordance with any Contract disclosed in the VDR;

(b) any assets transferred or surrendered from the Relevant Project Company to the Relevant Seller or any of its Leakage Affiliates, other than (i) cash, (ii) in accordance with the Land Purchase and Sale Agreement dated as of April 22, 2022 between FS Japan Project1 GK and FS Japan Project36 GK or (iii) the lease agreement between FS Japan Project1 GK and Nippon Renewable Energy Generation 2017-3 GK in respect of the land subject of the agreement referred to in clause (ii);

(c) any assumption, indemnification or discharge by the Relevant Project Company of any liability of the Relevant Seller or any of its Leakage Affiliates;

(d) any payment by the Relevant Project Company to any of the relevant Finance Parties under the Finance Documents (if any), or the assumption of any indebtedness, liability or obligation by such Project Company to such Persons, in either case in connection with the agreement of such Persons to provide the relevant Finance Consent and Release;

(e) the waiver by the Relevant Project Company of any right to any benefit due from the Relevant Seller or any of its Leakage Affiliates, except the waiver or termination of any right or benefit contemplated hereby; and

(f) any increase or additional Tax arising to the Relevant Project Company in connection with any of the matters referred to in paragraphs (a) to (e) above or any payment with respect to any such Tax,

in each case (x) during the period from (but exclusive of) the Reference Financial Statement Date to the Closing and (y) except to the extent budgeted for in the Relevant Financial Model.

“**Leakage Affiliates**” means, in respect of each Relevant Seller, its Affiliates other than (a) each “Transferring Company” (as defined in the MI PSA) and (b) each NewCo.

“**Leased Real Property**” means, in respect of each Project Company, any real property over which such Project Company has lease, superficies or other usage rights pursuant to a Leased Real Property Agreement.

“**Leased Real Property Agreements**” means the agreements specified in the Excel spreadsheets attached to the email titled “Dream - Leased Real Property Agreements” sent by representatives of the Sellers to representatives of the Purchaser on May 10, 2022.

“**Lien**” means, with respect to any property of any Person, any mortgage, lien, pledge, charge, lease, easement, security interest, attachment, conditional assignment or transfer or other similar encumbrance or restriction (under Law, Order, Contract or otherwise) with respect to such property of such Person.

“**Losses**” means, collectively, any loss, liability, damage, cost, expense (including reasonable attorneys’ and accountants’ fees and expenses), judgment and amount paid in settlement under any Transaction Document.

“**Material Adverse Effect**” means the result of one or more facts, events, circumstances, conditions, changes or effects that, on a stand-alone or cumulative basis, has or is reasonably expected to have, a material adverse effect on the financial condition or results of operation of the “Transferring Companies” as defined in the MI PSA and the “Transferring Business” as defined in the Business PSA, taken as a whole, but excluding:

(a) any effect resulting from (i) (A) the Parties entering into this Agreement or (B) the entry into any other Transaction Document by the parties thereto, (ii) any action taken by (A) a Party in accordance with this Agreement or (B) a party to any other Transaction Document in accordance with such Transaction Document, including in each case the consummation of any action contemplated hereby or thereby or requested or consented to by the Purchaser or a MI PSA Purchaser or (iii) the announcement of the Transaction;

(b) any effect resulting from general changes to the economy in Japan or the global economy as a whole, including changes in general regulatory or political conditions;

(c) any effect resulting from any outbreak of hostility, terrorist activities or war, or any similar event or circumstance;

(d) (i) any outbreak of illness or other public health-related events, including any outbreak or event caused by COVID-19 or (ii) the taking of any COVID-19 Action;

(e) changes in or to, or the promulgation of, any applicable Law (including Tax Law);

(f) any change (or changes taken together) or effect generally affecting (i) the national, regional or local electricity generation, transmission or distribution industry or wholesale or retail markets for electric power in Japan, (ii) the regulation of utilities or of the sales of electric power by or within Japan or (iii) the rules established by any independent system operator or regional transmission organization with jurisdiction over any portion of any Project Company, Project or Relevant Business;

(g) any change in, or failure of any Project Company, Project or Relevant Business to meet, any Projections (it being understood that the underlying facts and circumstances giving rise to such change or failure may, if they are not otherwise excluded from the definition of Material Adverse Effect, be deemed to constitute a Material Adverse Effect and may be taken into account in determining whether a Material Adverse Effect has occurred or will occur);

(h) any change or effect (or changes or effects taken together) which is (or are) cured (including by the payment of money) before the earlier of the Closing Date and the termination of this Agreement;

(i) any change in accounting principles or procedures or in the application or interpretation thereof;

(j) strikes, work stoppages or other labor disputes;

(k) changes in the costs of commodities, services, equipment, materials or supplies, including fuel and other consumables, or changes in the price of energy, capacity or ancillary services;

(l) any act of god or casualty or condemnation event;

(m) any change, financial or otherwise, to the business, affairs or operation of the Purchaser or any of its Affiliates; or

(n) developments arising from any facts that were expressly disclosed to the Purchaser at least one Business Day before the date of this Agreement,

provided, however, that with respect to sub-clauses (b) to (f), (i) and (k), if such change or effect disproportionately affects the Relevant Project Company, the Relevant Project or the Relevant Business compared to other similarly situated projects, then, to the extent not otherwise excluded from the definition of Material Adverse Effect, only such incremental disproportionate impact or impacts shall be taken into account in determining whether there has been a Material Adverse Effect.

“**Material Contract**” means, in respect of each Relevant Project, any Contract to which the Relevant Seller or the Relevant Project Company is a party and in respect of which breach, non-performance, termination or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**METI**” means the Ministry of Economy, Trade and Industry of Japan.

“**METI Wheeling Regulations**” has the meaning given in Section 2.7(b)(i).

“**MI PSA**” has the meaning given in Recital D.c.

“**MI PSA Purchaser**” has the meaning given in Recital D.c.

“**NewCo**” has the meaning given in the Business PSA.

“**Order**” means any judgment, decision, order, writ, charge, injunction, stipulation, ruling, decree, award or similar action of a Governmental Authority.

“**Permit**” means (a) any authorization, consent, approval, license, permit, certification, determination, waiver, exemption, filing (but only in jurisdictions where a filing is the regulatory equivalent of a permit) or variance of, by or with or (b) any registration by or with, in each case, any Governmental Authority.

“**Permitted Lien**” means any Lien (a) created pursuant to (or contemplated to be required under) any Finance Document, (b) permitted to exist pursuant to the terms of any Finance Document or (c) arising by operation of Law and in the ordinary course of the business of the relevant Person provided the debt or other obligation it secures is paid when due or contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of the relevant Person.

“**Person**” means any individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, Governmental Authority or other entity.

“**Post-Closing Tax Period**” means any taxable period (or portion thereof) beginning after the Closing Date.

“**Pre-Finance Project**” means each of the Kyoto Project, the Iwaki Watanabe Project, the Hitakokusai Project, the Shimo-Onuki Project, the Handa Project and the Minami Ueno-Cho Project.

“**Proceeding**” means any action, arbitration, claim, demand, dispute, investigation, lawsuit or other proceeding.

“**Producer-Side Base Charges**” has the meaning given in Section 2.7(a).

“**Project Company**” has the meaning given in Recital A.

“**Project Company Confidential Information**” means any Confidential Information relating to any Project Company or Relevant Business.

“**Projections**” has the meaning given in Section 7.5.

“**Projects**” means each “Project” specified in Schedule 1 (*Projects*).

“**Purchaser Confidential Information**” means any Confidential Information related to the Purchaser or its Affiliates (other than each Project Company and each NewCo) provided to any Seller, its Affiliates or any of their representatives by the Purchaser, its Affiliates or any of their representatives.

“**Purchaser Indemnified Parties**” has the meaning given in Section 9.4.

“**Purchaser Indemnity Claims**” has the meaning given in Section 9.4.

“**Reference Financial Statement Date**” means December 31, 2021.

“**Release**” means any release, discharge, disposal, spill, injection, leak, leaching, pumping, dumping, abandoning, discarding, migrating, escaping, emptying, seeping or emission into the environment.

“**Relevant Adjusted Net Producer-Side Charges Reduction Amount**” has the meaning given in Section 2.7(b)(i).

“**Relevant Assignment**” means, in respect of each Relevant Project, the sale of all of the Relevant TK Interests by the Relevant Seller to the Purchaser.

“**Relevant Assumed Net Producer-Side Charges Reduction Amount**” means, in respect of each Project, the amount specified as the “Assumed Net Producer-Side Charges Reduction Amount” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Base Consideration**” means, in respect of each Project, the amount specified as the “Base Consideration” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Business**” means, in respect of each Relevant Project, the solar power business conducted by the Relevant Project Company.

“**Relevant Closing Equity Amount**” means, with respect to each Pre-Finance Project, (a) the actual amount of the membership interest in the Relevant Project Company to be held by FSJ on the Closing Date and (b) the actual amount of the *tokumei kumiai* interests of the Relevant Project Company to be held by the Relevant Seller on the Closing Date.

“**Relevant Equity Adjustment Amount**” has the meaning given in Section 2.6(b).

“**Relevant Financial Model**” means, in respect of each Project, the financial model for such Project set forth in the Excel spreadsheet named [***] sent by [***] to representatives of the Purchaser by email on May 10, 2022 at 8:52 PM Japan Standard Time.

“**Relevant Maximum Debt Amount**” means, with respect to (a) each Finance Project, the maximum amount of indebtedness to be borrowed by the Relevant Project Company under the term loan facility pursuant to the relevant Finance Documents as of the Closing Date (and, for the avoidance of doubt, excluding any indebtedness under the consumption tax facility or debt service reserve facility), as specified as the “Maximum Debt Amount” in the relevant Part of Schedule 1 (*Projects*) and (b) each Pre-Finance Project, the amount specified as the “Maximum Debt Amount” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Net Producer-Side Charges Reduction Amount**” has the meaning given in Section 2.7(a).

“**Relevant Project**” means, in respect of each Seller, each “Project” in respect of which such Seller is specified as the “Seller” in Schedule 1 (*Projects*).

“**Relevant Project Company**” means, in respect of each Relevant Project, the “Project Company” specified in Schedule 1 (*Projects*).

“**Relevant Producer-Side Charges Adjustment Amount**” has the meaning given in Section 2.7(b)(ii).

“**Relevant Project Spend**” means, with respect to each Pre-Finance Project, the aggregate amount of all bona fide expenditures made (a) with respect to such Project, (b) pursuant to a Contract disclosed in the VDR and (c) during the period between the inception of such Project and the Closing.

“**Relevant Purchase Price**” has the meaning given in Section 2.2.

“**Relevant Required Equity Amount**” means, with respect to each Project, (a) the amount of the membership interest in the Relevant Project Company required to be held by FSJ on the Closing Date and (b) the amount of *tokumei kumiai* interests in the Relevant Project Company required to be held by the Relevant Seller on the Closing Date, in each case as specified as the “Required Equity Amount” in the relevant Part of Schedule 1 (*Projects*).

“**Relevant Seller**” means, in respect of each Project, the “Seller” specified in Schedule 1 (*Projects*).

“**Relevant Seller Bank Account**” means, in respect of each Seller, the “Bank Account” specified in Schedule 2 (*Relevant Seller Bank Accounts*).

“**Relevant TK Agreement**” means, in respect of each Relevant Project, the “TK Agreement” specified in Schedule 1 (*Projects*).

“**Relevant TK Interests**” means, in respect of each Relevant Project, all the rights, obligations and other status of the Relevant Seller as a *tokumei kumiai* investor under the Relevant TK Agreement.

“**Response Period**” has the meaning given in Section 9.10(c).

“**Retention**” has the meaning given in the W&I Policy, being an amount equal to ¥246,500,000.

“**Seller Borne Retention**” means the latter half of the Retention, i.e. that part of the Retention in excess of the first 50% of the Retention.

“**Seller Confidential Information**” means any Confidential Information related to any Seller or its Affiliates provided to the Purchaser, its Affiliates or any of their representatives by any Seller, its Affiliates or any of their representatives.

“**Seller Indemnified Parties**” has the meaning given in Section 9.6.

“**Seller Indemnity Claims**” has the meaning given in Section 9.6.

“**Tax**” means any national, state, local or foreign tax or other governmental charge, fee, levy or assessment of whatever kind or nature, including (a) all national, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, license, excise, franchise, employment, premium, recording, documentary, transfer, back up withholding, turnover, net asset, capital gains, value added, estimated, ad valorem, payroll and employee withholding, stamp, customs, occupation or similar taxes, and any social charges or contributions together with any interest, additions or penalties with respect to these Taxes and any interest in respect of any additions or penalties and (b) any liability in respect of any items described in clause (a) payable by reason of transferee or successor liability, by contract, assumption or operation of Law.

“**Tax Allocation**” has the meaning given in Section 10.2.

“**Tax Authority**” means any Governmental Authority exercising Tax regulatory authority, including any domestic, foreign, national, state, county, regional or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority.

“**Tax Return**” means any return, report, election or other document (including any related or supporting information) filed or required to be filed with any Tax Authority with respect to Taxes, including information returns, claims for refunds of Taxes, and any amendments or supplements to any of the foregoing.

“**TK Agreement**” has the meaning given in Recital A.

“**TK Interests**” has the meaning given in Recital B.

“**TK PSA ECL**” has the meaning given in Recital D.b.

“**TK PSA Guarantee**” has the meaning given in Recital D.a.

“**Transaction**” means the purchase and sale of all of the TK Interests in accordance with Section 2.1.

“**Transaction Documents**” means this Agreement, the TK PSA Guarantee, the TK PSA ECL, the MI PSA, the Business PSA and such other agreements and documents contemplated to be entered into by any Seller or its Affiliates (excluding each NewCo) on the one hand, and the Purchaser or its Affiliates (including each NewCo) on the other hand, in connection with the Transaction.

“**Transfer Taxes**” has the meaning given in Section 13.7.

“**VDR**” means the [***] virtual data room hosted by [***].

“**W&I Policy**” means the buyer-side warranty and indemnity insurance policies issued or to be issued by the Insurer to Kyoto Solar Plant L.P. as named insured.

“**Warranty Claim**” means any Proceeding by the Purchaser arising out of a breach or inaccuracy of any of the representations and warranties of any Seller in this Agreement.

“**Yen**” or “¥” means Japanese yen.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein:

(a) references in this Agreement to recitals, articles, sections, schedules and exhibits are to Recitals, Articles, Sections, Schedules and Exhibits of or to this Agreement;

(b) the words “herein”, “hereof”, “hereunder” and other words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular Section or other subdivision;

(c) the headings in this Agreement are inserted for convenience only and shall not affect its construction;

(d) references in this Agreement to any statute or statutory provision include a reference to such statute or statutory provision as from time to time amended, modified, re-enacted, extended, consolidated or replaced (whether before or after the date of this Agreement) and to any subordinate legislation made from time to time under such statute or statutory provision;

(e) references to this Agreement or to any other document is a reference to such document as varied, amended, modified, novated or supplemented from time to time;

(f) references in this Agreement to any Person shall include, or be deemed to be references to, its respective successors and permitted assignees or permitted transferees (as may be appropriate);

(g) references in this Agreement to the word “include” or “including” are to be construed without limitation;

(h) references in this Agreement to “writing” or “written” include any non-transient means of representing or copying words legibly, including by facsimile or email; and

(i) if any provision of this Agreement requires a negative number to be (i) added to any number, such number shall be reduced by the absolute value of the negative number or (ii) subtracted from any number, such number shall be increased by the absolute value of the negative number.

This Agreement shall not be construed against any Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision or who supplied the form of this Agreement.

2. PURCHASE AND SALE

2.1. Purchase and Sale. Subject to the other terms and conditions of this Agreement, and effective (x) as of the occurrence of the actions described in Section 3.4 and (y) simultaneously with the “DevCo Closing” under the Business PSA and the “Closing” under the MI PSA becoming effective:

(a) the Sellers hereby sell, convey, assign and transfer to the Purchaser all of the TK Interests, free from any Liens (other than Permitted Liens), without any representations and warranties of any Seller other than as provided in Article 6; and

(b) the Purchaser hereby purchases, receives and acquires all of the TK Interests and assumes the obligations of each Seller under each Relevant TK Agreement, without any representations and warranties of any Seller other than as provided in Article 6.

2.2. Purchase Price. Subject to Sections 2.3 to 2.7, the aggregate consideration for the Relevant TK Interests in connection with each Relevant Assignment (the “**Relevant Purchase Price**”) shall be an amount equal to the sum of:

(a) an amount equal to the aggregate Relevant Base Consideration for the Relevant Project (as adjusted, if applicable, pursuant to Section 2.5(c)); *plus*

(b) for each Project Company that holds a Pre-Finance Project, an amount equal to the Relevant Equity Adjustment Amount for such Project Company; *plus*

(c) for each Project Company for which a Cash Contribution was made by the Relevant Seller pursuant to Section 2.6(c), an amount equal to such Cash Contribution; *plus*

(d) an amount equal to 99% of (i) the aggregate amount of Japan fixed asset Taxes (*kotei shisan zei*), including for the avoidance of doubt any depreciable asset Taxes (*shokyaku shisan zei*), paid by the Relevant Project Company in respect of the Relevant Project before the Closing with respect to the calendar year in which the Closing occurs, *less* (ii) (A) the aggregate amount of Japan fixed asset Taxes (*kotei shisan zei*), including for the avoidance of doubt any depreciable asset Taxes (*shokyaku shisan zei*), payable by the Relevant Project Company in respect of the Relevant Project with respect to such calendar year, *multiplied by* (B) the ratio of the number of days from January 1 of such calendar year through the Closing Date (inclusive) *divided by* 365 days; *less*

(e) an amount equal to (i) 50% of the insurance premium and underwriting fee paid or payable by Kyoto Solar Plant L.P. or its designee for the W&I Policy, *multiplied by* (ii) the ratio of the Relevant Base Consideration for the Relevant Project *divided by* the aggregate of the Relevant Base Consideration for each Project.

2.3. Adjustment Statement. No later than five Business Days before the Closing Date, each Seller shall deliver to the Purchaser a statement setting forth as of the Closing (a) for each Project Company, the amounts referred to in Sections 2.2(c) and (d) and (b) for each Project Company that holds a Pre-Finance Project, the amount referred to in Section 2.2(b).

2.4. Adjustment Disputes.

(a) The following provisions of this Section 2.4 shall apply separately in respect of each Relevant Assignment, and each reference to the “Parties” shall be treated as a reference to the Relevant Seller and the Purchaser.

(b) Within [***] Business Days after the Closing Date, the Purchaser may deliver written notice to the Relevant Seller (a “**Disagreement Notice**”) setting out in reasonable detail (i) any item in respect of (A) the statement delivered by the Relevant Seller in accordance with Section 2.3 or (B) the satisfaction of any condition set forth in Section 3.3(e), (f) or (g) by the Relevant Seller, in either case that the Purchaser wishes to dispute (together, the “**Disputed Items**”), (ii) the reasons for the dispute and (iii) the Purchaser’s proposed adjustment to each Disputed Item. For the avoidance of doubt, any amounts not specifically disputed in the Disagreement Notice shall be deemed final and binding upon the Parties for the purposes of this Agreement upon the delivery of the Disagreement Notice.

(c) If the Purchaser delivers a Disagreement Notice to the Relevant Seller within the period referred to in Section 2.4(b), the Parties shall resolve the Disputed Items as follows:

(i) The Disputed Items shall be submitted first to the senior management of each Party for friendly resolution by negotiation for a period of up to 30 days from the date of the Relevant Seller’s receipt of the Disagreement Notice.

(ii) If the Parties fail to agree upon the Disputed Items within the period set forth in Section 2.4(c)(i), either Party may demand that an internationally recognized accounting firm agreed upon between the Parties (the “**Final Auditor**”) determine, with binding effect on the Parties, how the unresolved Disputed Items shall be settled based upon the books and records of the Relevant Project Company and in accordance with J-GAAP.

(iii) The Final Auditor shall act as an expert and not as an arbitrator. The Final Auditor’s activities and jurisdiction shall be limited to the Disputed Items. The Final Auditor shall determine any dispute to the extent relevant to resolving the Disputed Items, which may include any issue involving the interpretation of any provision of this Agreement or the Final Auditor’s terms of reference. The Final Auditor’s written decision on the matters shall be final and binding on the Parties in the absence of manifest error or fraud.

(iv) Each Party shall use its commercially reasonable efforts to cause the Final Auditor to resolve the Disputed Items as promptly as practicable, but in any event within 30 Business Days from the date on which the Final Auditor was appointed.

(v) Each Party shall authorize and permit the Final Auditor to have reasonable access, during normal business hours and upon reasonable notice, to (A) the properties, books, records and other information relating to the Relevant Project Company (in the case of the Relevant Seller, to the extent retained) and (B) the officers and other employees of such Party and its Affiliates, in each case, to the extent reasonably necessary or appropriate in connection with the resolution of the Disputed Items.

(d) Each Party shall bear its own costs in relation to the Final Auditor. The Final Auditor's fees and any costs incurred in arriving at the determination (including any fees and costs of any advisers appointed by the Final Auditor) shall be borne by each Party in proportion to the final allocation made by the Final Auditor of the Disputed Items weighted in relation to the claims made by each Party, such that the prevailing party pays the lesser proportion of such fees and costs.

(e) Without duplication of any amount paid in accordance with Section 2.4(f), if the amount equal to (x) the Relevant Purchase Price after reflecting the adjustments determined in accordance with Section 2.4(c), *less* (y) the amount paid by the Purchaser to the Relevant Seller on the Closing Date in accordance with Section 3.4(a)(i), or *plus* (z) the amount paid by the Relevant Seller to the Purchaser on the Closing Date in accordance with Section 3.4(a)(ii) (in respect of (y) and (z), as the case may be), is:

(i) a negative number, the Relevant Seller shall, within five Business Days after the final determination of such amount, pay to the Purchaser such amount in cash by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Purchaser to the Relevant Seller; or

(ii) a positive number, the Purchaser shall, within five Business Days after the final determination of such amount, pay to the Relevant Seller such amount in cash by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Relevant Seller to the Purchaser.

(f) Without duplication of any amount paid in accordance with Section 2.4(e), (i) if the *tokumei kumiai* interests in the Relevant Project Company held by the Relevant Seller on the Closing Date specified in Section 3.3(e) is less than the "Tokumei Kumiai Interests" part of the Relevant Required Equity Amount required on the Closing Date, the Relevant Seller shall pay such shortfall to the Purchaser, (ii) if any indebtedness specified in Section 3.3(f) is more than the Relevant Maximum Debt Amount as of the Closing Date, the Relevant Seller shall pay 99% of such excess to the Purchaser and (iii) if the requirements specified in Section 3.3(g) are not satisfied, the Relevant Seller shall pay 99% of any Leakage to the Purchaser. Any such payment shall be reduced by any adjustment to the Relevant Purchase Price agreed by the Relevant Seller and the Purchaser on the Closing Date, and shall otherwise be paid within five Business Days after the final determination of such amount, by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Purchaser to the Relevant Seller.

(g) Unless otherwise required by applicable Law, any payment made in accordance with Section 2.4(e) shall be treated as an adjustment to the Relevant Purchase Price for applicable Tax purposes.

2.5. Finance Project Adjustment.

(a) For each Finance Project, the Relevant Seller shall deliver to the Purchaser a copy of (i) a version of the facilities agreement that such Seller reasonably expects reflects the final terms and conditions of the facilities agreement for such Project at least two Business Days prior to the date it is executed and at least 10 Business Days prior to the Closing and (ii) the executed version of such facilities agreement no later than the next Business Day after the date it is executed. Within two Business Days from the delivery of such executed version to the Purchaser, such Seller or the Purchaser may notify the other in writing that the financial terms of such executed version differ from the financial terms for the financing assumed for the purposes of preparing the Relevant Financial Model for the Relevant Project (any such notice, a “**Finance Adjustment Notice**”).

(b) By no more than three Business Days after the delivery of a Finance Adjustment Notice, the Relevant Seller and the Purchaser shall consult in good faith and amend the Relevant Financial Model for the Relevant Project to reflect the financial terms of the relevant facilities agreement and, in implementing such amendments, shall use the same methodology as originally used to prepare such Relevant Financial Model (with the only difference being the value inputs of such different financial terms). Such amended model shall be treated as the Relevant Financial Model for all purposes of this Agreement from the date of this Agreement.

(c) By no more than three Business Days after amending the Relevant Financial Model for the Relevant Project pursuant to Section 2.5(b), the Relevant Seller and the Purchaser shall consult in good faith to amend the Relevant Base Consideration, the Relevant Assumed Net Producer-Side Charges Reduction Amount, the Relevant Maximum Debt Amount and the Relevant Required Equity Amount, in each case to the extent required to reflect the amended Relevant Financial Model. For such mutual consultation, such Parties shall use the same methodology as originally used to prepare the amounts specified as the “Base Consideration”, “Assumed Net Producer-Side Charges Reduction Amount”, “Maximum Debt Amount” and “Required Equity Amount” for the Relevant Project in Schedule 1 (*Projects*) (with the only differences being the amendments to the Relevant Financial Model implemented in accordance with Section 2.5(b)).

2.6. Equity Adjustments.

(a) No later than five Business Days before the Closing Date, the Relevant Seller in respect of each Pre-Finance Project shall deliver to the Purchaser reasonable evidence, such as invoices, transfer records, receipts or other evidence, for (i) all Relevant Project Spend in the following categories for each such Project: (A) engineering, procurement and/or construction; (B) interconnection; (C) insurance; and (D) solar modules and (ii) no less than 50% (in aggregate value) of all other Relevant Project Spend for each such Project related to development costs that are not included in (i). At any time during the Interim Period, the Purchaser may request the Relevant Seller to provide reasonable evidence of any other material Relevant Project Spend incurred with respect to a Pre-Finance Project, and the Relevant Seller shall use reasonable efforts to promptly provide such evidence to the Purchaser.

(b) With respect to each Project Company that holds a Pre-Finance Project, the “**Relevant Equity Adjustment Amount**” shall mean an amount equal to 99% of (i) the amount of the Relevant Closing Equity Amount attributable to (A) Relevant Project Spend and (B) cash held by such Project Company (excluding any cash contributed to such Project Company pursuant to Section 2.6(c) and any cash contributed to such Project Company pursuant to section 2.6(c) (*Equity Adjustments*) of the MI PSA), less (ii) the Relevant Required Equity Amount, in each case as of the Closing.

(c) At any time during the Interim Period, the Purchaser may request any Seller to contribute additional cash to the Relevant Project Company to fund a reasonable amount of anticipated post-Closing expenditures. The Relevant Seller shall consider any such request in good faith and in the event that such Relevant Seller and the Purchaser agree, the Relevant Seller shall contribute such amount in cash to the Relevant Project Company prior to the Closing (any such contribution, a “**Cash Contribution**”).

2.7. Producer-Side Base Charges Regime.

(a) Charges Reflected. Each Seller and the Purchaser acknowledge that the Relevant Base Consideration used to calculate each Relevant Purchase Price reflects a reduction in respect of the expected net impact of certain power producer-side base charges (*hatsuden gawa kakin*) (the “**Producer-Side Base Charges**”) on the Relevant Project (the “**Relevant Net Producer-Side Charges Reduction Amount**”) equal to the Relevant Assumed Net Producer-Side Charges Reduction Amount, on the basis of the following assumptions:

(i) Producer-Side Base Charges will apply in respect of the Relevant Project in an amount calculated by the formula of ¥75/kW per month and ¥0.25/kWh;

(ii) an adjustment amount (such as that shown in the slides distributed at the 32nd Massive Renewable Introduction Committee of METI’s official council held on May 12, 2021) will be deducted from the Producer-Side Base Charges (the “**Grid Charge Adjustment Amount**”) in an amount calculated by the formula of ¥0.5/kWh; and

(iii) the applicable period of the Producer-Side Base Charges and the Grid Charge Adjustment Amount is the period between April 1, 2024 and the end of the applicable FIT procurement period.

(b) Post-Closing Adjustments for Producer-Side Base Charges Regime.

(i) If METI adopts definitive regulations with respect to the Producer-Side Base Charges and the Grid Charge Adjustment Amount (the “**METI Wheeling Regulations**”) on or before the date 18 months from the date of this Agreement, and the parameters applicable under such METI Wheeling Regulations differ from the assumptions set forth in Section 2.7(a) (including, for the avoidance of doubt, if no Producer-Side Base Charges and/or Grid Charge Adjustment Amount are applicable to the Projects under such METI Wheeling Regulations), then the Parties shall, as soon as reasonably practicable after such date, consult in good faith to recalculate each Relevant Net Producer-Side Charges Reduction Amount under the METI Wheeling Regulations (each such recalculated amount, the “**Relevant Adjusted Net Producer-Side Charges Reduction**”).

Amount”). For such mutual consultation, the Parties shall use a methodology similar to the methodology used to calculate the Relevant Assumed Net Producer-Side Charges Reduction Amount to the extent possible.

(ii) In respect of each Project, if the difference between the Relevant Adjusted Net Producer-Side Charges Reduction Amount and the Relevant Assumed Net Producer-Side Charges Reduction Amount (the “**Relevant Producer-Side Charges Adjustment Amount**”) (A) is a positive amount, the Relevant Seller shall pay such amount to the Purchaser or (B) is a negative amount, the Purchaser shall pay such amount to the Relevant Seller, in each case by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated by the Purchaser or the Relevant Seller (as the case may be), with any bank charges, fees or expenses in respect of such payment being borne by the payer, within 30 Business Days from the date on which the Relevant Producer-Side Charges Adjustment Amount is agreed between the Relevant Seller and the Purchaser, provided that the Relevant Producer-Side Charges Adjustment Amount to be paid under this Section 2.7(b)(ii) by the Relevant Seller or the Purchaser in respect of each Project shall not exceed the “Maximum Producer-Side Charges Adjustment Amount” set forth in the relevant Part of Schedule 1 (*Projects*). Unless otherwise required by applicable Law, any payment made in accordance with this Section 2.7(b)(ii) shall be treated as an adjustment to the Relevant Purchase Price for applicable Tax purposes.

(iii) For the avoidance of doubt, if METI does not adopt the METI Wheeling Regulations on or before the date 18 months from the date of this Agreement, then no Relevant Adjusted Net Producer-Side Charges Reduction Amount shall be calculated and no Relevant Producer-Side Charges Adjustment Amount shall be payable under this Section 2.7(b).

(c) Continued Observance. If the Purchaser intends to transfer all or any material portion of the TK Interests in any Project to any Person at a time when any Relevant Producer-Side Charges Adjustment Amount may become payable to a Seller in respect of such Project, then before such transfer, the Purchaser shall, and shall cause such Person to, enter into a written agreement with the Relevant Seller, in a form reasonably acceptable to the Relevant Seller and the Purchaser, under which such Person agrees to the provisions of this Section 2.7 as though such Person was the “Purchaser” of the TK Interests in such Project. Notwithstanding the foregoing, the Purchaser shall continue to be jointly and severally liable with each such Person in respect of the obligations under this Section 2.7.

3.3 CLOSING

3.1 Closing. Provided that this Agreement is not terminated in accordance with Article 12, the purchase and sale of all of the TK Interests pursuant to Section 2.1 (the “**Closing**”) shall take place simultaneously on the “DevCo Closing Date” under the Business PSA (the “**Closing Date**”).

3.2 Closing Conditions of each Seller. The obligation of the Sellers to consummate the Transaction is subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived by the Sellers:

(a) Representations and Warranties of the Purchaser. (i) The representations and warranties made by the Purchaser set forth in Sections 8.1 (*Organization; Power and Authority; Enforceability*), 8.2(a) (*No Conflicts; No Permits*), 8.5 (*Not Insolvent*),

8.6 (*Brokers and Other Advisors*) and 8.8 (*Antisocial Forces*) shall be true and correct in all but minimal respects and (ii) the other representations and warranties made by the Purchaser set forth in Article 8 shall be true and correct in all material respects, in each case (i) and (ii) as of the Closing Date.

(b) **Obligations of the Purchaser.** The Purchaser shall have performed or observed, in all material respects, all of its obligations that are to be performed or observed under this Agreement by the Closing Date.

(c) **No Adverse Order.** There shall not have been any Proceedings instituted or Order issued by any Governmental Authority or any change in Law that has the effect of making the Closing illegal or otherwise restrains in any material respect, prohibits or invalidates the Closing by such Seller or the Purchaser.

(d) **Financing Arrangements.**

(i) (A) Each Relevant Project Company holding a Finance Project shall have entered into a facilities agreement as required under and in accordance with Section 2.5(a) and (B) a disbursement under each such agreement shall have been made to the Relevant Project Company.

(ii) For each Finance Adjustment Notice delivered pursuant to Section 2.5(a) (if any), the Relevant Seller and Purchaser shall have agreed upon amendments to the Relevant Financial Model in accordance with Section 2.5(b) and amendments to the Relevant Base Consideration, the Relevant Assumed Net Producer-Side Charges Reduction Amount, the Relevant Maximum Debt Amount and the Relevant Required Equity Amount in accordance with Section 2.5(c).

(iii) The Finance Parties under the Finance Documents for each Relevant Project Company shall have granted all consents and approvals required for the execution and performance of this Agreement by such Seller without (A) resulting in any breach, event of default or acceleration under such Finance Documents or (B) requiring any amendment, waiver or modification to such Finance Documents that is adverse to any Project Company or the Purchaser in any material respect (in respect of each Project, the "**Finance Consent and Release**").

(e) **Delivery of Approval Documents.** The following documents shall have been delivered by the Purchaser to such Seller:

(i) copies of the documents evidencing the approval of the execution and performance of this Agreement by the decision making body of the Purchaser; and

(ii) a certificate by an authorized officer of the Purchaser substantially in the form of Exhibit A (*Form of Closing Certificate*), dated as of the Closing Date.

3.3 Closing Conditions of the Purchaser. The obligation of the Purchaser to consummate the Transaction is subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived by the Purchaser:

(a) Representations and Warranties of the Relevant Seller. (i) The representations and warranties made by the Relevant Seller set forth in Sections 6.1 (*Organization; Power and Authority; Enforceability*), 6.2(a) (*No Conflicts; No Permits*), 6.2 (*Title*), 6.12 (*Not Insolvent*), 6.19 (*Brokers and Other Advisors*) and 6.24 (*Antisocial Forces*) shall be true and correct in all but minimal respects and (ii) the other representations and warranties made by such Seller set forth in Article 6 shall be true and correct except where the failure to be true and correct would not reasonably be expected to have a Material Adverse Effect, in each case (i) and (ii) as of the Closing Date (except to the extent any such representation and warranty is expressly related to any particular earlier date, in which case as of such date).

(b) Obligations of the Relevant Seller. The Relevant Seller shall have performed or observed, in all material respects, all of its obligations that are to be performed or observed under this Agreement by the Closing Date.

(c) No Adverse Order. There shall not have been any Proceedings instituted or Order issued by any Governmental Authority or any change in Law that has the effect of making the Closing illegal or otherwise restrains in any material respect, prohibits or invalidates the Closing by the Relevant Seller or the Purchaser.

(d) Financing Arrangements.

(i) (A) Each Relevant Project Company holding a Finance Project shall have entered into a facilities agreement as required under and in accordance with Section 2.5(a) and (B) a disbursement under each such agreement shall have been made to the Relevant Project Company.

(ii) For each Finance Adjustment Notice delivered pursuant to Section 2.5(a) (if any), the Relevant Seller and the Purchaser shall have agreed upon amendments to the Relevant Financial Model in accordance with Section 2.5(b) and amendments to the Relevant Base Consideration, the Relevant Assumed Net Producer-Side Charges Reduction Amount, the Relevant Maximum Debt Amount and the Relevant Required Equity Amount in accordance with Section 2.5(c).

(iii) The Finance Parties under the Finance Documents for each Relevant Project Company shall have granted a Finance Consent and Release.

(e) Funding of Required Amounts. For each Finance Project, neither (i) the membership interest in the Relevant Project Company held by FSJ on the Closing Date nor (ii) the *tokumei kumiai* interests in the Relevant Project Company held by the Relevant Seller on the Closing Date, shall be less than the Relevant Required Equity Amount.

(f) Maximum Debt. For each Project, the maximum indebtedness for borrowed money owed by the Relevant Project Company as of the Closing Date shall not be more than the Relevant Maximum Debt Amount.

(g) Leakage. No Leakage shall have occurred in respect of any Project Company between the date of this Agreement and the Closing.

(h) Delivery of Documents. The following documents shall have been delivered by the Sellers to the Purchaser:

- (i) the original of each TK Agreement;
- (ii) copies of the documents evidencing the approval of the execution and performance of this Agreement by the decision making body of each Seller;
- (iii) a certificate by an authorized officer of each Seller substantially in the form of Exhibit A (*Form of Closing Certificate*), dated as of the Closing Date;
- (iv) written approval sealed by each Project Company of the Transaction, substantially in the form of Exhibit B (*Form of Written Assignment Approval*); and
- (v) a seal certificate of each Project Company issued within three months prior to the Closing Date.

3.4 Deliveries and Closing Actions. On the Closing Date, upon satisfaction of the conditions set forth in Sections 3.2 and 3.3:

- (a) in respect of each Relevant Assignment, if the Relevant Purchase Price is:
 - (i) a positive number, the Purchaser shall pay such amount by wire transfer of immediately available funds, in Japanese Yen, to the Relevant Seller Bank Account, with any bank charges, fees or expenses in respect of such payment being borne by the Purchaser; or
 - (ii) a negative number, the Relevant Seller shall pay such amount by wire transfer of immediately available funds, in Japanese Yen, to the bank account designated in writing by the Purchaser to such Seller, with any bank charges, fees or expenses in respect of such payment being borne by the Relevant Seller; and
- (b) each Seller shall deliver to the Purchaser each of the documents referred to in Section 3.3(h) to the extent such documents have not already been delivered to the Purchaser.

All of the actions to be taken and documents to be executed and delivered at the Closing (as provided in this Section 3.4) shall be deemed to be taken, executed and delivered simultaneously, and no such action, execution or delivery will be effective until all are complete.

4. PRE-CLOSING COVENANTS

4.1 TK Agreements. Except (x) as otherwise contemplated by this Agreement or (y) as otherwise consented to or approved in advance in writing by the Purchaser (which consent or approval shall not be unreasonably withheld, conditioned or delayed), during the Interim Period, each Seller shall not (i) amend, revise or change in any material respect, (ii) waive any material right under or (iii) terminate, in each case any Relevant TK Agreement.

4.2 **Efforts to Close.**

(a) **Efforts to Consummate.** Each Party shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the Closing.

(b) **Efforts to Comply.** If any objections are asserted with respect to the Transaction under any Law or if any suit is instituted (or threatened to be instituted) by any Governmental Authority or other Person challenging the Closing as a violation of any Law or that would otherwise prohibit or materially impair or materially delay the Closing, each of the Relevant Seller and the Purchaser shall use its commercially reasonable efforts to resolve any such objections or suits so as to permit the Closing without material modification to the terms of this Agreement.

4.3 Continuing Due Diligence. During the Interim Period, each Seller shall continue to (a) afford the Purchaser and its authorized representatives (including independent public accountants and attorneys) reasonable access to the employees and business and financial records of the Relevant Project Company and (b) furnish to the Purchaser and its authorized representatives (including independent public accountants and attorneys) such additional information concerning the assets, properties and operations of the Relevant Project Company, in both cases as reasonably necessary for the Purchaser to conduct financial due diligence of the Relevant Project Company for the purposes of satisfying the conditional exclusion of the financial statements of the Relevant Project Company as set forth in the W&I Policy.

4.4 Disclosure Supplements. Each Seller may from time to time during the Interim Period, but in no event later than the fifth Business Day before the Closing Date, notify the Purchaser in writing of the existence or happening of any fact, event or occurrence that has occurred after the date of this Agreement and that should be included as an exception to a representation and warranty made by such Seller under Article 6 to make such representation and warranty true and correct as of the Closing Date (each such written disclosure, a “**Disclosure Supplement**”). With respect to the matters disclosed in any such Disclosure Supplement:

(a) if the Purchaser has the right to, but elects not to, terminate this Agreement with respect to any fact, event or occurrence set forth in a Disclosure Supplement in accordance with Section 12.1(d) or (e), in each case within five Business Days of its receipt of such Disclosure Supplement, then the Purchaser shall be deemed to have waived its right to so terminate this Agreement with respect to the facts, events and occurrences set forth in such Disclosure Supplement;

(b) no fact, event or occurrence set forth in such Disclosure Supplement shall be given any effect for purposes of determining whether the Purchaser is entitled to indemnification under Article 9 from the Closing Date; and

(c) any fact, event or occurrence set forth in such Disclosure Supplement shall be treated as an exception to the representations and warranties made by the Relevant Seller under Article 6 solely for the purposes of determining whether the conditions set forth in Section 3.3(a) have been satisfied, unless such fact, event or circumstance (i) would, together with all related matters disclosed in a Disclosure Supplement, reasonably be

expected to have a Material Adverse Effect or (ii) constitutes a material breach of any of the Fundamental Warranties.

4.5 Notification of Relevant Circumstances. In the event that, at any time during the Interim Period, a Seller recognizes any (a) material non-performance of its obligations under this Agreement, (b) event or circumstance that makes it impossible to satisfy the conditions set forth in Section 3.3 or (c) event or circumstance that is reasonably expected to cause the foregoing to occur, such Seller shall immediately notify the Purchaser in writing to such effect and of the details of the same.

5. POST-CLOSING COVENANTS

5.1 Liabilities and Obligations. As of the Closing Date, in respect of each Relevant Assignment:

(a) the Purchaser shall assume all of the rights, liabilities and obligations of the Relevant Seller under the Relevant TK Agreement as party to such Relevant TK Agreement in place of the Relevant Seller; and

(b) the Relevant Seller shall cease to be a party to the Relevant TK Agreement, such that it shall cease to have or exercise any right or power under the Relevant TK Agreement and shall be released from all liabilities and obligations with respect to the Relevant TK Interests and under such Relevant TK Agreement; but

(c) the Relevant Seller shall continue to be responsible to the Purchaser for, and shall indemnify the Purchaser against and hold it harmless from, all liabilities and obligations owed to the Relevant Project Company under the Relevant TK Agreement, solely to the extent that such liabilities and obligations arose and became due and payable prior to the Closing Date.

5.2 Further Assurances. Each Party agrees that from time to time after the Closing Date and at the written request of any other Party, it shall execute and deliver such further instruments, and take such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement with respect to the Closing.

6. REPRESENTATIONS AND WARRANTIES OF EACH SELLER

Subject to Section 4.4, Article 7 and the exceptions and qualifications set forth in Schedule 3 (*Disclosure Schedule*), each Seller represents and warrants to the Purchaser as of the date of this Agreement and as of the Closing Date (except for those representations and warranties expressly made as of a certain date, in which case, as of such date), as set forth in this Article 6. Each representation and warranty in this Article 6 is made jointly and severally by each Seller other than the Excluded Warranties and the Fundamental Warranties, which are made severally but not jointly by each Seller:

6.1 Organization; Power and Authority; Enforceability. Such Seller (a) is a private limited company duly established and validly existing under the laws of Singapore, (b) has full power and authority to execute and deliver the Transaction Documents to which it is or is intended to be a party and to perform all its obligations and exercise all its rights under such Transaction Documents, (c) has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, such Transaction

Documents in accordance with their terms and (d) has duly executed and delivered the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made. Assuming the due authorization, execution and delivery by the other parties to the Transaction Documents, the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made constitute valid and legally binding obligations of such Seller, enforceable against such Seller in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights in general or by general principles of equity (the "**Bankruptcy Exception**").

6.2 No Conflicts; No Permits.

(a) Subject to the satisfaction of the conditions set forth in Section 3.2 and section 3.2 (*Closing Conditions of the Seller*) of the Business PSA, the execution and delivery by such Seller of the Transaction Documents to which it is or is intended to be a party do not, and the consummation of the Transaction and all other transactions contemplated by such Transaction Documents will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of such Seller, under any provision of (i) the Constituent Documents of such Seller or (ii) any Law applicable to such Seller or its properties or assets, other than, in the case of clause (ii) above, any such items that would not reasonably be expected to, individually or in the aggregate, (A) prevent or materially delay consummation of the Transaction or (B) have a Material Adverse Effect.

(b) Subject to the satisfaction of the conditions set forth in Section 3.2 and section 3.2 (*Closing Conditions of the Seller*) of the Business PSA, no Permit is required to be obtained or made by or with respect to any Seller in connection with the execution and delivery of the Transaction Documents to which it is or is intended to be a party or performance by any Seller of the Transaction and all other transactions contemplated by such Transaction Documents, other than such items the failure of which to obtain or make would not reasonably be expected to, individually or in the aggregate, (i) prevent or materially delay consummation of the Transaction or (ii) have a Material Adverse Effect.

6.3 Title. Such Seller is the sole and legal beneficial owner of 100% of the Relevant TK Interests, and is transferring all such Relevant TK Interests to the Purchaser free and clear of any Liens (other than Permitted Liens).

6.4 Relevant TK Interests.

(a) The amount of *tokumei kumiai* contributions to the Relevant Project Company as of the date of this Agreement is as specified in the relevant Part of Schedule 1 (*Projects*).

(b) The Relevant TK Agreement was duly executed and is validly existing, and no event of material default, or event of termination, cancellation or invalidation, with regards to the Relevant TK Agreement, has occurred and is continuing or is reasonably expected to occur.

(c) The Relevant TK Agreement constitutes valid and legally binding obligations of each of the parties thereto, enforceable against each of the parties thereto in accordance with their terms, except as may be limited by the Bankruptcy Exception.

(d) The Relevant Project Company is an operator (*eigyosha*) of the *tokumei kumiai* established by the Relevant TK Agreement pursuant to Article 535 of the Commercial Code of Japan and such Seller is an investor (*tokumei kumiai'in*) entitled to a distribution of 99% of all profits of the Relevant Project Company. The Relevant Project Company is not a party to any other *tokumei kumiai* agreement or any other profit sharing arrangement with any Person other than the Relevant TK Agreement.

(e) Except as disclosed in the Disclosure Sources, there have been no amendments to the Relevant TK Agreement.

(f) To the Knowledge of the Sellers, no Seller nor any Project Company has taken any action that has caused any TK Agreement to cease to be a valid *tokumei kumiai* under applicable Law.

6.5 Constitution. Each Project Company is (a) a *godo kaisha* duly formed and validly existing under the laws of Japan and has the corporate power and authority to own, lease or otherwise hold its properties and assets and to carry on the Relevant Business and (b) duly qualified to do business in each jurisdiction in which the nature of its business or properties makes such qualification necessary, except for those jurisdictions where the failure to be so qualified would not have a Material Adverse Effect.

6.6 Material Contracts.

(a) True, complete and correct copies of each Material Contract, and all of the amendments, modifications and supplements thereto (other than any (i) Contracts, amendments, modifications and supplements entered into to satisfy the conditions set forth in Section 3.2 or 3.3 or any other Transaction Document or (ii) other Transaction Document), have been disclosed in the VDR.

(b) Each Material Contract constitutes valid and legally binding obligations of a Seller or Project Company (as applicable) and, to the Knowledge of the Sellers, the other parties thereto, enforceable against such parties in accordance with their terms, except (i) as such enforceability may be limited by the Bankruptcy Exception, (ii) where the rights and obligations thereunder may be subordinated or otherwise limited or restricted under the terms of the Finance Documents or (iii) where such failure to constitute a valid and legally binding obligation or be enforceable does not have a Material Adverse Effect.

(c) No default by any Seller and/or Project Company (as applicable) or, to the Knowledge of the Sellers, any other Person, has occurred and is continuing in respect of any Material Contract that has had or would reasonably be expected to have a Material Adverse Effect.

6.7 Related Party Agreements. Immediately before the Closing, other than the “Seller Credit Support” and each “Module Procurement Undertaking” (each as defined in the MI PSA), each module supply Contract and each development services agreement between FSJ and certain Project Companies, the other Transaction Documents, each Contract that has

been or will be transferred to a NewCo in accordance with the Business PSA and any “Closing IC Payables” (as defined in the MI PSA), there will be no credit support documents or other outstanding Contracts, loans, accounts payable, accounts receivable or other amounts owed between any Project Company, on the one hand, and any Seller or any of its current or former officers, directors, investors or Affiliates (other than each Leased Real Property Agreement with a Land Company), on the other hand.

6.8 Real Property.

(a) Each Project Company has lawful surface rights, easements or other rights of use and access to the relevant Leased Real Property necessary to conduct its business as currently conducted, except as would not reasonably be expected to have a Material Adverse Effect.

(b) There are no Proceedings pending or threatened in writing to (i) condemn or take any Leased Real Property, (ii) declare any Leased Real Property or any material part of it a nuisance or (iii) exercise the power of eminent domain or a similar power with respect to all or any material part of any Leased Real Property. To the Knowledge of the Sellers, the Leased Real Property does not contain any site for city planning roads or other city facilities for which a city planning decision has been made.

(c) The spreadsheets identified in the definition of “Leased Real Property Agreements” contain complete and accurate legal descriptions of all Leased Real Property Agreements.

(d) Each Leased Real Property Agreement was concluded and perfected, and is existing, validly and legally, free and clear of all Liens other than Permitted Liens. There are no grounds for the cancellation or termination of any Leased Real Property Agreement.

(e) Except as set forth in the spreadsheets identified in the definition of “Leased Real Property Agreements”, there are no material leases, land purchase agreements or other similar agreements relating to real property to which any Project Company is a party.

(f) There is no unlawful infringement on any Leased Real Property by the buildings or structures of the adjacent lands. There is no unlawful infringement on the adjacent lands by any Project Company or the buildings or structures of any Project Company.

As of the Closing Date, each representation and warranty in this Section 6.8 made in respect of the Kyoto Project and FS Japan Project 6 GK is subject to the exception and qualification that the land used by the Kyoto Project will transfer to an Affiliate of Kyoto Solar Plant L.P. on or around the Closing Date under the “Kyoto Land Transfer Agreement” as defined in the Business PSA.

6.9 Assets. Each Project Company has good and valid title to, or valid leasehold interests in, all material tangible assets currently being used by it, in each case duly perfected under applicable Laws (to the extent such perfection is legally possible, reasonably practicable and reasonably necessary) free and clear of all Liens (other than Permitted Liens). To the Knowledge of the Sellers, there is no defect (including legal defect) in any assets of any Project Company that could reasonably be expected to have a Material Adverse Effect.

6.10 Insurance. All premiums with respect to the material insurance policies maintained by each Project Company with respect to the Relevant Project have been duly paid, and no written notice of default, cancellation, non-renewal, termination, material premium increase or other material change in prospective coverage has been received by any Project Company with respect to any such insurance policies and all such insurance policies are in full force and effect.

6.11 Proceedings.

(a) There are no (i) material Proceedings by or before any court, tribunal or other Governmental Authority or threatened in writing against any Seller or otherwise in respect of any Project Company or the Relevant Business that, if adversely determined or (ii) material outstanding Orders in respect of (and which are adverse to) any Seller, any Project Company or the Relevant Business that, in each case (i) and (ii), would reasonably be expected to (x) prevent, impede or delay the ability of any Seller to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party or (y) have a Material Adverse Effect. To the Knowledge of the Sellers, there is no reasonable expectation that the foregoing (i) or (ii) will be filed or commenced.

(b) To the Knowledge of the Sellers, there has been no event giving rise to a right to claim for indemnification under any product warranty or performance warranty given by the supplier of a solar battery module, power conditioner, mount or any other part of any Project.

6.12 Not Insolvent. Neither such Seller nor the Relevant Project Company is insolvent or unable to make payments as and when they come due, nor has it suspended payments to its creditors, and no petition has been filed with respect to such Seller or the Relevant Project Company for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures), nor does any cause for such Proceedings exist. The execution or performance of this Agreement will not cause such Seller or the Relevant Project Company to become insolvent or to not make or suspend such payments, and to the Knowledge of such Seller, there is no risk that such events would occur.

6.13 Compliance with Law.

(a) Each Seller is in compliance with all Laws applicable to it, except where failure to be in compliance would not reasonably be expected to (i) prevent, impede or delay the ability of any Seller to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party or (ii) have a Material Adverse Effect.

(b) Each Project is in compliance with all Laws applicable to it, except where failure to be in compliance does not have and would not reasonably be expected to have a Material Adverse Effect.

(c) No material notice, charge, claim, action or assertion has been received in writing by any Seller or Project Company with respect to any Project from any Governmental Authority alleging any material violation of any Laws that materially affect such Project.

The representations and warranties in this Section 6.13 do not apply to environmental matters (which are governed exclusively by Section 6.14), Permit matters (which are governed exclusively by Section 6.14) or Tax matters (which are governed exclusively by Section 6.18).

6.14 Environmental Matters.

(a) To the Knowledge of the Sellers, (i) each Project is in compliance with all applicable Environmental Laws, including with all Permits (if any) issued thereunder and (ii) the Leased Real Property is free from soil contamination by any Designated Hazardous Substances, except in each case (i) and (ii), as does not have and would not reasonably be expected to have a Material Adverse Effect.

(b) There are no material Environmental Claims pending or threatened in writing in respect of any Project by or before any Governmental Authority pursuant to any applicable Environmental Law that has or would reasonably be expected to have a Material Adverse Effect.

(c) No Seller or Project Company has received any written notice from any Person, including any Governmental Authority, alleging that any Project is in material violation of any applicable Environmental Law or otherwise is materially liable under any Environmental Law.

6.15 Permits. (a) Each Project Company has all material Permits currently required under any Law (including, to the Knowledge of the Sellers, any Environmental Law) to carry on the Relevant Business in all material respects, (b) each such Permit has been duly obtained, was validly issued, is in full force and effect in all material respects, and no Proceedings before any Governmental Authority are pending or threatened in writing seeking injunction, material modification or revocation of any such Permit, (c) no Project Company is in material violation of or in material default under any such Permit, (d) to the Knowledge of the Sellers, grounds for revocation of such Permits have not occurred and (e) to the Knowledge of the Sellers, there are no events or circumstances that would reasonably be expected to result in any Project Company not receiving the Permits necessary to conduct the Relevant Business, in each case of (a) to (e), except as would not reasonably be expected to have a Material Adverse Effect.

6.16 Financial Statements. The Financial Statements provided to the Purchaser:

(a) were prepared in accordance with J-GAAP;

(b) give a true and fair view of (if audited) or fairly present (if unaudited) the financial condition of the Project Companies as at the end of, and results of operations for, the periods to which such financial statements relate (in the case of unaudited financial statements, subject to (i) normal recurring year-end adjustments (the effect of which are not, individually or in the aggregate, expected to be material) and (ii) the absence of footnote disclosures and other presentation items (that, if presented, are not expected to differ materially from those included in audited statements)); and

(c) disclose all liabilities (contingent or otherwise), and the reserves, if any, for such liabilities and all unrealized or anticipated liabilities and losses arising from

commitments entered into by the Project Companies, in each case to the extent required to be disclosed in accordance with J-GAAP.

6.17 Absence of Changes. Since the Reference Financial Statement Date, each Project Company has conducted the Relevant Business in the ordinary course of business consistent with its past custom and practice, except, in respect of the period between the date of this Agreement and the Closing Date, to the extent contemplated by the exceptions set forth in section 4.1(b) (*Conduct of Business*) of the MI PSA. Further, between the Reference Financial Statement Date and the date of this Agreement, there has been no event that has had or is likely to have a Material Adverse Effect.

6.18 Tax Matters.

(a) Each Project Company has filed, or has caused to be filed, all material Tax Returns that it is required to have filed (taking into account all applicable extensions validly obtained), and all such Tax Returns were true, complete and correct.

(b) Each Project Company has timely paid all Taxes to the appropriate Tax Authority, whether or not reflected on such Tax Returns (other than those Taxes that it is contesting in good faith by appropriate proceedings which are disclosed in Schedule 3 (*Disclosure Schedule*) and for which adequate reserves have been recorded on its financial statements in accordance with J-GAAP). Each Project Company has correctly withheld and timely remitted to the appropriate Tax Authority all Taxes required by applicable Law to have been withheld and remitted in connection with amounts paid, distributed or owing to any Seller or any employee, independent contractor, creditor, shareholder, vendor or Affiliate of any Seller or FSJ.

(c) No Project Company has granted any waiver of or agreed to any extension with respect to any statute of limitations on the assessment or collection of any Tax.

(d) No material audit, examination or administrative proceeding initiated by any Governmental Authority with respect to any Taxes of any Project Company is currently pending.

(e) No Governmental Authority has asserted in writing any deficiency or assessment, or proposed in writing any adjustment, for any material Taxes of any Project Company that have not been paid or settled.

(f) There are no Tax liens upon the assets of any Project Company, other than Permitted Liens.

(g) No Project Company has entered into any Tax sharing agreement or similar contractual agreement to share liability with another Person or indemnify another Person for Taxes other than (i) any commercially customary gross-up or indemnification provisions on borrowings, derivatives or leases and (ii) any such agreement that addresses responsibility for Taxes in a commercially customary manner and the primary purpose of which is not the sharing or allocation of or indemnity for Tax liabilities.

(h) No Project Company has ever been a member of any affiliated, consolidated, combined, unitary or similar group or participated in any other arrangement

whereby any income, revenues, receipts, gain or loss was determined or taken into account for Tax purposes with reference to or in conjunction with any income, revenues, receipts, gain, loss, asset or liability of any other Person except as disclosed in Schedule 3 (*Disclosure Schedule*) or any Disclosure Supplement. No Project Company has any liability for the Taxes of any other Person under Section 1.1502-6 of the U.S. Treasury Regulations (or any similar provision of applicable state, local or non-U.S. Law) as a transferee or successor.

(i) No Seller nor Project Company has received notice of any claim by a Governmental Authority in a jurisdiction where such Project Company does not file Tax Returns that such Project Company or Project is or may be subject to taxation or required to collect and remit Taxes in that jurisdiction. To the Knowledge of the Sellers, no Project Company nor Project has, or has ever had, a permanent establishment or engaged in a trade or business for applicable Tax purposes in any country other than Japan.

(j) For U.S. federal income Tax purposes each Project Company is treated as a partnership or is disregarded as a separate entity from its owner.

Subject to Sections 6.16 and 6.17, this Section 6.18 constitutes all of the Sellers' representations and warranties with respect to Taxes, and no other representation or warranty in this Agreement shall be construed to apply to any matter relating to Taxes. Nothing in this Section 6.18 or elsewhere in this Agreement shall be construed as a representation or warranty with respect to the amount or availability of any net operating loss, capital loss, tax credit carryover or other Tax asset or attribute of the Sellers nor any Project Company in any Post-Closing Tax Period.

6.19 Limited Purpose Entity / No Employees. Each Project Company at all times has engaged only in the solar power business and has not engaged in any other business. Each Project Company has no employees and has never had any employees. Each Project Company has not maintained, sponsored, administered or participated in any employee benefit plan or arrangement. No Project Company has any liability to any past or present employee, officer, director, manager or agent of such Project Company or any of its Affiliates.

6.20 FIT.

(a) The procurement period and feed-in-tariff of each Project under the FIT Act is as set forth in the relevant Part of Schedule 1 (*Projects*). There are no grounds or, to the Knowledge of the Sellers, reasonable expectation of any grounds, for modification or cancellation of such procurement period or feed-in-tariff. Without limiting the generality of the foregoing, with respect to the Yatsubo Project and Orido Project only, to the Knowledge of the Sellers, there are no grounds or reasonable expectation of any grounds for the relevant utility to require the Relevant Project Company to resubmit an application for the grid connection for the Relevant Project.

(b) The Business Plan for each Project has obtained accreditation from the Minister of Economy, Trade and Industry as set forth in Article 9 Paragraph 3 of the FIT Act (or is deemed to have obtained accreditation pursuant to Article 4 Paragraph 1 of the Supplementary Provisions for the 2016 Act to Amend FIT Act). Such accreditation is valid, and there are no grounds or, to the Knowledge of the Sellers, any reasonable expectation of grounds, for the modification or rescission of such accreditation.

(c) All pending applications to METI for a change in the Business Plan of any Project are described in the relevant Part of Schedule 1 (*Projects*), and no such change, if approved, could reasonably be expected to result in any modification or cancellation of the procurement period or feed-in-tariff for such Project.

(d) To the Knowledge of the Sellers, no grounds for rescission of recognition, as set forth in each of the items in Article 15 of the FIT Act, exist with respect to any relevant Business Plan Authorization.

(e) With respect to the Yatsubo Project and Orido Project only, FSJ has been informed orally by the relevant utility that the grid connection date is expected to occur in February 2023.

6.21 Disclosure of Information. To the Knowledge of the Sellers, the Sellers have disclosed to the Purchaser or its advisors all of the material information in the possession of the Sellers and their Affiliates relating to the Project Companies, the TK Agreements and the Projects that would reasonably be expected to materially affect the investment decision by the Purchaser.

6.22 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with Transaction based upon arrangements made by or on behalf of any Seller, in each case where the Purchaser or any Project Company may become liable.

6.23 Anti-Corruption. None of such Seller, the Relevant Project Company nor any of their respective directors, officers or employees has offered, authorized, made or paid, directly or indirectly, any bribes, kickbacks or other similar payments or offers or transfers of value to any Government Official (or to another Person at the request or with the assent or acquiescence of such Government Official) in connection with obtaining or retaining business or to secure an improper advantage in connection with the Relevant Project; nor have any of them, directly or indirectly, committed any violation of any applicable Law that relates to bribery, corruption or money laundering, such as the Unfair Competition Prevention Act of Japan (Act No. 47 of 1993) and the US Foreign Corrupt Practices Act 1977.

6.24 Antisocial Forces. None of such Seller, the Relevant Project Company nor any of their respective directors, officers, shareholders or, to the Knowledge of such Seller, employees or agents, is an Antisocial Force or falls under the definition of Antisocial Force or has any (a) relationships by which its management is considered to be controlled by any Antisocial Force, (b) relationships by which any Antisocial Force is considered to be involved substantially in its management, (c) relationships by which it is considered to unlawfully utilize any Antisocial Force for the purpose of securing unjust advantage for itself or any third party or of causing damage to any third party, (d) relationships by which it is considered to offer funds or provide benefits to any Antisocial Force or (e) persons involved substantially in its management having socially condemnable relationships with any Antisocial Force.

For the avoidance of doubt, (a) each Seller is making the Fundamental Warranties and Excluded Warranties (i) only with respect to itself and (ii) only in connection with each Relevant Assignment, and the Relevant Project Company, the Relevant Project, the Relevant Business and the Relevant TK Interests related to such Relevant Assignment, and the status,

properties, assets and liabilities thereof (as applicable), separately from any other Relevant Assignment and (b) no Seller is making any Fundamental Warranties or Excluded Warranties whatsoever with respect to any other Seller, any other Project Company, any other Project, the business of any other Project Company, any other TK Interests, or the status, properties, assets and liabilities thereof.

7. LIMITATIONS ON REPRESENTATIONS AND WARRANTIES OF EACH SELLER

7.1 Only Representations and Warranties in Article 6. Notwithstanding anything to the contrary in any other provision of this Agreement, it is the intent of each Party that the Sellers are not making any representation or warranty whatsoever, express, implied, statutory or otherwise, except for the representations or warranties set forth in Article 6, and the Purchaser acknowledges and agrees that the TK Interests, and by virtue of its acquisition of the TK Interests under this Agreement, each Project Company, each Project and its equipment and other assets, are being taken by it subject to all faults, “as is” and “where is”, subject only to the representations and warranties of the Sellers set forth in Article 6.

7.2 Disclaimer. Except for the representations and warranties of the Sellers set forth in Article 6, each Seller expressly disclaims and negates any representation or warranty, express or implied, statutory or otherwise, in particular relating to the condition of each Project and its equipment and other assets (including any implied or express warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials, or the presence, absence, release, disposal or discharge of any Hazardous Materials).

7.3 Non-reliance. The Purchaser agrees not to rely on any representation or warranty made by any Seller with respect to the condition, merchantability, quality or state of the TK Interests, any Project or its equipment and other assets except for those representations and warranties set forth in Article 6. Rather, the Purchaser agrees, except as provided in Article 6, to rely solely and exclusively upon its own evaluation of the TK Interests, each Project and its equipment and other assets.

7.4 No Other Assurances. This Agreement is the result of extensive negotiations among the Parties and no other assurances, representations or warranties about the condition, merchantability, quality or state of the TK Interests, any Project or its equipment and other assets were made by any Seller, any Project Company or any of their respective Affiliates in the inducement to enter into this Agreement, except as provided in this Agreement.

7.5 Projections. In connection with the Purchaser’s due diligence investigation, the Purchaser and its representatives have received from each Seller and its representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, regarding each Project Company, each Project and each Relevant Business (together, “Projections”). Except as set forth expressly in this Agreement, the Purchaser acknowledges and agrees that:

(a) there are uncertainties inherent in attempting to make such Projections with which the Purchaser is familiar, and that no assurances can be given that such Projections are accurate or will be realized;

(b) the Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Projections so provided (including the reasonableness of the assumptions underlying such Projections), and the Purchaser shall have no claim (and expressly waives any claim) against any Seller or its respective representatives with respect thereto;

(c) none of the Sellers nor their respective representatives has made or is making any express or implied representation or warranty with respect to such Projections (including the reasonableness of the assumptions underlying such Projections); and

(d) the Purchaser is fully qualified to evaluate the provided information and make its own determination as to whether to proceed with the Transaction and assume the risks contemplated thereby.

8.8 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to each Seller as of the date of this Agreement and as of the Closing Date as follows:

8.1 Organization; Power and Authority; Enforceability. The Purchaser (a) is an entity duly established and validly existing under the laws of its jurisdiction of establishment, (b) has full power and authority to execute and deliver the Transaction Documents to which it is or is intended to be a party and to perform all its obligations and exercise all its rights under such Transaction Documents, (c) has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, such Transaction Documents in accordance with their terms and (d) has duly executed and delivered the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made. Assuming the due authorization, execution and delivery by the other parties to the Transaction Documents, the Transaction Documents to which it is or is intended to be a party as of the date this representation and warranty is made constitute valid and legally binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their terms, except as such enforceability may be limited by the Bankruptcy Exception.

8.2 No Conflicts; No Permits.

(a) Subject to the satisfaction of the conditions set forth in Section 3.3 and section 3.3 (*Closing Conditions of each Purchaser*) of the Business PSA, the execution and delivery by the Purchaser of the Transaction Documents to which it is or is intended to be a party do not, and the consummation of the Transaction and all other transactions contemplated by such Transaction Documents will not, conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of the Purchaser under, any provision of (i) the Constituent Documents of the Purchaser or (ii) any Law applicable to the Purchaser or its properties or assets, other than, in the case of clause (ii) above, any such items that would not reasonably be expected to, individually or in the aggregate, prevent or materially delay consummation of the Transaction.

(b) Subject to the satisfaction of the conditions set forth in Section 3.3 and section 3.3 (*Closing Conditions of each Purchaser*) of the Business PSA, no Permit is

required to be obtained or made by or with respect to the Purchaser in connection with the execution and delivery of the Transaction Documents to which it is or is intended to be a party or performance by the Purchaser of the Transaction and all other transactions contemplated by such Transaction Documents, other than such items the failure of which to obtain or make would not reasonably be expected to, individually or in the aggregate, prevent or materially delay consummation of the Transaction.

8.3 Proceedings. There are no (a) material Proceedings by or before any court, tribunal or other Governmental Authority or threatened in writing against the Purchaser that, if adversely determined or (b) material outstanding Orders in respect of (and which are adverse to) the Purchaser that, in each case (a) and (b), would reasonably be expected to prevent, impede or delay the ability of the Purchaser to perform its obligations or consummate the transactions contemplated under the Transaction Documents to which it is or is intended to be a party.

8.4 Sufficient Funds. The Purchaser has sufficient funds on hand or available to it under the TK PSA ECL or otherwise to pay each Relevant Purchase Price on the Closing Date.

8.5 Not Insolvent. The Purchaser is not insolvent or unable to make payments as and when they come due, and has not suspended payments to its creditors, and no petition has been filed with respect to the Purchaser for commencement of bankruptcy, civil rehabilitation, special liquidation or other insolvency Proceedings (or other equivalent procedures), nor does any cause for such Proceedings exist. The execution or performance of this Agreement will not cause the Purchaser to become insolvent or to not make or suspend such payments, and to the Knowledge of the Purchaser, there is no risk that such events would occur.

8.6 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transaction based upon arrangements made by or on behalf of the Purchaser, in each case where any Seller may become liable.

8.7 Anti-Corruption. Neither the Purchaser nor any of its directors, officers or employees has offered, authorized, made or paid, directly or indirectly, any bribes, kickbacks or other similar payments or offers or transfers of value to any Government Official (or to another Person at the request or with the assent or acquiescence of such Government Official) in connection with obtaining or retaining business or to secure an improper advantage; nor have any of them, directly or indirectly, committed any violation of any applicable Law that relates to bribery, corruption or money laundering, such as the Unfair Competition Prevention Act of Japan (Act No. 47 of 1993) and the US Foreign Corrupt Practices Act 1977.

8.8 Antisocial Forces. Neither the Purchaser nor any of its directors, officers, shareholders or, to the Knowledge of the Purchaser, employees or agents, is an Antisocial Force or falls under the definition of Antisocial Force or has any (a) relationships by which its management is considered to be controlled by any Antisocial Force, (b) relationships by which any Antisocial Force is considered to be involved substantially in its management, (c) relationships by which it is considered to unlawfully utilize any Antisocial Force for the purpose of securing unjust advantage for itself or any third party or of causing damage to any third party, (d) relationships by which it is considered to offer funds or provide benefits to

any Antisocial Force or (e) persons involved substantially in its management having socially condemnable relationships with any Antisocial Force.

9. W&I POLICY; INDEMNIFICATION

9.1 Survival.

(a) Survival of Covenants. All of the covenants or other agreements contained in this Agreement shall survive until the first to occur of (i) the expiration by their terms of the obligations of the applicable Party under such covenant and (ii) such covenant being fully performed or fulfilled, unless non-compliance with such covenants or agreements is expressly waived in writing by the Party entitled to such performance.

(b) Survival of Representations and Warranties. The representations and warranties contained in this Agreement shall survive the Closing for 12 months, except that the representations and warranties set forth in Section 6.18 shall survive the Closing for 36 months. Notwithstanding the foregoing, all rights and claims under the W&I Policy are subject to the terms and conditions thereof and are not subject to the limitations set forth in this Section 9.1(b).

9.2 W&I Policy.

(a) The Purchaser shall obtain and maintain the W&I Policy.

(b) Within five Business Days from the date of this Agreement, the Purchaser shall deliver to the Sellers a copy of the signed and stamped (if applicable) W&I Policy.

(c) The Purchaser shall:

(i) take all commercially reasonable steps (which shall not require the Purchaser to initiate any litigation or arbitration) to enforce the terms of the W&I Policy in respect of any Losses that the Purchaser suffers or incurs in relation to any breach or inaccuracy of the representations and warranties of any Seller in this Agreement (other than the Excluded Warranties);

(ii) not agree to any amendment, variation or waiver of the W&I Policy that could reasonably be expected to have an adverse impact on any Seller (or take any other action that has a similar effect) without the prior written consent of each Seller;

(iii) not novate, or otherwise assign its rights under, the W&I Policy (or take any other action that has a similar effect) other than:

(A) with the prior written consent of each Seller; or

(B) to (I) any of its Affiliates or (II) a subsequent purchaser or transferee of all or a substantial portion of any Relevant Business, provided that in each case (I) and (II), each such Person undertakes to the Relevant Seller, in a form reasonably acceptable to such Seller, to be bound by the provisions of this Article 9 as though such Person was the "Purchaser";

(iv) satisfy on a timely basis those conditions to coverage explicitly set forth in the W&I Policy, and pay when due all premiums, fees, costs and taxes associated therewith;

(v) not take any action that could reasonably be expected to cause the W&I Policy or the rights of any party thereunder to be terminated, cancelled, amended or limited in a manner that (A) could vitiate the W&I Policy or (B) could otherwise reasonably be expected to have an adverse impact on any Seller; and

(vi) (A) ensure that the W&I Policy (I) includes an express waiver of the Insurer's rights of subrogation, contribution and express rights acquired by assignment against each Seller, except to the extent that any Warranty Claim arises out of or results from fraud of such Seller, in which case the Insurer shall only be entitled to subrogate to the extent of the rights of recovery relating directly to the fraud of such Seller and (II) acknowledges the rights of such Seller as a third party beneficiary in respect of such waiver and (B) not agree to any amendment, variation or waiver of the foregoing (or take any other action that has a similar effect) without the prior written consent of such Seller.

(d) The Purchaser acknowledges and agrees that:

(i) each Seller has entered into this Agreement in reliance on the W&I Policy being obtained and maintained by the Purchaser; and

(ii) notwithstanding any other provision in this Agreement or the W&I Policy, the other provisions of this Article 9 shall apply for the benefit of each Seller with respect to any Warranty Claim despite any vitiating, expiry or termination of, default under or failure to take out or enforce, the W&I Policy.

9.3 Availability of Indemnification for Warranty Claims. Notwithstanding any other provision in this Agreement, no Seller shall be liable in respect of, and the Purchaser may not make, any Warranty Claim, except to the extent that such Warranty Claim:

(a) arises out of or results from fraud of such Seller;

(b) is in respect of any of the Excluded Warranties of such Seller; or

(c) (i) is in respect of any of the representations and warranties of such Seller (including the Fundamental Warranties) other than the Excluded Warranties and (ii) the Purchaser has first sought recourse against the W&I Policy in respect of such Warranty Claim in accordance with Section 9.2(c)(i).

9.4 Indemnification by each Seller. Subject to the other provisions of this Article 9, from and after the Closing Date, each Seller shall indemnify, defend and hold harmless the Purchaser, each Relevant Project Company, their respective Affiliates and each of their respective officers, directors, employees and agents (the "**Purchaser Indemnified Parties**") from and against any Losses incurred by any Purchaser Indemnified Party as a result of (collectively, the "**Purchaser Indemnity Claims**");

(a) any breach or inaccuracy of any representation or warranty of such Seller contained in this Agreement; or

- (b) any breach of any covenant or agreement by such Seller under this Agreement.

9.5 Indemnification by the Kyoto Seller.

(a) Subject to the other provisions of this Article 9, from and after the Closing Date, the Kyoto Seller shall indemnify, defend and hold harmless the Purchaser Indemnified Parties from and against any Losses incurred by FS Japan Project 6 GK that constitute additional payments to which Chiyoda Corporation may be entitled under the construction contract for Kyoto Minami Yamashiro Mie-Shimagahara Power Plant Construction Project dated as of July 31, 2019 between FS Japan Project 6 GK and Chiyoda Corporation resulting from the matters raised by Chiyoda Corporation in its change requests FS6-CR-004, FS6-CR-008 and FS6-CR-009 (the “**Kyoto EPC Change Requests**”).

- (b) The Purchaser shall, and shall cause its Affiliates to:

- (i) reasonably cooperate with the Kyoto Seller with respect to resolving any claim or liability with respect to which the Kyoto Seller is or may be obligated to indemnify any Purchaser Indemnified Party under Section 9.5(a);

- (ii) make all commercially reasonable efforts to mitigate or resolve any such claim or liability in a manner that would minimize any Losses that would be subject to indemnification under Section 9.5(a);

- (iii) keep the Kyoto Seller informed of all material developments in respect of the Kyoto EPC Change Requests; and

- (iv) not admit any liability, consent to the entry of any judgment or enter into any settlement or compromise in respect of the Kyoto EPC Change Requests without the prior written consent of the Kyoto Seller (which consent shall not be unreasonably withheld, conditioned or delayed).

9.6 Indemnification by the Purchaser. Subject to the other provisions of this Article 9, from and after the Closing Date, the Purchaser shall indemnify, defend and hold harmless each Seller, its Affiliates and each of their respective officers, directors, employees and agents (the “**Seller Indemnified Parties**”) from and against any Losses incurred by any Seller Indemnified Party as a result of (collectively, the “**Seller Indemnity Claims**”):

- (a) any breach or inaccuracy of any representation or warranty of the Purchaser contained in this Agreement; or
- (b) any breach of any covenant or agreement by the Purchaser under this Agreement.

9.7 Mitigation. Without prejudice to any rights otherwise provided hereunder, each Party shall reasonably cooperate with each other Party with respect to resolving any claim or liability with respect to which one Party is or may be obligated to indemnify the other under this Agreement, including by making all reasonable efforts to mitigate or resolve any such claim or liability after such Party gains actual knowledge of such claim or liability.

9.8 Indirect Damages. No Indemnifying Party shall have any liability under this Agreement for any punitive, incidental, consequential, special or indirect damages (including

lost profits, operating losses and loss of operation time), except to the extent that any such damages are (a) awarded in a third-party claim against an Indemnified Party or (b) damages (excluding any punitive, incidental, consequential, special or indirect damages (including lost profits, operating losses and loss of operation time)) incurred by any "Purchaser" under any other Transaction Document arising or resulting from a breach of this Agreement.

9.9 Indemnity Claims Capped.

(a) Subject to Section 9.9(b), the aggregate liability of each Seller in respect of Losses based upon, arising out of or otherwise in respect of Section 9.4(a) shall be capped at, and may not exceed:

(i) in respect of any of the Excluded Warranties, [***], provided that the aggregate liability of all "Sellers" under the Transaction Documents in respect of all of the "Excluded Warranties" in the Transaction Documents shall not exceed the foregoing amount;

(ii) in respect of any of the Fundamental Warranties, the "Fundamental Indemnification Cap" specified in the relevant Part of Schedule 1 (*Projects*) for the Relevant Project, provided that the aggregate liability of all "Sellers" under the Transaction Documents in respect of all of the "Fundamental Warranties" in the Transaction Documents shall not exceed the foregoing amount with respect to such Relevant Project; and

(iii) in respect of any of the representations and warranties other than the Excluded Warranties and the Fundamental Warranties (A) the extent to which a corresponding claim under the W&I Policy (I) has eroded the Seller Borne Retention or (II) would have eroded the Seller Borne Retention had no claims in respect of the Fundamental Warranties eroded any part of the Retention and (B) in any event, in the aggregate, an amount equal to 50% of the Retention.

(b) Subject to Sections 9.9(a)(i) and (ii), the maximum aggregate liability of the Sellers under Section 9.4 and of the Purchaser under Section 9.6 shall not, in either case, exceed [***] of an amount equal to (i) the sum of each Relevant Purchase Price hereunder, *plus* (ii) the "Purchase Price" paid to each "Seller" under any other Transaction Document with respect to any Project Company or any Project, *less* (iii) the aggregate amount of all Cash Contributions (if any).

(c) The aggregate liability of TK Investco 7 Pte. Ltd. in respect of Losses based upon, arising out of or otherwise in respect of Section 9.5 shall be capped at, and may not exceed, [***].

9.10 Indemnity Claim Procedures.

(a) Claim Notice. As soon as reasonably practicable after any Party becomes aware of any event or condition that could reasonably be expected to result in a Loss for which the Purchaser Indemnified Parties (in the case of the Purchaser) or the Seller Indemnified Parties (in the case of a Seller) are entitled to an Indemnity Claim, such Party (the "**Claimant**") shall give notice in writing of such Indemnity Claim (a "**Claim Notice**") to the Relevant Seller (in the case where the Claimant is a Purchaser Indemnified Party) or the Purchaser (in the case where the Claimant is a Seller Indemnified Party) (in either case, the "**Indemnifying Party**"). A Claim Notice must describe the Indemnity Claim in reasonable

detail and must indicate the amount (estimated if necessary, and only to the extent feasible) of the Loss that has been or may be suffered by the Claimant.

(b) Delay in Claim Notice. A Claim Notice may only be given in respect of (i) any covenant or other agreement within six months of such covenant or other agreement ceasing to survive in accordance with Section 9.1(a) or (ii) any representation or warranty while such representation or warranty survives in accordance with Section 9.1(b). Subject to the foregoing, no delay in or failure to give a Claim Notice by the Claimant to the Indemnifying Party under Section 9.10(a) shall adversely affect any of the other rights or remedies that the Claimant has under this Agreement or alter or relieve the Indemnifying Party of its obligation to indemnify the Claimant except to the extent that such delay or failure has prejudiced the Indemnifying Party.

(c) Claim Response. The Indemnifying Party shall respond in writing to the Claimant (a “**Claim Response**”) within 30 days after the date that the Claim Notice is sent by the Claimant (the “**Response Period**”). Any Claim Response must specify whether or not the Indemnifying Party disputes the Indemnity Claim described in the Claim Notice. If the Indemnifying Party fails to give a Claim Response within the Response Period, then the Indemnifying Party shall be deemed not to dispute the Indemnity Claim described in the related Claim Notice, and the Indemnifying Party shall be obligated to pay the Claimant the amount of Losses specified in the Claim Notice, subject to the limitations contained in this Article 9. If the Indemnifying Party delivers a Claim Response within the Response Period indicating that it disputes one or more of the matters identified in the Claim Notice, then the Indemnifying Party and the Claimant shall settle the dispute in accordance with Section 13.4.

9.11 Further Limitations on Purchaser Indemnity Claims. No Purchaser Indemnified Party shall be entitled to make any Purchaser Indemnity Claim in connection with any Loss:

(a) to the extent that (i) the Purchaser had Knowledge of a breach of any representation or warranty by any Seller giving rise to such Purchaser Indemnity Claim as of the date of this Agreement or (ii) any information that would cause a breach of any representation or warranty giving rise to such Purchaser Indemnity Claim has been fairly disclosed in any of the Disclosure Sources;

(b) if such Loss arises out of or is increased as a result of any Seller’s compliance with the terms of this Agreement;

(c) if such Loss arises out of or is increased as a result of any action of any Purchaser Indemnified Party after the Closing Date;

(d) if a claim for such Loss was recovered by any Purchaser Indemnified Party under this Agreement or any other Transaction Document;

(e) if a Purchaser Indemnified Party has received or is reasonably expected to receive any insurance proceeds (including under the W&I Policy) or any indemnity, contribution or other similar payments, in each case in respect of the same Loss (i.e. there shall be no double recovery nor unjust enrichment); or

(f) to the extent that such Loss occurs as the result of (i) any decision of any court or tribunal or the passing or coming into force of or any change in any Law or

requirement of any Governmental Authority or utility after the date of this Agreement or (ii) any increase in rates of taxation after the date of this Agreement.

9.12 Fraud. The limitations set forth in this Article 9 shall not apply in respect of any Losses that arise out of or result from the fraud of the Indemnifying Party or its Affiliates.

9.13 No Set-Off. No Party shall have any right to set off any unresolved Indemnity Claim against (a) any payment due under this Agreement or (b) any payment due under any other Transaction Document.

9.14 Tax Treatment. Unless otherwise required by applicable Law, any indemnification payment made in accordance with this Agreement shall be treated as an adjustment to the Relevant Purchase Price for applicable Tax purposes.

9.15 Exclusive Remedies. The Parties acknowledge and agree that:

(a) prior to the Closing Date, the sole and exclusive remedies of each Party for any breach of the representations, warranties and obligations in this Agreement shall be to (i) refuse to consummate the Closing to the extent that its conditions precedent have not been satisfied or waived and (ii) terminate this Agreement to the extent permitted under Article 12 (in which case, the provisions of Section 12.3 shall apply to the extent stated therein);

(b) from and after the Closing Date, the sole and exclusive remedies of the Parties for any breach of the representations, warranties and obligations in this Agreement and any certificate delivered in accordance with this Agreement shall be the indemnification obligations under Section 9.4 or 9.6 (as the case may be), other than any breach due to fraud; and

(c) this Section 9.15 is not intended to, and does not, restrict any rights or claims that any Purchaser Indemnified Party may have under the W&I Policy.

9.16 Exclusion of Statutory Liability for Non-Conformity to Contract (“Keiyaku-Futekigo-Sekinin”). Even if the Projects or the TK Interests fail to satisfy the type (*shurui*), quality (*hinshitsu*) or quantity (*suryo*) as agreed under this Agreement, or otherwise fail to satisfy the explicit purpose of this Agreement with respect to such type, quality or quantity (collectively, “**Non-Conformity**”), the Purchaser may not seek a remedy against any Seller in the manner set forth in Article 562 of the Civil Code of Japan (Act No. 89 of 1896), to mitigate or otherwise fix or eliminate such Non-Conformity by the repair of the subject properties or assets (*mokuteki-butsu-no-shuho*), the delivery of substitute properties / assets (*daitai-butsu-no-hikiwatashi*), or delivery of any deficient part of such properties / assets (*fusoku-bun-no-hikiwatashi*); *provided, however*, that this Section 9.16 shall not exclude any Seller’s liability under Section 9.4.

9.17 No Expansion of Liability. Notwithstanding any other provision in this Agreement, despite any novation, assignment or transfer of the Purchaser’s rights and/or obligations under this Agreement or the W&I Policy, the aggregate liability of each Seller shall not exceed the liability that such Seller would have had if no such novation, assignment or transfer had occurred.

10. TAX MATTERS

10.1 Cooperation; Information. After the Closing, each Party shall, and shall cause its Affiliates to, reasonably cooperate and provide each other Party with such information relating to each Project Company as such other Party may reasonably request in connection with (a) filing any Tax Return or other Tax filing, (b) determining any Tax liability or right to refund of Taxes or (c) conducting or defending any audit or other Proceeding in respect of Taxes.

10.2 Tax Allocation. The aggregate of each Relevant Purchase Price shall be allocated among the TK Interests (and, to the extent required by applicable Law, further among the assets of each applicable Project Company) for all applicable Tax purposes and for the purposes of Section 9.9(a)(ii) in accordance with their respective fair market values in accordance with applicable Law (the "**Tax Allocation**"). Following the Closing, the Parties shall amend the Tax Allocation to reflect any adjustments to any Relevant Purchase Price made pursuant to this Agreement. The Parties shall (a) report the transactions contemplated by this Agreement in a manner consistent with the Tax Allocation unless otherwise required by applicable Law and (b) not take any position inconsistent with the Tax Allocation on any Tax Returns or in the course of any audit or Proceeding by any Tax Authority, Tax review or Tax proceeding relating to any Tax Returns unless required by applicable Law. Each Party shall notify each other Party of any inquiry, audit, investigation or other Proceeding by any Tax Authority, in each case, that relates to the Tax Allocation.

11. CONFIDENTIALITY AND ANNOUNCEMENTS

11.1 Confidentiality.

(a) Each Party agrees that it shall not, and shall cause its Affiliates and its and their respective officers, directors, employees and agents to not, disclose the terms and conditions of this Agreement or the Transaction until the date falling two years after the date of this Agreement.

(b) Each Seller agrees that it shall not, and shall cause its Affiliates and their respective officers, directors, employees and agents to not (i) disclose or use any Purchaser Confidential Information or (ii) disclose or use any Project Company Confidential Information after the Closing; *provided, however*, that each Seller, its Affiliates and their respective officers, directors, employees and agents may continue to use data that constitutes Project Company Confidential Information for the purposes of assessing and improving the products and services of such Seller and its Affiliates.

(c) The Purchaser agrees that it shall not, and shall cause its Affiliates and their respective officers, directors, employees and agents to not (i) disclose or use any Seller Confidential Information or (ii) disclose or use any Project Company Confidential Information until after the Closing.

(d) The foregoing (a) through (c) shall not apply to any disclosure by any Party, its Affiliates or their respective officers, directors, employees or agents:

(i) in the case of the Purchaser, to existing general partners, limited partners, equity holders, members, managers, lenders and investors of the Purchaser

and its Affiliates, in each case provided that such Person is informed by the Purchaser or its Affiliates of the confidential nature of such terms;

(ii) to its lenders, Affiliates and third party service providers, and to its and their respective legal, tax, financial or technical advisors for the purposes of receiving legal, tax, financial or technical advice from such advisors, in each case provided that such Person is informed by the applicable Party of the confidential nature of such terms;

(iii) with the prior written consent of each Seller or the Purchaser (as the case may be);

(iv) to the extent permitted in Section 11.2;

(v) to the extent required by applicable Law or the rules of any securities exchange on which such Party or such Party's Affiliates' securities are listed, provided that the disclosing Party provides each Seller or the Purchaser (as the case may be) with a reasonable opportunity to review and comment on such disclosure; or

(vi) in connection with any judicial, administrative or similar proceeding (including in response to oral questions, interrogatories or other requests for information or documents and/or in connection with a proceeding brought under Section 13.4),

provided that each Party shall seek to limit such disclosures to the minimum information reasonably necessary under the circumstances.

(e) Each Party shall be responsible for any breach of Section 11.1(a), each Seller shall be responsible for any breach of Section 11.1(b) and the Purchaser shall be responsible for any breach of Section 11.1(c), in each case by (i) its Affiliates and its and their respective officers, directors, employees and agents and (ii) any other Person to whom such Party discloses information directly or indirectly in accordance with an exception set forth in Section 11.1(d)(i) or (ii), in each case as though each such Person was bound directly by the relevant Sections as a "Party".

11.2 Public Announcements and Press. Each Party agrees that no public announcement or press release concerning the Transaction shall be issued without the prior written consent of each Seller or the Purchaser (as the case may be) (which consent shall not be unreasonably withheld or delayed), except as such announcement or release may be required by Law or the applicable rules of any securities exchange (provided that the Party required to make such announcement or release provides each Seller or the Purchaser (as the case may be) with a reasonable opportunity to review and comment on such announcement or release).

12. TERMINATION; EFFECT OF TERMINATION

12.1 Termination. This Agreement may be terminated at any time before the Closing:

(a) by mutual agreement among the Parties;

(b) by written notice from each Seller or the Purchaser to the Purchaser or each Seller (as the case may be) if the Closing has not occurred by the date falling six months

after the date of this Agreement, as such date may be extended by mutual agreement among the Parties, provided that the failure of the Closing to occur by such date is not attributable to any Seller (in the case of termination by the Sellers) or the Purchaser (in the case of termination by the Purchaser);

(c) by written notice from each Seller or the Purchaser to the Purchaser or each Seller (as the case may be) if after satisfaction of the requirements of Section 4.2, any court of competent jurisdiction or other Governmental Authority shall have issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the Closing, and such order or other action shall not be subject to appeal or shall have become final and unappealable;

(d) by written notice from each Seller to the Purchaser if there shall have been a breach by the Purchaser of any of its representations and warranties in Section 8.8, or by written notice from the Purchaser to each Seller if there shall have been a breach by any Seller of any of its representations and warranties in Section 6.24; or

(e) subject to Section 4.4(a), by written notice from the Purchaser to each Seller if any fact, event or occurrence disclosed in any Disclosure Supplement (i) has had or would reasonably be expected to have, together with any related matter disclosed in any Disclosure Supplement, a Material Adverse Effect or (ii) constitutes a material breach of any of the Fundamental Warranties.

12.2 Automatic Termination. This Agreement shall terminate automatically if the Business PSA is terminated in accordance with its terms.

12.3 Effect of Termination. If this Agreement is terminated in accordance with Section 12.1 or 12.2, all rights and obligations of the Parties under this Agreement shall terminate without any liability on the part of any Party, except that (a) Article 11 (*Confidentiality and Announcements*), this Article 12 (*Termination; Effect of Termination*) and Article 13 (*Miscellaneous*) shall continue in effect and (b) nothing in this Article 12 shall relieve any Party from liability to any other Party for any breach of this Agreement arising prior to its termination, nor preclude any Party from seeking remedies under this Agreement or applicable Law.

13. MISCELLANEOUS

13.1 Notices. All notices, requests, consents, agreements or other communications under this Agreement must be in writing to be effective and, without limiting any other means by which a Party may be able to prove that a notice has been received by another Party, shall take effect (or be deemed to have been given or delivered, as the case may be) (a) when delivered by hand, facsimile transmission (with confirmation of receipt) or email (i) during normal business hours of the recipient, on the Business Day of sending or (ii) outside normal business hours of the recipient, on the Business Day following the Business Day of sending or (b) when delivered by internationally recognized overnight courier, on the third Business Day following the Business Day of sending, in each case to such Party at its address (or number) set forth below or such other address (or number) as the Party may specify by notice:

If to any Seller: 78 Circular Road, #03-01
Singapore, 049432

Attention: [***]
Email: [***]

If to the Purchaser: 20F Toranomon Towers Office
4-1-28 Toranomon, Minato-ku
Tokyo 105-0001, Japan
Attention: [***]
Facsimile: [***]
Email: [***]

13.2 Successors and Assigns.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement is personal to the Parties and, subject to Sections 13.2(b) and (c), no Party may assign or transfer its rights and/or obligations under this Agreement without the prior written consent of each Seller (in the case of an assignment or transfer by the Purchaser) or the Purchaser (in the case of an assignment or transfer by any Seller). Assignments or delegations made in violation of this Section 13.2(a) shall be null and void.

(b) Before the Closing, the Purchaser may assign all of its rights under this Agreement, together with all of its obligations under this Agreement, to an Affiliate that continues to be supported by the TK PSA ECL to the same extent as the original Purchaser under this Agreement.

(c) After the Closing, the Purchaser may assign any of its rights and/or obligations under this Agreement to any of its Affiliates, provided that the Purchaser shall continue to be jointly and severally liable with each such Affiliate in respect of any obligations assigned in accordance with this Section 13.2(c).

13.3 Governing Law. This Agreement (including Section 13.4) is governed by, and shall be construed in accordance with, the laws of Japan, without giving effect to any conflicts of law or choice of law principles.

13.4 Resolution of Disputes.

(a) Subject to Section 2.4, all disputes based upon, arising out of or related to this Agreement shall be submitted first to the senior management of each relevant Party for friendly resolution by negotiation for a period of up to 30 days. If such negotiation fails to resolve the dispute, the dispute shall finally be settled by arbitration conducted under the auspices of the ICC by a panel of three arbitrators appointed in accordance with, and the arbitration shall be conducted pursuant to, the ICC rules in effect on the date of arbitration.

(b) The seat and venue of the arbitration shall be, and the award shall be rendered in, Singapore. The arbitration shall be confidential and conducted in English. Any arbitration award made by the panel shall be binding and non-appealable and shall be the sole and exclusive dispute resolution mechanism used by the Parties with respect to any controversies, claims and disputes among them, provided the foregoing is without prejudice to a Party's right to seek injunctive and equitable relief in a court of competent jurisdiction as available. The arbitrators will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or

vacate the award. Judgment upon the award may be entered in any court of competent jurisdiction.

(c) The out-of-pocket costs incurred in connection with the arbitration, such as the arbitrators' fees and any administrative fees paid to the ICC, shall be shared equally by the claimant(s) and the respondent(s). All other costs of the arbitration, including attorneys' fees and costs of investigation, shall be paid solely by the Party incurring such costs unless an award of attorneys' fees or costs is expressly mandated by statute and the arbitrators specifically include an award of attorneys' fees or costs in the award.

(d) The Parties waive the right to seek any punitive, incidental, consequential, special or indirect damages, and the arbitrators shall have no authority to award such damages, except as expressly provided in Article 9.

(e) The Parties expressly agree that (i) any claims arising out of or in connection with this Agreement and the other Transaction Documents may be made in a single arbitration and (ii) multiple arbitrations commenced under any such document may, at the request of a party, be consolidated into a single arbitration.

13.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

13.6 Expenses. Except as otherwise provided in this Agreement, each Party agrees to pay, without right of reimbursement from any other Party, all costs and expenses incurred by it in connection with (a) the preparation and negotiation of the Transaction Documents to which it is a Party and (b) the consummation of the Transaction, including the fees and disbursements of counsel, accountants, financial advisors, experts and consultants employed by the respective Party.

13.7 Transfer Taxes. All transfer, real estate transfer, stamp, documentary, sales, use, registration, value-added and other similar Taxes in connection with the Transaction ("**Transfer Taxes**") shall be borne and paid by the Purchaser. The Purchaser shall file or cause to be filed in a timely manner all necessary documents (including all Tax Returns) with respect to such Transfer Taxes.

13.8 Entire Agreement; Amendment.

(a) This Agreement contains the entire agreement among the Parties with respect to the transactions contemplated in this Agreement, and supersedes all prior written agreements and negotiations and oral understandings, if any, with respect thereto.

(b) Subject to Section 13.8(c), this Agreement (including its schedules and exhibits) may not be amended, supplemented or discharged except by an instrument in writing signed by each Party.

(c) If any amendment, supplement or discharge of or to this Agreement (including its schedules and exhibits) relates only to the rights and/or obligations of any one Seller in respect of the Purchaser and/or the Purchaser in respect of any one Seller, the instrument in writing to effect any such amendment, supplement or discharge shall be effective if signed at least by such Seller and the Purchaser.

13.9 No Waiver. No failure to exercise and no delay in exercising any right, power or privilege of a Party shall operate as a waiver nor a consent to the modification of the terms of this Agreement unless given by that Party in writing.

13.10 No Third Party Beneficiaries. Nothing herein, express or implied, is intended to or shall confer upon any Person other than the Parties any legal or equitable right, benefit or remedy of any nature whatsoever.

13.11 Separate Liability. Except as set forth in Article 6, the liability of each Seller under this Agreement is separate from (and not joint and several with) the liability of each other Seller under this Agreement, and in no event shall any Seller be liable for any liabilities or obligations of any other Seller under this Agreement.

13.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of page intentionally left blank]

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

Sellers:

TK INVESTCO 7 PTE. LTD.

By:

Name:

Title:

TK INVESTCO 8 PTE. LTD.

By:

Name:

Title:

TK INVESTCO 10 PTE. LTD.

By:

Name:

Title:

TK INVESTCO 11 PTE. LTD.

By:

Name:

Title:

[TK Interests Purchase and Sale Agreement]

Purchaser:

GIOIA INVESTMENT PTE. LTD.

By:

Name:

Title:

[TK Interests Purchase and Sale Agreement]

**SCHEDULE 1
PROJECTS**

Part 1: KYOTO PROJECT

Project Company	FS Japan Project 6 GK
Seller	TK Investco 7 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Kyoto Project) dated as of September 18, 2019, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥11,717,293,500
Assumed Net Producer-Side Charges Reduction Amount	¥97,753,392
Maximum Producer-Side Charges Adjustment Amount	¥97,753,392
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]

Fundamental Indemnification Cap	¥11,835,650,000
Project	The approximately 37.5 MW-ac solar power project referred to as the “Kyoto Project” that is located in Kyoto prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 20, 2014 (METI ID: A781659D24)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥36/kWh; from Expected Commercial Operation Date to September 30, 2040
Expected Commercial Operation Date	March 31, 2023

Part 2: YATSUBO PROJECT

Project Company	FS Japan Project24 GK
Seller	TK Investco 8 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Yatsubo Project) dated as of February 25, 2020, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥3,224,763,976
Assumed Net Producer-Side Charges Reduction Amount	¥141,921,661
Maximum Producer-Side Charges Adjustment Amount	¥141,921,661
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥3,256,598,541

Project	The approximately 25.5 MW-ac solar power project referred to as the “Yatsubo Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 19, 2015 (METI ID: AF76968C09)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 22, 2023

Part 3: MOMURA PROJECT

Project Company	FS Japan Project25 GK
Seller	TK Investco 10 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Momura Project) dated as of October 14, 2020, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥6,361,601,472
Assumed Net Producer-Side Charges Reduction Amount	¥298,336,744
Maximum Producer-Side Charges Adjustment Amount	¥298,336,744
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥6,425,022,209
Project	Together, the approximately:

Project	<ul style="list-style-type: none"> • <u>Momura North</u>: 28.5 MW-ac solar power project referred to as the “Momura North Project”; and • <u>Momura South</u>: 24.0 MW-ac solar power project referred to as the “Momura South Project”, <p>in each case that is located in Tochigi prefecture and the subject of the METI Approval described below</p>
METI Approval	<ul style="list-style-type: none"> • <u>Momura North</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 19, 2015 (METI ID: AF77776C09) • <u>Momura South</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 19, 2015 (METI ID: AF77777C09)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 29, 2023

Part 4: IWAKI WATANABE PROJECT

Project Company	FS Japan Project40 GK
Seller	TK Investco 11 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Iwaki-Watanabe Project) dated as of March 9, 2021, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥3,038,557,206
Assumed Net Producer-Side Charges Reduction Amount	¥108,102,820
Maximum Producer-Side Charges Adjustment Amount	¥108,102,820
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥2,277,530,146

Project	The approximately 21.0 MW-ac solar power project referred to as the “Iwaki Watanabe Project” that is located in Fukushima prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 4, 2020 (METI ID: A847548B07)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥12.85/kWh; for 20 years from Expected Commercial Operation Date (provided that the feed-in-tariff purchase period end date shall be no later than March 3, 2043)
Expected Commercial Operation Date	February 15, 2023

Part 5: HITAKOKUSAI PROJECT

Project Company	FS Japan Project4 GK
Seller	TK Investco 11 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Hita Project) dated as of March 9, 2021, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥6,971,528,111
Assumed Net Producer-Side Charges Reduction Amount	¥106,729,254
Maximum Producer-Side Charges Adjustment Amount	¥106,729,254
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥6,668,108,444
Project	The approximately 18.9 MW-ac solar power project referred to as the “Hitakokusai Project” that is located in Oita prefecture and the subject of the METI Approval described below

METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: A937919H44)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥36/kWh; for 20 years from Expected Commercial Operation Date (provided that the feed-in-tariff purchase period end date shall be no later than September 8, 2043)
Expected Commercial Operation Date	April 14, 2023

Part 6: SHIMO-ONUKE PROJECT

Project Company	FS Japan Project1 GK
Seller	TK Investco 11 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Shimo-Onuki Project) dated as of January 18, 2021, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥5,263,521,676
Assumed Net Producer-Side Charges Reduction Amount	¥137,594,144
Maximum Producer-Side Charges Adjustment Amount	¥137,594,144
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥5,315,815,035
Project	Together, the approximately:

Project	<ul style="list-style-type: none"> • <u>SHV</u>: 19.25 MW-ac solar power project referred to as the “SHV Project”; • <u>HV1</u>: 1.99 MW-ac solar power project referred to as the “HV1 Project”; • <u>HV2</u>: 1.99 MW-ac solar power project referred to as the “HV2 Project”; and • <u>HV4</u>: 1.0 MW-ac solar power project referred to as the “HV4 Project”, <p>in each case that is located in Tochigi prefecture and the subject of the METI Approval described below</p>
METI Approval	<ul style="list-style-type: none"> • <u>SHV</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00835C09) • <u>HV1</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00809C09) • <u>HV2</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00810C09) • <u>HV4</u>: Notification of Certification of Renewable Energy Based Electricity Generation Facility as of March 31, 2014 (METI ID: AE00812C09)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥36/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	June 14, 2023 (for HV1, HV2 and HV4) July 31, 2024 (for SHV)

Part 7: ORIDO PROJECT

Project Company	FS Japan Project B5 GK
Seller	TK Investco 11 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Orido Project) dated as of July 29, 2021, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥1,163,770,329
Assumed Net Producer-Side Charges Reduction Amount	¥76,115,622
Maximum Producer-Side Charges Adjustment Amount	¥76,115,622
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥1,174,896,374
Project	The approximately 13.5 MW-ac solar power project referred to as the “Orido Project” that is located in Tochigi prefecture and the subject of the METI Approval described below

METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37785C09)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 30, 2023

Part 8: HANDA PROJECT

Project Company	FS Japan Project27 GK
Seller	TK Investco 11 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Handa Project) dated as of August 23, 2021, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥3,654,287,787
Assumed Net Producer-Side Charges Reduction Amount	¥89,054,077
Maximum Producer-Side Charges Adjustment Amount	¥89,054,077
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥3,440,158,294

Project	The approximately 21.0 MW-ac solar power project referred to as the “Handa Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37783C09)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 27, 2023

Part 9: MINAMI UENO-CHO PROJECT

Project Company	FS Japan Project26 GK
Seller	TK Investco 11 Pte. Ltd.
TK Agreement	Tokumei Kumiai Agreement (Minamiueno Project) dated as of December 15, 2021, between the Project Company and the Seller
TK Contributions	[***]
Base Consideration	¥1,502,031,716
Assumed Net Producer-Side Charges Reduction Amount	¥29,640,879
Maximum Producer-Side Charges Adjustment Amount	¥29,640,879
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
Fundamental Indemnification Cap	¥1,296,907,790

Project	The approximately 6.0 MW-ac solar power project referred to as the “Minami Ueno-Cho Project” that is located in Tochigi prefecture and the subject of the METI Approval described below
METI Approval	Notification of Certification of Renewable Energy Based Electricity Generation Facility as of February 13, 2015 (METI ID: AF37781C09)
Business Plan Change Applications	[***]
Feed-in-tariff; purchase period	¥32/kWh; from Expected Commercial Operation Date to October 25, 2041
Expected Commercial Operation Date	April 30, 2023

**SCHEDULE 2
RELEVANT SELLER BANK ACCOUNTS**

[Omitted]

**SCHEDULE 3
DISCLOSURE SCHEDULE**

[Omitted]

EXHIBIT A
FORM OF CLOSING CERTIFICATE

[Omitted]

EXHIBIT B
FORM OF WRITTEN ASSIGNMENT APPROVAL

ASSIGNMENT APPROVAL

[Omitted]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE
EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE
REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED
INFORMATION IS INDICATED BY [***].

FIRST AMENDMENT
TO TK INTERESTS PURCHASE AND SALE AGREEMENT

This FIRST AMENDMENT TO TK INTERESTS PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is entered into as of June 24, 2022, by and among TK Investco 7 Pte. Ltd., TK Investco 8 Pte. Ltd., TK Investco 10 Pte. Ltd. and TK Investco 11 Pte. Ltd., each a Singapore private limited company (each, a “**Seller**”, and together, the “**Sellers**”) and Gioia Investment Pte. Ltd., a Singapore private limited company (the “**Purchaser**”). The Sellers and the Purchaser are referred to herein individually as a “**Party**” and together as the “**Parties**”.

RECITALS

A. The Parties entered into that certain TK Interests Purchase and Sale Agreement dated May 12, 2022 (the “**Agreement**”).

B. In anticipation of the Closing, the Parties now desire to set forth their agreement regarding certain amendments to, and acknowledgments and agreements in respect of, the Agreement.

ACCORDINGLY, the Parties agree as follows:

1. Defined Terms; Rules of Interpretation

Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Agreement. The rules of interpretation set forth in section 1.2 (*Rules of Interpretation*) of the Agreement shall apply to this Amendment *mutatis mutandis*.

2. Financial Model-Related Amendments

(a) The definition of “Relevant Financial Model” set forth in section 1.1 (*Definitions*) of the Agreement shall be amended to read in its entirety as follows:

“**Relevant Financial Model**” means, in respect of each Project, the financial model for such Project set forth in the Excel spreadsheet named [***] sent by [***] to representatives of the Purchasers by email on June 20, 2022 at 2.40pm Japan Standard Time.

(b) Following the amendment under Section 2(a), each such amended financial model shall be treated as the Relevant Financial Model for all purposes of the Agreement from the date of the Agreement.

(c) Schedule 1 (*Projects*) to the Agreement shall be amended by replacing the relevant rows of each Project referred to below with the following:

PART 1: KYOTO PROJECT	
Base Consideration	¥11,610,373,500
Assumed Net Producer-Side Charges Reduction Amount	¥97,755,209
Maximum Producer-Side Charges Adjustment Amount	¥97,755,209
PART 2: YATSUBO PROJECT	
Base Consideration	¥3,236,000,225
Assumed Net Producer-Side Charges Reduction Amount	¥141,930,473
Maximum Producer-Side Charges Adjustment Amount	¥141,930,473
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 3: MOMURA PROJECT	
Base Consideration	¥6,451,283,733
Assumed Net Producer-Side Charges Reduction Amount	¥297,740,762
Maximum Producer-Side Charges Adjustment Amount	¥297,740,762
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 4: IWAKI WATANABE PROJECT	
Base Consideration	¥3,071,491,117
Assumed Net Producer-Side Charges Reduction Amount	¥107,592,420
Maximum Producer-Side Charges Adjustment Amount	¥107,592,420

PART 7: ORIDO PROJECT	
Base Consideration	¥1,273,551,875
Assumed Net Producer-Side Charges Reduction Amount	¥76,481,303
Maximum Producer-Side Charges Adjustment Amount	¥76,481,303
Maximum Debt Amount	[***]
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]
PART 8: HANDA PROJECT	
Base Consideration	¥3,665,805,668
Assumed Net Producer-Side Charges Reduction Amount	¥88,990,955
Maximum Producer-Side Charges Adjustment Amount	¥88,990,955
PART 9: MINAMI UENO-CHO PROJECT	
Base Consideration	¥1,199,274,577
Assumed Net Producer-Side Charges Reduction Amount	¥29,595,444
Maximum Producer-Side Charges Adjustment Amount	¥29,595,444
Required Equity Amount	GK Membership Interests: [***] Tokumei Kumiai Interests: [***]

(d) Each Party:

(i) waives any breach by any other Party of section 2.5(b) or (c) (*Finance Project Adjustment*) of the Agreement in connection with the failure to agree to the amendments referred to in those sections within the periods specified for such amendments; and

(ii) agrees that the condition set forth in section 3.2(d)(ii) (*Financing Arrangements*) (in the case of each Seller) and section 3.3(d)(ii) (*Financing Arrangements*) (in the case of the Purchaser) of the Agreement shall be deemed satisfied by the execution of this Amendment.

3. Purchase Price Adjustments

(a) The Parties acknowledge that the Relevant Equity Adjustment Amount for the purposes of section 2.2(b) (*Purchase Price*) of the Agreement shall be zero for each Project Company that holds a Pre-Finance Project.

(b) Each Party agrees that no adjustments will be made for the purposes of sections 2.2(c) and (d) (*Purchase Price*) of the Agreement.

(c) Each Party agrees that this Section 3 shall be deemed to be the statement delivered in accordance with section 2.3 (*Adjustment Statement*) of the Agreement. The Purchaser waives any breach by any Seller of section 2.3 of the Agreement in connection with the failure to deliver the statements referred to in such section within the period specified for such delivery.

4. Kyoto Land R&Ws Exception and Qualification

The exception and qualification set forth in the last paragraph of section 6.8 (*Real Property*) of the Agreement shall be amended to read in its entirety as follows:

As of the Closing Date, each representation and warranty in this Section 6.8 made in respect of the Kyoto Project and FS Japan Project 6 GK is subject to the exception and qualification that land used by the Kyoto Project will transfer to an Affiliate of Kyoto Solar Plant L.P., and certain designations will be made, on or around the Closing Date under the “Kyoto Land Transfer and Designation Agreement” as defined in the Business PSA.

5. Payment of Relevant Purchase Price

(a) For the purposes of section 3.4(a)(i) (*Deliveries and Closing Actions*) of the Agreement, the Purchaser shall be deemed to have paid each Relevant Purchase Price to the Relevant Seller Bank Account when the Purchaser has delivered a SWIFT payment confirmation (MT103) which confirms, to the Relevant Seller’s reasonable satisfaction, that such amount has been paid to the Relevant Seller Bank Account.

(b) If each Relevant Purchase Price is not received by each Seller in its Relevant Seller Bank Account by the Business Day after the Closing Date, then the Sellers may, by delivering written notice to the Purchaser and at the Purchaser’s cost, require that the Transaction in its entirety be promptly unwound in accordance with article 545 of the Civil Code.

6. Affirmation

Except as set forth in this Amendment, the Agreement shall remain in full force and effect.

7. Governing Law

This Amendment is governed by, and shall be construed in accordance with, the laws of Japan.

8. Counterparts

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

Sellers:

TK INVESTCO 7 PTE. LTD.

By:

Name:

Title:

TK INVESTCO 8 PTE. LTD.

By:

Name:

Title:

TK INVESTCO 10 PTE. LTD.

By:

Name:

Title:

TK INVESTCO 11 PTE. LTD.

By:

Name:

Title:

[First Amendment to TK Interests Purchase and Sale Agreement]

Purchaser:

GIOIA INVESTMENT PTE. LTD.

By:

Name:

Title:

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTED INFORMATION IS INDICATED BY [*].**

FINANCE AGREEMENT

between

FS INDIA SOLAR VENTURES PRIVATE LIMITED

and

UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

Dated as of July 27, 2022

DFC Project Number/9000115523

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND INTERPRETATION	1
SECTION 1.01. Definitions and Interpretation	1
ARTICLE II AMOUNT AND TERMS OF THE LOAN	1
SECTION 2.01. Commitment; Disbursements; Loan	1
SECTION 2.02. Interest; Default Interest	2
SECTION 2.03. Repayment of the Loan	2
SECTION 2.04. Voluntary Prepayment	2
SECTION 2.05. Mandatory Prepayment	2
SECTION 2.06. Cancellation of Commitment	3
SECTION 2.07. Currency and Place of Payment; Computation of Interest; Application of Payments to DFC	3
SECTION 2.08. Tax Gross-Up; Stamp Duties	4
SECTION 2.09. Payment or Reimbursement of Expenses	4
ARTICLE III REPRESENTATIONS AND WARRANTIES	5
SECTION 3.01. Representations and Warranties	5
ARTICLE IV CONDITIONS PRECEDENT TO FIRST DISBURSEMENT	11
SECTION 4.01. Financing Documents; Other Documents	11
SECTION 4.02. Authorization Certificates	11
SECTION 4.03. Ownership	11
SECTION 4.04. Capital Commitment	11
SECTION 4.05. Consents	12
SECTION 4.06. Legal Opinions	12
SECTION 4.07. Appointment of Agent	12
SECTION 4.08. Office of Development Policy Conditions	12
SECTION 4.09. DFC Statutory and Policy Conditions	12
ARTICLE V CONDITIONS PRECEDENT TO EACH DISBURSEMENT	12
SECTION 5.01. Disbursement Request	12
SECTION 5.02. Note	13
SECTION 5.03. Closing Certificate	13
SECTION 5.04. Representations and Defaults	13
SECTION 5.05. Change in Circumstances	13

SECTION 5.06.	Financial Information and Reports	14
SECTION 5.07.	Payment or Reimbursement of Expenses	14
SECTION 5.08.	Financial Covenants	14
SECTION 5.09.	Sponsor Cash Requirements	14
SECTION 5.10.	Hedges	14
SECTION 5.11.	Commercial Operation	14
SECTION 5.12.	Other Documents	14
SECTION 5.13.	Office of Development Policy Conditions	14
SECTION 5.14.	ECB Filings; Other Consents	15
ARTICLE VI AFFIRMATIVE COVENANTS		15
SECTION 6.01.	Use of Proceeds	15
SECTION 6.02.	Company Operations	15
SECTION 6.03.	Compliance with Laws; Taxes; Consents	16
SECTION 6.04.	Insurance Requirements	16
SECTION 6.05.	Accounting and Financial Management	16
SECTION 6.06.	Compliance with Office of Development Policy Requirements	16
SECTION 6.07.	DFC Statutory and Policy Requirements	17
SECTION 6.08.	System for Award Management Entity Registration	17
ARTICLE VII INFORMATION COVENANTS		17
SECTION 7.01.	Financial Statements and Other Information	17
SECTION 7.02.	Periodic Reports	18
SECTION 7.03.	Notice of Default and Other Matters	18
SECTION 7.04.	Reserved	19
SECTION 7.05.	ECB reports	19
ARTICLE VIII NEGATIVE COVENANTS		19
SECTION 8.01.	Liens; Indebtedness; Investments; Acquisitions	19
SECTION 8.02.	Reserved	19
SECTION 8.03.	No Sale of Assets; Mergers; Subsidiaries	20
SECTION 8.04.	Ordinary Conduct of Business	20
ARTICLE IX DEFAULTS AND REMEDIES		21
SECTION 9.01.	Events of Default	21
SECTION 9.02.	Remedies upon Event of Default	25
SECTION 9.03.	Arbitration	26

SECTION 9.04.	Borrower Consent to Suit; Exclusive Forum Selection for Certain Actions	26
SECTION 9.05.	Judgment Currency	27
SECTION 9.06.	No Immunity	28
ARTICLE X MISCELLANEOUS		28
SECTION 10.01.	Notices	28
SECTION 10.02.	English Language	30
SECTION 10.03.	GOVERNING LAW	30
SECTION 10.04.	Succession; Assignment; Benefit	30
SECTION 10.05.	Survival of Agreements	30
SECTION 10.06.	Integration; Amendments	31
SECTION 10.07.	Severability	31
SECTION 10.08.	No Waiver	31
SECTION 10.09.	Indemnity	31
SECTION 10.10.	Further Assurances	32
SECTION 10.11.	Counterparts; Electronic Execution	32
SECTION 10.12.	Waiver of Litigation Payments	32
SECTION 10.13.	Cooperation; Loan Servicing	33
SECTION 10.14.	WAIVER OF JURY TRIAL	33

SCHEDULES

X	Defined Terms and Rules of Interpretation
Y	Office of Development Policy Requirements
Z	DFC Statutory and Policy Requirements
2.07(a)	Wire Transfer Instructions for Remittance of Payments to DFC
3.01(a)(iv)	Capitalization
3.01(a)(vi)	Tax Notices and Liens
4.05	Consents
9.03	Arbitration Provisions

EXHIBITS

A	Form of Promissory Note
B	Form of Disbursement Request
C-1	Form of Authorization Certificate of the Borrower (pursuant to Section 4.02)
C-2	Form of Authorization Certificate of the Guarantor (pursuant to Section 4.02)
D	Form of Closing Certificate (pursuant to Section 5.03)
E	Form of Compliance Certificate (pursuant to Section 7.01(a) and Section 7.01(b))
F	Form of Loan Proceeds Certificate (pursuant to Section 7.02(b))
G	Form of Narcotics Offense and Drug Trafficking Certification
H	Form of Construction Progress Report
I	Form of Guaranty Agreement

FINANCE AGREEMENT

This FINANCE AGREEMENT (this “*Agreement*”) is dated as of July 27, 2022, and is made by and between FS INDIA SOLAR VENTURES PRIVATE LIMITED, a private limited company organized and existing under the laws of the Republic of India with CIN U29308DL2020FTC371690 (the “*Borrower*”), and UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION, an agency of the United States of America (“*DFC*”).

RECITALS

WHEREAS, the Borrower intends to implement the Project and has requested that DFC provide a loan pursuant to 22 U.S.C. § 9621(b), which DFC is willing to do on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing and of the agreements contained herein, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 1.01. *Definitions and Interpretation.*

In this Agreement, including the Exhibits and Schedules hereto, (a) capitalized terms used but not otherwise defined have the meanings set forth in the attached Schedule X (*Defined Terms and Rules of Interpretation*), Schedule Y (*Office of Development Policy Requirements*) and Schedule Z (*DFC Statutory and Policy Requirements*), and (b) the rules of interpretation set forth in Schedule X (*Defined Terms and Rules of Interpretation*) apply.

ARTICLE II AMOUNT AND TERMS OF THE LOAN

SECTION 2.01. *Commitment; Disbursements; Loan.*

(a) *Commitment.* Subject to the terms and conditions hereof, DFC agrees to make, and the Borrower agrees to accept, a loan for the Project in a principal amount not to exceed five hundred million Dollars (\$500,000,000).

(b) *Disbursements.* During the Commitment Period, the Borrower may request a Disbursement by delivering to DFC a Disbursement Request not fewer than [***] prior to the relevant Closing Date.

(c) *Number and Amount of Disbursements.* There shall be no more than one (1) Disbursement in each fiscal quarter. Each Disbursement shall be in an amount of not less than [***].

(d) *Loan Amount.* The aggregate amount of all Disbursements shall not exceed five hundred million Dollars (\$500,000,000), and the amount of any Disbursement shall not exceed the amount of the then-available Commitment. Loan amounts repaid or prepaid may not be reborrowed.

SECTION 2.02. Interest; Default Interest.

(a) *Payment of Interest; Interest Rate.* On each Interest Payment Date, beginning on the Interest Payment Date immediately following the first Closing Date, the Borrower shall pay to the order of DFC interest in arrears accrued at the Interest Rate on the daily outstanding principal balance of each Note; *provided*, that if the Interest Payment Date immediately following any Closing Date occurs within fifteen (15) Business Days after such Closing Date, the Borrower shall make its first interest payment under the related Note on the second Interest Payment Date following such Closing Date.

(b) *Default Interest.* If the Borrower fails to pay when due any amount due to DFC under any Financing Document, such unpaid amount shall bear interest at the Default Rate (instead of the Interest Rate) from the date such amount is due until the date on which such amount is paid in full.

SECTION 2.03. Repayment of the Loan.

The Borrower unconditionally and irrevocably promises to repay the outstanding principal amount of the Loan in up to [***] semi-annual installments (collectively, the “*Principal Installments*”) on each Principal Repayment Date in accordance with the Repayment Schedule, beginning on the first Principal Repayment Date to occur after the expiration of the Grace Period, and ending not later than the last Principal Repayment Date to occur prior to the expiration of the Term (such last Principal Repayment Date, the “*Maturity Date*”).

SECTION 2.04. Voluntary Prepayment.

(a) Subject to the ECB Guidelines and the Borrower obtaining all requisite Consents from the RBI and AD Bank (as applicable) under the ECB Guidelines, on any Business Day, the Loan may be voluntarily prepaid, in whole or in part, [***].

(b) The portion of each voluntary prepayment that is applied to Principal Installments shall be applied *pro rata* across outstanding Notes, and *pro rata* across maturities.

SECTION 2.05. Mandatory Prepayment.

(a) Subject to the ECB Guidelines and the Borrower obtaining all requisite Consents from the RBI and AD Bank (as applicable) under the ECB Guidelines, the Borrower shall apply the following amounts in prepayment of the Loan within five (5) Business Days after the occurrence of any of the following events:

(i) if the Borrower fails to use the proceeds of any Disbursement of the Loan for the Project within [***] after such Disbursement, the Borrower shall prepay the Loan in the amount of the unused portion of such Disbursement;

(ii) if (A) a Significant Loss occurs and (B) the Borrower fails to provide within [***] evidence reasonably satisfactory to DFC of its intention and ability to restore the Project to its condition prior to the occurrence of the Event of Loss or Events of Loss comprising such Significant Loss, the Borrower shall prepay the amount of the Loan, together with interest accrued thereon and all other amounts due under the Financing Documents; and

(iii) if, other than in relation to any force majeure event reported to DFC in compliance with clauses (a) through (c) of the definition of “Expected Commercial Operation Date,” the Borrower voluntarily ceases to use the site upon which the Project is located in the manner contemplated in the Financing Documents or suspends all or substantially all of its activities in connection with the Project for a period of [***], the Borrower shall prepay the amount of the Loan, together with interest accrued thereon and all other amounts due under the Financing Documents; provided, for the avoidance of doubt, that retooling or the implementation of upgrades shall not be considered a cessation of use of the site or the suspension of activities in connection with the Project.

(b) The portion of each mandatory prepayment that is applied to Principal Installments shall be applied *pro rata* across outstanding Notes and to Principal Installments in the inverse order of maturity.

(c) The Borrower shall notify DFC of any mandatory prepayment required to be made pursuant to this Section 2.05 (*Mandatory Prepayment*) at least three (3) Business Days prior to the date of such prepayment, which notice shall be given as soon as [***] the Borrower becomes aware that a prepayment is required to be made. Each such notice shall specify the date of such prepayment and provide the amount of such prepayment.

(d) If required under the ECB Guidelines, the Borrower shall as soon as reasonably practicable upon the occurrence of any event set forth in Section 2.05(a) (*Mandatory Prepayment*) make all requisite applications in prescribed form to obtain the Consents of the RBI and AD Bank (as applicable) for the timely prepayment of the Loan.

SECTION 2.06. Cancellation of Commitment.

The Borrower may cancel all or any part of the Commitment at any time upon prior written notice [***]. Any part of the Commitment not disbursed at the end of the Commitment Period, or that is terminated for any reason, shall be deemed to have been canceled.

SECTION 2.07. Currency and Place of Payment; Computation of Interest; Application of Payments to DFC.

(a) *Currency and Place of Payment.* All payments to DFC shall be made in Dollars by wire transfer in immediately available funds without counterclaim, offset, or deduction. Unless instructed otherwise by DFC, wires should be sent to DFC's account with the U.S. Treasury Department in New York by either Fedwire transfer or international electronic funds transfer, and any such wire must include the required information set forth in Schedule 2.07(a) (*Wire Transfer Instructions for Remittance of Payments to DFC*).

(b) *Non-Business Day.* Whenever any payment would otherwise fall due on a day that is not a Business Day, the due date for payment shall be the immediately succeeding Business Day.

(c) *Computation of Interest.* Except as otherwise provided herein or in any Note, interest on any Note (including interest calculated at the Interest Rate or the Default Rate), and default interest calculated at the Default Rate on any other amounts past due, shall accrue on a daily basis and shall be computed on the basis of [***].

(d) *Application of Payments to DFC.* Payments received by DFC under any of the Financing Documents shall be applied to fees, costs, expenses, interest, principal, and any other amounts due to DFC in such manner as DFC in its sole discretion may determine; *provided* that any voluntary prepayment amounts that DFC applies to Principal Installments shall be applied as provided in Section 2.04(b) (*Voluntary Prepayment*), and any mandatory prepayment amounts that DFC applies to Principal Installments shall be applied as provided in Section 2.05(b) (*Mandatory Prepayment*). [***].

SECTION 2.08. Tax Gross-Up; Stamp Duties.

(a) All sums payable by the Borrower hereunder and under any other Financing Document shall be paid in full, free of any deductions or withholdings of any and all present and future Taxes, unless required by Applicable Law. If the Borrower is required by Applicable Law to deduct any Taxes from, or to withhold any Taxes in respect of, any amount payable to DFC hereunder or under any Financing Document, then the Borrower shall pay such additional amount as may be necessary so that the actual amount received by DFC after such deductions or withholdings equals the full amount stated to be payable under the Financing Documents.

(b) In addition to the obligations set forth in Section 6.03(a)(ii) (*Compliance with Laws; Taxes; Consents*), the Borrower shall pay, before they become overdue, any and all present and future Taxes payable on or in connection with the execution, delivery, registration, authorization, recordation, perfection or notarization, or for the legality, validity or enforceability of this Agreement or any other Financing Document (other than the Guaranty Agreement, for which the Guarantor shall be responsible for paying such amounts) directly to the Governmental

Authority responsible for collecting such Taxes, except for any Taxes that the Borrower is contesting in good faith by appropriate proceedings and for which adequate reserves have been set aside in accordance with GAAP; *provided*, that the Borrower hereby indemnifies DFC and holds DFC harmless from and against any and all liabilities, fees, or additional expenses with respect to or resulting from any delay in paying, or omission to pay, any such Taxes. Within thirty (30) days after payment by the Borrower of any such Taxes, the Borrower shall deliver to DFC the original or a Certified copy of the receipt evidencing payment thereof, together with any other information DFC may reasonably request. DFC shall have the right, but not the obligation, to pay any Taxes [***] not timely paid by the Borrower, and the Borrower shall, upon DFC's demand, promptly [***] reimburse DFC in full for all such payments.

SECTION 2.09. *Payment or Reimbursement of Expenses.*

(a) DFC may retain such advisors, including legal counsel, as determined by DFC in its sole discretion to be necessary at any time until the Loan is indefeasibly repaid in full.

(b) Upon request, the Borrower shall promptly pay all reasonable and documented fees, costs and expenses of such advisors and legal counsel, and pay or reimburse DFC for all of DFC's reasonable and documented out-of-pocket costs and expenses incurred, in each case, in connection with the negotiation, preparation, execution, delivery of and disbursements under the Financing Documents, including such fees, costs and expenses associated with (i) communications and in-person meetings, (ii) preparation of any documents, (iii) notarization, authentication and registration of any of the Financing Documents, (iv) preparation of a monitoring memorandum for DFC's use, (v) preparation, delivery and management of a closing checklist for each Disbursement, (vi) preparation and delivery of certain original Financing Documents (where necessary or advisable for the preservation or enforcement of DFC's rights under the Financing Documents) and an electronic closing set of the Financing Documents for DFC's use and (vii) termination of the Financing Documents.

(c) The Borrower shall also pay the fees, costs and expenses of such advisors and legal counsel, and pay or reimburse DFC for all of DFC's out-of-pocket costs and expenses incurred, in each case in connection with (i) any amendment, waiver, consent, or other modification of the Financing Documents, (ii) preserving in full force and effect, or enforcing its rights under, any Financing Document, and (iii) IU Filings and the appointment of an agent in relation to IU Filings.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES**

SECTION 3.01. *Representations and Warranties.*

(a) The Borrower represents and warrants to DFC that:

(i) *Existence and Power.* The Borrower (A) is a private limited company duly organized, and validly existing under the laws of the jurisdiction of its organization; (B) is duly authorized to do business in each jurisdiction in which it conducts business; and (C) has the power to (1) own its properties, carry on its business and the Project and (2) borrow money and execute, deliver and perform each of the Borrower Documents, [***].

(ii) *Authority.*

(A) The Borrower's execution, delivery, and performance of each of the Borrower Documents at the time this representation is made: (1) have been duly authorized by all necessary corporate action; (2) will not violate any Applicable Law [***]; and (3) will not breach (x) any of the Charter Documents of the Borrower, (y) any Consent or (z) any agreement by which it or any of its properties may be bound or affected (including the terms applicable to any other Indebtedness of the Borrower) [***].

(B) Each of the Borrower Documents has been duly executed and delivered by the Borrower; is a legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, [***], reorganization, [***] or other similar laws affecting creditors' rights generally and general equitable principles regardless of whether the

issue of enforceability is considered in a proceeding in equity or at law). All formalities required in the Borrower's jurisdiction of organization for the validity and enforceability of this Agreement and the other Borrower Documents (including any necessary translation, stamping, notarization, consularization, registration, recording or filing with any court, registry or other Governmental Authority in the Borrower's jurisdiction of organization) have been accomplished.

(C) *Reserved.*

(D) The Borrower's payment obligations hereunder and under the Notes are unsubordinated general obligations that rank at least *pari passu* in priority of payment with all other present unsubordinated and unsecured Indebtedness of the Borrower [***].

(iii) *Financial Condition.*

(A) The Borrower's unaudited Financial Statements, dated June 30, 2022, which has been delivered to DFC, and any other Financial Statements of the Borrower that have been delivered to DFC pursuant to Section 7.01(a) (*Audited Annual Financial Statements*) or Section 7.01(b) (*Unaudited Quarterly Financial Statements and Reports*), (1) are complete and correct and (2) fairly present [***] its financial condition and results of its operations for the periods then ended. [***].

(B) Except (1) for obligations and losses incurred in the ordinary course of business, and (2) obligations constituting Permitted Indebtedness arising after the end of the period of the most recent Borrower Financial Statements referenced in sub-section (A) above, the Borrower has no [***] obligation, contingent or otherwise, or material loss, [***].

(iv) *Capitalization; Beneficial Ownership; Subsidiaries.*

(A) The Borrower's authorized and issued share capital is as set forth in Part I of Schedule 3.01(a)(iv) (*Capitalization*) [***], and all such share capital has been duly authorized and validly issued.

(B) The Direct Owners hold the direct legal and beneficial title to the Borrower's share capital in the percentage amounts set forth next to their names in Part I of Schedule 3.01(a)(iv) (*Capitalization*) [***].

(C) The Beneficial Owners listed in Part II of Schedule 3.01(a)(iv) (*Capitalization*) hold the indirect legal and beneficial title to the Borrower's share capital in the percentage amounts set forth next to their names in Part II of Schedule 3.01(a)(iv) (*Capitalization*) [***].

(D) The Borrower does not own or otherwise control any voting shares of, or have any ownership interest in, any other Person.

(v) *Liens.* The Borrower does not have outstanding, nor is it contractually bound to create, any Lien on or with respect to any of its assets, rights, or revenues, except for Permitted Liens.

(vi) *Taxes and Reports.*

(A) The Borrower has filed all tax returns and reports required by Applicable Law to be filed and has paid (or provided adequate cash reserves for) all Taxes due.

(B) Except as set forth in Schedule 3.01(a)(vi) (*Tax Notices and Liens*) (as may be updated by the Borrower from time to time upon written notice to DFC) or otherwise disclosed in the Financial Statements referred to in Section 3.01(a)(iii)(A) (*Financial Condition*), the Borrower has not received notice of (1) any pending audits, examinations, investigations, proceedings or claims with respect to any Taxes or (2) any Lien with respect to Taxes that has been filed against any of the Borrower's property, nor to the Borrower's knowledge, in either case, has any such action been threatened.

(vii) *Defaults.* No Default or Event of Default has occurred and is continuing.

(viii) *Litigation.* No action, suit, other legal or arbitral proceeding or investigation is pending by or before any domestic or foreign court or Governmental Authority or in any arbitral or other forum, or to its knowledge, is threatened, that (A) relates to any Financing Document, or (B) could reasonably be expected to have a Material Adverse Effect.

(ix) *Compliance with Law; Consents.*

(A) Without limiting the representations and warranties in Part B (*Representations and Warranties*) of Schedule Y (*Office of Development Policy Requirements*) and Part B (*Representations and Warranties*) of Schedule Z (*DFC Statutory and Policy Requirements*), the Borrower has conducted and is conducting its business in compliance [***] with all Applicable Laws and in compliance with its Charter Documents, and it has not received any notice or communication from any Governmental Authority alleging any breach or non-compliance with Applicable Laws, [***].

(B) Neither the Borrower nor any of its directors are (1) on the defaulter list or caution list of the RBI, financial institutions, banks, TransUnion CIBIL Limited or any other credit information company as approved by the RBI or the ECGC, (2) in breach of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, or (3) under investigation of the RBI or any other Governmental Authority.

(C) None of the directors of the Borrower is a director on the board of any company or corporation which has been identified as a willful defaulter by any bank or financial institution, as per the parameters established by the RBI from time to time.

(D) Each Consent of a Governmental Authority issued to the Borrower necessary for the conduct of the Borrower's business as presently conducted (including the construction or operation of the Project as presently conducted), for the execution, delivery and performance of the Financing Documents, and for the validity or enforceability of the Financing Documents has been obtained by the Borrower and is in full force and effect, other than any Consent that is not required to be obtained until a later date for the conduct of the Borrower's business (including the construction or operation of the Project) or the transactions contemplated by the Financing Documents and is ministerial in nature or is of a type that can reasonably be expected to be obtained, as required, in a timely fashion in the normal course of business.

(E) The Intercompany Loans and the Intercompany Loan Agreement are in compliance with the ECB Guidelines, and all relevant Consents in relation to the Intercompany Loans have been obtained by the Borrower.

(x) *Good Title to Property.* The Borrower owns and has good and marketable title to, or valid leasehold interests in, all of its real and personal property material to its business, free and clear of all Liens other than Permitted Liens.

(xi) *Intellectual Property.* (A) The Borrower owns or licenses or otherwise has rights to use all Intellectual Property owned by Guarantor or its Affiliates that is necessary or desirable to carry out its business and the transactions contemplated by the Financing Documents, and (B) [***], the Borrower owns or licenses or otherwise has rights to use all other Intellectual Property that is necessary or desirable to carry out its business and the transactions contemplated by the Financing Documents, [***].

(xii) *Disclosure; Material Adverse Effect.*

(A) All documents, reports and other written information ([***]) that have been delivered to DFC [***] are true and accurate [***], and do not contain any untrue statement of a material fact or

omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading [***].

(B) Since the earlier of (x) the Borrower's application for the Loan dated November 22, 2021 and (y) the end of the period covered by the Guarantor's most recent audited Consolidated Financial Statements, no event, development, fact or circumstance has arisen that has or could reasonably be expected to have a Material Adverse Effect, [***].

(C) All projections, forecasts and other "forward-looking" information that have been delivered to DFC by the Borrower or the Guarantor in connection with the transactions contemplated hereby and the negotiation of the Financing Documents have been prepared in good faith based on reasonable assumptions.

(xiii) *Reserved.*

(xiv) *ERISA and Employees.* Neither the Borrower nor any ERISA Affiliate sponsors, maintains, administers, contributes to, participates in, has any obligation to contribute to or has any actual or contingent, direct or indirect liability under, any Guaranteed Pension Plan or Multiemployer Plan, and neither the Borrower nor any ERISA Affiliate has ever sponsored, maintained, administered, contributed to, participated in, had any obligation to contribute to, or had any actual or contingent, direct or indirect liability under, any Guaranteed Pension Plan or Multiemployer Plan.

(xv) *Investment Company Act.* The Borrower is not required to register as an "investment company" under the Investment Company Act of 1940, 15 U.S.C. § 80a-2, as amended.

(xvi) *Margin Regulation.* No part of the proceeds of the Loan will be used for the purpose of buying or "carrying" any "margin stock" within the meaning of each of the respective quoted terms under Regulation U of the Board of Governors of the Federal Reserve System. The Borrower is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of buying or "carrying" any "margin stock," and the proceeds of the Loan shall not be used in a manner that violates any provision of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(xvii) *Commercial Operation Date.* The Borrower reasonably expects that the Project will achieve Commercial Operation on or before the Expected Commercial Operation Date, and Borrower has no knowledge of any event or circumstance that could reasonably be expected to prevent the achievement of Commercial Operation by the Expected Commercial Operation Date.

(xviii) *Reserved.*

(xix) *Regulation of Indebtedness.*

(A) The Borrower's ability to incur Indebtedness under the Financing Documents does not result in a breach of any Applicable Law (including, without limitation, the ECB Guidelines and any United States Federal or state law) or its Charter Documents.

(B) The Borrower's ability to comply with any of its obligations under the Financing Documents or any transactions contemplated by the Financing Documents, does not result in a breach of any Applicable Law (including, without limitation, the ECB Guidelines and any United States Federal or state law) [***] or its Charter Documents.

(xx) *Solvency.*

(A) The Borrower (I) has not been declared to be the subject of any corporate insolvency resolution process, bankruptcy protection or reorganization under Applicable Law, (II) has not been notified of any procedure requesting a competent Governmental Authority to declare it insolvent under any Applicable Law, (III) has not voluntarily filed any procedure requesting a competent Governmental Authority to

declare it insolvent under any Applicable Law, (IV) has not admitted its inability to pay, nor is it unable to pay, its liabilities as they fall due and (V) has not suspended the making of payments on its liabilities to creditors generally.

(B) No corporate action, legal proceedings or other like step or procedure has been taken in relation to (I) the suspension of payments by it on its liabilities to creditors generally or a moratorium on any of the Borrower's indebtedness, (II) its winding-up, insolvency, bankruptcy, liquidation, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), (III) the appointment of a liquidator, receiver, administrator, administrative receiver, resolution professional, compulsory or interim manager or other similar officer in respect of it or any of its assets or (IV) any analogous procedure or step similar to the matters listed in this clause.

(C) No moratorium has been declared in respect of any Indebtedness of the Borrower by any Governmental Authority and no proceeding under the IBC has been initiated or threatened in writing against the Borrower.

(xxi) *No Immunity; Proper Legal Form; No Need to Qualify Under Project Country or other Applicable Law.*

(A) Neither the Borrower nor any of its properties have any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the United States, the Project Country or other relevant jurisdiction in respect of its obligations under the Financing Documents. To ensure the legality, validity, enforceability or admissibility into evidence in the Project Country of the Financing Documents, it is not necessary that the Financing Documents or any other document be filed, recorded or enrolled with any Governmental Authority in the Project Country or in any jurisdiction in which it conducts its business or its assets are located or that any stamp, registration, notarial or similar Taxes be paid on or in relation to the Financing Documents or the transactions contemplated therein except for such filing, recording, or enrollments, or payment of stamp, registration, notarial or similar Taxes, which has been made or paid (as applicable), or will be made or paid in accordance with this Agreement and Applicable Laws.

(B) Each of the Financing Documents is in proper legal form under the laws of the Project Country for the enforcement thereof against the Borrower under such laws.

(C) It is not necessary in order for DFC to enforce any rights or remedies under the Financing Documents or solely by reason of the execution, delivery and performance by the Borrower of the Financing Documents to which it is a party that DFC be licensed or qualified with any Governmental Authority in the Project Country, or be entitled to carry on business in any of the foregoing.

(b) *DFC Statutory and Policy Requirements.* The Borrower makes the representations and warranties set out in Part B of Schedule Z (*DFC Statutory and Policy Requirements*).

(c) *Office of Development Policy Matters.* The Borrower makes the representations and warranties set out in Part B of Schedule Y (*Office of Development Policy Requirements*).

(d) *Repetition of Representations and Warranties.* Each of the foregoing representations and warranties in this Section 3.01 (including the representations and warranties referred to in Section 3.01(b) and Section 3.01(c)) shall be deemed to be made as of the date hereof and as of each Closing Date. To the extent that any schedule referred to in this Section 3.01 shall need to be updated in order to permit such representation to be true and correct when made or deemed to be made, the Borrower shall provide DFC with such updated schedule in writing prior to the date such representation is deemed made and shall request that this Agreement be amended in accordance with Section 10.06 (*Integration; Amendments*). Unless this Agreement is amended to reflect the changes in any such schedule, no change shall be deemed to have been made.

ARTICLE IV
CONDITIONS PRECEDENT TO FIRST DISBURSEMENT

Unless DFC otherwise agrees in writing, the obligation of DFC to make the first Disbursement is subject to the prior fulfillment, to DFC's satisfaction in its sole discretion, of the following conditions precedent as of the date that is ten (10) Business Days prior to the first Closing Date (other than conditions precedent that by their nature cannot be satisfied until the first Closing Date) and to their continued fulfillment on the first Closing Date:

SECTION 4.01. Financing Documents; Other Documents.

(a) DFC shall have received the following documents, each of which shall be satisfactory to DFC in form and substance and, if applicable, shall have been duly executed by the parties thereto, and shall be in full force and effect in accordance with its terms without default:

(i) a wet-ink original of each Financing Document; and

(ii) Certified copies of (A) the Intercompany Loan Agreement and (B) any agreement pursuant to which Intercompany Loans will be made on or prior to the first Closing Date.

SECTION 4.02. Authorization Certificates.

DFC shall have received a certificate of an Authorized Officer of (a) the Borrower dated as of the Closing Date, substantially in the form of Exhibit C-1, and (b) of the Guarantor, dated as of the Closing Date, substantially in the form of Exhibit C-2.

SECTION 4.03. Ownership.

(a) DFC shall have received evidence satisfactory to it that the Direct Owners hold the direct legal and beneficial title to the equity shares of the Borrower in the percentages set forth in Part I of Schedule 3.01(a)(iv) (*Capitalization*).

(b) DFC shall have received evidence satisfactory to it that the Beneficial Owners listed in Part II of Schedule 3.01(a)(iv) (*Capitalization*) hold the indirect legal and beneficial title to the equity shares of the Borrower in the percentages set forth therein.

SECTION 4.04. Capital Commitment.

DFC shall have received evidence satisfactory to it that the Guarantor or an Affiliate thereof has committed to contribute, directly or indirectly, at least one hundred twenty-five million Dollars (\$125,000,000) (or an equivalent amount denominated in Rupees) to the Borrower in cash (as Intercompany Loans or equity in the form of paid-up capital or redeemable preference shares), for the financing of the Project.

SECTION 4.05. Consents.

DFC shall have received evidence satisfactory to it that all governmental approvals and other Consents required under Applicable Law (including under the ECB Guidelines) for the execution, delivery and performance of the Financing Documents by the Borrower and the Guarantor, including the Consents set forth on Schedule 4.05 (*Consents*), have been obtained.

SECTION 4.06. Legal Opinions.

DFC shall have received favorable written opinions, dated as of the Closing Date, acceptable to DFC in form and substance, of (a) Cyril Amarchand Mangaldas or other legal counsel acceptable to DFC, as legal counsel to DFC in the Project Country, (b) L&L Partners or other legal counsel acceptable to DFC, as legal counsel to Borrower in the Project Country, (c) Allen & Overy LLP or other legal counsel acceptable to DFC, as legal counsel to Borrower in New York and (d) Allen & Overy LLP or other legal counsel acceptable to DFC, as legal counsel to Guarantor in Delaware.

SECTION 4.07. Appointment of Agent.

DFC shall have received evidence satisfactory to it that the agent for service of process that is referred to in Section 9.04(c) (*Borrower Consent to Suit; Exclusive Forum Selection for Certain Actions*) has been duly and irrevocably appointed by the Borrower and holds such appointment without reservation until the date occurring six (6) months after the Maturity Date, together with evidence of the prepayment in full of the fees of such agent.

SECTION 4.08. Office of Development Policy Conditions.

DFC shall have received evidence satisfactory to it that the Borrower has satisfied the conditions precedent set out in Part C (*Conditions Precedent to First Disbursement*) of Schedule Y (*Office of Development Policy Requirements*).

SECTION 4.09. DFC Statutory and Policy Conditions.

DFC shall have received evidence satisfactory to it that the condition precedent set out in Part C (*Condition Precedent to First Disbursement*) of Schedule Z (*DFC Statutory and Policy Requirements*) has been satisfied.

**ARTICLE V
CONDITIONS PRECEDENT TO EACH DISBURSEMENT**

Unless DFC otherwise agrees in writing, the obligation of DFC to make each Disbursement (including the first Disbursement) is subject to the prior fulfillment, to DFC's satisfaction in its sole discretion, of the following conditions precedent as of the date that is ten (10) Business Days prior to such Closing Date (other than conditions precedent that by their nature cannot be satisfied until such Closing Date), and to their continued fulfillment on such Closing Date:

SECTION 5.01. Disbursement Request.

The Borrower shall have delivered a Disbursement Request in accordance with Section 2.01(b) (*Disbursements*).

SECTION 5.02. Note.

The Borrower shall have delivered to DFC an executed Note, dated the relevant Closing Date, in the principal amount of the Disbursement and maturing on the Maturity Date.

SECTION 5.03. Closing Certificate.

The Borrower shall have delivered to DFC a certificate of an Authorized Officer of the Borrower, dated the relevant Closing Date, substantially in the form of Exhibit D (*Form of Closing Certificate*).

SECTION 5.04. Representations and Defaults.

(a) Each of the representations and warranties of the Borrower and the Guarantor set forth in this Agreement and in each of the other Financing Documents shall be true and correct in all material respects (except with respect to any provision including the word “material” or words of similar import, with respect to which such representations and warranties shall be true and correct) on such Closing Date as if made on such Closing Date after giving effect to such Disbursement or if any such representation relates exclusively to an earlier date, as of such earlier date.

(b) On such Closing Date, no Default or Event of Default shall have occurred and be continuing, or will result from, the making of such Disbursement or from the application of the proceeds thereof.

(c) Since the end of the Borrower’s most recent Financial Statements delivered pursuant to Section 7.01 (*Financial Statements and other Information*), except (i) for obligations and losses incurred in the ordinary course of business, and (ii) obligations constituting Permitted Indebtedness, the Borrower has not incurred any material loss or liability, [***].

(d) Since the end of the Guarantor’s most recent Financial Statements delivered pursuant to the Guaranty Agreement, except (i) for obligations and losses incurred in the ordinary course of business, (ii) obligations secured by Excluded Liens arising after the end of the period of the most recent Financial Statements delivered pursuant to the Guaranty Agreement, and (iii) obligations not secured by Excluded Liens that are permitted by this Agreement and the Guaranty Agreement, the Guarantor has no material obligation, contingent or otherwise, or material loss, [***].

SECTION 5.05. Change in Circumstances.

As of such Closing Date, (a) nothing shall have occurred and be continuing, (b) no event, development, fact or circumstance shall exist, and (c) no litigation, investigation or proceeding shall have been pending or threatened with respect to the Borrower, the Guarantor, the Project or the Financing Documents, in each case of the foregoing clauses (a) through (c), that has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Financial Information and Reports.

DFC shall have received all Financial Statements, reports, and other information pursuant to Section 7.01 (*Financial Statements and Other Information*) and Sections 8(c) and (d) of the Guaranty Agreement, and all reports pursuant to Section 7.02 (*Periodic Reports*), in each case, that the Borrower or the Guarantor is required to deliver to DFC on or before such Closing Date.

SECTION 5.07. Payment or Reimbursement of Expenses.

All amounts due and payable by the Borrower, including as required by Section 2.09 (*Payment or Reimbursement of Expenses*), on or prior to such Closing Date shall have been paid in full.

SECTION 5.08. Financial Covenants.

DFC shall have received a certificate from the chief financial officer or treasurer of the Guarantor setting forth calculations, based on the most recent quarterly and annual Consolidated Financial Statements of the Guarantor, demonstrating in reasonable detail the Guarantor's compliance with the financial covenants set forth in Section 8(e) of the Guaranty Agreement and the basis for such calculations.

SECTION 5.09. Sponsor Cash Requirements.

DFC shall have received evidence satisfactory to it that as of each Closing Date, the Sponsor Cash Ratio is no greater than [***].

SECTION 5.10. Hedges.

DFC shall have received evidence satisfactory to it that the Borrower has effected Hedges, if any, in accordance with the Hedging Policy, the ECB Guidelines and other applicable RBI circulars and directives issued from time to time.

SECTION 5.11. Commercial Operation.

DFC shall have received a certification from an Authorized Officer of the Borrower [***] that the Project will achieve Commercial Operation on or before the Expected Commercial Operation Date.

SECTION 5.12. Other Documents

DFC shall have received a wet-ink original or, at DFC's election, a Certified copy of any Financing Document or agreement for the making of Intercompany Loans entered into after the first Closing Date.

SECTION 5.13. Office of Development Policy Conditions.

The Borrower shall have satisfied the conditions precedent set out in Part D (*Conditions Precedent to Each Disbursement*) of Schedule Y (*Office of Development Policy Requirements*).

SECTION 5.14. ECB Filings; Other Consents.

DFC shall have received evidence satisfactory to it that (a) the Borrower has filed with the RBI the monthly ECB 2 form in accordance with the ECB Guidelines and (b) the Borrower has obtained any other Consent that may be required of the Borrower under Applicable Laws (including ECB Guidelines) so that it can borrow such Disbursement.

SECTION 5.15. Information Utilities Filings.

For each Disbursement other than the first Disbursement, DFC shall have received written notice from the Borrower that DFC (or an agent on behalf of DFC) must submit an IU Filing relating to the Loan including changes in the terms and conditions of the Loan.

**ARTICLE VI
AFFIRMATIVE COVENANTS**

Unless DFC otherwise agrees in writing, so long as the Commitment remains outstanding or until all amounts due and to become due hereunder and under the Notes and each other Financing Document have been paid in full in cash, the Borrower agrees as follows:

SECTION 6.01. Use of Proceeds.

The Borrower shall apply the proceeds of the Loan exclusively to the Project (including interest under this Agreement during the construction period which is capitalized as part of the Project costs) in accordance with Applicable Laws (including the ECB Guidelines) and the terms of this Agreement and, to the extent permitted under the ECB Guidelines, to the repayment of Intercompany Loans to the extent the proceeds of such Intercompany Loans were applied exclusively to the Project; provided, that any repayment of Intercompany Loans prior to Commercial Operation shall not result in a Sponsor Cash Ratio greater than [***] as of the date of such repayment.

SECTION 6.02. Company Operations.

The Borrower shall:

- (a) except as otherwise expressly permitted under this Agreement, maintain and preserve its existence as a private limited company under the laws of the Republic of India;
- (b) comply with its Charter Documents;
- (c) maintain all Intellectual Property reasonably necessary for the conduct of its business, [***]; and
- (d) take all actions as may be necessary to ensure that the payment obligations of the Borrower hereunder and under the Notes at all times constitute unsubordinated general obligations of the Borrower ranking at least *pari passu* with all other present and future unsubordinated and unsecured Indebtedness of the Borrower [***].

SECTION 6.03. Compliance with Laws; Taxes; Consents.

(a) The Borrower shall:

(i) without limiting the requirements of Part E (*Covenants*) of Schedule Y (*Office of Development Policy Requirements*) and Part D (*Covenants*) of Schedule Z (*DFC Statutory and Policy Requirements*), conduct its business in all material respects in compliance with all Applicable Laws (including, for the avoidance of doubt, the ECB Guidelines, other rules and regulations issued pursuant to the FEMA), Consents and its Charter Documents; and

(ii) duly pay, before they become overdue, all Taxes levied or imposed in any jurisdiction upon its property, earnings, or business that, if not paid, could reasonably be expected to have a Material Adverse Effect, except amounts being contested in good faith by appropriate proceedings diligently pursued for which adequate cash reserves shall have been set aside in accordance with Accounting Standards.

SECTION 6.04. Insurance Requirements.

The Borrower shall:

(a) maintain or cause to be maintained in effect at all times insurance with reputable insurance companies, with respect to its business, against such risks and hazards, in such amounts, and in such form, as is usually carried by companies of a similar size that are engaged in the same or a similar business, and that own similar properties in the same or similar geographic area and are acting in accordance with domestically accepted industry standards; and

(b) permit DFC to review copies of any insurance policy of the Borrower or any Affiliate related to the Loan, the Project (including any relevant umbrella policies) or to the protection of operational assets of the Borrower related to the Project, if reasonably requested by DFC.

SECTION 6.05. Accounting and Financial Management.

The Borrower shall: (a) maintain adequate accounting, management information and cost control systems; (b) prepare its Financial Statements in accordance with Accounting Standards; (c) engage Haribhakti & Co., Chartered Accountants (with respect to the Financial Statements and related activities of the Borrower for any Fiscal Year ending 2022 or earlier), PricewaterhouseCoopers, or other independent internationally recognized accountants [***] satisfactory to DFC as its regular independent auditors; (d) notify DFC of any change in such accountants and the reason therefor; and (e) if requested by DFC, request that such accountants communicate with DFC ([**]) regarding the Borrower's accounts and operations.

SECTION 6.06. Compliance with Office of Development Policy Requirements.

The Borrower shall comply with the covenants set out in Part E (*Covenants*) of Schedule Y (*Office of Development Policy Requirements*).

SECTION 6.07. DFC Statutory and Policy Requirements.

The Borrower shall comply with the covenants set out in Part D (*Covenants*) of Schedule Z (*DFC Statutory and Policy Requirements*).

SECTION 6.08. System for Award Management Entity Registration.

No later than October 1, 2022, Borrower shall procure and at all times thereafter maintain an active and valid “System for Award Management” (SAM.gov) entity registration.

SECTION 6.09. Sponsor Cash Ratio Requirement.

The Borrower shall:

- (a) prior to the achievement of Commercial Operation, maintain a Sponsor Cash Ratio no greater than [***]; and
- (b) upon the achievement of Commercial Operation, deliver evidence to DFC that the Sponsor Cash Ratio as of the Commercial Operation date is no greater than [***].

**ARTICLE VII
INFORMATION COVENANTS**

SECTION 7.01. Financial Statements and Other Information.

(a) *Audited Annual Financial Statements.* The Borrower shall deliver to DFC:

(i) within [***] after the end of each calendar year, (A) the Financial Statements of the Borrower that were used for the preparation of the audited Consolidated Financial Statements of the Guarantor for such period, prepared in or translated into English and in Dollars in accordance with GAAP, (B) a Certified comparison of such Financial Statements to the annual Financial Statements on the same basis for the previous fiscal year, (C) a consolidating statement setting forth the relationship of such financial statements to the audited Consolidated Financial Statements of the Guarantor for the same period and (D) a certificate of the [***] substantially in the form of Exhibit E (*Form of Compliance Certificate*); and

(ii) (A) promptly after the Borrower is required to prepare them in accordance with Applicable Law in India, provide (1) audited Financial Statements of the Borrower prepared in or translated into English and in accordance with Indian Accounting Standards, and (2) a Certified comparison of such Financial Statements to the audited Financial Statements on the same basis for the previous Fiscal Year, and (B) a certificate of the [***] substantially in the form of Exhibit E (*Form of Compliance Certificate*).

(b) *Unaudited Quarterly Financial Statements and Reports.* The Borrower shall deliver to DFC within [***] after the end of each fiscal quarter (including the fourth fiscal quarter) of each Fiscal Year (i) the Borrower’s quarterly unaudited Financial Statements for such fiscal quarter, prepared in or translated into English and in Rupees in accordance with the Accounting Standards, (ii) a Certified comparison of such Financial Statements to the quarterly Financial Statements for the same period in the previous Fiscal Year and (iii) a certificate of the [***] substantially in the form of Exhibit E (*Form of Compliance Certificate*).

(c) *Accountants’ Reports and Other Documents.* The Borrower shall deliver to DFC copies of all other annual or interim reports and management letters submitted to the Borrower by its independent accountants, and such other information and data with respect to the Borrower’s operations, condition (financial or otherwise), assets, prospects (including supporting information as to compliance with this Agreement) and performance of its obligations under the Financing Documents as DFC may reasonably request from time to time.

SECTION 7.02. Periodic Reports.

(a) *Performance Reports.* The Borrower shall deliver to DFC, within [***] after the end of each calendar quarter during the construction period, a construction progress report, substantially in the form of Exhibit H (*Form of Construction Progress Report*), setting forth the progress made in construction of the Project during the period covered by such report, including estimates of the dates when all major construction milestones will be met.

(b) *Loan Proceeds Certificate.* The Borrower shall deliver to DFC, within six (6) months following the last Closing Date, a certificate of an Authorized Officer of the Borrower, setting forth in reasonable detail the use of proceeds of the Loan, substantially in the form of Exhibit F (*Form of Loan Proceeds Certificate*).

(c) The Borrower shall deliver copies of material notices received from the RBI, AD Bank or any other Governmental Authority in relation to the transactions contemplated by the Financing Documents and/or in relation to the Project.

(d) The Borrower shall provide DFC with such information as DFC reasonably requests for the purpose of timely making IU Filings. The Borrower shall timely verify and authenticate such information with Information Utilities in the manner required by the IBC to complete the IU Filing.

SECTION 7.03. Notice of Default and Other Matters.

The Borrower shall notify DFC [***] of:

(a) the occurrence of any Default or Event of Default, and any steps the Borrower is taking to remedy such Default or Event of Default,

(b) any legal or arbitral proceedings against the Borrower involving claims that (i) [***] relate to any of the transactions contemplated by any Financing Document, or (ii) either individually or in the aggregate (A) are equal to or greater than [***] or (B) could reasonably be expected to have a Material Adverse Effect;

(c) (i) any pending or, to the Borrower's knowledge, threatened audits, examinations, investigations, proceedings or claims with respect any [***] Taxes, or (ii) any Lien with respect to [***] Taxes that has been filed, or of which the Borrower has been notified in writing, against any of the Borrower's property;

(d) any actual or proposed material change in the business or operations of the Borrower;

(e) any material Event of Loss affecting the Borrower, specifying the nature of the event and any steps the Borrower is taking or proposes to take with respect thereto; and

(f) the occurrence of any other condition or event (including action by any Governmental Authority) that could reasonably be expected to have a Material Adverse Effect and any steps the Borrower or the Guarantor is taking to remedy such condition or event.

SECTION 7.04. Reserved.

SECTION 7.05. ECB reports

The Borrower shall make all necessary filings and reporting for the Loan in compliance with the ECB Guidelines. Without limiting the generality of the foregoing, the Borrower shall (a) no later than [***] from the end of each month, file Form ECB 2 Returns (as defined under the ECB Guidelines and in the form required by the RBI), certified by the Borrower's AD Bank, for such month with the Department of Statistics and Information Management of the RBI, or as otherwise required by the ECB Guidelines, (b) make such other filings as may be required under the ECB Guidelines from time to time, and (c) if required under the ECB Guidelines, provide information with regard to the amount, purpose and maturity of Loan to be disclosed on the RBI's website on a monthly basis.

ARTICLE VII
NEGATIVE COVENANTS

Unless DFC otherwise agrees in writing, so long as the Commitment remains outstanding or until all amounts due and to become due hereunder and under the Notes and each other Financing Document have been paid in full in cash, the Borrower agrees as follows:

SECTION 8.01. Liens; Indebtedness; Investments; Acquisitions.

The Borrower shall not:

- (a) directly or indirectly, create, assume, or otherwise permit to exist [***] any Lien on any of its assets, whether now owned or hereafter acquired, or in any proceeds or income therefrom, other than Permitted Liens;
- (b) incur, assume or permit to exist, or otherwise become liable for Indebtedness, other than Permitted Indebtedness; or
- (c) make or permit to exist loans or advances to, or deposits (except commercial bank deposits in the ordinary course of business) with, other Persons or investments in any Person or enterprise other than Permitted Investments.

SECTION 8.02. Reserved.

SECTION 8.03. No Sale of Assets; Mergers; Subsidiaries.

The Borrower shall not:

- (a) sell, lease, transfer or otherwise dispose of any portion of its assets, except for: (i) sales or other dispositions of obsolete assets, worn out assets or assets not useful for the business of the Borrower; (ii) the swap of assets in exchange for other assets, in the ordinary course of business, of comparable or greater value or usefulness to its business; (iii) asset sales in the ordinary course of business; (iv) sale of solar photovoltaic modules manufactured by the Borrower at the Project; or (v) in respect of Permitted Investments;
- (b) dissolve, liquidate, or otherwise cease to do business;
- (c) merge or consolidate with any Person; or
- (d) form or have any Subsidiary.

SECTION 8.04. Ordinary Conduct of Business.

The Borrower shall not:

- (a) change the nature or scope of its business as of the date hereof [***], other than businesses reasonably related or ancillary to the Borrower's business;
- (b) change its Charter Documents (other than for amendments or modifications (i) to correct manifest error, or (ii) which are of a stylistic, minor, or purely technical nature, or (iii) as required by the Companies Act to the extent such amendments do not affect any rights of DFC under the Financing Documents, or (iv) that do not change the Charter Documents in any material respect; *provided*, that the Borrower shall promptly give DFC notice, and provide DFC with a copy, of such amendment or modification);
- (c) change its Fiscal Year or make or permit any change in accounting policies or reporting practices, except as required to comply with the Accounting Standards or Applicable Laws;

(d) enter into any partnership, profit-sharing or royalty agreement [***], or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other Person;

(e) fail to maintain its corporate existence and its right to carry on its operations; or

(f) adopt, establish, maintain, sponsor, administer, contribute to, participate in, or incur any actual or contingent, direct or indirect liability under or obligation to contribute to, any Guaranteed Pension Plan or Multiemployer Plan.

ARTICLE IX
DEFAULTS AND REMEDIES

SECTION 9.01. Events of Default.

Each of the following events or circumstances shall constitute an "**Event of Default**":

(a) *Payment Default.* The Borrower or the Guarantor fails to pay, when due by it, any amount payable to DFC pursuant to this Agreement or any other Financing Document, unless, in any case, such failure to pay is caused by administrative or technical error and such payment is made within five (5) Business Days following its due date.

(b) *Cross-Default.*

(i) The Borrower defaults for a period (beyond any applicable grace period):

(A) in the payment of any principal, interest, or other amount due under any agreement or agreements involving Indebtedness [***]; or

(B) in the performance of any obligation due under any agreement or agreements [***] involving Indebtedness having an aggregate outstanding principal amount of more than [***], or any other event occurs, the effect of which default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Indebtedness to be demanded or terminated or to become due or to be repurchased, prepaid, defeased, or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease, or redeem such Indebtedness to be made, prior to its stated maturity [***].

(ii) The Guarantor, any Subsidiary of the Guarantor, or any combination thereof defaults for a period beyond any applicable grace period:

(A) in the payment of any principal, interest or other amount due under any agreement or agreements involving Indebtedness [***];
or

(B) in the observance or performance of any agreement or agreements or condition relating to Indebtedness [***], or any other event occurs, the effect of which is to cause the holder or holders or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity [***].

(c) *Representation Default.* Any representation or warranty made or deemed made by the Borrower or the Guarantor in any Financing Document, or in any report, certificate, Financial Statement, or other document delivered by the Borrower or the Guarantor after the date of this Agreement pursuant to any such Financing Document [***], prove to have been incorrect or misleading in any material respect when made or deemed made; [***].

(d) *Covenant Default.*

(i) The Borrower fails to comply with any covenant or provision set forth in Section 7.03 (*Notice of Default and Other Matters*) or Article VIII (*Negative Covenants*).

(ii) The Borrower fails to comply with any covenant or provision set forth in Section 6.09 (*Sponsor Cash Ratio Requirement*) and the same is not remedied within [***] after the Borrower has knowledge of the occurrence thereof.

(iii) Any Schedule Y Event of Default occurs.

(iv) Any Schedule Z Event of Default occurs.

(e) *Guaranty Default.* The Guarantor fails to perform any of its obligations under the Guaranty Agreement and, to the extent such failure is the failure of an obligation set forth in Section 8 of the Guaranty Agreement (other than Sections 8(a), 8(e), 8(h) and 8(j) of the Guaranty Agreement), the same is not remedied [***].

(f) *Obligation Default.* The Borrower fails to comply with or perform any applicable covenant, or agreement contained herein other than those referred to in Sections 9.01(a), (b), (c) (d), or (e) above [***].

(g) *Approvals Default.* Any Consent necessary for the Borrower or the Guarantor to perform and observe its obligations under any Financing Document or for the Borrower to conduct its business, is not effected or given or is withdrawn or ceases to remain in full force and effect [***], and such Consent remains not in effect or given or is withdrawn or ceases to remain in full force and effect for a period of thirty (30) days; [***].

(h) *Financing Document Default, Repudiation, Termination, Etc.*

(i) The Borrower fails to comply with or perform any of its material obligations or undertakings set forth in any Financing Document that is not otherwise listed as an Event of Default in this Section 9.01, and such failure continues (A) beyond the applicable cure period, if any is specified, or (B) for more than thirty (30) days [***].

(ii) Any Financing Document, or any term thereof, at any time for any reason (A) ceases to be in full force and effect, (B) is declared to be void, (C) is suspended or revoked, or terminated (other than upon expiration in accordance with its terms when fully performed), (D) ceases to give or provide the respective rights, titles, remedies, powers, or privileges intended to be created thereby, or (E) the Borrower or the Guarantor contests the validity or enforceability of such a Financing Document or any term thereof or repudiates the same.

(i) *Expropriation Default.* Any Governmental Authority condemns, nationalizes, seizes or otherwise expropriates any substantial portion of the Project assets or the share capital of the Borrower, or takes any action that would prevent the Borrower from carrying on its business or operations.

(j) *Voluntary Bankruptcy Default.* The Borrower or the Guarantor:

(i) commences any proceeding or files any petition seeking liquidation, reorganization, arrangement with creditors, adjustment of debts, winding-up, dissolution, composition or other relief under any federal, state, or foreign bankruptcy, insolvency, receivership, reorganization or similar law now or hereafter in effect;

(ii) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or petition described in Section 9.01(k);

(iii) suspends making payments on any of its Indebtedness to creditors generally or commences negotiations with one or more of its creditors with a view to rescheduling or restructuring any of its Indebtedness by reason of actual or anticipated financial difficulties,

- (iv) applies for or consents to the appointment of a receiver, resolution professional, trustee, custodian, sequestrator, conservator, liquidator, rehabilitator, or similar official for itself or for all or a substantial part of its assets;
- (v) files an answer admitting the material allegations of a petition filed against it in any proceeding described in Section 9.01(k);
- (vi) makes a general assignment for the benefit of creditors; or
- (vii) takes any corporate or other action for the purpose of effecting any of the foregoing.

(k) *Involuntary Bankruptcy Default.* (A) An involuntary proceeding is commenced, or an involuntary petition is instituted in any court of competent jurisdiction or by or before any Governmental Authority seeking (i) liquidation, reorganization, arrangement, adjustment, winding-up, dissolution, composition, moratorium or other relief in respect of the Borrower or the Guarantor or its debts, or of all or a substantial part of its assets, under any federal, state, or foreign bankruptcy, insolvency, receivership, reorganization, or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, resolution professional, sequestrator, conservator, liquidator, rehabilitator or similar official for the Borrower or the Guarantor or for all or a substantial part of its assets, and, in any such case, such proceeding or petition shall continue unstayed and undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered, or (B) Governmental Authority issues any order or direction that the Borrower or Guarantor be dissolved, liquidated or wound up or be merged or taken over by any other Person.

(l) *Inability to Pay Debts.* The Borrower or the Guarantor becomes unable, admits in writing its inability, or fails generally to pay its debts as they become due.

(m) *Litigation, Judgment, and Attachment Defaults.*

(i) A judgment, order, arbitral award, or litigation settlement for the payment of money in an aggregate amount in excess of (A) [***] or its equivalent in another currency is rendered against, or entered into by, the Borrower, or (B) [***] or its equivalent in another currency is rendered against, or entered into by, the Guarantor, or in each case any of their respective property, and such judgment, order, arbitral award, or settlement is [***] not stayed, satisfied or discharged within [***] after entry [***].

(ii) An attachment or analogous process is levied or enforced upon or issued against any property of (A) the Borrower for an amount in excess of the equivalent of [***] or (B) the Guarantor for an amount in excess of the equivalent of [***] and the same is not stayed, satisfied or discharged within [***] after entry [***].

(n) *Political Violence Default.* Any acts of war (whether declared or undeclared), revolution, insurrection, civil war, civil strife, terrorism, or sabotage occur that cause the destruction, disappearance or physical damage of a substantial portion of the Project assets of the Borrower or prevent the Borrower from carrying on its business or operations.

(o) *Change of Control Default.* The Guarantor ceases to retain Control of the Borrower as described in clause (i) of the definition of Control.

(p) *Moratorium.*

(i) Any Governmental Authority of the Project Country calls a moratorium on payments by borrowers in relation to, or by third parties under guaranties of, the External Indebtedness of Project Country entities generally, or a class thereof to which the Borrower belongs.

(ii) Any Governmental Authority of the Project Country with jurisdiction over the Borrower or the Loans calls a general moratorium or general debt rescheduling with respect to entities in the Project Country.

(iii) Any Governmental Authority of the Project Country declares any payment delay or refuses to pay or to acknowledge, or repudiates, a payment obligation in respect of its External Indebtedness.

(q) *Material Adverse Effect Default.* Any event or development occurs [***] has or could be expected to have a Material Adverse Effect.

(r) *Commercial Operation Default.* The Project fails to achieve Commercial Operation by the Expected Commercial Operation Date.

SECTION 9.02. Remedies upon Event of Default.

(a) Except as otherwise provided in Section 9.02(c), if any Event of Default has occurred and is continuing, DFC may at any time do any one or more of the following:

(i) suspend or terminate the Commitment;

(ii) declare, by written demand for payment, any portion or all of the Loan to be due and payable, whereupon such portion or all of the Loan, together with interest accrued thereon and all other amounts due under the Financing Documents, shall immediately mature and become due and payable, without any other presentment, demand, diligence, protest, notice of acceleration, or other notice of any kind, all of which the Borrower hereby expressly waives;

(iii) without notice of default or demand, proceed to protect and enforce its rights and remedies by appropriate proceedings or actions, whether for damages or the specific performance of any provision of any Financing Document, or in aid of the exercise of any power granted in any Financing Document, or by law, or may proceed to enforce the payment of any Note; or

(iv) initiate proceedings against the Borrower under the IBC.

(b) Upon the occurrence of an Event of Default referred to in paragraph (c) of Part F (*Events of Default*) of Schedule Y (*Office of Development Policy Requirements*), DFC may, in addition to the remedies set out in Section 9.02(a), require the Borrower to terminate any contracts with the relevant Contractor.

(c) Upon the occurrence of an Event of Default referred to in Sections 9.01(j) (*Voluntary Bankruptcy Default*) or (k) (*Involuntary Bankruptcy Default*), (i) the Commitment shall automatically terminate, and (ii) the Loan, together with interest accrued thereon and all other amounts due under the Financing Documents, shall immediately mature and become due and payable, without any presentment, demand, diligence, protest, notice of acceleration, or other notice or action of any kind, all of which the Borrower hereby expressly waives.

SECTION 9.03. Arbitration.

(a) Any Dispute shall be settled by arbitration in accordance with the Rules; *provided, however*, that this agreement to arbitrate Disputes shall not include the arbitration of (i) any Excluded Claims; and (ii) any Disputes that are subject to a pending action, suit or proceeding brought by DFC in accordance with Section 9.04 (*Borrower Consent to Suit; Exclusive Forum Selection for Certain Actions*).

(b) Arbitration pursuant to this Section 9.03 is not a waiver of, and shall not impair the enforcement rights of, DFC to exercise any other similar remedy under this Agreement or any other Borrower Document, pursuant to Section 9.03(a) or otherwise, and such enforcement by DFC shall not be deemed to be inconsistent with or a violation of the arbitration provisions of this Section 9.03.

(c) Any awards issued by the Arbitral Tribunal shall be final and binding on the Arbitration Parties; any orders so issued shall be binding on the Arbitration Parties. Judgment upon any award issued by the Arbitral Tribunal may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Arbitration Party or its assets. The Borrower hereby submits to the jurisdiction of the United States District Court for the Southern District of New York for the limited purpose of enforcing this agreement to arbitrate.

(d) The Arbitral Tribunal shall have no jurisdiction to grant any interim measure that limits or prevents, or seeks to limit or prevent, DFC from exercising any enforcement right with respect to any Lien or enforcing any remedy under this Agreement or any other Borrower Document, including without limitation any enforcement action pursuant to Section 9.04 (*Borrower Consent to Suit; Exclusive Forum Selection for Certain Actions*). The Borrower covenants and agrees not to seek any such interim measure, either in any arbitration pursuant to this Section 9.03 or otherwise.

(e) Notwithstanding Section 10.03 (*Governing Law*), this Section 9.03 and any arbitration pursuant thereto shall be governed by Title 9 (Arbitration) of the United States Code.

(f) The Parties hereto expressly agree that nothing contained in Part I of the (Indian) Arbitration and Conciliation Act, 1996 (as amended, supplemented or replaced from time to time) shall apply to any arbitration conducted in accordance with this Section 9.03 and Section 9.04 and the Borrower irrevocably waives its right to bring any action under Section 9 of the (Indian) Arbitration and Conciliation Act, 1996.

SECTION 9.04. Borrower Consent to Suit; Exclusive Forum Selection for Certain Actions.

(a) Notwithstanding Section 9.03 (*Arbitration*), DFC in its sole discretion shall have the option at any time and from time to time to bring against the Borrower any action, suit or proceeding in respect of any Dispute, in any of (i) the courts of the State of New York in the County of New York or the United States District Court for the Southern District of New York, or (ii) the courts in any other jurisdiction where the Borrower or any of its property may be found; *provided, however*, with regard to any Dispute that has been referred to arbitration pursuant to Section 9.03 (*Arbitration*) by the Borrower, DFC may, in its discretion, initiate an action, suit or proceeding as provided herein in lieu of such arbitration and in respect of such Dispute, so long as DFC exercises its option to do so prior to the last day on which DFC's statement of defense (or equivalent submission) in respect of such Dispute is to be submitted.

(b) The Borrower hereby: (i) irrevocably waives any present or future objection to any such action, suit or proceeding in any such venue, and irrevocably consents and submits unconditionally to the non-exclusive jurisdiction of any such court for itself and in respect of any of its property; (ii) irrevocably waives any claim in any such court that any such action, suit, or proceeding brought therein has been brought in an inconvenient forum; (iii) agrees that final judgment against it in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment or otherwise, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its obligation; and (iv) covenants and agrees not to resist enforcement of any such final judgment in any jurisdiction where DFC commences enforcement proceedings.

(c) Prior to the first Disbursement, the Borrower shall irrevocably designate and appoint an agent satisfactory to DFC for service of process in the State of New York, U.S. under this Agreement and any other Financing Document governed by the laws of the State of New York, with respect to any Action in New York, as its authorized agent to receive, accept, and confirm receipt of, on its behalf, service of process in any such proceeding, and shall provide DFC with evidence of the prepayment in full of the fees of such agent until six (6) months after the Maturity Date. The Borrower agrees that service of process, writ, judgment or other notice of legal process upon said agent shall be deemed and held in every respect to be effective personal service upon it. The Borrower shall maintain such appointment (or that of a successor satisfactory to DFC) continuously in effect at all times while the

Borrower is obligated under this Agreement or any Note. Nothing herein shall affect DFC's right to effect service of process in any other manner permitted by Applicable Law.

(d) Any enforcement action, suit, or other judicial, administrative or arbitral proceeding by the Borrower against DFC (or the United States government) in respect of an Excluded Claim shall be brought exclusively in a United States federal court of competent jurisdiction in the District of Columbia.

SECTION 9.05. Judgment Currency.

This is an international loan transaction in which the specification of Dollars is of the essence, and such currency shall be the currency of account in all events. The payment obligations of the Borrower to DFC under any Financing Document shall only be discharged by an amount paid in another currency, whether pursuant to a judgment or otherwise, to the extent of the amount in Dollars received by DFC (after any premium and costs of exchange) on the prompt conversion to Dollars in the U.S. of the amount so paid in another currency under normal banking procedures. In the event that any payment by the Borrower in another currency, whether pursuant to a judgment or otherwise, upon conversion and transfer, does not result in the payment of the amount of Dollars then due at the place such amount is due, DFC shall be entitled to demand immediate payment of and shall have a separate cause of action against the Borrower for the additional amount necessary to yield the amount of Dollars then due. In the event that DFC, upon the conversion of a payment in another currency into Dollars, receives an amount greater than that to which it was entitled, the Borrower shall be entitled to prompt reimbursement of the excess amount.

SECTION 9.06. No Immunity.

The Borrower represents and warrants that it is subject to civil and commercial law with respect to its obligations under each of the Borrower Documents, that the making and performance of such Borrower Documents and the borrowings by the Borrower pursuant hereto constitute private and commercial acts rather than governmental or public acts, and that neither the Borrower nor any of its properties or revenues has any right of immunity from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment, set-off, execution of a judgment, or from any other legal process with respect to its obligations under such Borrower Documents. To the extent that the Borrower may hereafter be entitled, in any jurisdiction in which judicial or arbitral proceedings may at any time be commenced with respect to any Borrower Document, to claim for itself or its revenues or assets any such immunity, and to the extent that in any such jurisdiction there may be attributed to the Borrower such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity. The foregoing waiver of immunity shall have effect under the United States Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended in scattered sections of 28 U.S.C.).

***ARTICLE X
MISCELLANEOUS***

SECTION 10.01. Notices.

(a) Except in the case of notices and other communications expressly required to be provided in accordance with Part E (*Covenants*) of Schedule Y (*Office of Development Policy Requirements*), each notice, demand, or other communication relating to this Agreement shall be in writing and shall be delivered by hand or overnight courier service, or delivered by e-mail as follows:

If to the Borrower:

FS India Solar Ventures Private Limited
FLAT NO 808-811 8th Floor Narain Manzil 23 B K ROAD
New Delhi, 110001
India
[***]

with a copy to:

First Solar, Inc.
350 West Washington Street, Suite 600
Tempe, AZ 85281
Attention: General Counsel
Email: [***]

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

First Solar, Inc.
350 West Washington Street, Suite 600
Tempe, AZ 85281
Attention: Treasurer
Email: [***]

If to DFC:

United States International Development Finance Corporation
1100 New York Avenue, N.W.
Washington, D.C. 20527
United States of America
Attn.: [***]

(b) Notices, demands or other communications sent by hand or overnight courier services, shall be deemed to have been duly given when sent. Notices, demands or other communications delivered through electronic communications to the extent provided in Section 10.01(d), shall be deemed to have been given as provided therein. Any party hereto may change its address for notices, demands and other communications hereunder by notice to the other parties hereto.

(c) No notice, demand or other communication to DFC, including notices or other communications delivered pursuant to Part E (*Covenants*) of Schedule Y (*Office of Development Policy Requirements*), shall be effective unless such notice, demand or other communication includes FS India Solar Ventures Private Limited (India), Project Number: 9000115523, and, prior to the first Disbursement, attention to Vice President, Structured Finance & Insurance, and subsequent to the initial Closing Date, attention to Managing Director, Project Portfolio Management Division.

(d) Notices, demands and other communications sent to the e-mail address of the addressee set forth in Section 10.01(a) or, if delivered pursuant to Part E (*Covenants*) of Schedule Y (*Office of Development Policy Requirements*) to the e-mail address set forth therein, shall be deemed to have been given upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function (as available, but excluding any automatic answer-back), return or reply e-mail or other written acknowledgment).

SECTION 10.02. English Language.

All documents to be delivered or communications made under each of the Financing Documents shall be in English, or if in another language, shall be accompanied by a Certified translation into English, which translation shall govern between the Borrower and DFC.

SECTION 10.03. GOVERNING LAW.

THIS AGREEMENT AND THE NOTES AND ANY CLAIM, CONTROVERSY, DISPUTE, OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE NOTES AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD OTHERWISE DIRECT APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

SECTION 10.04. Succession; Assignment; Benefit.

(a) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; *provided, however*, that the Borrower shall not, without the prior written consent of DFC, assign or delegate all or any part of its interest herein or obligations hereunder.

(b) This Agreement is for the sole benefit of the Borrower and DFC, and no other Person (other than the Indemnified Persons and permitted successors or assigns of the parties hereto) shall be a direct or indirect beneficiary of, be entitled to rely hereon, or have any direct or indirect cause of action or claim in connection with this Agreement or any of the Financing Documents.

SECTION 10.05. Survival of Agreements.

Each agreement, representation, warranty, and covenant contained or referred to in this Agreement shall survive any investigation at any time made by DFC and shall survive all disbursements of the Loan, except for changes permitted hereby, and, except as otherwise provided in this Section 10.05, shall terminate only when all amounts due or to become due under the Financing Documents [***]. Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Section 2.08 (*Tax Gross-Up; Stamp Duties*), Section 2.09 (*Payment or Reimbursement of Expenses*), and Section 10.09 (*Indemnity*) shall survive the payment in full of principal and interest hereunder and under the Notes. The obligations of the Borrower pursuant to this Agreement shall remain in full force and effect or shall be reinstated, as the case may be, if and to the extent that at any time any payment of any of the Obligations is rescinded, avoided, or must otherwise be returned or repaid by DFC, in whole or in part, upon the insolvency, bankruptcy, or reorganization of the Borrower, the Guarantor or otherwise, as if such payment had not been made by the Borrower or the Guarantor, as applicable.

SECTION 10.06. Integration; Amendments.

This Agreement, including the Exhibits and Schedules hereto, and the agreements referred to herein embody the entire understanding of the parties and supersede all prior negotiations, understandings, and agreements between them with respect to the subject matter hereof. The provisions of this Agreement may be waived, supplemented, or amended only by an instrument in writing signed by the parties hereto.

SECTION 10.07. Severability.

If any provision of this Agreement is prohibited or held to be invalid, illegal, or unenforceable in any jurisdiction, the parties hereto agree to the fullest extent permitted by Applicable Law that it shall not affect the validity, legality, and enforceability of the other provisions of this Agreement and shall not render such provision prohibited, invalid, illegal, or unenforceable in any other jurisdiction. If, and to the extent that, any obligation of the Borrower (including that under Section 10.09 (*Indemnity*)) is unenforceable for any reason it agrees, independently of any other obligation hereunder, to make the maximum contribution to the payment and satisfaction thereof as is permissible under Applicable Law.

SECTION 10.08. No Waiver.

(a) No failure or delay by either party in exercising any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy, or any abandonment or discontinuance of steps to enforce any right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any right, power or remedy shall be effective unless given in writing.

(b) The rights, powers and remedies of each of the parties hereunder are cumulative and are not exclusive of any other rights, powers or remedies provided by law or that such party would otherwise have.

SECTION 10.09. Indemnity.

The Borrower shall, at all times, indemnify DFC and its directors, officers, employees, and agents (each, an “*Indemnified Person*”) against, and hold each Indemnified Person harmless from, any losses, claims, damages, liabilities, penalties, judgments, Taxes or other costs (including costs, fees, and expenses incurred by or imposed on any Indemnified Person in defending, analyzing, settling or resolving any of the foregoing, and the expenses associated with the making of any affirmative claim in connection therewith) of any nature whatsoever to which an Indemnified Person may become subject (“*Loss*”) arising out of, in connection with, or related to the Loan (including any actual or proposed use of the proceeds of the Loan), this Agreement and any other Financing Document, the Project or any actual or prospective litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any Indemnified Person is a party thereto (the “*Borrower Indemnity*”). The Borrower Indemnity shall not apply to the extent that a court or arbitral tribunal with jurisdiction over the Loss and each Indemnified Person who has a Loss in connection therewith renders a final determination that the Loss resulted from the gross negligence or willful misconduct of the Indemnified Person. The Borrower Indemnity is independent of and in addition to (i) any rights of any party hereto in connection with any Loss, and (ii) any other agreement, and shall survive the execution, modification, and amendment of this Agreement and the other Financing Documents, the expiration, cancellation, or termination of the Commitment, the disbursement and repayment of the Loan, and the provisions of any other indemnity. Any exclusion of an obligation to pay any amount under this Section shall not affect the requirement to pay such amount under any other Section hereof or under any other agreement. DFC and each Indemnified Person shall have the right to control its, his, or her defense; *provided, however*, that each Indemnified Person shall: (A) notify the Borrower in writing as soon as [***] practicable of any Loss, and (B) keep the Borrower reasonably informed of material developments with respect thereto. In exercising the right and power to control his, her, or its actions in connection with a Loss, including a decision to settle any such Loss, each Indemnified Person shall, taking into account the nature and policies of such Indemnified Person (I) consult with the Borrower, and (II) act as such Indemnified Person would act if the Loss or settlement were to be paid by such Indemnified Person. The Borrower acknowledges and agrees that each Indemnified Person is an express, third-party beneficiary of the Borrower’s obligations under this Section 10.09. [***].

SECTION 10.10. Further Assurances.

The Borrower shall execute and deliver to DFC such additional documents and take such additional action as DFC may require to carry out the purposes of the Financing Documents, to cause the Financing Documents to be duly registered, notarized, and stamped in any applicable jurisdiction, and to preserve and protect DFC's rights as contemplated herein or therein.

SECTION 10.11. Counterparts; Electronic Execution.

(a) This Agreement may be executed and delivered in counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument.

(b) Delivery of an executed counterpart of a signature page of this Agreement in an electronic format (including .pdf, .tif, and .jpeg file format) shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution", "signed", "signature" and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 to 7006, 7021, 7031; the New York State Electronic Signatures and Records Act, NY State Tech. Law § 301; or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.12. Waiver of Litigation Payments.

In the event that any Action is initiated by or on behalf of DFC against the Borrower or any other party to any Financing Document, the Borrower, to the fullest extent permissible under Applicable Law, irrevocably waives its right to, and agrees not to request, plead, or claim that DFC and its successors, transfers, and assigns (any such Person, a "**DFC Plaintiff**") post, pay, or offer, any *cautio judicatum solvi* bond, litigation bond, or any other bond, fee, payment, or security measure provided for by any provision of law applicable to such Action (any such bond, fee, payment, or measure, a "**Litigation Payment**"), and the Borrower further waives any objection that it may now or hereafter have to a DFC Plaintiff's claim that such DFC Plaintiff should be exempt or immune from posting, paying, making, or offering any such Litigation Payment.

SECTION 10.13. Cooperation; Loan Servicing.

At its own expense, DFC may assign or delegate all or part of the responsibility for servicing the Loan to a Person that shall act as DFC's agent in addressing such matters as may be required in connection with the servicing of the Loan. Any Person who acquires the right to service the Loan shall benefit from the indemnity set forth in Section 10.09 (*Indemnity*) (as if the name of such Person had been stated in such provision).

SECTION 10.14. WAIVER OF JURY TRIAL.

THE BORROWER AND DFC EACH IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM ESTABLISHED BY ANY FINANCING DOCUMENT.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered on its behalf by its authorized representative as of the date first above written.

FS INDIA SOLAR VENTURES PRIVATE LIMITED

By:

Name:

Its:

UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

By:

Name:

Its:

DEFINED TERMS AND RULES OF INTERPRETATION

1. **Defined Terms.** As used in this Agreement, including the Exhibits and Schedules hereto, the following terms shall have the following meanings.

“**Accounting Standards**” means GAAP, consistently applied.

“**AD Bank**” means a Person licensed by the RBI as an “authorised dealer- category I” under sub-section (1) of Section 10 of the FEMA.

“**Action**” means any action, suit, other legal proceeding, arbitral proceeding, administrative proceeding, investigation or other claim by or before any Governmental Authority.

“**Administrator**” means the International Centre for Dispute Resolution, a division of the American Arbitration Association, or any successor thereof as may be identified by the Rules.

“**Affiliate**” means, with respect to any Person, any other Person that is directly or indirectly Controlled by, under common Control with or Controlling such Person.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Applicable Law**” means, with respect to a given Person on a given date, any constitution, statute, law, rule, regulation, ordinance, judgment, order, decree, Consent of a Governmental Authority, or any published directive, guideline, requirement or other governmental restriction that has the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, that is binding on such Person whether in effect as of the date hereof or as of any date thereafter.

“**Arbitral Tribunal**” means the arbitral tribunal constituted in accordance with the Rules.

“**Arbitration Parties**” means each of (a) DFC, (b) the Borrower and (c) any other party to an arbitration pursuant to Section 9.03 (*Arbitration*); and “Arbitration Party” means any of them, as the context requires.

“**Authorized Officer**” means, with respect to any Person, any officer designated in such Person’s Charter Documents or otherwise in writing as having been authorized to execute and deliver any of the Financing Documents or any other documents contemplated in connection therewith.

“**Beneficial Owner**” means each Person (other than a Direct Owner) that holds, directly or indirectly, any ownership interest, including any voting or economic interest, in the Borrower, excluding any such interest held by Qualified Public Company Shareholders.

“**Board of Governors of the Federal Reserve System**” means the Board of Governors of the Federal Reserve System, which is an agency of the United States of America responsible for the analysis of domestic and international financial and economic developments, and for regulating the operations of the Federal Reserve Banks and payment systems.

“**Borrower**” has the meaning set forth in the preamble to this Agreement.

“**Borrower Documents**” means each of the Financing Documents to which the Borrower is or will be a party.

“**Borrower Indemnity**” has the meaning set forth in Section 10.09 (*Indemnity*).

“**Business Day**” means any day other than (a) a Saturday, Sunday, or day on which commercial banks are authorized by law to close in the City of New York or Washington, D.C., United States of America, [***], (b) with

respect to any communication to DFC, a day on which DFC is not open for business, and (c) with respect to any Disbursement or payment to DFC, a day on which DFC or the United States Department of the Treasury are not open for business.

“**Certified**” means, in respect of any document, that such document is being delivered accompanied by a certification from an Authorized Officer that it is true and complete (or a true and complete copy, as the case may be), including all amendments to date, and, if applicable, is in full force and effect in accordance with its terms as of the date of such certification.

“**Charter Documents**” means, in respect of any Person, such Person’s founding act, charter, articles of incorporation and by-laws, certificate of incorporation, memorandum and articles of association, statute, or similar instrument.

“**Closing Date**” means, for any Disbursement, the Business Day on which a Disbursement is made.

“**CMT**” means, as of any date of determination of the DFC Cost of Funds, any “Constant Maturity Treasury” rate corresponding to a Specific Fixed Maturity as derived from the “Daily Treasury Yield Curve” on such date, as published by the U.S. Treasury on its website: <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield> (or any successor website).

“**Code**” means the Internal Revenue Code of 1986, 26 U.S.C. § 1 *et seq.*, as amended, and any successor statute and all rules and regulations promulgated thereunder.

“**Commercial Operation**” means the Project is capable of achieving the production of 175 MW of cadmium telluride solar modules within a thirty (30) day period.

“**Commitment**” means DFC’s commitment to lend an amount up to five hundred million Dollars (\$500,000,000), less (a) any portion thereof that has been canceled or has been deemed canceled pursuant to Section 2.06 (*Cancellation of Commitment*), and (b) any amounts disbursed pursuant to Section 2.01 (*Commitment; Disbursements; Loan*).

“**Commitment Period**” means the period beginning on the date of this Agreement and ending on March 31, 2024; *provided* that the Commitment Period shall expire automatically on the first date on which the Commitment equals zero.

“**Companies Act**” means the (Indian) Companies Act, 2013 as amended, modified, supplemented or re-enacted from time to time and shall include any applicable provision of the (Indian) Companies Act, 1956 which have not been superseded by the relevant provisions of the (Indian) Companies Act, 2013, as on the relevant date.

“**Consent**” means any registration, declaration, filing, consent, license, right, approval, authorization or permit.

“**Consolidated**” means, with respect to any Financial Statements to be provided, or any financial calculation to be made, that calculation shall be made by reference to the sum of all amounts of similar nature reported in the relevant Financial Statements of each of the entities whose accounts are to be consolidated with the accounts of the Guarantor plus or minus the consolidation adjustments customarily applied to avoid double counting of transactions among any of those entities, including the Guarantor; and the entities whose accounts are to be consolidated with the accounts of the Guarantor.

“**Control**” means (i) possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through ownership of securities or partnership or other ownership interests, by contract, or otherwise, of any Person or (ii) possession, directly or indirectly, of more than 50% of the voting or economic interests in any Person. “**Controlled**” and “**Controlling**” shall have a correlative meaning.

“**Default**” means an event or condition that, with the passage of time or the giving of notice, or both, could constitute an Event of Default.

“**Default Rate**” means (a) with respect to amounts due under a Note, an interest rate equal to the sum of (x) two percent (2.0%) *per annum* and (y) the Interest Rate set forth in such Note, and (b) with respect to any other amounts due, an interest rate equal to the sum of (x) two percent (2.0%) *per annum* and (y) the highest Interest Rate set forth in any Note then outstanding.

“**Developed Project**” means any power generating project, power generating and storage project, or storage project and, in each case, any associated facilities.

“**DFC**” has the meaning set forth in the preamble to this Agreement.

“**DFC Cost of Funds**” means [***].

“**DFC Plaintiff**” has the meaning set forth in Section 10.12 (*Waiver of Litigation Payments*).

“**Direct Owners**” means the Persons set forth in Part I of Schedule 3.01(a)(iv) (*Capitalization*).

“**Disbursement**” means any disbursement of the Loan.

“**Disbursement Request**” means a request for disbursement of the Loan substantially in the form of Exhibit B (*Form of Disbursement Request*).

“**Dispute**” means any dispute, controversy or claim arising out of, relating to, or in connection with this Agreement, the Notes or any other Financing Document to which the Borrower or DFC is a party, including any dispute, controversy or claim relating to the formation, existence, validity, interpretation, enforceability, breach, performance or termination of thereof.

“**Dollars**” or “**\$**” means U.S. dollars.

“**ECB Guidelines**” means the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, and the circulars issued thereunder from time to time including the Master Direction — External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 and the Master Direction on Reporting under Foreign Exchange Management Act, 1999 dated January 1, 2016, issued by the RBI, each as amended and/or updated and/or replaced by the RBI from time to time.

“**ECGC**” means the Export Credit Guarantee Corporation of India or its successor.

“**ERISA**” shall mean the U.S. Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended and in effect from time to time, and all rules and regulations promulgated thereunder.

“**ERISA Affiliate**” shall mean any Person that is treated as a single employer with the Borrower under § 414 of the Code or is under common control with the Borrower under § 4001 of ERISA.

“**Event of Default**” means the events of default set forth in Section 9.01 (*Events of Default*), the Schedule Y Events of Default and the Schedule Z Events of Default.

“**Event of Loss**” means, with respect to any property of the Borrower, any loss of, destruction of, or damage to, such property (including any such loss, destruction or damage resulting from an act of political violence), whether occurring as a single event or a series of events.

“**Excluded Claim**” means any dispute, controversy or claim (including any counterclaim, defense or set-off) against DFC, the United States of America, or any instrumentality or agency of the United States of America sounding in tort or other non-contractual basis for liability.

“**External Indebtedness**” means all indebtedness which (i) is denominated or payable (or, at the option of the payee, creditor or holder thereof, may be payable) in a currency other than the currency of the Project Country and (ii) was not originally incurred or assumed under the agreement or instrument made with or issued to creditors

substantially all of whom were residents of the Project Country or entities having their head office or principal place of business within the territory of the Project Country.

“**Expected Commercial Operation Date**” means June 30, 2024, [***], or as otherwise agreed by DFC in writing; [***].

“**FEMA**” means the Foreign Exchange Management Act 1999 (India), including any rules, regulations, circulars and notifications issued thereunder, as amended, modified or replaced from time to time.

“**Financial Statements**” means, with respect to any Person, its quarterly or annual (as applicable) consolidating and Consolidated, as applicable, balance sheet and statements of income, retained earnings, and sources and uses of funds for such fiscal period, together with all notes thereto (with respect to annual audited financial statements only) and with comparable figures for the corresponding period of its previous Fiscal Year, each prepared in or translated into English and in Dollars in accordance with Accounting Standards; provided, the financial statements of the Borrower delivered pursuant to Section 7.01(a)(ii) (*Audited Annual Financial Statements*) and Section 7.01(b) (*Unaudited Quarterly Financial Statements and Reports*) shall be prepared in Rupees.

“**Financing Documents**” means:

- (a) this Agreement;
- (b) each Note;
- (c) the Guaranty Agreement; and
- (d) any other documents designated as such by DFC and the Borrower.

“**Fiscal Year**” means, (a) with respect to the Borrower, the period beginning on April 1 and ending on March 31 of each year, and (b) with respect to Guarantor, the period beginning on January 1 and ending on December 31 of each year.

“**GAAP**” means generally accepted accounting principles in the United States of America (as amended, supplemented or re-issued from time to time), applied on a consistent basis both as to classification of items and amounts.

“**Governmental Authority**” means (a) any national, state, county, city, town, village, municipal or local government, or any political subdivision thereof, (b) any agency, authority, instrumentality, regulatory body, court, central bank, department, commission, board, or bureau, whether civilian or military, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), or (c) a government-owned, government-run or government-controlled association, organization, business, or enterprise.

“**Grace Period**” means a period beginning on the first Closing Date and ending on the date that is [***] after the first Closing Date.

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person

securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee of Indebtedness shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Guaranteed Pension Plan**” means any “employee pension benefit plan” within the meaning of § 3(2) of ERISA which is maintained or contributed to by the Borrower or any ERISA Affiliate, the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA, other than a Multiemployer Plan.

“**Guarantor**” means First Solar, Inc., a Delaware corporation.

“**Guaranty Agreement**” means the Guaranty Agreement made by the Guarantor in favor of DFC, substantially in the form attached as Exhibit I.

“**Hedge**” means any currency purchase, cap or collar agreement, forward rate agreement, interest rate or currency future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement.

“**Hedging Policy**” means Guarantor’s Foreign Exchange Risk Management Policy dated as of October 27, 2008 and as subsequently revised.

“**IBC**” shall mean the Insolvency and Bankruptcy Code, 2016 (India) and the rules, regulations, notifications and circulars issued thereunder, as may be amended, modified or replaced from time to time.

“**Indebtedness**” means, with respect to a Person, without duplication (i) all obligations of such Person for borrowed money; (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (iii) all obligations of such Person upon which interest charges are customarily paid; (iv) all obligations of such Person under conditional sale or other title-retention agreements relating to property acquired by such Person; (v) all obligations of such Person in respect of the deferred purchase price of property or services [***]; (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed; (vii) all Guarantees by such Person of Indebtedness of others (solely to the extent that such Indebtedness is not already covered in this definition); (viii) all obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with the Accounting Standards to be capitalized on the balance sheet of the lessee; (ix) [***]; (x) [***]; (xi) the amount of all letters of credit issued for the account of such Person and, without duplication, all outstanding reimbursement obligations with respect thereto; and (xii) all obligations of such Person, contingent or otherwise, under trade or bankers’ acceptances. The Indebtedness of Borrower shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“**Indemnified Person**” has the meaning set forth in Section 10.09 (*Indemnity*).

“**Indian Accounting Standards**” means the Indian Accounting Standards as required under the Companies Act, 2013.

“**Information Utilities**” means the persons registered as information utilities with the Insolvency and Bankruptcy Board of India under the provisions of the IBC.

“**Intellectual Property**” means any patents, trademarks, service marks, designs, business and trade names, copyrights, database rights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets in which a Person may from time to time have an interest.

“**Intercompany Loan Agreement**” means the loan agreement between the Borrower and First Solar FE Holdings Pte. Ltd., dated as of August 2, 2021, pursuant to which First Solar FE Holdings Pte. Ltd. shall have agreed to make an intercompany loan to the Borrower in an amount equal to [***].

“**Intercompany Loans**” means the aggregate amount outstanding from time to time under the Intercompany Loan Agreement and any other agreement for the making of intercompany loans to the Borrower between the Borrower and one or more Affiliates of the Borrower considered a “related party” of the Borrower as defined under the IBC.

“**Interest Payment Date**” means the 8th day of each February and August after the date hereof until the Loan and all amounts due hereunder or under the Notes are paid in full.

“**Interest Rate**” means the sum of 1.75% plus the DFC Cost of Funds, expressed as a rate *per annum* accruing on a daily basis each day on principal amounts outstanding.

“**Interpolated Rate**” means [***].

“**IU Filing**” means any filing with the Information Utilities in the manner required by the IBC relating to the Loan including changes in the terms and conditions of the Loan, occurrence of a Default, or such other particulars as may be required to be submitted by a financial creditor to the Information Utilities under the IBC.

“**Lien**” means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Litigation Payment**” has the meaning set forth in Section 10.12 (*Waiver of Litigation Payments*).

“**Loan**” means the loan specified in Section 2.01(a) (*Commitment*) or, as the context requires its principal amount from time to time outstanding.

“**Loss**” has the meaning set forth in Section 10.09 (*Indemnity*).

“**Luz del Norte Financing**” means the financing under (a) that certain Amended and Restated Common Terms Agreement, dated as of February 27, 2017, among Parque Solar Fotovoltaico Luz del Norte SpA, DFC (as successor to Overseas Private Investment Corporation), and International Finance Corporation; and (b) the related “Financing Documents” as defined therein.

“**Material Adverse Effect**” means a material adverse effect on:

(a) (i) except with respect to Section 9.01(q) (*Material Adverse Effect Default*), the business, operations, condition (financial or otherwise) and property of the Borrower or the Guarantor, [***], and (ii) with respect to Section 9.01(q) (*Material Adverse Effect Default*), the business, operations, condition (financial or otherwise) and property of the Guarantor, [***];

(b) the ability of the Borrower or the Guarantor to perform its payment obligations or other material obligations under any of the Financing Documents;

(c) the validity or enforceability of any material provision of any Financing Document; or

(d) the rights and remedies of DFC under any of the Financing Documents.

“**Maturity Date**” has the meaning set forth in Section 2.03 (*Repayment of the Loan*).

“**Multiemployer Plan**” means any multiemployer plan within the meaning of § 3(37) or § 4001(a)(3) of ERISA which is maintained or contributed to by the Borrower or any ERISA Affiliate and subject to Title IV of ERISA.

“**Non-Recourse Project Financing**” means, with respect to any Subsidiary of the Guarantor, any Indebtedness for borrowed money under an agreement entered into by such Subsidiary on a non-recourse project finance basis that (a) is incurred by such Subsidiary as obligor under the Indebtedness, (b) has no recourse to the Guarantor or any other Subsidiary of the Guarantor (other than such Subsidiary incurring such Indebtedness for borrowed money) and (c) is for the purpose of financing the development, construction, commissioning or operation of a Developed Project.

“**Note**” means any promissory note issued by the Borrower pursuant to this Agreement substantially in the form of Exhibit A (*Form of Promissory Note*).

“**Notice of Arbitration**” means the written notice issued by an Arbitration Party to the Administrator and at the same time to the other Arbitration Party, referring a Dispute to arbitration pursuant to Section 9.03 (*Arbitration*).

“**PBGC**” means the U.S. Pension Benefit Guaranty Corporation created by § 4002 of ERISA and any successor entity or entities having similar responsibilities.

“**Permitted Indebtedness**” means:

- (a) the Loan;
- (b) the Intercompany Loans;
- (c) Indebtedness consisting of trade credit from suppliers of goods or services incurred in the ordinary course of business in an aggregate amount not to exceed [***] and on terms requiring payment in full in not more than ninety (90) days;
- (d) the Hedges effected and maintained in accordance with the Hedging Policy;
- (e) Indebtedness consisting of bank guarantees and letters of credit supporting the Project and a working capital loan facility, in an aggregate amount not to exceed [***] or, if greater than such amount, subject to restrictions and conditions acceptable to DFC;
- (f) other Indebtedness in an aggregate amount not to exceed [***] or, if greater than such amount, subject to restrictions and conditions acceptable to DFC; and
- (g) Indebtedness incurred with respect to the extension, renewal or refinancing of such Indebtedness where the principal amount of the original Indebtedness prior to the extension, renewal or refinancing does not increase.

“**Permitted Investments**” means:

- (a) accounts receivable created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Borrower;
- (b) cash and cash equivalents, including amounts in checking, savings, or similar bank accounts;

(c) investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(d) loans and advances to officers and employees for moving, relocation and travel expenses and other similar expenditures, in each case in the ordinary course of business in an aggregate amount not to exceed the equivalent of [***] at any time (determined without regard to any write-downs or write-offs of such loans and advances);

(e) promissory notes and other non-cash consideration received in connection with any asset sale not prohibited by Section 8.03 (*No Sale of Assets; Mergers; Subsidiaries*);

(f) advances in the form of a prepayment of expenses to vendors, suppliers and trade creditors, so long as such expenses were incurred in the ordinary course of business of the Borrower; and

(g) other loans, advances and other investments to or in a Person in an aggregate amount for all loans, advances and other investments made pursuant to this clause (g) (determined without regard to any write-downs or write-offs thereof), net of cash repayments of principal in the case of loans, sale proceeds in the case of investments in the form of debt instruments and cash equity returns (whether as a distribution, dividend, redemption or sale) in the case of equity investments, not to exceed the equivalent of [***].

“**Permitted Liens**” means:

(a) tax, mechanic’s, worker’s or other like Liens arising by mandatory provision of law securing obligations incurred in the ordinary course of business that are (i) not yet overdue or (ii) that are being contested or litigated in good faith and for which adequate reserves have been made in accordance with Accounting Standards;

(b) Liens, pledges or deposits under worker’s compensation, unemployment insurance or other social security legislation;

(c) easements, rights-of-way, restrictions and other similar Liens incurred in the ordinary course of business and encumbrances consisting of zoning restrictions, licenses, or similar restrictions on the use of property or minor imperfections in title that could not reasonably be expected to have a Material Adverse Effect;

(d) Liens securing bank guarantees and letters of credit supporting the Project and a working capital loan facility, in an aggregate amount not to exceed [***] or, if greater than such amount, subject to restrictions and conditions acceptable to DFC; and

(e) any Lien securing an extension, renewal or refinancing of the original Indebtedness secured by such Liens; *provided* that (x) such Lien is created over the assets that secured such Indebtedness and (y) the principal amount of Indebtedness secured by the Lien prior to such extension, renewal or refinancing does not increase; and

(f) Liens securing amounts payable to suppliers of goods or services incurred in the ordinary course of business in an aggregate amount not to exceed [***].

“**Person**” means an individual, a legal entity, including, a partnership, a joint venture, a corporation, a trust and an unincorporated organization, and a government or any department or agency thereof.

“**Principal Installment**” has the meaning set forth in Section 2.03 (*Repayment of the Loan*).

“**Principal Repayment Date**” means each Interest Payment Date to occur beginning with the first Interest Payment Date to occur after the expiration of the Grace Period and continuing until the Loan and all amounts due hereunder or under the Notes are paid in full.

“**Project**” means the cadmium telluride solar module manufacturing facility with an expected final nameplate capacity of approximately 3.3 GW per annum at the SIPCOT Industrial Park, Pillaipakkam located in the State of Tamil Nadu in the Republic of India.

“**Project Country**” means the Republic of India.

“**Qualified Public Company Shareholders**” means each Person that holds, directly or indirectly, shares in a company, which shares are not restricted or closely held, but are freely available to the public for trading on any national securities exchange approved by or registered with the competent securities regulator of the relevant country.

“**RBI**” means the Reserve Bank of India, constituted under the Reserve Bank of India Act, 1934.

“**Repayment Schedule**” means the repayment schedule attached to each Note.

“**Rules**” means the International Arbitration Rules of the American Arbitration Association in effect as of the date of the Notice of Arbitration, except as modified by Section 9.03 (*Arbitration*) and Schedule 9.03 (*Arbitration Provisions*) or as may be modified by mutual agreement of the Arbitration Parties.

“**Rupees**” means Indian rupees.

“**Schedule Y Event of Default**” means any of the events or circumstances set forth in Part F (*Events of Default*) of Schedule Y (*Office of Development Policy Requirements*).

“**Schedule Z Event of Default**” means any of the events or circumstances set forth in Part E (*Events of Default*) of Schedule Z (*DFC Statutory and Policy Requirements*).

“**Significant Loss**” means one Event of Loss or a related series of Events of Loss affecting [***] of the Project, calculated based on the then-current total replacement value of the Project (excluding any solar photovoltaic modules manufactured by the Borrower at the Project).

“**Specific Fixed Maturity**” means [***].

“**Sponsor Cash**” means [***].

“**Sponsor Cash Ratio**” means [***].

“**Subsidiary**” means, with respect to any Person, any entity Controlled by such Person.

“**Swap Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided*, that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Guarantor, any Subsidiary thereof or the Borrower shall be a “Swap Agreement”.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Taxes.

“**Tax Deduction**” means deduction or withholding for or on account of Taxes from a payment under a Financing Document.

“**Taxes**” means all taxes, charges, fees, levies or other assessments, including without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, value added, turnover, transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp duties, occupation, property or other taxes, customs duties, fees, assessments or charges of any kind whatsoever, together with any interest and any

penalties, additions to tax or additional amounts imposed by any taxing authority and any political subdivision, instrumentality, agency or similar body of any taxing authority.

“**Term**” means a period not to exceed seven (7) years beginning on the first Closing Date.

“**U.S.**” means the United States of America.

“**U.S. Government**” means the government of the United States of America and its agencies and instrumentalities.

“**WALL**” means [***].

2. **Rules of Interpretation.**

In this Agreement, including Exhibits and Schedules hereto, unless otherwise indicated or required by the context: (a) reference to and the definition of any document (including this Agreement) shall be deemed a reference to such document as it may be amended, supplemented, revised, or modified from time to time; (b) all references to an “Article”, “Annex”, “Section”, “Schedule” or “Exhibit” are to an Article or Section of this Agreement or to an Annex, Exhibit or Schedule attached thereto and shall be deemed to have been made a part thereof; (c) the table of contents and article and section headings and other captions are for the purpose of reference only and do not limit or affect the meaning of the terms and provisions thereof; (d) defined terms in the singular include the plural and vice versa, and the masculine, feminine and neuter gender include all genders; (e) accounting terms not defined in this Schedule X have the meanings given to them under the Accounting Standards; (f) the words “hereof”, “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement; (g) the words “include”, “includes” and “including” mean include, includes and including “without limitation” and “without limitation by specification”; (h) terms capitalized for other than grammatical purposes that are defined in (i) the preamble, (ii) the recitals, or (iii) the Sections of this Agreement have the meanings ascribed to them therein; (i) phrases such as “satisfactory to DFC”, “in such manner as DFC may determine”, “in DFC’s determination”, “to DFC’s satisfaction”, “acceptable to DFC”, “at DFC’s election” and phrases of similar import authorize and permit DFC to approve, disapprove, act or decline to act in its sole discretion; and (j) the words “reasonable”, “reasonably”, “unreasonably” and words of similar import, when applied to DFC’s satisfaction, acceptance, determination, consent, discretion or approval, take into account any special consideration affecting decisions of DFC in its capacity as a governmental entity or its responsibilities as such and are based on its policies, practices and procedures, and law and regulations applicable to it.

OFFICE OF DEVELOPMENT POLICY REQUIREMENTS

PART A. DEFINITIONS.

“**Applicable Standards**” means:

- (a) IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts;
- (b) IFC Performance Standard 2: Labor and Working Conditions;
- (c) IFC Performance Standard 3: Resource Efficiency and Pollution Prevention;
- (d) IFC Performance Standard 4: Community Health, Safety, and Security; and
- (e) the World Bank Group Environmental, Health, and Safety General Guidelines (April 30, 2007).

“**Contractor**” means a contractor or sub-contractor that is a party to a contract related to the development, construction or operation of the Project.

“**Contractor Non-Compliance**” means any non-compliance by a Contractor with the Environmental, Social and Worker Covenants set forth in sub-sections (b)-(d) of Part E (*Covenants*) of this Schedule Y.

“**Development Outcomes Survey**” means the annual Development Outcomes Survey (form DFC-008), which the Borrower shall complete pursuant to instructions provided by DFC and submit via DFC’s online forms portal.

“**Environmental and Social Action Plan**” means the environmental, social and workers’ rights action plan set forth in Part G (*Environmental and Social Action Plan*) of this Schedule Y.

“**Environmental and Social Requirements**” means the Applicable Standards, the Environmental and Social Action Plan and the applicable provisions of the ESPP.

“**ESPP**” means the DFC Environmental and Social Policy and Procedures dated as of July 2020, which is available on DFC’s website at <https://www.dfc.gov/what-we-offer/eligibility/our-investment-policies>, as the same may be revised and supplemented by DFC from time to time.

“**IFC**” means the International Finance Corporation, a member of the World Bank Group.

“**Performance Standards**” means the IFC Performance Standards (January 1, 2012).

“**Results Table**” means the table attached to this Schedule Y as Appendix 1.

“**Withhold Release Order**” means a withhold release order issued by the U.S. Customs and Border Protection pursuant to Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307), as amended, and any successor statute and all rules and regulations promulgated thereunder, to prevent merchandise produced in whole or in part in a foreign country using forced labor from being imported into the United States.

“**Workers**” means, collectively, individuals that are employed directly by the Borrower or any Contractor.

PART B. REPRESENTATIONS AND WARRANTIES.

The Borrower represents and warrants to DFC that:

(a) The Borrower has duly complied, and its business, operations, and assets, and the Project, are in compliance, with all Applicable Laws regarding the environment, health and safety and social performance. With respect to air emissions, discharges to surface water or ground water, noise emissions, solid or liquid waste disposal, the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, or other environment, health and safety and social performance matters, the Borrower (i) has been issued and will maintain all Consents required [***], (ii) has received no [***] complaint, order, directive, claim, citation or notice by any Governmental Authority, and (iii) has received no [***] complaint or claim from any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

(b) The Borrower, the Borrower's business, operations and assets and the Project are each in compliance with the Environmental and Social Requirements.

(c) Neither the Borrower nor solar panels manufactured by the Borrower are the subject of a Withhold Release Order issued by U.S. Customs and Border Protection.

PART C. CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.

The Borrower shall have satisfied the applicable conditions specified in the Environmental and Social Action Plan

PART D. CONDITIONS PRECEDENT TO EACH DISBURSEMENT.

The Borrower shall be in compliance with the Environmental and Social Requirements and shall have satisfied the applicable conditions specified in the Environmental and Social Action Plan.

PART E. COVENANTS.

Environmental, Social, Worker and Economic Effects Covenants

(a) The Borrower shall implement and comply at all times with the Environmental and Social Action Plan. The Borrower shall not amend the Environmental and Social Action Plans without DFC's prior written consent.

(b) The Borrower shall, and shall ensure that each Contractor shall, comply with, and shall conduct its business and operations, and maintain its assets, equipment, property, leaseholds and other facilities in compliance with the provisions of (i) the Environmental and Social Requirements, and (ii) all Applicable Laws, environmental performance requirements and requirements related to healthy and safe work environments. The Borrower shall, and shall ensure that each Contractor shall, maintain all required Consents relating to: (A) air emissions, (B) discharges to surface water or ground water, (C) noise emissions, (D) solid or liquid waste disposal, (E) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes and (F) other environment, health and safety and social performance matters.

(c) Subject to sub-section (d) of this Part E, the Borrower shall, and shall ensure that each Contractor shall:

(i) not take any actions to prevent Workers from lawfully exercising their right of association and their right to organize and bargain collectively, or take any actions or otherwise interfere with, coerce or penalize, on the basis of the right of association or on the basis of organization and collective bargaining activities or membership, that may result in any form of retaliation, including, but not limited to, the termination, suspension, demotion, blacklisting or transfer of any Worker by the Borrower, or any Contractor, or by an officer, agent or representative thereof;

(ii) observe all Applicable Laws relating to a minimum age for employment of children and acceptable conditions of work with respect to hours of work, occupational health and safety, minimum wages, and pay to Workers all wages, including all legally-mandated bonus pay and premium pay for overtime work, in full, in legal tender, and in a timely fashion, except when Workers have agreed otherwise;

(iii) not use forced or compulsory labor, including, but not limited to, any form of slavery or bonded labor or the worst forms of child labor (as defined in section 507 of the Trade Act of 1974, 19 U.S.C. § 2467, as amended);

(iv) not employ persons, formally or informally, (A) under the age of eighteen (18) for any work that is economically exploitative, is likely to be hazardous or to interfere with the person's education or is likely to be harmful to the person's health or development, (B) under the age of fifteen (15) for general work or (C) in a manner constituting the worst forms of child labor (as defined in section 507 of the Trade Act of 1974, 19 U.S.C. § 2467, as amended);

(v) not make employment decisions or discriminate with respect to aspects of the employment relationship on the basis of personal characteristics unrelated to inherent job requirements, including gender, race, religion, nationality, political opinion or social or ethnic origin;

(vi) explain, document and make available in writing (and orally, where appropriate) to each Worker, information regarding all of their working conditions and terms of employment, including their entitlement to wages and any benefits and the Worker Rights Requirements, prior to the later of [***]; and

(vii) ensure that Workers have the right to remove themselves from hazardous situations without jeopardizing their continued employment.

(d) Notwithstanding sub-section (c) above, if any Applicable Law or collective bargaining agreement imposes a requirement that is more protective of worker rights than any of the foregoing requirements, the Borrower shall, and shall ensure that each Contractor shall, observe such Applicable Law or collective bargaining agreement. The Borrower and the Contractors shall not be responsible for any non-compliance or Contractor Non-Compliance with sub-section (c) of this Part E resulting from the actions of a government.

(e) The Borrower shall notify DFC immediately and in no event later than [***], of any accident associated with the Project that results in loss of life or that has or could reasonably be foreseen to have a material adverse impact on the environment. The Borrower shall submit to DFC within [***] after such occurrence of such event a summary report thereof.

(f) If information concerning any non-compliance with sub-sections (a) through (e) above or any Contractor Non-Compliance comes to the attention of a responsible officer of the Borrower, the Borrower shall give prompt notice thereof to DFC by email to odp@dfc.gov with a copy to notices@dfc.gov. The Borrower shall use all reasonable efforts, including remediation, to cure, or to cause the Contractor to cure, or prevent the recurrence of, any such non-compliance or Contractor Non-Compliance.

(g) All plans, procedures, notices and reports required under this Schedule Y shall be delivered electronically. The electronic version should be sent to odp@dfc.gov with a copy to notices@dfc.gov.

Additional Covenants

(h) The Borrower shall not change the nature or scope of the Project.

(i) The Borrower shall, upon DFC's request upon reasonable prior notice [***], give, or cause to be given, to any representatives of DFC access during normal business hours to its business and permit them to (i) examine, copy and make extracts from any and all records and documents in the possession or subject to the control of the Borrower relating to its operations and financial affairs, (ii) inspect any of its facilities or properties and (iii) communicate with employees, agents or contractors of the Borrower who have or may have knowledge of matters with respect to which DFC seeks information.

(j) The Borrower shall deliver the Development Outcomes Survey to DFC annually no later than June 30th of each year, beginning with the first June 30th to occur after the first anniversary of the first Closing Date.

(k) The Borrower shall deliver the Results Table to DFC (i) six months after the first Closing Date, and (ii) annually no later than December 30th of each year thereafter.

PART F. EVENTS OF DEFAULT.

Each of the following events or circumstances set forth in this Part F shall constitute a “*Schedule Y Event of Default*”.

(a) Except as provided in sub-sections (b) and (c) below, the Borrower fails to comply with any covenant or provision set forth in Part E (*Covenants*) of this Schedule Y.

(b) The Borrower fails to comply with any covenant or provision in sub-sections (i), (j) or (k) of Part E (*Covenants*) of this Schedule Y and such failure continues for [***] after the occurrence thereof.

(c) Any Contractor Non-Compliance occurs, and the Borrower fails to cause the relevant Contractor to cure, or prevent the recurrence of, such Contractor Non-Compliance, and such failure continues for [***] after the first occurrence of such Contractor Non-Compliance.

(d) The Borrower or solar panels manufactured by the Borrower become the subject of a Withhold Release Order issued by U.S. Customs and Border Protection.

PART G. ENVIRONMENTAL AND SOCIAL ACTION PLAN.

Environmental and Social Action Plan (ESAP)			
Item #	Applicable Standard	Requirement	Deliverable Schedule
1	PS 1	Provide copies of the Owner’s Representative monitoring and compliance reports	[***]
2	PS 1	Provide a copy of the FSLR India environmental management system and health and safety management system for operations	[***]
3	PS 1	Provide a copy of the final organizational chart for operations	[***]
4	PS 1	Provide an Environmental Mitigation and Monitoring Plan for the Project that incorporates the environmental requirements of its operating license and the WBG EHS General Guidelines.	[***]
5	PS 1	Provide evidence that an external grievance mechanism has been established that captures all external stakeholder complaints for construction and operations in alignment with IFC PS1.	[***]
6	PS 2	Provide a copy of the FSLR India Health and Safety Plan for operations	[***]
7	PS 2	Provide copy of FSLR India’s raw material and component supplier audits and use commercially reasonable efforts to cause suppliers to implement corrective actions, where applicable, as identified in the EHS audit findings.	[***]
8	PS 2	Provide evidence of management system that addresses risk of third-party exploitive hiring practices for the India facility in the operational phase.	[***]

Environmental and Social Action Plan (ESAP)			
Item #	Applicable Standard	Requirement	Deliverable Schedule
9	PS 2	Provide employment contract template(s) for the India facility that apply to all workers at the facility (including direct and contracted workers), comply with local labor laws, and align with IFC Performance Standard 2.	[***]
10	PS 2	Provide the Human Resources Policies for the India facility. The policies should address all workers at the facility (including direct and contracted workers), comply with local labor laws, and align with IFC Performance Standard 2, including but not limited to: <ul style="list-style-type: none"> Not discouraging workers from forming or joining workers' organizations of their choosing (IFC PS2, para 14) 	[***]
11	PS2	Provide contractor management plan that addresses all aspects of IFC Performance Standard 2, including an internal grievance mechanism that is accessible to all workers of the construction phase	[***]
12	PS 2	Provide documented supply chain mapping procedures that include the identification and mitigation of relevant risks of forced and child labor and incorporates the Advanced Supplier Readiness form and Supplier Quality Audit program	[***]
13	PS 2	Provide supplier contracts/agreements for India facility that require suppliers to comply with First Solar's Supplier Quality Manual and the Responsible Business Alliance's Code of Conduct	[***]
14	PS 3	Provide copies of FSLR India's Air Quality Management Plan, Wastewater Management Plan, Hazardous Materials Management Plan, and Waste Management and Recycling Plan	[***]
15	PS 4	Provide a copy of the Life and Fire Safety Plan for the FSLR India manufacturing facility	[***]
16	PS 4	Provide a copy of the Fire Safety Certificate issued to FSLR India by local fire authority	[***]

Appendix 1 – Results Table

Project Name:	FS India Solar Ventures Private Limited
Project #:	9000115523
Country:	India

ECONOMIC GROWTH

IQ Indicator	Metric	Metric Definition	Impact Result
Jobs	Direct Jobs Supported – Operations and Maintenance (#)	[***]	
Trade Balance Effects (Import Displacement)	Product Sales (%) in India	[***]	
Factors of Production	Shipments (rated panel capacity in watts)	[***]	
Factors of Production	Production (rated panel capacity in watts)	[***]	

DFC STATUTORY AND POLICY REQUIREMENTS

PART A. DEFINITIONS.

“**Anti-Money Laundering Laws**” means (a) the Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 to 1124 (codified as amended in scattered sections of 12 U.S.C., 15 U.S.C., and 31 U.S.C.) as amended by, *inter alia*, the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (codified as amended in scattered sections of the U.S.C.), (b) the Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956 and 1957 and (c) any other law, regulation, order, decree or directive of any relevant jurisdiction having the force of law and relating to anti-money laundering.

“**Beneficial Ten Percent Owner**” means each Person, including each Direct Owner, that owns, directly or indirectly, ten percent (10%) or more of the ownership interests, including any voting or economic interests, in the Borrower, excluding any such interests held by Qualified Public Company Shareholders.

“**Convicted**” means the act of being found guilty of or legally responsible for a criminal offense, and receiving a conviction or judgment by a court of competent jurisdiction, whether by verdict or plea, and including convictions entered upon a plea of *nolo contendere*.

“**Corrupt Practices Laws**” means (a) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1 *et seq.*, and (b) any other Applicable Law relating to bribery, corruption, kick-backs or similar business practices.

“**Disclosure of Lobbying Activities**” means Form SF-LLL (*Disclosure of Lobbying Activities*) available at [https://www3.opic.gov/DFCForms/documents/Form_SFLLL - Disclosure of Lobbying Activities.pdf](https://www3.opic.gov/DFCForms/documents/Form_SFLLL_-_Disclosure_of_Lobbying_Activities.pdf) as the same may be revised and supplemented from time to time.

“**Drug Trafficking**” means any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or to assist, abet, conspire or collude with others in illicit activities, including money laundering, relating to narcotic or psychotropic drugs, precursor chemicals or other controlled substances.

“**Inverted Domestic Corporation**” means an entity formed outside of the U.S. which is treated as an inverted domestic corporation under Section 835(b) of the Homeland Security Act of 2002, 6 U.S.C. § 395(b).

“**Key Individual**” means the officers or other personnel of the Borrower and the officers or other personnel of the Guarantor, who have primary responsibility for carrying out the development, construction and operation of the Project, which as of the date of this Agreement are [***].

“**Narcotics Offense**” means a violation of, or a conspiracy to violate, any law or regulation of the U.S., a State of the U.S. or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances.

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Department of the Treasury, which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted individuals, organizations, and foreign countries and regimes.

“**OFAC Lists**” means the Specially Designated Nationals and Blocked Persons List and any other lists administered or enforced by OFAC, including, but not limited to, the Sectoral Sanctions Identifications List, the Foreign Sanctions Evaders List, the Palestinian Legislative Council List, and the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, in each case as published by OFAC from time to time.

“**Official**” means (a) an employee, officer, or representative of or any person otherwise acting in an official capacity for or on behalf of a Governmental Authority, (b) any person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any Governmental Authority, (c) a candidate for political

office, (d) an individual who holds any other official, ceremonial or other appointed or inherited position with a government or any of its agencies or (e) an officer or employee of a public international organization.

“Prohibited Payment” means the giving or making by any Person (such Person, the “Payor”) of any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to or for the use or benefit of any Official (including to or for the use or benefit of any other Person if the Payor knows, or has reasonable grounds for believing, that the other Person would use such offer, gift, payment, promise or authorization of payment for the benefit of any such Official), for the purpose of influencing any act or decision or omission of any Official in order to obtain, retain or direct business to, or to secure any improper benefit or advantage for, the Borrower or the Project, or any other Person; *provided* that any such offer, gift, payment, promise or authorization of payment shall not be considered a Prohibited Payment if it is expressly permitted by written Applicable Law.

“Sanctioned Territory” means any country or territory that is the subject or target of Sanctions.

“Sanctions” means any economic or financial sanctions, or trade embargoes or restrictive measures, implemented, administered or enforced by OFAC or any other agency or instrumentality of the U.S. Government, including through rules, regulations or directives, and any U.S. Executive Orders imposing economic or financial sanctions on any individuals, entities or foreign countries or regimes.

“Subsidiary Of An Inverted Domestic Corporation” means an entity that is more than fifty percent (50%) owned (a) directly by an Inverted Domestic Corporation, or (b) through another entity that is more than fifty percent (50%) owned by an Inverted Domestic Corporation.

PART B. REPRESENTATIONS AND WARRANTIES.

The Borrower and the Guarantor represent and warrant to DFC that:

(a) Each of the Borrower, the Guarantor, each of their respective officers, directors, employees and agents and each of the Guarantor’s other Subsidiaries and their respective officers, directors, employees and agents have complied with applicable Corrupt Practices Laws in obtaining all Consents in respect of the Borrower’s business and the Project and have conducted and are conducting the Project and the Borrower’s business in compliance with applicable Corrupt Practices Laws. The Borrower, the Guarantor and each other Subsidiary of the Guarantor that has sought consents for the Project have internal management, compliance policies and procedures, and accounting practices and controls that are sufficient to (i) provide reasonable assurances of compliance with applicable Corrupt Practices Laws and the prevention of Prohibited Payments and (ii) ensure that each of the Borrower, the Guarantor and each of the Guarantor’s other Subsidiaries does not provide material or financial support for terrorism, drug trafficking or human trafficking, or orders or otherwise directs serious or gross violations of human rights. None of the Borrower, the Guarantor or any other Subsidiary of the Guarantor or any Person acting on behalf of any of them has made any Prohibited Payment.

(b) Each of the Borrower, the Guarantor and each other entity owned or controlled by the Guarantor is in compliance with the applicable requirements of (i) the Anti-Money Laundering Laws, (ii) Sanctions and (iii) all other applicable export control, and anti-boycott and sanctions laws relating to its business and facilities.

(c) None of the Borrower, the Guarantor, and any Direct Owner, any Beneficial Owner nor any other Subsidiary of the Guarantor has taken or knowingly agreed to take actions within the past three (3) years, which demonstrate or otherwise evidence intent to comply with, further or support any boycott in violation of Section 1773(a) of the Export Control Reform Act of 2018, 58 U.S.C. § 4842(a) (subtitle B of title XVII of Public Law 115–232).

(d) None of (i) the Borrower, its directors or members of its senior management, (ii) the Guarantor, its directors or members of its senior management, (iii) the Direct Owners, (iv) the Beneficial Owners, (v) any other Subsidiary of the Guarantor or (vi) [***], any of the Borrower’s, the Guarantor’s or any of the Guarantor’s other Subsidiaries’ employees, agents or representatives is a Person that is or is owned or controlled by Persons that are included in any OFAC List or otherwise the subject or target of Sanctions.

(e) No event has occurred and no condition exists that is likely to result in the debarment or suspension of the Borrower, the Guarantor or any other Subsidiary of the Guarantor from contracting with the U.S. government or any agency or instrumentality thereof, and none of the Borrower, the Guarantor nor any other Subsidiary of the Guarantor is now nor has been subject to any such debarment or suspension.

(f) None of the Borrower, the Guarantor nor any other Subsidiary of the Guarantor is an Inverted Domestic Corporation or a Subsidiary Of An Inverted Domestic Corporation.

PART C. CONDITION PRECEDENT TO FIRST DISBURSEMENT

(a) DFC shall have received a certificate, in the form of Exhibit G (*Narcotics Offense and Drug Trafficking Certification*), from each Key Individual.

PART D. COVENANTS.

(a) Each of the Borrower and the Guarantor shall, and the Guarantor shall ensure that each other Subsidiary of the Guarantor shall, comply with and conduct its business in compliance with the applicable requirements of (i) all Corrupt Practices Laws, (ii) the Anti-Money Laundering Laws, (iii) Sanctions and (iv) all other applicable export control, anti-boycott and sanctions laws relating to its business and facilities.

(b) Each of the Borrower and the Guarantor shall, and the Guarantor shall ensure that each other Subsidiary of the Guarantor shall, maintain internal management, compliance policies and procedures and accounting practices and controls that are sufficient to (i) provide reasonable assurances of compliance with applicable Corrupt Practices Laws and the prevention of Prohibited Payments, and (ii) ensure that none of the Borrower, the Guarantor nor any other Subsidiary of the Guarantor provides material or financial support for terrorism, drug trafficking or human trafficking, or orders or otherwise directs serious or gross violations of human rights.

(c) None of (i) the Borrower, its directors or members of its senior management, (ii) the Guarantor, its directors or members of its senior management, (iii) the Direct Owners, (iv) the Beneficial Owners, (v) any other Subsidiary of the Guarantor or (vi) [***], the Borrower's, the Guarantors or any of the Guarantor's other Subsidiaries' employees, agents or representatives shall be a Person that is, or is owned or controlled by Persons that are, included in any OFAC List or otherwise the subject or target of Sanctions.

(d) Each of the Borrower and the Guarantor shall not, and each such Person shall ensure that none of its respective directors, officers, employees, affiliates, agents or Persons acting on its behalf will, and the Guarantor shall ensure that none of its other Subsidiaries nor any of such Subsidiaries' directors, officers, employees, affiliates, agents or Persons acting on its or their behalf will, in each case, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of proceeds of the Loan to fund any trade, business or other activities (i) involving or for the benefit of any Person included in any OFAC List or otherwise the subject or target of Sanctions, (ii) in any country or territory that is a Sanctioned Territory or (iii) that could result in any Person (including DFC) being in breach of Sanctions, becoming included in any OFAC List, or otherwise the subject or target of Sanctions.

(e) Neither the Borrower, the Guarantor, any other Subsidiary of the Guarantor nor any Person acting on behalf of the Borrower, the Guarantor or any other Subsidiary of the Guarantor shall make any Prohibited Payment.

(f) Each of the Borrower and the Guarantor shall not, and the Guarantor shall ensure that each other Subsidiary of the Guarantor shall not, use the proceeds of the Loan in a manner or for a purpose that would violate applicable Corrupt Practices Laws.

(g) Each of the Borrower and the Guarantor shall not, and the Guarantor shall ensure that each other Subsidiary of the Guarantor shall not, use the proceeds of the Loan or any other federally appropriated funds to pay any Person for the purpose of influencing, or attempting to influence, (i) an officer or employee of any U.S. government agency, (ii) a member of the U.S. Congress, (iii) an officer or employee of the U.S. Congress or (iv) an employee of a member of the U.S. Congress, in connection with the Loan or any other federal action, including the awarding of any federal contract, the making of any federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement, [***].

(h) If the Borrower, the Guarantor or any other Subsidiary of the Guarantor has used or will use non-federally appropriated funds to pay any Person for the purpose of influencing, or attempting to influence, (i) an officer or employee of any U.S. government agency, (ii) a member of the U.S. Congress, (iii) an officer or employee of the U.S. Congress or (iv) an employee of a member of the U.S. Congress, in connection with this Agreement, the Borrower shall disclose the name of any registrant under the Federal Agency Anti-Lobbying Act, 31 U.S.C. § 1352, who has made lobbying contacts on behalf of the Borrower or a Subsidiary of the Guarantor with regard to this Agreement by promptly submitting to DFC a Disclosure of Lobbying Activities. If any material change to the disclosures in the Disclosure of Lobbying Activities occurs, then the Borrower shall submit to DFC an updated Disclosure of Lobbying Activities no later than the last day of the calendar quarter in which the material change occurred.

(i) The Borrower shall ensure that the foregoing clauses (g) and (h) are included in any contract with a Contractor. The Borrower shall ensure that any disclosures made by the Contractor are promptly sent to DFC by submission to DFC of a Disclosure of Lobbying Activities.

PART E. EVENTS OF DEFAULT.

Each of the following events or circumstances set forth in this Part E shall constitute an Event of Default.

(a) Any Person fails to comply with any covenant or provision set forth in Part D (*Covenants*) of this Schedule Z.

(b) Any Person, other than the Beneficial Ten Percent Owners set forth in Part I or Part II of Schedule 3.01(a)(iv) (*Capitalization*), becomes a Beneficial Ten Percent Owner of the Borrower without the prior written consent of DFC.

(c) A foreign government or group of foreign governments, or any Person that is Controlled by a foreign government or by a group of foreign governments, Controls the Borrower.

(d) The Borrower or any Key Individual is Convicted of a Narcotics Offense or Drug Trafficking.

WIRE TRANSFER INSTRUCTIONS FOR REMITTANCE OF PAYMENTS TO DFC

[Omitted]

CAPITALIZATION

[Omitted]

TAX NOTICES AND LIENS

[Omitted]

CONSENTS

[Omitted]

ARBITRATION PROVISIONS

[Omitted]

FORM OF PROMISSORY NOTE

[Omitted]

FORM OF DISBURSEMENT REQUEST

[Omitted]

FORM OF AUTHORIZATION CERTIFICATE OF THE BORROWER

[Omitted]

FORM OF AUTHORIZATION CERTIFICATE OF THE GUARANTOR

[Omitted]

FORM OF CLOSING CERTIFICATE

[Omitted]

FORM OF COMPLIANCE CERTIFICATE

[Omitted]

FORM OF LOAN PROCEEDS CERTIFICATE

[Omitted]

FORM OF NARCOTICS OFFENSE AND DRUG TRAFFICKING CERTIFICATION

[Omitted]

FORM OF CONSTRUCTION PROGRESS REPORT

[Omitted]

FORM OF GUARANTY AGREEMENT

[Omitted]

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 15 U.S.C. SECTION 7241, AS
ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark R. Widmar, certify that:

- (1) I have reviewed the Quarterly Report on Form 10-Q of First Solar, Inc., a Delaware corporation, for the period ended June 30, 2022, as filed with the Securities and Exchange Commission;
 - (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 - (3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for, the periods presented in this report;
 - (4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 - (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.
-

July 28, 2022

By: /s/ MARK R. WIDMAR
Name: Mark R. Widmar
Title: Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 15 U.S.C. SECTION 7241, AS
ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Alexander R. Bradley, certify that:

- (1) I have reviewed the Quarterly Report on Form 10-Q of First Solar, Inc., a Delaware corporation, for the period ended June 30, 2022, as filed with the Securities and Exchange Commission;
 - (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 - (3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for, the periods presented in this report;
 - (4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 - (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.
-

July 28, 2022

By: /s/ ALEXANDER R. BRADLEY
Name: Alexander R. Bradley
Title: Chief Financial Officer

**CERTIFICATION OF
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of First Solar, Inc., a Delaware corporation, for the period ended June 30, 2022, as filed with the Securities and Exchange Commission, each of the undersigned officers of First Solar, Inc. certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his respective knowledge:

- (1) the quarterly report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of First Solar, Inc. for the periods presented therein

July 28, 2022

By: /s/ MARK R. WIDMAR
Name: Mark R. Widmar
Title: Chief Executive Officer

July 28, 2022

By: /s/ ALEXANDER R. BRADLEY
Name: Alexander R. Bradley
Title: Chief Financial Officer