

SUNPOWER CORP  
Form PRE 14C  
March 08, 2012  
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## SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c)

of the Securities Exchange Act of 1934

(Amendment No.)

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
- Definitive Information Statement

**SUNPOWER CORPORATION**

(Name of Registrant as Specified in Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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**PRELIMINARY INFORMATION STATEMENT SUBJECT TO COMPLETION**

**NOTICE OF ACTION TAKEN PURSUANT TO**

**WRITTEN CONSENT OF STOCKHOLDERS**

**SUNPOWER CORPORATION**

**77 RIO ROBLES**

**SAN JOSE, CA 95134**

**408-240-5500**

**DATE FIRST MAILED TO STOCKHOLDERS: , 2012**

**WE ARE NOT ASKING YOU FOR A PROXY AND**

**YOU ARE REQUESTED NOT TO SEND US A PROXY.**

To the stockholders of SunPower Corporation:

On February 28, 2012, SunPower Corporation, a Delaware corporation ( **we**, **us**, **our**, **SunPower** or the **Company** ) entered into a Liquidity Support Agreement with Total S.A., a *société anonyme* organized under the laws of the Republic of France ( **Total S.A.** ), and the United States Department of Energy ( **DOE** ) (the **Liquidity Support Agreement** ), under which Total S.A. has agreed to provide the Company, or cause to be provided, liquidity under certain circumstances up to an aggregate amount of \$600 million. Contemporaneously, and in connection with the Liquidity Support Agreement, the Company also entered into a series of related agreements with Total S.A. and affiliates of Total S.A., including (i) the Compensation and Funding Agreement, by and between SunPower and Total S.A. (the **Compensation and Funding Agreement** ), (ii) the Revolving Credit and Convertible Loan Agreement, by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France and a wholly-owned indirect subsidiary of Total S.A. ( **Total G&P** ) (the **Revolving Credit and Convertible Loan Agreement** ), and (iii) the Private Placement Agreement, by and between SunPower and Total G&P (the **Private Placement Agreement** ). The Liquidity Support Agreement, Compensation and Funding Agreement, and all related transactions contemplated thereby were approved by a special committee of disinterested directors of the Board of Directors of the Company (the **Special Committee** ).

This Notice and the accompanying Information Statement are being furnished to the stockholders of SunPower to advise our stockholders that Total G&P, the holder of a majority of the issued and outstanding shares of the Company's common stock, has acted by written consent to approve the sale and issuance to Total G&P, or any designee of Total S.A., of (i) shares of our common stock in amounts set forth from time to time in a terms agreement with respect to a particular closing contemplated by the Compensation and Funding Agreement (the **Common Shares** ), (ii) a warrant to purchase 9,531,677 shares of our common stock (the **Upfront Warrant Shares** ) with an exercise price of \$7.8685 per share, subject to adjustment for customary anti-dilution and other events (the **Upfront Warrant** ), (iii) warrants to acquire a number of shares of our common stock (the **Warrant Shares** ) in amounts set forth from time to time in a terms agreement with respect to a particular closing contemplated by the Compensation and Funding Agreement or in connection with capitalization of interest pursuant to the Revolving Credit and Convertible Loan Agreement (the **Warrants** ), (iv) convertible notes, convertible into a number of shares of our common stock ( **Conversion Shares** ) in amounts determined from time to time with respect to a particular closing contemplated by the Compensation and Funding Agreement (the **Convertible Notes** and together with the Common Shares, Upfront Warrant, Upfront Warrant Shares, Warrants, Warrant Shares and Conversion Shares, the **Securities** ), and (v) such number of shares of our common stock as may be required from time to time to effect any exercise of the Upfront Warrant into Upfront Warrant Shares, Warrants into Warrant Shares and Convertible Notes into Conversion Shares or any exercise of Total G&P's remedies under the Revolving Credit and Convertible Loan Agreement (all such transactions collectively, **Private Placements** ), all effected pursuant to the terms of the Compensation and Funding Agreement, the Revolving Credit and Convertible Loan Agreement and the Private Placement Agreement. The issuance of the Securities in the Private Placements was approved by the Special Committee prior to its approval by Total G&P.

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Please review the Information Statement included with this Notice for a more complete description of this matter.

The close of business on February 28, 2012, the date that Total G&P gave its written consent, is the record date for the determination of stockholders entitled to notice of the action by written consent. Pursuant to Rule 14c-2 under the Securities Exchange Act of 1934, as amended (the **Exchange Act**), the corporate actions described above can be taken no sooner than 20 calendar days after the accompanying Information Statement is first mailed to the Company's stockholders. In addition, if a document or portion of a document other than an annual report sent to security holders pursuant to the requirements of Rule 14a-3 of the Exchange Act with respect to the same meeting or solicitation of consents or authorizations as that to which the information statement relates is incorporated by reference, the information statement must be sent to security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, at least 20 business days prior to the date the votes, consents or authorizations may be used to effect the corporate action. Since the accompanying Information Statement is first being mailed to security holders on \_\_\_\_\_, 2012, the corporate actions described therein may be taken on or after \_\_\_\_\_, 2012.

**WE ARE NOT ASKING YOU FOR A PROXY AND**

**YOU ARE REQUESTED NOT TO SEND US A PROXY.**

As the matters set forth in this Notice and accompanying Information Statement have been duly authorized and approved by the written consent of the holders of a majority of the voting power of the Company's issued and outstanding voting securities, your vote or consent is not requested or required to approve these matters. The accompanying Information Statement is provided solely for your information, and we are not, by sending this Information Statement, asking any of our security holders to vote. The accompanying Information Statement also serves as the notice required by Section 228 of the General Corporation Law of the State of Delaware of the taking of a corporate action without a meeting by less than unanimous written consent of the Company's stockholders.

By order of the Board of Directors,

Christopher Jaap  
Assistant Secretary

San Jose, California

, 2012

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**PRELIMINARY INFORMATION STATEMENT SUBJECT TO COMPLETION**

**SUNPOWER CORPORATION**

**77 RIO ROBLES**

**SAN JOSE, CA 95134**

**INFORMATION STATEMENT**

**We Are Not Asking You for a Proxy and**

**You are Requested Not To Send Us a Proxy.**

**ABOUT THIS INFORMATION STATEMENT**

**General**

On February 28, 2012, SunPower Corporation, a Delaware corporation ( **we**, **us**, **our**, **SunPower** or the **Company** ) entered into a Liquidity Support Agreement with Total S.A., a *société anonyme* organized under the laws of the Republic of France ( **Total S.A.** ), and the United States Department of Energy ( **DOE** ) (the **Liquidity Support Agreement** ), under which Total S.A. agreed to provide the Company, or cause to be provided, liquidity under certain circumstances up to an aggregate amount of \$600 million. Contemporaneously, and in connection with the Liquidity Support Agreement, the Company also entered into a series of related agreements with affiliates of Total S.A., including (i) the Compensation and Funding Agreement, by and between SunPower and Total S.A. (the **Compensation and Funding Agreement** ), (ii) the Revolving Credit and Convertible Loan Agreement, by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France and a wholly-owned indirect subsidiary of Total S.A. ( **Total G&P** ) (the **Revolving Credit and Convertible Loan Agreement** ), and (iii) the Private Placement Agreement, by and between SunPower and Total G&P (the **Private Placement Agreement** ). The Liquidity Support Agreement, Compensation and Funding Agreement, and all related transactions contemplated thereby were approved by a special committee of disinterested directors (the **Special Committee** ) of the Board of Directors (the **Board** ) of the Company.

This Information Statement is being furnished by the Company to advise our stockholders that Total G&P, the holder of a majority of the outstanding and issued shares of the Company's common stock, has acted by written consent to approve the sale and issuance to Total G&P, or any designee of Total S.A., of (i) shares of our common stock in amounts set forth from time to time in a terms agreement with respect to a particular closing contemplated by the Compensation and Funding Agreement (the **Common Shares** ), (ii) a warrant to purchase 9,531,677 shares of our common stock (the **Upfront Warrant Shares** ) with an exercise price of \$7.8685, subject to adjustment to customary anti-dilution and other events (the **Upfront Warrant** ), (iii) warrants to acquire a number of shares of our common stock (the **Warrant Shares** ) in amounts set forth from time to time in a terms agreement with respect to a particular closing contemplated by the Compensation and Funding Agreement or in connection with capitalization of interest pursuant to the Revolving Credit and Convertible Loan Agreement (the **Warrants** ), (iv) convertible notes, convertible into a number of shares of our common stock ( **Conversion Shares** ) in amounts determined from time to time with respect to a particular closing contemplated by the Compensation and Funding Agreement (the **Convertible Notes** and together with the Common Shares, Upfront Warrant, Upfront Warrant Shares, Warrants, Warrant Shares and Conversion Shares, the **Securities** ), and (v) such number of shares of our common stock as may be required from time to time to effect any exercise of the Upfront Warrant into Upfront Warrant Shares, Warrants into Warrant Shares and Convertible Notes into Conversion Shares, or any exercise of Total G&P's remedies under the Revolving Credit and Convertible Loan Agreement, all effected pursuant to terms of the Transaction Agreements (as defined below). The issuance of the Securities in the Private Placements (as defined below) was approved by the Special Committee prior to its approval by Total G&P.

This Information Statement is first being mailed on or about \_\_\_\_\_, 2012 to stockholders of record of the Company as of the close of business on February 28, 2012 (the **Record Date** ), and is being delivered to inform you of the corporate actions described herein before they take effect in accordance with Rule 14c-2 of the Securities Exchange Act of 1934, as amended (the **Exchange Act** ). You are urged to review this Information Statement for a more complete description of transactions contemplated pursuant to the Liquidity Support Agreement, the Compensation and Funding Agreement, the Revolving Credit and Convertible Loan Agreement and the Private Placement Agreement, which are collectively referred to herein as the **Private Placements**.



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None of the corporate actions described above may become effective until \_\_\_\_\_, 2012, which is at least 20 business days following the date on which this Information Statement was first sent to our stockholders.

Our principal executive offices are located at 77 Rio Robles, San Jose, California 95134, and our main telephone number is (408) 240-5500.

### **Approval of the Private Placements by Special Committee of Disinterested Directors**

On February 28, 2012, the Special Committee approved, subject to stockholder approval, the transactions contemplated by the Liquidity Support Agreement, the Upfront Warrant, the Compensation and Funding Agreement, the Revolving Credit and Loan Agreement, the Private Placement Agreement and all related agreements and forms of agreements. Summaries of these agreements and forms of agreements (collectively, the **Transaction Agreements**), and copies of the forms of the Transaction Agreements, as approved and executed by the parties, are attached hereto as **Annexes A, B, C, D, and E**, respectively. For more information regarding the approval of the Private Placements by the Special Committee, please refer to the section entitled **The Private Placements Background and Reasons for the Private Placements** below.

### **Requirement to Obtain Stockholder Approval**

We are subject to the NASDAQ Stock Market Listing Rules because our common stock is currently listed on the NASDAQ Global Select Market.

Pursuant to NASDAQ Stock Market Rule 5635(d), stockholder approval is required prior to the issuance or potential issuance by the Company of securities in connection with a transaction other than a public offering of securities equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. We cannot currently determine the total number of shares of our common stock that will be issued pursuant to the Transaction Agreements because that number depends on a number of factors, including our need for liquidity support and the market price of our common stock in the 30-trading day period leading up to any particular issuance of Warrants or common stock, or the market price of our common stock on the day before the conversion of Convertible Notes, under the Transaction Agreements. Likewise, we cannot currently determine the price at which any such common stock will be issued, because that price will also depend on the market price of our common stock in the 30-trading day period leading up to any particular issuance of Warrants or common stock, or the market price of our common stock on the day before the conversion of a Convertible Notes, under the Transaction Agreements. Due to these uncertainties, the Transaction Agreements have the potential to provide for the issuance of securities equal to 20% or more of the Company's common stock or 20% or more of its voting power for less than the greater of book or market value of the stock.

In addition, six of our eleven directors are employees or officers of Total S.A. NASDAQ has interpreted NASDAQ Stock Market Rule 5635(c), regarding stockholder approval of equity compensation plans, to apply to any sale of securities at a discount to the market value to an officer, director, employee or consultant, even if part of a larger financing transaction. NASDAQ may also view the issuance or potential issuance of the Company's common stock to Total S.A. or its affiliates as substantially equivalent to an issuance or potential issuance of common stock to our directors who are affiliated with Total S.A. and nominated by Total G&P to serve on our Board. Because common stock may be issued to Total S.A. or its affiliates at a discount to market value under the Transaction Agreements, stockholder approval of any such issuance may also be required under NASDAQ Stock Market Rule 5635(c).

As a result of the foregoing, we have determined to seek stockholder approval of the issuance of any and all Securities pursuant to the Transaction Agreements.

### **The Action by Written Consent**

On February 28, 2012, following approval of the Special Committee, Total G&P, the holder of a majority of our outstanding shares of common stock, approved by written consent the issuance of any and all Securities pursuant to the Transaction Agreements (the **Written Consent**). Pursuant to the Exchange Act, the Company may make effective the corporate actions approved by the Written Consent 20 business days after this Information Statement is first sent or given to our stockholders.

### **No Voting Required**

We are not seeking a vote, authorizations, or proxies from you. Our certificate of incorporation, bylaws and Section 228 ( **Section 228** ) of the Delaware General Corporation Law (the **DGCL** ) provide that stockholders may take action without a meeting of the stockholders and without prior notice if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding voting shares holding not less than the minimum number of votes that would be necessary to



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approve such action at a stockholders meeting. The approval by at least a majority of the outstanding voting power of our common stock is required to approve the issuance of the Securities pursuant to the Transaction Agreements for purposes of the NASDAQ Stock Market Listing Rules, and has been obtained by way of the Written Consent.

As of the Record Date, we had [\_\_\_] shares of common stock issued and outstanding and entitled to vote on the issuance of the Securities pursuant to the Transaction Agreements.

### **Notice Pursuant to Section 228**

Pursuant to Section 228, we are required to provide prompt notice of the taking of a corporate action by written consent to our stockholders who have not consented in writing to such action. This Information Statement serves as the notice required by Section 228.

### **Dissenters' Rights of Appraisal**

The DGCL does not provide dissenters' rights of appraisal to our stockholders in connection with the matters approved by the Written Consent.

## **THE PRIVATE PLACEMENTS**

### **The Companies**

*Our Company.* We are a Delaware corporation with our principal executive offices located at 77 Rio Robles, San Jose, California 95134. Our telephone number is (408) 240-5500. We are a vertically integrated solar products and services company that designs, manufactures and delivers high-performance solar electric systems worldwide for residential, commercial and utility-scale power plant customers.

On June 21, 2011, we became a majority owned subsidiary of Total G&P through a tender offer whereby Total G&P purchased approximately 60% of our former outstanding Class A common stock and Class B common stock for approximately \$1.4 billion, paid from Total S.A.'s general working capital. In connection with the tender offer, the Company and Total G&P and Total S.A. entered into several ancillary agreements including (i) a Credit Support Agreement, pursuant to which Total S.A. agreed to provide certain guarantees and otherwise assist the Company in obtaining credit from third party sources, and (ii) an Affiliation Agreement, which defines the conditions under which Total G&P may acquire further SunPower stock and sets forth various principles for the governance of SunPower during Total G&P's period of control. Pursuant to the Affiliation Agreement, Total G&P has designated, and currently has the continuing right to nominate, six of SunPower's eleven directors. On January 31, 2011, SunPower acquired Tenesol S.A., a *société anonyme* organized under the laws of the Republic of France, from Total G&P, and in connection with the acquisition, Total G&P purchased 18.6 million additional shares of SunPower common stock in a private placement for approximately \$164 million, paid from Total S.A.'s general working capital. The completion of the private placement increased Total G&P's ownership percentage of SunPower common stock to approximately 67% of the Company's outstanding common stock.

For more information about us, please visit [www.sunpowercorp.com](http://www.sunpowercorp.com). The contents of our website are not incorporated into, or otherwise to be regarded as a part of, this Information Statement.

*Total G&P.* Total G&P is a *société par actions simplifiée* incorporated in France, with principal executive offices at 2, place Jean Millier, La Défense 6, 92400 Courbevoie, France. The telephone number of Total G&P's principal executive offices is +33 (0)1 47 44 45 46. Total G&P is registered in France at the Nanterre Trade Register under the registration number 505 028 118 and is an indirect wholly-owned subsidiary of Total S.A. Total G&P is engaged in industrial, commercial, research and development projects in the energy industry in the United States, including with respect to natural gas and emerging energy technologies such as solar energy, both as a stand-alone entity and in cooperation with others. Total G&P participates in all manner of administrative, financial, securities, real estate, industrial and commercial operations including, where appropriate, participating in the creation of, or holding ownership interests in, companies engaged in the foregoing activities.

*Total S.A.* Total S.A. is a *société anonyme* incorporated in France on March 28, 1924, with principal executive offices at 2, place Jean Millier, La Défense 6, 92400 Courbevoie, France. The telephone number of Total S.A.'s principal executive offices is +33 (0)1 47 44 45 46. Total S.A. is registered in France at the Nanterre Trade Register under the registration number 542 051 180. Total S.A., together with its subsidiaries and affiliates, is the fifth largest publicly-traded integrated international oil and gas company in the world based on market capitalization, in dollars, as of December 31, 2010, and has operations in more than 130 countries and activities in every sector of the oil industry, including in oil and gas exploration, development and productions and liquid natural gas, and the refining, marketing and the trading and shipping of crude oil and



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petroleum products segments. Total S.A. also has operations in petrochemicals and fertilizers and specialty chemicals, mainly for the industrial market. In addition, Total S.A. has interests in the coal mining and power generation sectors.

### **Background and Reason for the Private Placements**

SunPower Corporation, Systems, a Delaware corporation and an indirect wholly owned subsidiary of the Company ( **SunPower Systems** ), is providing engineering, procurement and construction ( **EPC** ) services, as well as solar panels and power plant technology, to the California Valley Solar Ranch ( **CVSR** ), a 250 MW AC solar power plant that is currently under construction. SunPower Systems is performing this work under an Engineering, Procurement and Construction Agreement, dated as of September 30, 2011 (the **EPC Contract** ), between SunPower Systems, and High Plains Ranch II, LLC, a Delaware limited liability company ( **HPR II** ). HPR II is the CVSR project company sold by the Company to NRG Solar LLC in September 2011. Part of the debt financing necessary for SunPower Systems' customer, NRG Solar LLC, to pay for the construction of the CVSR project is being provided by the Federal Financing Bank in reliance on a guarantee of repayment provided by the DOE under a loan guarantee program. In late 2011, the DOE requested that the Company, as EPC contractor for the CVSR project, provide additional financial assurances to support SunPower Systems' obligations under the EPC Contract in connection with the project's loan guarantee. In response, following review and approval by the Special Committee as described below, the Company and Total S.A. entered into the Liquidity Support Agreement with the DOE, under which Total S.A. agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances up to an aggregate amount of \$600 million. The Company, Total S.A. and its affiliates entered into the remainder of the Transaction Agreements to establish the parameters for the terms of the liquidity support to be provided by Total S.A. and its affiliates, and for any liquidity injections that may be required under the Liquidity Support Agreement.

Six of our eleven directors are employees or officers of Total S.A., and the Transaction Agreements are considered related party transactions. Accordingly, our Board formed the Special Committee and delegated to it the exclusive, full and plenary power and authority of the Board to review and, if appropriate, approve the Transaction Agreements and other related agreements or any alternative liquidity support transactions. The Special Committee retained independent legal and financial advisors to assist it in evaluating the terms of the proposed Transaction Agreements. The Special Committee consulted with its legal counsel, financial advisor and SunPower's senior management in evaluating the transactions contemplated by the Transaction Agreements. Upon receiving from Total S.A. a proposal that set forth the terms upon which Total S.A. proposed to enter into the Liquidity Support Arrangements (as defined below) (the **Total Initial Proposal** ), the Special Committee met with its legal counsel and its financial advisor. During its initial meetings, the Special Committee's legal counsel informed the Special Committee of their obligations and its financial advisor indicated its preliminary views on the Total Initial Proposal. After a number of additional meetings among the Special Committee, its legal counsel and its financial advisor, the Special Committee authorized its financial advisor and SunPower's senior management to meet with Total S.A. regarding the Total Initial Proposal. Following such meeting, and after receiving further advice from its legal counsel and its financial advisor, the Special Committee authorized its financial advisor and SunPower's senior management to put forth a counterproposal reflecting specific terms defined by the Special Committee. During the next several weeks, the Special Committee met with its legal counsel, its financial advisor and SunPower's senior management on a number of occasions and directed its financial advisor and SunPower's senior management to continue negotiating with Total S.A. In addition, after being requested to do so by the Special Committee, certain members of the Special Committee held discussions and negotiated with Total S.A. regarding the final terms of the Liquidity Support Arrangements. On February 28, 2012, the Special Committee approved the Transaction Agreements and declared that the transactions contemplated thereby are fair to, and in the best interests of, the Company and its stockholders.

### **Agreements among the Company, Total S.A. and Total G&P**

The Liquidity Support Agreement, Upfront Warrant, Compensation and Funding Agreement, Revolving Credit and Convertible Loan Agreement, and Private Placement Agreement are described below in the section entitled "The Transaction Agreements."

#### *Third Amendment to Affiliation Agreement*

On April 28, 2011, we entered into an Affiliation Agreement with Total G&P (the **Affiliation Agreement** ), as amended by the Amendment to Affiliation Agreement, dated as of June 7, 2011 and the Second Amendment to Affiliation Agreement, dated as of December 23, 2011, to govern the relationship between SunPower, Total S.A. and Total G&P following the closing of the tender offer. Under the terms of the Affiliation Agreement, among other things, (i) we expanded the size of our Board to provide for a majority of Total representatives, (ii) Total S.A., Total G&P and their affiliates (the

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**Total Group** ) agreed to a standstill period during which time they were restricted from purchasing additional shares of our common stock, (iii) the approval of Total G&P as a stockholder was required in order for us to take certain actions including the incurrence of indebtedness above stated limits and certain acquisitions and dispositions, and (iv) the approval of a majority of our disinterested directors was required prior to effecting certain corporate actions.

In connection with the Liquidity Support Arrangements (as defined below), we entered into a third amendment (the **Third Amendment to Affiliation Agreement** ) to the Affiliation Agreement, which, among other things, (i) provides that Total G&P will have the right to appoint a deputy project manager for the CVSR project, subject to certain conditions, (ii) increases the number of Total Group designated directors on each of SunPower's standing or ad hoc committees of SunPower's Board of Directors to two members out of four (from one member out of three each), excluding the Audit Committee, (iii) broadens the definition of the period during which SunPower must obtain the affirmative vote or written consent of Total G&P prior to undertaking certain actions to include the period during which the Liquidity Support Arrangements are outstanding, (iv) requires the affirmative vote or written consent of Total G&P for any repurchases by SunPower of its common stock and under certain circumstances, the issuance of convertible debt, including to refinance existing convertible debt, and (v) specifies that the standstill provisions of the Affiliation Agreement do not apply to securities issued in connection with the Liquidity Support Arrangements.

The foregoing description of the Third Amendment to Affiliation Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Third Amendment to Affiliation Agreement, a copy of which is attached as Annex F to this Information Statement and is incorporated herein by reference.

## THE TRANSACTION AGREEMENTS

This section describes the material terms of the Transaction Agreements. The description in this section and elsewhere in this Information Statement is qualified in its entirety by reference to the complete text of the Transaction Agreements, copies of which are attached as Annexes A, B, C, D, and E, respectively, and are incorporated by reference into this Information Statement.

### The Liquidity Support Agreement

The Liquidity Support Agreement provides that, subject to the terms and conditions set forth therein, upon a Liquidity Support Event (as defined below), Total S.A. will make available, as of the date of the Liquidity Support Agreement, and provide to the Company from time to time various forms of equity, debt (both convertible and non-convertible), guarantee or other liquidity support ( **Liquidity Injections** ), as may be required to increase the amount of unrestricted cash, cash equivalents and unused borrowing capacity, and to ensure the Company's satisfaction of its financial covenants under certain third party indebtedness, up to the maximum aggregate amount of \$600 million (the **Liquidity Support Facility** ). A **Liquidity Support Event** occurs when (a) the Company's unrestricted cash and cash equivalents shown on its balance sheet plus any unused availability under any committed credit that is available to the Company ( **Reported Liquidity** ) is below \$100 million in a completed fiscal quarter, or the Company's projected liquidity measured in the same manner for the next fiscal quarter ( **Projected Liquidity** ) is below \$100 million, or (b) at any time during a fiscal quarter, the Company fails to satisfy any financial covenant under its indebtedness. Upon a Liquidity Support Event, Total S.A. is required to provide to the Company, and the Company is required to accept from Total S.A., a Liquidity Injection sufficient to cause (a) the Company's Reported Liquidity and Projected Liquidity to be at least \$100 million, or, as applicable, (b) the Company to cure any breach and satisfy the applicable financial covenant in its indebtedness.

The Liquidity Support Agreement will terminate, all outstanding guarantees issued thereunder will terminate, and all outstanding loans made thereunder will become due, upon the earliest to occur of (i) the final completion date of the CVSR project as defined under the EPC Contract, (ii) the date of December 31, 2015, as may be extended under certain circumstances as described in the EPC Contract, but not beyond December 31, 2016, (iii) the date on which all secured obligations, as defined under that certain Loan Guarantee Agreement, dated as of September 30, 2011, between the DOE and HPR II, have been paid in full and all commitments to extend credit as set forth therein in connection with the CVSR project have been terminated, and (iv) the date on which SunPower Systems terminates the EPC Contract.

The foregoing description of the Liquidity Support Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Liquidity Support Agreement, a copy of which is attached as Annex A to this Information Statement and is incorporated herein by reference.

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### **The Compensation and Funding Agreement**

In connection with the Liquidity Support Agreement, on February 28, 2012, the Company entered into a Compensation and Funding Agreement with Total S.A., pursuant to which, among other things, the Company and Total S.A. established the parameters for the terms of the Liquidity Support Facility and any Liquidity Injections that may be required to be provided by Total S.A. to the Company pursuant to the Liquidity Support Agreement (the **Liquidity Support Arrangements**). The Company has agreed in the Compensation and Funding Agreement to use commercially reasonable efforts to assist Total S.A. in the performance of its obligations under the Liquidity Support Agreement and to conduct, and to act in good faith in conducting, its affairs in a manner such that Total S.A.'s obligation under the Liquidity Support Agreement to provide Liquidity Injections will not be triggered or, if triggered, will be minimized. The Company has also agreed to use any cash provided under the facility in such a way as to minimize the need for further liquidity support.

#### *Upfront Payment Obligations*

On February 28, 2012, in consideration for Total S.A.'s agreement to enter into the Liquidity Support Agreement and for Total S.A.'s commitments set forth in the Liquidity Support Agreement, the Company issued the Upfront Warrant to Total G&P, which may be exercised to purchase 9,531,677 shares of the Company's common stock at an exercise price of \$7.8685 per share, subject to adjustment for customary anti-dilution and other events. The Upfront Warrant is exercisable at any time for seven years after its issuance, provided that, so long as at least \$25 million of the Company's existing convertible debt remains outstanding, such exercise will not cause any person, including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the beneficial owner (as such terms are defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), of more than 74.99% of the voting power of the Company's common stock at such time, because any person becoming such beneficial owner would trigger the repurchase or conversion of the Company's existing convertible debt. In addition, the Upfront Warrant is not exercisable by Total G&P until a certain period of time has elapsed after the Company has provided a copy of this Information Statement to all stockholders who did not execute a written consent.

The foregoing description of the Upfront Warrant does not purport to be complete and is qualified in its entirety by reference to the complete text of the Upfront Warrant, a copy of which is attached as Annex B to this Information Statement and is incorporated herein by reference.

#### *Ongoing Payment Obligations*

The Compensation and Funding Agreement further provides that, subject to the terms and conditions set forth therein, the Company will make certain cash payments to Total S.A. within 30 days after the end of each calendar quarter during the term of the Compensation and Funding Agreement as follows:

- (i) Quarterly payment of a commitment fee in an amount equal to 0.25% of the unused portion of the \$600 million Liquidity Support Facility as of the end of such quarter; and
- (ii) Quarterly payment of a guarantee fee in an amount equal to 2.75% per annum of the average amount of the Company's indebtedness that is guaranteed by Total S.A. pursuant to any Guaranty (as defined below) issued in accordance with the terms of the Compensation and Funding Agreement during such quarter.

In addition, any payment obligations of the Company to Total S.A. under the Compensation and Funding Agreement that are not paid when due shall accrue interest until paid in full at a rate equal to 6-month U.S. LIBOR as in effect from time to time plus 5.00% per annum.

#### *Form of Liquidity Support*

In the event that Total S.A. becomes obligated to provide a Liquidity Injection to the Company in a Liquidity Support Event pursuant to the Liquidity Support Agreement, the Compensation and Funding Agreement sets forth the form of such Liquidity Injection based on the greatest Drawn Support Amount, as defined in the Liquidity Support Agreement, that has been outstanding at any time prior to the date of determination (the **Maximum Drawn Support Amount**) at such time, as follows:

- (i) To the extent that the Maximum Drawn Support Amount at such time is equal to or less than \$60 million, the Liquidity Injection shall be, at Total S.A.'s option, in the form of a revolving, non-convertible debt facility (a **Revolving Loan**) pursuant to the terms of the Revolving Credit and Convertible Loan Agreement, a Total S.A. Guaranty (as defined below), or any other form of Liquidity Injection agreed to by the Company. In addition, at the time of funding of each such Revolving Loan, the Company will issue to or as directed by Total S.A. a Warrant, in the form of Exhibit A to the



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Compensation and Funding Agreement, that is exercisable for seven years to purchase an amount of the Company's common stock equal to 20% of the amount of such Revolving Loan divided by the volume-weighted average price for the Company's common stock for the 30 trading-day period ending on the trading day immediately preceding the date of calculation (the **30-Day VWAP**) as of the date of funding of such Revolving Loan. Notwithstanding the foregoing, the aggregate exercise price of Warrants issued in connection with Revolving Loans may not exceed 20% of the maximum aggregate amount of Revolving Loans that has been outstanding at any time under the Revolving Credit and Convertible Loan Agreement. Interest payable on the Revolving Loan shall be 6-months U.S. LIBOR plus 5% per annum when the Maximum Drawn Support Amount is equal to or less than \$60 million, 6-months U.S. LIBOR plus 7% per annum when the Maximum Drawn Support Amount is greater than \$60 million but less than or equal to \$200 million, and 6-months U.S. LIBOR plus 8% per annum when the Maximum Drawn Support Amount is greater than \$200 million.

(ii) To the extent that the Maximum Drawn Support Amount at such time is greater than \$60 million but equal to or less than \$200 million, Total S.A. may, at its sole discretion, convert any Revolving Loan into a convertible debt facility (a **Convertible Loan**), pursuant to terms of the Revolving Credit and Convertible Loan Agreement, and any future Liquidity Injections will be, at Total S.A.'s option, in the form of a Convertible Loan, a Total S.A. Guaranty (as defined below), or any other form of Liquidity Injection agreed to by the Company. Each Convertible Loan will be convertible into the Company's common stock at a conversion price equal to the amount of debt being converted, divided by the closing price of the Company's common stock on the trading day immediately preceding the conversion date at the option of Total S.A. at any time after (A) the Convertible Loan has not been repaid within 6 months, (B) the Company's debt to EBITDA ratio exceeds 3.5 to 1.0 (or for the 2012 fiscal year, 4.0 to 1.0), or (C) any time the Maximum Drawn Support Amount exceeds \$200 million. In addition, at the time of funding of each such Convertible Loan, the Company will issue to or as directed by Total S.A. a Warrant, in the form of Exhibit A to the Compensation and Funding Agreement, that is exercisable for seven years to purchase an amount of the Company's common stock equal to 25% of the amount of such Convertible Loan (if the Maximum Drawn Support Amount at such time is not in excess of \$200 million) or 35% of the amount of such Convertible Loan (to the extent that the Maximum Drawn Support Amount at such time is in excess of \$200 million), in each case, divided by the 30-Day VWAP as of the date of funding of such Convertible Loan. Notwithstanding the foregoing, the aggregate exercise price of Warrants issued in connection with Convertible Loans up to \$140 million may not exceed 25% of the maximum aggregate amount of such Convertible Loans that has been outstanding at any time under the Revolving Credit and Convertible Loan Agreement, and the aggregate exercise price of Warrants issued in connection with Convertible Loans in excess of \$140 million may not exceed 35% of the maximum aggregate amount of such Convertible Loans that has been outstanding at any time under the Revolving Credit and Convertible Loan Agreement. Interest payable on the Convertible Loan shall be 6-months U.S. LIBOR plus 7% per annum for any Convertible Loan outstanding when the Maximum Drawn Support Amount is less than or equal to \$200 million, and 6-months U.S. LIBOR plus 8% per annum when the Maximum Drawn Support Amount is greater than \$200 million.

(iii) If the Maximum Drawn Support Amount at such time exceeds \$200 million, or if the Company's debt to EBITDA ratio exceeds 3.5 to 1.0 (or, for the 2012 fiscal year, 4.0 to 1.0), the Liquidity Injection will be in the form selected by Total S.A., at its complete discretion, as an additional Revolving Loan, an additional Convertible Loan, a purchase of the equity securities of the Company, pursuant to the terms of the Private Placement Agreement, a guarantee by Total S.A. of the Company's indebtedness, pursuant to the form Guaranty set forth as Exhibit B to the Compensation and Funding Agreement (a **Guaranty**), or another form of Liquidity Injection acceptable to the applicable lender. The Company shall issue to Total S.A. Warrants in connection with additional Revolving Loans or Convertible Loans as described above. If such Liquidity Injection is in the form of purchase of equity securities, then the Company will issue to or as directed by Total S.A. a Warrant, in the form of Exhibit A to the Compensation and Funding Agreement, that is exercisable for seven years to purchase an amount of the Company's common stock equal to 25% of the amount of such Liquidity Injection divided by 30-Day VWAP as of the date of such Liquidity Injection. Any common stock sold to Total S.A. under the Private Placement Agreement will be priced at a 17% discount from the 30-Day VWAP as of the date such common stock is sold, and may be rounded up, at Total S.A.'s option, from the required amount of such Liquidity Injection to the next integral multiple of \$25 million.

No Warrants issued shall be exercisable so long as at least \$25 million of the Company's existing convertible debt remains outstanding and such exercise will cause any person, including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the beneficial owner of more than 74.99% of the voting power of the Company's common stock at such time. Loans made by Total S.A. under the Compensation and Funding Agreement shall be prepayable by the Company in agreed increments, so long as after giving effect to any such prepayment the Company's Reported Liquidity and Project Liquidity would be at least \$125 million.

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Notwithstanding the foregoing, if the incurrence of any such debt or issuance of any such Warrants or equity securities would trigger a default under the terms of any existing SunPower debt agreements in an amount greater than \$10 million, Total S.A. will have the option, in its reasonable discretion, to provide a Liquidity Injection in an alternative form so as not to cause the Company to be in breach or default of any of its debt agreements. Notwithstanding the limitations on the form of Liquidity Injections described above, in connection with an actual or potential breach by the Company of its covenants under the Revolving Credit Agreement with Credit Agricole Corporate and Investment Bank (the **Credit Agricole Facility Agreement**), Total S.A. may make Liquidity Injections in the form of equity purchases sufficient to provide the Company with an equity cure under the Credit Agricole Facility Agreement, plus up to an additional \$25 million of equity purchases. In addition to the provision of any equity cure, Total S.A. may also in such event elect to lend money to the Company, in the form of Revolving Loans or Convertible Loans as described above, in order to repay amounts owing under the Credit Agricole Facility Agreement. Notwithstanding the interest rates described above, any such debt would bear interest at a rate of LIBOR plus 4.25% per annum until September 27, 2013, and would thereafter bear interest at the rates described above, depending on the Maximum Drawn Support Amount.

If Total S.A. is required to make any payment to a lender under a Guaranty, and if the Company does not repay such payment to Total S.A. within 30 days, the amount of such payment, plus interest, shall be convertible, at Total S.A.'s option, into a Revolving Loan, a Convertible Loan or a purchase of equity pursuant to the Private Placement Agreement, in each case upon notice from Total S.A. to the Company and in each case with Warrant coverage as described above.

### *Termination*

The Compensation and Funding Agreement will remain in effect as long as (i) any obligations of the Company remain outstanding under any Revolving Credit and Convertible Loan Agreement or a Private Placement Agreement, (ii) any obligations of Total S.A. remain outstanding under any Guaranty, or (iii) Total S.A. has any obligation to provide Liquidity Injections pursuant to the Liquidity Support Agreement.

The foregoing description of the Compensation and Funding Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Compensation and Funding Agreement, a copy of which is attached as Annex C to this Information Statement and is incorporated herein by reference.

### **The Revolving Credit and Convertible Loan Agreement**

In connection with the Liquidity Support Arrangements, SunPower entered into the Revolving Credit and Convertible Term Loan Agreement with Total G&P, which establishes the terms and conditions for any Revolving Loans or Convertible Loans that may be provided to the Company pursuant to the Compensation and Funding Agreement described above. All Revolving Loans and Convertible Loans shall accrue interest as described above. All Revolving Loans shall be in an initial principal amount that is an integral multiple of \$1 million and not less than \$5 million, or the amount remaining available under the \$600 million Liquidity Support Facility. All Convertible Loans shall be in an initial principal amount that is an integral multiple of \$1 million and not less than \$10 million, or the amount remaining available under the \$600 million Liquidity Support Facility. All Revolving Loans or Convertible Loans must rank *pari passu* with the Company's existing senior indebtedness, and secured to the fullest extent permitted by the Company's debt agreements. Total G&P may demand prepayment of Revolving Loans and/or Convertible Loans, provided that after such prepayment, the Company would maintain its Reported Liquidity of at least \$150 million and would not be in default of any financial covenant under its indebtedness; after the expiration of the Compensation and Funding Agreement, Total G&P may demand prepayment without regard to these conditions.

The foregoing description of the Revolving Credit and Convertible Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Revolving Credit and Convertible Loan Agreement, a copy of which is attached as Annex D to this Information Statement and is incorporated herein by reference.

### **The Private Placement Agreement**

In connection with the Liquidity Support Arrangements, the Company and Total G&P entered into the Private Placement Agreement on February 28, 2012. Pursuant to the terms of the Private Placement Agreement, the Company will issue and sell to Total G&P, and Total G&P will purchase from the Company, the common stock or Warrants to purchase common stock with respect to each Liquidity Injection as specified by the terms of the Compensation and Funding Agreement. The number of Warrant Shares and exercise price will be calculated in accordance with the Compensation and Funding Agreement, and any common stock sold under the Private Placement Agreement will be priced at a 17% discount from the 30-Day VWAP as of the date such common stock is sold.



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The foregoing description of the Private Placement Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Private Placement Agreement, a copy of which is attached as [Annex E](#) to this Information Statement and is incorporated herein by reference.

The Transaction Agreements should not be read alone, but should instead be read in conjunction with the other information regarding SunPower, Total S.A. and Total G&P that is contained in this Information Statement, as well as in the filings that we have made and may make with the Securities and Exchange Commission (the **SEC**).

## **DESCRIPTION OF THE COMPANY S COMMON STOCK**

### **Reclassification**

On November 15, 2011, at a special meeting of stockholders, the stockholders of the Company approved a restated certificate of incorporation (the **Restated Certificate of Incorporation**) providing for the reclassification of all outstanding shares of SunPower Class A common stock, par value \$0.001 per share (the **Class A Common Stock**), and SunPower Class B common stock, par value \$0.001 per share (the **Class B Common Stock**), on a share-for-share basis into a single class of common stock, par value \$0.001 per share, with the same voting powers, preferences, rights and qualifications, limitations and restrictions as the Class A Common Stock (the **Reclassification**). Following receipt of stockholder approval at the special meeting, the Company filed the Restated Certificate of Incorporation on November 15, 2011 with the Secretary of State of the State of Delaware. The Restated Certificate of Incorporation became effective at 5 p.m. Eastern Standard Time on November 16, 2011 (the **Effective Time**).

In connection with the Reclassification, the By-laws of the Company were amended and restated to, among other things, eliminate obsolete provisions relating to the prior dual-class common stock structure. The amended and restated By-laws (the **Restated By-laws**) became effective immediately following the Effective Time of the Restated Certificate of Incorporation.

### **General**

Our authorized capital stock consists of 367,500,000 shares of common stock and 10,000,000 shares designated as preferred stock, par value \$0.001 per share. No shares of preferred stock are outstanding.

### **Common Stock**

*Voting Rights.* Subject to the preferences applicable to any preferred stock outstanding at any time, holders of common stock vote together as a single class on all matters submitted to a vote of the stockholders. Each holder of common stock is entitled to cast one vote per share held by such holder on all matters submitted to a vote of the stockholders. Generally, all matters submitted to a vote of the stockholders must be approved by a majority of the votes cast on the matter by the holders of common stock present in person or represented by proxy, voting together as a single class at a meeting at which a quorum is present, subject to any voting rights granted to holders of any outstanding shares of preferred stock.

*Conversion Rights.* Shares of common stock are not convertible into other securities of the Company.

*Dividend Rights.* Subject to preferences that may apply to shares of preferred stock outstanding at the time, the holders of outstanding shares of common stock are entitled to receive dividends out of assets legally available at the times and in the amounts that our board of directors may determine from time to time.

*No Preemptive or Redemption Rights.* Our common stock is not entitled to preemptive rights and is not subject to redemption or sinking fund provisions.

*Right to Receive Liquidation Distributions.* Upon our liquidation, dissolution or winding-up, the holders of common stock are entitled to share equally in all of our assets remaining after payment of all liabilities and the liquidation preferences of any outstanding preferred stock.

### **Preferred Stock**

Our Board is authorized, subject to limitations imposed by the DGCL, to issue up to a total of 10,000,000 shares of preferred stock in one or more series, without stockholder approval. As of November 16, 2011, no shares of preferred stock were issued or outstanding. Our board of

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directors is authorized to establish from time to time the number of shares to be included in each series, and to fix the rights, preferences and privileges of the shares of each wholly unissued series and any of its qualifications, limitations or restrictions, subject to the provisions of any series of preferred stock. Our board of

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directors is also able to increase or decrease the number of shares of any series, but not below the number of shares of that series then outstanding, without any further vote or action by the stockholders.

The Board may authorize the issuance of preferred stock with voting or conversion rights that could harm the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of the Company and might harm the market price of the common stock and the voting and other rights of the holders of common stock. The Company has no current plans to issue any shares of preferred stock.

## **Other Terms**

*Classification of Our Board of Directors.* The Restated Certificate of Incorporation and the Restated By-laws provide that our board of directors is, and will be, divided into three classes of directors, with the classes to be as nearly equal in number as possible. About one-third of the Board will be elected annually, and each member will serve a three-year term. The provision for a classified Board could prevent a party who acquires control of a majority of the outstanding voting shares from obtaining control of our Board until the second annual shareholders meeting following the date the acquirer obtains the controlling share interest. As a result, the classified Board provision may make it more difficult to obtain control of the Company.

*Calling of a Special Meeting of Stockholders by a Stockholder.* The Restated By-laws provide that stockholders may not call special meetings of the stockholders. However, the Company will call a special meeting of stockholders promptly following receipt of written notice from the Company's largest stockholder, Total G&P or any member of the Terra Group (as defined in the Affiliation Agreement) solely for the purpose of considering and voting on a proposal to effect (i) a Terra Merger (as defined in the Affiliation Agreement), to be effected pursuant to and in accordance with the terms of the Affiliation Agreement, together with any stockholder approval as is required by law in connection with such Terra Merger, or (ii) a Transferee Merger (as defined in the Affiliation Agreement) to be effected pursuant to and in accordance with the Affiliation Agreement, together with any stockholder approval as is required by law in connection with such Transferee Merger.

*Action of the Stockholders by Written Consent.* The Restated Certificate and the Restated By-laws permit action by written consent of the stockholders without a meeting for any action required to be taken at any annual or special meeting until the first time that Total S.A., and other entities controlled by Total S.A., no longer own at least fifty percent of the Company's voting securities ( **Total Stockholder Approval Period** ). The Restated Certificate of Incorporation further provides that following the Total Stockholder Approval Period, no action required or permitted to be taken at any annual or special meeting may be taken without a meeting, and the power of our stockholders to consent in writing, without a meeting, to the taking of any such action is specifically denied.

*Anti-Takeover Effects of Delaware Law.* The Company is subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. In general, those provisions prohibit a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless:

The transaction is approved by the board before the date the interested stockholder attained that status;

Upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or

On or after the date the business combination is approved by the board and authorized at a meeting of stockholders by at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines "business combination" to include the following:

Any merger or consolidation involving the corporation and the interested stockholder;

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Any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

Subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

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Any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or

The receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of a corporation and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

A Delaware corporation may opt out of this provision either with an express provision in its original certificate of incorporation or in an amendment to its certificate of incorporation or bylaws approved by its stockholders. However, we have not opted out, and do not currently intend to opt out, of this provision. The statute could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire us.

*Nasdaq Global Select Market Listing Symbol.* Our common stock is traded on the NASDAQ Global Select Market under the ticker symbol SPWR. The CUSIP number for the common stock is 867652 406.

*Transfer Agent and Registrar.* The transfer agent and registrar for the common stock is Computershare Trust Company, N.A.

*Rights Plan.* In connection with the Reclassification, the Rights Agreement we entered into with Computershare Trust Company, N.A., was amended and restated to, among other things, eliminate obsolete provisions relating to the existing dual-class common stock structure. The Rights Agreement was amended such that each of the current Class A Rights (as defined therein) and Class B Rights (as defined therein) shall become a Right to purchase Series A Junior Participating Preferred Stock, par value \$0.001 per share, of the Company having the rights and preferences set forth in the Certificate of Designation of Series A Junior Participating Preferred Stock which was filed concurrently with the Restated Certificate of Incorporation and took effect upon the effectiveness of the Restated Certificate of Incorporation. Our amended and restated Rights Agreement became effective immediately upon effectiveness of the Restated Certificate of Incorporation.

**SECURITY OWNERSHIP OF MANAGEMENT AND CERTAIN BENEFICIAL OWNERS**

The following table sets forth certain information regarding beneficial ownership of our common stock as of March 12, 2012 (except as described below) by:

Each of our directors;

Our Chief Executive Officer, Acting Chief Financial Officer, our former Chief Financial Officer, and each of the three other most highly compensated individuals who served as our executive officers at the end of our fiscal year 2011, and one other who would have been among the three most highly compensated individuals but was not serving as an executive officer at the end of our fiscal year 2011, whom we collectively refer to as our named executive officers ;

Our directors and executive officers as a group; and

Each person (including any group as that term is used in Section 13(d)(3) of the Securities Exchange Act) who is known by us to beneficially own more than 5% of any class of our common stock.

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Applicable beneficial ownership percentages listed below are based on [\_\_\_\_\_] shares of common stock outstanding as of March 12, 2012. The business address for each of our directors and executive officers is our corporate headquarters at 77 Rio Robles, San Jose, California 95134.

<b>Directors and Named Executive Officers</b>	<b>Common Stock Beneficially Owned (1)</b>	
	<b>Shares</b>	<b>%</b>
W. Steve Albrecht		
Dennis V. Arriola		
Betsy S. Atkins		
Charles Boynton		
Arnaud Chaperon		
Bernard Clement		
Denis Giorno		
Thomas R. McDaniel		
Marty T. Neese		
Jean Marc Otero del Val		
James S. Pape		
Douglas J. Richards		
Jerome Schmitt		
Humbert de Wendel		
Howard J. Wenger		
Thomas H. Werner		
Pat Wood III		
All Current Directors and Executive Officers as a Group ([_] persons)		
<b>Other Persons</b>		
Total S.A.		

Total Gas & Power USA, SAS

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

\* Less than 1%.

(1) Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to the securities. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares underlying restricted stock units and options held by that person that will vest and be exercisable within 60 days of March 12, 2012 are deemed to be outstanding. Such shares, however, are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person.

**DELIVERY OF INFORMATION STATEMENT**

To reduce the expenses of delivering duplicate materials to our stockholders, we are taking advantage of householding rules that permit us to deliver only one Information Statement to stockholders who share the same address unless otherwise requested.

If you share an address with another stockholder and have received only one Information Statement, you may write or call us to request a separate copy at no cost to you. For future mailings, you may request separate materials or, if you are receiving multiple copies you may request that we only send one set of materials, by writing to us at SunPower Corporation, 77 Rio Robles, San Jose, California 95134, Attention: Corporate Secretary, or by calling us at (408) 240-5500.

**FORWARD-LOOKING STATEMENTS**

This Information Statement contains forward-looking statements regarding future events as well as assumptions underlying or relating to such statements, all of which are forward-looking statements within the meaning of Section 21E of the Exchange Act. We use words and phrases such as may, expect, intend, potential, proposed, believe, would, agreed to, will, designed, anticipated and similar expressions to identify forward-looking statements. Forward-looking statements in this Information Statement include, but are not limited to, statements regarding the occurrence, timing, benefits and effects of the corporate actions approved by the Special Committee, as applicable, including the Private Placements and the transactions contemplated by the Transaction Agreements. These forward-looking statements

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are based on information available to us as of the date of this Information Statement and our current expectations and assumptions, and involve a number of risks and uncertainties that could cause actual events to differ materially from those anticipated by the forward-looking statements.

Such risks and uncertainties include a variety of factors, some of which are beyond our control. In particular, risks and uncertainties that could cause actual events to differ include: legal risks related to the actions described in this Information Statement; market risk, particularly as it relates to our stock price; the timing of the Private Placements; the need for Liquidity Injections; governmental support and the impact on the completion of the CVSR project; and other risks described in our Annual Report on Form 10-K for the year ended January 1, 2012 and our other filings with the SEC. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

### **INCORPORATION BY REFERENCE; FINANCIAL INFORMATION**

The SEC allows us to incorporate by reference information into this Information Statement, which means that we can disclose important information to you by referring you to another document or report filed separately with the SEC. The information incorporated by reference is deemed to be a part of this Information Statement, except to the extent any information is superseded by this Information Statement.

Certain financial information required under Section 14(c) of the Exchange Act and the rules and regulations thereunder, including the Company's (i) financial statements, (ii) supplementary financial information, (iii) management's discussion and analysis of financial condition and results of operations, and (iv) quantitative and qualitative disclosures about market risk, can be found in our Annual Report on Form 10-K for the fiscal year ended January 1, 2012, filed with the SEC on February 29, 2012. Such financial information is incorporated herein by reference.

We are also incorporating by reference additional documents we may file pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the closing of the Private Placements. Such additional documents shall be deemed to be incorporated by reference into the Information Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference into this Information Statement will be deemed to be modified or superseded for purposes of this Information Statement to the extent that a statement contained in this Information Statement or any other subsequently filed document that is deemed to be incorporated by reference into this Information Statement modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this Information Statement.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read or copy any document we file including exhibits thereto at the public reference room maintained by the SEC at Station Place, 100 F Street, N.E., Washington, D.C. 20549. Copies of this information may also be obtained by mail from the SEC's Public Reference Branch at Station Place, 100 F Street, N.E., Washington, D.C. 20549. In addition, our filings with the SEC are also available to the public on the SEC's internet website at <http://www.sec.gov> and on our corporate website, <http://www.sunpowercorp.com>.

Copies of material filed by us with the SEC, including the information we are incorporating by reference and exhibits thereto, may also be obtained free of charge and within one business day of our receipt of such request, by writing to us at our corporate headquarters, SunPower Corporation, Attention: Investor Relations, 77 Rio Robles, San Jose, California 95134, or by calling (408) 240-5500.

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ANNEX A

**LIQUIDITY SUPPORT AGREEMENT**

This LIQUIDITY SUPPORT AGREEMENT, dated as of February 28, 2012 (this Agreement ), is entered into by and among SUNPOWER CORPORATION, a Delaware corporation ( SunPower ), TOTAL S.A., a société anonyme organized under the laws of the Republic of France ( Total ), and the U.S. DEPARTMENT OF ENERGY, acting by and through the Secretary of Energy ( DOE ) and, together with SunPower and Total, the Parties ).

**RECITALS**

WHEREAS, Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France and an indirect wholly owned subsidiary of Total, owns approximately 66.3% of the equity interests of SunPower;

WHEREAS, SunPower Corporation, Systems, a Delaware corporation and an indirect wholly owned subsidiary of SunPower (the Contractor ), and High Plains Ranch II, LLC, a Delaware limited liability company ( HPR II or Borrower ), have entered into that certain Engineering, Procurement and Construction Agreement, dated as of September 30, 2011 (the EPC Contract ), pursuant to which the Contractor has agreed to design, engineer, procure certain materials and equipment for, install, construct, test and commission a 250 MW AC design capacity photovoltaic power plant in San Luis Obispo County, California (the PV Power Plant );

WHEREAS, SunPower has executed and delivered a Guaranty, dated as of September 30, 2011 (the SunPower Guaranty ), in favor of HPR II, pursuant to which SunPower guarantees the payment and performance by the Contractor of its obligations and liabilities under the EPC Contract;

WHEREAS, in order to finance certain costs relating to the development and construction of the PV Power Plant and certain related expenses, HPR II and DOE entered into that certain Loan Guarantee Agreement, dated as of September 30, 2011 (as amended, restated, modified or otherwise supplemented from time to time, the Loan Guarantee Agreement ), pursuant to which DOE will guarantee Advances (as defined under the Loan Guarantee Agreement) made to HPR II by the Federal Financing Bank, a body corporate and instrumentality of the United States of America ( FFB ) (pursuant to that certain Note Purchase Agreement dated as of September 30, 2011, by and among HPR II, DOE and FFB), subject to the terms and conditions set forth in the Loan Guarantee Agreement;

WHEREAS, the obligation of DOE to guarantee any Advance under the Loan Guarantee Agreement is subject to, among other things, the condition that since the date of the Loan Guarantee Agreement (or, if later, since the date of the last Advance), no event has occurred or could reasonably be expected to occur that has had or could reasonably be expected to have a Material Adverse Effect (as defined in the Loan Guarantee Agreement);

WHEREAS, in SunPower's Form 10-Q for the quarterly period ended October 2, 2011 (the SunPower 10-Q ), filed with the U.S. Securities and Exchange Commission ( SEC ) on November 10, 2011, SunPower disclosed that, as of January 2, 2012, and potentially for one or more subsequent quarters, SunPower might fail to meet a financial covenant under that certain Revolving Credit Agreement, dated September 27, 2011, by and among SunPower, Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto, as amended by the First Amendment to Revolving Credit Agreement, dated as of December 21, 2011 (as so amended, and as may be further amended, modified or supplemented from time to time, the Credit Agricole Facility );

WHEREAS, the obligation of DOE to guarantee any Advance under the Loan Guarantee Agreement is also subject to, among other things, the condition that each of the representations and warranties made by any Major Project Participant in any Transaction Document (in each case, as defined in the Loan Guarantee Agreement) is true and correct in all material respects as of the date of the relevant Master Advance Notice (as defined in the Loan Guarantee Agreement);

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WHEREAS, SunPower and the Contractor are Major Project Participants;

WHEREAS, based upon its review of the SunPower 10-Q, DOE requested further information from SunPower regarding its liquidity position in order to determine whether SunPower's liquidity position constituted a Material Adverse Effect under the Loan Guarantee Agreement and whether the Contractor was capable of making the representations set forth in the EPC Contract;

WHEREAS, since the date of the SunPower 10-Q, no event of default has existed at any time under the Credit Agricole Facility due to a failure by SunPower to meet its financial covenants or any other reason;

WHEREAS, in order to mitigate any risk that the Contractor may have insufficient liquidity to perform its obligations under the EPC Contract in the future, at the request of DOE and on and subject to the terms and conditions described below, Total has agreed to provide, or cause to be provided, liquidity support to SunPower in an aggregate amount of up to \$600 million;

WHEREAS, Total will derive indirect benefit from providing liquidity support to SunPower, and DOE has agreed that the provision of such liquidity support will (a) eliminate the risk that DOE will fail to approve the first Advance on the basis of the financial condition or liquidity of the Contractor or SunPower and (b) significantly reduce the risk that DOE will fail to approve any subsequent Advances on the basis of the financial condition or liquidity of the Contractor or SunPower; and

WHEREAS, the Parties understand that DOE will be making its decision of guaranteeing an Advance in reliance on, among other things, the liquidity support provided by Total under this Agreement;

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, DOE, SunPower and Total hereby agree as follows:

**AGREEMENT**

**Section 1. Definitions.** Capitalized terms used in this Agreement shall have the meanings set forth in this Section. All capitalized terms used but not otherwise defined in this Agreement shall have the meanings assigned to them in the Loan Guarantee Agreement.

(a) Acceptable Affiliate means, with respect to any Person, any Affiliate of such Person that is not a Prohibited Person, and (with respect to Affiliates of Total) as to which Total has certified to DOE that such Affiliate is not a Prohibited Person.

(b) Affiliate means with respect to any Person, any other Person that directly or indirectly Controls, is under common Control with, or is Controlled by, such Person.

(c) Alternative Form has the meaning set forth in Section 3(a).

(d) Applicable Indebtedness means and includes the aggregate amount of all Indebtedness of SunPower to third-party lenders, other than (i) Indebtedness that is non-recourse to SunPower, (ii) Indebtedness to Total and its Acceptable Affiliates, (iii) Indebtedness as to which Total or any of its Acceptable Affiliates has guaranteed the reimbursement obligations of SunPower, and (iv) letter of credit facilities of SunPower to the extent secured by cash collateral.

(e) Authorized Officer means the Chief Executive Officer, the Chief Financial Officer, the Principal Accounting Officer or the Treasurer of a Person.

(f) Available Support Amount means the difference between the Maximum Support Amount and the Drawn Support Amount.

(g) Business Day means a day, other than (i) a Saturday or Sunday, (ii) any other day on which either FFB or the Federal Reserve Bank of New York is not open for business or (iii) a public holiday, on which banks are generally not open for business in the State of California.

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(h) Cash Equivalents means:

(i) direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations unconditionally and fully guaranteed by the full faith and credit of the government of the United States, in each case maturing not more than one hundred eighty (180) days from the date of creation thereof;

(ii) securities issued by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one (1) year from the date of acquisition thereof;

(iii) investments in commercial paper maturing within ninety (90) days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(iv) investments in certificates of deposit and time deposits maturing within two hundred seventy (270) days from the date of acquisition thereof issued by any bank organized under the laws of the United States, any State thereof, any country that is a member of the Organization for Economic Co-Operation and Development or any political subdivision thereof, that has a combined capital and surplus of not less than five hundred million Dollars (\$500,000,000) and having, on the date of purchase, a rating on its commercial paper of at least A-1 or the equivalent thereof by S&P, or at least P-1 or the equivalent thereof by Moody's;

(v) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (ii) above and entered into with a financial institution satisfying the criteria of clause (iv) of this definition; and

(vi) investments in money market funds within the meaning of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (i) and (ii) of this definition.

(i) Control (including with correlative meanings, the terms Controlling, Controlled by and under common Control with ) means the power, directly or indirectly, to direct or cause the direction of the management or business or policies of a Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract, or otherwise (other than through super-majority rights or negative control rights of members).

(j) Debarment Regulations means all of the following:

(i) the Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988);

(ii) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400-9.409; and

(iii) the revised Government-wide Debarment and Suspension (Nonprocurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

(k) Dollar and \$ mean lawful money of the United States of America.

(l) Drawn Support Amount means, as of any time, the difference, in Dollars, of (i) the aggregate amount of Liquidity Injections provided by Total and its Acceptable Affiliates to SunPower pursuant to this Agreement minus (ii) the aggregate amount of all the Returned Liquidity Injections that have since been repaid, refunded, reimbursed or otherwise returned by SunPower to Total or its Acceptable Affiliates.

(m) Final Completion Date means the Final Completion Date, as defined in the EPC Contract, provided, that the Final Completion Date hereunder shall not occur until DOE shall have consented to HPR II's issuance of a Final Completion Certificate (as defined in the EPC Contract) pursuant to Section 7.15(b) of the Loan Guarantee Agreement.

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- (n) GAAP means generally accepted accounting principles, consistently applied, as in effect from time to time.
- (o) Governmental Authority means any federal, state, county, municipal, or regional authority or agency, or any other entity of a similar nature, exercising any executive, legislative, judicial, taxing, regulatory, or administrative function of government.
- (p) Governmental Judgment means with respect to any Person, any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having jurisdiction over such Person or any of its properties.
- (q) Indebtedness means and includes the aggregate amount of, without duplication (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable and accrued expenses incurred in the ordinary course of business determined in accordance with GAAP), (iv) all obligations with respect to capital leases, (v) all obligations created or arising under any conditional sale or other title retention agreement with respect to acquired property, (vi) all reimbursement and other payment obligations in respect of letters of credit and similar surety instruments (including construction performance bonds), contingent or otherwise, and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.
- (r) Investment Company Act means The United States Investment Company Act of 1940, as amended from time to time.
- (s) Knowledge means (i) with respect to SunPower, the actual knowledge of any Authorized Officer of SunPower or any knowledge that should have been obtained by an Authorized Officer of SunPower after due inquiry, and (ii) with respect to Total, the actual knowledge of an Authorized Officer of Total or any knowledge that should have been obtained by such Person after due inquiry.
- (t) Law means any federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, directives, injunctions, permits, concessions, grants, franchises, licenses and governmental restrictions, whether now or hereafter in effect.
- (u) Liquidity Injection means any combination of debt (secured, mezzanine or otherwise), repayment or purchase of debt owed by SunPower to a third party, equity (including any cash exercise of a warrant), preferred equity, convertible debt, convertible equity, guarantees of new debt or existing debt, or any other transaction that is approved or deemed approved by DOE pursuant to Section 3(a), in each case between SunPower and Total or its Acceptable Affiliates, that increases the amount of unrestricted cash on SunPower's balance sheet or otherwise satisfies Total's obligations pursuant to Section 3(c) or 3(d) of this Agreement, so long as such transaction is in compliance with all limitations or restrictions on such types of transactions then applicable to SunPower.
- (v) Liquidity Injection Certificate means a certificate, substantially in the form of Exhibit B hereto.
- (w) Liquidity Support Event means:
- (i) SunPower's failure to deliver to DOE, within fifteen (15) Business Days after the end of each fiscal quarter of SunPower, a SunPower Quarterly Certificate from an Authorized Officer of SunPower confirming that, to the best knowledge of such Authorized Officer after due inquiry, SunPower's Reported Liquidity as of the last Business Day of the applicable fiscal quarter was equal to at least \$100 million and SunPower's Projected Liquidity for the next fiscal quarter, determined as of the date of certification, is equal to at least \$100 million; or
- (ii) At any time during any fiscal quarter, SunPower's failure to satisfy any of its financial covenants under any Applicable Indebtedness (taking into account all cure periods under the Applicable Indebtedness and any forbearance periods during which (A) SunPower and the applicable lender are diligently working to cure such default and (B) the applicable lender has not accelerated any portion of the Applicable Indebtedness or commenced proceedings to foreclose on any collateral

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securing such Applicable Indebtedness, in each case, as certified by SunPower to DOE, on a weekly basis, after the occurrence of such failure and expiration of any applicable cure period); or

(iii) Failure by SunPower to provide the certification required in accordance with clause (ii) above.

(x) Maximum Support Amount means \$600 million, calculated in Dollars.

(y) Moody's means Moody's Investors Service, Inc. and any successor thereto.

(z) OFAC means the Office of Foreign Assets Control, agency of the U.S. Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence.

(aa) Outside Termination Date means December 31, 2015, as extended by the number of days that the PV Power Plant Substantial Completion Guaranteed Date (as defined in the EPC Contract) is extended due to a Force Majeure Event (as defined in the EPC Contract) or an Excusable Event (as defined in the EPC Contract) pursuant to the EPC Contract; provided, that such date shall not, in any case, be extended by more than 180 days due to a Force Majeure Event or 365 days due to an Excusable Event, and in any event not beyond December 31, 2016.

(bb) Person means and includes an individual, firm, a partnership, a corporation, company (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

(cc) Prohibited Person means any Person that is:

(i) named, identified, or described on the list of Specially Designated Nationals and Blocked Persons (Appendix A to 31 CFR chapter V) as published by OFAC at its official website, <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or at any replacement website or other replacement official publication of such list;

(ii) named, identified or described on any other blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom U.S. persons may not conduct business, including lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State;

(iii) debarred or suspended from contracting with the U.S. government or any agency or instrumentality thereof;

(iv) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from contracting with any U.S. federal government department or any agency or instrumentality thereof or otherwise participating in procurement or nonprocurement transactions with any U.S. federal government department or agency pursuant to any of the Debarment Regulations;

(v) indicted, convicted or had a Governmental Judgment rendered against it for any of the offenses listed in any of the Debarment Regulations;

(vi) subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates;

(vii) owned or controlled by, or acting on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates; or

(viii) an Affiliate of a Person listed above.

(dd) Projected Liquidity means, as of any date of determination, the projected amount of (i) SunPower's unrestricted cash and Cash Equivalents as of the last Business Day of the fiscal quarter in which such determination is made (after taking into account all obligations, including under Applicable Indebtedness, that are expected to come due in such fiscal quarter and any projected sales for such fiscal

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quarter) plus (ii) unused availability under any committed credit arrangement that will be available to SunPower to be used for general corporate purposes as of the last Business Day of the fiscal quarter in which such determination is made.

(ee) Reported Liquidity means, as of any date of determination, the amount of (i) SunPower's unrestricted cash and Cash Equivalents shown on SunPower's balance sheet (after payment of all Applicable Indebtedness that became due in the applicable quarter) plus (ii) unused availability under any committed credit arrangement that was available to SunPower to be used for general corporate purposes.

(ff) Returned Liquidity Injections has the meaning set forth in Section 4.

(gg) Subsidiary means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

(hh) SunPower Quarterly Certificate means a certificate, substantially in the form of Exhibit A hereto.

(ii) S&P means Standard & Poor's Rating Services, a division of the McGraw & Hill Companies, Inc.

**Section 2. SunPower Covenants.**

(a) Quarterly Reporting. Commencing on the date hereof and continuing until the Final Completion Date, within fifteen (15) Business Days after the end of each fiscal quarter of SunPower, starting from the fiscal quarter ending on March 31, 2012, SunPower shall deliver to each of DOE and Total a duly completed SunPower Quarterly Certificate, signed by an Authorized Officer of SunPower, setting forth to the best knowledge of such Authorized Officer after due inquiry (i) SunPower's Reported Liquidity as of the last Business Day of the immediately preceding fiscal quarter and (ii) SunPower's Projected Liquidity determined as of the date of such certificate.

(b) Notice of Breach. Promptly upon obtaining Knowledge thereof, SunPower shall deliver notice to each of DOE and Total of any failure by SunPower to meet any of its financial covenants under any Applicable Indebtedness (taking into account all cure periods under the Applicable Indebtedness). Thereafter, if applicable, SunPower shall deliver weekly notices to each of DOE and Total, each substantially in the form of Exhibit C hereto, during any forbearance period during which (i) SunPower and the applicable lender are diligently working to cure such default and (ii) the applicable lender has not accelerated any portion of the Applicable Indebtedness or commenced proceedings to foreclose on any collateral securing such Applicable Indebtedness.

**Section 3. Liquidity Support.**

(a) No Conditions Precedent; Form of Liquidity Injections. There shall be no conditions precedent to this Agreement or to Total's obligation to provide Liquidity Injections when required pursuant to clauses (c) and (d) of this Section 3, except those stated in clause (b) hereof, which may be waived in DOE's sole discretion. Liquidity Injections will be in the form(s) contemplated by the definition thereof; provided, that if Total wishes to provide a Liquidity Injection in a form other than as set forth in such definition (an Alternative Form), Total will provide a commercially reasonable written description of such proposed Alternative Form to DOE during the five (5) Business Day period described in Section 3(c) or (d), as applicable, and DOE will have

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three (3) Business Days after receipt of such description during which it may notify Total in writing of its rejection (for commercially reasonable reasons) of such proposed Alternative Form. For the avoidance of doubt, if DOE fails to notify Total of its rejection of the proposed Alternative Form within such three (3) Business Day period, DOE will be deemed to have accepted such Alternative Form and Total may utilize the Alternative Form to fulfill its obligations under this Agreement just as if such Alternative Form was specifically referenced in the definition of Liquidity Injection. If DOE rejects a proposed Alternative Form within three (3) Business Days as set forth above, Total will not use such Alternative Form, and will instead use any form contemplated by the definition of Liquidity Injection. If Total notifies DOE of a proposed Alternative Form during the five (5) Business Day period described in Section 3(c) or (d), as applicable, then the date by which Total or an Acceptable Affiliate must provide a Liquidity Injection (whether in a form described in the definition of Liquidity Injection or in an Alternative Form accepted or deemed to have been accepted by DOE) will be extended by the lesser of (a) the time within which DOE notifies Total of such acceptance or rejection and (b) three (3) Business Days.

(b) Opinions. Each of Total and SunPower shall have provided an opinion from a law firm, reasonably acceptable to DOE, in a form reasonably acceptable to DOE, with respect to due authorization, due delivery, due execution and enforceability of this Agreement.

(c) Quarterly Liquidity Shortfalls. Within five (5) Business Days after the occurrence of a Liquidity Support Event described in clause (i) of the definition thereof (subject to extension of such period pursuant to the last sentence of Section 3(a)), Total shall make, or cause to be made through one or more of its Acceptable Affiliates, a Liquidity Injection into SunPower in such form as Total may choose in its sole discretion, and in an amount needed to cause both SunPower's Reported Liquidity and SunPower's Projected Liquidity to be equal to the amount of at least \$100 million.

(d) Covenant Defaults. Within five (5) Business Days after obtaining Knowledge of the occurrence of a Liquidity Support Event described in clause (ii) of the definition thereof (subject to extension of such period pursuant to the last sentence of Section 3(a)), Total shall make, or cause to be made through one or more of its Acceptable Affiliates, a Liquidity Injection into SunPower in such form as Total may choose in its sole discretion, and in such amount as is necessary to enable SunPower to cure such breach and satisfy the applicable financial covenant after giving effect to, and as of the date of, such Liquidity Injection.

(e) Cap on Liquidity Support. Notwithstanding anything herein to the contrary, in no event shall Total be required to provide, or cause any of its Acceptable Affiliates to provide, any amount of Liquidity Injections that would cause the Drawn Support Amount to exceed the Maximum Support Amount.

(f) Evidence of Liquidity Injections. Promptly upon providing a Liquidity Injection pursuant to Section 3(c) or 3(d) of this Agreement, Total shall provide to DOE a Liquidity Injection Certificate, which shall (i) set forth (A) the identity of the Person providing the Liquidity Injection, and (B) a description of each Liquidity Support Event and the amount and form of the Liquidity Injection intended to cure such Liquidity Support Event, (ii) certify that (A) all Liquidity Support Events have been cured, after giving effect to, and determined as of the date of, such Liquidity Injection, (B) the Drawn Support Amount after giving effect to such Liquidity Injection and the Available Support Amount, (C) any agreements relating to the Liquidity Injection are in compliance with all limitations or restrictions on such types of transactions then applicable to SunPower, and (D) in the event that the Person providing the Liquidity Injection is not Total, (x) such Person is an Acceptable Affiliate and (y) Total has the power and authority to cause such Person to comply with all restrictions imposed on Acceptable Affiliates hereunder, and (iii) attach a statement of an Authorized Officer of SunPower confirming the amount of such Liquidity Injection and that such Liquidity Injection has cured the applicable Liquidity Support Event (subject to the restriction contained in Section 3(e)). If such Liquidity Injection is in the form of a guaranty of Indebtedness, such Liquidity Injection Certificate shall also attach a copy of the guaranty.

(g) Preemptive Cure Right. Total shall have the option, but not the obligation, at any time to provide, or to cause an Acceptable Affiliate to provide, Liquidity Injections into SunPower in order to prevent the

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occurrence of a Liquidity Support Event, to improve the liquidity of SunPower or for any other reason (for example, by replacing third-party debt with debt provided by Total or its Acceptable Affiliates, curing potential or actual defaults or making equity or quasi-equity investments in SunPower or exercising any warrant to purchase equity of SunPower), and, upon Total's delivery to DOE of a Liquidity Injection Certificate describing the applicable Liquidity Injection, the amount of such Liquidity Injections will be included in calculations of Reported Liquidity, Projected Liquidity and the Drawn Support Amount, as applicable.

(h) Effect of Liquidity Support Arrangements. In consideration of Total entering into this Agreement, DOE acknowledges and agrees that: (i) no Material Adverse Effect under the Loan Guarantee Agreement or breach of the financial condition representation made by the Contractor in Section 4.1.10 of the EPC Contract has occurred prior to the date hereof, and (ii) for so long as (A) this Agreement remains in effect and (B) Total is in compliance with its obligations hereunder, DOE will not claim (x) the occurrence of a Material Adverse Effect under the Loan Guarantee Agreement pursuant to clause (ii) or (iii) of the definition of Material Adverse Effect (as in effect on the date hereof in the Loan Guarantee Agreement, or pursuant to corresponding or similar provisions of such definition if such definition is amended after the date of this Agreement) solely on the basis of the financial condition or liquidity of the Contractor and/or SunPower or (y) the breach of the financial condition representation made by the Contractor in Section 4.1.10 of the EPC Contract (and the resulting Potential Default under the Loan Guarantee Agreement that may be caused by such breach). Notwithstanding anything herein to the contrary, nothing in this Agreement shall prevent DOE from asserting the occurrence of a Material Adverse Effect under the Loan Guarantee Agreement or breach of any other representation or warranty, in each case, (a) for any other reason or (b) on the basis of the financial condition or liquidity of the Contractor and/or SunPower, if the conditions of this Section 3(h) are not met.

**Section 4. Total Covenants.** Each of Total and each Acceptable Affiliate shall not exercise, and shall not permit any of its Subsidiaries to exercise, any remedies against SunPower or the Contractor under any agreement pertaining to a Liquidity Injection or any other Indebtedness due to it or an Acceptable Affiliate from SunPower or the Contractor if (a) a Liquidity Support Event has occurred and has not been cured or (b) such exercise of remedies could reasonably be expected to cause a Liquidity Support Event or cause SunPower or the Contractor to become bankrupt, insolvent, unable to pay its debts as they become due or unable to perform its obligations under the EPC Contract; provided, that at any time after the end of any fiscal quarter during which Total or any of its Acceptable Affiliates has provided a Liquidity Injection, Total or its Acceptable Affiliate, as applicable (such returned Liquidity Injections, the Returned Liquidity Injections ), may call, and SunPower will return to Total or its Acceptable Affiliate, as applicable, part or all of the Liquidity Injection previously provided to the extent that (i) no Liquidity Support Event has occurred and has not been cured and (ii) the return of such amount to Total or its Acceptable Affiliate, as applicable, could not reasonably be expected to cause a Liquidity Support Event or cause SunPower or the Contractor to become bankrupt, insolvent, unable to pay its debts as they become due or unable to perform its obligations under the EPC Contract.

**Section 5. Termination.** This Agreement shall terminate following the earliest to occur of (a) the Final Completion Date, (b) the Outside Termination Date, (c) the date on which all of the Secured Obligations (as defined under the Loan Guarantee Agreement) have been indefeasibly paid in full and all commitments to extend credit under the FFB Documents (as defined under the Loan Guarantee Agreement) have been terminated, and (d) the date on which the EPC Contract has been terminated by the Contractor pursuant to the terms thereof and subject to the Direct Consent Agreement, dated September 30, 2011, between the Contractor and DOE. For the avoidance of doubt, Total shall have no obligation to provide liquidity support to SunPower pursuant to this Agreement following the expiration or termination of this Agreement and may at any time after such date require return or repayment of previously provided liquidity support.

### **Section 6. Specific Performance; Scope of Total Obligations; No Duty to Mitigate.**

(a) Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement is not performed in accordance with the terms hereof, this Agreement shall remain in full force and effect and the parties shall be entitled to specific performance of the terms hereof,

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in addition to any other remedy at law or equity. If SunPower or DOE institutes any action or proceeding to specifically enforce the provisions hereof against Total, Total hereby waives any claim or defense that such party has an adequate remedy at law, and Total shall not offer in any such action or proceeding the claim of defense that such remedy at law exists. In addition to the remedy of specific performance, if Total breaches this Agreement and fails to cure a Liquidity Support Event on terms and conditions set forth in this Agreement, DOE will have a claim against Total for contractual breach of this Agreement; provided, that for the avoidance of doubt, any damages would be payable to SunPower. The Parties agree that in those circumstances neither SunPower nor DOE will be obligated to prove damages hereunder and that the full amount of damages shall be equal to the amount of Liquidity Injection required to be provided by Total to SunPower in connection with the applicable Liquidity Support Event.

(b) Limitation on Liabilities of Total. Total's aggregate liability for claims arising out of or relating to this Agreement shall in no event exceed an amount equal to the Maximum Support Amount minus the Drawn Support Amount. For the avoidance of doubt, nothing in this agreement shall make Total liable for SunPower's obligations under the SunPower Guaranty, the Contractor's obligations under the EPC Contract or HPR II's obligations under the Loan Guarantee Agreement, or for any other obligations.

(c) No Duty to Mitigate. SunPower will not be required to mitigate the amount of any Liquidity Injection that Total may be required to provide to SunPower pursuant to Section 3(c) or (d) of this Agreement at any time. Upon the occurrence of a Liquidity Support Event, SunPower shall have the right to, and shall be required to, obtain the required Liquidity Injection without any further consent of Total or any Acceptable Affiliate.

**Section 7. Obligations Absolute.** Total agrees that its obligations hereunder to provide Liquidity Injections when required pursuant to Section 3 of this Agreement are irrevocable, absolute, independent and unconditional and shall not be affected by any event, condition or circumstance whatsoever including any event, condition or circumstance which constitutes, or might be construed to constitute, a legal or equitable defense or discharge of Total. In furtherance of the foregoing and without limiting the generality thereof, Total hereby agrees as follows:

(a) This Agreement is a primary obligation of Total.

(b) DOE may enforce this Agreement notwithstanding the existence of any dispute between DOE and the Contractor or SunPower with respect to whether the Contractor or SunPower is in default or breach of any obligation.

(c) The obligations of Total hereunder to provide Liquidity Injections when required pursuant to Section 3 of this Agreement are exclusive and independent of (i) the obligations of SunPower under SunPower's Guaranty, or (ii) the Contractor's obligations under the EPC Contract; and a separate action or actions may be brought and prosecuted against Total whether or not any action is brought against the Contractor or SunPower and whether or not either the Contractor or SunPower is joined in any such action or actions.

(d) Any provision by Total or an Acceptable Affiliate of a portion, but not all, of any Liquidity Injection required to be provided pursuant to Section 3 of this Agreement shall in no way limit, affect, modify or abridge Total's liability for any remaining portion of such required Liquidity Injection, subject to Section 3(e).

**Section 8. Waivers.** Total hereby waives, for the benefit of DOE:

(a) any right to require DOE, as a condition to Total or an Acceptable Affiliate providing any Liquidity Injection when required pursuant to Section 3 of this Agreement, to proceed against the Contractor under the EPC Contract or SunPower under the SunPower Guaranty; and

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(b)(i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of Total's or such Acceptable Affiliate's obligations hereunder, and (ii) the benefit of any statute of limitations affecting such Total's or such Acceptable Affiliate's liability hereunder or the enforcement hereof.

**Section 9. Waiver of Subrogation.** Until the Final Completion Date, Total hereby waives and agrees that, with respect to any guaranty of Applicable Indebtedness issued by Total or an Acceptable Affiliate, neither it nor any Acceptable Affiliate shall assert or seek or be entitled to any right or remedy relating to repayment or reimbursement that Total or such Acceptable Affiliate may have against SunPower in connection with such guaranty, in each case whether such right or remedy arises in equity, under contract, by statute, under common law or otherwise and including any right of subrogation, reimbursement, contribution or indemnification that Total or such Acceptable Affiliate now has or may hereafter have against SunPower, except as otherwise permitted by Section 4. Total further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, contribution or indemnification Total or such Acceptable Affiliate may have against SunPower shall be junior and subordinate to any rights DOE may have against SunPower.

## **Section 10. Representations and Warranties.**

(a) SunPower Representations and Warranties. On and as of the date of this Agreement, SunPower represents and warrants to Total and to DOE that:

(i) Due Incorporation, Qualification, etc. SunPower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to conduct its business as it is presently being conducted.

(ii) Authority. The execution, delivery and performance by SunPower of this Agreement and the consummation of the transactions contemplated hereby (A) are within the corporate power and authority of SunPower and (B) have been duly authorized by all necessary corporate actions on the part of SunPower.

(iii) Enforceability. This Agreement has been duly executed and delivered by SunPower and constitutes a legal, valid and binding obligation of SunPower, enforceable against SunPower in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(iv) Approvals. Other than those already obtained, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or any other person or entity (including, without limitation, the shareholders of SunPower) is required in connection with the execution and delivery by SunPower of this Agreement or the performance and consummation by SunPower of the transactions contemplated hereby.

(v) Litigation. Except as set forth in Schedule 10(a)(v), there are no material actions, suits, proceedings or investigations pending against SunPower or its properties, nor has SunPower received notice of any threat thereof, and SunPower is not a party or, to its Knowledge, subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality.

(vi) SEC Reports. As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), no form, report and document filed by SunPower with the SEC since February 28, 2011, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

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(vii) Investment Company Act. SunPower is not required to register as an investment company and it is not controlled by a company required to register as an investment company under the Investment Company Act.

(viii) Non-Contravention. The execution and delivery by SunPower of this Agreement and the performance and consummation of the transactions contemplated hereby do not and will not (A) violate the articles or certificate of incorporation or bylaws of SunPower, (B) violate any judgment, order, writ, decree, statute, rule or regulation applicable to SunPower, (C) violate any provision of, or result in the breach or the acceleration of, or entitle any other person to accelerate (whether after the giving of notice or lapse of time or both), any material mortgage, indenture, agreement, instrument or contract to which SunPower is a party or by which it is bound, or (D) result in the creation or imposition of any lien upon any property or asset of SunPower (other than those in favor of Total that may be granted by SunPower as security for its obligations relating to any Liquidity Injection).

(b) Total Representations and Warranties. On and as of the date of this Agreement, Total represents and warrants to SunPower and to DOE that:

(i) Due Incorporation, Qualification, etc. Total is duly organized, validly existing and in good standing under the laws of the Republic of France and has requisite power and authority to conduct its business as it is presently being conducted.

(ii) Authority. The execution, delivery and performance by Total of this Agreement and the consummation of the transactions contemplated hereby (A) are within the corporate power and authority of Total and (B) have been duly authorized by all necessary corporate actions on the part of Total.

(iii) Enforceability. This Agreement has been duly executed and delivered by Total and constitutes a legal, valid and binding obligation of Total, enforceable against Total in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(iv) Approvals. Other than those already obtained, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or any other person or entity is required in connection with the execution and delivery by Total of this Agreement and the performance and consummation by Total of the transactions contemplated hereby.

(v) Litigation. There are no actions, suits, proceedings or investigations pending against Total, nor has Total received notice of any threat thereof, and Total is not a party or to its knowledge subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality, that question the validity of this Agreement, or the right of Total to enter into this Agreement, or to consummate the transactions contemplated hereby, nor is Total aware that there is any basis for any of the foregoing.

(vi) SEC Reports. As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), no form, report and document filed by Total with the SEC since March 28, 2011, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(vii) Non-Contravention. The execution and delivery by Total of this Agreement and the performance and consummation of the transactions contemplated hereby do not and will not (A) violate the articles or certificate of incorporation or bylaws (or equivalent governing documents) of Total, (B) violate any judgment, order, writ, decree, statute, rule or regulation applicable to Total, (C) violate any provision of, or result in the breach or the acceleration of, or entitle any other person to accelerate (whether after the giving of notice or lapse of time or both), any mortgage, indenture, agreement, instrument or contract to which Total is a party or by which it is bound, or (D) result in the creation or imposition of any lien upon any property or asset of Total, except, in the case of each of clauses (B), (C) and (D) above, for such violations,

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or breaches or liens that could not reasonably be expected to (1) have a material adverse effect on (x) the business, assets, operations or financial or other condition of Total, when taken as a whole, or (y) the ability of Total to perform its obligations in accordance with the terms of this Agreement or (2) materially impede or delay Total's performance of its obligations under this Agreement.

**Section 11. Miscellaneous.**

(a) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon SunPower, Total or DOE under this Agreement shall be in writing and delivered by electronic mail, facsimile, hand delivery, overnight courier service or certified mail, return receipt requested, to each party at the address set forth below (or to such other address most recently provided by such party to the other party). All such notices and communications shall be effective (i) when sent by Federal Express or other overnight service of recognized standing, on the Business Day following the deposit with such service, (ii) when mailed, by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt, (iii) when delivered by hand, upon delivery, and (iv) when faxed or emailed, upon confirmation of receipt.

Total:

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Olivier Devouassoux, VP Subsidiary Finance Operations

Telephone: +33 1 47 44 45 64

Facsimile: + 33 1 47 44 48 74

Email: olivier.devouassoux@total.com

With a copy to:

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Christine Souchet, Subsidiary Finance Operations Gas and Power

Telephone: +33 1 47 44 72 11

Facsimile: +33 1 47 44 47 92

Email: christine.souchet@total.com

With a copy to:

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Jonathan Marsh, Vice President, Legal Director

Mergers, Acquisitions & Finance

Telephone: +33 (0) 1 47 44 74 70

Facsimile: +33 (0)1 47 44 43 05

Email: [jonathan.marsh@total.com](mailto:jonathan.marsh@total.com)

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SunPower:

SunPower Corporation 77

Rio Robles San Jose, CA 95134

Attention: Dennis Arriola, Executive Vice President and Chief Financial

Officer

Telephone: 408-240-5500

Facsimile: 408-240-5404

E-mail: dennis.arriola@sunpowercorp.com

With a copy to:

SunPower Corporation

77 Rio Robles San Jose,

CA 95134

Attention: Navneet Govil, Vice President and Treasury

Telephone: 408-457-2655

E-mail: navneet.govil@sunpowercorp.com

With a copy to:

SunPower Corporation

1414 Harbour Way South

Richmond, CA 94804

Attention: Christopher Jaap, General Counsel

Telephone: 408-240-5500

Facsimile: 408-240-5404

E-mail: christopher.jaap@sunpowercorp.com

DOE:

U.S. Department of Energy

Loan Programs Office, Loan Guarantee Program

1000 Independence Avenue, S.W.

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Washington, D.C. 20585

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Attn: Director, Portfolio Management

Phone: (202) 287-6142

FAX: (202) 287-5816

Email: lpo.portfolio@hq.doe.gov

Re: California Valley Solar Ranch, LGPO Loan #1229

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

Attn: Chinwe Binitie

Phone: (202) 287-6646

FAX: (202) 287-6949

Email: chinwe.binitie@hq.doe.gov

Re: California Valley Solar Ranch, LGPO Loan #1229

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

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036

Attn: Harold Moore

E-mail:harold.moore@skadden.com

Phone: (212) 735-3252

FAX: (917) 777-3252

Re: California Valley Solar Ranch

(b) Nonwaiver. No failure or delay by any Party in exercising any right hereunder shall operate as a waiver of such right of such Party or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right by such Party or any other Party.

(c) Amendments and Waivers. This Agreement may not be amended or modified, nor may any of its terms be waived, except by a written instrument signed by SunPower, Total and DOE. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments.

(i) Assignment by SunPower. This Agreement may not be assigned by SunPower without the prior written consent of Total and DOE, which consent may be withheld in Total's or DOE's sole discretion.

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(ii) Assignment by Total. This Agreement may not be assigned by Total without the prior written consent of SunPower and DOE, which, with respect to DOE, may be withheld in DOE's sole discretion and, with respect to SunPower, may not be unreasonably withheld, conditioned or delayed.

(iii) Successors and Assigns. No assignment of this Agreement shall be valid until all of the obligations of the assignor hereunder shall have been assumed by the assignee by written agreement delivered to the other Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(e) Partial Invalidity; Reinstatement. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(f) Applicable Law; Jurisdiction; Etc.

(i) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

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(ii) **SUBMISSION TO JURISDICTION**. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY HERETO MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST ANY OTHER PARTY HERETO OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(iii) **WAIVER OF VENUE**. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 8(f)(ii). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(iv) **Appointment of Process Agent and Service of Process**. Total hereby appoints CT Corporation System, located on the date hereof at 111 Eighth Avenue, New York, New York 10011, as its agent (the Process Agent ) to receive services of copies of the summons and complaint and any other process that may be served in any such action or proceeding in the State of New York. Total shall provide written notice to SunPower and DOE at least ten (10) days prior to any change in address of the Process Agent and, if for any reason CT Corporation System shall cease to act as a Process Agent for Total or shall cease to maintain an office in New York State, Total shall promptly designate a new agent in New York City to act on the terms and for the purposes of this Section 11(f), which Person shall be reasonably satisfactory to SunPower and DOE, and Total shall deliver to SunPower and DOE an agreement with such Process Agent evidencing its designation as such and the payment of any fees related thereto throughout the term hereof. Service of process on Total under this Agreement may be made by mailing or delivering a copy of any such process to Total in care of the Process Agent at the Process Agent's above address, and Total hereby irrevocably authorizes and directs the Process Agent to receive such service on its behalf. As an alternative method of service, Total also irrevocably consents to the service of any and all process in any such action or proceeding by the certified mailing of copies of such process to Total at its then effective notice addresses pursuant to Section 11(a). Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

(v) **WAIVER OF JURY TRIAL**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED

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TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11(f).

(g) Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals.

*[Remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, the parties hereto have caused this Liquidity Support Agreement to be executed as of the day and year first written above.

**SUNPOWER CORPORATION**

By: /s/ Thomas H. Werner  
Name: Thomas H. Werner  
Title: Chief Executive Officer

**TOTAL S.A.**

By: /s/ Patrick de la Chevardiere  
Name: Patrick de la Chevardiere  
Title: Chief Financial Officer

**U.S. DEPARTMENT OF ENERGY**

By: /s/ Francis I. Nwachuku  
Name: Francis I. Nwachuku  
Title: Director, Portfolio Management Division

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**Exhibit A**

**Form of SunPower Quarterly Certificate**

To: Total S.A.  
2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Olivier Devouassoux, VP Subsidiary Finance Operations

Telephone: +33 1 47 44 45 64

Facsimile: + 33 1 47 44 48 74

Email: olivier.devouassoux@total.com

U.S. Department of Energy

Loan Programs Office, Loan Guarantee Program

1000 Independence Avenue, S.W.

Washington, D.C. 20585

Attention: Director, Portfolio Management

E-mail: lpo.portfolio@hq.doe.gov

Telephone: (202) 287-6738

Facsimile: (202) 287-5816

Date:

I, \_\_\_\_\_, an Authorized Officer of SunPower Corporation ( "SunPower " ), hereby deliver this report pursuant to Section 2(a) of the Liquidity Support Agreement, dated as of February 28, 2012 (the "Liquidity Support Agreement " ), by and among Total S.A., SunPower and DOE, and certify as follows (capitalized terms used and not otherwise defined below have the meanings given them in the Liquidity Support Agreement):

1. This SunPower Quarterly Certificate is being delivered to Total and DOE within fifteen (15) Business Days after the end of the fiscal quarter ended [ \_\_\_\_\_ ], 20[ \_\_\_\_\_ ] (the "Reported Quarter " ).
2. Attached hereto as Schedule I is a statement setting forth, to the best of my knowledge after due inquiry, the amount of (x) SunPower's unrestricted cash and Cash Equivalents shown on SunPower's balance sheet (after payment of all Applicable

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Indebtedness that has come due in the Reported Quarter) plus (y) unused availability under any committed credit arrangement that was available to SunPower to be used for general corporate purposes, as of the last Business Day of the Reported Quarter.

3. Attached hereto as Schedule II is a statement setting forth, to the best of my knowledge after due inquiry, the projected amount as of the last Business Day of the current fiscal quarter, of (a) SunPower's unrestricted cash and Cash Equivalents (after taking into account all obligations, including under Applicable Indebtedness, that are expected to come due in such fiscal quarter and any projected sales for such fiscal quarter) plus (b) unused availability under any committed credit arrangement that will be available to SunPower to be used for general corporate purposes.
  
4. [As of the date hereof, no Liquidity Support Event has occurred that has not been cured.]

Sincerely,

[Authorized Officer]  
SunPower Corporation

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**Schedule I to SunPower Quarterly Certificate**

**Reported Liquidity**

	<b>Unused Availability</b>	
<b>Unrestricted Cash and</b>	<b>Under Committed</b>	
<b>Cash Equivalents</b>	<b>Credit Arrangements</b>	<b>Total</b>



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**Exhibit B**

**Form of Liquidity Injection Certificate**

To: U.S. Department of Energy  
Loan Programs Office, Loan Guarantee Program

1000 Independence Avenue, S.W.

Washington, D.C. 20585

Attention: Director, Portfolio Management

E-mail: lpo.portfolio@hq.doe.gov

Telephone: (202) 287-6738

Facsimile: (202) 287-5816

Date:

I, \_\_\_\_\_, [ \_\_\_\_\_ ] of Total S.A. ( "Total " ), hereby deliver this report pursuant to Section 3[(f)][(g)] of the Liquidity Support Agreement, dated as of February 28, 2012 (the "Liquidity Support Agreement " ), by and among Total, SunPower Corporation and DOE, and certify as follows (capitalized terms used and not otherwise defined below have the meanings given them in the Liquidity Support Agreement):

1. On [ \_\_\_\_\_ ], 20[ \_\_\_\_\_ ], pursuant to Section 3[(c)][(d)][(g)] of the Liquidity Support Agreement, [due to the occurrence of a Liquidity Support Event resulting from [describe Liquidity Support Event].]<sup>1</sup> [Total][[name of Acceptable Affiliate (the "Applicable Acceptable Affiliate " ), an Acceptable Affiliate of Total] made a Liquidity Injection into SunPower in an aggregate amount equal to \$[ \_\_\_\_\_ ] (the "Current Injection " ).
2. The form of the Current Injection was [description of transaction, e.g., equity, preferred equity, convertible debt, convertible equity, guarantees, etc.].
3. The Current Injection has increased SunPower's Reported Liquidity, as of the date hereof, to \$[ \_\_\_\_\_ ] and SunPower's Projected Liquidity to \$[ \_\_\_\_\_ ]. [Modify as appropriate to the extent that the amount of the Current Injection has been decreased by application of the \$600 million cap.]
4. After giving effect to the Current Injection, as of the date hereof, the Drawn Support Amount is \$[ \_\_\_\_\_ ] and the Available Support Amount is \$[ \_\_\_\_\_ ].
5. All agreements relating to the Current Injection are in compliance with all limitations or restrictions on such types of transactions applicable to SunPower.
- 6.

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[The Applicable Acceptable Affiliate is not a Prohibited Person, and Total has the power and authority to cause the Applicable Acceptable Affiliate to comply with all restrictions imposed on Acceptable Affiliates under the Liquidity Agreement.]<sup>2</sup>

7. [After giving effect to, and as of the date of, the Current Injection, all Liquidity Support Events have been cured (subject to Section 3(e) of the Liquidity Support Agreement).]<sup>3</sup>
  
8. Attached hereto as Exhibit A is a statement from an Authorized Officer of SunPower confirming the amount of the Current Injection[ and that the Current Injection has cured the applicable Liquidity Support Event (subject to the proviso in Section 3(e) of the Liquidity Support Agreement).]<sup>4</sup>

<sup>1</sup> Insert for Liquidity Injections made pursuant to Sections 3(c) or 3(d).

<sup>2</sup> Insert to the extent that Total is not providing the Liquidity Injection.

<sup>3</sup> Insert for Liquidity Injections made pursuant to Sections 3(c) or 3(d).

<sup>4</sup> Insert for Liquidity Injections made pursuant to Sections 3(c) or 3(d).

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9. [Attached hereto as Exhibit B is a copy of the guarantee pursuant to which the Liquidity Injection was effected.]<sup>5</sup>

Sincerely,

Title:  
Name:

<sup>5</sup> Insert if the form of the Liquidity Injection is a Guarantee.

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**Exhibit A to Liquidity Injection Certificate**

To: Total S.A.  
2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Olivier Devouassoux, VP Subsidiary Finance Operations

Telephone: +33 1 47 44 45 64

Facsimile: + 33 1 47 44 48 74

Email: olivier.devouassoux@total.com

U.S. Department of Energy

Loan Programs Office, Loan Guarantee Program

1000 Independence Avenue, S.W.

Washington, D.C. 20585

Attention: Director, Portfolio Management

E-mail: lpo.portfolio@hq.doe.gov

Telephone: (202) 287-6738

Facsimile: (202) 287-5816

Date:

I, \_\_\_\_\_, an Authorized Officer of SunPower Corporation ( "SunPower " ), hereby deliver this report pursuant to Section 3(f) of the Liquidity Support Agreement, dated as of February 28, 2012 (the "Liquidity Support Agreement " ), by and among Total S.A., SunPower and DOE, and certify as follows (capitalized terms used and not otherwise defined below have the meanings given them in the Liquidity Support Agreement):

1. I have reviewed the Liquidity Injection Certificate of Total, dated [ \_\_\_\_\_ ], 20[ \_\_\_\_\_ ], and hereby certify that the amount of the Liquidity Injection and calculation of the Reported Liquidity and Projected Liquidity expressed therein are true and correct.
2. As of the date hereof, no Liquidity Support Event has occurred that has not been cured.

Sincerely,

[Authorized Officer]  
SunPower Corporation

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**Exhibit C**

**Form of SunPower Forbearance Certificate**

To: U.S. Department of Energy  
Loan Programs Office, Loan Guarantee Program

1000 Independence Avenue, S.W.

Washington, D.C. 20585

Attention: Director, Portfolio Management

E-mail: lpo.portfolio@hq.doe.gov

Telephone: (202) 287-6738

Facsimile: (202) 287-5816

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Olivier Devouassoux, VP Subsidiary Finance Operations

Telephone: +33 1 47 44 45 64

Facsimile: + 33 1 47 44 48 74

Email: olivier.devouassoux@total.com

Date:

I, \_\_\_\_\_, an Authorized Officer of SunPower Corporation (SunPower), hereby certify to the U.S. Department of Energy (DOE) and Total S.A. (Total) pursuant to Section 2(b) of the Liquidity Support Agreement, dated as of February 28, 2012 (Liquidity Support Agreement), by and among Total, SunPower and DOE, as follows (capitalized terms used and not otherwise defined below have the meanings given them in the Liquidity Support Agreement):

1. This SunPower Forbearance Certificate is being delivered to DOE and Total in accordance with Section 2(b) of the Liquidity Support Agreement for the week ended [date].

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2. As of [date], SunPower has failed to satisfy one or more financial covenants under [describe Applicable Indebtedness] (the Applicable Facility ).
  
3. As of the date of this SunPower Forbearance Certificate, [(a) SunPower and [insert applicable lender(s) or representative thereof] are diligently working to cure such default under the Applicable Facility and (b) the applicable lender(s) has not accelerated any portion of amounts outstanding under the Applicable Facility or commenced proceedings to foreclose on any collateral securing amounts outstanding under the Applicable Facility] [or] [SunPower has cured the applicable default].

Sincerely,

[Authorized Officer]  
SunPower Corporation

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**Table of Contents****Schedule 10(a)(v)**

Three securities class action lawsuits were filed against SunPower and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired SunPower's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as In re SunPower Securities Litigation, Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning SunPower's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and sections 11 and 15 of the Securities Act of 1933. SunPower believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010. The court dismissed the consolidated complaint with leave to amend on March 1, 2011. An amended complaint was filed on April 18, 2011. The amended complaint added two former employees as defendants. Defendants filed motions to dismiss the amended complaint on May 23, 2011. The motions to dismiss the amended complaint were heard by the court on August 11, 2011. On December 19, 2011, the court granted in part and denied in part the motions to dismiss, dismissing the claims brought pursuant to sections 11 and 15 of the Securities Act of 1933 and the claims brought against the two newly added former employees. SunPower is currently unable to determine if the resolution of these matters will have an adverse effect on SunPower's financial position, liquidity or results of operations.

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

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

**Table of Contents****ANNEX B**

THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, (THE SECURITIES ACT ), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (II) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (III) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES.

**SUNPOWER CORPORATION****WARRANT****TO PURCHASE COMMON STOCK**Certificate Number: **T-1**

Dated: February 28, 2012

For value received, Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France (the *Investor* ) and, together with any transferee of the Warrant in accordance with the terms of this Warrant, the *Holder* ), is entitled to purchase from SunPower Corporation, a Delaware corporation (together with its successors and assigns, the *Company* ), at any time and from time to time after the date set forth above, subject to the conditions set forth in Sections 1.2(f) and 1.2(g), and prior to 5:00 p.m., New York time, on the Expiration Date (as defined below), at the purchase price of **\$7.8685** per share (as such price may be adjusted pursuant to Section 2, the *Exercise Price* ) an aggregate of **9,531,677** fully-paid and nonassessable shares of the Company's common stock, par value \$0.001 per share ( *Common Stock* ) (as such shares may be adjusted pursuant to Section 2, the *Warrant Shares* ).

This Warrant (this *Warrant* ) is being initially issued to the Investor pursuant to a Private Placement Agreement dated February 28, 2012 (the *Purchase Agreement* ) by and between the Company and the Investor, together with a related Terms Agreement, as each may be amended, restated, modified or supplemented from time to time.

**Section 1. Term and Exercise of Warrant.**

**1.1 Term of Warrant.** The Holder shall have the right, subject to the conditions set forth in Sections 1.2(f) and 1.2(g), at any time before 5:00 p.m., New York time, on the seventh anniversary of the date hereof, or, if such date is not a Business Day (as defined below), the next Business Day (the *Expiration Date* ) to exercise this Warrant in accordance with the terms of this Warrant.

**1.2 Exercise of Warrant.**

(a) **Cash Exercise.** Subject to Sections 1.2(f) and 1.2(g), this Warrant may be exercised at any time prior to the Close of Business on the Expiration Date (or if the Expiration Date is not a Business Day, the next Business Day) and from time to time, in whole or in part, upon surrender to the Company, together with the duly completed and signed form of notice of exercise (designating thereon the Holder's election to cash exercise ( *Cash Exercise* )) in the form attached (the *Notice of Exercise* ), and payment to the Company of the Exercise Price in effect on the date of such exercise for the number of Warrant Shares in respect of which this Warrant is then being exercised; provided, that the Holder may not elect to Cash Exercise this Warrant unless there is available an effective registration statement to cover such transaction or such Holder checks the box on the Notice of Exercise thereby representing to the Private Placement Representations (as defined in the Notice of Exercise). Payment of the aggregate Exercise Price upon exercise pursuant to this Section 1.2(a) shall be made by delivery of a check to the principal executive offices of the Company as provided in Section 7 or, at the Holder's

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discretion, by wire transfer of immediately available funds in accordance with written wire transfer instructions to be provided by the Company at the Holder's request.

(b) **Net-Issue Exercise**. Subject to Sections 1.2(f) and 1.2(g), in lieu of exercising this Warrant on a cash basis pursuant to Section 1.2(a), the Holder may elect to exercise this Warrant at any time prior to the Expiration Date and from time to time, in whole or in part, on a net-issue basis by electing to receive the number of Warrant Shares which are equal in value to the value of this Warrant (or any portion thereof to be canceled in connection with such Net-Issue Exercise) at the time of any such Net-Issue Exercise, by surrender of this Warrant, together with the duly completed and signed Notice of Exercise (designating the Holder's election to Net-Issue Exercise ( ***Net-Issue Exercise*** )), to the Company at the principal executive offices of the Company as provided in Section 7. The Notice of Exercise shall be properly marked to indicate (A) the number of Warrant Shares to be delivered to the Holder in connection with such Net-Issue Exercise, (B) the number of Warrant Shares in respect of which this Warrant is being surrendered in payment of the aggregate Exercise Price for the Warrant Shares to be delivered to the Holder in connection with such Net-Issue Exercise, calculated as of the Determination Date (as defined below) and (C) the number of Warrant Shares which remain subject to this Warrant after such Net-Issue Exercise, if any (each as determined in accordance with this Section 1.2(b)). In the event that the Holder elects to exercise this Warrant in whole or in part on a net-issue basis pursuant to this Section 1.2(b), the Company will issue to the Holder the number of Warrant Shares determined in accordance with the following formula:

$$X = [Y \times (A - B)] / A$$

where:

***X*** is the number of Warrant Shares to be issued to the Holder in connection with such Net-Issue Exercise;

***Y*** is the number of Warrant Shares to be exercised, up to the number of Warrant Shares subject to this Warrant;

***A*** is the Closing Sale Price (as defined below) as of the Determination Date (as defined below) of one share of Common Stock; and

***B*** is the Exercise Price in effect as of the date of such Net-Issue Exercise (as adjusted pursuant to Section 2).

The ***Determination Date*** will be the date the Notice of Exercise is given to the Company (determined in accordance with Section 7), or if such date is not a Trading Day, the next succeeding Trading Day.

(c) **Fractional Interests**. No fractional shares of Common Stock will be issued upon the exercise of this Warrant, but in lieu thereof the Company shall pay therefor in cash an amount equal to the product obtained by multiplying the Closing Sale Price of one share of Common Stock on the Trading Day immediately preceding the date of exercise of the Warrant times such fraction (rounded to the nearest cent).

(d) **Deemed Issuance**. Subject to 1.2(c), upon such surrender of the Warrant, delivery of the Notice of Exercise and, in the case of a Cash Exercise pursuant to Section 1.2(a), payment of the Exercise Price, the Company will with all reasonable dispatch (and in no event more than three Business Days from delivery of the Notice of Exercise), in the sole discretion of the Holder and as reflected on the Notice of Exercise, either (i) issue and cause to be delivered a certificate or certificates to and in the name of the Holder, or in the name of such other Person as designated by the Holder, or (ii) establish an electronic book entry at the Transfer Agent in a segregated account established by the Transfer Agent for the Holder's benefit and registered in the name of Holder, or in the name of such other Person as designated by the Holder, in either case of (i) or (ii), for the number of full shares of Common Stock so purchased upon the exercise of this Warrant, together with a check or cash in respect of any fraction of a share of Common Stock otherwise deliverable upon such exercise, as

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provided in Section 1.2(c). Such certificate or certificates shall be deemed to have been issued, or such electronic book entry shall be deemed to have been established, and the Person in whose name any such certificates will be issuable, or in whose name the electronic book entry has been registered, upon exercise of this Warrant (as indicated in the applicable Notice of Exercise) will be deemed to have become a holder of record of such Warrant Shares as of the date of the surrender of this Warrant and, in the case of a Cash Exercise pursuant to Section 1.2(a), payment of the Exercise Price.

(e) Warrant Exercisable in Whole or in Part. The rights of purchase represented by this Warrant shall be exercisable, at the election of the Holder, either in full or from time to time in part. If this Warrant is exercised in respect of less than all of the Warrant Shares purchasable on such exercise at any time prior to the Expiration Date, a new Warrant of like tenor exercisable for the remaining Warrant Shares may be issued and delivered to the Holder by the Company. This Warrant or any part thereof surrendered in the exercise of the rights thereby evidenced shall thereupon be cancelled by the Company and retired.

(f) Stockholder Approval Condition to Exercise Warrant. The Warrant shall not be exercisable by Holder prior to the date the Company obtains stockholder approval ( Stockholder Approval ) with respect to the issuance of Warrant Shares upon exercise of the Warrant in the manner set forth in the Compensation and Funding Agreement, dated February 28, 2012, between the Company and the Investor.

(g) Holder's Exercise Limitations. So long as the Company has at least \$25 million aggregate principal amount of Convertible Notes outstanding, the Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, to the extent that after giving effect to such issuance after exercise as set forth on the Notice of Exercise, the Holder would, directly or indirectly, including through one or more wholly-owned subsidiaries, become the beneficial owner (as these terms are defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), of more than 74.99% of the voting power of the Company's capital stock that is at the time entitled to vote by the holder thereof in the election of the Board of Directors (or comparable body). Upon request by Holder, the Company shall obtain a written statement from its Transfer Agent setting forth the number of shares of Common Stock outstanding.

(h) Listing and Reservation Covenants. On and after the date of such Stockholder Approval, the Company shall (i) cause the Warrant Shares to be approved for listing on the NASDAQ Global Select Market or such other securities exchange or market as the Common Stock is listed from time to time, subject to official notice of issuance and (ii) for as long as this Warrant remains outstanding, at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock or shares of Common Stock held in treasury by the Company, for the purpose of effecting the exercise of this Warrant, the number of Warrant Shares then issuable upon the exercise hereof (after giving effect to all anti-dilution adjustments provided for herein). All Warrant Shares delivered upon exercise of this Warrant shall be newly issued shares or shares held in treasury by the Company, shall have been duly authorized and validly issued and shall be fully paid and nonassessable, and shall be free from preemptive rights and free of any lien or adverse claim (except for liens or adverse claims arising from the action or inaction of Holder).

**Section 2. Adjustment of Exercise Price and Warrant Shares.**

The Exercise Price and the number of Warrant Shares purchasable upon the exercise of this Warrant shall be subject to adjustment from time to time as set forth below.

**2.1 Adjustment for Change in Capital Stock.** If, after the Issue Date of the Warrant, the Company:

- (a) pays a dividend or makes a distribution payable exclusively in shares of Common Stock on all or substantially all shares of the Company's Common Stock;
- (b) subdivides the outstanding shares of Common Stock into a greater number of shares; or
- (c) combines the outstanding shares of Common Stock into a smaller number of shares;

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then the Exercise Price will be decreased (or increased with respect to an event in clause (c)) based on the following formula:

$$R = R \times \frac{OS}{OS}$$

where,

R = the Exercise Price in effect immediately after the Open of Business on the record date for such dividend or distribution, or immediately after the Open of Business on the effective date of such subdivision or combination, as the case may be;

R = the Exercise Price in effect immediately prior to the Open of Business on the record date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such subdivision or combination, as the case may be;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the record date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such subdivision or combination, as the case may be; and

OS = the number of shares of Common Stock outstanding immediately after the Open of Business on the record date for such dividend or distribution, or immediately after the Open of Business on the effective date of such subdivision or combination, as the case may be. Such adjustment shall become effective immediately after the Open of Business on the record date for such dividend or distribution, or the effective date for such subdivision or combination, as the case may be. If any dividend or distribution of the type described in this Section 2.1 is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Exercise Price shall be immediately readjusted, effective as of the date the Company's board of directors or a duly appointed committee thereof (the **Board of Directors**) determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Exercise Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

**2.2 Adjustment for Rights Issue.** If, after the Issue Date of the Warrant, the Company distributes any rights, options or warrants (other than pursuant to a Shareholders' Rights Plan (defined below)) to all or substantially all holders of the Company's Common Stock entitling them to purchase (for a period not more than 45 days from the record date for such distribution) shares of Common Stock at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including the Trading Day immediately preceding the record date for such distribution, the Exercise Price shall be decreased in accordance with the formula:

$$R = R \times \left( \frac{O + \frac{N \times P}{M}}{O + N} \right)$$

where:

R = the Exercise Price in effect immediately after the Open of Business on the record date for such distribution;

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- R = the Exercise Price in effect immediately prior to the Open of Business on the record date for such distribution;
- O = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the record date for such distribution;
- N = the number of additional shares of Common Stock issuable pursuant to such rights, options or warrants;
- P = the per-share offering price payable to exercise such rights, options or warrants for the additional shares plus the per-share consideration (if any) the Company receives for such rights, options or warrants; and

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M = the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the record date with respect to the distribution.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the Open of Business on the record date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Exercise Price shall be increased to the Exercise Price that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Exercise Price shall be increased promptly to be the Exercise Price that would then be in effect if such record date for such distribution had not been fixed.

For purposes of this Section 2.2, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Common Stock at less than the average of the Closing Sale Prices of Common Stock for each Trading Day in the applicable 10 consecutive Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

**2.3 Adjustment for Other Distributions.** If, after the Issue Date of the Warrant, the Company distributes to all or substantially all holders of its Common Stock any of its debt or other assets or property (including cash, rights, options or warrants to acquire capital stock of the Company or other securities, but excluding (a) dividends or distributions (including subdivisions) referred to in Section 2.1 and distributions of rights, warrants or options referred to in Section 2.2, (b) rights issued to all holders of Common Stock pursuant to a Shareholders Rights Plan, where such rights are not presently exercisable, continue to trade with Common Stock and holders will receive such rights together with Common Stock upon exercise of the Warrant), (c) dividends or other distributions paid exclusively in cash (to which Section 2.4 shall apply) and (d) any Spin-off to which the provisions set forth below in this Section 2.3 shall apply) ( *Distributed Property* ), the Exercise Price shall be decreased, in accordance with the formula:

$$R = R \times \frac{M-F}{M}$$

where:

R = the Exercise Price in effect immediately after the Open of Business on the record date for such distribution;

R = the Exercise Price in effect immediately prior to the Open of Business on the record date for such distribution;

M = the average of the Closing Sale Prices of Common Stock for the 10 consecutive Trading Day period ending on, and including, the record date for such distribution; and

F = the fair market value, as determined by the Board of Directors, of the portion of the Distributed Property to be distributed in respect of each share of Common Stock immediately as of the Open of Business on the record date for such distribution.

Such adjustment shall become effective immediately prior to the Open of Business on the record date for such distribution. Notwithstanding the foregoing, if F as set forth above is equal to or greater than M as set forth above, in lieu of the foregoing adjustment, the Holder shall receive, at the same time and up on the same terms as holders of Common Stock, the amount and kind of Distributed Property the Holder would have received had the Holder owned a number of shares of Common Stock issued upon such exercise immediately prior to the record date for such distribution. If such distribution is not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price that would then be in effect if such dividend or distribution had not been

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declared. If the Board of Directors or a committee thereof determines  $F$  for purposes of this Section 2.3 by reference to the actual or when issued trading market for any Common Stock, it must in doing so consider the prices in such market over the same period used in computing the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the record date for such distribution.

With respect to an adjustment pursuant to this Section 2.3 where there has been a payment of a dividend or other distribution on the Common Stock in shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit, where such capital stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the Spin-off) on a national securities exchange or reasonably comparable non-U.S. equivalent, which is referred to herein as a *Spin-off*, the Exercise Price will be decreased based on the following formula:

$$R = R \times \frac{MP}{F + MP}$$

$R$  = the Exercise Price in effect immediately after the end of the Valuation Period (as defined below);

$R$  = the Exercise Price in effect immediately prior to the end of the Valuation Period;

$F$  = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the effective date for the Spin-off (such period, the *Valuation Period*); and

$MP$  = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Exercise Price under the preceding paragraph of this Section 2.3 will be made immediately after the Close of Business on the last day of the Valuation Period, but will be given effect as of the Open of Business on the effective date for the Spin-off. For purposes of determining the Exercise Price in respect of any exercise during the 10 Trading Days commencing on the effective date for any Spin-off, references within the portion of this Section 2.3 related to Spin-offs to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-off to, but excluding, the relevant Determination Date.

For purposes of this Section 2.3, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than the average of the Closing Sale Prices of the Common Stock for each Trading Day in the applicable 10 consecutive Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

If, prior to a Determination Date, a record date for a Spin-off has been set but the relevant dividend or distribution has not yet resulted in an adjustment to the Exercise Price and an exercising Holder is not entitled to participate in the dividend or distribution with respect to the shares of Common Stock the Holder receives upon exercise (whether because the Holder was not a holder of such shares of Common Stock on the effective date for such dividend or distribution or otherwise), then as promptly as practicable following the Determination Date, the Company will deliver to the Holder a number of additional shares of Common Stock that reflects the increase to the number of Warrant Shares deliverable as a result of the Spin-off.

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**2.4 Adjustment for Cash Distributions.** If, after the Issue Date of the Warrant, the Company makes a distribution to all or substantially all holders of its Common Stock consisting exclusively of cash, the Exercise Price shall be adjusted in accordance with the formula:

$$R = R \times \frac{SP - C}{SP}$$

R = the Exercise Price in effect immediately after the Open of Business on the record date for such distribution;

R = the Exercise Price in effect immediately prior to the Open of Business on the record date for such distribution;

SP = the average of the Closing Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the record date for such distribution; and

C = the amount in cash per share the Company distributes to holders of Common Stock.  
The adjustment shall become effective immediately after the Open of Business on the record date with respect to the distribution.

Notwithstanding the foregoing, if C as set forth above is equal to or greater than SP as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, the amount of cash the Holder would have received had the Holder owned a number of shares exercisable from the Exercise Price on the record date for such distribution. If such dividend or distribution is not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price that would then be in effect if such dividend or distribution had not been declared.

**2.5 Adjustment for Company Tender Offer.** If, after the Issue Date of the Warrant, the Company or any Subsidiary makes a payment to holders of the shares of Common Stock in respect of a tender or exchange offer, other than an odd-lot offer, by the Company or any of its Subsidiaries for shares of Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices over the 10 consecutive Trading Day period commencing on, and including the Trading Day immediately following the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the ***Expiration Date***), the Exercise Price shall be decreased based on the following formula:

$$R = R \times \frac{OS \times SP}{F + (SP \times OS)}$$

R = the Exercise Price in effect immediately after the Open of Business on the Trading Day immediately following the Expiration Date;

R = the Exercise Price in effect immediately prior to the Open of Business on the Trading Day immediately following the Expiration Date;

F = the aggregate fair market value, as determined by the Board of Directors, of all cash and other consideration payable in such tender or exchange offer for shares purchased in such tender or exchange offer, such value to be measured as of the expiration time of the tender or exchange offer (the ***Expiration Time***);

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OS = the number of shares of Common Stock outstanding immediately prior to the Expiration Time (prior to giving effect to such tender offer or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender offer or exchange offer); and

SP = the average of the Closing Sale Prices of Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day immediately following the Expiration Date.

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The adjustment to the Exercise Price under this Section 2.5 will be made immediately after the Open of Business on the 11<sup>th</sup> Trading Day following the Expiration Date but will be given effect at the Open of Business on the Trading Day following the Expiration Date. For purposes of determining the Exercise Price, in respect of any exercise during the 10 Trading Days commencing on the Trading Day immediately following the Expiration Date, references within this Section 2.5 to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day following the Expiration Time to, but excluding, the relevant Determination Date.

**2.6 When No Adjustment Required.** No adjustment need be made as a result of:

- (a) the issuance of the rights pursuant to the Company's adoption of a stockholders rights plan that provides that each share of Common Stock issued upon exercise of the Warrant at any time prior to the distribution of separate certificates representing rights will be entitled to receive the right (a *Stockholder Rights Plan*);
- (b) the distribution of separate certificates representing the rights under a Stockholder Rights Plan;
- (c) the exercise or redemption of the rights in accordance with any rights agreement under a Stockholder Rights Plan;
- (d) the termination or invalidation of the rights under a Stockholder Rights Plan;
- (e) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Common Stock under any plan;
- (f) upon the issuance of any shares of Common Stock or options or rights to purchase or be issued those shares pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;
- (g) ordinary course of business stock repurchases, including structured or derivative transactions pursuant to a stock repurchase program approved by the Board of Directors (but, for the avoidance of doubt, excluding transactions described in Section 2.5);
- (h) upon the issuance of any shares of Common Stock or any securities convertible into, or exchangeable for shares of Common Stock, or the right to purchase shares of Common Stock or such convertible or exchangeable securities other than as described in Sections 2.2 or 2.3; or
- (i) for a change in the par value of Common Stock.

If any event described in Section 2.6 (a) through (d) occurs, the Holder will receive the rights upon exercise, unless, prior to any exercise, the rights have separated from the Common Stock. If the rights have separated, the Exercise Price will be decreased at the time of separation as provided by Section 2.2 or 2.3, as applicable, subject to readjustment in the event of expiration, termination or redemption of such rights.

Notwithstanding the foregoing, no adjustment need be made to the Exercise Price pursuant to Section 2.1, 2.2, 2.3, 2.4 or 2.5 if the Holder is entitled to participate (as a result of holding this Warrant, and at substantially the same time as Common Stock holders participate), subject to notice of such entitlement to the Holder, in the transaction that would otherwise trigger the applicable adjustment, as if the Holder held a number of shares of Common Stock issuable upon exercise of this Warrant. No adjustment need be made if the Common Stock to be issued upon exercise will actually receive the consideration provided in, or be subject to, the transaction that would otherwise trigger the adjustment.

**Table of Contents****2.7 Effect of Reclassification, Consolidation, Merger or Sale.**

(a) Upon the occurrence of (i) any reclassification of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination covered by Section 2.1), (ii) any consolidation, merger, sale of all or substantially all of the Company's assets (other than a sale of all or substantially all of the assets of the Company in a transaction in which the holders of Common Stock immediately prior to such transaction do not receive securities, cash or other assets of the Company or any other Person), or (iii) a binding share exchange which reclassifies or changes the outstanding shares of Common Stock, in each case as a result of which the holders of Common Stock shall be entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock (any such event, a **Merger Event**), then at the effective time of the Merger Event, the right to exercise this Warrant will be changed into a right to exercise this Warrant into the type and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock issuable upon exercise of this Warrant immediately prior to such Merger Event would have owned or been entitled to receive (the **Reference Property**) upon such Merger Event. If the Merger event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property to be received upon exercise will be deemed to be the weighted average of the types and amounts of Reference Property to be received by the holders of Common Stock that affirmatively make such election).

(b) If the Company consummates a Merger Event, the Company shall promptly provide notice to the Holder briefly describing the Merger Event and stating the type or amount of cash, securities, property or other assets that will comprise the Reference Property after any such Merger Event and any adjustment to be made with respect thereto.

(c) The above provisions of this Section shall similarly apply to successive Merger Events.

**2.8 Simultaneous Adjustments.** In the event that this Section 2 requires simultaneous adjustments to the Exercise Price under more than one of Sections 2.1, 2.2, 2.3 or 2.4 of this warrant then the Board of Directors of the Company shall make such adjustments to the Exercise Price in good faith and in a commercially reasonable manner.

**2.9 Successive Adjustments.** After an adjustment to the Exercise Price under this Section 2, any subsequent event requiring an adjustment under this Section 2 shall cause an adjustment to the Exercise Price as so adjusted.

**2.10 Limitation on Adjustments.** The Company shall not take any action that would result in an adjustment pursuant to the foregoing provisions in this Section 2 if that adjustment would reduce the Exercise Price below the then par value of the shares of Common Stock issuable upon exercise of the Warrant. In no event will the Exercise Price be increased other than as a result of a transaction described in Section 2.1(c).

**2.11 Adjustment of Number of Warrant Shares.** Upon each adjustment of the Exercise Price pursuant to this Section 2, each Warrant outstanding prior to the making of the adjustment in the Exercise Price shall thereafter evidence the right to receive upon payment of the adjusted Exercise Price that number of shares of Common Stock (calculated to the nearest hundredth) obtained from the following formula:

$$N = N \times (E/E')$$

where:

N = the adjusted number of Warrant Shares issuable upon exercise of a Warrant by payment of the adjusted Exercise Price.

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N = the number of Warrant Shares previously issuable upon exercise of a Warrant by payment of the Exercise Price prior to adjustment.

E = the adjusted Exercise Price.

E = the Exercise Price prior to adjustment.

**2.12 No Avoidance.** If the Company shall enter into any transaction for the purpose of avoiding the provisions of this Section 2, the benefits provided by such provisions shall nevertheless apply and be preserved.

**2.13 Notices.**

(a) Promptly after any adjustment of the Exercise Price or the number of Warrant Shares issuable hereunder, the Company shall give written notice thereof to the Holder, setting forth in reasonable detail the calculation of such adjustment.

(b) The Company shall give written notice to the Holder at least five (5) Business Days prior to the date on which the Company (I) closes its books or takes a record (a) with respect to any dividend or distribution on the Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock, (c) with respect to any pro rata redemption or similar offer to holders of the Common Stock or (d) for determining rights to vote with respect to any Merger Event, dissolution or liquidation or (II) enters into any transaction that will result in an adjustment of the Exercise Price or the number of Warrant Shares issuable hereunder.

**Section 3. Restriction on Transfer of Warrant and Warrant Shares.**

(a) On or after the Issue Date, the Holder may transfer this Warrant or the Warrant Shares to any Person:

(i) pursuant to a registration statement that is, at the time of such transfer, effective under the Securities Act;

(ii) pursuant to Rule 144 promulgated under the Securities Act; or

(iii) in a transaction otherwise exempt from the registration requirements of the Securities Act (subject to the requirements of such exemption).

(b) Notwithstanding the foregoing, the following terms and conditions will apply to each transfer provided for in Section 3(a):

(i) in the case of a transfer pursuant to Section 3(a)(ii) or (iii), as a condition precedent to such transfer, unless otherwise agreed by the Company in writing, the transferor must deliver an opinion of counsel reasonably satisfactory to the Company to the effect that the proposed transfer is exempt from registration under the Securities Act and applicable state securities laws; and

(ii) no Holder that is subject to the Company's then-applicable insider trading policy may transfer any of the Warrants or any Warrant Shares except to the extent permitted under such trading policy.

(c) By its acceptance of this Warrant, each Holder (i) shall be deemed to have acknowledged and agreed to the restrictions on transfer described in this Section, and to have acknowledged that the Company will rely upon the truth and accuracy of such acknowledgement and agreement and (ii) agrees to the imprinting of the following legend on any certificate or book-entry evidencing this Warrant and the Warrant Shares:

THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, (THE SECURITIES ACT), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE

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TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (II) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (III) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES.

(d) Except as provided in Section 3(a) and (b) above, this Warrant, the rights represented hereby and the Warrant Shares may not be transferred in whole or in part by the Holder. In order to effect any transfer or partial transfer of this Warrant, the Holder shall deliver this Warrant to the Company with the notice of transfer in the form attached (the *Notice of Transfer*) completed and duly executed. Upon receipt of Notice of Transfer and the opinion of counsel required by this Section, if any, the Company shall promptly (i) issue to the transferee a new Warrant for the number of Warrant Shares assigned by the Holder, and (ii) to the extent the transfer contemplated by the Notice of Transfer is not for the entire number of Warrant Shares represented by this Warrant, issue to the Holder a replacement Warrant representing the balance of such Warrant.

(e) The Company shall not be required to register any transfer of the Warrants or the Warrant Shares in violation of this Section or applicable securities laws. The Company may, and may instruct any transfer or warrant agent for the Company to, place such stop transfer orders as may be required on the transfer books of the Company in order to ensure compliance with the provisions of this Section and applicable securities laws.

**Section 4. Taxes.** The issuance of certificates for Warrant Shares or the establishment of an electronic book entry upon the exercise of the rights represented by this Warrant will be made without charge to the Holder for any issuance tax in respect thereof; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate or establishment of an electronic book entry in a name other than that of the Holder.

**Section 5. Mutilated or Missing Warrant.** If this Warrant shall be mutilated, lost, stolen or destroyed and the Company shall receive evidence thereof and (except with respect to mutilated Warrants returned to the Company) indemnity reasonably satisfactory to it, then the Company shall issue and deliver in exchange and substitution for and upon cancellation of the mutilated Warrant, or in lieu of and substitution for the Warrant lost, stolen or destroyed, a new Warrant of like tenor and representing an equivalent right or interest. An applicant for such a substitute Warrant shall comply with such other reasonable requirements and pay such reasonable charges as the Company may prescribe, including, without limitation, the execution and delivery of a lost Warrant affidavit and indemnification agreement in a form reasonably satisfactory to the Company and its counsel.

**Section 6. No Rights as Stockholder until Exercise.** Except as provided in Section 1.2(d), nothing contained in this Warrant shall be construed as conferring upon the Holder the right to vote or to receive dividends or to consent or to receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the Company or any other matter, or any rights whatsoever as stockholders of the Company.

**Section 7. Notices.** All notices and other communications required or permitted to be given with respect to the Warrant shall be in writing signed by the sender, and shall be considered given: (w) on the date delivered, if personally delivered during normal business hours, or on the next Business Day if delivered after normal business hours of the recipient; (x) on the date sent by telecopier with automatic confirmation of the transmitting machine showing the proper number of pages were transmitted without error, if sent during normal business hours of the recipient, or on the next Business Day if sent after normal business hours; (y) on the Business Day after being sent by Federal Express or another recognized overnight delivery service in time for and specifying next day or next business day delivery; or (z) five (5) Business Days after mailing, if mailed by United States

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postage-paid certified or registered mail, return receipt requested, in each instance referred to in the preceding clauses (y) and (z) only if all delivery charges are pre-paid. Each such notice or other communication shall be given to the Holder at the address in a Warrant register to be created and maintained by the Company and to the Company at its principal executive offices.

**Section 8. No Waivers; Remedies; No Impairment.** Prior to the Expiration Date, no failure or delay by the Holder in exercising any right, power or privilege with respect to the Warrant shall operate as a waiver of the right, power or privilege. A single or partial exercise of any right, power or privilege shall not preclude any other or further exercise of the right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies provided in the Warrant shall be cumulative and not exclusive of any rights or remedies provided by law. The Company will not, by amendment of its charter or by-laws or through any other means, directly or indirectly, avoid or seek to avoid the observance or performance of any of the terms of this Warrant and will at all time in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the Holder against impairment.

**Section 9. Amendments.** No amendment, modification, termination or waiver of any provision of the Warrant, and no consent to any departure from any provision of the Warrant, shall be effective unless it shall be in writing and signed and delivered by the Company and the Holder. Notwithstanding the foregoing, neither Sections 1.2(f) or 1.2(g), nor this sentence, may be amended.

**Section 10. Governing Law.** This Warrant shall be governed by and construed in accordance with the laws of the State of New York that apply to contracts made and performed entirely within such state.

**Section 11. Severability of Provisions; Successors.** Any provision of this Warrant that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions of the Warrant or affecting the validity or enforceability of the provision in any other jurisdiction. This Warrant shall be binding upon any entity succeeding the Company by merger, consolidation or otherwise. All of the covenants and agreements of the Company shall inure to the benefit of successors and permitted assigns of the Holder.

**Section 12. Titles and Subtitles; Section References.** The titles and subtitles used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant. Unless otherwise stated, references to Sections are to the Sections of this Warrant.

**Section 13. Purchase Agreement.** The Company will provide any Holder with a copy of the Purchase Agreement upon request.

**Section 14. Definitions.** For purposes of this Warrant, the following terms have the following meanings:

(a) ***Business Day*** means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

(b) ***Close of Business*** means 5:00 p.m. (New York City time).

(c) ***Closing Sale Price*** of the Common Stock on any date means the closing per-share sale price (or if no closing per-share sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on that date as reported the principal other national or regional securities exchange on which the shares of the Common Stock are then traded. The Closing Sale Price will be determined without reference to after-hours or extended market trading. If the Common Stock is not so listed for trading on the relevant date, then the Closing Sale Price of the Common Stock will be the last quoted bid price for Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or a similar organization. If the Common Stock is not so quoted, then the

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Closing Sale Price of the Common Stock will be determined by a U.S. nationally recognized independent investment banking firm selected by the Company for this purpose.

(d) **Convertible Notes** means the Company's 4.75% Senior Convertible Debentures due 2014 and 4.5% Senior Convertible Debentures due 2015.

(e) **Exchange Act** means the Securities Exchange Act of 1934, as amended.

(f) **Issue Date** means the date on which the Warrant was originally issued or deemed issued as set forth on the face of the Warrant.

(g) **Market Disruption Event** means the occurrence or existence on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time within the 30 minutes prior to the closing time of the relevant exchange on such Scheduled Trading Day.

(h) **Open of Business** means 9:00 a.m. (New York City time).

(i) **Person** means any individual, corporation, partnership, company, trust, unincorporated organization or any other form of entity.

(j) **Scheduled Trading Day** means any day that is scheduled by the applicable exchange to be a Trading Day, provided that if the Common Stock is not listed or traded, then a Scheduled Trading Day shall have the same meaning as Business Day.

(k) **Securities Act** means the Securities Act of 1933, as amended.

(l) **Subsidiary** means a Person more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries of the Company, or by the Company and one or more other Subsidiaries of the Company.

(m) **Trading Day** means a day on which (i) there is no Market Disruption Event and (ii) trading in the Company's securities generally occurs on the NASDAQ Global Select Market, or if shares of Common Stock are not listed on the NASDAQ Global Select Market, then as reported by the principal other national or regional securities exchange on which the shares of Common Stock are then traded, or if the Common Stock is not listed or approved for trading on another national or regional securities exchange, on the principal market on which shares of the Common Stock are then traded, provided that if the Common Stock is not so listed or traded, then a Trading Day shall have the same meaning as Business Day.

(n) **Transfer Agent** means Computershare Trust Company, N.A., or any successor transfer agent for the Company.

[The next page is the signature page]

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The Company has executed and delivered this Warrant as of the date set forth above.

SUNPOWER CORPORATION

By: /s/ Thomas H. Werner  
Name: Thomas H. Werner

Title: Chief Executive Officer

Accepted:

TOTAL GAS & POWER USA, SAS

By: /s/ Arnaud Chaperon  
Name: Arnaud Chaperon

Title: President

Warrant Signature Page

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**NOTICE OF EXERCISE**

**(To Be Completed Only Upon Exercise)**

TO: SunPower Corporation  
77 Rio Robles  
San Jose, California 95134

1. The undersigned hereby irrevocably elects to exercise the Warrant with respect to \_\_\_\_\_ Warrant Shares pursuant to the terms of the Warrant.

2. If **Cash Exercise**, check this box "": The undersigned tenders herewith full payment of the aggregate cash exercise price equal to \$ \_\_\_\_\_ U.S. Dollars for such shares in accordance with the terms of the Warrant.

3. If **Cash Exercise** and there is no effective registration statement under the Securities Act to cover the issuance of the Warrant Shares upon such Cash Exercise, check this box "": The undersigned hereby makes the representations and warranties set forth in Section 3.2 of the Purchase Agreement as if it were the Investor and the Warrant Shares to be issued upon this exercise were the Securities (the **Private Placement Representations** ).

4. If **Net-Issue Exercise**, check this box "": The undersigned exercises the Warrant on a net-issue basis pursuant to the terms set forth in the Warrant. Net-Issue Information:

(a) Number of Warrant Shares to be Issued to Holder: \_\_\_\_\_

(b) Number of Warrant Shares Subject to Warrant Surrendered: \_\_\_\_\_

(c) Number of Warrant Shares Remaining Subject to Warrant, if any: \_\_\_\_\_

5.(Select one option below):

Please issue a certificate or certificates representing said Warrant Shares in such name or names as specified below:

(Name and Address)

Please establish an electronic book entry at the Transfer Agent in a segregated account established by the Transfer Agent for the benefit of and registered in the name of such name or names as specified below:

(Name and Address)

Determination Date:

By:

(Signature must conform in all respects to name of the Holder as set forth on the face of the Warrant)

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**NOTICE OF TRANSFER**

**(To Be Completed Only Upon Transfer)**

TO: SunPower Corporation  
77 Rio Robles  
San Jose, California 95134

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto the right represented by this Warrant, to purchase Warrant Shares.

Please issue a Warrant representing the right to purchase such Warrant Shares in such name or names as specified below:

(Name and Address)

The undersigned requests the Company, by written order to exchange or register the transfer of a Warrant or Warrants, and, to the extent the transfer contemplated by this notice is not for the entire number of Warrant Shares represented by this Warrant, to issue a replacement Warrant in the name of the undersigned representing the balance of such Warrant Shares.

By executing and delivering this Notice of Transfer, the undersigned represents and warrants that transfer contemplated hereby is being made in accordance with Section 3 of this Warrant.

Dated:

By:

(Signature must conform in all respects to name of the Holder as set forth on the face of the Warrant)

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ANNEX C

**COMPENSATION AND FUNDING AGREEMENT**

This COMPENSATION AND FUNDING AGREEMENT, dated as of February 28, 2012 (this Agreement ), is entered into by and between SUNPOWER CORPORATION, a Delaware corporation ( SunPower ), and TOTAL S.A., a société anonyme organized under the laws of the Republic of France ( Total ).

**RECITALS**

WHEREAS, Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France and an indirect wholly owned subsidiary of Total ( Total USA ), owns approximately 66.30% of the common stock of SunPower;

WHEREAS, SunPower Corporation, Systems, a Delaware corporation and a subsidiary of SunPower (the Contractor ), and High Plains Ranch II, LLC, a Delaware limited liability company ( HPR II ), have entered into that certain Engineering, Procurement and Construction Agreement, dated as of September 30, 2011 (the EPC Contract ), pursuant to which the Contractor has agreed to design, engineer, procure certain materials and equipment for, install, construct, test and commission a 250 MW AC design capacity photovoltaic power plant in San Luis Obispo County, California (the PV Power Plant );

WHEREAS, in order to finance the cost of the development and construction of the PV Power Plant and certain related expenses, HPR II and the U.S. Department of Energy ( DOE ) are parties to that certain Loan Guarantee Agreement, dated as of September 30, 2011 (as amended, restated, modified or otherwise supplemented from time to time, the Loan Guarantee Agreement ), pursuant to which DOE will guarantee Advances (as defined under the Loan Guarantee Agreement) made to HPR II by the Federal Financing Bank, a body corporate and instrumentality of the United States of America ( FFB ) pursuant to that certain Note Purchase Agreement dated as of September 30, 2011, by and among HPR II, DOE and FFB (the Note Purchase Agreement ), subject to the terms and conditions set forth in the Loan Guarantee Agreement;

WHEREAS, the obligation of DOE to guarantee any Advance under the Loan Guarantee Agreement is subject to, among other things, the condition that since the date of the Loan Guarantee Agreement (or, if later, since the date of the last Advance), no event has occurred or could reasonably be expected to occur that has had or could reasonably be expected to have a Material Adverse Effect (as defined in the Loan Guarantee Agreement);

WHEREAS, the obligation of DOE to guarantee any Advance under the Loan Guarantee Agreement is also subject to, among other things, the condition that each of the representations and warranties made by any Major Project Participant in any Transaction Document (in each case, as defined in the Loan Guarantee Agreement) is true and correct in all material respects as of the date of the relevant Master Advance Notice (as defined in the Loan Guarantee Agreement);

WHEREAS, SunPower and the Contractor are Major Project Participants;

WHEREAS, at DOE's request, on or about the date hereof, Total will enter into a Liquidity Support Agreement with SunPower and DOE (the Liquidity Support Agreement ), pursuant to which Total will have an obligation to provide, or cause to be provided, Liquidity Injections to SunPower upon the occurrence of Liquidity Support Events, subject to the terms and limitations described therein; and

WHEREAS, in order to induce Total to enter into the Liquidity Support Agreement, SunPower has agreed to (a) issue an upfront warrant and make certain payments to Total, (b) establish parameters for the terms of any Liquidity Injections that may be required to be provided by Total to SunPower pursuant to the Liquidity Support Agreement, as more fully set forth below, and (c) enter into Amendment No. 3 to the Affiliation Agreement, dated as of April 28, 2011, between SunPower and Total USA, as amended;

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NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, SunPower and Total hereby agree as follows:

**AGREEMENT**

**Section 1. Definitions.** Capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to such terms in the Liquidity Support Agreement, and the following terms have the meanings set forth below:

(a) 30-Day Volume Weighted Average Price or 30-Day VWAP means the volume weighted average price of SunPower common stock, from 9:30 a.m. (New York City time) on the Trading Day 30 Trading Days preceding the applicable issuance date to 4:00 p.m. (New York City time) on the Trading Day immediately preceding the applicable issuance date, as calculated pursuant to the heading Bloomberg VWAP on Bloomberg Page SPWR <Equity> VWAP, or if such volume weighted average price is not available, the Board of Directors' reasonable, good faith estimate of the volume weighted average price of the shares of SunPower common stock for such 30-Trading Day period.

(b) Claim means any claim, suit, demand, proceeding, complaint, assessment, lien, injunction, order, judgment, notice of non-compliance, notice of violation, investigation or other action by or before any Governmental Authority or any other Person.

(c) Convertible Loans has the meaning set forth in the Total Credit Facilities Agreement.

(d) Credit Agricole Facility Agreement means the Revolving Credit Agreement, dated September 27, 2011, by and among SunPower, Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto, as amended by the First Amendment to Revolving Credit Agreement, dated as of December 21, 2011 and as may be further amended, modified or supplemented from time to time.

(e) Drawn Support Amount shall have the meaning given to it in the Liquidity Support Agreement, which meaning shall be interpreted in a manner consistent with Section 2(b) hereof.

(f) EBITDA means, for any period, the total of the following calculated for SunPower and its Subsidiaries on a consolidated basis and without duplication, with each component thereof determined in accordance with GAAP consistently applied by SunPower for such period (except as otherwise required by GAAP): (a) consolidated net income; plus (b) any deduction for (or less any gain from) income or franchise taxes included in determining such consolidated net income; plus (c) interest expense deducted in determining such consolidated net income; plus (d) amortization and depreciation expense deducted in determining such consolidated net income; plus (e) any non-recurring charges and any non-cash charges resulting from application of GAAP insofar as GAAP requires a charge against earnings for the impairment of goodwill and other acquisition related charges to the extent deducted in determining such consolidated net income and not added back pursuant to another clause of this definition; plus (f) any non-cash expenses that arose in connection with the grant of equity or equity-based awards to officers, directors, employees and consultants of SunPower and its Subsidiaries and were deducted in determining such consolidated net income; plus (g) non-cash restructuring charges; plus (h) non-cash charges related to negative mark-to-market valuation adjustments as may be required by GAAP from time to time; plus (i) non-cash charges arising from changes in GAAP occurring after the date hereof; less (j)(x) non-cash adjustments related to positive mark-to-market valuation adjustments as may be required by GAAP from time to time and (y) any non-recurring or extraordinary gains; less (k) other quarterly cash and non-cash adjustments that are deemed by the Chief Financial Officer of SunPower not to be part of the normal course of business and not necessary to reflect the regular, ongoing operations of SunPower and its Subsidiaries. As used in this definition, non-cash charge shall mean a charge in respect of which no cash is paid during the applicable period (whether or not cash is paid with respect to such charge in a subsequent period).

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(g) Equity Interests means shares of capital stock, general or limited partnership interests, membership interests in a limited liability company, beneficial interests in a trust, or other equity ownership interests in a Person, and any warrants, options, or other rights entitling the holder thereof to purchase or acquire any such equity interest.

(h) Exchange means the Nasdaq Global Select Market.

(i) Financial Indebtedness of SunPower and any of its Subsidiaries shall mean, without duplication, all Indebtedness of such Person other than (i) all obligations to pay the deferred purchase price of property or services, (ii) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (iii) Indebtedness in connection with the factoring of the accounts receivable of the Borrower or any Subsidiary in respect of rebates from U.S. Governmental Authorities pursuant to the Tech Credit Agreement in the ordinary course of business, (iv) intercompany liabilities (but including liabilities to a non-Subsidiary Affiliate) maturing within 365 days of the incurrence thereof, (v) non-recourse indebtedness, and (vi) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (v) above.

(j) GAAP means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States of America as in effect from time to time.

(k) Governmental Authority means any supra-national body, the government of the United States of America, any other nation or any political subdivision of any thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

(l) Gross Financial Indebtedness means at any time the aggregate Financial Indebtedness of SunPower and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated subsidiary that is non-recourse to such subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)).

(m) Guaranty is defined in Section 3(a)(i).

(n) Indebtedness means the aggregate amount of, without duplication, (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable and accrued expenses incurred in the ordinary course of business determined in accordance with GAAP), (iv) all obligations with respect to capital leases, (v) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (vi) all reimbursement and other payment obligations in respect of letters of credit and similar surety instruments (contingent or otherwise and including construction performance bonds), and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.

(o) Joint Venture means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

(p) LIBOR means, as of any date of determination, the LIBO Rate as defined in the Total Credit Facilities Agreement.

(q) LSA Effective Date means the date on which the Liquidity Support Agreement is fully executed and delivered by all parties thereto.

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(r) Market Disruption Event means, (1) a failure by the primary exchange or quotation system on which the SunPower common stock trades or is quoted to open for trading during its regular trading session, or (2) the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the SunPower common stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by such exchange or otherwise) in the SunPower common stock or in any options, contracts or future contracts relating to the SunPower common stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

(s) Material Adverse Effect means a material adverse effect on (a) the business, financial condition, operations or properties of SunPower and its subsidiaries, taken as a whole, (b) the validity or enforceability of any of the Transaction Documents, or (c) the ability of SunPower to perform its obligations under the Transaction Documents.

(t) Maximum Drawn Support Amount means, from time to time, the greatest Drawn Support Amount that has been outstanding at any time prior to the date of determination plus, if applicable, the amount of the Liquidity Injection in connection with which the Maximum Drawn Support Amount is being calculated, but only to the extent that the total including such Liquidity Injection would exceed the greatest Drawn Support Amount that had been outstanding at any time prior to the date of determination; provided, that Guarantees that were previously issued but which are no longer outstanding (whether due to termination, expiration or otherwise) shall not be included in the Drawn Support Amount at any time for purposes of calculating the Maximum Drawn Support Amount. For the avoidance of doubt, (a) the Maximum Drawn Support Amount is expected to increase from time to time but, except as described in the proviso to the preceding sentence, will never decrease and (b) once a previously-issued Guaranty is no longer outstanding, the Maximum Drawn Support Amount will thereafter be calculated as though such Guaranty had never been in effect.

(u) Person means an individual, partnership, corporation, association, limited liability company, unincorporated organization, trust or Joint Venture, or a governmental agency or political subdivision thereof.

(v) Private Placement Agreement means the Private Placement Agreement, dated as of the date hereof, between the Total USA and SunPower.

(w) Related Parties means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, trustees, employees, agents and advisors of such Person and such Person's Affiliates.

(x) Requirement of Law means, as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

(y) Revolving Loans has the meaning set forth in the Total Credit Facilities Agreement.

(z) subsidiary with respect to any Person, means:

(i) any corporation of which the outstanding Equity Interests having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly by such Person; or

(ii) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person.

(aa) Subsidiary means, unless the context otherwise requires, a subsidiary of SunPower.

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(bb) SunPower Debt Documents means, as of any date, any agreement, contract or instrument relating to any Indebtedness of SunPower (excluding the Total Credit Facilities Agreement and any other Loan Documents), including any amendments to such documents.

(cc) Tech Credit Agreement means that certain First Amended and Restated Purchase Agreement, dated November 1, 2010, between SunPower North America LLC and Technology Credit Corporation, as amended on January 25, 2011 and April 18, 2011.

(dd) Total Credit Facilities Agreement means the Revolving Credit and Convertible Loan Agreement, dated as of the date hereof, between Total USA and SunPower.

(ee) Trading Day means a day on which (i) there is no Market Disruption Event and (ii) the Exchange or, if the Shares not listed on the Exchange, the principal other U.S. national or regional securities exchange on which the SunPower common stock is then listed, is open for trading or, if the SunPower common stock is not so listed, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(ff) Transaction Documents means this Agreement, the Total Credit Facilities Agreement, the Liquidity Support Agreement, the Private Placement Agreement, any Warrant, any Guaranty, any promissory note evidencing a Revolving Loan or a Convertible Loan and any other agreements entered into between the Borrower and Total or its Affiliates pursuant to any of the foregoing agreements.

(gg) Transactions means, collectively, the execution, delivery and performance by the parties of the Transaction Documents in accordance with the terms thereof.

(hh) Warrant means a Warrant in the form of Exhibit A hereto.

**Section 2. Fees, Warrant and Expenses.**

(a) Upfront Obligations. In consideration for Total's agreement to enter into the Liquidity Support Agreement and for its commitments set forth in the Liquidity Support Agreement and in this Agreement, on the LSA Effective Date, SunPower shall issue to Total, or to an Acceptable Affiliate as directed by Total, a Warrant, in the form of Exhibit A hereto, which shall be exercisable to purchase an amount of stock equal to \$75,000,000, divided by 30-Day VWAP as of the LSA Effective Date. The per share exercise price of the Warrant issued pursuant to this Section 2(a) shall be the 30-Day VWAP as of the LSA Effective Date.

(b) Determining Availability of Liquidity Support. As of the LSA Effective Date, an aggregate of \$600,000,000 of liquidity support in the form of Liquidity Injections is available to SunPower under this Agreement and the other Transaction Documents. The amount of available liquidity support shall be decreased from time to time, upon any Liquidity Injection by Total or an Acceptable Affiliate, by (i) the principal amount (plus capitalized interest, if any) of any Indebtedness issued by SunPower to Total or an Acceptable Affiliate pursuant to this Agreement and the Total Credit Facilities Agreement, (ii) the cash purchase price of any equity securities issued by SunPower to Total or an Acceptable Affiliate pursuant to this Agreement and the Private Placement Agreement (including the cash proceeds to SunPower upon the exercise of a Warrant issued hereunder), (iii) the principal amount of Indebtedness of SunPower covered by a guarantee issued by Total hereunder and (iv) the amount of any other Liquidity Injection as determined by mutual good faith agreement of Total and SunPower. The amount of available liquidity support shall be increased from time to time, upon the repayment, refund, reimbursement, return or release by SunPower of any Liquidity Injection made by Total or an Acceptable Affiliate, by (i) the principal amount of any Indebtedness repaid by SunPower to Total or an Acceptable Affiliate pursuant to this Agreement or the Total Credit Facilities Agreement, (ii) the principal amount of Indebtedness of SunPower covered by a guarantee issued by Total hereunder and subsequently

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released and (iii) the amount of any other Liquidity Injection that is repaid, refunded, reimbursed, returned or released by SunPower, as determined by mutual good faith agreement of Total and SunPower. For the avoidance of doubt, Liquidity Injections made in the form of purchases of equity securities of SunPower (including the exercise of Warrants for cash) and any other Liquidity Injections not specifically subject to repayment irrevocably reduce the amount of liquidity support available hereunder, and SunPower shall have no obligation to repay, refund, reimburse, return or release any such Liquidity Injection.

(c) Commitment and Guaranty Fees. Within thirty (30) days after the last day of each calendar quarter during the term of this Agreement, SunPower shall pay to or as directed by Total, in cash (and pro-rated as appropriate for partial quarters):

(i) a commitment fee in an amount equal to 0.25% of the difference between the Maximum Support Amount, minus the Drawn Support Amount, as of the end of such quarterly period; and

(ii) a guarantee fee in connection with each Guaranty issued in accordance with Section 3 of this Agreement and outstanding for all or any part of the preceding calendar quarter, calculated as follows:

$$X \text{ times } Y \text{ times } (Z/365)$$

where:

(A) X is the average daily amount of Indebtedness guaranteed pursuant to one or more Guaranties issued in accordance with Section 3 of this Agreement;

(B) Y is 2.75%; and

(C) Z is the number of days during such calendar quarter that a Guaranty was outstanding.

(d) Expenses. SunPower shall pay and reimburse Total for all reasonable out-of-pocket expenses (including the reasonable fees and expenses of outside counsel) incurred by Total after the LSA Effective Date in enforcement of SunPower's obligations under this Agreement, the Liquidity Support Agreement and the other Transaction Documents.

(e) Interest on Overdue Amounts. Any payment obligations of SunPower to Total under this Agreement that are not paid when due shall accrue interest until paid in full at a rate equal to LIBOR as in effect from time to time plus 5.00% per annum.

**Section 3. Form of Liquidity Support; Choice of Liquidity Support.**

(a) Form of Liquidity Support. In the event that Total becomes obligated to provide a Liquidity Injection to SunPower pursuant to the Liquidity Support Agreement, subject to Section 3(c) of this Agreement, the Liquidity Injection shall (i) in the event that such Liquidity Injection is provided to address the occurrence of a Liquidity Support Event described in clause (i) of the definition thereof in the Liquidity Support Agreement, be in the minimum amount sufficient to cause both SunPower's Reported Liquidity and SunPower's Projected Liquidity to be equal to the amount of at least \$100 million (the Required Amount (i)), but shall in no event be more than the Required Amount (i) plus the minimum amount necessary to comply with the minimum funding amounts specified for the applicable form of Liquidity Injection (for example, the \$5 million minimum draw for Revolving Loans) without the written consent of SunPower, (ii) in the event that such Liquidity Injection is provided to address the occurrence of a Liquidity Support Event described in clause (ii) of the definition thereof in the Liquidity Support Agreement, be in the minimum amount sufficient to enable SunPower to cure the applicable breach and satisfy the applicable financial covenant after giving effect to, and as of the date of, such Liquidity Injection (the Required Amount (ii)), but shall in no event be more than the Required Amount (ii) plus the minimum amount necessary to comply

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with the minimum funding amounts specified for the applicable form of Liquidity Injection without the written consent of SunPower, and (iii) be in the applicable form prescribed below:

(i) Maximum Drawn Support Amount up to \$60 Million. To the extent that, at the time Total becomes obligated to provide such Liquidity Injection, (A) the Maximum Drawn Support Amount (taking into account the amount of such Liquidity Injection) is equal to or less than \$60,000,000 and (B) the ratio of Gross Financial Indebtedness at the end of the immediately preceding completed fiscal quarter to EBITDA for the four immediately preceding completed fiscal quarters of SunPower is not more than 3.5 to 1.0 (or, for the quarters in the fiscal year ending in 2012, 4.0 to 1.0), Total or an Acceptable Affiliate shall provide the applicable Liquidity Injection, and SunPower shall accept the Liquidity Injection, at Total's option (as to which Total shall notify SunPower promptly following Total's receipt of the documentation described in Section 3(e)), in the form of (1) a Revolving Loan pursuant to the Total Credit Facilities Agreement, (2) a guaranty by Total of Indebtedness of SunPower under any SunPower Debt Documents pursuant to a Guaranty substantially in the form of Exhibit B hereto (each such guaranty, a Guaranty) or (3) any other form of Liquidity Injection permitted by the Liquidity Support Agreement and agreed to in writing by SunPower.

(A) Warrant Issuance in Connection with Revolving Loans. At the time of funding of each Revolving Loan pursuant to the Total Credit Facilities Agreement, at no cost to Total, and subject to the provisions of Section 3(a)(i)(B) below, SunPower will issue to or as directed by Total a Warrant exercisable to purchase an amount of stock equal to 20% of the amount of such Revolving Loan divided by 30-Day VWAP as of the date of funding of such Revolving Loan. The per share exercise price of the Warrant issued pursuant to this Section 3(a)(i)(A) shall be the 30-Day VWAP as of the date of issuance of such Warrant.

(B) Limitation on Warrants in Connection with Revolving Loans. Notwithstanding the foregoing provisions of Section 3(a)(i)(A), the aggregate exercise price at issuance of Warrants issued in connection with Revolving Loans shall not exceed 20% of the maximum aggregate amount of Revolving Loans that has been outstanding at any time under the Total Credit Facilities Agreement (for example, if Total provides a \$40,000,000 Revolving Loan pursuant to the Total Credit Facilities Agreement, SunPower shall issue a \$8,000,000 Warrant; if SunPower repays \$10,000,000 of such Revolving Loan and Total thereafter provides an additional Revolving Loan of \$20,000,000, the Warrant issued in connection with the subsequent Revolving Loan would be \$2,000,000, corresponding to the \$10,000,000 incremental increase in the maximum aggregate amount of Revolving Loans outstanding).

(ii) Maximum Drawn Support Amount Over \$60 Million up to \$200 Million. To the extent that, at the time Total becomes obligated to provide such Liquidity Injection, (A) the Maximum Drawn Support Amount (taking into account the amount of such Liquidity Injection) is greater than \$60,000,000 but not greater than \$200,000,000 and (B) the ratio of Gross Financial Indebtedness at the end of the immediately preceding completed fiscal quarter to EBITDA for the four immediately preceding completed fiscal quarters of SunPower is not more than 3.5 to 1.0 (or, for the quarters in the fiscal year ending in 2012, 4.0 to 1.0), Total or an Acceptable Affiliate shall provide the applicable Liquidity Injection, and SunPower shall accept the Liquidity Injection, at Total's option (as to which Total shall notify SunPower promptly following Total's receipt of the documentation described in Section 3(e)), in the form of (1) a Convertible Loan pursuant to the Total Credit Facilities Agreement, (2) a Guaranty or (3) any other form of Liquidity Injection permitted by the Liquidity Support Agreement and agreed to in writing by SunPower.

(A) Conversion of Revolving Loan. If the Maximum Drawn Support Amount at any time exceeds \$60,000,000 then any outstanding amount under a Revolving Loan (including unpaid or capitalized interest) shall be convertible, at Total's option, into a Convertible Loan under the Total Credit Facilities Agreement upon notice from Total to SunPower. No additional Warrants shall be issued in connection with any such conversion.

(B) Warrant Issuance in Connection with Convertible Loan. At the time of funding of each new Convertible Loan pursuant to the Total Credit Facilities Agreement (as opposed to conversions of

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Revolving Loans into Convertible Loans), at no cost to Total, and subject to the provisions of Section 3(a)(ii)(C) below, SunPower will issue to Total, or to an Acceptable Affiliate as directed by Total, a Warrant, exercisable to purchase an amount of stock equal to (A) (x) to the extent that the Maximum Drawn Support Amount following the issuance of such Convertible Loan will not be in excess of \$200 million, 25% of the amount of such Convertible Loan and (y) to the extent that the Maximum Drawn Support Amount following the issuance of such Convertible Loan will be in excess of \$200 million, 35% of the amount of such Convertible Loan, in each case divided by (B) 30-Day VWAP as of the date of issuance of such Warrant. The per share exercise price of the Warrant issued pursuant to this Section 3(a)(ii)(B) shall be the 30-Day VWAP as of the date of issuance of such Warrant.

(C) Limitation on Warrants in Connection with Convertible Loans. Notwithstanding the foregoing provisions of Section 3(a)(ii)(B), (1) so long as the Maximum Drawn Support Amount is not in excess of \$200,000,000, the aggregate exercise price at issuance of Warrants issued in connection with new Convertible Loans that are not the result of converting Revolving Loans shall not exceed 25% of the maximum aggregate amount of Convertible Loans that are not the result of converting Revolving Loans that has been outstanding at any time under the Total Credit Facilities Agreement (for example, if Total provides a \$100,000,000 new Convertible Loan pursuant to the Total Credit Facilities Agreement (as opposed to conversions of Revolving Loans into Convertible Loans), SunPower shall issue a \$25,000,000 Warrant; if SunPower repays \$10,000,000 of such Convertible Loan and Total thereafter provides an additional Convertible Loan of \$20,000,000, the Warrant issued in connection with the subsequent Convertible Loan would be \$2,500,000); and (2) if the Maximum Drawn Support Amount is in excess of \$200,000,000, the aggregate exercise price at issuance of Warrants issued in connection with new Convertible Loans that are not the result of converting Revolving Loans and that cause the Maximum Drawn Support Amount to be increased to any amount in excess of \$200,000,000 shall not exceed 35% of the maximum aggregate amount of such Convertible Loans that has been outstanding at any time under the Total Credit Facilities Agreement (for example, if Total provides a new \$240,000,000 Convertible Loan pursuant to the Total Credit Facilities Agreement (as opposed to conversions of Revolving Loans into Convertible Loans) at a time when no Convertible Loans have been yet been issued pursuant to the Total Credit Facilities Agreement, SunPower shall issue an \$64,000,000 Warrant (representing a \$50,000,000 Warrant in respect of the first \$200,000,000 aggregate principal amount of such Convertible Loan and a \$14,000,000 Warrant in respect of the remaining \$40,000,000 aggregate principal amount); if SunPower repays \$10,000,000 of that \$240,000,000 amount and Total thereafter provides an additional Convertible Loan of \$20,000,000 before any other portion of the outstanding Convertible Loan is repaid, the Warrant issued in connection with the subsequent Convertible Loan would be \$3,500,000).

(iii) Maximum Drawn Support Amount Over \$200 Million. To the extent that at the time Total becomes obligated to provide such Liquidity Injection (A) the Maximum Drawn Support Amount (taking into account the amount of such Liquidity Injection) is greater than \$200,000,000 or (B) the ratio of Gross Financial Indebtedness at the end of the immediately preceding fiscal quarter to EBITDA for the four immediately preceding completed fiscal quarters of SunPower exceeds 3.5 to 1.0 (or, for the quarters in the fiscal year ending in 2012, 4.0 to 1.0), Total or an Acceptable Affiliate shall provide, and SunPower shall accept, the applicable Liquidity Injection, at Total's option (as to which Total shall notify SunPower promptly following Total's receipt of the documentation described in Section 3(e)), in the form of (1) additional Revolving Loans, (2) additional Convertible Loans, (3) a purchase of equity securities of SunPower pursuant to the Private Placement Agreement (which purchase of equity securities may be rounded up, at Total's option, from the required amount of such Liquidity Injection to the next integral multiple of \$25 million), (4) a Guaranty or (5) any other form of Liquidity Injection permitted by the Liquidity Support Agreement and agreed to in writing by SunPower. SunPower shall issue to Total, at no cost to Total, Warrants in connection with additional Revolving Loans and/or additional Convertible Loans in accordance with the preceding provisions of this Section 3(a). To the extent that such Liquidity Injection is provided in the form of a purchase of equity securities or in another form permitted by the Liquidity

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Support Agreement, then, at no cost to Total, SunPower will issue to or as directed by Total a Warrant, exercisable to purchase an amount of stock equal to 25% of the amount of such Liquidity Injection divided by 30-Day VWAP as of the date of such Liquidity Injection. The per share exercise price of the Warrant issued pursuant to this Section 3(a)(iii) shall be the 30-Day VWAP as of the date of issuance of such Warrant.

(b) Reimbursement for Draws on Guarantees. Within thirty (30) days after the date on which Total makes any payment to a lender under a Guaranty, SunPower shall pay to or as directed by Total (i) the full amount of such payment made by Total plus (ii) interest on such amount, for the period from and including the date of payment by Total to the lender to and including the date of payment by SunPower to Total, at a rate per annum equal to LIBOR as in effect from time to time plus 5.00%; provided, that, if SunPower fails to pay such amount when due, the amount of such payment obligation (including interest) shall be convertible, at Total's option, into a Revolving Loan, a Convertible Loan or a purchase of equity pursuant to the Private Placement Agreement, in each case upon notice from Total to SunPower and in each case with warrant coverage in accordance with Section 3(a).

(c) Effects on SunPower Debt Documents and Other Conflicts. Notwithstanding the foregoing, if (i) a Liquidity Injection in the form specified in this Agreement would trigger a default under any SunPower Debt Documents evidencing Indebtedness (actual or committed) of SunPower in an amount greater than \$10 million, (ii) a Liquidity Injection in the form specified in this Agreement would not cure the breach, if any, of a financial covenant that triggered the requirement for such Liquidity Injection, or (iii) SunPower is otherwise unable to consummate a Liquidity Injection in the form specified in this Agreement (for example, if SunPower is unable to consummate a Convertible Loan under the circumstances contemplated in Section 3(a)(ii)), then Total shall have the option, in its reasonable discretion, to provide, and SunPower shall accept, such Liquidity Injection in an alternative form so as not to cause SunPower to be in breach or default of any SunPower Debt Documents evidencing Indebtedness of SunPower in an amount greater than \$10 million, so as to enable the cure of the breach of the applicable financial covenant or otherwise so as to enable SunPower to consummate the Liquidity Injection (including via a transaction or series of transactions that amends or refinances the applicable facilities governed by the SunPower Debt Documents); provided, that the compensation provided by SunPower to Total in connection with such Liquidity Injection (if such Liquidity Injection is in an alternative form as to which compensation has not already been agreed as set forth in this Agreement) shall be reasonably agreed in good faith by SunPower and Total.

(d) Liquidity Injections Not Required by Liquidity Support Agreement; Cure of Breaches of Credit Agricole Facility Agreement.

(i) Any Liquidity Injection that is not then required to be provided by Total pursuant to the Liquidity Support Agreement may be in such form (including the forms described above) as Total and SunPower may mutually agree; provided, that Total may provide a Guaranty at any time in any amount in its sole discretion.

(ii) Notwithstanding the foregoing, the following provisions shall apply to the provision of one or more Liquidity Injections the purpose of which is to pay, in whole or in part, any amount outstanding under the Credit Agricole Facility Agreement prior to or in connection with a breach by SunPower of its covenants under the Credit Agricole Facility Agreement (but prior to such event constituting a Liquidity Support Event):

(A) In addition to its obligations under Section 4(a) of this Agreement, SunPower shall immediately notify Total in writing of any breach by SunPower of its covenants contained in the Credit Agricole Facility Agreement, without regard to any otherwise-applicable cure periods or waivers by Credit Agricole, as well as at any time that any breach of such covenants is reasonably foreseeable. Any such notification shall identify the applicable covenants and include the date of breach or anticipated breach and the length of any applicable cure period.

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(B) If, following Total's receipt of the notice described above, fewer than ten (10) calendar days remain in the applicable cure period and SunPower shall not have cured such breach or anticipated breach without Total's assistance, or if the breach or anticipated breach is of Section 5.02 of the Credit Agricole Facility Agreement, then an RCF Trigger shall be deemed to have occurred and Total may proceed immediately as described below.

(C) Following the occurrence of an RCF Trigger, Total may, at its option and without further notice to SunPower, provide one or more Liquidity Injections to SunPower in any form described in Section 3(a)(iii) (notwithstanding the requirements as to the form of liquidity support attributable to the then-applicable Maximum Drawn Support Amount) and may negotiate directly with Credit Agricole and the other lenders for the benefit of SunPower.

(D) Total shall receive the fee provided in Section 2(c) for any partial or whole Guaranty of the Credit Agricole Facility Agreement provided as described above.

(E) If Total determines to provide a Liquidity Injection in the form of an equity purchase pursuant to the Private Placement Agreement, then (1) the proceeds of such Liquidity Injection will be used to repay or otherwise provide an equity cure under the Credit Agricole Facility Agreement, (2) the amount of such Liquidity Injection shall be at Total's determination but not greater than the next integral multiple of \$25 million above the amount that is necessary to accomplish such equity cure, and (3) Total shall receive the corresponding amount of Warrants described in Section 3(a)(iii). For the avoidance of doubt, the amount of any such Liquidity Injection shall increase the Drawn Support Amount and, if applicable, the Maximum Drawn Support Amount, and any subsequent Liquidity Injections (other than as provided in Section 3(d)(ii)(F)) shall be in the form prescribed in Section 3(a) after taking into account such increases. Total shall thereafter have the right to provide one or more additional Liquidity Injections in the form of debt described below, the proceeds of which will be used to repay any or all remaining amounts under the Credit Agricole Facility Agreement.

(F) If Total determines to provide a Liquidity Injection in the form of debt (at Total's option and whether or not Total shall previously have provided a Liquidity Injection in the form of an equity purchase as described above, provided that such debt will be in the form contemplated by Section 3(a), after taking into account the then-applicable Maximum Drawn Support Amount), (1) the proceeds of such Liquidity Injection will be used to repay in whole or in part the Credit Agricole Facility Agreement, (2) such Liquidity Injection shall bear interest at a rate of LIBOR plus 4.25% per annum until the maturity date of the Credit Agricole Facility Agreement and (3) thereafter, such Liquidity Injection shall bear interest at the rate then applicable to Revolving Loans or Convertible Loans, as the case may be, pursuant to the Total Credit Facilities Agreement and taking into account the then-applicable Maximum Drawn Support Amount, and shall be payable in full on the Maturity Date (as defined in the Total Credit Facilities Agreement). Any such Liquidity Injections shall also entitle Total to receive Warrants as provided in Section 3(a)(i) or (ii) depending on the then-applicable Maximum Drawn Support Amount.

(e) Process for Provision of Liquidity Support.

(i) Pursuant to Sections 4(a)(ix) and (x), SunPower is required to indicate to Total from time to time (i) whether an Authorized Officer of SunPower believes that a Liquidity Injection will be required to be made by Total in accordance with the terms of the Liquidity Support Agreement and Section 3(a) of this Agreement and (ii) whether it believes that the representations and warranties of SunPower contained in the Liquidity Support Agreement, this Agreement and any or all of the other Transaction Documents (to the extent such agreements are applicable to the form of such Liquidity Injection pursuant to the terms hereof, and as indicated in writing by Total) are true and correct, except as otherwise disclosed or modified by an attached disclosure schedule (the Preliminary Disclosure Schedule).

(ii) Within three (3) Business Days following the delivery to Total of the Preliminary Disclosure Schedule (as such time period may be extended on a day-for-day basis corresponding to the additional time

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permitted in connection with Alternative Forms of Liquidity Injections pursuant to the last sentence of Section 3(a) of the Liquidity Support Agreement), Total shall indicate in writing to SunPower the form and amount of Liquidity Injection it intends to pursue (the Preliminary Liquidity Injection Indication ), and, in the event that the Liquidity Injection would be provided under the Total Credit Facilities Agreement, Total shall within the time periods specified in the Total Credit Facilities Agreement deliver to SunPower a Funding Notice (as defined in the Total Credit Facilities Agreement).

(iii) Within two (2) Business Days following the delivery of the Preliminary Liquidity Injection Indication to SunPower, and in any event not later than the date on which a Liquidity Injection is required pursuant to the Liquidity Support Agreement, SunPower shall deliver to Total a certification by an Authorized Officer, on behalf of SunPower, that the representations and warranties of SunPower contained in the Liquidity Support Agreement, this Agreement and any or all of the other Transaction Documents (to the extent such agreements are applicable to the form of such Liquidity Injection pursuant to the terms hereof, and as indicated in writing by Total) are true and correct on and as of the date of such Liquidity Injection, except as otherwise disclosed or modified by an attached disclosure schedule.

### **Section 4. Covenants of SunPower.**

(a) Reporting Requirements. SunPower agrees to deliver to Total:

(i) on every other Thursday (or if such day is not a Business Day, the immediately succeeding Business Day), commencing with the first Thursday following the LSA Effective Date, a weekly cash forecast over the remaining portion of the then-current fiscal quarter, certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(ii) within twenty-five (25) Business Days after the last day of each fiscal quarter ending with the third fiscal quarter of 2012, a cash forecast at each month-end covering the period of three fiscal quarters beginning with the first fiscal quarter following the then-current quarter, including a forecast of the lowest amount of cash at any point during each such quarter and the approximate date upon which such low point will occur, and also an updated cash forecast for the first month of the following fiscal quarter, delivered not later than the last Business Day of the second calendar month of the then-current fiscal quarter, in each case certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(iii) within fifteen (15) Business Days after the last day of each fiscal month beginning with December 2012, a cash forecast at each month-end covering the period of three fiscal quarters beginning with the first fiscal quarter following the then-current quarter, including a forecast of the lowest amount of cash at any point during each such quarter and the approximate date upon which such low point will occur, certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(iv) within fifteen (15) Business Days after the end of each fiscal quarter in 2012, and within ten (10) Business Days after the last day of each fiscal quarter thereafter, a statement setting forth a calculation of all financial ratios under all SunPower Debt Documents as of the last day of the immediately preceding fiscal quarter and forecasts of such ratios for the next three quarters, certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(v) within fifteen (15) Business Days after the last day of each fiscal month that is not the last month of a quarter in 2012, and within ten (10) Business Days thereafter, a forecast setting forth a calculation of all financial ratios under all SunPower Debt Documents for the current fiscal quarter and for the next three quarters, certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(vi) within fifteen (15) Business Days after the end of each fiscal month in 2012, and within ten (10) Business Days after the last day of each fiscal month thereafter, a report in a form to be agreed by SunPower and Total setting forth the terms of all (A) outstanding Indebtedness that is guaranteed by

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SunPower as of the end of the immediately preceding calendar month and (B) outstanding parent guarantees issued by SunPower and letters of credit issued to any Person for the account of SunPower (whether cash collateralized, guaranteed or otherwise) as of the end of such monthly period, and forecasts of such Indebtedness guaranteed by SunPower, parent guarantees issued by SunPower and letters of credit issued for the account of SunPower for the next eleven months, certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(vii) promptly after SunPower's receipt thereof, a copy of any management letter or other material communications received by SunPower or the Contractor from any Person in relation to the PV Plant, including, without limitation, any weekly project report, management weekly dashboard report, executive bi-weekly report, SunPower-prepared progress report, Bechtel monthly progress report, and Beta monthly progress report;

(viii) within fifteen (15) Business Days after the end of each fiscal month in 2012, and within ten (10) Business Days after the last day of each fiscal month thereafter, a monthly business report in a form to be agreed between SunPower and Total covering the previous monthly period, which shall contain in reasonable detail (A) all actual expenses, capital expenditures and revenues of SunPower, (B) reported sales, and (C) such other information as Total may reasonably request, certified by an Authorized Officer of SunPower as being complete in all material respects and prepared in good faith;

(ix) promptly upon obtaining Knowledge thereof, and at least five (5) Business Days before it is required to provide similar notice to DOE, notice of the potential failure of SunPower to satisfy any financial covenants under any SunPower Debt Documents or to maintain a minimum of \$100,000,000 in Reported Liquidity and Projected Liquidity as of any date, based in each case on estimated data;

(x) during fiscal 2012, at least three (3) Business Days prior to the date upon which delivery to DOE is required (and not later than twelve (12) Business Days after the end of each fiscal quarter of SunPower), and thereafter at least five (5) Business Days prior to the date upon which delivery to DOE is required (and not later than ten (10) Business Days after the end of each fiscal quarter of SunPower), draft copies of each SunPower Quarterly Certificate that is required to be delivered by SunPower to DOE pursuant to the Liquidity Support Agreement, based on estimated data, together with a certificate substantially in the form of Exhibit C hereto, signed by an Authorized Officer of SunPower, and any other additional documentation reasonably requested by Total, indicating whether SunPower believes that Total will have any funding obligation as a result of the delivery of such SunPower Quarterly Certificate to DOE and, if so, confirming that SunPower believes it will be able to make the required representations and warranties under the documents governing the Revolving Loan, Convertible Loan, Private Placement Agreement or other form of Liquidity Injection (or if there would be exceptions on a disclosure schedule);

(xi) within five (5) Business Days after the last day of each fiscal quarter, a report in a form to be agreed between SunPower and Total specifying, as of the end of such fiscal quarter: (A) the number of shares of SunPower capital stock that are outstanding; (B) the number of shares of SunPower capital stock that are reserved for issuance pursuant to any outstanding warrants, notes, options, restricted stock units, or any other rights to acquire SunPower capital stock or other equity or voting interest in SunPower; and (C) the difference between the authorized capital stock of SunPower and (A) and (B) above; and

(xii) such other information or reports as may be reasonably requested by Total in connection with its obligations pursuant to the Liquidity Support Agreement.

(b) Affirmative Covenants. SunPower agrees to:

(i) consult with Total prior to the release of any information to the DOE relating to the Liquidity Support Agreement or the PV Power Plant (including the financing thereof), including providing drafts of all written communications proposed to be delivered to DOE (A) in the case of communications required to be delivered pursuant to the express terms of the Liquidity Support Agreement, at least five (5) Business Days prior to delivery to DOE and (B) in the case of communications required to be delivered pursuant to

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the express terms of any other document to which SunPower and DOE are parties, or in response to any additional request from DOE to SunPower for information (as to which request SunPower shall notify Total immediately), as early as possible prior to delivery to DOE, including using best efforts to deliver such drafts at least five (5) Business Days prior to delivery to DOE when such time period is available between the time of DOE's request for such information and the deadline for DOE's receipt of such information;

(ii) use commercially reasonable efforts to assist Total in the performance of its obligations under the Liquidity Support Agreement and to conduct, and to act in good faith in conducting, its affairs in a manner such that Total's obligation under the Liquidity Support Agreement to provide Liquidity Injections will not be triggered or, if triggered, will be minimized (provided that nothing in this [Section 4\(b\)\(ii\)](#) shall be construed to require SunPower to minimize the amount of a Liquidity Injection required to be provided by Total pursuant to the Liquidity Support Agreement following the occurrence of a Liquidity Support Event);

(iii) at all times that the Liquidity Support Agreement is in effect, utilize the investments, funds and accounts described in the definition of Cash Equivalents in the Liquidity Support Agreement for all cash that may be commercially reasonably invested or held in such investments, funds and accounts, and not to utilize any similar investments, funds or accounts of lesser quality that would not qualify for inclusion as Cash Equivalents for purposes of the Liquidity Support Agreement;

(iv) deposit and maintain as Cash Equivalents all cash proceeds of Liquidity Injections received by SunPower following (or provided in anticipation of) a shortfall in Projected Liquidity for so long as is necessary to ensure that (A) no new Liquidity Injection will be required to cure a shortfall of Reported Liquidity for the fiscal quarter that was the subject of the shortfall in Projected Liquidity and (B) no Liquidity Injection could reasonably be expected to be required to be provided in the future as a result of commercially unreasonable management and deployment of such cash proceeds;

(v) utilize all cash proceeds of Liquidity Injections received by SunPower following (or provided in anticipation of) any breach of a financial covenant of SunPower to cure or prevent such breach and thereafter to manage and deploy any remaining such cash proceeds in a commercially reasonable manner such that no Liquidity Injection could reasonably be expected to be required in the future as a result of a breach by SunPower of the same or similar financial covenants;

(vi) for so long as SunPower is in a forbearance period relating to a failure to meet a financial covenant under any Applicable Indebtedness as described in Section 2(b) of the Liquidity Support Agreement, keep Total actively apprised of the status of the forbearance discussions and provide as much notice as possible of an inability of SunPower to continue to deliver the weekly notice described in Section 2(b) of the Liquidity Support Agreement;

(vii) cause the Contractor to terminate the EPC Contract, pursuant to the terms of the EPC Contract and if and as permitted by SunPower's and the Contractor's written agreements with the DOE, upon the bankruptcy or insolvency of HPR II; and

(viii) as soon as reasonably practicable, but no later than 15 days, following the date of this Agreement, SunPower shall prepare and file with the Securities and Exchange Commission (SEC) a preliminary information statement on Schedule 14C, and as promptly as possible thereafter, shall prepare and file with the SEC a definitive information statement on Schedule 14C (the Information Statement), notifying the stockholders of SunPower, including for purposes of and in accordance with Section 228 of the Delaware General Corporation Law, that Total USA has executed (and Total shall execute prior to the completion of the preliminary Information Statement) a written consent of stockholders approving the issuance of any and all securities pursuant to the Agreement for purposes of the NASDAQ Stock Market Listing Rules. The Information Statement shall comply as to form in all material respects with the applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. Total and SunPower will each cooperate with the other in the preparation of the Information Statement. SunPower shall promptly furnish the preliminary Information Statement and the definitive Information Statement, and any amendments or supplements thereto, to Total and give Total and its legal counsel a reasonable

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opportunity to review and comment on such preliminary and definitive Information Statements, or amendments or supplements thereto, prior to filing with the SEC, and SunPower shall consider in good faith all comments of Total in connection therewith. SunPower shall use its reasonable best efforts to respond as soon as reasonably practicable to any SEC comments with respect to the Information Statement. SunPower will use reasonable best efforts to have the Information Statement cleared by the SEC as promptly as practicable after the filing thereof, and to cause the definitive Information Statement to be mailed to the stockholders of SunPower as promptly as practicable after the Information Statement has been cleared by the SEC or after 10 calendar days have passed since the date of filing of the preliminary Information Statement with the SEC without notice from the SEC of its intent to review the Information Statement. Each of Total and SunPower agree to correct any information provided by it for use in the Information Statement which shall have become false or misleading. SunPower shall as soon as reasonably practicable notify Total of the receipt of any comments from the SEC with respect to the Information Statement and any request by the SEC for any amendment or supplement to the Information Statement or for additional information and shall provide Total with copies of all correspondence between SunPower and its representatives, on the one hand, and the SEC, on the other hand. Total shall be given a reasonable opportunity to participate in the response to any SEC comments and to provide comments on any response (to which reasonable and good faith consideration shall be given), including by participating in any discussions or meetings with the SEC.

**Section 5. Representations and Warranties.**

(a) SunPower Representations and Warranties. On and as of the date of this Agreement, and as of the date of each Liquidity Injection, SunPower represents and warrants to Total that:

(i) Organization; Powers. SunPower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to own its property and assets and to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

(ii) Authorization; Enforceability. The Transactions are within SunPower's organizational powers and have been duly authorized by all necessary organizational action of SunPower. Each Transaction Document has been duly executed and delivered by SunPower and is a legal, valid and binding obligation of SunPower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity.

(iii) Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, except to the extent that any such failure to obtain such consent or approval or to take any such action, would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Requirement of Law applicable to SunPower, (c) will not violate or result in a default under any other material indenture, agreement or other instrument binding upon SunPower its assets, or give rise to a right thereunder to require any payment to be made by SunPower, and (d) except as contemplated under the Total Credit Facilities Agreement and other Loan Documents, will not result in the creation or imposition of any lien on any asset of SunPower.

(iv) Litigation. Except as disclosed in SunPower's filings with the SEC from time to time, there are no actions, suits, proceedings or investigations by or before any arbitrator or Governmental Authority pending against or, to the knowledge of SunPower, threatened against or affecting SunPower as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(v) Compliance with Laws and Agreements; Licenses and Permits. SunPower is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

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(vi) **Investment Company Status.** SunPower is not an investment company as defined in, and is not required to be registered under, the Investment Company Act of 1940.

(vii) **Taxes.** SunPower has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings and for which it has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(viii) **Material Agreements.** SunPower is not in default in any material respect in the performance, observance or fulfillment of any of its obligations contained in any material agreement to which it is a party, except where such default would not reasonably be expected to have a Material Adverse Effect.

(ix) **Disclosure.** The exhibits, reports and other writings furnished by or on behalf of SunPower to Total in connection with the negotiation of this Agreement or pursuant to the terms of the Transaction Documents (as modified or supplemented by other information so furnished), taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, SunPower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) **Total Representations and Warranties.** On and as of the date of this Agreement, Total represents and warrants to SunPower that:

(i) **Due Incorporation, Qualification, etc.** Total is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and has requisite power and authority to conduct its business as it is presently being conducted.

(ii) **Authority.** The execution, delivery and performance by Total of this Agreement and the consummation of the transactions contemplated hereby (A) are within the corporate power and authority of Total and (B) have been duly authorized by all necessary corporate actions on the part of Total.

(iii) **Enforceability.** This Agreement has been duly executed and delivered by Total and constitutes a legal, valid and binding obligation of Total, enforceable against Total in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

**Section 6. Indemnification; Limitation on Liability.**

(a) **Indemnification.** SunPower hereby agrees to indemnify Total and each Related Party of Total (each such Person being called an Indemnitee ) against, and hold each Indemnitee harmless from, any and all losses, Claims, damages, liabilities and related expenses (including all reasonable fees, costs and expenses of outside counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee directly caused by:

(i) the breach by SunPower of any covenant or agreement contained in this Agreement, the Liquidity Support Agreement, any other Transaction Document or any agreement or instrument contemplated hereby or thereby (including without limitation any Guaranty or any Warrant); and

(ii) any actual or prospective Claim, litigation, investigation or proceeding relating to any foregoing breach, whether based on contract, tort or any other theory, regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereunder, under the Liquidity Support Agreement or under any other Transaction Document is consummated, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee;

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provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, or (y) arise out of any action, suit or proceeding brought by SunPower against an Indemnitee for such Indemnitee's gross negligence or willful misconduct, including without limitation any derivative claim brought against an Indemnitee on behalf of SunPower.

(b) Limitation on Liability. Total's aggregate liability for Claims by SunPower or DOE arising out of or relating to this Agreement and the Liquidity Support Agreement shall in no event exceed an amount equal to the Maximum Support Amount minus the Drawn Support Amount.

**Section 7. Termination.** This Agreement shall continue in full force and effect for so long as any obligations of SunPower remain outstanding under the Total Credit Facilities Agreement or Private Placement Agreement, any obligations of Total remain outstanding under any Guaranty, or Total has any obligation to provide Liquidity Injections pursuant to the Liquidity Support Agreement.

## **Section 8. Miscellaneous.**

(a) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon SunPower or Total under this Agreement shall be in writing and delivered by electronic mail, facsimile, hand delivery, overnight courier service or certified mail, return receipt requested, to each party at the address set forth below (or to such other address most recently provided by such party to the other party). All such notices and communications shall be effective (i) when sent by Federal Express or other overnight service of recognized standing, on the Business Day following the deposit with such service, (ii) when mailed, by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt, (iii) when delivered by hand, upon delivery, and (iv) when faxed or emailed, upon confirmation of receipt.

Total:

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Olivier Devouassoux, VP Subsidiary Finance Operations

Telephone: +33 1 47 44 45 64

Facsimile: + 33 1 47 44 48 74

Email: olivier.devouassoux@total.com

With a copy to:

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Edgar Filing: SUNPOWER CORP - Form PRE 14C

Attention: Christine Souchet, Subsidiary Finance Operations - Gas and Power

Telephone: +33 1 47 44 72 11

Facsimile: +33 1 47 44 47 92

Email: christine.souchet@total.com

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With a copy to:

Total S.A.

2, place Jean Millier

La Défense 6

92400 Courbevoie

France

Attention: Jonathan Marsh, Vice President, Legal Director

Mergers, Acquisitions & Finance

Telephone: +33 (0) 1 47 44 74 70

Facsimile: +33 (0)1 47 44 43 05

Email: jonathan.marsh@total.com

SunPower:

SunPower Corporation

77 Rio Robles

San Jose, CA 95134

Attention: Dennis Arriola, Executive Vice President and Chief Financial Officer

Telephone: 408-240-5500

Facsimile: 408-240-5404

E-mail: dennis.arriola@sunpowercorp.com

With a copy to:

SunPower Corporation

77 Rio Robles Street

San Jose, CA 95134

Attention: Navneet Govil, Vice President and Treasurer

Telephone: 408-457-2655

E-mail: navneet.govil@sunpowercorp.com

With a copy to:

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Edgar Filing: SUNPOWER CORP - Form PRE 14C

SunPower Corporation

1414 Harbour Way South

Richmond, CA 94804

Attention: General Counsel

Telephone: 408-240-5550

Facsimile: 408-240-5404

Email: cjaap@sunpowercorp.com

(b) Nonwaiver. No failure or delay on a party's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Agreement may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by SunPower and Total. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments.

(i) Assignment by SunPower. This Agreement may not be assigned by SunPower without the prior written consent of Total, which may be withheld in Total's sole discretion.

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(ii) Assignment by Total. This Agreement may not be assigned by Total without the prior written consent of SunPower, which consent may not be unreasonably withheld, conditioned or delayed.

(iii) Successors and Assigns. No assignment of this Agreement shall be valid until all of the obligations of the assignor hereunder shall have been assumed by the assignee by written agreement delivered to the other party. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(e) Partial Invalidity; Reinstatement. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(f) Conflicts with Liquidity Support Agreement. In the event of a conflict between the terms of the Liquidity Support Agreement on the one hand, and this Agreement and/or any other Transaction Document on the other hand, this Agreement and/or such Transaction Agreement shall control as between Total (and its Acceptable Affiliates) and SunPower.

(g) Applicable Law; Jurisdiction; Etc.

(i) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(ii) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY HERETO MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST ANY OTHER PARTY HERETO OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(iii) WAIVER OF VENUE. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 8(g)(ii). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

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(iv) WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8(g).

(h) Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals.

(i) Entire Agreement. The Transaction Documents integrate all of the terms and conditions mentioned therein or incidental to the Transactions and supersede all written or oral negotiations, correspondence, term sheets, summaries and prior agreements of the parties to the Transaction Documents in respect of the subject matter of the Transaction Documents.

*[Remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, the parties hereto have caused this Compensation and Funding Agreement to be executed as of the day and year first written above.

**SUNPOWER CORPORATION**

By: /s/ Thomas H. Werner  
Name: Thomas H. Werner  
Title: Chief Executive Officer

**TOTAL S.A.**

By: /s/ Patrick de la Chevardiere  
Name: Patrick de la Chevardiere  
Title: Chief Financial Officer

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Exhibit A

Form of Warrant

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THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, (THE SECURITIES ACT), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (II) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (III) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES.

**SUNPOWER CORPORATION****WARRANT****TO PURCHASE COMMON STOCK**

Certificate Number:

Dated:

For value received, Total Gas & Power USA, SAS, a société par actions simplifiée organized under the laws of the Republic of France (the *Investor*) and, together with any transferee of the Warrant in accordance with the terms of this Warrant, the *Holder*), is entitled to purchase from SunPower Corporation, a Delaware corporation (together with its successors and assigns, the *Company*), at any time and from time to time after the date set forth above, subject to the conditions set forth in Sections 1.2(f) and 1.2(g), and prior to 5:00 p.m., New York time, on the Expiration Date (as defined below), at the purchase price of \$[ ] per share (as such price may be adjusted pursuant to Section 2, the *Exercise Price*) an aggregate of [ ] fully-paid and nonassessable shares of the Company's common stock, par value \$0.001 per share (*Common Stock*) (as such shares may be adjusted pursuant to Section 2, the *Warrant Shares*).

This Warrant (this *Warrant*) is being initially issued to the Investor pursuant to a Private Placement Agreement dated [ ] (the *Purchase Agreement*) by and between the Company and the Investor, together with a related Terms Agreement, as each may be amended, restated, modified or supplemented from time to time.

**Section 1. Term and Exercise of Warrant.**

**1.1 Term of Warrant.** The Holder shall have the right, subject to the conditions set forth in Sections 1.2(f) and 1.2(g), at any time before 5:00 p.m., New York time, on the seventh anniversary of the date hereof, or, if such date is not a Business Day (as defined below), the next Business Day (the *Expiration Date*) to exercise this Warrant in accordance with the terms of this Warrant.

**1.2 Exercise of Warrant.**

(a) **Cash Exercise.** Subject to Sections 1.2(f) and 1.2(g), this Warrant may be exercised at any time prior to the Close of Business on the Expiration Date (or if the Expiration Date is not a Business Day, the next Business Day) and from time to time, in whole or in part, upon surrender to the Company, together with the duly

1 Exercise Price to be equal to the 30-Day VWAP (as defined in the Compensation and Funding Agreement) as of the LSA Effective Date (for the warrant specified in Section 2(a) of the Compensation and Funding Agreement) or as of the date of issuance of such Warrant (for the warrants specified in Section 3 of the Compensation and Funding Agreement), as applicable.

2