

Exhibit 17

EXECUTION VERSION

Hudson Solar Cayman, LP, as Administrative Agent
c/o Hudson Clean Energy Partners
400 Frank W. Burr Boulevard, Suite 37 Teaneck, New Jersey 07666
Email: ben.baker@hudsoncep.com
Attn: Benjamin Baker

RE: Hudson/Sky Solar Amended and Restated Note Purchase Agreement

October 3, 2016

Dear Sirs

WAIVER AND AMENDMENT REQUEST LETTER**1. BACKGROUND; DEFINITIONS; INTERPRETATION**

1.1 We refer to:

1.1.1 the Amended and Restated Note Purchase Agreement dated as of July 15, 2016 (the **A&R NPA**) between Energy Capital Investment S.à r.l., as borrower (the **Company**), Lumens Holdings 1, LLC, Renewable Capital Investment 2, Sociedad Limitada and Hudson Solar Cayman, LP, as administrative agent (the **Administrative Agent**) and initial note purchaser (the **Initial Note Purchaser**) (as modified, supplemented, amended, restated, extended or renewed from time to time); and

1.1.2 the Waiver Request Letter dated as of September 16, 2016 (the **Prior Waiver Letter**) between the Company, the Administrative Agent and the Initial Note Purchaser.

1.2 As used with capital letters in this Waiver and Amendment Request Letter (this **Letter**), each of the following words and expressions has the meaning given in this Section 1.2 or in the Note Purchase Documents (as such term is defined in the A&R NPA) referred to below:

1.2.1 **A&R NPA** has the meaning given in Section 1.1.1 of this Letter.

1.2.2 **Administrative Agent** has the meaning given in Section 1.1.1 of this Letter.

1.2.3 **Alternate Use of Uruguay Proceeds** has the meaning given in Section 2.5 of this Letter.

1.2.4 **Alternate Use of Uruguay Proceeds Provision** has the meaning given in Section 3.3 of this Letter.

1.2.5 **Asset Management Plan** has the meaning given in Section 3.5.6.1 of this Letter.

1.2.6 **Company** has the meaning given in Section 1.1.1 of this Letter.

1.2.7 **Condition Precedent** has the meaning given in Section 2.1 of this Letter.

1.2.8 **Condition Subsequent** has the meaning given in Section 2.2 of this Letter.

1.2.9 **Conditions Waiver** has the meaning given in Section 3.6.1.2 of this Letter.

- 1.2.10 **Effective Date** has the meaning given in Section 5.1 of this Letter.
- 1.2.11 **EPC Escrow Account Amendments** has the meaning given in Section 3.6.4 of this Letter.
- 1.2.12 **EPC Escrow Account Provisions** has the meaning given in Section 3.4.1 of this Letter.
- 1.2.13 **Fifth Note Purchase Notes** has the meaning given in the Prior Waiver Letter.
- 1.2.14 **Fifth Note Purchase Payment** has the meaning given in the Prior Waiver Letter.
- 1.2.15 **Fifth Note Purchase Payment Condition** has the meaning given in Section 2.3 of this Letter.
- 1.2.16 **Fifth Note Purchase Payment Waivers** has the meaning given in Section 3.6.2 of this Letter.
- 1.2.17 **Fifth Note Purchase U.S. Note** has the meaning given in Section 2.4 of this Letter.
- 1.2.18 **Fifth Note Purchase Uruguay Notes** has the meaning given in Section 3.5.3 of this Letter.
- 1.2.19 **IDB Excess Amount** has the meaning given in Section 2.5 of this Letter.
- 1.2.20 **IDB Excess Amount Conditions** has the meaning given in Section 3.5.2 of this Letter.
- 1.2.21 **Initial Note Purchaser** has the meaning given in Section 1.1.1 of this Letter.
- 1.2.22 **Letter** has the meaning given in Section 1.2 of this Letter.
- 1.2.23 **Operator** has the meaning given in Section 3.5.6.2 of this Letter.
- 1.2.24 **Prior Waiver Letter** has the meaning given in Section 1.1.2 of this Letter.
- 1.2.25 **Request for Payment for Fifth Note Purchase Notes** has the meaning given in the Prior Waiver Letter.
- 1.2.26 **SunEdison** has the meaning given in Section 3.5.6.2 of this Letter.
- 1.2.27 **Timing Waiver** has the meaning given in Section 3.6.2 of this Letter.
- 1.2.28 **Unsatisfied Conditions Precedent** has the meaning given in Section 3.1 of this Letter.
- 1.2.29 **Unsatisfied Conditions to the Fifth Note Purchase Payment** has the meaning given in Section 3.2 of this Letter.
- 1.2.30 **Unsatisfied Fourth Note Purchase Conditions Subsequent** has the meaning given in Section 3.2 of this Letter.
- 1.2.31 **Use of Proceeds Waiver** has the meaning given in Section 3.6.3 of this Letter.
- 1.2.32 **Waiver Default** has the meaning given in Section 4.2 of this Letter.

- 1.3 Terms defined in the A&R NPA have the same meaning in this Letter unless otherwise defined in this Letter.
- 1.4 The provisions of Section 1.4 (*Interpretation*) of the A&R NPA apply to this Letter as though they were set out in full in this Letter except that references to the A&R NPA are to be construed as references to this Letter.

2. CONDITIONS; NOTE PURCHASE PAYMENT; EPC ESCROW ACCOUNT AMENDMENTS

- 2.1 Pursuant to Section 3.3 (*Conditions Precedent to Any Additional Note Purchase*) of the A&R NPA, the obligation of the Initial Note Purchaser to make any Additional Note Purchase other than the Fourth Note Purchase shall be subject to the satisfaction, or waiver by the Administrative Agent, of each of the conditions precedent set out in Section 3.3 (*Conditions Precedent to Any Additional Note Purchase*) of the A&R NPA, each of which shall be in form and substance satisfactory to the Administrative Agent (each a **Condition Precedent**).
- 2.2 Pursuant to Section 3.5 (*Conditions subsequent to Fourth Note Purchase*) of the A&R NPA, the Company is obliged to satisfy certain of the conditions subsequent set out in Section 3.5 (*Conditions subsequent to Fourth Note Purchase*) of the A&R NPA on or prior to the Note Purchase Date for the U.S. Note immediately following that issued on the Fourth Note Purchase Date, each of which shall be in form and substance satisfactory to the Administrative Agent (each a **Condition Subsequent**).
- 2.3 Pursuant to Section 3.4.3.1 (*Company's Waiver Requests*) of the Prior Waiver Letter, the Company is obliged to deliver to the Administrative Agent the Request for Payment for Fifth Note Purchase Notes no later than fifteen (15) Business Days prior to the date it desires to receive the Fifth Note Purchase Payment from the Initial Note Purchaser or one or more of the Initial Note Purchaser's Affiliates, unless such notice is otherwise waived by the Administrative Agent in writing (the **Fifth Note Purchase Payment Condition**).
- 2.4 The Company requests that the Fifth Note Purchase Payment in respect of the U.S. Note delivered in connection with the Prior Waiver Letter (the **Fifth Note Purchase U.S. Note**) be made on or about the date hereof.
- 2.5 The Company requests permission to use the proceeds of any Note Purchase with respect to the Uruguay Projects that is in excess of the aggregate equity contribution requirement for the Uruguay Projects set forth in the fully executed, definitive and complete Project Financing Documents for the IDB Project Financing (such excess amount, the **IDB Excess Amount**) in a manner not consistent with Section 2.4(b)(ii) (*Use of Proceeds; Deposit into General Account*) of the A&R NPA (such use of proceeds, hereinafter, the **Alternate Use of Uruguay Proceeds**).
- 2.6 The Company requests that certain amendments be made to the A&R NPA in respect of the retention and release of the proceeds of U.S. Notes deposited in the EPC Escrow Account pursuant to Section 2.4(c)(ii) (*Use of Proceeds; Deposit into General Account*) and Section 2.12 (*EPC Escrow Account Terms and Conditions*) of the A&R NPA.
- 2.7 Pursuant to Section 2.3(c) (*Request for Note Purchases*) of the A&R NPA, certain conditions precedent to a Note Purchase may be waived with the consent of the Administrative Agent. Pursuant to Section 8.1 (*Waivers and Amendments; Acknowledgment*) of the A&R NPA, an amendment of or supplement to the A&R NPA may be valid and effective when executed in writing and signed by the party against whom it is sought to be enforced.

- 2.8 In order to effect:
- 2.8.1 the Fifth Note Purchase Payment in respect of the Fifth Note Purchase U.S. Note and the Fifth Note Purchase Uruguay Notes;
 - 2.8.2 the Alternate Use of Uruguay Proceeds; and
 - 2.8.3 the amendments to be made to the A&R NPA as described in Section 2.6 of this Letter;

the Company requests (a) the waiver of certain Conditions Precedent, (b) the waiver of certain Conditions Subsequent, (c) the waiver of the Fifth Note Purchase Payment Condition, (d) certain amendments and waivers, as the case may be, to the Alternative Use of Uruguay Proceeds Provision (as such term is defined below) and (e) certain amendments to the A&R NPA, as set out in Section 3.6 of this Letter.

3. COMPANY'S WAIVER AND AMENDMENT REQUESTS

- 3.1 Section 3.3 (*Conditions Precedent to Any Additional Note Purchase*) of the A&R NPA requires that, among others, the following Conditions Precedent be satisfied (or waived), as determined in the reasonable discretion of the Administrative Agent:
- 3.1.1 the Conditions Precedent described in Sections 3.3(o) - (q) of the A&R NPA;
- (such Conditions Precedent, collectively, the **Unsatisfied Conditions Precedent**).
- 3.2 Section 3.5 (*Conditions subsequent to Fourth Note Purchase*) of the A&R NPA requires that, among others, the following Conditions Subsequent be satisfied (or waived) on or prior to the Note Purchase Date for the U.S. Note immediately following that issued on the Fourth Note Purchase Date, as determined in the sole discretion of the Administrative Agent:
- 3.2.1 the Conditions Subsequent described in Section 3.5(j) of the A&R NPA;
- (such Conditions Subsequent, collectively, the **Unsatisfied Fourth Note Purchase Conditions Subsequent** and, together with the Unsatisfied Conditions Precedent, the **Unsatisfied Conditions to the Fifth Note Purchase Payment**).
- 3.3 The provision of the A&R NPA described in this Section 3.3 is proposed to be amended or waived, as the case may be, solely for purposes of effectuating the Alternate Use of Uruguay Proceeds:
- 3.3.1 pursuant to Section 2.4(b)(ii) (*Use of Proceeds; Deposit into General Account*) of the A&R NPA, proceeds of the Uruguay Notes must be used to fund Construction Costs only for the Relevant Project identified in the Request for Note Purchase for such Notes;
- (such provision, the **Alternate Use of Uruguay Proceeds Provision**).
- 3.4 The provisions of the A&R NPA described in this Section 3.4 are proposed to be amended as follows:
- 3.4.1 Section 2.4(c)(ii) (*Use of Proceeds; Deposit into General Account*) and Section 2.12 (*EPC Escrow Account Terms and Conditions*) of the A&R NPA shall be amended and restated so that the sections, as amended and restated, read as set

forth in Annex 1 to this Letter (such provisions, collectively, the **EPC Escrow Account Provisions**).

- 3.5 The Company and the Initial Note Purchaser mutually agree that the Unsatisfied Conditions to the Fifth Note Purchase Payment and the Fifth Note Purchase Payment Condition cannot be satisfied prior to the date of the Fifth Note Purchase Payment for the Fifth Note Purchase U.S. Note and the Fifth Note Purchase Uruguay Notes. To induce the Administrative Agent and the Initial Note Purchaser to agree to waive the requirement of each Unsatisfied Condition to the Fifth Note Purchase Payment, to agree to waive the Fifth Note Purchase Payment Condition, to agree to amend or waive, as the case may be, the Alternate Use of Uruguay Proceeds Provision as described in Section 3.3 of this Letter and to agree to amend the EPC Escrow Account Provisions as described in Section 3.4 of this Letter, the Company hereby:
- 3.5.1 represents and warrants as of the date of this Letter, the date of each Request for Payment for Fifth Note Purchase Notes in respect of the Fifth Note Purchase U.S. Note and the Fifth Note Purchase Uruguay Notes and the date of each Fifth Note Purchase Payment in respect of the Fifth Note Purchase U.S. Note and the Fifth Note Purchase Uruguay Notes:
- 3.5.1.1 on the terms specified in Sections 4.1(a) (*Organization*) through (c) (*Compliance with Laws and Contracts*), Section 4.1(e) (*Enforceable Obligations*), Section 4.1(h) (*Full Disclosure*), and Section 4.1(t) (*Legal form; Enforceability*) of the A&R NPA with respect to this Letter as a Note Purchase Document;
- 3.5.1.2 that no Default shall exist as of such date;
- 3.5.1.3 that no event or circumstance shall exist giving rise to, or reasonably likely to give rise to, any Material Adverse Effect; and
- 3.5.1.4 that, except to the extent waived or amended hereby, the Company has performed and complied in all material respects with all agreements and conditions required in the Note Purchase Documents to be performed or complied with by it on or prior to such date.
- 3.5.2 warrants, covenants, undertakes and agrees that:
- 3.5.2.1 the proceeds of the Uruguay Notes other than the IDB Excess Amount must be used to fund Construction Costs only for the Relevant Project identified in the Request for Note Purchase for such Notes; and
- 3.5.2.2 the IDB Excess Amount must be used for general corporate purposes of the Company and any of its Affiliates and shall be subject to Section 5.2(e) (*Restricted Payments*) of the A&R NPA in all respects;
- (such conditions, the **IDB Excess Amount Conditions**).
- 3.5.3 warrants, covenants, undertakes and agrees that all fees and expenses due and payable by the Company under any Note Purchase Document on or before the date hereof will be paid on or before the date of the Fifth Note Purchase Payment in respect of the Uruguay Notes delivered in connection with the Prior Waiver Letter (the **Fifth Note Purchase Uruguay Notes**) (or such payment will be made

out of the proceeds of the Fifth Note Purchase Payment in respect of the Fifth Note Purchase Uruguay Notes).

- 3.5.4 warrants, covenants, undertakes and agrees that it has delivered to the Administrative Agent a duly completed and executed Request for Payment for Fifth Note Purchase Notes in respect of the Fifth Note Purchase U.S. Note no later than the date hereof or, to the extent the Fifth Note Purchase Payment for the Fifth Note Purchase U.S. Note is proposed for a subsequent time and date, on such date as the Administrative Agent agrees to in writing.
- 3.5.5 warrants, covenants, undertakes and agrees that it will deliver to the Administrative Agent a duly completed and executed Request for Payment for Fifth Note Purchase Notes in respect of the Fifth Note Purchase Uruguay Notes no later than such date as the Administrative Agent agrees to in writing.
- 3.5.6 warrants, covenants, undertakes and agrees that:
- 3.5.6.1 it will, not later than forty five (45) days from the date hereof, deliver to the Administrative Agent a detailed asset management plan (the **Asset Management Plan**) in relation to the U.S. Projects in form and substance satisfactory to the Administrative Agent (in its sole discretion);
- 3.5.6.2 it will, not later than December 31, 2016, procure that SunEdison, Inc., and/or any of its relevant Affiliates (collectively, **SunEdison**), are replaced as operations and maintenance contractor (the **Operator**) in respect of each of the U.S. Projects for which SunEdison acts as Operator as of the date hereof;
- 3.5.6.3 it will, not later than December 31, 2016, implement the Asset Management Plan in respect of each of the U.S. Projects in a manner satisfactory to the Administrative Agent (in its sole discretion);
- 3.5.6.4 if any of the requirements set forth in Sections 3.5.6.1, 3.5.6.2 and 3.5.6.3 are not complied with by the Company in form and substance satisfactory to the Administrative Agent (in its sole discretion) during the respective time period set forth in each such section, the Administrative Agent will have the right, notwithstanding any provision of the A&R NPA or the Amended and Restated Equity Conversion Agreement to the contrary, to review and revise any of the technical assumptions set forth in the U.S. Financial Model or equity conversion model in any respect, provided that no such revision would result in higher production or higher valuation than is currently set forth in the U.S. Financial Model and equity conversion model as of the date hereof; and
- 3.5.6.5 any U.S. Financial Model or equity conversion model that has been revised by the Administrative Agent in accordance with Section 3.5.6.4 of this Letter will, from the date of such revision, constitute the U.S. Financial Model or equity conversion model, respectively, for all purposes contemplated by the A&R NPA or the Amended and Restated Equity Conversion Agreement.
- 3.5.7 warrants, covenants, undertakes and agrees that it will, not later than forty five (45) days from the date hereof, deliver to the Administrative Agent such further

information as was requested by the Administrative Agent's technical advisor in its report produced in connection with the U.S. Projects Initial Due Diligence, in form and substance satisfactory to the Administrative Agent (in its sole discretion).

3.6 The Company hereby requests that the Administrative Agent and the Initial Note Purchaser:

3.6.1 waive the requirement to fulfil:

3.6.1.1 the Condition Precedent described in Section 3.3(o) of the A&R NPA solely for purposes of the Fifth Note Purchase Payment in respect of the U.S. Note;

3.6.1.2 each Unsatisfied Condition to the Fifth Note Purchase Payment other than the Unsatisfied Condition to the Fifth Note Purchase Payment described in Section 3.6.1.1 of this Letter solely in respect of the Security Documents by means of which all of the Share Capital in, and assets and Property of, Clear Skies I, LLC and Clear Skies IV, LLC are pledged in favor of the Administrative Agent and other documents related thereto pursuant to Section 3.5(j) (*Conditions subsequent to Fourth Note Purchase*) of the A&R NPA, until November 15, 2016 (the **Conditions Waiver**);

3.6.2 waive the Fifth Note Purchase Payment Condition for purposes of the Fifth Note Purchase Payments in respect of the Fifth Note Purchase U.S. Note and the Fifth Note Purchase Uruguay Notes (the **Timing Waiver** and, together with the Conditions Waiver, the **Fifth Note Purchase Payment Waivers**); and

3.6.3 amend or waive, as the case may be, the Alternate Use of Uruguay Proceeds Provision solely in respect of the IDB Excess Amount and subject to the IDB Excess Amount Condition in all respects (the **Use of Proceeds Waiver**); and

3.6.4 amend the EPC Escrow Account Provisions in the manner described in Section 3.4 of this Letter (the **EPC Escrow Account Amendments**).

4. **CONDITIONAL WAIVER**

4.1 Subject to compliance by the Company in all respects with the conditions described in Section 3.5 of this Letter, each of the Administrative Agent and the Initial Note Purchaser consents, as of the Effective Date (as defined herein), to the Fifth Note Purchase Payment Waivers, the Use of Proceeds Waiver and the EPC Escrow Account Amendments.

4.2 The Company hereby agrees and acknowledges that:

4.2.1 any failure by the Company to comply with any of the terms and conditions of this Letter; or

4.2.2 if any representation or warranty made the Company in this Letter shall prove to have been false or incorrect in any respect on any date on, or as of which, it was made, and is incapable of remedy by means of the issue of a written correction within thirty (30) days of the Company obtaining knowledge of such misstatement, shall occur;

will each be deemed, and constitute, an Event of Default, as defined under the A&R NPA and each other Note Purchase Document (each such Event of Default being, a **Waiver**

Default), and in respect of which the Note Holders may elect to take any of the actions or steps specified in Section 6.2 (*Remedies*) of the A&R NPA; *provided, however*, that, with respect to any Fifth Note Purchase Note in respect of which the Fifth Note Purchase Payment has not been made, the Note Holders may elect to take any such actions or steps only to the extent necessary to accelerate payment of accrued but unpaid interest then due on such Fifth Note Purchase Note; and, for the avoidance of doubt, in no event shall the Note Holders be entitled to payment of any Yield Maintenance Amount or to accelerate the payment of any principal amount with respect to any Fifth Note Purchase Note in respect of which the Fifth Note Purchase Payment has not been made.

5. EFFECTIVENESS

For the avoidance of doubt:

- 5.1 the Fifth Note Purchase Payment Waivers and the EPC Escrow Account Amendments shall become effective on the date on which the Administrative Agent confirms in writing to the Initial Note Purchaser and the Company that each condition specified in Section 3.5 of this Letter has been fulfilled in form and substance satisfactory to it (such date being the **Effective Date**); and
- 5.2 notwithstanding Section 3.6 of this Letter, the Fifth Note Purchase Payment Waivers and the Use of Proceeds Waiver shall remain effective from and including the Effective Date until the occurrence of any Waiver Default.

6. MISCELLANEOUS

- 6.1 Except as expressly waived or amended by this Letter, the A&R NPA and each other Note Purchase Document continues in full force and effect and no other amendments, revisions or changes to, consents with respect to, or waivers of the terms of, the A&R NPA or any other Note Purchase Document shall be made or permitted hereby.
- 6.2 Each Finance Party reserves any other right or remedy it may have now or subsequently. This Letter does not constitute a waiver of any right or remedy other than in relation to the specific waivers expressly given under this Letter. In taking the foregoing actions, the Administrative Agent fully reserves all of its respective rights under the A&R NPA and the other Note Purchase Documents with respect to all Defaults currently outstanding, or that may exist, including those rights set forth in your previous letters to us.
- 6.3 THIS LETTER, THE RELATIONSHIP BETWEEN THE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS LETTER OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK INCLUDING SECTION 5 1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ANY OTHER CONFLICT OF LAW RULES THAT WOULD LEAD TO THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.
- 6.4 This Letter is hereby designated as a Note Purchase Document.
- 6.5 EACH OF THE PARTIES HERETO HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OR ANY OTHER NOTE PURCHASE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR

ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE INITIAL NOTE HOLDER AND THE ADMINISTRATIVE AGENT TO ENTER INTO THE AGREEMENT SET FORTH IN THIS LETTER.

- 6.6 THIS LETTER REPRESENTS THE FINAL AND COMPLETE AGREEMENT OF THE PARTIES HERETO, AND ALL PRIOR NEGOTIATIONS, REPRESENTATIONS, UNDERSTANDINGS, WRITINGS AND STATEMENTS OF ANY NATURE ARE HEREBY SUPERSEDED IN THEIR ENTIRETY BY THE TERMS OF THIS LETTER.
- 6.7 This Letter may be executed by one or more parties hereto on any number of separate counterparts each of which when so executed and delivered shall be deemed to be an original, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

The Administrative Agent and Initial Note Purchaser have signed this Letter below having agreed to the above.

Yours faithfully

Energy Capital Investment S.à r.l., as Company

By: jskshrestha

Name: SANJAY K SHRESTHA

Title: CATAGORY A MANAGER

FORM OF ACKNOWLEDGEMENT

We agree to the terms of this Letter.

Hudson Solar Cayman, LP, as Administrative Agent

By: 

Name: Neil Z. Auerbach

Title: Managing Partner

Hudson Solar Cayman, LP, as Initial Note Purchaser

By: 

Name: Neil Z. Auerbach

Title: Managing Partner

ANNEX 1

AMENDED AND RESTATED A&R NPA SECTION 2.4(c)(ii) AND SECTION 2.12

2.4 Use of Proceeds; Deposit into General Account

- (c) All proceeds from each Note Purchase shall be deposited into the General Account in accordance with Section 2.10, with the exception of:
 - (ii) subject to Section 2.12(a)(iii), the proceeds of the U.S. Notes (other than (A) those relating to the Third Note Purchase, the aggregate amount of US\$6,000,000 of the Fourth Note Purchase referred to in Section 2.4(c)(i) and any Transaction Expenses and (B) any remaining proceeds of the U.S. Note issued in the Note Purchase immediately following the Fourth Note Purchase after depositing the proceeds of such U.S. Note in an amount equal to the difference between US\$5,000,000 minus the total amount deposited in the EPC Escrow Account at such time), which shall be deposited into the EPC Escrow Account for application in accordance with Section 2.12 (including, the aggregate amount of US\$4,670,000 of the proceeds of the Fourth Note Purchase).

2.12 EPC Escrow Account Terms and Conditions

- (a) The proceeds of the U.S. Notes deposited in the EPC Escrow Account pursuant to Section 2.4(c)(ii) (which, for the avoidance of doubt, will not include any proceeds relating to the Third Note Purchase or the Fourth Note Purchase other than the aggregate amount of US\$4,670,000 of the proceeds of such Fourth Note Purchase, or any proceeds referred to in Section 2.4(c)(ii)(B)) shall be applied as follows:
 - (i) up to but excluding the date on which the Administrative Agent (in its sole discretion) determines that the EPC Escrow Account Full Funding Date has occurred, upon a deposit of the proceeds of U.S. Notes into the EPC Escrow Account, an amount of such proceeds equal to the Full Funding Amount will be retained in the EPC Escrow Account, with the remaining amount of such proceeds being (absent a Default having occurred and being continuing on the proposed transfer date) transferred by the Administrative Agent to an account designated by Sky Capital to be applied towards the General Corporate Purposes (such that, with respect to the aggregate amount of US\$4,670,000 of the proceeds of the Fourth Note Purchase, US\$1,170,000 of such proceeds shall, on the Fourth Note Purchase Date, be so transferred by the Administrative Agent to an account designated by Sky Capital to be applied towards the General Corporate Purposes), provided that, in the case of each amount so released to Sky Capital, an Intercompany Loan Agreement is entered into between the Company and Sky Capital and duly executed, with a copy thereof being delivered to the Administrative Agent promptly following execution thereof;
 - (ii) on and following the date on which the Administrative Agent (in its sole discretion) determines that the Escrow Account Full Funding Date has occurred, all of the proceeds of such U.S. Notes deposited in the

- EPC Escrow Account in excess of the Full Funding Amount shall (absent a Default having occurred and being continuing on the proposed transfer date) be transferred by the Administrative Agent to an account designated by Sky Capital to be applied towards General Corporate Purposes; or
- (iii) for the avoidance of doubt, in no case shall the proceeds of the U.S. Notes retained in the EPC Escrow Account exceed fifty percent (50%) of the aggregate proceeds of all U.S. Notes purchased from time to time.
- (b) Notwithstanding Section 2.12(a)(i) the proceeds of any U.S. Notes deposited in the EPC Escrow Account shall be retained in the EPC Escrow Account subject to transfer in accordance with following provisions:
- (i) The Administrative Agent shall transfer an amount of the proceeds of such Notes deposited in the EPC Escrow Account that is equal to US\$2,500,000 to the General Account for application in accordance with Sections 2.10(a) through (d) on the date on which:
 - (A) the Company has provided to the Administrative Agent a copy of the Q Cells Module Supply Agreement duly signed and delivered by all parties thereto and otherwise in form and substance satisfactory to the Administrative Agent; and
 - (B) if the Company is unable to provide a copy of the Q Cells Module Supply Agreement to the Administrative Agent in accordance with the terms of Section 2.12(b)(i)(A) due solely to Q Cells having failed to agree on the terms and conditions of such Q Cells Module Supply Agreement with the Company, the date on which the Company evidence in form and substance satisfactory to the Administrative Agent (in its sole discretion) that the Q Cells Module Supply Agreement will be signed and delivered by all parties thereto.
 - (ii) Provided that the Escrow Equity Coverage Ratio would be met after giving effect to such transfer, the Administrative Agent shall transfer an amount of the proceeds of such Notes deposited in the EPC Escrow Account that is equal to the lesser of (x) the total amount of such proceeds deposited in the EPC Escrow Account at such time and (y) US\$2,500,000, to the General Account for application in accordance with Sections 2.10(a) through (d) on the date on which:
 - (A) the Company has provided to the Administrative Agent a copy of a Q Cells EPC Contract duly signed and delivered by all parties thereto and otherwise in form and substance satisfactory to the Administrative Agent; or
 - (B) if the Company is unable to provide a copy of the Q Cells EPC Contract to the Administrative Agent in accordance with the terms of Section 2.12(b)(ii)(A) prior to the second anniversary of the date of this Agreement:
 - I. due to a breach of any kind by Sky Capital of the Q Cells Guarantee, the date on which the Administrative Agent (in its

sole discretion) is satisfied that Sky Capital is in compliance with the relevant obligations under the Q Cells Guarantee and a copy of such Q Cells EPC Contract has been provided to the Administrative Agent in accordance with the terms of Section 2.12(b)(ii)(A), or

- II. due solely to Q Cells having failed to agree on the terms and conditions of such Q Cells EPC Contract with the Company (and not due to the reasons referred to in Section 2.12(b)(ii)(B)(I)), and the Company has provided evidence satisfactory to the Administrative Agent (in its sole discretion) thereof and that the Company has acted diligently and in good faith in attempting to reach agreement on such terms and conditions with Q Cells, the date of such second anniversary of the date of this Agreement.

(c) The Company hereby agrees and acknowledges that:

- (i) the EPC Escrow Account shall be, and remain at all times, an account of the Administrative Agent under the exclusive control of the Administrative Agent, and that the Company will not be entitled to issue any instructions in relation to such account, or be permitted to access such account, at any time;
- (ii) on the occurrence of an Event of Default, the Administrative Agent will be permitted to apply any funds deposited in the EPC Escrow Account in accordance with the terms of Section 7.4(d); and
- (iii) any calculation or determination made by the Administrative Agent under this Section 2.12 shall be binding and conclusive, absent manifest error.

(d) For the purposes of this Agreement:

- (i) **EPC Escrow Account** shall mean an account of the Administrative Agent into which capital calls with respect to Notes issued on and following the date of this Agreement will be deposited in accordance with Section 2.4(c)(ii);
- (ii) **EPC Escrow Account Full Funding Date** means the date on which the Administrative Agent, in its sole discretion, determines that the EPC Escrow Account contains the Full Funding Amount;
- (iii) **Escrow Equity Coverage Ratio** means the ratio of the Escrow Net Equity Value to the aggregate amount of the outstanding principal and Interest of the U.S. Notes, and the Escrow Equity Coverage Ratio will be met for the purposes of Section 2.12(b)(ii) above to the extent that such ratio will be no less than 1.1:1;
- (iv) **Escrow Net Equity Value** means the conversion value of all the Notes issued at the relevant time, as calculated by the Administrative Agent (in its sole discretion) in accordance with the latest equity conversion model therefor;

- (v) **Full Funding Amount** means US\$5,000,000;
- (vi) **Q Cells EPC Contract** means an engineering, procurement and construction contract made between the Company, or one of its Affiliates, with Q Cells, or one of its Affiliates, for the engineering, procurement and construction of certain Uruguayan projects, certain Canadian projects, certain U.S. projects and certain other Latin American projects, with installed capacity, in the aggregate of at least 20 MW; and
- (vii) **Q Cells Module Supply Agreement** means a supply contract made between the Company, or one of its Affiliates, with Q Cells, or one of its Affiliates, for the supply of certain solar panel modules capable of producing an installed capacity of at least 36 MW and to be used for the Uruguay Projects.