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TURNKEY LFC AGREEMENT
SOLAR PHOTOVOLTAIC GENERATING FACILITY
(continued)

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11.2.2 It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article as Schedule Liquidated Damages are reasonable, considering the damages that FPL would sustain, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by FPL. Payment of Schedule Liquidated Damages are the exclusive remedies for delays if and in the event the Project ultimately achieves Provisional Acceptance before the aggregate amount of liquidated damages is exhausted. Further, subject to the last sentence of this paragraph and provided Contractor:

- (a) Has not otherwise materially breached the Agreement; and
- (b) Is paying the assessed Schedule Liquidated Damages,

the failure to achieve Provisional Acceptance by the applicable Guaranteed Provisional Acceptance Date shall not be considered an event of default under the Contract Documents.

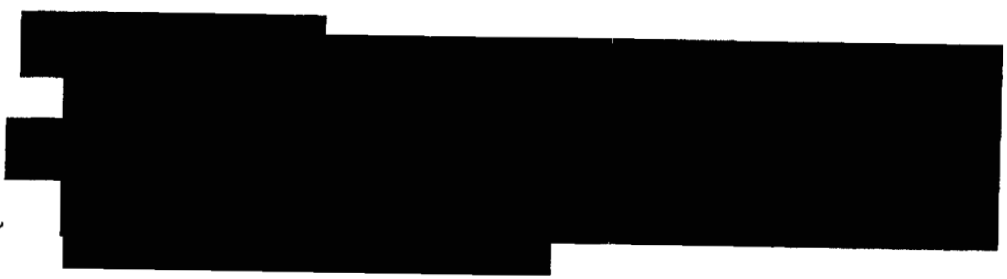
Notwithstanding anything contained herein to the contrary, in the event that Contractor has not achieved Provisional Acceptance but has reached its maximum liability hereunder for payment of liquidated damages in accordance with Section 11.5.3, Aggregate Liquidated Damages, Contractor shall be considered in default, and this Agreement may, at FPL's sole and exclusive discretion, be terminated in accordance with Article XV, TERMINATION.

11.2.3 Although Schedule Liquidated Damages are FPL's sole and exclusive remedy and Contractor's sole and exclusive obligation for Contractor's delay in achieving Provisional Acceptance, such exclusivity shall in no event affect FPL's rights and remedies set forth in Article XV Article XV, TERMINATION.

11.2.4 Notwithstanding anything herein to the contrary, if Contractor selects option (b) of Section 10.5.1 as and when applicable, no additional Schedule Liquidated Damages shall accrue thereafter.

11.3 FINAL ACCEPTANCE PERFORMANCE LEVEL; GUARANTEED PERFORMANCE LEVEL.

Contractor guarantees to FPL that the peak Net Energy Output of the Plant during the period from the Provisional Acceptance Date to the Final Acceptance Date will be equal to or greater than the Expected Energy Output (which for purposes of clarity is based on a 25,000 kW net AC capacity at Guarantee Design Conditions) (the "Net Energy Output Guarantee"); provided, however, that (i) for purposes of satisfaction of clause (c)(i) of the definition of "Final Acceptance", Net Energy Output shall be equal to or greater than the Final Acceptance Performance Level; (ii) in the event that Contractor makes the election provided for in Section 10.5.1(b), "Net Energy Output Guarantee" shall thereafter be deemed to equal the peak Net Energy Output of the Plant as determined by the Final Acceptance Performance Level that has been achieved by the last Guaranteed Performance Test performed (and during which the Noise Guarantee was simultaneously satisfied) when corrected to the Guarantee Design Conditions contained in the Scope of Work; and (iii) in the event that the Contract Price is reduced pursuant to Section 11.4.3, "Net Energy Output Guarantee" shall thereafter be deemed to equal the product of the Net Energy Output Guarantee (prior to any reduction thereto in the event that Contractor selected option (b) of Section 10.5.1) and the ratio calculated for the Energy Yield Test pursuant to the first sentence of Section 11.4.3.



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(b) [REDACTED]

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11.5 PAYMENT OF LIQUIDATED DAMAGES.

- 11.5.1 Schedule Liquidated Damages, if any, under this Article shall accrue on a daily basis for each Day (or portion thereof) of delay. Contractor shall pay any Schedule Liquidated Damages pursuant to this Article within seven (7) Days after receipt of demand therefor.
- 11.5.2 Except as provided in Section 11.5.3, Aggregate Liquidated Damages, Contractor's obligation to pay Schedule Liquidated Damages when and as provided in this Article is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by:
- (a) Any default by FPL in the performance or observance of any of its obligations hereunder, provided that FPL has paid all undisputed amounts due to Contractor hereunder;
 - (b) The assignment by FPL of the Contract Documents to the Financing Parties or any other Person; or
 - (c) Any other circumstances, happening, condition or event.
 - (d) Contractor shall pay such liquidated damages without deduction, set-off, reduction or counterclaim.
- 11.5.3 Aggregate Liquidated Damages. Notwithstanding anything contained herein to the contrary, the aggregate amount of Schedule Liquidated Damages payable by Contractor hereunder shall not exceed five percent (5%) of the Contract Price.
- 11.5.4 FPL shall have the right to offset any amounts owing to FPL under this Article against amounts owing to Contractor under this Agreement and to exercise its rights against any security provided by or for the

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- (b) Be free from improper workmanship and Defects;
- (c) Comply with all applicable requirements of all Applicable Laws and all Applicable Permits; and
- (d) Be fit for FPL's use in and as a photovoltaic solar power generation facility.

Contractor's warranty above expressly excludes (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration, improper application or removal by any party other than Contractor, (ii) cosmetic defects stemming from normal wear and tear of photovoltaic module materials, and (iii) Defects caused by FPL's failure to comply with the operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment.

12.1.2 Contractor warrants to FPL that the Work will be performed in a good and workmanlike manner, and that the Plant will:

- (a) Conform to and be designed, engineered and constructed in accordance with the Drawings, Scope of Work, all Applicable Laws and Applicable Permits, Prudent Utility Practices and other requirements of the Contract Documents;
- (b) Conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in major solar power projects similar to the Project; and
- (c) Contain the Equipment, supplies and materials described in the Scope of Work.

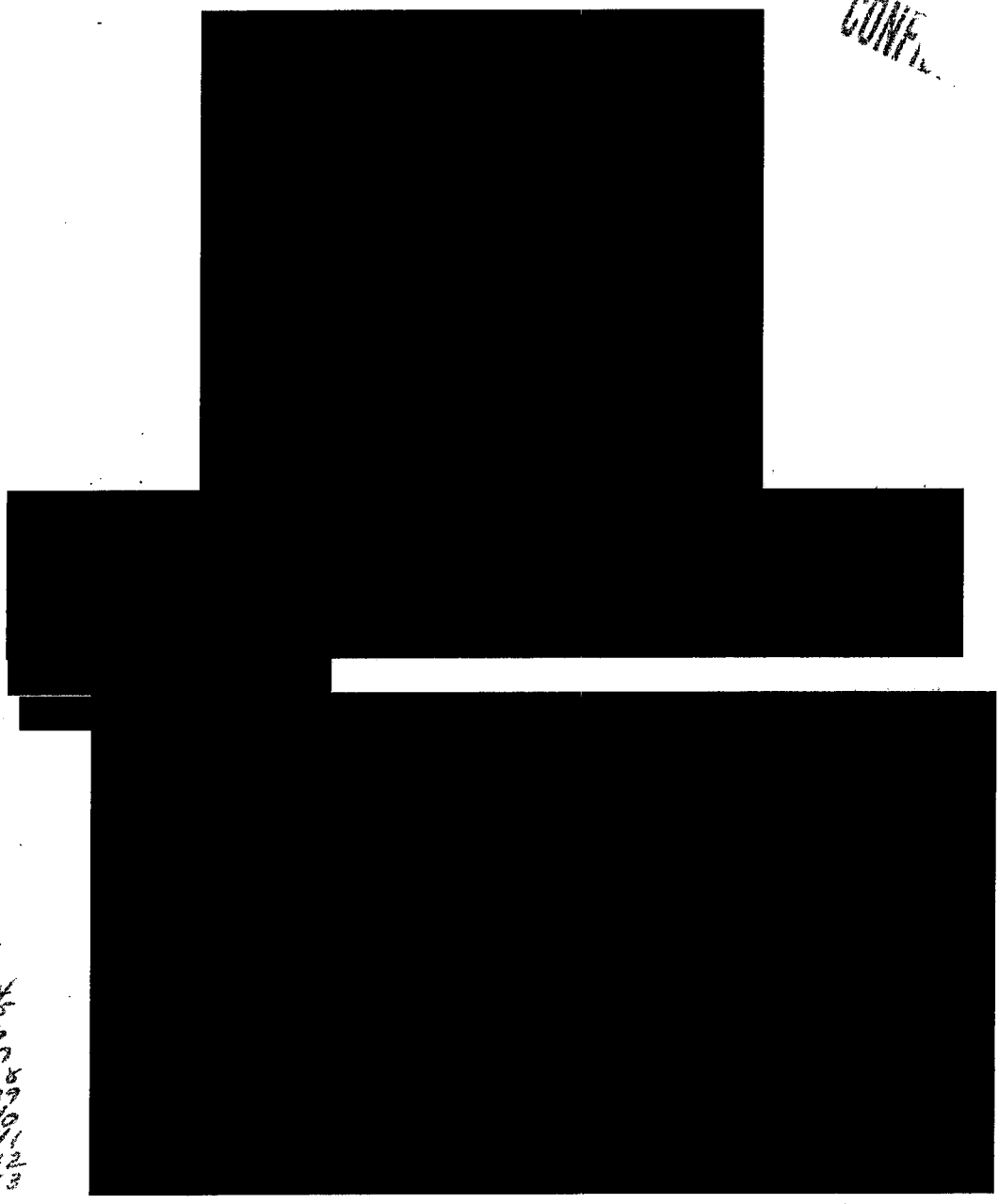
Contractor's warranty above expressly excludes (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration, improper application or removal by any party other than Contractor, (ii) cosmetic defects stemming from normal wear and tear of photovoltaic module materials, and (iii) Defects caused by FPL's failure to comply with the operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment.



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12.1.5

12.1.6 If, prior to or during the given Warranty Period for any warranty provided hereunder (as the same may be extended hereunder), fifteen percent (15%) or more of any type of component of the Work fails (for purposes hereof, a component shall be deemed to have failed if it contains a Defect or is in breach of other warranty set forth in Section 12.1, WARRANTIES, as applicable), then Contractor shall perform or cause to be performed a root-cause analysis with respect to such extensive component failure and, unless Contractor proves to FPL's sole satisfaction that the failure is not due to a design fault in such component, such component or components shall be re-designed and retrofitted for the Plant, subject fully in each case to the warranties set forth in Section 12.1, WARRANTIES, for a period of twelve (12) months beginning on each date of the completion of the re-installation of such new component. If Contractor proves to FPL's sole satisfaction that the failure is not due to a design fault in such component, then the given Warranty Period applicable for all such component or components in the Plant shall be automatically extended for (a) an additional twenty-four (24) months commencing on the date, in the case of each such component, when the failure occurred that caused the percentage of failures of components of that type to equal or exceed fifteen percent (15%) if such failure occurred at any time prior to the first anniversary of the Final Completion Date and or (b) an additional twelve (12) months commencing on the date, in the case of each such component, when the failure occurred that caused the percentage of failures of components of that type to equal or exceed fifteen percent (15%) if such failure occurred at any time on or after the first anniversary of the Final Completion Date.

12.1.7 THE WARRANTIES OF CONTRACTOR SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

12.2 REPAIR OF NONCONFORMING WORK

12.2.1 If, during the given Warranty Period for any warranty provided hereunder, the Work or the Plant is found to contain Defects or Contractor is otherwise in breach of any of the warranties set forth in Section 12.1, WARRANTIES, as applicable, Contractor shall at its expense correct, repair or replace such Defect or otherwise cure such breach as promptly as practicable upon being given notice thereof. FPL shall provide Contractor with reasonable access to the Plant in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Plant. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including, without limitation, necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect or breach of warranty. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the "root cause" unless Contractor can demonstrate to FPL's reasonable satisfaction that there is not a risk of the recurrence of such problem. Contractor's obligations under this Section shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any Vendor or Subcontractor to Contractor or FPL concerning any Defect or breach of warranty. No such correction or cure, as the case may be, shall be considered complete until FPL shall have reviewed and accepted such remedial Work.

