

**LOAN AMENDMENT REQUEST FORM (LARF)**

CEC-278 (Revised 02/13)

CALIFORNIA ENERGY COMMISSION



Original Agreement #	002-10-CEB	Amendment #	1
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<b>Division</b>	<b>Agreement Manager:</b>	<b>MS-</b>	<b>Phone</b>
600 Fuels and Transportation Division	Jacob Orenberg	27	916-654-3888

<b>Recipient's Legal Name</b>	<b>Federal ID Number</b>
Stion Corporation	-

<b>Revisions:</b> (check all that apply)		
<input type="checkbox"/> Term Extension	New End Date: / /	Include revised schedule and complete items A, B, C, & F below.
<input type="checkbox"/> Budget Augmentation	Amendment Amount: \$ 0	Include revised budget and complete items A, B, C, D, & F below.
<input type="checkbox"/> Budget Reallocation		Include revised budget and complete items A, B, C, & F below.
<input type="checkbox"/> Scope of Work Revision		Include revised scope of work and complete items A, B, C, E, & F below.
<input type="checkbox"/> Change in Project Location or Demonstration Site		Include revised scope of work and complete items A, B, C, E, & F below.
<input checked="" type="checkbox"/> Novation/Name Change of Prime Contractor/Recipient		Include novation documentation and complete items A, B, C, & F below.
<input type="checkbox"/> Terms and Conditions Modification		Include applicable exhibits with bold/underline/strikeout and complete items A, B, C, & F below.

**A) Business Meeting Information****Business Meeting approval is not required for the following types of Agreements:**

<input type="checkbox"/> ARFVTP minor amendments delegated to Executive Director.			
Proposed Business Meeting Date	2 / 25 / 2015	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Discussion
Business Meeting Presenter	none	Time Needed:	minutes
Please select one list serve. Select			

**Agenda Item Subject and Description**

STION CORPORATION. Proposed resolution approving Amendment 1 to Loan Agreement 002-10-CEB for a novation in which Stion Corporation (formerly known as HETF Solar, Inc.) will assume all obligations and liabilities of the original borrower now known as CM Manufacturing Inc.

**B) List all subcontractors (major and minor) and equipment vendors: (attach additional sheets as necessary)**

Legal Company Name:	Budget
NPC Incorporated and NPC America Corporation	\$ 5,000,000.00
	\$ 0.00
	\$ 0.00

**C) List all key partners: (attach additional sheets as necessary)**

Legal Company Name:

**D) Budget Information (only include amendment amount information)**

Funding Source	Funding Year of Appropriation	Budget List No.	Amount
Funding Source			\$
R&D Program Area:	Select Program Area	TOTAL:	\$ 0
Explanation for "Other" selection			
Reimbursement Contract #:		Federal Agreement #:	



**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov

**NOVATION AGREEMENT****Loan Agreement Number 002-10-CEB**

This Novation Agreement is made and entered into by CM Manufacturing Inc. (formerly known as Stion Corporation, hereinafter referred to as “Original Borrower”), Stion Corporation (formerly known as HETF Solar, Inc., hereinafter referred to as “New Borrower”), and the State Energy Resources Conservation and Development Commission (hereinafter “Energy Commission”). Original Borrower and New Borrower are referred to collectively herein as “Stion”; Original Borrower, New Borrower, and Energy Commission are collectively referred herein as the “Parties.”

As used herein, “Loan” refers to the Clean Energy Business Financing Program (CEBFP) loan in the original amount of \$5,000,000 as evidenced by loan agreement 002-10-CEB, including but not limited to Exhibits A, B, C, & D thereof, between the Energy Commission and Original Borrower and any and all subsequent modifications and amendments that occurred prior to the Effective Date of this Novation Agreement.

The Effective Date of this Novation Agreement is the date the Energy Commission signs it. The Energy Commission shall be the last of the Parties to sign and shall only sign if the Novation Agreement is approved by the Energy Commission at a duly-noticed commission Business Meeting.

**A. RECITALS:** The Parties hereby represent:

- 1) On July 29, 2011, Original Borrower and the Energy Commission entered into CEBFP Loan agreement number 002-10-CEB in the amount of \$5,000,000.00. A true and correct copy of the Loan agreement is attached hereto as **Exhibit 1**. The purpose of this loan was for Original Borrower to use loan proceeds to purchase and install solar panel manufacturing equipment at Original Borrower’s San Jose, California facility.
- 2) On October 22, 2013, Original Borrower entered into a General Assignment for the Benefit of Creditors (the “General Assignment”) with Development Specialists, Inc. (“DSI”) as the assignee for the benefit of creditors. A true and accurate copy of the General Assignment is attached hereto as **Exhibit 2**.
- 3) Stion has requested that the Energy Commission ratify the General Assignment, agree to the assumption and assignment of the Loan from Old Borrower to New Borrower and waive certain Events of Default under the Loan as more particularly described in paragraph **B 5** below.
- 4) The current outstanding balance of the Loan as of January 8, 2015 is **\$2,149,943.56**.

B) **STION'S REPRESENTATIONS:** New Borrower and Original Borrower hereby certify and represent the following facts and information, the truth and accuracy of which the Energy Commission has detrimentally relied on in deciding to enter into this Novation Agreement:

- 1) On October 11, 2013, Original Borrower filed a certificate of amendment with the State of Delaware Secretary of State to change the name of the corporation from Stion Corporation to CM Manufacturing, Inc.
- 2) On October 8, 2013, New Borrower came into existence when it was incorporated in the State of Delaware under the corporate name of HETF Solar Inc.
- 3) On October 22, 2013, Original Borrower, as assignor, entered into the General Assignment with DSI, as the assignee for the benefit of creditors.
- 4) On October 22, 2013, New Borrower purchased the assets covered under the General Assignment and assumed certain obligations, including loan number 002-10-CEB, as set forth in that certain Asset Purchase Agreement, by and among New Borrower, as Buyer, DSI, solely in its capacity as the assignee for the benefit of creditors of CM Manufacturing, Inc. (f/k/a Stion Corporation), as Seller, and Old Borrower, a true, accurate and complete copy of which is attached hereto as **Exhibit 3**.
- 5) On October 25, 2013, New Borrower filed a certificate of amendment with the State of Delaware Secretary of State changing its name from HETF Solar Inc. to Stion Corporation.
- 6) Thereafter, Stion requested that the Energy Commission enter into this novation agreement and waive the Events of Default set forth in the letter dated November 13, 2013, a true and accurate copy of which is attached hereto as **Exhibit 4** (attachments omitted).
- 7) The representations set forth in the answers to questions in the document entitled "Stion Questions" dated "2/3/2014", Stion's written response dated February 4, 2014, attached hereto as **Exhibit 5**, are true and correct in all material respects (provided that those representations expressly referring to a specific date shall be true and complete in all material respects as of such date).

**C) CONDITIONS PRECEDENT**

The Energy Commission's ratification, consent and agreement to this Novation Agreement, and its duties and obligations hereunder, are strictly contingent upon the occurrence of the following Conditions Precedent:

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- 1) New Borrower providing a fully-executed and notarized new Promissory Note in the amount of **\$2,149,943.56** (less any amount(s) paid by New Borrower on the loan after January 8, 2014) in the form set forth in **Exhibit 6** hereto, and approved by the Energy Commission, such approval not to be unreasonably withheld.
- 2) New Borrower providing a fully-executed and notarized CERTIFIED CORPORATE RESOLUTION TO OBTAIN CREDIT duly signed by the current officers of New Borrower in the form set forth in **Exhibit 7** hereto, and approved by the Energy Commission, such approval not to be unreasonably withheld.
- 3) New Borrower providing fully-executed and notarized CONTINUING GUARANTEES, in the form set forth in **Exhibit 8** hereto, from the following Loan guarantors, duly signed by the current officers of said Loan guarantors, and approved by the Energy Commission, such approval not to be unreasonably withheld:
  - a. Khosla Ventures III, L.P.; and
  - b. VNK Management LLC.
- 4) New Borrower providing fully-executed and notarized ERRORS AND OMISSIONS STATEMENT, in the form set forth in **Exhibit 9** hereto.
- 5) New Borrower providing fully-executed and notarized Closing Date Certificates for VNK Management LLC, and Khosla Ventures III, L.P., in the form provided in **Exhibit 10** hereto, duly signed by the current officers of said Loan guarantors, and approved by the Energy Commission, such approval not to be unreasonably withheld.

Upon execution and approval of **Exhibits 6, 7, 8, 9, and 10** as set forth above, said Exhibits shall become a fully enforceable part of this Novation Agreement.

**D) AGREEMENT**

In consideration for the mutual promises contained in this Novation Agreement, the Parties represent, warrant and agree as follows:

- 1) Assumption of Loan. New Borrower unconditionally assumes and hereby agrees to be bound by all obligations, liabilities, terms, conditions, provisions, and covenants of the Loan, including but not limited to all obligations and liabilities of Original Borrower under the Loan. New Borrower hereby agrees to pay all sums payable, and to perform each and every obligation to be performed under and in accordance with the Loan as if New Borrower were the original recipient of the Loan.
- 2) Novation. Original Borrower, New Borrower, and Energy Commission hereby agree that this Novation Agreement shall constitute a novation of the obligations and liabilities of

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Original Borrower under the Loan. Accordingly, all of the rights, duties, obligations, and liabilities of Original Borrower under the Loan are hereby extinguished. Energy Commission, New Borrower and Original Borrower recognize New Borrower as Original Borrower's successor in interest in and to all other Original Borrower's rights, duties, obligations, and liabilities in, to and under the Loan.

- 3) Ratification by New Borrower. The New Borrower ratifies all previous actions taken by the Original Borrower with respect to the Loan, with the same force and effect as if the action had been taken by the New Borrower.
- 4) Maintenance of Facility. New Borrower agrees to maintain its San Jose, California facility during the entire remaining term of the Loan.
- 5) No Prejudice. The Parties agree that neither the Energy Commission nor the State of California, nor any of their successors, assigns, officers or employees, shall suffer any prejudice to any of their rights under the terms of the original Loan to Original Borrower, including but not limited to any and all rights to the Loan collateral and/or any proceeds thereof, as a result of this novation.
- 6) Ratification of General Assignment. In reliance on, and subject to the truth and accuracy of, the representations of Stion set forth herein, the Energy Commission hereby accepts and ratifies the General Assignment.
- 7) DSI's Role as Assignee for Benefit of Creditors of Original Borrower. DSI is signing this Novation Agreement on behalf of Original Borrower, in order to avoid any doubt whether the execution of this Novation Agreement by Original Borrower is duly authorized. DSI signs solely by virtue of DSI's status as Assignee for the benefit of creditors of Original Borrower and solely in its capacity as such Assignee, pursuant to the authority, including the power of attorney, granted under the General Assignment to DSI as Assignee. In view of the role and capacity of DSI under the terms of the General Assignment, and for avoidance of doubt, the parties agree that:
  - a) With the exception of the representations and statements made in sections 2) and 3) of Part A (Recitals) and sections 3), 4), and 6) of Part B (Stion's Representations) above, DSI's actual knowledge of the matters stated in Part A and Part B of this Novation Agreement is based on information and belief, specifically that DSI has been informed by representatives of Original Borrower or New Borrower that such matters are accurately stated, and on that basis DSI believes that information to be accurate.
  - b) To the extent any rights or claims of Energy Commission against Original Borrower, its assignment estate, or DSI survive the execution of this Novation Agreement:

- i. this Novation Agreement shall not give Energy Commission any greater rights or higher priority against Original Borrower, its assignment estate, or DSI than the rights and priority that Energy Commission held immediately prior to the execution of this Novation Agreement; and
  - ii. subject to the limitation in clause i) immediately above, this section 8 shall not limit or reduce any such surviving rights or claims of Energy Commission, or their priority, against Original Borrower, its assignment estate, or DSI.
- c) This section 8 shall not in any respect limit any rights of Energy Commission against New Borrower, whether such rights are asserted or claimed under this Novation Agreement or otherwise.
- 8) One-time waiver. In reliance on, and subject to the truth and accuracy of, the representations of Stion set forth herein, Energy Commission hereby provides a one-time waiver of the Events of Default set forth in **Exhibit 4** hereto that existed under the Loan prior to the effective date of this Novation Agreement.
- 9) Covenant. New Borrower agrees that it will take all actions reasonably necessary to carry out the matters contemplated by the Loan and this Novation Agreement.
- 10) No reimbursement. The Parties agree that the Energy Commission is not obligated to pay or reimburse New Borrower, Original Borrower, or either of them for any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Novation Agreement, other than those that the Energy Commission would have been obligated to pay or reimburse in the absence of this Novation Agreement under the terms of the original Loan.
- 11) Loan in full force. The Loan shall remain in full force and effect as modified by this Novation Agreement and any subsequent written and duly executed amendments.
- 12) Legality of terms. If any term, condition, or provision in this Novation Agreement is found to be invalid, unlawful or unenforceable to any extent, the remaining terms, conditions and provisions, shall continue to be valid and enforceable to the fullest extent permitted by law. In such case, the Parties shall attempt in good faith to agree to such amendment(s) as will remedy the invalid, unlawful or unenforceable provision, in order to preserve to the maximum extent legally permissible the intentions of the Parties expressed in this Agreement.
- 13) Entire agreement. Loan agreement 002-10-CEB as modified by this Novation Agreement contains the entire agreement of the Parties and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

- 14) Amendment. Neither this Novation Agreement nor the Loan may be amended, except by a writing signed by the Energy Commission and New Borrower.
- 15) Counterparts. This Novation Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.
- 16) Governing law. This Novation Agreement shall be interpreted and construed in accordance with the laws of the State of California.
- 17) Disputes/venue. Any and all disputes related to or arising out of this Agreement shall be resolved in a court of competent jurisdiction located within the State of California, with venue in Sacramento County, California, subject to any applicable requirement that a claim against the State first be presented to the California Victim Compensation and Government Claims Board and subject to the exhaustion of any other applicable administrative remedies. Each Party hereby consents to and accepts personal jurisdiction within the State of California as well as venue in Sacramento County.
- 18) Interpretation. This Novation Agreement shall be deemed to have been prepared equally and mutually by the Parties and it and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that another party prepared it.
- 19) Loan terms. Except as expressly modified herein, all terms and conditions of the Loan remain in full force and effect, and New Borrower agrees to be bound thereby.
- 20) Authority. Each of the persons signing below on behalf of the corporate Parties hereto warrants and represents that he or she is an officer of the corporation fully authorized to execute and enter into this Novation Agreement on behalf of the corporation, and that his or her signature is fully sufficient to legally bind the corporation.
- 21) Contacts. Updated contact information for the Parties has been added to a new “Exhibit C 2014 Contacts List” attached as **Exhibit 11** hereto. The Parties shall use this updated new Contacts List in place of the original “Exhibit C Contacts List” attached to the original 2011 Loan Agreement.

**Signatures of the Parties appear on following page:**

**IN WITNESS WHEREOF**, by signing below, the Parties hereby agree to the above terms and conditions of this Novation Agreement and intend to be legally bound thereby.

**Original Borrower: CM MANUFACTURING, INC. (formerly known as Stion Corporation)**

BY: **Development Specialists, Inc.**, acting solely in its capacity as Assignee under the General Assignment, with power of attorney of Original Borrower

by: \_\_\_\_\_ Date: \_\_\_\_\_

**Matthew P. Sorenson**

Title: Vice President

BY: \_\_\_\_\_ Date: \_\_\_\_\_

**Chester A. Farris**

Chief Executive Officer

**New Borrower: STION CORPORATION (formerly known as HETF Solar, Inc.)**

BY: \_\_\_\_\_ Date: \_\_\_\_\_

**Chester A. Farris**

President, Chief Executive Officer, Treasurer, and Chief Financial Officer

BY: \_\_\_\_\_ Date: \_\_\_\_\_

**Patrick A. Pohlen**

Secretary

**CALIFORNIA ENERGY COMMISSION**

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF CALIFORNIA

STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION - RE: STION CORPORATION

**RESOLVED**, that the State Energy Resources Conservation and Development Commission (Energy Commission) adopts the staff CEQA findings contained in the Agreement Amendment Request Form; and

**RESOLVED**, that the Energy Commission approves Amendment 1 to Loan Agreement 002-10-CEB for a novation in which Stion Corporation (formerly known as HETF Solar, Inc.) will assume all obligations and liabilities of the original borrower now known as CM Manufacturing Inc.; and

**FURTHER BE IT RESOLVED**, that the Executive Director or his/her designee shall execute the same on behalf of the Energy Commission.

**CERTIFICATION**

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on February 25, 2015.

AYE: [List of Commissioners]

NAY: [List of Commissioners]

ABSENT: [List of Commissioners]

ABSTAIN: [List of Commissioners]

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Harriet Kallemeyn,  
Secretariat