



Energy Management Agreement

This Energy Management Agreement (this "EMA"), entered into on March [], 2016 (the "Effective Date"), is made by and between SunPower Corporation, Systems ("SunPower"), and Bonita Unified School District ("Customer"). SunPower and Customer are referred to herein collectively as the "Parties" and each individually as a "Party" to this EMA.

- 1. Solutions.** This EMA is a master agreement between the Parties and sets forth the terms and conditions that will govern the rights, responsibilities, and obligations of the Parties with respect to the provision of the solutions (the "Solutions"), the scope of which are described in the applicable statements of work attached hereto (each a "SOW" and together with this EMA, the "Agreement"). SunPower will provide the Solutions in accordance with the Agreement and each applicable SOW. In connection with each Site Address for which Customer desires to procure any of the Solutions from SunPower, SunPower and Customer will execute a SOW that specifies, among other things, a description of the Solutions to be provided, the compensation for those Solutions, and any other details related to the engagement.
- 2. Use and Access License.** For the duration of the term of any duly-executed SOW, SunPower grants to Customer a limited, revocable, non-transferrable (except as set forth herein) and non-exclusive right to use and access (including through remote means) the Solutions solely for Customer's internal business operations and subject to the terms of this EMA and each applicable SOW. Without limiting the terms of the Agreement, Customer agrees not to decompile, disassemble, reverse engineer, or otherwise attempt to perceive the source code relating to the Solutions or any web-based portal relating thereto, or assign, sublicense, sell, resell, lease, or otherwise transfer, convey, or pledge as security or encumber, any right in the Solutions. Except as expressly permitted herein, Customer agrees that it shall not receive any right, title, or interest in, or any license or right to use or access, the Solutions or any patent, copyright, trade secret, trademark, or other intellectual property rights therein by implication or otherwise.
- 3. Term.** This EMA shall commence on the Effective Date and continue as long as any SOW is effective, unless terminated in accordance with the terms herein (the "Term").
- 4. Confidentiality.**
 - a. Nondisclosure to Third Parties.** In providing the Solutions under the Agreement, each Party will be exposed to certain Confidential Information (as hereinafter defined) of the other Party. Each Party, on its own behalf and on behalf of its employees, contractors, and agents (collectively, "Representatives"), agrees not to, except as required by applicable law or regulation, use or disclose such Confidential Information without the prior written consent of the other Party, either during or after the Term. To protect Confidential Information, each Party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to know"; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate policies and procedures in place with such Representatives that are sufficient to enable compliance with the confidentiality obligations contained herein. The term "Confidential Information" means all information, including, without limitation, any trade secret, which is disclosed, either orally or in written form, by either Party or its Representatives and shall be deemed to include: (x) any notes, analyses, compilations, studies, interpretations, memoranda, or other documents prepared by either Party or its Representatives which contain, reflect, or are based upon, in whole or in part, any Confidential Information furnished to a receiving Party or its Representatives pursuant hereto; and (y) any information concerning the

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business relationship between the Parties.

- b. **Use of Confidential Information.** Customer acknowledges that SunPower may receive Confidential Information of Customer from the applicable independent system/grid operator or utility, through data collected through the Solutions or otherwise, which may be used or disclosed by SunPower as necessary for the performance of the Agreement.
 - c. **Use of Data.** All data that is produced by the Solutions with respect to the solar facilities owned by Customer shall remain the sole property of Customer, subject to the limited rights granted pursuant to Section 5 below.
5. **Aggregate Data Collection and Usage.** Customer acknowledges and agrees that SunPower may: (i) collect, process, and aggregate any data used with, stored in, or related to the Solutions, including, without limitation, end-user energy usage and demand data, and create aggregate data records ("Aggregate Data") by removing any personally identifiable information ("PII") from the underlying data; (ii) use such Aggregate Data to improve the Solutions, develop new solutions, understand actual energy usage and demand trends and general industry trends, develop white papers, reports, or databases summarizing the foregoing, and generally for any legitimate purpose related to SunPower's business; and (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data.
6. In the event Customer has an existing agreement in place with EnerNOC, Inc. for the provision of the Solution, Customer agrees and acknowledges that EnerNOC, Inc. may provide data collected through the Solutions or otherwise, including without limitation, Confidential Information from the applicable independent system/grid operator and/or utility, to SunPower as necessary for the performance of the agreement between SunPower and the Customer.
7. [RESERVED].
8. **Limitation on Liability.** Except for breaches of confidentiality, SunPower's liability hereunder is limited to direct, actual damages as the sole and exclusive remedy available to Customer, and SunPower's total damages under the Agreement shall not exceed \$100,000.00. In no event shall either Party, its parent, officers, directors, partners, shareholders, employees, or affiliates, or any contractor or subcontractor or its employees or affiliates, be liable to the other Party for special, indirect, exemplary, punitive, incidental, or consequential damages, of any nature whatsoever, connected with or resulting from the Solutions or from performance or non-performance of obligations under the Agreement, including without limitation, damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, whether or not such damages are reasonably foreseeable and whether or not such claims are based upon negligence, strict liability, contract, operation of law, or otherwise.
9. **Warranty Limitations.** IF THE SOLUTIONS BECOME OR ARE LIKELY TO BECOME THE SUBJECT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM OR ACTION, SUNPOWER MAY, AT SUNPOWER'S SOLE OPTION, EITHER: (I) REPLACE SUCH SOLUTIONS WITH AN EQUALLY SUITABLE SOLUTION FREE OF INFRINGEMENT; (II) MODIFY OR OBTAIN A LICENSE FOR THE SOLUTIONS SO THAT THEY NO LONGER INFRINGE ON ANY RIGHTS; OR (III) AFTER SUNPOWER HAS DEMONSTRATED ITS GOOD-FAITH EFFORTS TO ACHIEVE THE FOREGOING WITHOUT SUCCESS, TERMINATE EACH APPLICABLE SOW. EXCEPT AS PROVIDED HEREIN, THE SOLUTIONS (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) ARE PROVIDED AS IS, WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST



EXTENT PERMISSIBLE UNDER APPLICABLE LAW. NOTHING CONTAINED HEREIN WILL LIMIT OR OTHERWISE ALTER ANY WARRANTY, OBLIGATION OR GUARANTY OF SUNPOWER TO CUSTOMER IN CONNECTION WITH ANY OTHER AGREEMENT BETWEEN THE PARTIES.

- 10. Choice of Law.** The Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to choice of law rules that otherwise might apply.
- 11. Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder, without the prior written consent of SunPower; except that Customer may assign the Agreement to its successor or any entity acquiring all or substantially all of the assets of Customer by providing SunPower with written notice promptly following the acquisition date. The Agreement, including all exhibits, attachments, and SOWs, constitutes the entire agreement between Customer and SunPower and may only be amended in writing signed by each of the Parties. In the event of any conflict between this EMA and any SOW, the terms of this EMA shall control with respect to each applicable SOW. If any of its provisions shall be held invalid or unenforceable, the Agreement shall be construed as if not containing those provisions, and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. The Agreement shall be binding upon the Parties, together with their successors and permitted assigns. Each Party shall be responsible for its Representatives' compliance with the Agreement. Customer shall promptly notify SunPower, in writing, of any changes that occur during the Term to the Customer address(es) set forth in this EMA.
- 12. Taxes.** Fees, costs, and expenses described in the Agreement do not include any sales, use, personal property, duty, levy, or similar governance charge, value added, or good/services taxes. SunPower may include applicable taxes as separate items on Customer's invoice, and Customer shall be responsible to pay or reimburse SunPower for all taxes (other than taxes based on SunPower's income), unless Customer has provided adequate evidence of exemption upon execution of this EMA or the applicable SOW. If withholding of taxes is required by any government, Customer shall remit such taxes in accordance with applicable law, gross up the applicable payment amounts so that SunPower receives the full amount of fees invoiced, and provide SunPower with applicable evidence of withholding.
- 13. Force Majeure.** Each Party shall be excused for any failure or delay in the performance of its obligations hereunder due to acts of God or any other legitimate cause beyond its reasonable control.
- 14. Termination.** Either Party may terminate this EMA (i) in the event of the other Party's material breach of this EMA, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date that it receives written notice from the non-breaching Party specifying the purported breach; (ii) immediately upon the institution by or against the other Party of insolvency, receivership, or bankruptcy proceedings, or any other proceedings for the settlement of the other Party's debts; or (iii) for convenience by giving the other Party sixty (60) days' prior written notice; provided, however, that neither Party may terminate this EMA, pursuant to this Section 14(iii), with respect to any SOW executed by the Parties hereunder that remains in effect.
- 15. Notices.** Any notices required or permitted to be given hereunder by either Party to the other Party shall be given in writing by: (i) personal delivery; (ii) bonded courier or nationally-recognized overnight delivery company; or (iii) electronic mail. If notice is given by personal delivery, bonded courier, or nationally-recognized overnight delivery company, such notice shall be addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section):

If to Customer:

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Bonita Unified School District
115 West Allen Avenue
San Dimas, CA 91773
Attention: Ann Sparks, Assistant Superintendent, Business Services

If to SunPower:

SunPower Corporation, Systems
1414 Harbour Way South, Suite 1901
Richmond, California 94804 USA
Attention: Contracts Administrator

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this EMA by their authorized representatives as of the Effective Date.

SunPower Corporation, Systems

Name: _____

Title: _____

Signature: _____

Bonita Unified School District

Name: _____

Title: _____

Signature: _____



Energy Intelligence Software Statement of Work

This Statement of Work (this "SOW"), entered into on _____ (the "SOW Effective Date"), is made by and between SunPower Corporation, Systems ("SunPower"), and Bonita Unified School District ("Customer") pursuant to the Energy Management Agreement executed by and between the Parties effective as of _____ (the "EMA"), to which this SOW is attached and incorporated into. Unless otherwise defined herein, capitalized terms have the meanings ascribed in the EMA.

1. **Term.** This SOW shall commence on the date that the Solutions described herein become available to Customer (the "Commercial Operation Date") and continue until the last day of the month that is thirty-six (36) months following the Commercial Operation Date, unless earlier terminated in accordance with the terms herein (the "SOW Term").
2. **Enablement.** If required by SunPower for Customer's use and access to the Solutions, Customer shall, within twelve (12) days following execution by the Parties of this SOW, provide SunPower with reasonable access to install a SunPower site server ("ESS") that allows for Internet-based power metering, data collection, near real-time data communication, and Internet-based reporting and analytics for the Customer facility address identified on the Site Address Attachment attached hereto (the "Site Address"). In the event that cellular connectivity is required but not feasible, Customer shall provide either a static or non-static, as applicable, Internet Protocol (IP) address and Local Area Network (LAN) access that allows for Internet-based communication of the Site Address' energy consumption or any other access required for performance or building management system data. Customer agrees to collaborate with SunPower in a timely manner in testing, enabling, and maintaining the installed ESS, the Solutions, and any other components of the SunPower system ("SunPower System"). If required for the Site Address, as determined solely by SunPower and indicated on the Site Address Attachment, the Parties shall execute a SunPower System enablement plan ("Enablement Plan") for that Site Address, the terms of which shall be attached to this SOW.
3. **Standard Solutions.** SunPower agrees to provide Customer with the following Solutions at the Site Address:
 - a. **Utility Bill Management.** Upon Customer's election to use utility bill management functionality ("UBM"), and SunPower's acceptance of the election, SunPower will, for each Account associated with the Site Address (as defined below) up to the UBM Account Limit (as defined below), upload Customer Data (as defined below) from the twelve (12)-month period preceding the date of Customer's election and upon completion of set-up provide Customer with utility bill management by:
 - collecting, processing, and evaluating accuracy and completeness of Customer utility bills;
 - providing Customer with ongoing access to raw data, trends, and analysis of utility bills via the SunPower System;
 - tracking energy expense against a Customer budget;
 - providing a utility liaison service in order to follow-up on common utility questions such as missing bills and errors;
 - uploading relevant utility bill information to ENERGY STAR Portfolio Manager on a monthly basis; and
 - providing analysis of potential utility bill errors.

For purposes of this SOW, "Account" shall mean an account for the supply of a single type of utility to meter(s) billed to Customer by one utility or other supplier, and the "UBM Account Limit" at the Site Address shall be seven (7) Accounts.

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For the avoidance of doubt, nothing in this SOW shall require Customer to use UBM.

- b. **Energy Analysis.** SunPower will provide Customer with energy interval information by:
- giving access and visibility to energy interval data in real time via the SunPower System;
 - delivering dashboards and on-demand analytics that interpret energy data into meaningful information;
 - providing customizable alerts which notify users of abnormalities in energy demand or consumption in real time;
 - monitoring solar meter data points, and presenting energy and demand charge savings from solar systems provided by SunPower
 - mapping additional meter data points to supported data stream unit of measure types in the SunPower platform; and
 - application of customer tariffs to energy usage data to provide analytics reflecting customer's actual energy costs.
- c. **Support.** SunPower will provide Customer with ongoing support by:
- offering assistance via a 24/7/365 customer support hotline;
 - delivering basic training on how to use the SunPower System via pre-scheduled webinars and unlimited access to online training resources;
 - providing access to energy experts.

4. [Reserved]

5. Customer Support Requirements.

- a. **General Support Requirements.** Customer agrees to provide or cause to be provided to SunPower contact, billing, and energy usage data, and facility information concerning the Site Address ("Customer Data") as is necessary to support the Solutions, including, but not limited to: (i) at least twelve (12) months of historical utility bills and supply contracts; (ii) any account/supply point data including, without limitation, account numbers, meter serial numbers, meter identifiers, and change of tenancy information; (iii) square footage, operating hours (including holiday schedules) and average occupancy for the Site Address; (iv) major heating ventilation and air conditioning equipment, lighting type used, and any other significant equipment for the Site Address; (v) a contact list for all key personnel; and (vi) a letter of authorization or such other form as may be necessary for SunPower to act on behalf of Customer and interface directly with Customer's utility companies. Customer (x) represents that it has the right to provide Customer Data to SunPower and will provide Customer Data to SunPower in compliance with applicable legal requirements; (y) authorizes SunPower to use, copy, store, modify, and display Customer Data for Customer's benefit and as expressly set forth in Section 5 of the EMA; and (z) authorizes SunPower to access Customer Data to provide quality assurance, perform software maintenance, and deliver customer service and technical support. During the SOW Term and for thirty (30) days following expiration or termination of this SOW, SunPower will preserve and maintain Customer Data. Thereafter, SunPower will have no obligation to preserve or return any Customer Data.

6. General Terms.

- a. **Provider Limitation.** Customer agrees not to contract with any other provider of the Solutions during the SOW



Term.

- b. **Payments to Utilities or Other Suppliers.** In no event shall SunPower or its affiliates, directors, employees, or agents (collectively, the “Indemnified Parties”) be responsible or liable for payment of any utility bill of Customer or any amount Customer may owe to any utility or other supplier. To the fullest extent permitted by law, Customer shall defend and indemnify, at its own expense, any third-party claim against the Indemnified Parties that arise due to any allegation that the Indemnified Parties are responsible for payment of any utility bill of Customer or a portion thereof, or any other amounts due by Customer to any utility or other supplier. In connection with the foregoing indemnification obligations, Customer shall pay reasonable legal fees as incurred and such damages or costs as are finally awarded against SunPower or agreed to in settlement for such claim.
- c. **Termination.** Either Party may terminate this SOW (i) in the event of the other Party’s material breach of this SOW, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date of written notice from the non-breaching Party specifying the purported breach; or (ii) immediately upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other Party’s debts.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this SOW by their authorized representatives as of the SOW Effective Date.

SunPower Corporation, Systems

Bonita Unified School District

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____



Site Address Attachment
Site Addresses

Site Name	Site Address	# of Meters	Capacity (kWdc)
Allen Avenue Elementary School	740 E. Allen Avenue, San Dimas, CA 91773	1	143.6
Arma J. Shull Elementary School	825 N. Amelia, San Dimas, CA 91773	1	156.6
Bonita High School	3102 D Street, La Verne, CA 91750	2	683.0
Transportation Yard	115 W. Allen Avenue, San Dimas, CA 91773	1	378.5
Fred Ekstrand Elementary School	400 N. Walnut, San Dimas, CA 91773	2	182.7
Gladstone Elementary School	1314 W. Gladstone St., San Dimas, CA 91773	2	156.6
Grace Miller Elementary School	1629 Holly Oak St., La Verne, CA 91750	1	130.5
J. Marion Roynon Elementary School	2715 E Street, La Verne, CA 91750	2	182.7
La Verne Heights Elementary School	1550 E. Baseline, La Verne, CA 91750	1	130.5
Lone Hill Middle School	700 S. Lone Hill, San Dimas, CA 91773	1	365.4
Oak Mesa Elementary School	5200 N. Wheeler, La Verne, CA 91750	1	182.7
Ramona Middle School	3490 Ramona Ave., La Verne, CA 91750	1	430.7
San Dimas High School	800 W. Covina Blvd., San Dimas, CA 91773	1	796.1

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