



**Energy Monitoring System
Terms and Conditions**

(As of July 2018)

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This Energy Management Agreement (this “**EMA**”), entered into on **Date [], 2018** (the “**Effective Date**”), is made by and between SuperPower Technologies Ltd. (“**SuperPower**”), and **Party Name**



SuperPower Technologies Ltd, 1 Kingdon Street, Newmarket, Auckland
0800 777 769
www.superpower.co.nz

(“**Customer**”). SuperPower and Customer are referred to herein collectively as the “Parties” and each individually as a “Party” to this EMA.

1. Services. 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 services (the “**Services**”), the scope of which are described in the applicable statements of work attached hereto (each a “SOW” and together with this EMA, the “**Agreement**”). SuperPower will provide the Services in accordance with the Agreement and each applicable SOW. In connection with each Site Address for which Customer desires to procure any of the Services from SuperPower, SuperPower and Customer will execute a SOW that specifies, among other things, a description of the Services to be provided, the compensation for those Services, and any other details related to the engagement.

2. User License. For the duration of the term of any duly-executed SOW, SuperPower 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 Services 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 Services 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 Services. 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 Services or any patent, copyright, trade secret, trademark, or other intellectual property rights therein by implication or otherwise.

3. Term of Agreement. 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 Services 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 business relationship between the Parties.



Schedule 2

- b. Use of Confidential Information. Customer acknowledges that SuperPower may receive Confidential Information of Customer from the applicable independent system/grid operator or utility, through data collected through the Services or otherwise, which may be used or disclosed by SuperPower as necessary for the performance of the Agreement.
- c. Use of Data. All data that is produced by the Services 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 SuperPower may:
- (i) collect, process, and aggregate any data used with, stored in, or related to the Services, 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 Services, develop new services, 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 SuperPower's business; and
 - (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data.

6. Limitation on Liability. Except for breaches of confidentiality, SuperPower's liability hereunder is limited to direct, actual damages as the sole and exclusive remedy available to Customer, and SuperPower will be removed of all monetary damages under this the Agreement. In addition to that, 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 Services 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.

7. Warranty Limitations. If the services become or are likely to become the subject of any third-party intellectual property infringement claim or action, SuperPower may, at superpower's sole option, either:

- (i) replace such services with an equally suitable solution free of infringement;
- (ii) modify or obtain a license for the services so that they no longer infringe on any rights; or
- (iii) after SuperPower has demonstrated its good-faith efforts to achieve the foregoing without success, terminate each applicable sow. except as provided herein, the services (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 confidential and proprietary extent permissible under applicable law. nothing contained herein will limit or otherwise alter any warranty, obligation or guaranty of superpower to customer in connection with any other agreement between the parties.

9. Applicable Laws. The Agreement shall be governed by and construed and enforced in accordance with the laws of New Zealand and other applicable laws it shall relate thereto, without giving effect to choice of law rules that otherwise might apply.



10. Miscellaneous. Customer may not assign any of its rights or delegate any of its performance obligations hereunder, without the prior written consent of SuperPower; 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 SuperPower with written notice promptly following the acquisition date. The Agreement, including all exhibits, attachments, and SOWs, constitutes the entire agreement between Customer and SuperPower 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 SuperPower, in writing, of any changes that occur during the Term to the Customer address(es) set forth in this EMA.

11. 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. SuperPower may include applicable taxes as separate items on Customer's invoice, and Customer shall be responsible to pay or reimburse SuperPower for all taxes (other than taxes based on SuperPower'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 SuperPower receives the full amount of fees invoiced, and provide SuperPower with applicable evidence of withholding.

12. 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.

13. 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.

14. 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):



Schedule 2

Annex 1

Site Address Attachment Site Addresses



SuperPower Technologies Ltd, 1 Kingdon Street, Newmarket, Auckland
0800 777 769
www.superpower.co.nz

Schedule 2

Site Name	Site Address	# of Meters	Monitored Point

