

# CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

SUNPOWER CORPORATION

## I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the SUNPOWER CORPORATION (SunPower) establishment located at 51 RIO ROBLES, SAN JOSE, CA 95134-1859, beginning on June 28, 2019. OFCCP found that SunPower failed to comply with *Executive Order 11246, as amended (E.O. 11246 or the Executive Order)*, *Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503)*, and/or *the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA)* and their respective implementing regulations at 41 C.F.R. § 60-741.

OFCCP notified SunPower of the specific violation(s) and the corrective action(s) required in a Notice of Violation issued on 06/25/2020 (NOV).

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and SunPower enter into this Conciliation Agreement (Agreement), and the parties agree to all the terms therein.

## II. General Terms and Conditions

1. In exchange for SunPower's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if SunPower violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review SunPower's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. SunPower will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves SunPower of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or

other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. SunPower and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. SunPower agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the Director of the San Jose District Office (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after SunPower submits its final progress report required in Section IV, below, unless OFCCP notifies SunPower in writing before the expiration date that SunPower has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that SunPower has met all of its obligations under the Agreement.
11. If SunPower violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34 and *41 C.F.R. 60-741.63* will govern:
    - i. OFCCP will send SunPower a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. The SunPower shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - iii. If SunPower is unable to demonstrate that it has not violated the Agreement, or if OFCCP's alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.

- iv. In the event of a breach of this Agreement by the SunPower, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
  - b. SunPower may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
12. SunPower neither admits nor denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
  13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
  14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
  15. Each party shall bear its own fees and expenses with respect to this matter.
  16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.

### **III. Technical Violations and Remedies**

1. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, SunPower failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, in violation of 41 C.F.R. § 60-741.44(f)(1)(i). Specifically, SunPower Corporation's assessment of its outreach and recruitment efforts was not adequate to effectively recruit qualified individuals with a disability.

**REMEDY:** SunPower will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 C.F.R. § 60-741.44(f)(2).

2. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, SunPower failed to invite its employees to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 § C.F.R. 60-741.42(c). Specifically, SunPower Corporation failed to conduct self-identification of its employees in five-year intervals, and failed to remind employees at least once in intervening years that they can voluntarily update their disability status.

**REMEDY:** SunPower will immediately invite its employees to voluntarily inform SunPower whether the employee believes that he or she is an individual with a

disability, as that term is defined in 41 C.F.R. § 60-741.2(g)(1)(i) or (ii). All invitations to self-identify must be made using the OMB-approved form for this purpose (available on the OFCCP website). In addition, SunPower shall extend this invitation again at five year intervals, thereafter. At least once during each interval, SunPower will remind its employees that they may voluntarily update their disability-related self-identification information at any time. SunPower must keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 C.F.R. § 60-741.42(e).

3. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, SunPower failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified individuals with disabilities as required by 41 C.F.R. § 60-741.44(f)(3).

**REMEDY:** SunPower will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 C.F.R. § 60-741.44(f)(3). SunPower will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 C.F.R. § 60-741.44(f)(3). If SunPower concludes that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in 41 C.F.R. § 60-741.44(f)(1) or (f)(2).

#### IV. OFCCP Monitoring Period

1. **Recordkeeping.** SunPower agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. SunPower will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**
  - a. **Schedule and Instructions.** SunPower agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

| REPORT DUE DATE  | PERIOD COVERED                         |
|------------------|--|
| February 1, 2021 | July 1, 2020 through December 31, 2020 |
| August 1, 2021   | January 1, 2021 through June 30, 2021  |

The reports will include the following information in each progress report:

- 1) Documentation of all outreach and positive recruitment activities reasonably designed to effectively recruit individuals with disabilities during the reporting period.

- 2) Documentation extending an invitation for all employees to voluntarily self-identify as an individual with a disability at five-year intervals.
- 3) Documentation reminding all employees that they may voluntarily update their disability status in accordance with 41 C.F.R. § 60-741.42(c).
- 4) Documentation of SunPower's assessment of the overall effectiveness of its outreach and positive recruitment efforts for individuals with disabilities in accordance with 41 C.F.R. § 60-741.44(f)(3).

SunPower will submit reports to Lynda Sakseangvirat, District Director of OFCCP, 96 North Third Street, Suite 410, San Jose, CA 95112, via email at (b) (7)(C), (b) (6) @dol.gov. SunPower and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports SunPower provides in accordance with this agreement are customarily kept private or closely-held, and SunPower believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, SunPower will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

**V. SIGNATURES**

The person signing this Agreement on behalf of SunPower personally warrants that he or she is fully authorized to do so, that SunPower has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on SunPower.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and SUNPOWER CORPORATION SAN JOSE, CA 95134-1859.

**(b) (7)(C), (b) (6)**

Doug Richards  
Executive Vice President  
SUNPOWER CORPORATION  
SAN JOSE, CA 95134-1859

DATE: 08/12/2020

**(b) (7)(C), (b) (6)**

Lynda Sakseangvirat  
District Director  
San Jose  
Pacific

DATE: 08/13/2020

**(b) (6), (b) (7)(E)**

Compliance Officer  
San Jose  
Pacific

DATE: \_\_\_\_\_