

NON-DISCLOSURE AGREEMENT
FOR EVALUATION OF POTENTIALLY PATENTABLE INFORMATION AND
PROPRIETARY INFORMATION

This Non-Disclosure Agreement, as authorized under 35 U.S.C. 205 and 18 U.S.C. 1905, is by and between the United States Department of Energy, represented by the National Energy Technology Laboratory (hereinafter referred to as “NETL”), and by [Participant] (hereinafter referred to as “Participant”), collectively referred to as “Parties” and individually as “Party”,

WHEREAS NETL wishes to provide to Participant certain [information, data and/or samples] relating to [potentially patentable information description] that NETL considers to be of a potentially patentable nature (hereinafter referred to as “Potentially Patentable Information”), and Participant wishes to receive the Potentially Patentable Information for the purpose of [performing a review and evaluation of the Potentially Patentable Information] (hereinafter referred to as “Purpose for Receiving Potentially Patentable Information”), and

WHEREAS Participant wishes to provide to NETL certain [information, data and/or samples] relating to [Participant’s proprietary information description] that Participant considers to be Proprietary Information (trade secrets and privileged commercial or financial information) but Participant is willing and able to provide the Proprietary Information under the terms and conditions hereinafter set forth, and NETL wishes to receive the Proprietary Information for the purpose of [performing a review and evaluation of the Proprietary Information] (hereinafter referred to as “Purpose for Receiving Proprietary Information”).

NOW WHEREFORE NETL and Participant agree that the Potentially Patentable Information and the Proprietary Information shall be provided under the following terms and conditions:

1. Potentially Patentable Information:

1.1 All Potentially Patentable Information that is conveyed by NETL to Participant shall be so identified and marked by NETL at the time it is conveyed to Participant, which marking shall include the following legend:

PATENT HOLD

This Potentially Patentable Information is made available in confidence solely for use in [copy Purpose for Receiving Potentially Patentable Information], and such Potentially Patentable Information may not be published or otherwise disseminated, disclosed, or used for any purpose before patent approval for such release or use has been secured, upon request, from the NETL Patent Counsel, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, WV 26505.

1.2 To the extent that Participant receives or is given access to any such identified and marked Potentially Patentable Information, Participant shall use its best efforts to treat such Potentially Patentable Information in accordance with the Patent Hold legend

contained thereon, to use such Potentially Patentable Information only for the Purpose for Receiving Potentially Patentable Information, and to make no further disclosure of such Potentially Patentable Information until approval for release or use has been obtained from NETL Patent Counsel.

1.3 In the event Participant receives oral disclosure of Potentially Patentable Information or visits facilities of NETL and is given access to Potentially Patentable Information, NETL shall, at the time of the disclosure: advise Participant of the Potentially Patentable Information, provide Participant within thirty (30) days following such disclosure or access with a document containing a brief description of the Potentially Patentable Information so disclosed, note on the brief description that the disclosure comprised Potentially Patentable Information, and include on such description the above Patent Hold legend.

1.4 Participant agrees not to pass the Potentially Patentable Information, its progeny or derivatives, on to any other party or use them for commercial purposes without the express written consent of the NETL Patent Counsel. No other right or license to the Potentially Patentable Information, its progeny or derivatives, is granted or implied as a result of providing the Potentially Patentable Information to Participant.

1.5 All such identified and marked Potentially Patentable Information provided to Participant by NETL shall remain the property of NETL and upon completion of the Purpose for Receiving Potentially Patentable Information Participant, shall be returned to NETL with all copies made therefrom.

2. Proprietary Information:

2.1 All Proprietary Information that is conveyed by Participant to NETL shall be so identified and marked by Participant at the time it is conveyed to NETL with the following legend:

LIMITED RIGHTS LEGEND

This Proprietary Information, furnished under a Non-Disclosure Agreement dated _____ between the National Energy Technology Laboratory (NETL) and [Participant], may be reproduced and used only as is necessary to enable NETL to [copy Purpose for Receiving Proprietary Information] and may not be disclosed to anyone without the prior written permission of [Participant], other than to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 USC 1905), or employees of NETL contractors who have agreed to keep the Proprietary Information confidential, and whose access to the Proprietary Information is necessary for [copy Purpose for Receiving Proprietary Information]. This Legend shall be marked on any reproduction, in whole or in part, of this Proprietary Information.

2.2 To the extent that NETL receives or is given access to any such identified and marked Proprietary Information by Participant, NETL shall use its best efforts to treat such Proprietary Information in accordance with the Limited Rights Legend contained thereon, to use such Proprietary Information only for the Purpose for Receiving Proprietary Information, and to make no further disclosure of such Proprietary Information. NETL shall not be liable for any inadvertent disclosure of Proprietary Information where at least a reasonable degree of care has been exercised, provided that upon discovery of such inadvertent disclosure, it shall have endeavored to correct the effects thereof and to prevent any further inadvertent disclosure.

2.3 In the event NETL receives oral disclosures of Proprietary Information or visits facilities of Participant and is given access to Proprietary Information, Participant shall, at the time of the disclosure: advise the recipient of the Proprietary Information, provide NETL within thirty (30) days following such disclosure or access with a document containing a brief description of the Proprietary Information so disclosed, and note on the brief description that the disclosure comprised Proprietary Information, and include on such description the above Limited Rights Legend.

2.4 All such identified and marked Proprietary Information provided to NETL by Participant shall remain the property of Participant and, upon completion of the Purpose for Receiving Proprietary Information, shall be returned to Participant with all copies made thereof.

3. The points of contact for the Parties are as follows:

NETL

Technical Contact:

Department of Energy
3610 Collins Ferry Rd
P.O. Box 880
Morgantown, WV 26507-0880
Phone:
Email:

Administrative Contact:

Jessica Sosenko
Department of Energy
626 Cochrans Mill Road
P.O. Box 10940
Pittsburgh, PA 15236-0940
Phone: 412.386.7417
Email:
jessica.sosenko@netl.doe.gov

Participant

Technical Contact:

[INSERT NAME]
[ADDRESS]
[PHONE]
[EMAIL]

Administrative Contact:

[INSERT NAME]
[ADDRESS]
[PHONE]
[EMAIL]

Any communications shall be deemed made if mailed by postage prepaid first class U.S. Mail addressed to the point of contact of the receiving Party as of the day of receipt of such communication by the addressee or on the date given if by verified facsimile or on the date given by if by electronic mail. Changes to the points of contact identified in this Article or their addresses shall be given in accordance with this Article and shall be effective thereafter.

4. The obligations of this Non-Disclosure Agreement shall not extend or apply to Potentially Patentable Information or Proprietary Information which now or hereafter (i) becomes publicly known without the fault of the receiving Party; (ii) comes into the receiving Party's possession from a third party that is not subject to a confidentiality obligation; (iii) is independently developed by the receiving Party's employees who did not have access to the Potentially Patentable Information or Proprietary Information; (iv) is intentionally released by the disclosing Party to a third party without restriction; or (v) is released for disclosure with the written consent of the disclosing Party.

5. This Non-Disclosure Agreement shall terminate [term] from the effective date, unless earlier terminated upon written notification by Participant or NETL.

6. The obligation of confidentiality with respect to the Potentially Patentable Information shall survive for [redacted] years from the effective date of this agreement, unless NETL requests an extension of the time for good cause shown. The nondisclosure restrictions regarding the Proprietary Information shall continue for a period of five (5) years from the effective date of this Nondisclosure Agreement.

7. This Non-Disclosure Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one and the same instrument.

8. This Non-Disclosure Agreement is effective on the date affixed hereto by the Party last signing this Non-Disclosure Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Non-Disclosure Agreement,

DEPARTMENT OF ENERGY
NATIONAL ENERGY TECHNOLOGY LABORATORY

[Participant]

By: _____

By: _____

Title: Director,
Office of Research and Development

Title: _____

Date: _____

Date: _____