

**BILATERAL NON-DISCLOSURE AGREEMENT No. XX – XXXX**  
("Agreement")

This Agreement is entered into by and between the **Alliance for Sustainable Energy, LLC** ("Alliance"), the Manager and Operator of the National Renewable Energy Laboratory ("NREL") under Prime Contract No. DE-AC36-08GO28308 for the U.S. Department of Energy (the "DOE"), located at 15013 Denver West Parkway, Golden, CO, 80401 and **COMPANY NAME** ("Company"), whose place of business is located at **[COMPANY ADDRESS]**. Both parties are hereinafter referred to individually as the "Party" and collectively as the "Parties". The effective date ("Effective Date") of this Agreement shall be the signature date of the last of the Parties to sign this Agreement. For the purpose of this Agreement, the terms NREL and Alliance are interchangeable except where the circumstances dictate otherwise.

**1. PURPOSE**

- a. Company wishes to provide to NREL, for a period of **[DEFINE THE PERIOD OF TIME FOR THE DISCLOSURE WHICH MUST BE 1-12]** months, and NREL wishes to obtain access to Proprietary Information related to **[PROVIDE A NON-PROPRIETARY DESCRIPTION OF THE INFORMATION TO BE DISCLOSED, E.G., THE SERIAL NUMBER AND TITLE OF A NON-PUBLISHED PATENT APPLICATION, THE IDENTIFYING NUMBER AND TITLE OF AN INVENTION DISCLOSURE, ETC.]**, which the Company considers PROPRIETARY INFORMATION. Company is furnishing PROPRIETARY INFORMATION to NREL for the purpose of **[DESCRIBE THE PURPOSE, I.E., EVALUATION, TESTING, CONSIDERATION OF A POSSIBLE BUSINESS COLLABORATION, ETC.]**.
- b. As used herein, PROPRIETARY INFORMATION means information which (i) embodies trade secrets as defined under 18 U.S.C. §1839 or (ii) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. §552(b)(4)), either of which is developed at private expense outside this Agreement and which is marked as PROPRIETARY INFORMATION.
- c. Alliance wishes to provide to Company, for a period of **[DEFINE THE PERIOD OF TIME FOR THE DISCLOSURE WHICH MUST BE 1-12]** months, and Company wishes to obtain access to NREL PROTECTED INFORMATION relating to **[PROVIDE A NON-PROPRIETARY DESCRIPTION OF THE INFORMATION TO BE DISCLOSED, E.G., THE SERIAL NUMBER AND TITLE OF A NON-PUBLISHED PATENT APPLICATION, THE IDENTIFYING NUMBER AND TITLE OF AN INVENTION DISCLOSURE, ETC.]**, which Alliance considers NREL PROTECTED INFORMATION. Alliance is furnishing NREL PROTECTED INFORMATION to Company for the purpose of **[DESCRIBE THE PURPOSE, I.E., EVALUATION, TESTING, CONSIDERATION OF A POSSIBLE BUSINESS COLLABORATION, ETC.]**.

**2. PROPRIETARY INFORMATION AND NREL PROTECTED INFORMATION**

- a. Company agrees to treat all NREL PROTECTED INFORMATION disclosed to Company by Alliance, whether such original disclosure is written or oral, as confidential and proprietary and not to disclose NREL PROTECTED INFORMATION to any third party for a period of three (3) years from the Effective Date of this Agreement. However, oral disclosure of information (i.e., information expressed by spoken words) by Alliance to Company shall be considered NREL PROTECTED INFORMATION upon being identified as such at the time of disclosure, reduced to writing, and a copy thereof being provided by Alliance to Company within thirty (30) days of such disclosure.
- b. Alliance agrees to treat all PROPRIETARY INFORMATION disclosed to Alliance by Company, whether such original disclosure is written or oral, as confidential and proprietary and not to disclose PROPRIETARY INFORMATION to any third party for three (3) years from the Effective Date of this Agreement. However, oral disclosure of information (i.e., information expressed by spoken words) by Company to NREL shall be considered PROPRIETARY INFORMATION upon being identified as such at the time of disclosure, reduced to writing, and a copy thereof being provided by Company to NREL within thirty (30) days of such disclosure. All written PROPRIETARY INFORMATION provided to NREL

hereunder is subject to inspection by DOE employees upon reasonable notice and shall be protected against further disclosure by DOE employees under 18 U.S.C. §1905.

- c. All PROPRIETARY INFORMATION and NREL PROTECTED INFORMATION shall be identified and marked by Company and Alliance as "PROPRIETARY INFORMATION" and "NREL PROTECTED INFORMATION," respectively.
- d. Each Party further agrees that access to such PROPRIETARY INFORMATION and/or NREL PROTECTED INFORMATION shall be provided only to the Party's employees, agents, and independent contractors who are required to have access specifically related to the purpose(s) permitted herein and to the DOE. Each Party shall inform individuals having access to such PROPRIETARY INFORMATION and/or NREL PROTECTED INFORMATION of the confidential nature of this information and the restrictions on its publication, disclosure, and use, and shall require that such employees, agents, and independent contractors preserve the secrecy of such information with respect to third parties. The standard of care imposed on each Party for protecting the PROPRIETARY INFORMATION or NREL PROTECTED INFORMATION received from the other Party will be that degree of care that it uses to prevent disclosure, publication, or dissemination of its own confidential information of like importance.
- e. The obligations of confidentiality set forth in this Agreement do not apply to information which (i) becomes publicly known without the fault of Alliance, DOE, or Company; (ii) has been made available by the Parties (or the owners where the Parties are not the owners) to others without obligation concerning its confidentiality; (iii) is already in the possession of the Parties or the DOE without obligation concerning its confidentiality; (iv) is independently developed by the DOE or employees of the receiving Party who do not have access to such NREL PROTECTED INFORMATION or PROPRIETARY INFORMATION; or (v) is required to be disclosed by U.S. law, including a court order from a court of competent jurisdiction.

### **3. MISCELLANEOUS**

- a. It is further agreed that the disclosure of NREL PROTECTED INFORMATION and/or PROPRIETARY INFORMATION to the Parties to this Agreement shall not constitute any grant, option, or license under any patent or other right now or hereinafter held by the Company, Alliance, or the DOE. No license, express or implied, in the NREL PROTECTED INFORMATION and/or PROPRIETARY INFORMATION or other proprietary right is granted hereunder other than to use the information in the manner and the extent authorized by this Agreement.
- b. If not earlier terminated by either Party, this Agreement shall expire in [DEFINE THE PERIOD OF TIME FOR THE DISCLOSURE WHICH MUST BE 1-12] months.
- c. As appropriate, either Party may terminate this Agreement with or without cause by giving the other Party thirty (30) days prior written notice.
- d. Upon expiration or termination hereof, each Party will within two (2) weeks of written request from Disclosing Party, return all documents concerning the PROPRIETARY INFORMATION and NREL PROTECTED INFORMATION to the Disclosing Party and all copies of any such agreements, or certify in writing their destruction, subject to each Party's right to retain one copy of each such document in the files of its law department or outside legal counsel for record purposes only.
- e. Notwithstanding the above, the obligations of confidentiality set forth in Paragraph 2. herein shall survive termination of this Agreement.
- f. A Party receiving NREL PROTECTED INFORMATION and/or PROPRIETARY INFORMATION shall adhere to U.S. Export Administration Laws and Regulations and shall not export or re-export any such NREL PROTECTED INFORMATION and/or PROPRIETARY INFORMATION, any technical data, items, or products arising from the Information to any country or person unless properly authorized by the U.S.

Government.

- g. This Agreement contains the entire understanding between the Parties and it supersedes all prior or contemporaneous communications, agreements, or understandings between the Parties concerning Company's receipt of NREL PROTECTED INFORMATION or NREL's receipt of PROPRIETARY INFORMATION for the purpose(s) set forth herein above. The Parties acknowledge that this Agreement may be executed in a number of counterparts and the sum of said counterparts shall represent a fully executed document. The Parties further acknowledge that facsimile signatures are fully binding and constitute a legal method of executing this Agreement.

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