

BILATERAL NON-DISCLOSURE AGREEMENT ("Agreement")

This Agreement is entered into by and between **Alliance for Sustainable Energy, LLC** ("Alliance"), the Manager and Operator of the National Renewable Energy Laboratory ("NREL") under Prime Contract No. DE-AC36-08GO28308 ("Prime Contract") for the U.S. Department of Energy ("DOE"), located at 15013 Denver West Parkway, Golden, CO 80401, and **COMPANY NAME** ("**COMPANY SHORT**"), whose place of business is located at **COMPANY ADDRESS**, which are also referred to herein collectively as the "Parties", individually as a "Party", as "Receiving Party" when receiving information under this Agreement, and as "Disclosing Party" when providing information under this Agreement. The effective date ("Effective Date") of this Agreement is the signature date of the last of the Parties to sign this Agreement.

1. DEFINITIONS AND PURPOSE

- a. As used herein, "Proprietary Information" means information that (i) embodies trade secrets as defined under 18 U.S.C. § 1839 or (ii) is commercial or financial information that is privileged or confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)), and that is developed at private expense outside this Agreement.
- b. As used herein, "NREL Protected Information" means information generated in the performance of, or pursuant to the performance of, the Prime Contract regardless of form or characteristic, which would be Proprietary Information had it been generated by a non-federal entity third party and which can be restricted from dissemination by the Bayh-Dole Act, 35 U.S.C. § 200 et seq., other applicable laws, or DOE rules or regulations.
- c. As used herein, the "Scope" means:
 - i. pertaining to **COMPANY SHORT**, 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 **COMPANY SHORT** considers to be Proprietary Information;
 - ii. pertaining to Alliance, 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 Alliance considers to be NREL Protected Information.
- d. For a period of **DEFINE THE PERIOD OF TIME FOR DISCLOSURE, WHICH MUST BE 1-12** months from the Effective Date (the "Disclosing Period"), Disclosing Party wishes to provide Receiving Party and Receiving Party wishes to obtain access to Proprietary Information and/or NREL Protected Information related to the Scope. The Parties are furnishing such information for the purpose of **DESCRIBE THE PURPOSE, I.E., EVALUATION, TESTING, CONSIDERATION OF A POSSIBLE BUSINESS COLLABORATION, ETC.** (the "Purpose"). The "Confidentiality Period" for this Agreement is three (3) years from the Effective Date.

2. PROPRIETARY INFORMATION AND NREL PROTECTED INFORMATION

- a. Disclosing Party will identify and mark its written Proprietary Information or NREL Protected Information disclosed hereunder as "Proprietary Information" or "NREL Protected Information", as applicable, at the time it is conveyed to Receiving Party. For Proprietary Information or NREL Protected Information first disclosed orally (i.e., information expressed by spoken words) hereunder, Disclosing Party will: (i) identify such information as Proprietary Information or NREL Protected Information, as applicable, at the time it is conveyed to Receiving Party; (ii) reduce

such information to writing; and (iii) provide an appropriately identified and marked copy of such writing to Receiving Party within thirty (30) days of such disclosure.

- b. Receiving Party will treat Proprietary Information and NREL Protected Information that is within the Scope and that is disclosed in compliance with Paragraph 2.a, above, as confidential and proprietary and will use such information only for the Purpose. Receiving Party will not disclose such information to any third party for the duration of the Confidentiality Period without the prior written approval of Disclosing Party. Notwithstanding the foregoing, Proprietary Information provided to Alliance hereunder is subject to inspection by DOE or its designee upon reasonable notice. Proprietary Information provided to DOE employees is protected against further disclosure under 18 U.S.C. § 1905.
- c. Receiving Party will provide access to Proprietary Information and NREL Protected Information that is within the Scope and that is disclosed in compliance with Paragraph 2.a, above, only to Receiving Party's employees, agents, and independent contractors who are required to have access specifically related to the Purpose, and, with respect to Alliance, to DOE or its designee for auditing and inspection purposes only. Receiving Party will inform individuals having access to such information of the confidential nature of this information and the restrictions on its publication, disclosure, and use, and will require that such employees, agents, and independent contractors are bound by confidentiality obligations no less stringent than those stated in this Agreement.
- d. The obligations of confidentiality set forth in this Agreement do not apply to information which (i) becomes publicly known without the fault of Receiving Party or DOE; (ii) has been made available by Disclosing Party (or the owner if other than Disclosing Party) to others without obligation concerning its confidentiality; (iii) is already in the possession of Receiving Party or DOE without obligation concerning its confidentiality; (iv) is independently developed by employees of Receiving Party or DOE who did not have access to such Proprietary Information or NREL Protected Information; or (v) is required to be disclosed by U.S. law, including, with respect to Alliance, a Freedom of Information Act request if no exemption is deemed by DOE to be applicable, and, with respect to both Parties, a court order from a court of competent jurisdiction, provided that Receiving Party promptly notifies Disclosing Party and uses diligent efforts to limit such disclosure. Notwithstanding anything to the contrary herein, any disclosure permitted by (v) above will not relieve Receiving Party's confidentiality obligations as to disclosures to any other third party.

3. TERM AND TERMINATION

- a. Either Party may terminate this Agreement with or without cause by giving the other Party thirty (30) days prior written notice.
- b. If not earlier terminated by either Party, this Agreement will terminate at the end of the Disclosing Period.
- c. Upon termination of this Agreement, Receiving Party will, within two (2) weeks of written request from Disclosing Party, return all documents concerning the Proprietary Information and NREL Protected Information and all copies of any such documents to Disclosing Party, or certify in writing their destruction, with the exception of copies of Proprietary Information and NREL Protected Information made as a matter of routine information technology or legal backup, provided that such copies will continue to be subject to the confidentiality obligations set forth in this Agreement and may only be used in resolving a dispute between the Parties regarding this Agreement.
- d. The obligations of confidentiality set forth in Section 2., above, will survive termination of this Agreement until the end of the Confidentiality Period.

4. MISCELLANEOUS

- a. Disclosure of Proprietary Information and/or NREL Protected Information to Receiving Party does not constitute any grant, option, or license under any patent or other right now or hereinafter held by Disclosing Party or DOE. No license—express or implied—in the Proprietary Information and/or NREL Protected 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. A Party receiving Proprietary Information and/or NREL Protected Information will adhere to U.S. Export Administration Laws and Regulations and will not export or re-export any such Proprietary Information and/or NREL Protected Information, any technical data, items, or products arising from such information to any country or person unless properly authorized by the U.S. Government.
- c. Nothing in this Agreement prohibits or otherwise restricts employees or subcontractors of the Parties from lawfully reporting waste, fraud, or abuse related to the performance of a government contract to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).
- d. This Agreement contains the entire understanding between the Parties and it supersedes all prior or contemporaneous communications, agreements, or understandings between the Parties concerning receipt of Proprietary Information and/or NREL Protected Information for the Purpose. This Agreement may be executed in counterparts and the sum of said counterparts will represent a fully executed document. Facsimile signatures and electronic signatures are fully binding and constitute a legal method of executing this Agreement.