

MULTI-PARTY NONDISCLOSURE AGREEMENT

This Multi-Party Nondisclosure Agreement (“Agreement”) is regarding the (PACT) Consortium under the U.S. Department of Energy , hereinafter “Consortium”, and entered into by:

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 (“DOE”), located at 15013 Denver West Parkway, Golden, CO 80401;

National Technology & Engineering Solutions of Sandia, LLC (“NTESS”), a limited liability company formed under the laws of the State of Delaware and operator of Sandia National Laboratories (“SNL”) pursuant to Contract No. DE-NA0003525 with the U.S. Department of Energy, and having its principal place of business located at 1515 Eubank SE, Albuquerque, New Mexico 87123; and

CFV Solar Test Laboratory, Inc. (dba “CFV Labs”) a Delaware Corporation whose place of business is located at 5600A University, BLVD SE, Albuquerque, NM 87106

collectively referred to as (“Laboratory Members”)

For the purposes of furthering the Consortium, NREL will administer this Agreement with PACT Partner(s) on behalf of the Laboratory Members and will then distribute the executed Agreement to all Parties.

[PACT Partner(s) TO BE ADDED LATER] (“PACT Partner(s)”)

Laboratory Members and PACT Partner(s) collectively referred to as (“Parties”) or individually referred to as (“Party”);

Purpose: The Parties wish to share information relating to the Consortium with each other with a purpose to discover, develop, de-risk, and enable the commercialization of photovoltaic technologies, materials, devices, modules, and systems. The Laboratory Members may be asked to measure, monitor, and characterize technology from the PACT partner(s). In the course of this information sharing and discussions, it may become necessary for Parties to disclose proprietary technical and business information with potentially patentable information, such proprietary technical and business information referred to herein as (“Proprietary Information”).

In order to review such Proprietary Information amongst the Parties and the DOE, the Parties agree to access and use such Proprietary Information only for the stated Purpose of this Agreement. The Parties are willing and able to provide the Proprietary Information to each other under the following terms and conditions:

1. All Proprietary Information conveyed by the Parties shall be identified as "Proprietary Information" or other, similar designation, at the time it is disclosed. The receiving Party's obligations shall only extend to Proprietary Information that is within the scope of the Consortium, appropriately marked, or that is unmarked (e.g. oral and visual disclosures and access to facilities of a disclosing Party) but identified as potentially patentable, business sensitive, or proprietary at the time of disclosure or access, and is designated as Proprietary Information in a written memorandum sent to the receiving Party's representative within thirty (30) days of disclosure or access, sufficiently summarizing the Proprietary Information to enable its identification.

To the extent that the Parties receive or are given access to any identified and marked Proprietary Information, the Parties shall use the same degree of care that they use to protect their own

MULTI-PARTY NONDISCLOSURE AGREEMENT

proprietary information or potentially patentable information of a like nature (but no less than a reasonable degree of care) to maintain such information in confidence, to use such information only for the Purpose, to disclose such information only to its employees who need to know the information for the Purpose, and to make no further disclosure of such information without the prior written permission of the disclosing Party. However, because the United States Government has ownership, authority, control, audit and inspection rights over all activities conducted at NREL, and NTESS' facilities, Proprietary Information may be disclosed to employees of the United States Government who are subject to the U.S. Trade Secrets Act (18 U.S.C. 1905) regarding further disclosure. Notwithstanding the foregoing, the Parties agree that Proprietary Information may be mutually shared among all Parties.

2. All Proprietary Information provided to the receiving Party shall remain the property of the initial disclosing Party and, upon expiration or termination of this Agreement, shall be returned at the disclosing Party's expense or destroyed/deleted as requested, in writing, by the disclosing Party, subject to the receiving Party's right to retain one copy of each such document for record purposes only.
3. The effective date of this Agreement shall be determined by the date the PACT Partner signs this Agreement, or in the case of multiple PACT Partners, the date the last of the PACT Partners to sign ("Effective Date"). This Agreement shall be in full force and effect for a period of two (2) years from the Effective Date. Any Party may terminate its participation in this Agreement with thirty (30) days written notice to all the other Parties. For five (5) years from the Effective Date of this Agreement, receiving Party will not disclose or otherwise make available to any third parties the Proprietary Information, except as otherwise expressly permitted under this Agreement.
4. The obligations of this Nondisclosure Agreement shall not extend or apply to Proprietary Information which now or hereafter (i) is or becomes generally known or available from other sources without obligation concerning its confidentiality; (ii) has been made available by the disclosing Party to others without obligation concerning its confidentiality; (iii) is already available to others without obligation concerning its confidentiality; (iv) is independently developed by an employee of the receiving Party having no access to the Proprietary Information; or (v) is required to be released pursuant to law (e.g., federal and state FOIA), regulation, or judicial process, provided however that the receiving Party subject to such requirement must notify, in writing, the disclosing Party as soon as practicable to allow the disclosing Party an opportunity to seek a protective order. In no event will receiving Party be in breach of this Agreement for its good faith compliance with applicable law.
5. This Agreement does not create any obligation upon a Party to provide information to another Party. This Agreement does not create a joint venture, partnership, or other form of business association between the Parties.
6. The Proprietary Information furnished under this Agreement may be subject to the United States export control laws and regulations. Each Party agrees to comply with applicable government export and import laws and regulations.
7. This Agreement shall be governed by and construed in accordance with U.S. Law in a court of competent jurisdiction.

MULTI-PARTY NONDISCLOSURE AGREEMENT

8. The Parties agree that no other right or license to the Proprietary Information is granted or implied as a result of its transmission to the Parties.
9. The disclosing Party acknowledges that this Agreement and all information received hereunder by NREL and NTESS may be transferred to the DOE or its respective successor contractor if its Management & Operating Contract is terminated.

Otherwise, no other Party may assign or otherwise transfer its rights or delegate its duties or obligations under this Agreement without prior written consent of all of the other Parties. Any attempt to do so is void.

10. 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 electronically transmitted facsimile signatures are fully binding and constitute a legal method of executing this Agreement. Any reproduction of this Agreement by reliable means will be considered an original of this Agreement.
11. The failure of a Party to enforce a right under this Agreement will not be deemed a waiver of any subsequent right.
12. Disclaimers: EACH DISCLOSING PARTY PROVIDES PROPRIETARY INFORMATION SOLELY ON AN "AS IS" BASIS AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND CONCERNING ITS ACCURACY OR COMPLETENESS.

Neither this Agreement, nor any disclosure of Proprietary Information hereunder, in any way: (i) grants to any Party any rights (except the limited rights expressly set forth in this Agreement) or license under any copyright, patent, mask work, or trademark now or hereafter owned or controlled by the another; (ii) obligates any Party to disclose or receive any Proprietary Information, perform any work, enter into any license, business engagement, or other agreement; (iii) limits any Party from developing, manufacturing, or marketing products or services which may be competitive with those of the other Parties; (iv) limits any Party from assigning or reassigning employees in any way; (v) creates any partnership, joint venture, agency, or joint relationship, or authorizes any Party to act or speak on behalf of the other Parties; or (vi) limits any Party from entering into any business relationship with any other parties.

13. Parties receiving Proprietary Information will adhere to U.S. Export Administration Laws and Regulations and will not export or re-export any such Proprietary Information, any technical data, items, or products arising from such information to any country or person unless properly authorized by the U.S. Government.
14. By signing this Agreement, the PACT Partner(s) acknowledges and agrees that the Laboratory Members and the DOE may publish the results of this work in articles or reports containing aggregated and anonymized summary information after a thirty (30) day right of review by the PACT Partner(s). These reports may include but not necessarily be limited to (i) summary degradation rate or performance loss metrics averaged across multiple systems, (ii) metadata limited to allow performance to be sorted by system type but not uniquely identified. Examples of metadata include zip code, climate zone, US region, PV technology, system size category, tracking

MULTI-PARTY NONDISCLOSURE AGREEMENT

vs fixed. Metadata categories will be selected to contain 5-10 systems such that unique identification is not possible, (iii) de-identified normalized time series data. Production data will be converted into non-attributable performance ratios to preserve site anonymity. The PACT Partner(s) agree that no Proprietary Information will be disclosed in any published report or summary without aggregation or other de-identification procedure.

15. Statutes and Executive Orders. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.

[REST OF PAGE INTENTIONALLY BLANK, CONTINUED ON NEXT PAGE]

MULTI-PARTY NONDISCLOSURE AGREEMENT

In witness whereof, the Parties have executed this Agreement:

ALLIANCE FOR SUSTAINABLE ENERGY, LLC

By: DRAFT _____

Name: Anne Miller _____

Title: Director, Technology Transfer _____

Date: _____

NATIONAL TECHNOLOGY & ENGINEERING SOLUTIONS OF SANDIA, LLC

By: DRAFT _____

Name: Robert W. Leland _____

Title: Director, Climate Change Security (Josh Stein- NDA-16288) _____

Date: _____

CFV SOLAR TEST LABORATORY, INC.

By: DRAFT _____

Name: _____

Title: _____

Date: _____

MULTI-PARTY NONDISCLOSURE AGREEMENT

By signing this Agreement, PACT Partner(s) are not becoming member to the Consortium, but rather gaining the ability to receive and disclose Proprietary Information relating to the Purpose and agreeing to the terms herein.

PACT PARTNER

Address

Address

By: DO NOT SIGN UNTIL NOTIFIED

Name:

Title:

Date:
