

Non Disclosure and Confidentiality Agreement

This Confidentiality Agreement (“Agreement”), entered into as of _____ (“Effective Date”), is by and between Applied High Voltage, LLC (including its affiliates), having its principal offices at 403 New Karner Road, Albany, NY 12205 (“Company”), and _____ and its affiliates, (“Counterparty”).

WHEREAS, Company and Counterparty shall each be referred to as a “Party” and collectively as the “Parties”;

WHEREAS the Parties desire to hold discussions and exchange information regarding Counterparty’s equipment and/or services to Company related to wind energy facilities, solar energy facilities, energy facilities, business evaluation, funding, purchase agreement or other business transaction (collectively the “Transactions”);

WHEREAS, in the course of evaluating the Transactions it will be necessary for Company (“Disclosing Party”) to release certain Confidential Information (as defined below) to the Counterparty (“Receiving Party”);

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties agree as follows:

1. Confidential Information. “Confidential Information” shall mean all information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by Company or otherwise, which is disclosed to Counterparty, regardless of whether such information is disclosed intentionally or inadvertently, before or after the execution of this Agreement, in connection with the Transaction and including all records, reports, analyses, notes, memoranda, documentation, knowledge, data, specifications, diagrams, statistics, systems or software, manuals, business plans, operational information or practices, processes (whether or not patented, patentable or reduced to practice), customer lists, concepts, ideas, policies, contractual arrangements with, and information about, the Company’s suppliers, distributors and customers, the existence of the discussions between the Parties concerning the Transaction, or other information that are based on, contain or reflect any such Confidential Information. All information received from the Company shall be considered Confidential Information, unless it is specifically designated as non-proprietary and non-confidential.

Confidential Information shall not include: (a) information which is or becomes publicly available other than as a result of a violation of this Agreement; (b) information which is or becomes available on a non-confidential basis from a source which is not known to the Receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the Disclosing Party; (c) information which the Receiving Party can demonstrate was legally in its possession prior to disclosure by the Disclosing Party; or (d) information which is developed by or for Receiving Party independently of the Disclosing Party’s Confidential Information.

2. Nondisclosure and Use of Confidential Information. Confidential Information shall not be used for any purpose other than to analyze, implement or complete the Transactions. Confidential Information shall be held in strict confidence by Receiving Party and shall not be disclosed without prior written consent of Disclosing Party, except to those advisors, affiliates, agents, assigns, attorneys, employees, directors, officers and/or members (“Agents”) with a need-to-know the Confidential Information for the purposes of analyzing, implementing or completing the Transactions. Receiving Party shall require all recipients of the Confidential Information to be bound by the terms of this Agreement. Receiving Party shall be responsible for any breach of this Agreement by the Receiving Party or its Agents. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard.

3. Required Disclosure. In the event that Receiving Party is requested or required by legal or regulatory authority to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement prior to disclosure, if permitted by law, so that Disclosing Party may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Receiving Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. Receiving Party will provide reasonable cooperation to Disclosing Party and its legal counsel with respect to performance of the covenants undertaken pursuant to this Section 3.

4. Remedies. The Receiving Party agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that Disclosing Party shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity. Notwithstanding anything contained in this Agreement, the Receiving Party’s liability to the Disclosing Party in connection with this Agreement and any activities undertaken in connection with the evaluation of the Transactions shall be limited to direct damages and shall exclude any other liability, including without limitation liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

5. Return or Destruction. Promptly following any decision by the Receiving Party not to continue discussions with respect to the Transactions, and at any other time upon the Disclosing Party’s written request, the Receiving Party shall return or destroy, at the Receiving Party’s option, all written Confidential Information of the Disclosing Party, including that portion of such Confidential Information that may be found in analyses, compilations, studies or other documents prepared by, or for, the Receiving Party, and the Receiving Party and its Agents shall not retain any copies of such written Confidential Information. At any time after which the Receiving Party has been required to return or destroy the Confidential Information in its possession in accordance with the preceding sentence, the Receiving Party shall, upon written request of the Disclosing Party, cause one of its duly authorized officers to certify in writing to the Disclosing Party that the requirements of the preceding sentence have

been satisfied in full. The Receiving Party shall not be deemed to have retained or failed to destroy any Confidential Information which is an Imaged Document if such Confidential Information is deleted from local hard drives so long as no attempt is made to recover such Confidential Information from servers or back-up sources, provided that any such retained Confidential Information in an Imaged Document form shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination of this Agreement.

6. Notice. Any notice given to a Party shall be deemed properly given if specifically acknowledged by the other Party in writing or when delivered by certified or registered mail to the addresses set forth on the first page of this Agreement. Any notice given to Company shall be sent to the attention of Ben Fischer, President, with a separate copy to the attention of Chris Hall, General Counsel.

7. No Other Agreement. It is understood that this Agreement is not intended to and does not, obligate either Party to enter into any further agreements or to proceed with any possible relationship or other transaction, including without limitation the Transactions, or to require either Party to disclose of any information under this Agreement. Any pricing lists, proposals or summaries disclosed under this Agreement ("Pricing Documents") are intended only to provide a framework for further discussions between the Parties. Pricing Documents are not an offer or a commitment of either Party. Neither Party will be bound by any of the terms of these Pricing Documents unless and until the final terms are incorporated into a mutually agreed, final definitive agreement that is executed and delivered by both Parties.

8. No License. It is understood that nothing contained in this Agreement shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to Receiving Party. Nothing in this Agreement is intended to prevent either Party hereto from using its own Confidential Information which it furnished hereunder for dealings with third parties for any purpose.

9. Amendment. Any amendment to this Agreement must be in writing and signed by an authorized representative of each Party.

10. No Assignment. Neither Party may assign this Agreement unless prior written consent is obtained by both Parties; however, upon written notice to Counterparty, Company may assign this Agreement (including the right to enforce its terms) to a parent, affiliate or subsidiary at its sole discretion without consent.

11. Non-Waiver. No waiver of any provision of this Agreement shall be deemed to be nor shall constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Tennessee without regard to its conflict of laws provisions. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Tennessee.

13. Term. This Agreement shall terminate three (3) years following written notice by either Party to the other of its desire to terminate this Agreement. However, the obligations contained herein shall remain in effect for a period of five (5) years from the date the Confidential Information was disclosed under this Agreement.

14. Entire Agreement. This Agreement constitutes the full and entire agreement between the Parties regarding the confidentiality of Confidential Information.

15. Counterparts. This Agreement may be signed in counterparts and may be delivered by facsimile, each of which may be deemed an original, and all of which together constitute one and the same agreement.

16. Authorization and Binding Obligations. Each Party represents to the other Party that the execution, delivery and performance of this Agreement have been duly authorized, and this Agreement has been duly executed and delivered by the signatory so authorized, and the obligations contained herein constitute the valid and binding obligations of such Party.

17. Waiver of Trial by Jury. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

18. Publicity. Counterparty shall not make any public disclosures regarding the Company, or the Transactions, including, without limitation, any advertisements, publications or documents, without the prior written approval of the Company.

19. No Warranties. Each Party acknowledges that the Disclosing Party provides the Confidential Information on an "as is" basis and without warranty of any kind. THE DISCLOSING PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES PERTAINING TO THE CONFIDENTIAL INFORMATION, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

20. Proprietary Information. Counterparty acknowledges that, under this Agreement, Company is disclosing Confidential Information to Counterparty that is valuable, confidential and proprietary. If said Confidential Information were disclosed by Counterparty to any third party, said disclosure would damage Company and negatively affect its opportunity to work on the Transaction, including during bidding process and contract negotiations. Counterparty agrees that on a case by case basis (when confirmed in writing by both Parties), the Counterparty shall consult, contract, and negotiate exclusively with Company concerning those designated Transactions. On such agreed Transactions, Counterparty agrees and states that it has not and will not enter discussions with any other entity concerning it providing of any services for those Transactions. Counterparty may not use or disclose the Confidential Information with any third party regarding the Transactions or otherwise to the disadvantage of the Company.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first set forth above.

Company: Applied High Voltage, LLC

By: _____

Name: _____

Title: _____

Counterparty

By: _____

Name: _____

Title: _____

Address: _____

City/ST/ZIP: _____

Phone: _____