

Strategic Technical Assistance Response Team (START) Program Non-Disclosure Agreement (NDA)

Proposal to

U.S. Department of Energy Office of Indian Energy Strategic Technical Assistance Response Team (START) Program.

To protect certain Protected Data and Proprietary Information,

Alliance for Sustainable Energy, LLC, the Management and Operating Contractor for 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 the following:

[Insert Applying Member (Tribe) name]

[Insert additional Member 1 name. In this and the following spaces, insert the name(s) of any developers and/or project partners working with the Tribe on this project which have Proprietary Information that will be needed as described in Paragraph 4 below. The Tribe should make reasonable efforts to obtain signatures on this NDA from their project partners prior to submitting their application. Applications with no NDA from the Tribe may not be considered, and applications with complete signatures from project partners will be viewed more favorably in the review process.]

[Insert additional Member 2 name]

[Insert additional Member 3 name]

[Insert additional Member 4 name]

whose addresses shall be set forth below,

all of the above hereinafter referred to individually as “Member” or collectively as “Members” hereby agree:

1. Disclosing Member/Receiving Member: Proprietary Information and Protected Data may be mutually shared by the Members, which may include subcontractors to the Members.
2. “Employee” includes council members, professors, principal investigators, visiting scholars, trainees, postdoctoral appointees, graduate students, undergraduate student assistants, support services contractors, and staff employees.
3. “Award” means a technical assistance award granted to the Members as a result of the Applying Member’s application to the DOE Office of Indian Energy START Program.
4. “Proprietary Information” means Limited Rights Data which are defined in the Award to the Members as follows: Limited Rights Data means data developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged and generally described as follows: Documents which support the following subjects and related documents that are necessary to allow NREL to complete its work under the DOE START Program, namely to provide technical assistance to the Applying

Member in relation to the Renewable Energy Project for which they are applying (hereinafter, "Project"):

- a. site planning, layout, engineering studies, and construction plans for the Project and the associated balance of plant, including interconnection, transmission, or related improvements;
 - b. resource data, interpretation, engineering analyses, production estimates or related documentation of the expected performance of the Project;
 - c. interconnection details, transmission studies, utility contracts or other revenue contracts, including third party power purchase agreement contracts, renewable energy credit sales contracts, supporting documentation required to define off-take agreements and/or revenue sources for the Project;
 - d. permitting and entitlement information including environmental, interconnection, building permits, State, local, Federal or Tribal approvals or permits necessary for project construction;
 - e. technology selection and specifications, preliminary or final, such as equipment and material selection, siting and design relative to the specific technology selected, balance of plant components, etc.;
 - f. project development schedule, construction and commissioning schedules, financial information including pro forma projections for the Project, Tribal cash flows or distributed cash projections over the Project's life, capital sources and uses, annual revenue projections and operating costs as necessary to describe the Project economics and financial performance.
5. "Protected Data" is defined in the Award to the Members as technical data or commercial or financial data first produced in the performance of the Award which, if it had been obtained from and first produced by a non-federal Member, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552 (b) (4) and which data is marked as being protected data by a Member.
6. Protected Data and Proprietary Information disclosed hereunder may not be used by any Member other than the Disclosing Member for any purpose other than as stated herein.
7. Receiving Member shall protect only Disclosing Member's Protected Data and Proprietary Information, which is either:
- a. disclosed in writing or other tangible form and plainly marked as the Disclosing Member's Protected Data or Proprietary Information, or
 - b. disclosed in another manner and identified as business sensitive or proprietary at the time of disclosure, and summarized and designated business sensitive or proprietary in a written memorandum delivered to Receiving Member within thirty (30) days of the disclosure; in which case the information contained in the summary (not information contained solely in the non-tangible disclosure) shall be subject to the restrictions herein.
8. Receiving Member shall:
- a. protect the Disclosing Member's Protected Data and Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, as Receiving Member uses to protect its own Protected Data and Proprietary Information of a like nature.
 - b. not disclose the Disclosing Member's Protected Data or Proprietary Information to any third Party without the written consent of the Disclosing Member.
 - c. restrict disclosure of the Disclosing Member's Protected Data and Proprietary Information to Employees or contractors who have a need to know the same and who have been advised of Receiving Member's obligations under this Agreement, and are under an agreement that is at least as restrictive as this NDA.
 - d. not remove the restrictive markings from any of the Disclosing Member's Protected Data or Proprietary Information.

9. The Members acknowledge that U.S. Government employees have the right to inspect all written Protected Data and Proprietary Information provided to any Management & Operating Contractor for a National Laboratory or Federally Funded Research and Development Center upon reasonable notice and that such information shall be protected against further disclosure by U.S. Government employees under 18 USC §1905.
10. The obligations of nonuse and nondisclosure set forth in this Agreement shall not apply to any information which:
 - a. is or becomes part of the public domain otherwise than as a consequence of breach of obligations under this Agreement;
 - b. was already known to the Receiving Member prior to receipt from the Disclosing Member as evidenced by Receiving Member's written records;
 - c. is lawfully disclosed by the Disclosing Member to a third party without restriction;
 - d. is disclosed by a third party to the Receiving Member without restriction and otherwise than as a consequence of breach of obligations of a nondisclosure Agreement; or
 - e. is at any time developed by Receiving Member independently without the use of Disclosing Member Protected Data or Proprietary Information as evidenced by Receiving Member's written records.
11. No license to a Member, under any patent, trademark, copyright, mask work or any other intellectual property right, is either granted or implied by the conveying of Protected Data or Proprietary Information to such Member. None of the Protected Data or Proprietary Information which may be disclosed or exchanged by the Members shall constitute any representation, warranty, assurance, guarantee or inducement by a Member to any other Member of any kind, and, in particular, with respect to the non-infringement of patents or any other intellectual property rights, or other rights of third persons or of the Members hereto.
12. Neither this Agreement nor the disclosure or receipt of Protected Data or Proprietary Information shall constitute or imply any promise or intention to make any purchase of products or services by any Member, or any commitment by any Member with respect to the present or future marketing of any product or service.
13. Upon termination or expiration of this Agreement as to any Member, such Member will, within a reasonable period of time thereafter and upon receipt of a written request to do so by the Disclosing Member, return to such Disclosing Member all Protected Data and Proprietary Information received from that Disclosing Member under this Agreement and copies made thereof, or certify by written memorandum that all such Protected Data and Proprietary Information has been destroyed; provided, however, that the terminating Member may retain an archival copy to be used only in case of a dispute concerning this Agreement. Destruction of copies shall not extend to archival copies maintained in computer system backup files, permanent business records or as may otherwise be required by Receiving Member's internal document retention policies.
14. The Receiving Members hereunder acknowledge that they will not export or disclose to any non-resident foreign person or entity, any technical data without first complying with U.S. Government export control laws and regulations such as the International Traffic Arms Regulations and the Export Administration Regulations, including requirements for obtaining export licenses, regardless of whether the transfer occurs within the United States or abroad. Each Receiving Member further agrees that it will not export, directly or indirectly, any Protected Data or Proprietary Information it receives under this Agreement without the written consent of the Disclosing Member.
15. This Agreement shall be in full force and effect for a period of 12 months from the Effective Date (see Paragraph 22). Each Member may terminate this Agreement by giving thirty (30) days' prior written notice to the other Members. The obligations undertaken by a Receiving Member with respect to specific items of

Protected Data and Proprietary Information received hereunder shall continue for 12 months from the Effective Date. Notwithstanding the foregoing, any Member may terminate the Agreement as it applies to that Member upon thirty-days written notice to the other Members, but that Member will continue to be obligated to protect Protected Data and Proprietary Information it received prior to the termination for the period set forth in the preceding sentence. In order to terminate the Agreement as to all Members prior to its twelve-month term, all Members must agree in writing and their obligations to protect Protected Data and Proprietary Information shall continue as specified herein.

- 16. This Agreement will be binding on Members, and their council members, professors, principal investigators, visiting scholars, trainees, postdoctoral appointees, graduate students, undergraduate student assistants, support services contractors, subcontractors, and staff employees.
- 17. All notices and/or correspondence hereunder, shall be mailed, faxed or hand-delivered and addressed to:

National Renewable Energy Laboratory

Attn: **Colton Heaps**
15013 Denver West Parkway, Mail Stop RSF401
Golden, CO 80401

 [Insert additional Member 2 name]
 Attn: _____
 Address: _____
 City: _____ State: ___ Zip: _____

 [Insert Applying Member (Tribe) name]
 Attn: _____
 Address: _____
 City: _____ State: ___ Zip: _____

 [Insert additional Member 3 name]
 Attn: _____
 Address: _____
 City: _____ State: ___ Zip: _____

 [Insert additional Member 1 name]
 Attn: _____
 Address: _____
 City: _____ State: ___ Zip: _____

 [Insert additional Member 4 name]
 Attn: _____
 Address: _____
 City: _____ State: ___ Zip: _____

- 18. This Agreement shall be construed in accordance with the laws of the United States of America.
- 19. The Members acknowledge that, with respect to National Laboratory and Federally Funded Research and Development Centers Management & Operating Contractors, this Agreement and all information received hereunder by said Members, may be transferred to their respective successor contractors if the Management & Operating Contracts are terminated.
- 20. This Agreement contains the entire understanding of the Members regarding the treatment of Protected Data and Proprietary Information. Any previous agreements or understanding between all of the Members, regarding the Protected Data and Proprietary Information, whether written or oral, are superseded. The waiver, amendment or modification of this Agreement will not be effective unless in writing signed by authorized representatives of all of the Members. Amendments and modifications as discussed in this Paragraph do not include the addition of new Members.
- 21. Reproduction of this agreement, with all signatures affixed, shall be deemed a duplicate executed original of this agreement.
- 22. This agreement is effective as of the date of last signature (“Effective Date”).

IN WITNESS WHEREOF, the authorized representatives of the Members have executed this Agreement as set forth below.

AGREED:

ALLIANCE FOR SUSTAINABLE ENERGY, LLC

Signed: _____

Name: William T. Farris

Title: Associate Laboratory Director
Innovation Partnering & Outreach

Date: _____

[Insert additional Member 2 name]

Signed: _____

Name: _____

Title: _____

Date: _____

[Insert Applying Member (Tribe) name]

Signed: _____

Name: _____

Title: _____

Date: _____

[Insert additional Member 3 name]

Signed: _____

Name: _____

Title: _____

Date: _____

[Insert additional Member 1 name]

Signed: _____

Name: _____

Title: _____

Date: _____

[Insert additional Member 4 name]

Signed: _____

Name: _____

Title: _____

Date: _____

Instructions for Returning this Form

Please ensure all members complete, sign, and date this form and then mail it to the following address. You can also email the scanned form to STARTsupport@nrel.gov.

National Renewable Energy Laboratory

Attn: **Colton Heaps**

15013 Denver West Parkway, Mail Stop RSF401
Golden, CO 80401