
CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “*Agreement*”) dated as of [REDACTED], 202[REDACTED] (the “*Effective Date*”), is made and entered into by and between Ameresco, Inc., a Delaware corporation with headquarters at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701 (“*Ameresco*”), and [REDACTED], a [REDACTED] [partnership/limited liability company/corporation] with headquarters at [REDACTED] (“*Company*”). Ameresco and Company may be referred to in this Agreement individually as a “*Party*” or collectively as “*Parties*”.

RECITALS:

WHEREAS, the Parties will or already have had discussions and exchanged information, and intend to continue having discussions and exchanging information, in connection with a possible transaction between them involving [REDACTED] (the “*Project*” and all such discussions collectively, the “*Discussions*”); and

WHEREAS, during and in connection with the Discussions, each Party acknowledges that the other Party may make available information that is regarded as confidential in order to allow the Parties to evaluate the merits of the Project.

NOW THEREFORE, in consideration of the covenants and mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. “**Confidential Information**” means any information that is disclosed in connection with the Discussions, including information that these Discussions have or continue to take place, and is furnished by a Party to the other Party in one or more of the following forms:
 - a. written information or machine readable data, including reports, assessments, drawings, documents, product specifications, financial statements and projections, product and product cycle plans, software and databases, and any other written information or machine readable data;
 - b. information, including demonstrations, which is furnished orally;
 - c. any item of hardware, including samples, devices and any other physical embodiments delivered to the receiving Party; and
 - d. any “metadata,” source code, object code, firmware, or other data, information, or documentation embedded in, or attached to, electronic documents, product samples, or other media provided to the receiving Party.
2. **Incorporation of Confidential Information in Other Documents.** In the event Confidential Information is incorporated into or reflected in other documents, whether separately or jointly generated by the Parties, such other documents will be deemed Confidential Information subject to the terms of this Agreement.
3. **Non-Disclosure.** The receiving Party shall, for a period beginning on the Effective Date and continuing for a period of twelve (12) months following expiration of the term of this Agreement,

keep such Confidential Information confidential and secret and not disclose it to anyone except to such of its directors, officers, employees, affiliates, partners, agents, subcontractors, advisors, attorneys, accountants, or third party finance companies (collectively, “**Authorized Persons**”) as have a need to know such Confidential Information in order that the objectives of the Discussions can be achieved and have been informed to treat the Confidential Information in accordance with the terms of this Agreement. The receiving Party shall be responsible for the compliance by such Authorized Persons with the provisions of this Agreement. The receiving Party hereby acknowledges that it is aware and that its Authorized Persons have been advised that under certain circumstances the United States securities laws prohibit any person who has material non-public information about an issuer from purchasing or selling securities of an issuer. Company acknowledges that it shall be solely responsible for its own assessment, and for obtaining its own legal advice, as to whether any of the Confidential Information would be considered material nonpublic information or is of a price sensitive nature related to any securities listed on the New York stock exchange or any other securities exchange or market.

- 4. Exceptions to Confidentiality Obligations.** The confidentiality and limited use obligations of this Agreement will not apply to information disclosed in connection with the Discussions which:
- a. is or becomes publicly known other than through a breach of this Agreement by the receiving Party or any of its Authorized Persons;
 - b. is already known to the receiving Party at the time of disclosure as evidenced by the receiving Party’s written documentation, provided the source of such information was not known by the receiving Party to be bound by a confidentiality agreement with or other legal or fiduciary obligation of confidentiality owed to the disclosing Party or any of its affiliates;
 - c. is lawfully received by the receiving Party from a source other than the disclosing Party or its Authorized Persons without, to the receiving Party’s knowledge, breach of any confidentiality agreement or other legal or fiduciary obligation of confidentiality owed to the disclosing Party or any of its affiliates by such source;
 - d. is independently developed by the receiving Party without use, directly or indirectly, of Confidential Information received from the disclosing Party; or
 - e. is authorized in writing by the disclosing Party to be released from the confidentiality obligations herein.

Specific information shall not be deemed to be within the foregoing exceptions merely because it is included within general information which is within the exceptions, nor will a combination of features be deemed to be within such exceptions merely because the individual features of the combination are separately included within such exceptions. The Party relying on any of the foregoing exceptions to the confidentiality and limited use obligations herein shall bear the burden of proving the applicability of the exception.

- 5. Use and Ownership of Confidential Information.** Confidential Information shall not be copied or used by the receiving Party for any purpose other than in connection with the Discussions. With regard to Confidential Information which is covered by copyrights belonging to the disclosing Party, it is agreed that the disclosing Party reserves all rights therein. However, the receiving Party may make a limited number of copies of written materials covered by such copyrights (not including

machine readable data) so that the receiving Party can adequately use such Confidential Information in accordance with this Agreement, provided that all proprietary or export-control legends and notices on the originals are also reproduced on such copies and that each such copy shall be subject to the terms of this Agreement. Confidential Information shall remain the exclusive property of the disclosing Party. The receiving Party agrees that Confidential Information disclosed hereunder is being received subject to the disclosing Party's ownership rights in such Confidential Information and subject to all relevant intellectual and/or proprietary property rights of the disclosing Party, including, without limitation, relevant laws governing patents, trademarks, copyrights, semiconductor chip protection, trade secrets and unfair competition. Nothing herein shall be construed as granting or conferring upon the receiving Party, expressly, impliedly, or otherwise, any licenses or other rights under any patents, trademarks, or any other intellectual and/or proprietary rights which the disclosing Party hereunder now owns or may hereafter acquire. The provisions of this Section 5 shall survive the termination or expiration of this Agreement.

- 6. Return of Certain Confidential Information.** Upon the written request of the disclosing Party, the receiving Party shall, at its own expense, promptly return to the disclosing Party all originals and copies of the writings and hardware in its possession which contain Confidential Information, except that the portion of Confidential Information that may be found in analyses, compilations, studies and other documents prepared by or for the receiving Party shall be destroyed rather than returned, as verified by a written certificate given by an officer of the receiving Party to the disclosing Party; provided, that neither Party shall be required to alter or destroy archived electronic media made in the ordinary course of business which contains Confidential Information, it being acknowledged that such Confidential Information shall remain subject to the terms of this Agreement. The foregoing notwithstanding, (a) the receiving Party may retain a single set of copies solely as an archival record of materials submitted; and (b) Confidential Information routinely embedded in a Party's electronic records (including, without limitation, email messages), or incorporated in the ordinary course in any Party's written board or decisional materials or minutes or the like, shall not be subject to the obligations of return or destruction set forth in this Section 6 as long as such materials or minutes are held consistent with the procedures normally used by that Party to safeguard its own proprietary information, but not less than reasonably prudent care.
- 7. No Warranties.** The receiving Party understands and agrees that any information contained in the Confidential Information is being provided by the disclosing Party without any representation or warranty, expressed or implied, as to the accuracy or completeness of such information, and neither the disclosing Party nor any of its Authorized Persons shall have any liability whatsoever to the receiving Party or its Authorized Persons resulting from the use of such information.
- 8. Information Regarding Existence of Discussions.** During the term of this Agreement and for a period of thirty (30) days thereafter, except as required by law, no Party shall issue any statement, confirm, or otherwise disclose to the general public, to the news media, or to any third party (other than any Authorized Persons who are permitted to receive Confidential Information under this Agreement from a Party), except with the prior written concurrence of the other Party, (a) that the Discussions are taking or have taken place, (b) that the Parties have exchanged information with a view toward the consummation or implementation of an agreement, or (c) the existence of this Agreement; provided, however, notwithstanding anything to the contrary, Ameresco may issue any statement, confirm or otherwise disclose any information if required, in Ameresco's discretion, by the rules or regulations of any securities exchange or market.
- 9. Legally Required Disclosure.** If the receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand, or

similar process) to disclose Confidential Information, it will provide the disclosing Party with prompt written notice so the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event such protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions of this Agreement, the receiving Party will furnish only that Confidential Information which is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed. Ameresco may disclose any Confidential Information of the other Party to this Agreement if required (in Ameresco's discretion) by the rules or regulations of any securities exchange or market.

10. Export of Confidential Information. The Parties acknowledge that certain Confidential Information exchanged under this Agreement may be subject to U.S. export control laws and regulations, including the U.S. Department of Energy regulations at 10 C.F.R. Part 810 and the U.S. Department of Commerce regulations at 15 C.F.R. Part 730 et seq. (the "Export Laws"). As such:

- a. The receiving Party shall not transfer, disclose, provide access to, export, re-export, or otherwise make available any Confidential Information received hereunder except in compliance with all Export Laws. The receiving Party shall implement appropriate internal controls to ensure that access to Confidential Information is restricted to authorized personnel only.
- b. In particular, Company understands that Export Laws restrict the transfer of U.S. nuclear technology and other export-controlled technical information, including but not limited to blueprints, CAD files, technical drawings, and other technical data. Company understands that under the Export Laws, prior governmental authorization may be required for certain disclosures of such information to foreign persons, even if located in the United States. As such, Company shall not provide any information identified as export-controlled to any foreign person, except following written consent by Ameresco and receipt of any governmental authorization required under applicable Export Laws.
- c. The obligations under this Section shall survive termination or expiration of this Agreement.

11. Term. This Agreement will be effective as of the Effective Date and will terminate [twelve (12)] months after the Effective Date unless extended by mutual written agreement of the Parties. Notwithstanding the termination of this Agreement, the obligations of limited use and nondisclosure hereunder will remain in effect until the expiration of the applicable period of confidentiality pursuant to Section 3 hereof, unless superseded by a subsequent written agreement between the Parties as to treatment of the Confidential Information.

12. No Assignment. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party.

13. Integration. This Agreement contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous oral and written agreements, if any, among the Parties regarding confidentiality of information disclosed in connection with the Discussions.

14. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect to the fullest extent permitted by law without being impaired or invalidated in any way.

- 15. Modification; Waiver.** This Agreement may not be modified except by a written agreement signed by an authorized person on behalf of each Party. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- 16. Governing Law; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, choice of law rules excepted. Each of the Parties hereby irrevocably consents to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts, the courts of the United States for the District of Massachusetts and any appellate courts from any thereof, and agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts. Company waives any objection to the venue in any such courts and any defense of forum non conveniens.
- 17. Remedies.** If either Party should breach or threaten to breach any of the provisions of this Agreement, the other Party, in addition to any other remedies it may have at law or in equity, will be entitled to seek a restraining order, injunction or other similar remedy in order to specifically enforce the provisions of this Agreement. Each Party specifically acknowledges that money damages alone would be an inadequate remedy for the injuries and damages that would be suffered and incurred by the other Party as a result of a breach of any of the provisions of this Agreement.
- 18. Counterparts.** This Agreement may be executed in one or more counterparts (including counterparts delivered by facsimile or other electronic means), each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement.
- 19. Limited Scope.** Each Party agrees that unless and until a definitive agreement regarding a possible transaction between the Parties has been executed and delivered by the Parties, and in such event, only to the extent provided in such definitive agreement, neither Party shall be under any legal obligation of any kind whatsoever with respect to any possible transaction between the Parties by virtue of this Agreement, except for the matters specifically agreed to herein. This Agreement is not intended to, and shall not be deemed to, create any partnership, joint venture, joint enterprise or agency relationship between the Parties hereto, or to authorize or empower either Party to act on behalf of or obligate or bind the other Party. Each Party acknowledges and agrees that the other Party shall not have any obligation to furnish Confidential Information.
- 20. Applicability to Affiliates.** Any Confidential Information disclosed by an affiliated company of either of the Parties which would otherwise constitute Confidential Information hereunder if disclosed by either of the Parties, shall be deemed to constitute Confidential Information under this Agreement, and the rights of such Party under this Agreement may be enforced by any such affiliate as if such affiliate were also a Party to this Agreement. Each of the Parties may disclose any Confidential Information received hereunder to representatives of any of its affiliated companies, provided such representatives need to know such Confidential Information and provided further that such representatives comply with the provisions of this Agreement.

* * * * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

AMERESCO, INC.

By: _____
Name:
Title:

[COMPANY]

By: _____
Name:
Title: