

Mutual Nondisclosure Agreement

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (this “**Agreement**”) is entered into between American Wind and Solar LLC, a Texas limited liability company (“**AWS**”), and _____ (“**Counterparty**”), as of the earliest signature date below (the “**Effective Date**”) to protect the confidentiality of information of AWS and Counterparty disclosed under this Agreement. Each of AWS and Counterparty may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, AWS is in the business of providing consulting and/or development services for PV solar power, wind turbine, traditional power generation and battery storage projects; and

WHEREAS, AWS and Counterparty desire to engage in business discussions concerning a potential transaction or other business relationship (the “**Potential Transaction**”) that may include the exchange of their respective Confidential Information.

In consideration of the foregoing premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.** Unless otherwise defined in this Agreement, capitalized terms shall have the meaning set forth in this Section 1.

1.1. “**Confidential Information**” means all information that the Disclosing Party discloses to the other Party including, but not limited to, written, oral, visual, electronic, present, or future information such as: (a) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (b) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (c) confidential or proprietary information that the Party has received and in the future will receive from third-parties subject to a duty on the Party’s part to maintain the confidentiality of such information and to use it only for certain limited purposes; (d) information acquired during any facilities tours; (e) summaries, notes, reports or analyses or other documents created by the Recipient or its Representatives that refer to, discuss, constitute, or embody all or any portion of the Confidential Information; and (f) the existence or status of any ongoing negotiations between the Parties.

The term Confidential Information shall not include, however, information that (w) is or becomes generally available to the public other than as a result of a disclosure by the Recipient or any of its Representatives in breach of this Agreement; (x) was lawfully available to the Recipient on a non-confidential basis prior to its disclosure by the Disclosing Party or its Representatives from a Person who was not otherwise known by the Recipient or its Representatives to be bound by a confidentiality or similar agreement with the Disclosing Party or any of its Representatives, or otherwise subject to an obligation of confidentiality or secrecy to the Disclosing Party or its Representatives as evidenced by written records thereof, created prior to the date thereof; (y) becomes available to the Recipient on a non-confidential basis from a Person who was not otherwise known by the Recipient or its Representatives to be bound by a confidentiality or similar agreement with the Disclosing Party or any of its Representatives, or otherwise subject to an obligation of confidentiality or secrecy to the Disclosing

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Party or its Representatives; or (z) is independently developed by the Recipient or its Representatives without the use of, or reference to, the Confidential Information of the Disclosing Party. Confidential Information shall not be deemed to fall within one of the enumerated exceptions in (x) through (z) above merely because it is included in a document that also includes information that does fall within such exceptions. **"Disclosing Party"** means a Party to this Agreement disclosing Confidential Information under this Agreement. Except otherwise indicated in this Agreement, Disclosing Party also includes Affiliates of the Disclosing Party and, except otherwise indicated, the term Recipient also includes all Affiliates of the Recipient.

"Affiliate" shall mean a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control of one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

1.2. **"Effective Date"** means the date in the preamble to this Agreement.

1.3. **"Person"** means any natural person, corporation, company, partnership, limited liability company, joint venture, trust, organization, association, sole proprietorship or other entity.

1.4. **"Potential Transaction"** has the meaning in the second recital hereof.

1.5. **"Recipient"** means the Party receiving Confidential Information from the Disclosing Party.

1.6. **"Representatives"** means a Party's affiliates and their respective directors, officers, employees, attorneys, accountants, financial advisers, investors, lenders, consultants or other agents or advisors who are not officers or employees of such party.

2. **Confidentiality Obligations.** Except as otherwise permitted in this Agreement or as authorized in writing by the Disclosing Party, the Recipient shall (1) hold in confidence and not distribute or disclose to any third-party other than its Representatives any Confidential Information of the Disclosing Party or any facts related thereto; (2) protect such Confidential Information with at least the same degree of care that Recipient uses to protect its own Confidential Information, but in no case, less than a reasonable degree of care; (3) use the Disclosing Party's Confidential Information for no purpose other than pursuing the Potential Transaction; (4) limit access to the Disclosing Party's Confidential Information to its Representatives having a need to know such Confidential Information and who are bound by confidentiality obligations substantially similar to those contained herein; and (5) promptly notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Disclosing Party's Confidential Information. The Recipient shall be liable to the Disclosing Party for any breach by any of its Representatives of the terms and conditions contained herein.

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2.1. **Disclosures Required by Law.** If the Recipient or any of its Representatives is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas or similar process) in connection with any legal or governmental proceeding to disclose or otherwise becomes legally compelled to disclose any Confidential Information, the Recipient shall provide the Disclosing Party with prompt written notice and reasonable assistance (subject to reimbursement by the Disclosing Party of all reasonable out-of-pocket expenses incurred by the Recipient in providing such assistance) so as to enable the Disclosing Party to seek a protective order or other appropriate remedy or waive compliance with this Agreement. The Recipient shall not, and shall not permit its Representatives to, oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. If such a protective order or other remedy is not obtained within no more than thirty (30) days of Recipient's notice, or if the Disclosing Party waives compliance with this Agreement, the Recipient (or such other person required to disclose Confidential Information) may disclose Confidential Information, but only such Confidential Information as it is legally required to disclose to avoid contempt or other penalty in the opinion of counsel to the Recipient, and shall exercise reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such disclosed Confidential Information.

2.2. **Remedies.** The Recipient acknowledges that its breach of this Agreement may cause irreparable damage to the Disclosing Party for which monetary damages would not be an adequate remedy. Without prejudice to the rights and remedies otherwise available to the Disclosing Party both at law and in equity, the Disclosing Party shall be entitled to obtain injunctive relief and specific performance from any court having jurisdiction to enforce the terms of this Agreement without proof of any actual or special damages, if the Recipient or its Representatives breach or threaten to breach this Agreement and the Recipient shall not plead in defense thereto that there would be an adequate remedy at law. The Disclosing Party shall not be required to post a bond or other surety in connection with any such injunctive relief. The prevailing Party (which will mean the Party obtaining injunctive relief if granted, or the Party opposing such relief if it is sought and denied) will be entitled to recover all reasonable costs and expenses, including attorneys' fees incurred because of any legal action arising in relation to this Agreement. The rights and remedies provided to each Party in this Agreement are cumulative and in addition to any other rights and remedies available to such Party at law or in equity.

3. **No License Granted.** The Confidential Information is and shall remain the sole property of the Disclosing Party (or the third-party which has disclosed the information to the Disclosing Party). The Recipient recognizes and agrees that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Disclosing Party's Confidential Information, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information.

4. **No Obligation or Joint Venture.** This Agreement does not constitute a commitment or promise by either Party to proceed with the Potential Transaction. The Parties agree that unless and until a written agreement has been executed and delivered regarding a Potential Transaction, no binding agreement providing for any such transaction between the Parties shall be deemed to exist, and neither Party will be under any legal obligation with respect to such Potential Transaction by virtue of this Agreement or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. This Agreement does not obligate either Party to deal exclusively

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with the other Party or to continue discussions regarding or to consummate a Potential Transaction. Each Party reserves the right, in its sole discretion, to decline, to retract or to reject, at any time, any proposal which has not yet become legally binding by execution of a written agreement between the Parties and to terminate all further discussions and negotiations. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, or agency between the Parties.

5. **Restrictions.** The Recipient will not reproduce the Disclosing Party's Confidential Information in any form except as required for evaluating the Potential Transaction. Any copy of any of the Disclosing Party's Confidential Information remains the property of the Disclosing Party and will contain all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by Disclosing Party.

6. **No Representations.** All Confidential Information is provided on an "as is" basis and the Recipient agrees and acknowledges that neither the Disclosing Party nor any of its Representatives are making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and neither the Disclosing Party nor any of its Representatives will have any liability to the Recipient, its Representatives or any other Person relating to or resulting from the use of or reliance on the Confidential Information or for any errors therein or omission therefrom.

7. **Termination; Ongoing Obligations.** Either Party may terminate disclosure of its Confidential Information at any time, for any reason. This Agreement and the confidentiality and use restriction obligations contained herein shall survive with respect to all Confidential Information of the Disclosing Party until that date which is five years after the Effective Date, except with respect to Confidential Information that constitutes a Disclosing Party's trade secrets, which shall remain Confidential Information hereunder until such information is no longer maintained as a trade secret by the Disclosing Party, regardless of termination of this Agreement. The Recipient shall return to the Disclosing Party, at the election of the Disclosing Party, within ten (10) days of the earlier of (a) receipt of a written request by the Disclosing Party or (b) receipt or delivery of notice terminating further disclosures under this Agreement, all materials containing or reflecting Confidential Information that are in the possession or control of the Recipient and its Representatives, without retaining copies, and provide an officer's certificate to the Disclosing Party that such documents or copies not otherwise returned have been destroyed in lieu of returning such documents and copies to the Disclosing Party. Notwithstanding the return and destruction of such materials, the Recipient and its Representatives shall continue to be bound by the obligations of confidentiality and other obligations hereunder. Both Parties acknowledge that Confidential Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Recipient on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "the Back Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Recipient be required to destroy Confidential Information stored on Back Up Tapes; provided, however, that any Confidential Information stored on Back Up Tapes pursuant to this Section shall be kept confidential under the terms of this Agreement.

8. **General Provisions.**

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8.1 **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF. EACH PARTY AGREES THAT VENUE FOR ANY SUIT, ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS AGREEMENT SHALL BE AUSTIN, TRAVIS COUNTY, TEXAS.

8.2 **Waiver of Jury Trial.** EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY AND ALL ACTIONS, CLAIMS AND DISPUTES IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

8.2 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, by any court having jurisdiction, all other provisions not adversely affected thereby shall remain in force and effect; provided, however, that the Parties shall negotiate in good faith to attempt to implement an equitable adjustment in this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision which effect comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

8.4 **No Assignment.** Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed in the event of a sale of all or substantially all of the assets of a Party. Any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assignees of the Parties.

8.5 **Notices.** All notices, requests and other communications to any Party hereunder shall be in writing and delivered by hand, by nationally-recognized delivery service that guarantees overnight delivery, or by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to American Wind and Solar LLC:

American Wind and Solar LLC
1930 Glenoak Dr
Corpus Christi, TX 78418

if to the Counterparty, to the address set forth on the signature page hereto

or to such other address as such Party hereafter may specify for the purpose by notice to the other Party. Each such notice, request or other communication shall be effective upon delivery or refusal of delivery at the address specified in this Section 8.5.

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8.6 Headings; Miscellaneous. The headings of paragraphs in this Agreement are for descriptive purposes only and shall not control, alter, or otherwise affect the meaning, scope or intent of any provisions of this Agreement. The terms defined herein shall apply equally to both the singular and plural forms of the terms defined and to the correlative forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “**include**,” “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation**.” The word “**or**” is not exclusive. All references to “**days**” shall be to calendar days and all references to “**months**” shall be to calendar months, unless otherwise specified.

8.7 Integration; Amendments and Waiver.

(a) This Agreement and the documents and agreements expressly incorporated herein by reference represent the entire agreement and understanding between the Parties as to the subject matter herein and supersede all prior or contemporaneous agreements, arrangements, discussions and undertakings between the Parties (whether written or oral) with respect to the subject matter hereof.

(b) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective (which, in the case of AWS, shall require the signature of an officer).

(c) No failure or delay by any Party 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. No waiver of any provision of this Agreement (1) shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar) or (2) shall constitute a continuing waiver unless otherwise expressly provided therein.

8.8 Interpretation. The Parties acknowledge and agree that this Agreement is the result of their separate representation and negotiation. No provision shall be construed against a Party on the basis that this Agreement or any particular provision in this Agreement was proposed, negotiated or written by such Party.

8.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Any counterpart may be executed by facsimile or any image transmitted by electronic mail (such as a PDF file).

[Signature pages follow]

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IN WITNESS WHEREOF, the Parties have caused this Mutual Nondisclosure Agreement to be executed by their duly authorized representatives as of the Effective Date.

American Wind and Solar LLC	COUNTERPARTY
By: <i>William Conoly</i>	By: _____
Name: William Conoly	Name: _____
Title: Director of Development	Title: _____
Date: _____	Date: _____
	Address for Notices: _____ _____ _____
	Attention: _____
	E-mail: _____