



**MUTUAL NONDISCLOSURE AGREEMENT FOR EXCHANGE
OF CONFIDENTIAL INFORMATION**

This Mutual Nondisclosure Agreement For Exchange of Confidential Information (“Agreement”), effective the date the last party signs (“EFFECTIVE DATE”), is made by and between

_____, Inc., having a location at _____, _____ (“_____”)

and

_____, having a location at _____

 (“INDIVIDUAL”)

Whereas, _____ and INDIVIDUAL (hereinafter individually referred to as the “PARTY”, or collectively as the “PARTIES”) desire to exchange CONFIDENTIAL INFORMATION (as defined below), this Agreement will govern the conditions of mutual disclosure of such information by the PARTIES.

The PARTIES hereby agree:

- (1) (a) CONFIDENTIAL INFORMATION disclosed by _____ shall be all nonpublic information technical and business information (including information embodied in samples) related tobut not limited to.....

(b) CONFIDENTIAL INFORMATION disclosed by INDIVIDUAL shall be all nonpublic technical and business information (including information embodied in samples) related to, but not limited to,

(c) CONFIDENTIAL INFORMATION disclosed by either PARTY shall be designated in writing to be confidential or proprietary, or if given orally or by demonstration, shall be confirmed within thirty (30) days in writing as having been disclosed as confidential or proprietary.
- (2) The receiving PARTY will not have any obligation or assume any liability with respect to any portion of the CONFIDENTIAL INFORMATION that:
 - (a) the receiving PARTY can demonstrate, by written documentation, was previously known to it;
 - (b) is, or becomes, available to the public through no fault of the receiving PARTY;

- (c) is lawfully obtained by the receiving PARTY from a third party, without breach of any obligation to the disclosing party;
- (d) is independently developed by or for the receiving PARTY independent of any disclosure hereunder; or
- (e) is required to be disclosed pursuant to proper governmental or judicial process, provided that notice of such process is promptly provided to disclosing PARTY in order that disclosing PARTY may have every reasonable opportunity to intervene in such process to contest such disclosure.

If any portion of a PARTY'S CONFIDENTIAL INFORMATION falls within any of the above exceptions, the remainder shall continue to be subject to the terms of this Agreement.

- (3) To perform all terms of this Agreement and to maintain the CONFIDENTIAL INFORMATION in confidence, giving it the same degree of care, but no less than a reasonable degree of care, as the PARTIES exercise with their own proprietary information to prevent its unauthorized disclosure;
- (4) To exchange and use the CONFIDENTIAL INFORMATION solely for evaluation purposes.
- (5) Neither PARTY acquires any intellectual property rights under this Agreement. No license to any PARTY is granted or implied under this Agreement.
- (6) None of the information which may be disclosed or exchanged by the PARTIES shall constitute any representation, warranty, assurance, guarantee or inducement by either PARTY to the other of any with respect to the infringement of patents or copyrights or other rights of others. Nothing in this Agreement shall be construed as a warranty, assurance, guarantee or by either PARTY to the other with respect to the content or accuracy of documents and information transmitted or exchanged by the PARTIES under this Agreement.
- (7) Neither PARTY, without the prior written consent of the other, will disclose any portion of the CONFIDENTIAL INFORMATION to others except to their employees, agents, consultants, independent contractors having a need to know in order to accomplish the purpose stated above, and who are bound by obligations of confidentiality no less stringent than those set out in this Agreement. The receiving PARTY shall use reasonable efforts to make its employees, agents, consultants, independent contractors aware of the limitations of use and disclosure imposed by this Agreement.
- (8) All rights and title to the CONFIDENTIAL INFORMATION disclosed under this Agreement will remain the property of the disclosing PARTY unless otherwise agreed to in writing by the PARTIES.
- (9) All disputes between the PARTIES in connection to this Agreement shall first be discussed in good faith between the PARTIES in order to try to find an amicable solution. If no solution can be found to settle the dispute within 45 days after either PARTY's ("Initiating Party") giving notice to the other PARTY ("Other Party"), then the dispute will be submitted to the Court of the country or state in which the Other Party is located. This Agreement shall be governed by and construed in accordance with the laws of that country or state, exclusive of its choice of law rules.

- (10) This Agreement may be terminated by either PARTY giving thirty (30) days notice in writing to the other PARTY of its intention to terminate. Otherwise, this Agreement will terminate two (2) years from the EFFECTIVE DATE hereof.
- (11) Termination of this Agreement shall not affect the rights and obligations contained herein with respect to maintaining the confidentiality of any CONFIDENTIAL INFORMATION. The protection, disclosure, return or destruction, secrecy and non-use obligations of this Agreement shall survive such termination and will remain in effect for five (5) years from the date of disclosure of said CONFIDENTIAL INFORMATION.
- (12) Within thirty (30) days of the termination date, or upon breach of any obligation of this Agreement by the receiving PARTY, or upon request of the disclosing PARTY, the receiving PARTY will return or destroy the CONFIDENTIAL INFORMATION. If the CONFIDENTIAL INFORMATION is destroyed, a certificate of destruction must be furnished to the disclosing PARTY within the thirty (30) days. The rights and obligations provided by this Agreement shall survive the return or destruction of CONFIDENTIAL INFORMATION.
- (13) The receiving PARTY acknowledges its obligations to control access to technical data under the U.S. Export Laws and Regulations and agrees to adhere to such Laws and Regulations with regard to any technical data received under this Agreement.
- (14) This Agreement shall not be construed as creating any joint venture, pooling arrangement, team, partnership or other joint relationship nor as an obligation to supply CONFIDENTIAL INFORMATION.
- (15) Any modification to this Agreement must be in writing and signed by the duly authorized representative of each PARTY.
- (16) The Agreement sets forth the entire agreement and understanding between the PARTIES hereto as to the exchange of CONFIDENTIAL INFORMATION and supersedes all prior discussions, commitments, agreements and understandings of any nature between the PARTIES hereto relating to the exchange of CONFIDENTIAL INFORMATION.

Energy Conversion Devices, Inc. _____

By: _____
(signature)

By: _____
(signature)

Name: _____
(please print)

Name: _____
(please print)

Title: _____

Title: _____

Date: _____

Date: _____