



## CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT

This Agreement dated as of [Insert Date M/D/Yr], when executed in the manner provided for herein below shall evidence this agreement (the "Agreement") by and between Murphy International Development LLC, ("MIDC"), and \_\_\_\_\_ ("---"), to wit ("MIDC", and "---" being sometimes referred to herein individually as a "Party" and collectively as the "Parties"):

**WHEREAS**, --- represents an interest in the possible development of proposed solar development opportunity(ies), each separately registered as Project(s) are mutually added by written agreement to Attachment 1 Transaction(s), (the "Transaction");

**AND WHEREAS**, in consideration of the Transaction(s), the respective Parties have requested information concerning certain power generation equipment, power development opportunities from the other Party in oral and written form. This information shall include, but not be limited to equipment source, development background, equipment definition, drawings, estimates of performance, estimates of emissions, pricing, development sited descriptions, and pertinent information relating to the proposed Consortium Partner(s) (the "Information");

**AND WHEREAS**, Each Party's agreement to furnish all or any part of the Information to the other Parties is expressly conditioned upon (i) agreement to maintain the confidentiality of the Information, (ii) agreement to use the Information solely towards the consummation of a Transaction, (iii) agreement by each Party to work exclusively with the other Party as further described in Section (6) contained herein;

**AND WHEREAS**, in connection with providing Information, each Party agrees that they will not circumvent the other Parties with regard to the Transaction.

**NOW THEREFORE**, in consideration of the above premises, the mutual covenants provided for herein and the benefits inuring to the Parties hereto, it is agreed as follows:

- (1) The originating Party hereby agrees to provide the Information to the receiving Party expressly subject to the terms and conditions of this Agreement.
- (2) The receiving Party recognizes and acknowledges the competitive value and confidential nature of the Information and the damage that could result to the originating Party if any part of the Information were disclosed to any third party.
- (3) Both Parties agree that neither Party nor its respective representatives have made any representations or warranties as to the accuracy or completeness of the Information provided hereunder by either Party and the Parties agree that neither Party nor its respective representatives shall have any liability to the other Party or any of its directors, officers, employees and representatives resulting from the use of such Information by the other Party or its directors, officers, employees and representatives.
- (4) The receiving Party's employees, agents and representatives shall refrain from using the Information except for the purpose of evaluating the Transaction and shall maintain all of the Information secret and confidential, and shall not disclose it to any third party without the prior written consent of the originating Party, except as required by law, provided, however, that the receiving Party may disclose Information on a need to know basis to other joint participants in the Transaction provided such other joint participants agree to be bound by the provisions of this Agreement and to safeguard the Information with the same degree of care as used with respect to its own confidential information.
- (5) In addition, without the prior written consent of MIDC, and ---, representatives of a respective Party shall not disclose to any person either the fact that discussions or negotiations are taking place concerning a possible Transaction, any of the associated terms or conditions, or other facts with respect to any such possible Transaction including the status thereof.
- (6) The Parties hereby covenant and agree that they will deal solely each with the other, as detailed in separate term sheets to be negotiated, in regard to the Transaction(s) with the development project(s), equipment source and Named Customers on each separately introduced and mutually



agreed Transaction, as defined in Attachment 1. The Parties agrees that its Representatives, its affiliates and/or parent company(ies) will not circumvent or attempt to circumvent the other Party respectively by contracting or participating with any third party with respect to, or otherwise attempt to consummate the opportunity represented by the Transaction(s), except in participation with the other Party herewith, respectively.

- (7) In the event that negotiations between the Parties for consummation of the Transaction(s) with a specific opportunity do not commence within 60 days of the introduction of the named Consortium Partner, or having commenced, do not result in binding agreement(s) on or before 60 days thereafter, then:
  - (a) --- will not seek the involvement of the named Consortium Partner for alternate transactions with the proposed services or equipment for a period of two years without the inclusion of MIDC.
  - (b) Neither the receiving Party nor its representatives shall, without the prior written consent of the originating Party, use any of the Information now or hereafter received or obtained from the originating Party for any and all purposes whatsoever; and
  - (c) All Information (and all copies, summaries, and notes of the contents or parts thereof) shall be returned to the originating Party by the receiving Party and its representatives without retaining any copies in any form for any reason.
- (8) Information shall not include the following:
  - (a) information which at the time of disclosure by the disclosing Party is in the public domain, or information which later becomes part of the public domain through no act or omission of the receiving Party;
  - (b) information which the receiving Party can demonstrate was legally in its possession prior to disclosure by the disclosing Party;
  - (c) information received by the receiving Party from a third party who did not acquire such information on a confidential basis directly from the disclosing Party.
- (9) All written notification pursuant to this Agreement shall be personally delivered or mailed by first class mail or sent by fax with conformation by first class mail, to the respective corporate office. All notices shall be effective upon receipt by a Party.
- (10) The parties hereto understand and agree that unless and until a definitive agreement has been executed, intended to be within 60 days from the agreed registration of a Transaction herewith, and delivered, no contract or agreement providing for a Transaction between the parties shall be deemed to exist between the parties, and neither party will be under any legal obligation of any kind whatsoever with respect to any such Transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this Agreement, the term “definitive agreement” does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both parties.
- (11) Neither the holding of discussions between the Parties nor the disclosure of Confidential Information will be construed as an obligation on the part of either Party to refrain from engaging at any time in the same business or any business similar or dissimilar to the business in which the other is now engaged. Further, except as otherwise agreed in writing, Confidential Information received concerning the other Party’s future plans is tentative and does not represent firm decisions or commitments by either Party. Either Party may meet with third persons and may receive information similar to the Confidential Information, which the Party received under this Agreement.
- (12) Notwithstanding any other provision of this Agreement, no Party shall have the right nor the authority to commit another Party to any obligation without such other Parties prior written



agreement, nor shall any Party represent itself to third parties as having the right or authority to commit such other Party.

- (13) Any Party may not assign this Agreement hereto, without the prior written consent of the other Parties.
- (14) The Parties hereby represent and warrant to the other that they and their respective affiliates have each conducted (and will continue to conduct) all their respective activities in connection with the Transaction including, without limitation, the application for and receipt of all permits, and approvals associated with the Transaction, in accordance with all, and without violation of any applicable laws, regulations and other requirements of all national and foreign governmental authorities and all political subdivisions and agencies thereof. No Party will pay, promise to pay, or authorize or permit the direct or indirect payment of, by such Party or by an affiliate or agent thereof, any money or anything of value to any person for the purposes of illegally or improperly inducing that person to take any action or omit to take any action in connection with the Transaction.
- (15) All questions concerning the validity or meaning of this Agreement or relating to the rights and obligations of the Parties with respect to performance under this Agreement shall be construed and resolved under the laws of the State of New York excluding any conflict of law rules or other laws that would require the application of the laws of any other state or jurisdiction.
- (16) This Agreement inures to the benefit of the parties hereto and their successors and assigns and is binding on each other and each other's successors and assigns. This Agreement constitutes the entire agreement with respect to the subject matter hereof. The headings of the Sections of this Agreement are inserted for convenience only and do not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

\_\_\_\_\_ (---)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Murphy Int'l Dev. LLC.**

By: \_\_\_\_\_  
Douglas Murphy, Managing Member

Date: [Insert Date M/D/Yr]



## Attachment 1 TRANSACTION (S)

### Project Description

- 1.
- 2.
- 3.

For each project above, include a summary or details covering, at minimum, each of the below:

- 1) Status of key agreements
  - i) Permits
  - ii) Concession agreement
  - iii) Project award from competitive bid
  - iv) License from government
  - v) Site control
  - vi) Status of most critical arrangements:
- 2) Power purchase
- 3) Fuel supply or resource evaluation
- 4) Engineering, Procurement and Construction (EPC)
- 5) Schedule to complete development
  - i) Tasks, timing, cost
  - ii) Responsible party
  - iii) Milestones, Deadlines
- 6) Support for project
  - i) Local
  - ii) Regional
  - iii) National
  - iv) Utility