

## MUTUAL NONDISCLOSURE

This Agreement is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between **N2Power, Inc.**, having its principal office at 1 Jenner, Ste. 200, Irvine, CA 92618, and \_\_\_\_\_, having its principal office at \_\_\_\_\_.

This Agreement is made in order for each party to obtain from the other certain business and technical information under terms that will protect the confidential and proprietary nature of such information in connection with furthering a potential business relationship between the parties.

It is agreed that the disclosure of such information by one party (the "Discloser") to the other party (the "Recipient") is conditioned upon and is in consideration of the following:

1. Confidential Information.
  - a. For purposes of this Agreement, and except as provided below, "Confidential Information" shall mean any information, data or know-how which relates to the business, research, services or products of the Discloser, including, without limitation, any intellectual property, designs, specifications, schematics, records, data, drawings, notes, reports, processes, formulas, methodologies, conceptual or developmental products, computer programs, algorithms, compilations, trade secrets, copyrights, inventions, patent applications, financial information, business plans, or personnel, marketing or sales information, which is disclosed by the Discloser or on its behalf, before or after the date hereof, to the Recipient either in writing, orally, by inspection or in any other form or medium, and may include information obtained from third parties that is subject to obligations of secrecy and confidentiality on behalf of the Discloser.
  - b. However, "Confidential Information" does not include information, data or know-how that the Recipient can demonstrate: (i) was independently developed by the Recipient without use of or reference to Confidential Information obtained from the Discloser; (ii) was lawfully in Recipient's possession prior to disclosure by the Discloser; (iii) is furnished to Recipient on a non-confidential basis subsequent to disclosure by the Discloser by a source which is not bound by a confidentiality agreement with the Discloser in respect thereof; (iv) becomes generally available to the public other than as a result of disclosure by Recipient, its employees, agents, representatives or others acting on Recipient's behalf; or (v) is approved for general release by written authorization of the Discloser.
2. Obligations. Each party agrees that: (i) it will not use the Confidential Information of the other party for any purpose except for the purposes described above and as necessary to carry out the terms of any business relationship between the parties hereto; (ii) it will not disclose Confidential Information of the other party to any person other than its employees, agents or advisors who are directly involved in the business relationship between the parties hereto, and only on a need-to-know basis; (iii) it will take reasonable security measures and use reasonable care to preserve and protect the secrecy of the other party's Confidential Information (including, without limitation, using at least the same degree of care as it uses to protect its own Confidential Information); and (iv) it will not reverse engineer, decompile, or deconstruct any Confidential Information of the other party.

3. Legal Disclosure. If the Recipient becomes legally obligated (by oral questions, interrogatories, requests for information or documents, subpoena, court order, investigative demand or similar process under the applicable laws, including securities regulations) to disclose any of the Confidential Information, the Recipient may disclose the Confidential Information; provided that, the Recipient shall, unless prohibited by applicable law, provide the Discloser with prompt written notice so that the Discloser may seek a protective order or other appropriate remedy. If the Recipient is still obliged to disclose Confidential Information regardless of the Discloser's effort to seek such protective order or other remedy, the Recipient will furnish only that portion of the Confidential Information which it is legally required to disclose and will exercise its diligent effort to obtain reliable assurance, to the extent that such assurance can be obtained, that confidential treatment will be accorded the Confidential Information.
4. Ownership of Confidential Information. All Confidential Information of the Discloser, and any Derivative thereof (as defined below), whether created by the Discloser or the Recipient, shall remain the property of the Discloser. For purposes of this Agreement, "Derivative" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent, trademark and/or trade secret.
5. Return or Destruction of Confidential Information. Upon request by the Discloser, the Recipient shall, at Discloser's option, promptly return to the Discloser or destroy (with a certificate of destruction from the chief financial officer of the Recipient) all written or tangible material containing or reflecting Confidential Information of the Discloser (whether prepared by the Discloser or otherwise), without retaining any copies, summaries, analyses or abstracts thereof.; provided, however, that Recipient may retain copies of Confidential Information if required by applicable law, rule or regulation, or in accordance with its internal document retention policies, provided that all such retained Confidential Information remains subject to the protections of this Agreement.
6. No License or Representations. Nothing in this Agreement shall be construed as granting any right or license to the Recipient or any other party, by implication or otherwise, with respect to any Confidential Information of the Discloser, except for the limited purposes set forth above. The Discloser makes no representations or warranties of any kind with respect to any of the Confidential Information disclosed hereunder.
7. Export. Neither party shall export, directly or indirectly, any Confidential Information of the other party, or any product utilizing any such Confidential Information, to any country for which the United States government or any agency thereof requires an export license or other government approval without first obtaining such license or approval in accordance with applicable export control laws and regulations.
8. Term. The obligation to protect the Confidential Information received hereunder shall continue for five (5) years following provision of the same. This Agreement may be terminated by either party by giving (60) sixty days' prior written notice to the other party; provided, however, that the

obligations protecting the Confidential Information shall survive such termination. Trade secrets and know-how shall be kept confidential in perpetuity.

9. Remedies. Each party agrees that the obligations contained in this Agreement are necessary and reasonable in order to protect each party's Confidential Information, and acknowledges that any breach by the Recipient will result in irreparable and continuing damages to the Discloser for which there will be no adequate remedy at law. Accordingly, each party agrees that, in addition to any other remedies available at law, the aggrieved party shall be entitled to obtain an injunction or other equitable relief against a threatened or continuing breach of this Agreement by the other party without the necessity of proving actual damages or posting a bond.
10. Assignment. Neither party may assign this Agreement without the prior written consent of the other. This Agreement shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns.
11. Agents and Employees. Recipient will cause its employees, officers, directors, managers, advisors and agents to be bound by the provisions of this Agreement and Recipient will be responsible for any breaches of this Agreement by its employees, officers, directors, managers, advisors and agents. This Agreement does not create any agency or partnership relationship between the Discloser and the Recipient.
12. Severability. If any provision of this Agreement is determined to be invalid or unenforceable under applicable law, to the full extent the applicable law may be waived, it is hereby waived. To the extent that law cannot be waived, the invalid or unenforceable provision will be replaced by a valid provision agreed upon by both Parties which comes closest to the intentions of the parties to this Agreement. In case a replacement provision cannot be agreed upon, the invalidity of the provision in question will not affect the validity of any other provision or this Agreement as a whole, unless the invalid provision is of such essential importance that it can be reasonably shown that the parties would not have entered into this Agreement without the invalid provision.
13. Entire Agreement. This Agreement contains the entire understanding and agreement between the parties concerning Confidential Information and supersedes all prior understandings and agreements, whether written or oral, concerning such subject matter.
14. Modifications and Waivers. This Agreement may be modified or amended, and any provision of this Agreement may be waived, only by a written instrument signed by the parties. A failure or delay in enforcing any provision of this Agreement shall not constitute a waiver thereof. The waiver of any provision of this Agreement in one instance shall not operate or be construed as a waiver of any other or subsequent breach of any term hereof.
15. Governing Law; Attorney's Fees. This Agreement shall be governed by the laws of the State of California without regard to the conflicts of law provisions thereof. In the event legal proceedings are commenced to enforce this Agreement, the prevailing party shall be entitled to collect its reasonable attorneys' fees from the non-prevailing party.

16. Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile or similar means of electronic transmission), each of which shall be deemed to be an original, but all of which shall constitute the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in the first paragraph of this Agreement.

**N2POWER**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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