**NON-DISCLOSURE AGREEMENT**

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”)  With a principal place of business at: | Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation (“MP”) with a principal place of business at: |
| ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  CITY, STATE, ZIPCODE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  ATTN (for Notices): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ADDRESS: 30 West Superior Street  CITY, STATE, ZIPCODE: Duluth, MN 55802  ATTN (for Notices): Legal Services |
| The Effective Date of this Non-Disclosure Agreement is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023 | |

This Non-Disclosure Agreement (the “Agreement”) is entered into by MP and Seller as of the Effective Date indicated above. As used throughout, the term “MP” includes any MP Affiliates (defined in Section 1 below), as applicable. MP and Seller are referred to individually as a Party and collectively as the Parties.

**Recitals**

A. MP, doing business as Minnesota Power, has issued a Request for Proposals (the “RFP”) for solar generation projects which can provide up to 300 MW of solar energy (the “Purpose”); and

B. Seller’s RFP response may contain confidential pricing or other information and Seller wishes to protect the public disclosure of such data; and

C. MP may provide confidential Information to Seller in furtherance of the Purpose; and

D. In furtherance of providing such protection, the Parties wish to define their respective rights and obligations with respect to such Confidential Information according to the terms of this Agreement.

The Parties agree as follows:

**Terms**

1. As used herein, the term "Confidential Information" means information which is of a non-public, proprietary or confidential nature to either Party, whether disclosed before or after the date of this Agreement (with the obligations contained in this Agreement applicable only after the Effective Date of this Agreement), which information includes all reports and analyses, documents, technical data, studies, forecasts, plans, drawings, trade secrets, research or business strategies, employee information, customer information, contractor information, sourcing information (such as request for proposals), scopes of work, financial or contractual information or other written or oral information. Confidential Information may be in any form whatsoever, including but not limited to writings, computer programs, drawings or other media. Each Party shall use its commercially reasonable efforts to clearly mark or otherwise identify Confidential Information as such, provided that failure to mark information as Confidential Information shall not invalidate the obligations in this Agreement for any information which a reasonable person would understand to be Confidential Information.

As used in this Agreement, (a) the term “Representative” means, as to any person, such person’s Affiliates (as defined below) and its and their directors, officers, employees, and advisors (including, without limitation, legal counsel) who work on the Project, and (b) the term “Affiliates” means all entities that are controlling, controlled by or under common control with a Party.

2. Notwithstanding the provisions of Section 1 above, the term "Confidential Information" shall not include, and the receiving Party shall not be under any obligation to maintain in confidence or not use, any information (or any portion thereof) disclosed to it by the disclosing Party to the extent that the receiving Party can demonstrate that such information:

(i) is in the public domain at the time of disclosure by the disclosing Party; or

(ii) following disclosure by disclosing Party, becomes generally known or available through no breach of this Agreement by receiving Party; or

(iii) is known, or becomes known, to receiving Party from a source other than disclosing Party or their Representatives, provided that such source is not reasonably known by receiving Party to owe any duty of confidentiality to disclosing Party related to such information; or

(iv) is independently developed by receiving Party without violating any of its obligations under this Agreement.

Each Party shall be allowed to disclose Confidential Information required to be disclosed by it pursuant to a subpoena or court order, or for evidentiary purposes in any relevant action, proceeding or arbitration to which either Party or any of its partners, officers, directors, shareholders or Affiliates is a party. Each Party may further disclose any Confidential Information as required by any governmental agency with regulatory jurisdiction to make such a demand. In the event that either Party receives a request to disclose any Confidential Information under such subpoena, order or otherwise, such Party shall, unless legally prohibited from doing so: (a) promptly notify the disclosing Party thereof, (b) consult with such disclosing Party on the advisability of taking steps to resist or narrow such request, and (c) if disclosure is required, reasonably cooperate with disclosing Party in an attempt to obtain an order or other reliable assurance that confidential treatment will be accorded to the Confidential Information, all of which efforts shall be at disclosing Party’s sole cost. In responding to any such request pursuant to this paragraph, the Receiving Party shall seek to provide the minimal amount of Confidential information as is required, as determined by legal counsel.

3. Each Party shall keep the Confidential Information confidential and shall use the Confidential Information solely for the Purpose. Neither Party shall disclose the Confidential Information to any person, except that each Party may disclose Confidential Information to any of its Representatives (a) who require access to such information in connection with the Purpose, or (b) who otherwise have reason to know (including legal, compliance, credit, accounting, and audit personnel and any other personnel who perform similar control or risk management functions in the normal course of performing their respective duties) the Confidential Information. Both Parties shall use the same standard of care in safeguarding and maintaining the confidentiality of the Confidential Information that such Party uses in safeguarding and maintaining its own confidential information of the same nature, but in any case at least reasonable care. Each Party shall be responsible for any use or disclosure (including unauthorized access) of Confidential Information by any of its Representatives, and shall indemnify the disclosing Party with respect to all losses, claims and damages, except for special, consequential, or indirect damages, to the extent that such claims arise out of a breach by receiving Party or any of its Representatives of the terms of this Agreement. Before disclosing any Confidential Information to its Representative, receiving Party shall inform such Representative of the confidential or proprietary nature thereof and of receiving Party’s obligations under this Agreement

4. All rights to Confidential Information disclosed pursuant to this Agreement are reserved to the disclosing Party. No license or conveyance of any rights relating to the Confidential Information is granted or implied by the disclosing Party to receiving Party.

5. This Agreement shall commence as of the date first set forth above and shall continue in effect until the earlier of (a) one year from the date hereof, or (b) written notice from either Party to the other Party stating that it is no longer interested in pursuing the Purpose; provided, however, that if the Parties enter into a definitive agreement regarding the Purpose, then this Agreement shall be coterminous with such definitive agreement, unless such definitive agreement provides otherwise. The obligations of confidentiality, non-disclosure and non-use contained herein shall survive the termination or expiration of this Agreement. Notwithstanding the expiration or termination of this Agreement as provided herein, the obligations of non-disclosure imposed hereby shall remain in effect for one year from the date of expiration or termination of this Agreement.

6. Nothing in this Agreement shall obligate either Party to disclose any Confidential Information to the other Party, and any disclosure of Confidential Information shall be at each Party’s sole discretion. This Agreement does not constitute a commitment or promise by either Party to proceed with the Purpose, nor does it grant to either Party any rights whatsoever with respect to the Purpose. Each Party reserves the right at any time to terminate negotiations with the other Party or to enter negotiations with third parties regarding a project identical, or similar, to the Purpose.

Neither Party makes any representation or warranties as to the quality, accuracy or completeness of any Confidential Information, except those representations related to the accuracy of Seller’s RFP response. Neither Party, nor its Representatives, will have any liability relating to or arising from any use of, or reliance upon, the Confidential Information; and each Party hereby releases and holds the other Party harmless with respect to such Party’s or its Affiliates’ or Representatives’ use of or reliance upon the Confidential Information.

7. To the extent legally permissible, as promptly as practicable but in any event within 30 days after disclosing Party’s request, a receiving Party shall return to disclosing Party or destroy all Confidential Information in the possession of receiving Party or its Representatives, including all copies of such Confidential Information, all notes or other documents with respect to or reflecting such Confidential Information, and all materials derived from such Confidential Information. Upon completing the foregoing, an officer of receiving Party shall certify to disclosing Party in writing disclosing Party’s compliance with this Section. Notwithstanding the foregoing, receiving Party may retain copies of such Confidential Information in its legal department to the extent such retention is consistent with receiving Party’s policies and may retain such Confidential Information that exists as part of electronic disaster recovery backup data pursuant to an applicable document retention policy; provided that all such retained Confidential Information shall remain subject to the terms of this Agreement.

8. This Agreement is binding on, and inures to the benefit of, the Parties’ respective successors and permitted assigns. This Agreement may not be assigned by either Party without the prior written consent of the other Party except to that Party’s Affiliate or in connection with the sale or transfer of all or substantially all of the business or assets of the assigning Party. Any purported assignment without the consent required hereunder shall be null and void.

9. Without prejudice to the rights and remedies otherwise available to either Party, each Party shall be entitled to equitable relief by way of injunction if there is a breach or threat of a breach of any of the provisions of this Agreement by the other Party.

# 10. Each Party hereby confirms that it is not acting as an agent for or representative of any person and is considering the Project only for its own account.

# 11. All notices and other communications hereunder shall be in writing and shall be delivered personally or by nationally recognized overnight courier (with proof of delivery from the carrier), with such notice deemed given as of the time of delivery, to a Party at the address provided above or such other address as a Party may specify by like notice.

12. This Agreement shall be governed by the laws of the State of Minnesota, without regard to the conflicts of law principles thereof, and any litigation arising out of or in connection in any way with this Agreement shall take place in a State or Federal court of competent jurisdiction situated in St. Louis County, Minnesota.

13. Each Party may scan and preserve this Agreement electronically. The electronic copy of this document may be treated as the original document for all purposes, and each Party acknowledges that an electronically preserved copy of this Agreement constitutes the best evidence thereof.

14. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied. The recitals to this Agreement are incorporated herein. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto.

15. The provisions of this Agreement are severable, and if any one or more of such provisions is determined to be judicially invalid or unenforceable, the remaining provisions shall nevertheless be binding and enforceable.

\*\*\*Signature Page Follows\*\*\*

The Parties, each by their duly authorized representatives, has signed this Agreement to be effective as of the Effective Date stated above.

**Minnesota Power, a division of ALLETE, Inc.**

**(entity name)**

By:

Name:

Title:

**Seller**

**(entity name)**

By:

Name:

Title: