



## PACIFIC NORTHWEST HYDROGEN ASSOCIATION

### FORM OF MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (this “**Agreement**”), effective as of the date set forth on the signature page hereto (the “**Effective Date**”), is entered into by and between Pacific Northwest Hydrogen Association, a Washington nonprofit corporation (“**PNWH2**”), and the counterparty identified on the signature page hereto (the “**Recipient**” and, together with PNWH2, the “**Parties,**” and each, a “**Party**”).

In connection with a proposed hydrogen project to be located in the Pacific Northwest region of the United States of America (the “**Recipient Project**”), the Recipient has requested that PNWH2 provide the Recipient with funding for the Recipient Project in connection with the funding by the United States Department of Energy (the “**DOE**”) of a proposed hydrogen hub in the Pacific Northwest (the “**Purpose**”) under the U.S. Department of Energy’s Regional Clean Hydrogen Hubs Funding Opportunity, announced in DE-FOA-0002779 (the “**USDOE H2 Hub Program**”) for which PNWH2 was selected as the recipient for such funding.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, the Parties agree as follows:

1. Confidential Information. “**Confidential Information**” means all non-public, proprietary or confidential information disclosed by either Party (a “**Disclosing Party**”) to the other Party (a “**Recipient**”) or its affiliates, or to any of such Recipient’s or its affiliates’ employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, “**Representatives**”), in oral, visual, written, electronic, or other tangible or intangible form, whether disclosed before or after the Effective Date and that, if disclosed in writing or other tangible form, is clearly labeled as “confidential,” or if disclosed orally, is identified as confidential when disclosed and within 15 days thereafter, is summarized in writing and confirmed as confidential, and all notes, analyses, summaries, and other materials prepared by Recipient or any of its Representatives that contain, are based on, or otherwise reflect, to any degree, any of the foregoing (“**Notes**”); *provided, however*, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Recipient’s or its Representative’s breach of this Agreement; (b) is obtained by Recipient or its Representative on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; (c) Recipient establishes by documentary evidence was in Recipient’s or its Representative’s possession before receiving such information from Disclosing Party; (d) Recipient establishes by documentary evidence was or is independently developed by Recipient or its Representative without the use of or reference to any Confidential Information, or (e) to the extent communicated to PNWH2 or its representative, (i) is in a written form and is not expressly and clearly marked “confidential”, or (ii) is conveyed orally and is not subsequently expressly and clearly identified in writing as “confidential”, or (iii) is in any form and is otherwise subject to disclosure pursuant to the Washington Public Records Act (defined below).

2. Recipient Obligations. Except as required by applicable federal, state, or local law or regulation, including Chapter 42.56 of the Revised Code of Washington (the “**Washington Public Records Act**”), Recipient shall:

- (a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose, or otherwise in any manner to Disclosing Party's detriment;

(c) not disclose any such Confidential Information to any person or entity, except to Recipient's Representatives who:

(i) need to know the Confidential Information to assist Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under this Agreement;

(ii) are informed by Recipient of the confidential nature of the Confidential Information; and

(iii) are subject to confidentiality duties or obligations to Recipient substantially similar to the terms and conditions of this Agreement; and

(d) be responsible for any breach of this Agreement caused by any of its Representatives.

Notwithstanding anything herein to the contrary, to the extent the Recipient is PNWH2 or its Representative, the Recipient understands and acknowledges that the information communicated may be subject to disclosure under the Washington Public Records Act. If PNWH2 or its Representative receives a public records request for Confidential Information that is subject to an exemption from disclosure under the Washington Public Records Act, PNWH2 shall take commercially reasonable precautions to withhold such information from disclosure. To the extent that PNWH2 receives a public records request for Confidential Information that PNWH2 does not intend to withhold pursuant to any exemption, PNWH2 shall use commercially reasonable efforts to provide the Disclosing Party notice, if permissible by law. PNWH2 and its Representatives shall have no liability to the Disclosing Party for the release of any information provided to it to the extent PNWH2 complies with this Section 2 and it or its Representative releases such information pursuant to the Washington Public Records Act.

3. Additional Confidentiality Obligations. Except as required by applicable federal, state, or local law or regulation, including the Washington Public Records Act, or otherwise as mutually agreed in writing by the Parties, neither Party shall itself disclose, nor permit any of its Representatives to disclose to any person:

(a) that the Confidential Information has been made available to it or its Representatives, or that it has inspected any portion of the Confidential Information; or

(b) any details of any matters that are being discussed or negotiated in relation to the Confidential Information or the Purpose.

4. Required Disclosure. Except as otherwise required by law, any disclosure by Recipient or its Representatives of any of Disclosing Party's Confidential Information under applicable federal, state, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Before making any such disclosure, Recipient shall provide Disclosing Party with:

(a) prompt written notice of such requirement so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, Recipient remains subject to a Legal Order to disclose any Confidential Information, Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of Recipient's legal counsel, such Legal Order specifically requires Recipient to disclose and, on Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

5. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at Disclosing Party's written request, Recipient and its Representatives shall promptly return to Disclosing Party all copies, whether in written, electronic, or other form or media, of Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to Disclosing Party that such Confidential Information has been destroyed. In addition, Recipient shall also destroy all copies of any Notes created by Recipient or its Representatives and certify in writing to Disclosing Party that such copies have been destroyed. Notwithstanding the foregoing, Recipient may retain copies of Confidential Information that are stored on Recipient's IT backup and disaster recovery systems until the ordinary course deletion thereof. Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

6. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire on the second anniversary of the date on which 100% of the funding in connection with the Purpose has been disbursed by the DOE. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of two years from the date of such expiration or termination, even after the return or destruction of Confidential Information by Recipient, except that Recipient's duties with respect to Confidential Information received from the Disclosing Party that remains in the possession of Recipient or its Representative and is specifically identified as trade secret shall survive the expiration or termination of this Agreement, and shall continue for as long as the information continues to meet the definition of trade secret.

7. No Representations or Warranties. Neither Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to Recipient hereunder. Neither Disclosing Party nor any of its Representatives shall be liable to Recipient or any of its Representatives relating to or resulting from Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

8. No Transfer of Rights, Title, or Interest. Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to Recipient or any of its Representatives.

9. No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically

agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

10. Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

11. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Washington. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Washington in each case located in the city of Seattle and County of King, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice, or other document by mail to such Party's address set out herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

12. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date received by email (with confirmation of transmission and receipt from recipient); or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set out on the signature page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

13. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

14. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

16. Assignment. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party. Any purported assignment in violation of this Section shall be null and

void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

17. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of [\_\_\_], 20\_\_.

PACIFIC NORTHWEST HYDROGEN ASSOCIATION  
a Washington nonprofit corporation

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

Name: Jaelyn Woodson

Title: PNWH2 Operations Director

Address:  
9805 NE 116<sup>th</sup> Street, Ste. 7447  
Kirkland, WA 98034

**COUNTERPARTY**

[\_\_\_\_\_]

By \_\_\_\_\_

Name:

Title:

Address:  
[\_\_\_\_\_]