

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is entered into on _____ by and between _____ (referred to herein as "you" or "your") and THE POWER BARROW COMPANY LLC (PBC)

As a condition of PBC disclosing to you the Confidential Information (as defined herein) you agree as follows:

1. Purpose. You desire to participate in certain business discussions with PBC (the "Business Discussions").
2. Confidential Information. As used herein, "Confidential Information" shall mean any and all material or information relating to PBC, or for which PCB has agreed to maintain the confidentiality of such information including all data provided by or on behalf of PCB through its directors, officers, employees, subcontractors, agents or representatives to you, either orally, electronically or in writing.
3. Exceptions. Notwithstanding anything to the contrary herein, Confidential Information shall not include information (a) that is in the public domain as of the date of this Agreement or becomes in the public domain after the date of this Agreement through no fault of yours, (b) that is independently developed or known by you prior to its disclosure by PCB or (c) that is disclosed to or received by you (regardless of whether or not then in the public domain) by or from a source who at the time of such disclosure or receipt is under no legal obligation to treat such information as confidential.
4. Disclosure. You shall not, without the prior written consent of PCB, disclose Confidential Information to any person or entity, other than your directors, officers, employees, subcontractors, agents and representatives who need to know the Confidential Information for the purpose of the Business Discussions and who are subject to nondisclosure obligations comparable in scope to those contained in the Agreement. You shall also be liable to _____ for any breach of this Agreement by any such person.
5. Use. You will not sell, utilize, implement, publish, distribute or otherwise use the Confidential Information for any purpose whatsoever. or permit the use of the Confidential Information by others for any purpose whatsoever, without the express written permission of PCB, except for the Business Discussions and as permitted under Section 4 above. Without limiting the generality of the foregoing, you shall not use the Confidential Information for purpose of competing with PCB and interfering with PCB customers or potential customers.

6. Forced Disclosure. You may disclose Confidential Information to the extent required by any applicable law, regulation, or court or governmental order; provided that you (a) give PCB reasonable prior written notice of the disclosure, (b) use reasonable efforts to resist disclosing the Confidential Information, (c) cooperate with PCB on request to obtain a protective order or otherwise limit the disclosure of the Confidential Information and (d) prior to such disclosure, provide a letter from your counsel confirming that the Confidential Information is, in fact, required to be disclosed.
7. Copies. Without the prior written consent of PCB, you shall not (a) copy, photograph, record or make other copies or drawings, either in printed or electronic format, of the Confidential Information or (b) photograph or make audio or visual recordings of any PCB facility, equipment or process or the Business Discussion. If PCB consents to any such photograph or audio or visual recording, you promptly shall provide PCB with one copy of any such photograph or audio or visual recording.
8. Ownership of Confidential Information. You acknowledge that the Confidential Information you receive is the sole property of PCB, and that despite its disclosure pursuant to the terms of this Agreement, PCB shall retain its ownership rights in the Confidential Information. Nothing in this Agreement shall be construed as granting any right or license under any trademarks, copyrights, inventions, or patents now or hereafter owned or controlled by PCB.
9. Return of Information. Promptly upon the termination of the Business Discussions or upon the request of PCB, you shall (a) return to PCB any and all original copies and printed or electronic copies of the Confidential Information and (b) certify in writing your compliance with this paragraph.
10. NO WARRANTY. Neither PBC nor any of its representatives or advisers makes any warranty, guarantee or representation hereunder, either express or implied, with respect to any information disclosed hereunder. Neither PBC nor any of its representatives or advisers shall be liable, in any manner, as a result of your use of or reliance on such information.
11. Expenses. Nothing in this Agreement obligates PCB (a) to enter into any business transaction with you, (b) to make any payments to you or (c) to reimburse any of your expenses.
12. No Partnership. This Agreement shall not be construed to create an association, partnership, joint venture, or relation of principal and agent between the parties within the meaning of any federal, state or local law.

13. Enforcement. You acknowledge and agree that disclosure or misappropriation of Confidential Information in violation this Agreement may cause PCB irreparable harm, the effect of which may be difficult to ascertain, and agree therefore that PCB shall be entitled to an injunction and/or specific performance in addition to all other remedies otherwise available to PCB at law and/or equity. If it becomes necessary to enforce the terms of this Agreement, you shall be obligated to pay any and all costs reasonably incurred by PCB in pursuing such enforcement, including attorneys' fees and court costs.
14. Waiver. The failure of any party in any one or more instances to insist upon strict performance of any of the terms or provisions of this Agreement, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms, provisions or options on any future occasion.
15. Severability. Any provision of this Agreement which is rendered unenforceable by a court of competent jurisdiction shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate or otherwise render ineffective any or all of the remaining provisions of this Agreement.
16. Choice of Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
17. Entire Agreement. This Agreement constitutes the entire agreement between the parties in regard to the confidentiality of matters disclosed pursuant to this Agreement, supersedes any prior oral or written representations in regard to said matters and may not be modified, except in writing, signed by all parties hereto.
18. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement may be duly executed and delivered by a party by execution and facsimile delivery of the Agreement to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the
19. other party.

The undersigned have caused this Agreement to be executed and entered into as of the date set forth above.

.

THE POWER BARROW COMPANY LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

.

.