

Non-Disclosure Agreement

This Non-Disclosure Agreement is effective as of [REDACTED], 2012.

between ATLANTA BETTER BUILDINGS CHALLENGE (“ABBC”) and [REDACTED] (“XXX”, each a “party” and collectively, the “parties”):

The following “Data Control Persons” are hereby appointed to receive Confidential Information exchanged under this Agreement:

For ABBC: [Name], [Title]
For XXX: [Name], [Title]

The parties wish to work together on the following “Project”:

Development and implementation of energy and water efficiency and renewable energy opportunities so as to reduce participating building’s/buildings’ total energy and water consumption.

In carrying out the Project, it may be necessary for one party (the “Disclosing Party”) to disclose to the other party (the “Receiving Party”) certain business, marketing and technical information in the possession of the Disclosing Party that is non-public, confidential or proprietary in nature.

In consideration of the mutual covenants herein, the parties agree as follows:

1. DEFINITIONS

- 1.1 “Confidential Information” shall include, but not be limited to, ideas, materials, documents, drawings, models, schedules, and any business, financial, marketing, technical, scientific or other information or materials disclosed by the Disclosing Party to the Receiving Party in connection with the Project, even if disclosed before the effective date of this Agreement, that is disclosed in writing, orally, visually, by demonstration, or in some other form not permanently recorded, and shall be considered Confidential Information if the Receiving Party knows, or should reasonably expect under the circumstances of disclosure that such information is, Confidential Information of the Disclosing Party. The existence of the this Agreement and its terms, the fact that the Confidential Information has been made available, that discussions, negotiations, and/or investigations are taking place concerning any business venture, or any of the terms, conditions, or other facts with respect to any possible relationship or other transaction, including the status thereof, shall also be considered Confidential Information.

2. TERMINATION

- 2.1 This Agreement will expire upon the earlier of three (3) years from the effective date of this Agreement (the “Confidentiality Period”) or when terminated by either party with not less than fourteen (14) days prior written notice to the other party, whichever is earlier. In the event of a termination before the end of the Confidentiality

Period, any duties or obligations relating to the use, disclosure, protection or return of Confidential Information pursuant to this Agreement shall survive any such termination and continue in effect until the end of the Confidentiality Period. Upon the expiration of the obligations under this Agreement or a termination before the end of the Confidentiality Period, the Receiving Party shall have no right to keep, disclose or use (unless otherwise permitted in this Agreement) and shall promptly destroy or return to the Disclosing Party all Confidential Information in the Receiving Party's possession or control in accordance with Section 3.6.

3. RESTRICTIONS ON USE AND DISCLOSURE

- 3.1 The Receiving Party will not use the Confidential Information for any purpose other than in connection with the Project.
- 3.2 The Receiving Party will hold the Confidential Information confidential, and will not disclose, or provide access to, any Confidential Information, directly or indirectly, to any person except as expressly permitted by this Agreement or with the prior written consent of the Disclosing Party. The Receiving Party may disclose the Confidential Information within its organization and to its partners, members, managers, directors, officers, employees, affiliates, agents, advisors, consultants, attorneys, accountants, representatives, potential financing sources and potential co-investors (collectively, while acting in such capacity “Representatives”), but only to those Representatives who have a need to know basis for the evaluation or implementation of the Project and who are informed of the confidential nature of the Confidential Information. The Receiving Party agrees to be fully responsible for any breach of this Agreement by any of its Representatives to whom it has disclosed Confidential Information. The Receiving Party shall protect the Confidential Information with at least the same degree of care with which it protects its own Confidential Information, but in no case less than a reasonable degree of care. The Receiving Party may make only such copies of the Confidential Information as are necessary for the Project and in connection with any other disclosure which is permitted in this Agreement. Any such copies must reproduce proprietary markings included therein.
- 3.3 All Confidential Information, regardless of its form, will be routed through or copied to one of the Receiving Party’s Data Control Persons but a failure to do so will not affect whether the information is Confidential Information. Each Party may change its Data Control Person by written notice to the other.

- 3.4 The Receiving Party's obligations of confidentiality and restrictions on use do not apply to information that is:
- (a) already public knowledge or becomes public knowledge through no fault of the Receiving Party in breach of this Agreement;
 - (b) shown by the written records of the Receiving Party to have been possessed or known to the Receiving Party prior to its receipt from the Disclosing Party, or to have been independently developed by the Receiving Party's personnel acting without access to the Confidential Information;
 - (c) disclosed by the Disclosing Party after the expiration or earlier termination of this Agreement; or
 - (d) was or becomes available on a non-confidential basis to the Receiving Party or its Representatives from a source other than the Disclosing Party, provided that, such source is not prohibited from disclosing such information to the Receiving Party by a contractual, legal or fiduciary obligation.

Confidential Information will not be deemed to be within the foregoing exceptions merely because it (or a portion thereof) is expressed in more general terms publicly or in items in the Receiving Party's possession.

- 3.5 If the Receiving Party or its Representative receives a request or is required (by law or regulation, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or any part of the Confidential Information, the Receiving Party shall notify the Disclosing Party at the earliest reasonable opportunity so that the Disclosing Party can seek an appropriate protective order or other remedy, unless such notice is prohibited under applicable law, rule or regulation. The Receiving Party shall cooperate (at Disclosing Party's expense) with the Disclosing Party to obtain such protective order or other remedy. In the event that such a protective order or other remedy is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information which, as advised by legal counsel in writing, is legally required to be disclosed, and the Receiving Party will exercise reasonable efforts to obtain assurance that the information so revealed will remain confidential. Upon the request of the Disclosing Party, the Receiving Party shall provide such opinion of legal counsel to the Disclosing Party.
- 3.6 All Confidential Information is and will remain the sole property of the Disclosing Party, and all copies and excerpts thereof and all computer generated or stored files or notes or any other notes or personal memoranda which include or make reference to the Confidential Information will, upon the Disclosing Party's request or voluntarily, be promptly returned to the Disclosing Party or destroyed. Notwithstanding the foregoing, the Receiving Party and its Representatives may retain such Confidential Information and material to the extent

relevant to demonstrate its or its Representatives' compliance with any legal, fiduciary, professional or contractual obligation or document retention policy. If requested, the Receiving Party will certify in writing its compliance with the provisions of this Section.

- 3.7 Receiving Party shall indemnify and hold harmless the Disclosing Party, its directors, officers, and employees from any claims, damages, liabilities, losses and expenses, including reasonable attorney fees (collectively "Losses"), arising from, or in connection with, the unauthorized disclosure of Confidential Information by the Receiving Party or its Representatives or any other breach of this Agreement by Receiving Party or its Representatives. Neither party shall be liable to the other party for consequential, incidental, indirect or punitive damages.

4. GENERAL

- 4.1 Any Confidential Information disclosed under this Agreement is provided "as is" and without any representations or warranty, express or implied. The Disclosing Party will have no liability to the Receiving Party with respect to any Confidential Information disclosed under this Agreement. Only those representations or warranties that are stated herein or made in a definitive agreement for the Possible Transaction ("Definitive Agreement") when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect. This Agreement does not constitute or create any obligation on the part of either party to provide any Confidential Information or other information to the other party, but merely defines the rights, duties and obligations of the parties with respect to the Confidential Information to the extent it may be disclosed or made available. Each party also acknowledges and agrees that no contract or agreement providing for the Project shall be deemed to exist between the parties unless and until a Definitive Agreement has been executed and delivered by a party and each of the other parties thereto.
- 4.2 The Receiving Party acknowledges that any unauthorized use or disclosure of the Confidential Information, or any threat thereof, would likely cause the Disclosing Party irreparable harm that could not be fully remedied by monetary damages. So, the Receiving Party agrees that the Disclosing Party will have the right, in addition to any other remedy available to it, to seek injunctive or other equitable relief from a court of competent jurisdiction, without proof of actual damage, as may be necessary to prevent any unauthorized use or disclosure.
- 4.3 The parties agree that should any provision of this Agreement be held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws, such provision will be ineffective to the extent of such illegality, invalidity or unenforceability, without invalidating the

remainder of such provision or the remaining provisions of this Agreement.

- 4.4 This Agreement does not create any partnership, joint venture, agency, or other relationship (beyond that of independent contractors) between the parties.
- 4.5 The Receiving Party shall not assign this Agreement without the prior written consent of the Disclosing Party.
- 4.6 This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

- 4.7 This Agreement expresses the entire understanding between the parties concerning the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written agreements relating thereto. Nothing herein is intended to be construed as a waiver or limitation on either party's common law rights and obligations, including maintaining confidential information or trade secrets during or after the term of this Agreement.
- 4.8 This Agreement will be construed in accordance with and governed by the laws of the State of Georgia, excluding its conflict of laws provisions.

IN WITNESS OF WHICH, the undersigned, duly authorized, accept and agree to the above provisions as of the effective date of this Agreement, and acknowledge receipt of a copy of this Agreement.

ATLANTA BETTER BUILDINGS CHALLENGE	
<i>Signature</i>	
<i>Name</i>	
<i>Title</i>	

<i>Signature</i>	
<i>Name</i>	
<i>Title</i>	