

Secrecy Agreement

(Please return two completed copies)

Between

(please fill in company name and address)

- hereinafter referred to as »Specification Recipient« -

and

Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V.,
Hansastraße 27 c, D-80686 München, Federal Republic of Germany

- hereinafter referred to as »FhG« -

as legal entity for

Fraunhofer Institut für Windenergie und Energiesystemtechnik IWES
Königstor 59
34119 Kassel

- hereinafter referred to as »FhI« -

Whereas:

Specification Recipient and FhG intend to collaborate in the field of:

Specification of an energy management gateway for customers in the distribution grid including including an execution environment and data models for devices and smart grid resources

and

- In order to define the nature and content of the collaboration the parties hereto may wish to exchange technical and/or commercial information of a confidential nature presently in their possession and wish to ensure that the same remain confidential.

Now, therefore, it is hereby agreed as follows:

- 1 For the purposes of this Agreement »Confidential Information« shall mean such technical and/or commercial information, including but not limited to any documents, drawings, sketches or designs, materials or samples disclosed either by Specification Recipient or FhG to the other party, and which at the time of its disclosure is identified as being confidential.
- 2 Specification Recipient and FhG each undertake to treat as confidential all and any Confidential Information and agree not to disclose the same to any third party except with the prior written consent of the disclosing party.
- 3 The restrictions on the use and disclosure of Confidential Information shall not apply to any information which is:
 - (a) proven to have been known to the receiving party prior to the time of its receipt pursuant to this Agreement; or
 - (b) in the public domain at the time of disclosure to the receiving party or thereafter enters the public domain without breach of the terms of this Agreement; or
 - (c) lawfully acquired by the receiving party from an independent source having a bona fide right to disclose the same; or
 - (d) independently developed by an employee of the receiving party who has not had access to any of the Confidential Information of the other party.
- 4 Unless it is necessary for the definition of the collaboration and provided that any copy of Confidential Information is distributed to employees only who have a need to know, the receiving party shall not, without the prior written consent of the disclosing party, copy or reproduce any document provided to the receiving party containing in whole or in part Confidential Information and any party receiving any such document shall return or destroy the same and any copies thereof on the supplying party's request but the latest until termination of this Agreement. This shall not apply to copies of the electronically exchanged Confidential Information made as a matter of routine information technology back-up and to Confidential Information or copies thereof which must be stored by the receiving party according to mandatory law.
- 5 All Confidential Information supplied pursuant to this Agreement shall remain the property of the party disclosing or supplying the same and no rights, including but not limited to the right to apply for industrial property rights, are granted to the other party in the same.

The Parties agree that any Confidential Information is made available "as is" and that no warranties are given or liabilities of any kind are assumed with respect to the quality of such Confidential Information, including, but not limited, to its fitness for the purpose, non-infringement of third party rights, accuracy, completeness or its correctness.

- 6** Any sample or material which may be supplied either by Specification Recipient or FhG to the other party shall be treated as confidential according to section 2 to 5 of this Agreement and shall be used only for purposes of evaluation or testing or any other purpose as specified by the supplying party.

The party receiving such sample or material shall not analyse, chemically or otherwise, the sample or material to determine the identity and/or properties of components used to prepare the sample or material.

To the extent that such sample or material has not been destroyed or used during such evaluation or testing and unless there is no other agreement between Specification Recipient and FhG or any other obligation of the receiving party to keep samples or material, any sample or material shall be returned to the party supplying the same at the request of the supplying party, but the latest until termination of this Agreement.

- 7** This Agreement shall come into force on the date of the last signature and shall thereafter be valid for 6 months. The obligation of confidentiality hereunder shall continue to be valid for a period of 3 years after the end of the term of this Agreement.

- 8** Ancillary agreements, amendments, additions hereto must be made in writing.

- 9** This Agreement is subject to and governed by the laws of the Federal Republic of Germany.

- 10** If any provision of this Agreement is determined to be illegal or in conflict with the applicable law, the validity of the remaining provisions shall not be affected. The ineffective provision shall be replaced by an effective provision which is economically equivalent. The same shall apply in case of a gap.

Signed on behalf of Specification Recipient

Signed on behalf of FhG