

## MUTUAL AND RECIPROCAL CONFIDENTIALITY AND NON-CIRCUMVENT AGREEMENT

This Mutual and Reciprocal Confidentiality and Non-Circumvent Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between \_\_\_\_\_ ("Interested Parties"). and Axess1 Energy LLC ("A-1"), Atlanta, GA.

**1. Purpose.** In connection with the evaluation of a possible business transaction between A-1 and Interested Parties regarding potential sale of A-1 products by Interested Parties or regarding potential sale of Interested Parties' products by A-1, as well as the performance of any agreement reached between the parties relating thereto ("**Purpose**"), each party may disclose to the other certain Confidential Information (as defined below). A party disclosing Confidential Information under this Agreement is referred to herein as a "**Disclosing Party**," and a party receiving Confidential Information under this Agreement is referred to herein as a "**Receiving Party**."

**2. Definition.** "Confidential Information" means this Agreement (its terms and existence), any information, technical data, or know-how, including, but not limited to, that which relates to research, product plans, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing, or finances, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is confirmed promptly in writing as having been disclosed as confidential or proprietary. Confidential Information does not include information, technical data or knowhow which: (i) is in the possession of the receiving Party at the time of disclosure as shown by the receiving Party's files and records immediately prior to the time of disclosure; (ii) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving Party; (iii) is approved for release by the disclosing Party in writing; or (iv) is developed independently by the recipient's personnel having no access to the confidential information which is the subject of this Agreement.

**3. Non-Disclosure of Confidential Information.** the Parties agree not to use the Confidential Information disclosed to it by the other Party for its own use or for any purpose except to carry out discussions concerning, and the undertaking of, any business relationship between the Parties. Neither Party will disclose any Confidential Information of the other Party to third parties except those directors, officers, employees, consultants, and agents who are required to have the information to carry out the discussions of the contemplated business and who have been advised of the confidential nature of the information and instructed of their obligations to comply with the terms set forth in this Agreement. Such disclosure will be subject to the same terms and conditions as set forth in this Agreement. Each Party agrees that it will take all reasonable measures to protect the secrecy of, and avoid disclosure or use of, Confidential Information of the other Party to prevent it from falling into the public domain or the possession of unauthorized persons, which measures shall include the highest degree of care that either Party utilizes to protect its own Confidential Information of a similar nature. Each Party agrees to Information that may come to its attention.



4. **Non-Circumvention.** The Receiving party agrees that the principals whom they represent are only to be contacted through the Disclosing Party herein and shall not circumvent the Disclosing Party to contact in any way whatsoever, whether directly or indirectly, the Disclosing Party's customers, contacts, or suppliers. The Receiving Party agrees that monetary damages would not be a sufficient remedy for a breach of this Clause and that the Disclosing Party shall be entitled to specific performance or any other injunctive relief as a remedy in equity for any such breach of this Clause. Any remedy shall not be deemed to be exclusive or all-inclusive and shall be in addition to any and all other remedies which may be available to the Disclosing Party in law or equity.
5. **Mandatory Disclosure.** In the event that either Party or their respective directors, officers, employees, consultants, or agents are requested or required by legal process to disclose any of the Confidential Information of the other Party, the Party required to make such disclosure shall give prompt notice so that the other Party may seek a protective order or other appropriate relief. In the event that such protective order is not obtained, the Party required to make such disclosure shall disclose only that portion of the Confidential Information that its counsel advises that it is legally required to disclose.
6. **Return of Materials.** Any materials or documents that have been furnished by one Party to the other will be promptly returned, accompanied by copies of such documentation, after the business possibility has been rejected or concluded.
7. **No License Granted.** Nothing in this Agreement is intended to grant any rights to either Party under any patent, copyright, trade secret or other intellectual property right nor shall this Agreement grant either Party any rights in or to the other Party's Confidential Information, except the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the proposed business relationship between the Parties.
8. **Term.** The obligations imposed by this Agreement shall survive any termination of discussions between the Parties and shall continue for a period of three (3) years following the date of disclosure of the particular Confidential Information.
9. **No Warranty.** Neither Party warrants the accuracy of the information provided to the other. The provision of such information does not constitute a warranty, express or implied as to future developments, enhancements or modifications by the disclosing Party of any of its products. The Parties agree that neither shall be responsible to the other, its customers or any third Party for any loss or damage caused or alleged to be caused by reliance on information provided pursuant to this Agreement. Each Party understands that either Party may make revisions to information contained in prior communications without notifications to the other.
10. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed and enforced in accordance with the laws of Atlanta, Georgia and shall be binding upon the Parties hereto worldwide,



as the case may be. The courts within the US Territory of Georgia shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement.

11. **Remedies.** Each Party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the other Party and that, in addition to any other remedies that may be available, in law, in equity, or otherwise, the other Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages. In any suit to enforce this Agreement, the prevailing Party shall have the right to recover its costs and reasonable attorneys' fees.

12. **Miscellaneous.**

- a. Each Party agrees that only a writing signed by both Parties may modify this Agreement.
- b. This Agreement shall be binding upon and for the benefit of the undersigned Parties, their successors and assigns, provided that Confidential Information of either Party may not be assigned without the prior written consent of the disclosing Party. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.
- c. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous discussions, representations, or agreements, whether written or oral. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement will remain in full force and effect.
- d. This Agreement is not intended to be, and will not be construed as a joint venture, partnership, or other financial business organization. Neither Party shall have the right or obligation to make any commitments or incur any obligations on behalf of the other Party. Neither Party shall have any obligation to enter into a business relationship with the other Party.
- e. Neither Party shall publicize either the terms of this Agreement or the facts of its existence without the prior written consent of the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above

          INTERESTED PARTY          

**Axess1, LLC (A-1)**

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

By: Mark Henderson/Joe Diersen

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Managing Owner

Date: \_\_\_\_\_

Date: 4/20/2020

