

# **International RBC Agreement for the Renewable Energy Sector**

**DATED 06 March 2023**

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**CONFIDENTIALITY  
PROTOCOL**

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**THIS CONFIDENTIALITY PROTOCOL** (the "**Confidentiality Protocol**") is entered into on [DATE]

**BETWEEN:**

1. The signatories as listed in Schedule 3 (hereinafter: **signatories**).

**RECITALS:**

- (A) On **6 March 2023** the signatories have entered into the International Responsible Business Conduct Agreement for the Renewable Energy Sector hereinafter the "**Agreement**".
- (B) In the context of the Agreement, the signatories commit to collaborate and undertake actions to collectively address severe (potential) adverse impacts to people, the natural environment and biodiversity in the renewable energy supply chains. All discussions, meetings, reports, studies and other activities undertaken in the context of the Agreement will be hereinafter referred to as the "**Activities**".
- (C) The Signatories acknowledge their obligations under (inter)national laws and regulations, including competition laws and regulations, and will act in accordance therewith.
- (D) The Signatories commit themselves to put in place the necessary safeguards to ensure compliance with the obligations under the applicable (inter)national laws and regulations, including competition laws and regulations. In particular, these safeguards will ensure that all information which is exchanged in the context of the Activities (i) stays confidential and (ii) does not have as their object or effects an unlawful restriction of competition.
- (E) For this reason, the Signatories have included obligations in this Confidentiality Protocol and they wish to accede to this Confidentiality Protocol.
- (F) According to Article 5.33 of the Agreement, the Signatories have appointed an independent Secretariat (hereinafter: the **Secretariat**). This Secretariat will be operated by the Social and Economic Council of the Netherlands (hereinafter: the **SER**) in line with the terms of the agreement to perform services between the private Parties<sup>1</sup> to the Agreement and the SER (hereinafter the **Assignment Agreement**) outlining the tasks of the Secretariat and its confidentiality obligations.
- (G) For this purpose, the Signatories

**AGREED TO THE FOLLOWING:**

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<sup>1</sup> The private Parties consist of the Companies, Industry Associations, Trade Unions, the civil society organisations and the knowledge institutions.

## 1. INTERPRETATION

- 1.1. The definitions and other provisions in Schedule 1 (Interpretation) apply throughout this Confidentiality Protocol.
- 1.2. In this Confidentiality Protocol a reference to a Clause or Schedule is a reference to a clause or schedule of this Confidentiality Protocol. The Schedules form part of this Confidentiality Protocol.
- 1.3. The headings in this Confidentiality Protocol do not affect its interpretation.

## 2. EXCHANGE AND USE OF INFORMATION

- 2.1. Participation in the Agreement inherently requires exchanges of information between the Signatories, for example during meetings. That is not objectionable and it is even in the interest of a successful implementation of the Agreement. In this context, it is important that the Signatories can discuss topics with each other in confidence. Accordingly, the Signatories agree that all information and documents which are or will be exchanged in the context of the Activities (hereinafter: **Information**) will be kept confidential and will not be disclosed to third Signatories, not being the Secretariat. Each Signatory will moreover ensure that all **Related Parties** are also bound to the clauses in this Confidentiality Protocol and will comply with them. The Signatories will also keep confidential the Assignment Agreement and the Confidentiality Protocol itself, as well as all information relating to disputes or arguments in connection with the Agreement, the Confidentiality Protocol or the Assignment Agreement.
- 2.2. The obligations in Clause 2.1. do not apply if and to the extent that:
  - a. The steering committee as defined in Article 5.17 of the Agreement (hereinafter: the **Steering Committee**) agrees in writing to disclose and/or share the information with a third party; or
  - b. The Information is publicly available or has been obtained lawfully by the receiving Party from a third party;
  - c. The sharing of Information is necessary to obtain advice from a professional advisor. Except when needed to seek competition law advice, consent of the Party concerned is required before the sharing of Information to obtain advice from a professional advisor;
  - d. Disclosure is required by any applicable law or by any order of any judicial, administrative or regulatory authority or pursuant to a reasonable request by competent financial regulatory authorities. In such a situation, the Party to which the Information pertains, must be informed as soon as possible; or
  - e. The Information is used in arbitral proceedings between two or more Signatories (other than the Party to which the information pertains) in connection with this Confidentiality Protocol. The consent of the Party to which the Information pertains must be obtained before the Information is used in such arbitral proceedings.
- 2.3. In the event of disclosure of Information under Article 2.2.c, the disclosing Party will ensure that the professional advisor is bound by the obligations in Article 2 and will comply with them.
- 2.4. Each violation of Article 2 by a Signatory, a Related Party or a professional advisor of a Signatory, will be notified by the Signatory to the other Signatories and the Steering Committee at the shortest notice.
- 2.5. The Signatories agree to ensure that the Information is protected with an adequate degree of care and to keep it separate from other documents and information. The Signatories will only use the Information for the purpose it is collected.

## 3. COMMERCIALY SENSITIVE INFORMATION

- 3.1. The Signatories acknowledge that the applicable laws and regulation in the field of competition law set certain boundaries for the exchange of information. This particularly concerns the exchange of commercially sensitive information as defined in Schedule 1 (hereinafter: Commercially Sensitive Information).

- 3.2. Signatories will not exchange or share Commercially Sensitive Information with each other.
- 3.3. Signatories agree that all flows of Commercially Sensitive Information will be limited to those which are necessary for the successful implementation of the Agreement and will only take place through the Secretariat.
- 3.4. The Secretariat will (i) keep confidential all Information; (ii) ensure that Commercially Sensitive Information is protected with an adequate degree of care and is only used for the purpose it is collected; (iii) ensure that Commercially Sensitive Information obtained from Signatories or any parts or details thereof will not be shared between any or all Signatories and (iv) ensure that all flows of information between the Secretariat and any or all Signatories that is necessary for the execution of the Activities consist of aggregated and non-individualised information insofar as and only if such information is derived from and/or based on Commercially Sensitive Information in compliance with the applicable competition laws and regulations. The Signatories agree that the above tasks, in the event that the SER operates the Secretariat, will be further specified in the Assignment Agreement.
- 3.5. For situations in which Commercially Sensitive Information could be made available, the Secretariat may consider the need to appoint a third party and/or a group of independent persons (hereinafter the "Independent Team") that will process the relevant information and manage the communication between any or all Signatories and the Secretariat. Upon request of the Secretariat, the Independent Team will be appointed by the Steering Committee. The Independent Team will be bound by the obligations in the Confidentiality Protocol as if it were a party thereto. For that purpose, the Independent Team involved will sign the Declaration of Confidentiality in Schedule 5 hereto.
- 3.6. The Signatories will ensure that a third party (such as an external individual or organisation) involved in the implementation of the Agreement, will act in compliance with this Confidentiality Protocol as if they were a party to the Confidentiality Protocol. For that purpose, the third party involved will sign the Declaration of Confidentiality in Schedule 5 hereto.
- 3.7. The Signatories and/or the Secretariat will consider on a case-by-case basis the need to engage a competition counsel as defined in Schedule 1 (hereinafter "**Outside Competition Counsel**") in order to ensure that the exchange, processing and disclosure of Commercially Sensitive Information does not breach, amongst others, (i) this Confidentiality Protocol and (ii) the applicable (inter)national competition laws and regulations.
- 3.8. Finally, the Signatories will set up all necessary safeguards to ensure that all meetings and discussions organized in the context of the Agreement will be conducted in a professional way and in compliance with the applicable competition laws and regulations. In particular, the Signatories agree that all meetings and discussion will comply with the minimum standards described in Schedule 2 hereto.

#### **4. GENERAL PROVISIONS**

- 4.1. This Confidentiality Protocol may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Confidentiality Protocol.
- 4.2. This Confidentiality Protocol may only be amended or supplemented in writing and only with the consent of all Signatories.
- 4.3. No Signatory may assign any of its rights or transfer any of the obligations under this Confidentiality Protocol without the prior written consent of the other Signatories.
- 4.4. Unless specifically stated otherwise, the terms of this Confidentiality Protocol may be enforced only by a party to the Confidentiality Protocol or a party's permitted assignors or successors. In the event any Third-Party stipulation (*derdenbeding*) contained in this Confidentiality Protocol is accepted by any third party, such third party will not become a party to this Confidentiality Protocol.
- 4.5. If at any time any provision of this Confidentiality Protocol is or becomes illegal, invalid or unenforceable, the Signatories will still be bound to the other provisions.

In that situation, the Signatories will discuss to replace the invalid or unenforceable provision of this Confidentiality Protocol with a provision which is valid and enforceable and which is – taking into account the contents and the nature of this Confidentiality Protocol – as much as possible aligned with the provision which was deemed invalid or unenforceable.

- 4.6. The Signatories agree that this Confidentiality Protocol cannot be rescinded (*ontbinden*) or annulled (*vernietigen*) and the Signatories waive their right thereto.
- 4.7. This Confidentiality Protocol contains the whole agreement between Signatories relating to the arrangements contemplated by this Confidentiality Protocol and supersedes all previous agreements, whether oral or in writing, between the Signatories relating to these arrangements.
- 4.8. All costs incurred or to be incurred by a signatory in the preparation, execution or implementation of this Confidentiality Protocol are borne by that signatory alone.
- 4.9. All notices, confirmations, waivers and other messages in the context of this Confidentiality Protocol need to be in writing and in Dutch or English and can only be personally delivered or with registered mail, courier, fax or e-mail to those addresses and fax numbers of which one Party notifies the other Part(y)(ies) from time to time.

## **5. APPLICABLE LAW**

- 5.1. This Confidentiality Protocol and any contractual or non-contractual obligations arising out of or in connection to it, is governed by and shall be construed exclusively in accordance with the laws of the Netherlands, with the exception of rules of international private law which may lead to the applicability of the laws from other jurisdictions.

## **6. DISPUTE RESOLUTION**

- 6.1. Any dispute arising out of this Confidentiality Protocol (including any dispute as to the validity of this Confidentiality Protocol, any questions in respect of the authority of the arbitrators and any dispute about whether a particular dispute should be referred to arbitration) will be exclusively settled by arbitration in accordance with the rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*). The arbitral tribunal will be composed of three arbitrators appointed in accordance with those rules. The arbitrators will decide according to the rules of law. The place of the arbitration will be Rotterdam, the Netherlands. The language of the arbitration will be English. Their arbitral award will not be disclosed other than to the Signatories to the arbitral proceedings.
- 6.2. Consolidation of arbitral proceedings with other proceedings as provided for in article 1046 of the Dutch Code of Civil Procedure is excluded.

## **7. LANGUAGE**

- 7.1. The language of this Confidentiality Protocol and the arrangements envisaged by it is English and all notices, demands, requests, statements, certificates or other documents or communications will be in English or Dutch unless otherwise agreed.

## **8. TERM, ACCESSION AND TERMINATION**

- 8.1. The Confidentiality Protocol shall come into force upon signature and continues to be in full force for the duration of the Agreement.
- 8.2. A new Party to the Agreement will be a signatory to this Confidentiality Protocol by signing the Accession Notice in Schedule 4 hereto. The Signatories to this Confidentiality Protocol hereby approve in advance to such accession.
- 8.3. Each Signatory may terminate its commitment to the Agreement subject to the procedure and conditions laid down in article 5.54 of the Agreement. When a Party is no longer a party to the Agreement, the Party's commitment to this Confidentiality Protocol shall be terminated at the same time.
- 8.4. After termination of a Party's commitment to this Confidentiality Protocol, irrespective of the cause thereof, the provisions 2 (Exchange and use of

information), 4.7 (Entire agreement), 5 (Applicable law), 6 (Dispute resolution) and 8.5 (Destruction of Commercially Sensitive Information) remain in full force and effect. The termination of a Party's commitment to this Confidentiality Protocol does not release a Party of its liabilities for a violation of its commitments or other obligations which have arisen before the date of termination.

8.5. After its commitment to this Confidentiality Protocol is terminated, a Party, after being so specifically instructed in writing by another relevant Party or the Secretariat, shall insofar as it is practically feasible destroy all originals and copies containing Commercially Sensitive Information. Any such request should be made within a term of a month following the date of the termination of a Party's commitment to the Confidentiality Protocol.

8.6. If a Party's commitment to the Confidentiality Protocol is terminated, the obligations of the other Signatories remain in full force and effect.

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**THUS AGREED AND SIGNED**

***[individual signature pages follow]***

**Signature page Confidentiality Protocol with the International Responsible Business Conduct Agreement for the Renewable Energy Sector**

**[Name organization]**

[Name signatory]

[title signatory]

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Date:



**SCHEDULE 1 DEFINITIONS**

(1) In this Confidentiality Protocol the below definitions have the following meaning:

<b>Activities</b>	All discussions, meetings, reports, studies and other activities undertaken in the context of the Agreement.
<b>Commercially Sensitive Information</b>	Strategic information which, if exchanged, could influence undertaking's conduct which may therefore potentially result in a restriction of competition, such as information about past, current or future: (i) prices and pricing elements (e.g., current prices, discounts, rebates, calculation methods), pricing strategy, planned price changes (increases or reductions), etc. (ii) other general terms and conditions; (iii) cost structures, profit margins, capacity or output; (iv) plans relating to future business, investment, product, marketing strategies; (v) purchasing or bidding plans or other commercial strategies; (vi) sales volumes or values, sales quotas or market shares; (vii) proprietary technical development and (viii) individual dealings with customers or suppliers including the status or content of yearly negotiations.
<b>Third Party</b>	An individual or legal entity which is not a Party or a Related Party.
<b>Outside Competition Counsel</b>	Counsel jointly engaged and appointed by the Signatories and/or by the Secretariat which is adequately and sufficiently knowledgeable in the field of (inter)national competition law.
<b>Information</b>	All information and documents which are or will be exchanged in the context of the Activities, including but not limited to information about a Party, the Government or the Secretariat in connection with the Agreement; the content of meetings in connection with the Agreement; agenda, minutes and other documents of meetings in

connection with the Agreement; documents on the Sharepoint pages in connection with the Agreement; and disputes or arguments arising in connection with the Agreement, the Confidentiality Protocol or the Assignment Agreement.

### **Related Party**

Any individual, legal entity or partnership which is part of a group of a Party; any subsidiary of a Party; every individual, legal entity or partnership of which the Party is a subsidiary and every individual, legal entity or partnership which is a subsidiary of the first mentioned individual, legal entity or partnership; any member of an organ and every employee of each of the previously mentioned individuals, legal entities or partnerships;

In this definition the terms 'subsidiary' and 'group' mean a subsidiary or a group as defined in Article 2:24a and 2:24b of the Dutch Civil Code; with respect to individuals those Articles apply according to the extent necessary.

- (2) If a term is not defined in this Confidentiality Protocol the meaning of that term in the Agreement is determinative.
- (3) The singular will include the plural and vice versa and references to words importing one gender will include both genders.

## **SCHEDULE 2 MINIMUM STANDARDS FOR MEETINGS AND DISCUSSIONS**

- (1) All Signatories to the Agreement should conduct meetings in a professional manner. This implies, for instance, that before a meeting takes place, the Secretariat or somebody appointed for this purpose circulates a formal agenda, appoints a chairperson and/or a secretary who documents the discussions accurately.
- (2) Particular attention should be paid to the following:
  - There should be a clear and legitimate reason for organizing and participating in a meeting.
  - Signatories should insist on a formal and clear written agenda listing the topics that will be discussed during the meeting (circulated before the meeting takes place).
  - The chairperson and/or secretary should indicate at the beginning of the meeting that discussions have to respect competition law (discussions on Commercially Sensitive Information are prohibited).
  - Accurate and detailed draft minutes of the meeting should be prepared and circulated to each participant to the meeting with the least possible delay (including a list of attendees and absentees).
  - Signatories should avoid informal meetings and/or discussions on topics that might involve the exchange of commercially sensitive information in the fringes of the official meetings.
  - Signatories should collect all documents and information that reflects the purpose of the meeting and the way the discussions were structured in order to ensure compliance with laws and regulations.
  - The Secretariat should receive training regarding competition law issues that could be raised by the activities of the Signatories, and consult with competition counsel as appropriate during the entire course of the Signatories' activities.
  - At the outset of the Signatories' activities, each participating Party should consult with its own legal or competition counsel to gain an understanding of the applicable competition laws, and – if necessary - consult with its counsel to insure compliance with applicable competition laws.

### **SCHEDULE 3 LIST OF SIGNATORIES TO THE CONFIDENTIALITY PROTOCOL WITH THE INTERNATIONAL RESPONSIBLE BUSINESS CONDUCT AGREEMENT FOR THE RENEWABLE ENERGY SECTOR<sup>2</sup>**

Signatories:

1. The Minister for Foreign Trade and Development Cooperation of the Kingdom of the Netherlands, Liesje Schreinemacher, acting in the capacity of governing body
2. The Minister for Climate and Energy Policy of the Kingdom of the Netherlands, Rob Jetten, acting in the capacity of governing body
3. Holland Solar
4. Nederlandse WindEnergie Associatie (NWEA)
5. Esdec B.V.
6. GE Offshore Wind
7. Groendus Groep B.V.
8. GroenLeven B.V.
9. Natec Sunergy B.V.
10. N.V. Eneco
11. Ørsted Wind Power Netherlands B.V.
12. RWE Renewables Benelux B.V.
13. Shell Overseas Investments B.V.
14. Siemens Gamesa Renewable Energy B.V.
15. Solarfields Nederland B.V.
16. Sunbeam B.V.
17. Sunrock Investments B.V.
18. Vattenfall N.V.
19. Vestas Benelux B.V.
20. IUCN National Committee of the Netherlands
21. North Sea Foundation
22. Stichting Terre des Hommes Nederland
23. Federatie Nederlandse Vakverenigingen (FNV)
24. Christelijk Nationaal Vakverbond in Nederland (CNV)
25. Danish Institute for Human Rights
26. ASN Bank
27. ASN Impact Investors
28. Stichting TKI Wind op Zee
29. Vereniging Energie-Nederland
30. Nederlandse Vereniging Duurzame Energie
31. WindEurope asbl/vzw
32. Vereniging Eigen Huis
33. Central Government Real Estate Agency (Rijksvastgoedbedrijf)

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<sup>2</sup> This Confidentiality Protocol includes the organisations that signed the Renewable Energy Agreement during the signing ceremony of 6 March 2023. An up-to-date list of current signatories to the Renewable Energy Agreement can be found on this website: <https://www.imvoconvenanten.nl/en/renewable-energy/participants>

**SCHEDULE 4 ACCESSION NOTICE TO THE CONFIDENTIALITY PROTOCOL**

The signatory declares that it has become a party to the International Responsible Business Conduct Agreement for the Renewable Energy Sector dated 06 March 2023.

Therefore, the signatory wishes to accede to the confidentiality protocol dated 06 March 2023 (the **Confidentiality Protocol**).

The signatory hereby accedes to the Confidentiality Protocol as a Party and accepts and agrees to all rights and obligations in the Confidentiality Protocol that apply to it.

**[NAME SIGNATORY]**

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By:

Title:

Date:

**SCHEDULE 5 DECLARATION OF CONFIDENTIALITY WITH THE INTERNATIONAL RESPONSIBLE BUSINESS CONDUCT AGREEMENT FOR THE RENEWABLE ENERGY SECTOR**

- (A) The signatory of this Declaration of Confidentiality has read and understood the Confidentiality Protocol and agrees that he will act in compliance with the Confidentiality Protocol as if he were a party thereto; and in particular will:
  - i) keep confidential all Information;
  - ii) ensure that Information is protected with an adequate degree of care and kept separately from other information and documents;
  - iii) ensure that Information is only used for the purpose it is collected;
  - iv) ensure that Commercially Sensitive Information obtained from a Party and any parts or details thereof will not be shared between any or all Signatories;
  - v) ensure that all meetings and discussions in which the signatory participates in are conducted in compliance with the minimum standards described in **Schedule 2** of the Confidentiality Protocol.
  
- (B) Nothing in this Declaration prevents the signatory of this Declaration of Confidentiality from making any announcement or disclosure of Information if disclosure is required by any applicable law or by any order of any judicial, administrative or regulatory authority or pursuant to a reasonable request by competent financial regulatory authorities. The signatory will inform the Steering Committee in writing before it discloses any Information.
  
- (C) After being so specifically instructed in writing by the relevant Party or the Secretariat, the signatory to this Declaration shall insofar as it is practically feasible (i) return to the Party or destroy all original and copy documents containing Information; and (ii) destroy all original and copy documents containing analyses, studies, compilations and other materials derived from and/or based on the Information; and (iii) permanently remove all Information from any computer, disk or other device.

**[Name organization]**

[Name signatory]

[Title signatory]

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Date: