

## **CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT**

This Confidentiality and Non-Circumvention Agreement (the "Agreement") is made and entered into this 17 day of August, 2009 (the "Effective Date"), by and between **ProEnergy Services, LLC**, a Missouri limited liability company ("ProEnergy") and **Derwick Associates Corporation**, a Barbados company ("Derwick"), for itself and its affiliate, (collectively ProEnergy and Derwick sometimes herein referred to as the "Parties") on the following terms and conditions:

### **RECITALS**

1. WHEREAS Derwick for itself and/or through one or more of its subsidiaries or affiliates is in the business of buying, selling, brokering and otherwise deploying parts, equipment, engineering, procurement, and construction services (EPC), installation and commissioning services, and operations services, including operations support and customer service agreements (CSA), for power plants and utilities in, among other places, the Bolivarian Republic of Venezuela ("Venezuela"); and
2. WHEREAS ProEnergy, for itself and/or through one or more of its subsidiaries or affiliates, is in the business of buying, selling, brokering and otherwise deploying parts and equipment, engineering, procurement, and construction services (EPC), installation and commissioning services, and operations services, including operations support and customer service agreements (CSA), for power plants and utilities in, among other places, Venezuela; and
3. WHEREAS the Parties desire to be bound to one another by confidentiality and non-circumvention for all of their respective business matters with respect to parts and equipment, engineering, procurement, and construction services (EPC), installation and commissioning services, and operations services, including operations support and customer service agreements (CSA), for power plants owned, operated, or serviced by La Electricidad de Caracas or any of its 100% owned subsidiary companies or utilities in Venezuela ("EDC");

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

### **TERMS AND CONDITIONS**

1. **Confidentiality.** Neither Party to this Agreement shall disclose or otherwise reveal to any other person any Confidential Information provided by one party to the other, without the prior written consent of the other Party. "Confidential Information" shall be designated in writing as such by the disclosing Party and, whether or not designated as confidential, shall include, but not be limited to, any and all details regarding transactions between Derwick and ProEnergy, details regarding transactions between a Party and third parties, and the payment of fees and commissions.

2. **Non-Circumvention.** Neither Party shall circumvent, avoid, bypass or obviate the other Party in any of its business matters involving EDC during the term of this Agreement, either directly or indirectly, to deprive the other Party of its business opportunities, sales, or profit in any transaction with EDC. Specifically, neither Party shall contract with, or otherwise broker any transaction with, any entity or person other than the other Party for sales, leases, or other business dealings with respect to parts or equipment for EDC power plants or utilities in Venezuela during the term of this Agreement unless otherwise mutually agreed in writing on a case-by-case basis.

3. **Persons Bound.** The terms, covenants, and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, as well as their parents, subsidiaries, affiliates, officers, directors, principals, employees, agents, successors, assigns, and other representatives.

4. **Term.** This Agreement shall be effective for a period of two (2) years from the Effective Date and shall be extended for two (2) additional years with respect to any EDC project in which Derwick and/or ProEnergy, or any of their affiliates or subsidiaries, has executed a definitive written contract or purchase order for the sale of parts or equipment.

5. **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties with respect to confidentiality and non-circumvention and may be modified or amended only by a written instrument executed by both of the Parties.

6. **Severability.** Each provision of this Agreement is severable from other provisions. Should any one or more provisions of this Agreement be unenforceable for any reason, the remaining provisions shall remain in full force and effect as if such unenforceable provision(s) did not exist.

7. **Governing Law.** This Agreement shall be governed exclusively by the laws of the State of Texas.

8. **Dispute Resolution.** All claims, demands, disputes, controversies and differences between the Parties arising out of, or in any way relating to, this Agreement shall be heard exclusively in the state or federal district courts in Houston, Texas, and the Parties hereby stipulate to the jurisdiction of such courts, waiving all defenses of lack of personal jurisdiction and inconvenient forum.

9. **Attorneys' Fees.** The prevailing Party in any action or proceeding arising out of this Agreement shall be entitled, in addition to all other appropriate relief, to an award of its attorneys' fees reasonably incurred in such action or proceeding.

10. **Waiver.** Any failure of either party to enforce at any time any of the provisions of this Agreement, or any rights or remedies with respect thereto, or to exercise any election therein provided, will not constitute a waiver of any such provision, right, remedy or election, nor shall it in any way affect the validity of any such provision or of this Agreement. The exercise by either party of any of its rights, remedies or elections under

the terms of this Agreement shall not preclude or prejudice that Party's rights to exercise at any other time the same or any other right, remedy or election it may have under this Agreement. The failure of either Party at any time to require performance by the other of any provisions of this Agreement will in no way affect the full right of the Party to require the performance at any later time.

11. **Notices.** Each notice, request, approval, authorization, consent, report or other communication to be given under this Agreement will be in writing and will be considered to have been given if delivered by certified United States Mail, return receipt requested, express courier service (charges prepaid), or by confirmed facsimile and shall be effective on the date such communication is actually received by the Party to whom it is addressed as follows:

A. If to ProEnergy:

ProEnergy Services, LLC  
2031 Adams Road Sedalia,  
MO 65301  
Fax:(660)829-1160

Attn.: Mr. Jeff Canon

B. If to Derwick:

Derwick Associates Corporation.  
13, 8<sup>th</sup> Avenue  
Belleville  
St. Michael, Barbados  
Fax: +58 212 977 7399

Attn.: Mr. Alejandro Betancourt Lopez

Either Party may change its address or fax number by prior written notice to the other in the manner provided for by this Agreement.

12. **Construction.** This Agreement in all cases shall be construed as a whole, according to its fair meaning and not strictly for or against either of the Parties. The headings of the captions and subsections of this Agreement have been inserted for convenience of reference only and will not restrict or otherwise modify any of the terms or provisions of this Agreement.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. **Other Acts/Cooperation.** Each Party shall execute such other documents or instruments as may be necessary to carry out or effectuate the purpose of this Agreement.

ACCEPTED AND AGREED  
ProEnergy Services LLC

---

ACCEPTED AND AGREED  
Derwick Associates Corp

---