

Hawaii Hydrogen

601 Van Ness Ave, No. E3613
San Francisco, CA 94102
T 510.601.0789
F 510.601.6143



Fax

To: Greg Barbour, Hawaii Hydrogen **From:** Deborah Eudaley

Fax: 808-589-2102 **Pages:** 2

Phone: 808-589-2101 **Date:** 3/25/03

Re: Mutual NDA **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Greg,

Attached is the signed Mutual NDA. Please fax back a copy with your signature to me at (510) 601-6143.

Thanks.

Deborah
(510) 601-0789

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Attached is the signed Mutual NDA. Please fax back a copy with your signature to me at (510) 601-6143.

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Deborah
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Thanks.
DE

Mutual Nondisclosure Agreement

Hawaii Hydrogen Technologies, LLC, a Hawaii corporation, located at 2800 Woodlawn Drive, Honolulu, Hawaii 96822 and 1255 AVE. #3613, SF CA desire to explore certain possible business transactions and in facilitating that, it is understood and agreed that certain business and trade information which the parties deem confidential may be provided or disclosed by one to the other: PST Inc., 601 VAN

In consideration of the receiving party being granted access or continued access to such information, the parties hereby agree as follows:

1. "INFORMATION" shall mean any information, technical data or know-how relating to the business, services or products of the disclosing party or a third party, including without limitation any research, products, services, developments, inventions, processes, techniques, designs, components, parts, documents, drawings, electronic files, data sketches, plans, programs, specifications, software, and/or distribution, engineering, marketing, financial, merchandising, sales, and salary information and/or other materials (hereinafter collectively referred to as "INFORMATION") which is disclosed by such party or on its behalf, before or after the date hereof, to the other party or its employees or agents, directly or indirectly, in writing, orally, electronically, or by drawings or inspection. "INFORMATION" does not include information, technical data or know-how which the receiving party establishes: (i) is already published or available to the public other than by a breach of this Agreement or any confidentiality obligation owed to the disclosing party; (ii) is rightfully received from a third party without, and not in breach of, any obligation of confidentiality; (iii) is independently developed by personnel or agents of the receiving party without access to the INFORMATION of the other; (iv) is known to the receiving party at the time of disclosure without an obligation of confidentiality and the receiving party discloses to the disclosing party at the time of disclosure that the information is known and therefore not covered by the Agreement; or (v) is produced in compliance with applicable law or a court order, provided that the receiving party first gives the disclosing party reasonable notice of such law or order and gives the disclosing party opportunity to oppose and/or attempt to limit such production.

2. The receiving party shall hold in trust and confidence, and not disclose to others, by any means, any and all INFORMATION disclosed under this Agreement. INFORMATION may be used by the receiving party only for the purpose of considering or pursuing a business relationship or business transaction with the disclosing party. The receiving party may disclose INFORMATION received under this Agreement to persons within its organization who have a need to know such information and only if such persons are bound in writing (pursuant, for example to a general employee non-disclosure agreement protecting third party confidential information as well as the employer's confidential information) to protect the confidentiality of such INFORMATION. The receiving party further agrees it shall take the same measures, but no less than reasonable security measures, and use the same care, but no less than a reasonable degree of care, to preserve and protect the secrecy of, and to avoid disclosure or unauthorized use of, the disclosing party's INFORMATION as it uses with its own information of similar importance. With respect to tangible materials constituting INFORMATION the receiving party agrees not to analyze any such materials for composition or structure without the written consent of the disclosing party

3. Title to all property received by the receiving party from the disclosing party, including all INFORMATION, shall remain at all times the sole property of the disclosing party, and this Agreement shall not be construed to grant to receiving party any licenses, patents, trademarks, trade names copyrights or similar rights to such property or INFORMATION (including all intellectual property) disclosed to the receiving party hereunder. Nothing in this Agreement shall limit or restrict the rights of the disclosing party to assert infringement or other intellectual property claims against the receiving party or to impose on either party any obligation to disclose any INFORMATION or to purchase or sell any products.

4. The receiving party shall, upon request of the disclosing party: (i) return to the disclosing party all documents, drawings, equipment and other tangible materials, including all INFORMATION and all manifestations thereof, delivered to the receiving party under this Agreement, and all copies and reproductions thereof; and (ii) certify to the disclosing party that all such INFORMATION has been returned.

5. The receiving party's duties under Section 2 of this Agreement expire with respect to any particular item of INFORMATION five years after the date of disclosure hereunder to the receiving party, or five years after the expiration or termination of the relationship between the parties to this Agreement, whichever is later.

6. The parties further agree to the following terms and conditions:

(a) Neither party shall without the prior written consent of the other party disclose to a third party any aspect of the commercial relationship between the parties including, but not limited to, pricing, items or quantities offered or sold, payment terms, production methods or schedules, delivery locations and means and suppliers. Each party agrees not to issue any press release or make any statement on the Internet, America on Line, CompuServe, Prodigy or any other public electronic network, or to any analysts or reporters concerning the other party or its products or services, without the other party's prior written authorization.

(b) Receiving party shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data or products received from the disclosure or the direct product of such technical data to any proscribed countries.

(c) Any breach by the receiving party of its obligations under this Agreement will result in irreparable injury to the disclosing party for which damages and other legal remedies will be inadequate. In seeking enforcement of any of these obligations, the disclosing party will be entitled (in addition to other remedies) to preliminary and permanent injunctive and other equitable relief.

(d) If any provision of this Agreement is invalid or unenforceable, then such provision shall be construed and limited to the extent necessary, or severed if necessary, in order to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall not be affected thereby.

(e) No delay or omission by either party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

(f) This Agreement shall be binding upon and will inure to the benefit of the parties hereto, and their respective successors and assigns.

(g) This Agreement is governed by and will be construed in accordance with the laws of the State of Hawaii, and the state and federal courts of Hawaii shall be the exclusive forum.

(h) This Agreement supersedes all prior agreements, written or oral, between the disclosing party and receiving party (or their respective predecessors in interest) relating to the subject matter of this Agreement. This Agreement may not be amended except by an agreement in writing signed by both parties that specifically refers to this Agreement.

HAWAII HYDROGEN TECHNOLOGIES, LLC

By: _____

Print Name: _____

Title: _____

Date: _____

By: [Signature] PST INC

Print Name: DEBORAH FEUDLEY

Title: COO + CFO

Date: 3/25/2003

Mutual Non-disclosure Agreement

Hawaii Hydrogen Technologies, LLC, a Hawaii corporation, located at 2800 Woodlawn Drive, Honolulu, Hawaii 06622 and PSI Inc., 601 WAW desire to explore certain possible business transactions and in facilitating that, it is understood and agreed that certain business and trade information which the parties deem confidential may be provided or disclosed by one to the other.

In consideration of the receiving party being granted access or continued access to such information, the parties hereby agree as follows:

1. "INFORMATION" shall mean any information, technical data or know-how relating to the business, services or products of the disclosing party or a third party, including without limitation any research, products, services, developments, inventions, processes, techniques, designs, components, parts, documents, drawings, electronic files, data sketches, plans, programs, specifications, software and/or distribution, engineering, marketing, financial, merchandising, sales and sales information and/or other materials (hereinafter collectively referred to as "INFORMATION") which is disclosed by such party or on its behalf, before or after the date hereof, to the other party or its employees or agents, directly or indirectly, in writing, orally, electronically, or by drawings or inspection. "INFORMATION" does not include information, technical data or know-how which the receiving party establishes: (i) is already published or available to the public other than by a breach of this Agreement or any confidentiality obligation owed to the disclosing party; (ii) is rightfully received from a third party without, and not in breach of, any obligation of confidentiality; (iii) is independently developed by personnel or agents of the receiving party without access to the INFORMATION of the other; (iv) is known to the receiving party at the time of disclosure without an obligation of confidentiality and the receiving party discloses to the disclosing party at the time of disclosure that the information is known and therefore not covered by the Agreement; or (v) is produced in compliance with applicable law or a court order, provided that the receiving party first gives the disclosing party reasonable notice of such law or order and gives the disclosing party opportunity to oppose and/or attempt to limit such production.

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(g) This Agreement is governed by and will be construed in accordance with the laws of the State of Hawaii, and the state and federal courts of Hawaii shall be the exclusive forum.

(h) This Agreement supersedes all prior agreements, written or oral, between the disclosing party and receiving party (or their respective predecessors in interest) relating to the subject matter of this Agreement. This Agreement may not be amended except by an agreement in writing signed by both parties that specifically refers to this Agreement.

HAWAII HYDROGEN TECHNOLOGIES, LLC

By: [Signature]
Print Name: CEO / Gregory Barbour

Title: _____
Date: 3/25/03

By: [Signature] **PSI INC**

Print Name: DEBORAH UDALEY

Title: COO + CFO
Date: 3/25/2003

From: Gregory P Barbour <gb@hawaiihydrogen.com>
Reply-To: <gb@hawaiihydrogen.com>
Organization: Hawaii Hydrogen Technologies, LLC
To: 'Deborah Eudaley' <deudaley@broadviewnet.net>
Cc: <scott@fuelselltechnologies.com>
Date: Saturday, January 11, 2003 4:43 PM
Subject: Hawaii Hydrogen

Deborah: I will call you Monday. Is 10am HST (noon PST) good for you? We too are interested in working out an arrangement with your firm. gb

Aloha.....

Gregory P. Barbour, CEO
Hawaii Hydrogen Technologies, LLC
808.542.4622

-----Original Message-----

From: Deborah Eudaley [mailto:deudaley@broadviewnet.net]
Sent: Saturday, January 11, 2003 2:36 PM
To: gb@hawaiihydrogen.com
Cc: scott@fuelselltechnologies.com
Subject: FW: FST

Gregory,

Please give me a call early next week to discuss how we can move forward together. FST is very interested in a non-exclusive licensing arrangement to include the alanate in our fully integrated solution. We'd like to work something out that makes sense for both companies.

I can be reached at (510) 601-0789. I look forward to hearing from you.

Deborah Eudaley
CFO, FST Inc.
(510) 601-0789

From: Richard Cox <rcox@hawaii.edu>
Date: Sat, 11 Jan 2003 14:08:27 -1000
To: Deborah Eudaley <deudaley@fuelselltechnologies.com>
Cc: "Craig M. Jensen" <jensen@gold.chem.hawaii.edu>, gb@hawaiihydrogen.com
Subject: RE: FST

Dear Deborah:

After meeting with Hawaii Hydrogen Technology (HHT), the other company I spoke of the other day, and considering the various options, it appears to us (UH) that it is probably best for FST to negotiate with HHT to acquire a sublicense to the alanate technology or to enter into a supply agreement

with them. We are very close to finalizing our license with HHT and trying to negotiate a carve-out for FST is problematical at this point. Therefore, we would prefer that you work directly with them to make arrangements suitable for your business purposes. Please contact Mr. Gregory Barbour, CEO of HHT, via email at gb@hawaiihydrogen.com.

Please let me know how your discussions with HHT go and whether there is anything my office can do to help promote an arrangement between FST and HHT.

Sincerely,
Dick Cox

Richard F. Cox, Jr.
Associate Director
Office of Technology Transfer and Economic Development University of Hawaii
2800 Woodlawn Drive, Suite 280 Honolulu, Hawaii 96822
Phone: (808) 539-3817
Fax: (808) 539-3833

-----Original Message-----

From: Deborah Eudaley [mailto:deudaley@fuelselltechnologies.com]
Sent: Thursday, January 09, 2003 10:12 AM
To: rcox@hawaii.edu
Cc: scott@fuelselltechnologies.com
Subject: FST

Dick,

Thank you for your time and responsiveness today. To reiterate, FST is very interested in negotiating a non-exclusive license to the alanate patent, for use in FST's system. We would like to be able to manufacture or subcontract out the production of the alanate solely for use in our systems; we will not be marketing the compound as a separate product. We understand that you are in negotiations with another company for an exclusive license, and hope we can come to an arrangement which makes sense for all parties.

We'd like you to consider two options, with the first being our preferred one:

- The other company grants the University a carve out to issue a non-exclusive license to FST. The compensation to the University will involve a combination of royalties and equity. As compensation to the other company for allowing the carve out, the University could provide some revenue sharing back to them.
- The University facilitates negotiations between the other company and FST for a sublicense. This alternative is less attractive in that it introduces a bit more business risk to FST by making us dependent on another start-up. We'd like to be able to move quickly on our business development opportunities.

Thanks, and we look forward to concluding a mutually beneficial arrangement.

Deborah Eudaley
CFO, FST Inc.
(510) 601-0789