

**WESTERN AREA POWER ADMINISTRATION
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
(Version 2.0 - PROPOSED)**

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 20__ by and between _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ (“Licensee”) and the United States of America, acting by and through the Western Area Power Administration (“Western”), having offices located at _____ . Licensee and Western each may be referred to as a “Party” and collectively, as the “the Parties.”

WHEREAS, Western possesses certain non-public, confidential, business sensitive (but - unclassified) information, or Critical Energy Infrastructure Information (CEII) which Western desires to protect against disclosure;

WHEREAS, in order to facilitate and effect _____, Western may disclose certain non-public, confidential, business-sensitive information, or CEII to _____ or to a _____ Designee; and

WHEREAS, _____

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

A. DEFINITIONS

1. The term “Information,” as used in this Agreement, means information of any kind, in whatever form, including without limitation, business data, specifications, drawings, sketches, models, samples, reports, plans, forecasts, current or historical data, computer programs or documentation, and all other technical and financial data, whether disseminated orally, in writing, electronically or otherwise.
2. The term “Confidential Information,” as used in this Agreement, is Information which is in the possession of Western and requested by Licensee, and is marked pursuant to Section B below.
3. The term “_____ Designee” means any agent, advisor, attorney, consultant, contractor, and/or subcontractor of _____ whom _____ has engaged to

assist it in the _____ effort and whom _____ has designated in writing to Western in accordance with Section C of this Agreement, as an authorized recipient, for purposes of for receiving Confidential Information from Western.

B. INFORMATION MARKING

1. All Information which is disclosed by Western to _____ or a _____ Designee that Western believes should be protected hereunder as Confidential Information shall:

- a. If in writing or other tangible form, be conspicuously labeled on every page as “Confidential” or “Official Use Only” (OUO) or with a similar legend (e.g., Confidential Information) at the time of delivery. This Confidential Information may not be disclosed outside of _____ or a _____ Designee without the prior written approval of Western.
- b. If oral Information is identified as Confidential Information at the time of disclosure, it shall be treated as Confidential Information.
- c. If oral Information is identified as Confidential Information and, if subsequently it is reduced to writing by either Western or _____, whether electronically or otherwise, it shall be treated as Confidential Information and shall be labeled in accordance with this Section B.

2. Western shall have the right at any time to correct, by written notification to _____ and/or to a _____ Designee, any failure by Western to designate Information as Confidential Information. Immediately upon receiving said notification, _____ shall treat such information as Confidential Information, and shall protect the information in accordance with this Agreement.

C. INFORMATION DISCLOSURE AND RESTRICTIONS

1. Both Parties shall identify a Designated Coordinator as a point of contact for this Agreement. The Designated Coordinators are identified in Section D of this Agreement. Western’s Designated Coordinator shall be the appropriate Operations or Transmission Services Manager. Only the _____ Designated Coordinator may designate a _____ Designee in accordance with this Agreement.

2. _____ shall:

- a. Hold and maintain the Confidential Information in the strictest confidence and shall only use such Confidential Information as provided in furtherance of the _____.
- b. Ensure that access to any Confidential Information released by Western, whether directly to _____ or to a _____ Designee, is restricted to only those individuals who have a legitimate need for the Confidential Information and:
 - i. _____, but only after each employee of _____ to whom disclosure is to be made (1) has been notified that the Confidential Information will be received in confidence and shall be kept in confidence by the employee, as set forth in this Agreement; and (2) has signed the attached “Acknowledgement” (Exhibit

- B) indicating that he or she has read this Agreement and understands and agrees that it governs the handling of Confidential Information;
- ii. _____ Designee, including the agents, advisors, attorneys, consultants, contractors, and/or subcontractors, without limitation any _____ Designee, who have a legitimate need for the Confidential Information for purposes of assisting _____ with respect to its performance of _____ services for Western, but only after any individuals to whom disclosure is to be made (1) have been notified that the Confidential Information will be received in confidence and kept in confidence by the individuals as set forth in this Agreement; and (2) have signed the attached “Acknowledgement” (Exhibit B) indicating that he or she has read this Agreement and understands and agrees that it governs the handling of Confidential Information.
- c. Maintain a current list of all individuals with whom any Confidential Information has or will be shared under this Agreement, including individuals employed by _____ and any _____ Designee, and shall make that list available to Western upon request.
- d. Ensure that Confidential Information provided hereunder is used only for purposes directly related to _____’s assistance to Western in facilitating and effecting the _____.
- e. Have processes in place to ensure that Confidential Information is safeguarded and kept in confidence and in a secure place by its employees and _____ Designee.
- f. Immediately notify Western if it believes or has reason to believe that any Confidential Information may have been improperly released. _____ shall cooperate with Western in the event there is or there is a reason to believe that Confidential Information has been improperly released.
3. The obligations imposed on _____ shall not apply to certain information – whether or not designated as Confidential Information, which is:
- a. Received in the ordinary course of business from a third party without restriction and without breach of this Agreement;
 - b. Independently developed by _____ without the use of Confidential Information;
 - c. Disclosed without restriction to a third party by Western;
 - d. Approved for release in writing by Western’s Designated Coordinator;
 - e. Required to be disclosed by any law, rule, regulation, or valid order of a court of competent jurisdiction, *provided* that the disclosing Party (1) notifies the other Party immediately upon becoming aware of any court or other proceeding in which the release of Confidential Information is at issue or is reasonably anticipated to be at issue, and; (2) undertakes all reasonable measures, including without limitation, seeking a protective order to prevent the release of the Confidential Information.
 - f. Legitimately available to the general public at the time of disclosure other than as a result of any act or omission of _____ or _____ Designee.

4. _____ and _____ Designee(s) must return Confidential Information to Western or destroy Confidential Information within fifteen days of a written request by Western to do so. Within the time period, _____ and _____ Designee, if requested to do so, shall also submit to Western an affidavit stating that, to the best of its knowledge, all Confidential Information has been returned or destroyed.

This requirement does not require _____ to destroy or alter any computer archival and backup tapes or archival and backup files, provided that the tapes and files shall be kept confidential in accordance with the terms of this Agreement.

D. DESIGNATED COORDINATORS

The Designated Coordinators for the Parties are:

Western:

[Operations /Transmission Services] Manager

For _____: _____

E. INFORMATION OWNERSHIP RIGHTS

Nothing in this Agreement shall be construed as granting or conferring any rights in any Confidential Information disclosed by Western to _____ or a _____ Designee. No disclosure of any Confidential Information hereunder shall be construed to be a public disclosure of Confidential Information by Western for any purpose whatsoever.

F. UNAUTHORIZED DISCLOSURE

In the event that _____ or a _____ Designee discloses, disseminates, releases or otherwise makes available any Confidential Information received from Western, except as provided by this Agreement, the disclosure, dissemination, or release will be deemed a material breach of this Agreement requiring _____ to immediately return any and all Confidential Information previously provided by Western to _____ or a _____ Designee. The provisions of this paragraph apply in addition to any other legal rights or remedies that the Parties may have under Federal law.

G. RELIABILITY AND ACCURACY OF CONFIDENTIAL INFORMATION

While any Confidential Information provided by Western hereunder is believed to be reliable, no representation is made by Western, or its employees or agents, as to the accuracy or completeness of the Confidential Information. By receipt of Confidential Information, _____ agrees that the United States Government shall have no responsibility for any misstatement or omission of fact or for any opinion expressed, and _____ hereby releases Western, its employees, agents, and the United States from any liability in connection with loss or damage suffered by _____ or its customers or clients resulting from _____'s use of or reliance upon the Confidential Information provided.

H. ENTIRE AGREEMENT; MODIFICATION

This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written representation or understanding with regard to the subject matter hereof. This Agreement may not be modified except by a written agreement signed by both Parties.

I. EFFECTIVE DATE; DURATION; TERMINATION

1. This Agreement shall be effective from _____, 20__ through _____, 20__ [Insert Term of no longer than 50 years], unless amended, in writing, by mutual agreement of the parties. Notwithstanding the above, the provisions concerning non-disclosure of Confidential Information received under this Agreement shall survive the expiration of the term of this Agreement.

2. Upon expiration of this Agreement, or at any time prior thereto upon the written or oral request of Western, _____ shall take all necessary steps to ensure that any and all individuals in possession of Confidential Information pursuant to Section C of this Agreement immediately cease to use Confidential Information received from Western. In such event, _____ shall either (a) appropriately destroy all of the Confidential Information, including copies thereof, and furnish Western with a written certification of destruction or (b) at Western's election, return all of the Confidential Information to Western.

J. GOVERNING LAW

This Agreement shall be governed by Federal law.

K. ELECTRONIC DATA BACKUPS

Notwithstanding other terms of Confidential Information return or destruction in the Agreement, _____ is not obligated to remove the Confidential Information from its backed up electronic records outside of its normally scheduled retention policies, provided that _____ does not make use of the Confidential Information. The term of this Agreement will apply to the backed up Confidential Information until it is deleted in the normal course of business.

L. EXHIBITS MADE A PART OF THIS AGREEMENT:

Exhibits A and B attached hereto, are made a part of this Agreement and shall be in full force and effect in accordance with their respective terms and conditions until superseded by a subsequent Exhibit.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties as of the date set forth in Section I above.

[Licensee]

By: _____

(SEAL)

Printed Name: _____

Attest: _____

Title: _____

By: _____

Address: _____

Date: _____

Western Area Power Administration

By: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____

EXHIBIT B

ACKNOWLEDGEMENT

I, _____, hereby affirm that I have read the Confidentiality and Non-Disclosure Agreement dated _____, 20__ between _____ and the United States of America, acting by and through the Western Area Power Administration, regarding Confidential Information and understand that the Non-Disclosure Agreement governs and restricts my use and disclosure of such information. I agree to be bound by the terms and conditions of the Confidentiality and Non-Disclosure Agreement.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____