

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

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 20__ by and between ____ *<< Insert requesting entity’s name. >>* ____, a *<< Insert entity type. >>* organized and existing under the laws of the State/Commonwealth of *<< Insert State. >>* (“Licensee”) and the United States of America, acting by and through the Western Area Power Administration (“Western”), having offices located at *<< Insert address. >>* . 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 *<< Insert project name. >>* ____, Western may disclose certain non-public, confidential, business-sensitive information, or CEII to Licensee or to a Licensee Designee; and

WHEREAS, *<< Insert additional explanatory recitals as needed. >>* _____

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 “Licensee Designee” means any agent, advisor, attorney, consultant, contractor, and/or subcontractor of Licensee whom Licensee has engaged to assist it in the *<< Insert project name. >>* effort and whom Licensee 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 Licensee or a Licensee 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 Licensee or a Licensee 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 Licensee, 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 Licensee and/or to a Licensee Designee, any failure by Western to designate Information as Confidential Information. Immediately upon receiving said notification, Licensee 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 Licensee Designated Coordinator may designate a Licensee Designee in accordance with this Agreement.

2. Licensee 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 << *Insert project name.* >>.
 - b. Ensure that access to any Confidential Information released by Western, whether directly to Licensee or to a Licensee Designee, is restricted to only those individuals who have a legitimate need for the Confidential Information and:
 - i. Licensee, but only after each employee of Licensee 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. Licensee Designee, including the agents, advisors, attorneys, consultants, contractors, and/or subcontractors, without limitation any Licensee Designee, who have a legitimate need for the Confidential Information for purposes of assisting Licensee with respect to its performance of << Insert project name. >> 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 Licensee and any Licensee 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 Licensee's assistance to Western in facilitating and effecting the << Insert project name. >>.
 - 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 Licensee Designee.
 - f. Immediately notify Western if it believes or has reason to believe that any Confidential Information may have been improperly released. Licensee 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 Licensee 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 Licensee 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 Licensee or Licensee Designee.
4. Licensee and Licensee 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, Licensee and Licensee 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 Licensee 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: << Insert name. >>
 << Insert Operations or Transmission Services >> Manager

Licensee: << Insert name. >>
 << Insert title. >>

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 Licensee or a Licensee 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 Licensee or a Licensee 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 Licensee to immediately return any and all Confidential Information previously provided by Western to Licensee or a Licensee 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, Licensee agrees that the United States Government shall have no responsibility for any misstatement or omission of fact or for any opinion expressed, and Licensee hereby releases Western, its employees, agents, and the United States from any liability in connection with loss or damage suffered by Licensee or its customers or clients resulting from Licensee'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, Licensee 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, Licensee 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, Licensee is not obligated to remove the Confidential Information from its backed up electronic records outside of its normally scheduled retention policies, provided that Licensee 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.

<< *INSERT REQUESTING ENTITY'S NAME.* >>

By: _____

(SEAL)

Printed Name: _____

Attest:

Title: _____

By: _____

Address: _____

Title: _____

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 << *Insert requesting entity.* >> 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: _____