

**WESTERN AREA POWER ADMINISTRATION
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
(Version 12/01/2009)**

THIS AGREEMENT is entered into this ____ day of _____, 20__ between _____, having offices located at _____, and the United States of America, acting by and through the Western Area Power Administration (“Western”), having offices located at _____ (each a “Party” and collectively, “the Parties”).

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

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

WHEREAS, _____

NOW THEREFORE, 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 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 Information or with a similar legend (e.g., Confidential) at the time of delivery. This Confidential Information may not be disclosed outside of _____ 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 designate a Designated Coordinator as a point of contact for this Agreement. The Designated Coordinator is identified in Section D of this Agreement. _____ Designee in accordance with this Agreement shall be made only by the _____ Designated Coordinator.

2. _____ shall:

- a. Hold and maintain the Confidential Information in the strictest confidence and shall only use such Confidential Information as provided for Western's benefit in furtherance of the _____.
- b. Ensure that access to any Confidential Information released by Western, whether directly to _____ or to a _____ Designee, is restricted only those individual who are required to have access to such information and to:
 - i. _____, but only after each employee of _____ to whom such disclosure is to be made (1) has been notified that such Confidential Information will be received in confidence and shall be kept in confidence by such 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 such agents, advisors, attorneys, consultants, contractors, and/or subcontractors, including without limitation any _____ Designee, who have a need to know the information for purposes of assisting _____ with respect to its _____ services to Western, but only after any such individuals to whom such disclosure is to be made (1) has been notified that such Confidential Information will be received in confidence and shall be kept in confidence by such individuals 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.

- 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 released.
2. _____ shall cooperate with Western in the event there is or there is a reason to believe that Confidential Information has been released.
 - a. In the event _____ believes or has reason to believe that any Confidential Information may have been released, _____ shall immediately notify Western. _____ shall cooperate with Western to determine if Confidential Information has been improperly released and if Confidential Information has been improperly released, Western and _____ shall develop corrective actions and _____ shall mitigate the release.
 - b. In the event Western believes or has reason to believe that any Confidential Information may have been released by _____, Western shall notify _____. _____ shall cooperate with Western to determine if Confidential Information has been improperly released and if Confidential Information has been improperly released, Western and _____ shall develop corrective actions and _____ shall mitigate the release.
3. The obligations imposed on _____ shall not apply to 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, including, rule, regulation, or valid order of a court of competent jurisdiction, *provided* that (1) the disclosing Party 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 reasonably is anticipated to be at issue and; (2) undertakes all reasonable measures, including without limitation the seeking of a protective order, to prevent the release of the Confidential Information.
4. _____ must return Confidential Information to Western or destroy Confidential Information within fifteen days of a written request by Western to do so. Within such time period, each Licensee, if requested to do so, shall also submit to Western an affidavit stating that, to the best of his or her knowledge, all Confidential Information has been returned or destroyed.

D. DESIGNATED COORDINATORS

The Designated Coordinators for the parties are:

For Western: _____

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. All Confidential Information shall remain the property of Western and shall be returned by _____ or _____ Designee to Western upon request. No disclosure of any Confidential Information hereunder shall be construed to be a public disclosure of such 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, such 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 _____. 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 such 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 Government 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 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 writing signed by both parties.

I. EFFECTIVE DATE; DURATION; TERMINATION

1. This Agreement shall be effective from _____, 20__ through _____, 20__, 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 the 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 such information, including copies thereof, and furnish Western with a written certification of destruction or (b) at Western's election, upon its request, return all such information to Western.

J. GOVERNING LAW

This Agreement shall be governed by Federal law.

IN WITNESS WHEREOF, agreeing to be bound, each of the parties here to have executed this Agreement as of the date set forth in Section I above.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Western Area Power Administration

Signature: _____

Printed Name: _____

Title: _____

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 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 Non-Disclosure Agreement.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____