**CONFIDENTIALITY AGREEMENT**

Tri-State Contract Number: \_\_\_-TSGT-\_\_\_\_\_ *(Completed by Tri-State)*

 This CONFIDENTIALITY AGREEMENT (“Agreement”) by and between Click here to enter Company Name (“Customer”), a Click here to enter State and Entity Type, and TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. (“Tri-State”), a Colorado cooperative corporation, shall become effective on the date this Agreement is last executed by the Parties. Customer and Tri-State each may be referred to as a Party, or collectively as the Parties. The general term “Recipient” refers to whichever Party receives information from the other Party. The general term “Provider” refers to whichever Party discloses information to the other Party.

WHEREAS, Customer seeks to obtain certain Confidential Information from Tri-State to develop interconnection and/or transmission projects (“Transaction”);

WHEREAS, Customer may disclose certain Confidential Information to Tri-State in the course of the Transaction; and

WHEREAS, each Party is willing to provide Confidential Information to the other party under suitable contractual limits concerning the disclosure and use of Confidential Information.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the Parties agree as follows:

**1.** **Confidential Information.** “Confidential Information” means any and all technical information, and copies thereof, disclosed in oral, visual, written, electronic, or other form, provided by Provider to Recipient for the Transaction including, but not limited to, WECC data and base cases for transmission system analysis, contingency files, Critical Energy Infrastructure Information, modeling time horizons, power supply assumptions, power system operating characteristics, power flow information, network upgrade plans, system operating criteria, project development planning information and design data, and other non­public or proprietary information about Provider. Confidential Information also means any tangible or intangible documents, reports, data, policies, software, or any other information developed by Recipient pursuant to the Transaction or derived from Confidential Information disclosed by Provider to Recipient.

**2.** **Exclusions.** “Confidential Information” does not include information which (i) was in Recipient’s possession prior to any disclosure from Provider to Recipient, as evidenced by tangible records; (ii) was or becomes generally available to the public other than as a result of a disclosure by Recipient in breach of this Agreement; or (iii) becomes available to Recipient from a source not known by it to be bound by an obligation of confidentiality to Provider with respect to such information.

**3. Obligation of Confidentiality.** Recipient shall not disclose to any third party not permitted hereunder, any Confidential Information supplied or made available by Provider, its attorneys, employees, representatives, agents, Affiliates, consultants or clients. Recipient agrees that it will not use any Confidential Information for any purpose other than in connection with the Transaction. Recipient agrees that it will hold the Confidential Information in confidence and, unless Provider otherwise consents in writing, it will not disclose Confidential Information other than to its employees, officers, attorneys and (x), in the case of Customer, its Affiliates, consultants or clients who have executed a Confidentiality Statement (in the form of Exhibit 1 attached hereto) and (y) in the case of Tri-State, its consultants, who perform services related to the Transaction (collectively “Authorized Persons”); provided that such Authorized Persons have been informed of the confidential nature of the Confidential Information and the obligations of confidentiality provided in this Agreement. Customer may disclose Confidential Information to an Affiliate, consultant or client only upon demonstrating to Tri-State that (a) the Affiliate, consultant or client has satisfied the requirement of Section 4, if applicable; and (b) the Affiliate, consultant or client has signed the Confidentiality Statement, and only after Customer receives a written acknowledgement of such from Tri-State. Recipient shall be responsible to Provider for any breach of this Agreement by its Authorized Persons. In the event that Recipient or its Authorized Persons are requested or required (by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or other formal process) to disclose any Confidential Information, Recipient or its Authorized Persons may disclose Confidential Information to the extent that Recipient or its Authorized Persons concludes in good faith that such disclosure is required as a matter of law, subject to Section 5 below. Affiliateshall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

**4. WECC Data.** If Customer requests Confidential Information from Tri-State that Tri-State deems, in its sole discretion, to be information that requires Customer to be a member of the Western Electricity Coordinating Council (“WECC”) or have signed a non-member nondisclosure agreement with WECC to receive such information (“WECC Data”), Customer shall provide proof of such membership or a signed non-member nondisclosure agreement to Tri-State prior to receipt of the WECC Data. Customer shall only disclose WECC Data to an Affiliate, consultant or client, if the Affiliate, consultant or client has provided proof of such WECC membership or signed non-member nondisclosure agreement to Tri-State, signed a Confidentiality Statement with “Yes” marked, and received a written acknowledgement of such from Tri-State.

**5.** **Requested Disclosure.** In the event Recipient or its Authorized Persons is required by applicable law or judicial or regulatory authority to disclose any Confidential Information received from Provider, Recipient shall first promptly notify Provider of the existence, terms, and circumstances surrounding such requirement, so that Provider may seek a protective order or other appropriate remedy, or waive compliance with the terms of this Agreement regarding such Confidential Information. If disclosure of the Confidential Information is required by law, judicial, or regulatory authority, or if Provider waives compliance with the terms hereof, Recipient or its Authorized Persons will furnish only the portion of the Confidential Information that is required by such authority.

**6.** **Term; Survival.** This Agreement shall terminate five (5) years from the date this Agreement is last executed by the Parties below. Recipient’s obligations to protect Confidential Information disclosed hereunder and all of Provider’s rights concerning the same shall continue and survive beyond expiration or termination until such time that, by effect of any provision of Section 2 above, said information ceases to be Confidential Information and such obligations no longer apply thereto.

**7.**  **Disposition of Confidential Information.** Upon written request of Provider at any time and without terminating this Agreement or upon expiration or termination of this Agreement, Recipient shall (i) return all Confidential Information to Provider, or (ii) at Provider’s sole discretion, destroy all Confidential Information and notify Provider that such has been done; provided, however, that Recipient may retain electronic copies of Confidential Information (including Confidential Information generated through data backup or archiving systems) solely in accordance with policies and procedures implemented in order to comply with legal and regulatory recordkeeping requirements. Recipient shall keep such retained copies confidential as provided herein and shall use them solely for the purpose of recordkeeping compliance.

**8.** **Enforcement.** Recipient expressly acknowledges and agrees that due to the unique nature of Provider’s Confidential Information, monetary damages would be inadequate to compensate Provider for any breach of this Agreement by Recipient or its Authorized Persons. Recipient further acknowledges and agrees that any such breach or threatened breach will cause immediate, substantial, and irreparable injury to Provider and that, in addition to and not to the exclusion of any other rights and remedies that may be available in law, in equity, or otherwise, Provider shall be entitled to obtain injunctive relief against threatened or continuing breach of this Agreement, and enforce Recipient’s obligations under this Agreement without the necessity of proving actual damages and without the requirement of a bond. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines by final, nonappealable order, that this Agreement has been breached, Recipient shall reimburse Provider for Provider’s costs and reasonable attorney’s fees to the extent that Provider prevails in any such proceeding.

**9.** **Rights in Intellectual Property.** Recipient agrees that that any Confidential Information is and shall remain the property of Provider, which shall be the sole owner thereof, and that no right, title, license or interest in and to such Confidential Information is hereby granted to Recipient, its Authorized Persons or any others.

**10.** **Miscellaneous.**

 **10.1.**  Notices. Any notices under this Agreement must be given in writing to the person(s) listed below or such other person as a Party may provide from time to time by written notice, and must be sent via a nationally recognized overnight courier service with signature required upon receipt, or certified mail with return receipt requested.

To Tri-State: Tri-State Generation and Transmission Association, Inc.

Attn: Joel K. Bladow

Senior Vice President, Transmission

1100 West 116th Avenue

Westminster, CO 80234

With a copy to: Senior Vice President and General Counsel

To Customer: Click here to enter Entity Name

Click here to enter Contact Name

Click here to enter Address

Click here to enter Address

 Click here to enter City, ST & Zip

**10.2.** Governing Law.This Agreement shall be governed by the laws of the State of Colorado without regard to any choice of law provisions.

**10.3.** Severability.If any provision of this Agreement is finally determined to be invalid, void or unenforceable by any court or other governmental authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

**10.4.** Indemnity. Customer shall at all times indemnify, defend, and save Tri-State harmless from, any and all damages, losses, claims, including claims and actions related to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs attorney fees, and all other obligations by or to third parties, arising out of or resulting from Tri-State’s performance of its obligations under this Agreement on behalf of Customer, except in cases of gross negligence or intentional wrongdoing by Tri-State.

**10.5.** Consequential Damages. In no event shall either Party be liable under any provision of this Agreement or any reliance on the Confidential Information by either Party for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder. Nor shall either Party be liable for any delay in delivery or for the non-performance or delay in performance of its obligations under this Agreement.

**10.6.** Disclaimer of Warranty. In preparing the Confidential Information, each Party and any consultants employed by it shall have to rely on information provided by others and may not have control over the accuracy of such information. Accordingly, no Party nor any consultant employed by it makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy of Confidential Information. Recipient acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder. The Confidential Information is subject to change at any time without notice, and Provider shall have no liability to Recipient as a result of any change in, or Recipient’s reliance upon, any information disclosed.

**10.7.** Binding Effect. This Agreement is binding upon and inures to the benefit of the parties and their permitted successors and assigns.

**10.8.** Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement.

**10.9.** Third Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character in favor of any persons, corporations, associations or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest, and, where permitted, their assigns.

**10.10.** No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party.

 **10.11.** Amendments and Modifications. The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by both Parties.

**10.12.** Assignment. This Agreement may be assigned by either Party only with the written consent of the other. Any attempted assignment that violates this article is void and ineffective.

 **10.13**. No Implied Waiver. The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement, will not be considered a waiver of any obligation, right, or duty of or imposed upon such Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year last written below.

|  |  |
| --- | --- |
| **Tri-State Generation and Transmission Association, Inc.**  | Click here to enter Legal Name |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ***(****Signature)* | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ***(****Signature)* |
| Name: Joel K. Bladow | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: Senior Vice President, Transmission | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit 1**

**Form of Confidentiality Statement**

**XX-TSGT-** **XXXX**

Pursuant to the Confidentiality Agreement between *[Customer’s Name]* (“Customer”) and Tri-State Generation and Transmission Association, Inc. (“Tri-State”) dated *[Date of Agreement]* (“Agreement”), *[Affiliate, Consultant or Client’s Name]*, a *[State and Entity Type]*, as an Affiliate, consultant or client of Customer in relation to the Transaction specified in the Agreement, hereby acknowledges and agrees that all the terms of the Agreement are incorporated by reference herein, and that the Affiliate, consultant or client is subject to all obligations and rights under the Agreement with respect to Confidential Information as if the Affiliate, consultant or client were the Customer. The Affiliate, consultant or client affirms that it has read the Agreement, and agrees to abide by its terms.

\_\_\_\_ YES; \_\_\_\_ NO - If marked yes, the Affiliate, consultant or client further represents and warrants that it is a member of Western Electricity Coordinating Council (“WECC”) or it has signed a non-member nondisclosure agreement with WECC. The Affiliate, consultant or client must mark yes to receive WECC Data.

Affiliate’s, Consultant’s or

Client’s Notice Information: *[Affiliate, Consultant or Client’s Name]*

 *[Attn:]*

 *[Address]*

 *[Address]*

 *[City, ST, Zip]*

***[Affiliate, Consultant or Client’s Name]***

By: \_[SAMPLE ONLY – NOT FOR EXECUTION]\_ *(signature)*

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Acknowledgment by Tri-State:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*(signature)*

Name: Joel K. Bladow

Title: Senior Vice President, Transmission

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_