

**WESTERN AREA POWER ADMINISTRATION
NON-DISCLOSURE AGREEMENT
(Version 3.0)**

THIS 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 (“WAPA”), having offices located at *<< Insert address. >>*__. Licensee and WAPA each may be referred to as a “Party” and collectively, as the “the Parties.”

WHEREAS, WAPA possesses certain non-public, Business Sensitive (but unclassified) information or Official Use Only information (which may also include Critical Energy Infrastructure Information (CEII)) which WAPA desires to protect against disclosure;

WHEREAS, in order to facilitate the needs of the Licensee to obtain certain information, WAPA may disclose certain non-public, Business Sensitive or Official Use Only information (which may also include 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 “Business Sensitive or Official Use Only (OUO)”, as used in this Agreement, is Information which is in the possession of WAPA and requested by Licensee and is marked pursuant to Section B below. It also includes information designated under “confidentiality” provisions of WAPA’s Standard Large Generator Interconnection Agreement, Article 22, WAPA’s Small Generator Interconnection Agreement, Article 9, or WAPA’s General Requirements for Interconnection, Section IV.E.

3. The term “Licensee Designee” means any agent, advisor, attorney, consultant, contractor, or subcontractor of Licensee whom Licensee has engaged to assist it and whom Licensee has designated in writing to WAPA in accordance with Section C of this Agreement, as an authorized recipient, for purposes of for receiving Business Sensitive or OOU Information from WAPA.

4. The term “Foreign National” means any person who is not a United States citizen, including lawful permanent residents.

B. INFORMATION MARKING

1. All Information which is disclosed by WAPA to Licensee or a Licensee Designee that WAPA believes should be protected hereunder as Business Sensitive or OOU Information shall:

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

2. WAPA shall have the right at any time to correct, by written notification to Licensee and/or to a Licensee Designee, any failure by WAPA to designate Information as Business Sensitive or OOU Information. Immediately upon receiving said notification, Licensee shall treat such information as Business Sensitive or OOU 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. WAPA’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 Business Sensitive or OOU Information in the strictest confidence and shall only use such Business Sensitive or OOU Information as authorized by WAPA in the attached Exhibit A.
- b. Ensure that access to any Business Sensitive or OOU Information released by WAPA, whether directly to Licensee or to a Licensee Designee, is restricted to only those

individuals who have a legitimate need for the Business Sensitive or OOU Information and:

- i. Licensee, but only after each employee of Licensee to whom disclosure is to be made (1) has been notified that the Business Sensitive or OOU 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 Business Sensitive or OOU Information;
 - ii. Licensee Designee, including the agents, advisors, attorneys, consultants, contractors, and/or subcontractors, without limitation, who have a legitimate need for the Business Sensitive or OOU Information for purposes of assisting Licensee with respect to the Licensee’s identified need for such information as set forth in the attached Exhibit A, but only after any individuals to whom disclosure is to be made (1) have been notified that the Business Sensitive or OOU 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 Business Sensitive or OOU Information.
- c. Maintain a current list of all individuals with whom any Business Sensitive or OOU 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 WAPA upon request.
 - d. Ensure that no information is viewed or accessed by individuals or organizations that have been prohibited or restricted by the United States or Department of Energy (DOE) from viewing or accessing Business Sensitive or OOU Information. DOE maintains a sensitive country list on its website.
 - e. Ensure that Business Sensitive or OOU Information provided hereunder is used only for purposes authorized by WAPA directly related to Licensee’s identified need for such information as set forth in the attached Exhibit A.
 - f. Have processes in place to ensure that Business Sensitive or OOU Information is safeguarded and kept in confidence and in a secure place by its employees and Licensee Designee.
 - g. Immediately notify WAPA if it believes or has reason to believe that any Business Sensitive or OOU Information may have been improperly released. Licensee shall cooperate with WAPA in the event there is or there is a reason to believe that Business Sensitive or OOU Information has been improperly released.
 - h. Notify WAPA and obtain approval from WAPA prior to release of Business Sensitive or OOU Information to any Foreign National.
3. The obligations imposed on Licensee shall not apply to certain information, whether or not designated as Business Sensitive or OOU 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 Business Sensitive or OOU Information;

- c. Disclosed without restriction to a third party by WAPA;
- d. Approved for release in writing by WAPA'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 Business Sensitive or OUO 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 Business Sensitive or OUO 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 Business Sensitive or OUO Information to WAPA or destroy Business Sensitive or OUO Information within fifteen days of a written request by WAPA to do so. Within the time period, Licensee and Licensee Designee, if requested to do so, shall also submit to WAPA an affidavit stating that, to the best of its knowledge, all Business Sensitive or OUO 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:

WAPA: _____
<< 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 Business Sensitive or OUO Information disclosed by WAPA to Licensee or a Licensee Designee. No disclosure of any Business Sensitive or OUO Information hereunder shall be construed to be a public disclosure of Business Sensitive or OUO Information by WAPA for any purpose whatsoever.

F. UNAUTHORIZED DISCLOSURE

In the event that Licensee or a Licensee Designee discloses, disseminates, releases or otherwise makes available any Business Sensitive or OUO Information received from WAPA, 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 Business Sensitive or OUO Information previously provided by WAPA 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 BUSINESS SENSITIVE OR OOU INFORMATION

While any Business Sensitive or OOU Information provided by WAPA hereunder is believed to be reliable, no representation is made by WAPA, or its employees or agents, as to the accuracy or completeness of the Business Sensitive or OOU Information. By receipt of Business Sensitive or OOU 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 WAPA, 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 Business Sensitive or OOU 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 Business Sensitive or OOU 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 WAPA, Licensee shall take all necessary steps to ensure that any and all individuals in possession of Business Sensitive or OOU Information pursuant to Section C of this Agreement immediately cease to use Business Sensitive or OOU Information received from WAPA. In such event, Licensee shall either (a) appropriately destroy all of the Business Sensitive or OOU Information, including copies thereof, and furnish WAPA with a written certification of destruction or (b) at WAPA's election, return all of the Business Sensitive or OOU Information to WAPA.

J. GOVERNING LAW

This Agreement shall be governed by federal law.

K. ELECTRONIC DATA BACKUPS

Notwithstanding other terms of Business Sensitive or OOU Information return or destruction in the Agreement, Licensee is not obligated to remove the Business Sensitive or OOU Information from its backed up electronic records outside of its normally scheduled retention policies, provided that Licensee does not make use of the Business Sensitive or OOU Information. The term of this Agreement will apply to the backed-up Business Sensitive or OOU 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. The revised Exhibit shall become effective as to this Agreement upon execution of the revised Exhibit.

M. WHISTLEBLOWER PROTECTION ENHANCEMENT ACT OF 2012

The [Whistleblower Protection Enhancement Act of 2012](#) (WPEA) was signed into law to strengthen protections for federal employees who disclose evidence of waste, fraud, or abuse. The WPEA requires that any non-disclosure policy, form, or agreement utilized by a federal agency include the statement copied below, and provides that any such policy, form or agreement executed without the language may be enforced as long as agencies post notice of the following statement:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

Employees (and former employees) are reminded that reporting evidence of waste, fraud, or abuse involving classified information or classified programs must continue to be made consistent with established rules and procedures designed to protect classified information.

The following list of Executive orders and statutory provisions are controlling in the case of any conflict with an agency non-disclosure policy, form, or agreement:

- Executive Order No. 13526;
- Section 7211 of Title 5, United States Code (governing disclosures to Congress);

- Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military);
- Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
- Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents);
- The statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952, of title 18, United States Code; and
- Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b))

N. DIGITAL SIGNATURES

The Parties agree that this Agreement may be signed and executed by digital signature, consistent with WAPA's current digital signature policy. A digital signature is the same as a handwritten signature and shall be considered valid and acceptable.

O. EXECUTION IN COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement 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 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 Business Sensitive or OOU 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 Non-Disclosure Agreement.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____