

**WESTERN AREA POWER ADMINISTRATION
NON-DISCLOSURE AGREEMENT**

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>> (“Requesting Party”) and the United States of America, acting by and through the Western Area Power Administration (“WAPA”), having offices located at <<Insert address>>. Requesting Party and WAPA each may be referred to as a “Party” and collectively, as the “the Parties.”

WHEREAS, WAPA possesses certain non-public or Confidential Information all of which WAPA desires to protect against disclosure;

WHEREAS, in order to facilitate the needs of the Requesting Party to obtain certain information, WAPA may disclose certain non-public, Confidential Information (which may also include CEII) to Requesting Party or to a Licensee Designee; and

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

A. DEFINITIONS

1. The term “Confidential Information”, as used in this Agreement, is information which is in the possession of WAPA and requested by Requesting Party 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.
2. The term “Controlled Unclassified Information,” or “CUI,” shall have the meaning provided in United States Department of Energy (DOE) Order 471.7, as amended.
3. The term “Critical Energy/Electric Infrastructure Information” (hereinafter referred to as “CEII”) shall have, as applicable, the meanings provided by 16 U.S.C. § 824o-1 and 18 CFR 388.113, as amended or supplemented.
4. The term “Designated Coordinator” shall mean the explicit point of contact designated by “the Parties” 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.

5. The term "Licensee Designee" means any agent, advisor, attorney, consultant, contractor, or subcontractor of Requesting Party whom Requesting Party has engaged to assist it and whom Designated Coordinator has designated in writing to WAPA in accordance with Section C of this Agreement, as an authorized recipient, for purposes of receiving Confidential Information from WAPA.

6. 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 Requesting Party or a Licensee Designee that WAPA believes should be protected hereunder as Confidential Information shall:

- a. If in writing or other tangible form, be conspicuously labeled as "Controlled Unclassified Information," "CUI," "Critical Energy/Electric Infrastructure Information," "CEII," "Business Sensitive," "Official Use Only," or "OUO" or with a similar legend at the time of delivery. This Confidential Information may not be disclosed outside of Requesting Party or a Licensee Designee without the prior written approval of WAPA.
- 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 WAPA, Requesting Party or Licensee Designee, whether electronically or otherwise, it shall be treated as Confidential Information and shall be labeled in accordance with this Section B.

2. WAPA shall have the right at any time to correct, by written or oral notification to Requesting Party or Licensee Designee, any failure by WAPA to designate information as Confidential Information. Immediately upon receiving said notification, Requesting Party or 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.

2. Requesting Party or Licensee Designee shall:

- a. Hold and maintain the Confidential Information in the strictest confidence and shall only use such Confidential Information as authorized by WAPA in the attached Exhibit A. Requesting Party's or Licensee Designee's handling of Confidential Information shall be in accordance with, and as amended from time to time, Executive Order No. 13556, 32 CFR part 2002, DOE Order 471.7, and the CUI Registry. In the case of CEII, Requesting Party or Licensee Designee shall comply with applicable federal statutes, regulations, and DOE and WAPA orders and policies related to the handling, use, and dissemination of CEII.

- b. Ensure that access to any Confidential Information released by WAPA, whether directly to Requesting Party or Licensee Designee, is restricted to only those individuals who have a legitimate need for the Confidential Information and:
 - i. Requesting Party or Licensee Designee, but only after each employee of Requesting Party or Licensee Designee 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. Requesting Party or Licensee Designee, including the agents, advisors, attorneys, consultants, contractors, and/or subcontractors, without limitation, who have a legitimate need for the Confidential Information for purposes of assisting Requesting Party or Licensee Designee with respect to the Requesting Party's or Licensee Designee'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 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 Requesting Party or 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 Confidential Information. DOE maintains a sensitive country list on its website.
- e. Ensure that Confidential Information provided hereunder is used only for purposes authorized by WAPA directly related to Requesting Party's or Licensee Designee's identified need for such information as set forth in the attached Exhibit A.
- f. Have processes in place to ensure that Confidential Information is safeguarded and kept in confidence and in a secure place by the Requesting Party's or Licensee Designee's employees.
- g. Immediately notify WAPA's Designated Coordinator, or other appropriate personnel if the Designated Coordinator is not available, if it believes or has reason to believe that any Confidential Information may have been improperly handled or released. Requesting Party's or Licensee Designee shall cooperate with WAPA in the event there is or there is a reason to believe that Confidential Information has been improperly handled or released.
- h. Notify WAPA and obtain approval from WAPA prior to release of Confidential Information to any Foreign National.

3. The obligations imposed on Requesting Party or Licensee Designee 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 Requesting Party or Licensee Designee without the use of Confidential 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 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 Requesting Party or Licensee Designee.

4. Requesting Party and/or Licensee Designee must return Confidential Information to WAPA or destroy Confidential Information within fifteen days of a written request by WAPA to do so. Within the time period, Requesting Party and/or Licensee Designee, if requested to do so, shall also submit to WAPA an affidavit stating that, to the best of its knowledge, all Confidential Information has been returned or destroyed. This requirement does not require Requesting Party or Licensee Designee 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 Confidential Information disclosed by WAPA to Requesting Party or Licensee Designee. No disclosure of any Confidential Information hereunder shall be construed to be a public disclosure of Confidential Information by WAPA for any purpose whatsoever.

F. UNAUTHORIZED USE OR DISCLOSURE

In the event that Requesting Party or Licensee Designee misuses, discloses, disseminates, releases or otherwise makes available any Confidential Information received from WAPA, except as provided by this Agreement, the misuse, disclosure, dissemination, or release will be deemed a material breach of this Agreement requiring Requesting Party or Licensee Designee to immediately return any and all Confidential Information previously provided by WAPA to Licensee or 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. Any misuse of Confidential Information by Licensee or a Licensee Designee is subject to penalties established in accordance with applicable law, regulation, or government-wide policy.

G. RELIABILITY AND ACCURACY OF CONFIDENTIAL INFORMATION

While any Confidential 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 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 Requesting Party or Licensee Designee hereby releases WAPA, its employees, agents, and the United States from any liability in connection with loss or damage suffered by Requesting Party or Licensee Designee or its customers or clients resulting from Requesting Party's or Licensee Designee'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 WAPA, Requesting Party or Licensee Designee 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 WAPA. In

such event, Requesting Party or Licensee Designee shall either (a) appropriately destroy all of the Confidential Information, including copies thereof, and furnish WAPA with a written certification of destruction or (b) at WAPA's election, return all of the Confidential Information to WAPA.

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, Requesting Party or Licensee Designee is not obligated to remove the Confidential Information from its backed up electronic records outside of its normally scheduled retention policies, provided that Requesting Party or Licensee Designee 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. The revised Exhibit shall become effective as to this Agreement upon execution of the revised Exhibit.

M. GENERAL POWER CONTRACT PROVISIONS

Requesting Party or Licensee Designee agrees to Provision Nos. 41-45 of WAPA's General Power Contract Provisions (GPCPs), attached hereto as Attachment No. 1. References in the GPCPs to "Contractor" shall mean Requesting Party or Licensee Designee.

N. 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))

O. 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.

P. 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 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 Non-Disclosure Agreement.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____

