

MEMORANDUM OF AGREEMENT

between
The California Energy Commission
and
The Western Area Power Administration
regarding
The Sharing of Transmission Infrastructure Data

Purpose

The purpose of this memorandum of agreement (MOA) is to ensure timely and effective coordination between the California Energy Commission (Energy Commission) and the United States of America, acting by and through the Western Area Power Administration, Sierra Nevada Region (Western) (collectively referred to herein as "agencies") in the sharing of Geographic Information System (GIS) transmission infrastructure data.

This MOA describes the manner in which the two agencies and their staffs may coordinate and share GIS transmission infrastructure data whether within the Energy Commission's or Western's defined jurisdictions.

This MOA additionally establishes the process for resolving disagreements between the two agencies and describes the process for canceling the MOA

WHEREAS:

- I. The Energy Commission is the repository for all California electric infrastructure information and has recently digitized GIS data of electric transmission infrastructure in the State using high-resolution orthographic imaging to determine locational characteristics of the state-wide electric transmission system.
- II. The Warren-Alquist State Energy Resources Conservation and Development Act, Public Resources Code, Sections 25000, *et seq.*, authorizes the Energy Commission to identify and or designate appropriate electric transmission corridor zones.
- III. Public Resources Code Section 25332 requires the Energy Commission to be the state California Environmental Quality Act lead agency, for all transmission corridor zones proposed for designation within the State's jurisdiction.
- IV. Under federal Reclamation Laws, Western markets and delivers power and related services within a 15-state region of the central and western United States including portions of the State of California.

- V. The Energy Commission believes it is in the best interest of the State and in the mutual interest of both agencies to share data regarding the locational characteristics of the state-wide electric transmission system.
- VI. Each agency believes it is useful to enter into this MOA to collaborate on and share digitized electric transmission infrastructure data.
- VII. Staffs of each agency have interacted in past and current projects to help each agency fulfill its respective responsibilities, and have developed a common understanding of the statutory and regulatory requirements of each agency. Both the Energy Commission and Western have recognized this relationship in past efforts.
- VIII. Each agency further recognizes the benefits of the Energy Commission and Western staff providing expertise in consulting and data quality control on transmission infrastructure data or issues that may arise during either agency's planning efforts for state or federal transmission infrastructure expansion; in providing comments on related transmission plans; and in addressing mutual information needs.
- IX. The Energy Commission is governed by regulations regarding the designation and handling of confidential documents, and pursuant to Title 20 of the California Code of Regulations, section 2505(b), when another federal, state or local entity submits information the entity considers confidential to the Energy Commission, the Energy Commission shall likewise treat that information as confidential.

THEREFORE:

The Energy Commission and Western agree to the following:

1. Sharing of Transmission Infrastructure Information

1.1 The Energy Commission and Western staffs may share existing transmission infrastructure data and notify each other of any proposed transmission infrastructure projects, to include upgrades, corridor designations, or expansions where any part of the facility or any part of any related facility of the proposed project may be under Energy Commission jurisdiction, Western-controlled lands or Rights-of-Way, and may inform each other of any significant planning meetings and correspondence regarding such proposals. Such notifications will be sent to the Energy Commission's Deputy Director for Siting, Transmission and Environmental Protection and the Program Manager for Transmission Corridor Designation, and to Western's Power Operations Manager and Land Management and Transmission Planning Offices.

1.2 The Energy Commission may share its most current digitized GIS transmission infrastructure data with Western and conversely Western may share with the Energy Commission its locational transmission infrastructure data to include transmission line name and alignment, transmission line right-of-way width, voltage rating, substations,

and appropriate land ownership data related to transmission lines associated with the Central Valley Project. The agencies shall agree to provide timely quality control feedback to the other in the event of discoveries of inaccurate information. This may include the periodic review and update of shared data. Each agency will also provide Federal Geographic Data Committee standard metadata.

1.3 Data to be shared shall be transmitted via agreed-to electronic methods to the Energy Commission's Cartography Unit and Western's Natural Resource Department in mutually agreeable formats. At a future date agreeable to the agencies, subject to Section 2, below, access to the data may be granted to transmission operators and owners in the State of California in their exclusive role as transmission function employees or entities.

1.4 In accordance with Public Resources Code section 25334(a), the Energy Commission may also transmit to Western a copy of any application for the designation of a transmission corridor zone where any part of the zone or related facilities would be located on or impact Western lands or transmission infrastructure.

2. Confidentiality and Data Security

At present, electronic data that details multiple substations, including their names with major transmission lines, may be considered very sensitive under the Homeland Security Act's designation of Critical Electricity Assets. Consequently, there is a need to maintain the security of information shared between the agencies. Both agencies agree that all non-agency or third party users of the shared data shall be required to sign a Non-Disclosure Agreement (NDA), mutually agreed to by the agencies, protecting the security of the information provided. Generic versions of the NDA's to be used by Western and the Energy Commission in these circumstances are attached hereto and made part of this MOA as Attachments 1 and 2 respectively. Neither agency shall share data provided under this MOA with any non-agency entity or third party that has not signed an NDA and that cannot protect the confidentiality of the data or cannot prevent the data from being used for any merchant purposes. Data shared herein under an NDA shall not be construed to be a public disclosure of such data. The decision to disclose the data to non-agency entities or third parties shall be at the agencies' discretion and is not mandated by this MOA.

3. Data Ownership

Nothing in this MOA shall be construed as granting or conferring any rights in any data shared under this MOA. All data shared under this MOA shall remain the property of the disclosing agency. Upon expiration of this MOA upon the written request of the disclosing agency, or at any time prior thereto upon the written request of the disclosing agency, the receiving agency shall take all reasonable steps to ensure that any and all individuals of the agency in possession of data shared by disclosing agency pursuant to this MOA immediately cease to use that data. In such event, the receiving agency shall

either take reasonable steps to: (a) appropriately destroy all shared data, including copies thereof, and furnish the disclosing party with a written certification of destruction, or (b) at the receiving agency's election return all such data to the disclosing party.

Additionally, the receiving agency, if requested to do so by the releasing agency, shall take reasonable steps to retrieve any and all data disclosed to non-agency entities or third parties under this MOA.

4. Reliability and Accuracy of Data

No representation is made by either party as to the accuracy or completeness of data which may be shared under this MOA. By receiving data, a party agrees that, except as may be provided in a separate definitive agreement: (a) the disclosing party shall have no responsibility for the accuracy of or the completeness of data, including any misstatement or omission of fact or for any opinion expressed; and (b) the receiving party hereby releases disclosing party from any liability in connection with loss or damage suffered by receiving party resulting from the use of or reliance upon the data provided hereunder.

5. Resolving Disagreements

5.1 If there are disagreements between the two agencies or their staffs regarding the provisions of this MOA, representatives of each staff will meet to discuss the issues in dispute and shall work towards agreement.

5.2 If agreement is not reached within twenty-one days of this initial meeting, the Executive Director of the Energy Commission and the Regional Manager of Western, or their representatives, shall confer to attempt to resolve the disagreement.

6. Amendments

This MOA may be amended by mutual agreement of the two agencies.

7. Duration of MOA

This MOA shall become effective upon signature by the agencies and shall remain in effect for five (5) years following the date of execution. The term of this MOA may be extended upon mutual agreement between the Energy Commission and Western. Such term extension shall be effectuated by an amendment to this MOA.

8. Cancellation

Either agency may cancel this MOA with a 30-day written notice to the other.

9. General Provisions

9.1 Nothing in this MOA is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of the Energy Commission or Western.

9.2 Nothing in this MOA binds the Energy Commission or Western to perform beyond their respective authorities.

9.3 Nothing in this MOA requires the Energy Commission or Western to assume or expend any funds in excess of available appropriations authorized by law. Where activities provided for in the MOA extend beyond the current fiscal year, continued expenditures by Western are contingent upon Congress making the necessary appropriations required for the continued performance of Western's obligations under this MOA. In case such appropriation is not made, the Energy Commission hereby releases Western from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

9.4 The mission requirements, funding, personnel, and other priorities of either the Energy Commission or Western may affect their ability to fully implement all the provisions identified in this MOA.

9.5 Specific activities that involve the transfer of money, services, or property between or among the agencies will require execution of separate agreements or contracts.

9.6 Nothing in this MOA is intended to or shall be construed to restrict the Energy Commission, Western, or the State of California-whether through the Energy Commission, Western or other agencies or departments-from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

9.7 Any information furnished between the agencies under this MOA is potentially subject to the Freedom of Information Act, 5 U.S.C. §§ 552, *et seq.* (FOIA) and the California Public Records Act, Gov. Code §§ 6250, *et seq.* (CPRA). The agencies agree to consult one another prior to releasing any documents exchanged pursuant to this MOA, including, but not limited to potentially privileged or confidential documents, or documents exempt from public disclosure; and to cooperate in good faith to assert all such privileges and exemptions permitted by FOIA and CPRA.

9.8 Each and every provision in this MOA is subject to the laws of the United States of America or as applicable the laws of the State of California and to the delegated authority assigned in each instance.

Memorandum of Agreement 15-SNR-01956 between
California Energy Commission and
Western Area Power Administration

9.9 All cooperative work under the provisions of this MOA will be accomplished without discrimination against any employee because of race, sex, creed, color, or national origin.

9.10 This MOA, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

9.11 The Parties agree not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973) as amended or supplemented.

CONCURRENCE

The Energy Commission and Western agree to the terms of this MOA, as evidenced by the signatures of their representatives below.

Robert P. Oglesby
Executive Director
California Energy Commission

Subhash Paluru
Senior Vice President and
Sierra Nevada Regional Manager
Western Area Power Administration

Date: _____

Date: _____

Attachments:

Attachment 1–Western Area Power Administration Confidentiality and Non-Disclosure Agreement

Attachment 2–California Energy Commission Confidentiality and Non-Disclosure Agreement

Attachment 1 to
Memorandum of Agreement 15-SNR-01956 between
California Energy Commission and
Western Area Power Administration

Attachment 1

(Western Area Power Administration Confidentiality and Non-Disclosure Agreement)

This Attachment 1 to Agreement 09-SNR-01366 between the California Energy Commission (Energy Commission) and the Western Area Power Administration (Western) regarding the sharing of transmission infrastructure data has been agreed to by both agencies as the contractual document form that Western shall execute with non-agency or third party users prior to sharing any information with such users.

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

THIS AGREEMENT is entered into this _____ day of _____, 20__ between
(Licensee), 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 _(Project)_, Western may disclose certain non-
public, confidential, business sensitive, or CEII information to _(Licensee)_ or to a _(Licensee)_
Designee; and

WHEREAS Add any other.

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 " (Licensee)_ Designee" means any agent, advisor, attorney, consultant, contractor, and/or subcontractor of _(Licensee)_ whom _(Licensee)_ has engaged to assist it in the _(Project)_ 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 _(Project) , 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 Information or with a similar legend _(Licensee)_ Confidential) at the time of delivery. This Confidential Information may not be disclosed outside of _(Licensee)_ 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 designate a Designated Coordinator as a point of contact for this Agreement. The Designated Coordinators is identified in Section D of this Agreement. _(Licensee)_ Designee in accordance with this Agreement shall be made only by the _(Licensee)_ Designated Coordinator.

2. _(Licensee)_ 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 _(Project)_.
 - b. Ensure that access to any Confidential Information released by Western, whether directly to _(Licensee)_ or to a _(Licensee)_ Designee, is restricted only those individual who are required to have access to such information and to:
 - i. _(Licensee)_, but only after each employee of _(Licensee)_ 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. _(Licensee)_ Designee, including such agents, advisors, attorneys, consultants, contractors, and/or subcontractors, including without limitation any

- _(Licensee)_ Designee, who have a need to know the information for purposes of assisting _(Licensee)_ with respect to its _(Project)_ 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 _(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 _(Project)_.
 - 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 released.
2. The _(Licensee)_ 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 _(Licensee)_ believes or has reason to believe that any Confidential Information may have been released, _(Licensee)_ shall immediately notify Western. _(Licensee)_ shall cooperate with Western to determine if Confidential Information has been improperly released and if Confidential Information has been improperly released, Western and _(Licensee)_ shall develop corrective actions and _(Licensee)_ shall mitigate the release. Licensee shall also provide to (Western): (1) the information released; (2) the date time and circumstances of the release; (3) the individuals to whom the information was disclosed, and (4) what actions Licensee has taken to remedy the disclosure.
 - b. In the event Western believes or has reason to believe that any Confidential Information may have been released by _(Licensee)_ , Western shall notify _(Licensee)_ . _(Licensee)_ shall cooperate with Western to determine if Confidential Information has been improperly released and if Confidential Information has been improperly released, Western and _(Licensee)_ shall develop corrective actions and _(Licensee)_ shall mitigate the release.
3. The obligations imposed on _(Licensee)_ 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 _(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, 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. _(Licensee)_ 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 _(Licensee)_: _____

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. All Confidential Information shall remain the property of Western and shall be returned by _(Licensee)_ or _(Licensee)_ 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 _(Licensee)_ or a _(Licensee)_ 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 _(Licensee)_ to immediately return any and all Confidential Information previously provided by Western to _(Licensee)_. The provisions of this paragraph apply in addition to any other legal rights or remedies that the parties may have under Federal or State law, and Licensee acknowledges that (Western) may obtain both legal and equitable relief,

including but not limited to, injunctive relief against Licensee in the event of an unauthorized disclosure.

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, _(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 Government 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 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, _(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 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.

(Licensee)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Western Area Power Administration

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A TO ATTACHMENT 1

CONFIDENTIAL INFORMATION

"Confidential Information" includes information which, if disclosed, could harm or impede activities, techniques, communications capabilities, operational activities, or otherwise adversely impact or impair Western activities.

TYPES OF INFORMATION EXPECTED TO BE PROVIDED TO (Licensee) _:

- Identify specific technical characteristics as appropriate.

EXHIBIT B TO ATTACHMENT!

ACKNOWLEDGEMENT

I, _____, hereby affirm that I have read the Confidentiality and Non-Disclosure Agreement dated _____ 20____ between _(Licensee)_ 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: _____

Date: _____

Attachment 2 to
Memorandum of Agreement 15-SNR-01956 between
California Energy Commission and
Western Area Power Administration

Attachment 2

(California Energy Commission Confidentiality and Non-Disclosure Agreement)

This Attachment 2 to Memorandum of Agreement 09-SNR-01366 between the California Energy Commission (Energy Commission) and the Western Area Power Administration (Western) regarding the sharing of transmission infrastructure data has been agreed to by both agencies as the contractual document form that the Energy Commission shall execute with non-agency or third party users prior to sharing any information with such users.

**CALIFORNIA THE ENERGY COMMISSION
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is entered into this _____ day of _____, 20____ between
(Licensee), having offices located at _____, and the
California Energy Commission ("Energy Commission"), having offices located at _____
(each a "Party" and collectively, "the Parties").

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

WHEREAS, in order to facilitate and effect _(Project)_, the Energy Commission may disclose certain non-public, confidential, business sensitive, or CEII information to _(Licensee)_ or to a _(Licensee)_ Designee; and

WHEREAS Add any other.

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 the Energy Commission 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 _(Project)_ effort and whom _(Licensee)_ has designated in writing to the Energy Commission in accordance with Section C of this agreement, as an authorized recipient, for purposes of _(Project) , for receiving Confidential Information from the Energy Commission.

B. INFORMATION MARKING

1. All information which is disclosed by the Energy Commission to (Licensee) or a (Licensee) Designee that the Energy Commission 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 (Licensee) without the prior written approval of the Energy Commission.
 - 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 the Energy Commission or (Licensee), whether electronically or otherwise, it shall be treated as Confidential Information and shall be labeled in accordance with this Section B.

2. The Energy Commission shall have the right at any time to correct, by written notification to (Licensee) and/or to a (Licensee) Designee, any failure by the Energy Commission 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 designate a Designated Coordinator as a point of contact for this Agreement. The Designated Coordinators is identified in Section D of this Agreement. (Licensee) Designee in accordance with this Agreement shall be made only by the (Licensee) Designated Coordinator.

2. (Licensee) shall:
 - a. Hold and maintain the Confidential Information in the strictest confidence and shall only use such Confidential Information as provided for the Energy Commission's benefit in furtherance of the (Project).
 - b. Ensure that access to any Confidential Information released by the Energy Commission, whether directly to (Licensee) or to a (Licensee) Designee, is restricted only those individual who are required to have access to such information and to:
 - i. (Licensee) , but only after each employee of (Licensee) 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. (Licensee) Designee, including such agents, advisors, attorneys, consultants, contractors, and/or subcontractors, including without limitation any (Licensee) Designee, who have a need to know the information for purposes of assisting (Licensee), with respect to its (Project) services to the Energy Commission, 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 (Licensee) and any (Licensee) Designee, and shall make that list available to the Energy Commission upon request.
 - d. Ensure that Confidential Information provided hereunder is used only for purposes directly related to (Licensee)'s assistance to the Energy Commission in facilitating and effecting the (Project).
 - 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 the Energy Commission if it believes or has reason to believe that any Confidential Information may have been released.
2. The (Licensee) shall cooperate with the Energy Commission in the event there is or there is a reason to believe that Confidential Information has been released.
- a. In the event (Licensee) believes or has reason to believe that any Confidential Information may have been released, (Licensee) shall immediately notify the Energy Commission. (Licensee) shall cooperate with the Energy Commission to determine if Confidential Information has been improperly released and if Confidential Information has been improperly released, the Energy Commission and (Licensee) shall develop corrective actions and (Licensee) shall mitigate the release. Licensee shall also provide to (Energy Commission): (1) the information released; (2) the date time and circumstances of the release; (3) the individuals to whom the information was disclosed, and (4) what actions Licensee has taken to remedy the disclosure.
 - b. In the event the Energy Commission believes or has reason to believe that any Confidential Information may have been released by (Licensee), the Energy Commission shall notify (Licensee). (Licensee) shall cooperate with the Energy Commission to determine if Confidential Information has been improperly released and if Confidential Information has been improperly released, the Energy Commission and (Licensee) shall develop corrective actions and (Licensee) shall mitigate the release.

3. The obligations imposed on _(Licensee)_ 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 _(Licensee)_ without the use of Confidential Information;
 - c. Disclosed without restriction to a third party by the Energy Commission;
 - d. Approved for release in writing by the Energy Commission'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. _(Licensee)_ must return Confidential Information to the Energy Commission or destroy Confidential Information within fifteen days of a written request by the Energy Commission to do so. Within such time period, each Licensee, if requested to do so, shall also submit to the Energy Commission 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 the Energy Commission: _____

For _(Licensee)_: _____

E. INFORMATION OWNERSHIP RIGHTS

Nothing in this Agreement shall be construed as granting or conferring any rights in any Confidential Information disclosed by the Energy Commission to _(Licensee)_ or a _(Licensee)_ Designee. All Confidential Information shall remain the property of the Energy Commission and shall be returned by _(Licensee)_ or _(Licensee)_ Designee to the Energy Commission upon request. No disclosure of any Confidential Information hereunder shall be construed to be a public disclosure of such Confidential Information by the Energy Commission 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 the Energy Commission, except as provided by this Agreement, such 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 the Energy Commission to _(Licensee)_. The provisions of this paragraph apply in addition to any other legal rights or remedies that the parties may have under Federal or State law, and Licensee acknowledges that (Energy Commission) may obtain both legal and equitable relief, including but not limited to, injunctive relief against Licensee in the event of an unauthorized disclosure.

G. RELIABILITY AND ACCURACY OF CONFIDENTIAL INFORMATION

While any Confidential Information provided by the Energy Commission hereunder is believed to be reliable, no representation is made by the Energy Commission, or its employees or agents, as to the accuracy or completeness of such 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 the Energy Commission, its employees, agents, and the United States Government 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 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 the Energy Commission, _(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 the Energy Commission. In such event, _(Licensee)_ shall either (a) appropriately destroy all such information, including copies thereof, and furnish the Energy Commission with a written certification of destruction or (b) at the Energy Commission's election, upon its request, return all such information to the Energy Commission.

J. GOVERNING LAW

This Agreement shall be governed by State 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.

(Licensee)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

California Energy Commission

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A TO ATTACHMENT 2

CONFIDENTIAL INFORMATION

"Confidential Information" includes information which, if disclosed, could harm or impede activities, techniques, communications capabilities, operational activities, or otherwise adversely impact or impair the Energy Commission activities.

TYPES OF INFORMATION EXPECTED TO BE PROVIDED TO (Licensee):

- Identify specific technical characteristics as appropriate.

EXHIBIT B TO ATTACHMENT 2

ACKNOWLEDGEMENT

I, _____, hereby affirm that I have read the Confidentiality and Non-Disclosure Agreement dated _____, 20____ between _(Licensee)_ and the California Energy Commission, 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: _____

Date: _____