

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is made and entered into by and between [COMPANY NAME], a [STATE] [COMPANY FORM] (“Company”) and the COLORADO ELECTRIC TRANSMISSION AUTHORITY, an independent public body politic and corporate, public instrumentality, and political subdivision of the State of Colorado (“CETA”), herein individually referred to as a “Party” and collectively referred to as the “Parties.”

WHEREAS, the Parties have pursued and expect to continue to pursue discussions (the “Discussions”) relative to a possible business opportunity relating to electrical transmission and/or storage infrastructure in Colorado (the “Objective”);

WHEREAS, in the course of continuing the Discussions, the Parties may disclose to one another, or the principals, partners, shareholders, directors, officers, employees, representatives, advisors or agents of each other (collectively, the “Representatives”), certain information of a proprietary and confidential nature; and

WHEREAS, the Parties acknowledge that neither Party hereto would enter into the Discussions in the absence of the protections contained herein and that each Party desires to protect the Confidential Information (as hereinafter defined) of the other Party both during and subsequent to the Discussions.

NOW THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth and the good and valuable consideration, the Parties agree as follows:

1. **Confidential Information.**

(a) For purposes of this Agreement, and except as provided in Section 1(b), “Confidential Information” shall include without limitation:

(i) customer and project identities, site information, and wind and solar data;

(ii) business and marketing plans, operational information and practices, proprietary financing structures, and organization models;

(iii) financial statements, projections, analyses and information related to costs and revenues;

(iv) pricing information, interconnection information, and rate information;

(v) power purchase agreements, costs of production, costs of transmission, transmission service agreements, credit reviews, and detailed power models; and

(vi) all other information provided by the Company or CETA that is designated as proprietary technical or business information (whether communicated by means of verbal or written disclosures).

(b) Confidential Information shall not include:

- (i) this Agreement;
- (ii) the name of the Company;
- (iii) the general stage of the Objective;
- (iv) the quadrant of the State where the Objective may be located (e.g., Northwest Colorado); and

(v) information for which satisfactory evidence can be produced by the receiving Party that the information:

(1) was in the possession of the receiving Party at the time it was first disclosed by the disclosing Party;

(2) was in the public domain at the time it was disclosed to the receiving Party;

(3) enters the public domain through sources independent of the receiving Party and through no fault of the receiving Party;

(4) was disclosed by the disclosing Party to a third party on a non-confidential basis;

(5) was lawfully obtained by the receiving Party from a third party not under an obligation of confidentiality to the disclosing Party; or

(6) was at any time developed by the receiving Party independently of any disclosure by the disclosing Party.

(c) The Company shall conspicuously mark all records containing Confidential Information as “Confidential Proprietary, Technical, or Business Information” prior to providing them to CETA.

2. **Nondisclosure and Use of Confidential Information**. Each Party shall maintain the Confidential Information of the other Party in confidence and shall not use the same for its own benefit or disclose the same to any third party, except as provided in Section 7 below. Each Party may disclose the Confidential information of the other only to its own principals, partners, shareholders, directors, officers, employees, representatives, advisors or agents on a need-to-know basis for the purposes of the Discussions, provided that such persons must agree to comply with and be bound by the terms of this Agreement and that each Party shall be liable for the acts of its Representatives.

3. **Term.** The term of this Agreement shall be two (2) years from the date of the recent signature below, unless extended by written agreement of the Parties. All obligations of the Parties hereunder shall survive any termination of the Discussions, or termination or expiration of this Agreement for a period of one (1) year or until certain Confidential Information becomes public through no action or fault of the receiving Party, whichever time period is shorter. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party.

4. **Return of Confidential Information.** In the event the Discussions are terminated, whether or not the Objective has been accomplished, each Party shall, upon request by the other, promptly return or destroy all documentation and other materials containing Confidential Information of the other Party. Each Party shall thereafter, upon request by the other, provide a certification signed by an officer that all such materials have been returned to the disclosing Party or have been destroyed. Notwithstanding the foregoing, the receiving Party may retain one copy of any Confidential Information provided by the disclosing Party for legal or archival purposes.

5. **Remedies.** Each Party acknowledges and agrees that the unauthorized disclosure or use of Confidential Information disclosed to it by the other Party or any other breach of a Party's obligations hereunder may result in irreparable injury to the Party that furnished the Confidential Information. Therefore, each Party waives the right to assert that the injured Party has an adequate remedy at law and agrees that the injured Party may be entitled to receive injunctive relief in any legal proceeding instituted by such injured Party.

NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ANY PARTY BE ENTITLED TO EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

6. **Binding on Representatives and Affiliates.** Each Party agrees that its obligations contained herein apply also to its Representatives, and any and all parent entities, subsidiaries and affiliates, and each Party agrees to similarly bind its successors and assigns. Each Party will take all reasonable steps necessary to ensure that all Confidential Information is retained in confidence.

7. **Required Disclosure.**

(a) In the event that either Party or its Representatives receives any court order compelling or lawful demand requesting or requiring disclosure of any Confidential Information, the receiving Party shall promptly give notice to the disclosing Party so that the disclosing Party may seek an appropriate protective order. The receiving Party shall reasonably cooperate with the disclosing Party's efforts to obtain such a protective order. Whether or not such a protective order is obtained, the receiving Party or its Representatives shall furnish responsive information only to the extent required by law or permitted hereunder.

(b) Notwithstanding Section 7(a), the Parties acknowledge that CETA is subject to the Colorado Open Records Act, § 24-72-201 *et seq.*, C.R.S. ("CORA") and, as a result, records maintained by CETA may be subject to public disclosure. If CETA receives a

CORA request for records marked by the Company as “Confidential Proprietary, Technical, or Business Information” in accordance with Section 1(c), CETA shall make its own determination as to whether the records must be disclosed under CORA. If CETA determines that disclosure is required, CETA shall promptly notify the Company and cooperate with the Company’s efforts, if any, to obtain a protective order pursuant to Section 7(a). Under no circumstances shall CETA be liable to the Company for disclosing records pursuant to its legal obligations under CORA, as determined by CETA in its reasonable discretion. CETA shall, however, in coordination with the Company, take reasonable efforts, up to and including legal action, to withhold from inspection and disclosure information it determines to be Confidential Information, regardless of whether it is marked by the Company as “Confidential Proprietary, Technical, or Business Information,” and not subject to disclosure under CORA if a CORA request is made. Any attorney’s fees and costs associated with legal action taken by CETA to protect Confidential Information provided to it by the Company from disclosure under CORA shall be reimbursed by the Company.

8. **Publicity.** Except as required by Section 7, neither Party shall make any public disclosures regarding the other Party, the Discussions, or the Objective, including without limitation any advertisements, announcements, or publications, without prior written approval of the other Party.

9. **Governing Law; Venue.** The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for the City and County of Denver.

10. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW AND WITH RESPECT TO ANY LITIGATION ARISING OUT OF THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL AND AGREE THAT ANY SUCH LITIGATION SHALL BE TRIED BY A JUDGE WITHOUT A JURY.

11. **Severability.** If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, that provision shall be enforced to the greatest extent permissible so as to affect the intent of the Parties hereto, and the legality, validity and enforceability of the remaining provisions shall in no manner be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties will negotiate in good faith to replace the illegal, invalid or unenforceable provision with legal, valid and enforceable language which as closely as possible reflects such intent.

12. **Waiver.** The waiver by any Party of any other Party’s non-compliance with any obligation or responsibility herein shall be ineffective unless given in writing and shall not be deemed a waiver of other instances of non-compliance or of any Party’s remedies for such non-compliance.

13. **As-Is.** Any and all Confidential Information disclosed under this Agreement is provided “as-is,” and the disclosing Party makes no warranty, implied or express, as to the completeness or accuracy of the Confidential Information.

14. **Ownership; License.** Any and all Confidential Information disclosed under this Agreement remains the sole and exclusive property of the disclosing Party, and the disclosing Party grants no intellectual or proprietary rights or license to the receiving Party whatsoever, except the rights specifically stated in this Agreement.

15. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings among them involving the subject matter hereof. This Agreement shall be effective only when signed by all the Parties. This Agreement may not be amended, supplemented, changed, or modified except by a written agreement signed by the Parties, and may not be assigned without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

16. **Section Headings.** The section headings in this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of any part of this Agreement.

17. **Counterparts, Electronic Signatures and Electronic Records.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the most recent date indicated below.

[NAME OF COMPANY], a [Company State of
Formation and Company Form]

By: _____
Name: _____
Title: _____
Date: _____

COLORADO ELECTRIC TRANSMISSION
AUTHORITY, an independent public body politic
and corporate of the State of Colorado

By: _____
Name: _____
Title: _____
Date: _____