



ERCOT Mutual Confidentiality and Non-Disclosure Agreement

1. This MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "Agreement") is entered into between the undersigned ("Vendor") and Electric Reliability Council of Texas, Inc. ("ERCOT"), a Texas non-profit corporation (each a "Party", and collectively the "Parties"), for the purpose of allowing ERCOT and/or Vendor to obtain and/or exchange information, an evaluation, or certain Services from ERCOT and/or Vendor. In order for the Parties to this Agreement to exchange information, perform an evaluation, or provide Services, both ERCOT and Vendor may need to disclose Confidential Information to each other (i.e., the "Disclosing Party" provides confidential information to the "Receiving Party").
2. "**Confidential Information**" is information that by its nature or purpose would reasonably be considered by a person to be confidential or proprietary or trade secret information and specifically includes, but is not limited to, anything designated as Protected Information under the ERCOT Protocols and all information, technical data, and know-how that relates to the business, services, or products of Disclosing Party, or Disclosing Party's market participants, customers or other vendors, including without limitation, any research, products, services, developments, inventions, processes, techniques, designs, and scientific, technical, engineering, distribution, marketing, financial, merchandising, pricing, and sales information that is disclosed to Receiving Party directly or indirectly in writing, electronically, orally, by drawings, or through inspection.

Confidential Information does not include information, technical data, or knowledge, that is:

- a. Already published or available to the public, or subsequently becomes available, other than by a breach of this Agreement;
 - b. Received from a third party not to Receiving Party's knowledge in breach of or under any obligation of confidentiality;
 - c. Independently developed by personnel or agents of Receiving Party without reliance on the Confidential Information;
 - d. Proven by written evidence to be known to Receiving Party at the time of disclosure; or
 - e. Produced by Receiving Party in compliance with an order, rule, or law of any federal, state, local or municipal body having jurisdiction over a Party, provided that Receiving Party gives Disclosing Party notice, to the extent reasonably possible, of such order, rule, or law and gives Disclosing Party an opportunity to defend and/or attempt to limit such production.
3. Receiving Party agrees that it and its employees, representatives, and agents must:
 - a. Maintain Confidential Information in strict confidence;
 - b. Not disclose or use the Confidential Information for any purpose other than purposes contemplated under this Agreement;
 - c. Not disclose Confidential Information to any third party other than the employees, representatives, or agents of Receiving Party who have a need to know the information in connection with a purpose permitted under this Agreement;
 - d. Not copy or make public Confidential Information without the prior written consent of Disclosing Party;
 - e. Notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information and to cooperate in any reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent further unauthorized use or disclosure.
 4. The Confidential Information and all copies remain the exclusive property of Disclosing Party, and Receiving Party must take reasonable actions and precautions to prevent unauthorized disclosure and use of Confidential Information. Upon request of Disclosing Party or immediately upon termination of this Agreement Receiving Party will promptly return all Confidential Information via bonded courier or some other similarly secure means approved in advance by Disclosing Party, or destroy the Confidential Information and provide a certificate of destruction if approved by Disclosing Party, provided that Receiving Party may keep a copy of this Agreement.
 5. Receiving Party acknowledges and agrees that a breach of this Agreement may result in irreparable and continuing damage to Disclosing Party, for which there may be no adequate remedy at law, and that, in the event of such breach, Disclosing Party will be entitled to seek injunctive relief and/or a decree for specific performance, in addition to all such other and further relief as may be available at law, in equity, or otherwise.



6. Notwithstanding anything to the contrary in this Agreement, neither ERCOT nor Vendor, nor any employee or contractor of either Party, will be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law, or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An employee or contractor of a Party who files a lawsuit for such Party's retaliation in response to the employee's or contractor's reporting of a suspected violation of law may disclose the trade secret to his or her attorney and use the trade secret information in the court proceeding if the he or she (i) files any document containing the trade secret under seal and (ii) does not disclose the trade secret, except pursuant to court order.

7. This Agreement is to be construed and interpreted in accordance with the laws of the State of Texas without regard to any conflicts of law provisions.

8. This Agreement will remain in full force and effect until terminated by either Party upon thirty (30) days written notice to the other Party. However, the rights and obligations contained in this Agreement survive any termination of this Agreement.

9. Each Party represents that the person signing below on its behalf has the necessary right and authority to execute this Agreement and bind it to the provisions hereof. This Agreement applies only to the extent that the Confidential Information to be exchanged is not addressed in another agreement between the Parties and otherwise contains the entire understanding of the Parties with respect to this subject matter. This Agreement may be executed by facsimile or scanned and electronically transferred. A copy of this Agreement bearing an electronic or electronically transferred signature or signatures on the executed documents has the same force and effect as an original agreement with inked original signatures. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, scan, facsimile) is considered an original.

AGREED: Electric Reliability Council of Texas, Inc.

AGREED (VENDOR): _____

By:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____