

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is effective as of _____, 20__ by and between El Paso Electric Company (“EPE”), a Texas corporation, and [insert full legal name of counterparty] (“Counterparty”) a[n] [insert state of registration and type of business organization]. EPE and Counterparty are referred to collectively in this Agreement as the “Parties”, and each individually as a “Party”.

1. Recitals.

- 1.1 EPE is an investor-owned utility providing electric service to customers in West Texas and south-central New Mexico.
- 1.2 EPE has issued a Request for Proposals for an Automated Metering Infrastructure and / or Meter Data Management System (the “RFP”).
- 1.3 Counterparty is engaged in the business of providing products and services that may be sought by EPE through the RFP.
- 1.4 In connection with the RFP process, EPE and Counterparty seek to exchange certain confidential and proprietary information in order to evaluate a possible business transaction (the “Proposed Transaction”).
- 1.5 To facilitate the communication of such information and to avoid disclosure of such information and attendant communications to third persons or entities, the parties agree that such information and communications will be subject to the terms and conditions of this Agreement.
- 1.6 A Party that receives confidential information under this Agreement is hereinafter referred to as a “Receiving Party,” and a Party that provides information under this Agreement is hereinafter referred to as a “Disclosing Party.”

2. Agreement.

In consideration of their mutual promises, covenants, and warranties, the parties agree as follows:

- 2.1 For purposes of this Agreement, “Confidential Information” means (i) Appendices A-H to the RFP (including all information contained therein), (ii) any proposal (including all information contained therein) provided by Counterparty to EPE in response to the RFP, (iii) all customer information and personnel information of the Disclosing Party, (iv) all software licenses, software services agreement, software developments, and software as a service agreements between the Disclosing Party and any third party, (v) all software programs (including, without limitation, source and object code) and documentation licensed by the Disclosing Party from any third party and any written and/or oral descriptions of the functionality of such programs, (vi) all designs, specifications, documentation, components, software (including, without limitation, source code and object code), images, icons, schematics, drawings, protocols, processes and other visual depictions of the Disclosing Party, (vii) all other information disclosed by the Disclosing Party in

connection with the RFP or the Proposed Transaction and designated in writing (by label, stamp, or other written communication) by the Disclosing Party as “confidential” or “proprietary” at the time of the disclosure (or in the case of a oral disclosure, designated as “confidential” or “proprietary” at the time of disclosure and confirmed in writing within five (5) days after disclosure, and (viii) non-public information of EPE that under federal law is designed to protect the electric grid of the United States and the cyber systems related to EPE’s role as a public utility service provider and owner and operator of grid assets, including (a) all information pertaining to systems defined as “cyber assets” and “bulk electric system (BES) cyber systems” under the Critical Infrastructure Protection (“CIP”) Standards or other standards promulgated by the North American Electric Reliability Corporation (“NERC”), together with all security measures to protect such critical cyber assets and systems, (b) all “BES cyber security information” (“BCSI”) pertaining to any “BES cyber system” as such terms are defined in the CIP Standards or other standards promulgated by NERC, and (c) all “critical energy/electric infrastructure information” (“CEII”) and other information concerning “critical infrastructure” as such terms are defined by the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 388.113(c) as may be amended or re-codified.

- 2.2 The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:
- (a) was previously in the possession or control of the Receiving Party at the time of its disclosure hereunder;
 - (b) is or has been previously published, or becomes publicly known, through no action of the Receiving Party;
 - (c) is received by Receiving Party from a third party free to disclose it without restriction from the Disclosing Party;
 - (d) is developed independently by the Receiving Party; or
 - (e) is related to any disclosures in public documents, such as Securities Exchange Commission filings or other filings as may be required by other state or federal regulatory agencies, provided that prior to making such disclosure, the Receiving Party shall comply with the provisions of paragraph 2.6 of this Agreement.
- 2.3 The Receiving Party shall use its best efforts and shall take all reasonable steps necessary to ensure that Confidential Information is not disclosed, communicated, or transmitted to any person or entity other than the Receiving Party’s officers, employees, or agents (acting in such capacity) (“Representatives”) who have a need to review or know such Confidential Information in order to evaluate the Proposed Transaction between the parties and who are informed of the confidential nature of the Confidential Information and agree in writing to be bound by the terms of this Agreement. Notwithstanding such disclosure, communication, or transmission, the Receiving Party shall be responsible for any breach of this Agreement by the Receiving Party or its Representatives.

- 2.4 The Confidential Information addressed in the course of these discussions represents trade secrets and proprietary information that if used by the Receiving Party or its Representatives for purposes other than evaluating the Proposed Transaction, would unfairly prejudice and irreparably harm the rights and interests of the Disclosing Party. The Receiving Party acknowledges this fact and expressly agrees not to use the Confidential Information received hereunder for any purpose other than the evaluation of the Proposed Transaction.
- 2.5 The Receiving Party acknowledges that the Disclosing Party would be irreparably injured by any breach of this Agreement and that remedies at law may be inadequate to protect the Disclosing Party against any such breach. Accordingly, the Receiving Party agrees that the Disclosing Party shall be entitled to equitable relief, including, without limitation, injunctive relief and specific performance, in the event of any actual or threatened breach by the Receiving Party of the provisions of this Agreement without proof of actual damages, and any requirement that bond or other security be posted as a condition to such equitable relief is hereby waived. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by the Receiving Party or its Representatives, but shall be in addition to all other remedies available at law or in equity. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by a Receiving Party or its Representatives, then the Receiving Party will reimburse the Disclosing Party for its reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with all such litigation.
- 2.6 Should any person or entity seek to legally compel the Receiving Party or its Representatives (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, regulation, statute, or otherwise) to disclose any of the Confidential Information, the Receiving Party will provide the Disclosing Party prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy (including participating in any proceeding to which the Receiving Party is a party, which the Receiving Party will use its reasonable business and legal efforts to permit). If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is, in the opinion of its legal counsel, compelled to disclose the Confidential Information, the Receiving Party may disclose only such of the Confidential Information to the person or entity compelling disclosure as is required by applicable law, order, regulation, or rule.
- The foregoing provisions of this Section 2.6 notwithstanding, EPE may disclose the RFP, Counterparty's proposal and other Confidential Information, and any subsequent definitive agreement between the Parties with respect to the Proposed Transaction to (i) any regulatory agency that requests a copy thereof provided that such agency first issues a protective order therefor, and (ii) staff of any regulatory agency or an intervenor in any regulatory agency proceeding, provided that each first executes a confidentiality agreement or protective order certification pursuant to a protective order filed with the regulatory agency.
- 2.7 All Confidential Information of the Disclosing Party will remain the property of Disclosing Party, and no right or license is granted to the Receiving Party with respect to any of the Disclosing Party's Confidential Information.

- 2.8 Nothing in this Agreement shall be construed to impose on the Disclosing Party any liability or responsibility for errors or omissions in, or any business decisions made by the Receiving Party in reliance on, any Confidential Information. No representation or warranty is made by the Disclosing Party as to the accuracy or completeness of any information provided to the Receiving Party under this Agreement. Representations and warranties, if any, are to be applicable only as and to the extent set forth in a subsequent definitive agreement, in writing, between the Parties.
- 2.9 Nothing in this Agreement obligates the Disclosing Party to disclose any information to the Receiving Party or creates any agency, joint venture, partnership or other relation between them or otherwise obligates either of them to enter into any business transaction or other contractual relationship.
- 2.10 This Agreement may not be assigned by any Party, by operation of law or otherwise, without the prior written consent of the other Party, provided that this Agreement may be enforced against the Receiving Party by a party that acquires the Disclosing Party.
- 2.11 No failure or delay by a Disclosing Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.
- 2.12 This Agreement shall be interpreted and governed by the laws of the State of Texas without reference to its conflicts of law or choice of laws provisions.
- 2.13 This Agreement represents the entire agreement of the parties in connection with the subject matter hereof and may be modified only in writing agreed to by all parties.
- 2.14 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.
- 2.15 If any term or provision of this Agreement is determined to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement shall, to the extent reasonable and practicable, continue in full force and effect.
- 2.16 Not later than ten (10) days following the later of (i) the termination of this Agreement pursuant to paragraph 2.17, or (ii) receipt of written demand from the Disclosing Party for return or destruction of all Confidential Information, the Receiving Party shall destroy or tender to the Receiving Party all Confidential Information, including all copies thereof which may have been made by or furnished to the Receiving Party or its Representatives and will furnish to the Disclosing Party a written statement signed by a representative of the Receiving Party certifying that all Confidential Information provided to it under this Agreement has been returned or destroyed. The Parties acknowledge that Confidential Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by the Receiving Party on electronic devices, magnetic tape or other media pursuant to automatic electronic archiving procedures or for the purpose of restoring data in the event of a system failure. With respect to Confidential Information contained in the Receiving Party's

computer network backup media, the Parties agree that the Receiving Party is not required to immediately destroy Confidential Information stored on the Receiving Party's computer backup media (provided that such Confidential Information shall remain subject to the disclosure and use restrictions prescribed by this Agreement), but instead, shall destroy or delete (through erasure, overwriting, or other means) such Confidential Information from such media in accordance with its information technology and document retention policies and procedures.

2.17 This Agreement shall become effective as of the date set forth in the initial paragraph of this Agreement and shall continue until terminated in writing by either Party provided, however, this Agreement shall remain in effect with respect to all Confidential Information disclosed prior to such termination.

[insert full legal name of Counterparty]

El Paso Electric Company

By: _____
Signature

By: _____
Signature

Name

Name

Title

Title

Date

Date