

Example Non-Disclosure Agreement Template

Disclaimer: Neither Battelle nor the Consortium for Electric Reliability Technology Solutions (CERTS) (as co-funders and sponsors of the Eastern Interconnection Phasor Project) make any claims regarding the suitability or applicability of this document for the disclosure of proprietary data. This document is offered only as an example.

MUTUAL NON-DISCLOSURE AGREEMENT

The parties to this Agreement are _____ (hereinafter _____) and _____ (hereinafter _____). Both parties have concluded that the following understanding will establish the conditions under which the Proprietary Information can be disclosed or exchanged.

For and in consideration of the mutual understandings by ___ and _____, it is hereby agreed:

1. _____ "Proprietary Information" is information owned or controlled by _____, for which _____ has the right to prevent dissemination, and that may comprise confidential and proprietary information. _____'s Proprietary Information relates to _____.

_____ "Proprietary Information" is information owned or controlled by _____ which _____ has the right to prevent dissemination, and may comprise confidential and proprietary information. _____'s Proprietary Information relates to _____.

2. All disclosures of Proprietary Information by either party, whether seen, heard, or written, shall be identified as proprietary at the time of disclosure and any writing shall be marked proprietary at the time such writings are first furnished to RECIPIENT, which can be either party, or within thirty (30) days thereafter. All non-written disclosures of Proprietary Information shall be summarized in writing and furnished to the other party within thirty (30) days after disclosure.

3. RECIPIENT shall maintain the identified Proprietary Information in confidence for a period of five (5) years from the date of disclosure. During this period, RECIPIENT shall not divulge such information to any third party, or use such information for any purpose other than review and evaluation without the prior written consent of DISCLOSER, except as required by law. RECIPIENT shall treat such information with the same degree of care as it accords to its own proprietary information, but in any event, not less than reasonable care.

4. It is understood by the parties that this obligation of confidentiality shall not apply to information which:

- a. is published or becomes published or otherwise is or becomes generally available to the public through no breach of this Agreement by RECIPIENT; or
- b. RECIPIENT can show was properly in its possession prior to receipt of the information from DISCLOSER; or
- c. is independently developed by RECIPIENT as demonstrated by competent documentary evidence; or

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- d. becomes available to RECIPIENT from an independent source without breach of agreement or violation of law; or
 - e. is required to be disclosed pursuant to proper governmental or judicial process, provided that notice of such process is promptly provided to DISCLOSER in order that DISCLOSER may have every reasonable opportunity to intervene in such process to contest such disclosure.
5. Proprietary Information disclosed hereunder shall remain the property of DISCLOSER. No license under any patent, copyright, trademark or trade secret is granted or implied.
 6. Upon request, RECIPIENT shall return all documents concerning the Proprietary Information to the party who furnished such items and all copies of any such documents or certify in writing their destruction, subject to RECIPIENT's right to retain one copy of each such document in the files of its law department or outside legal counsel for record purposes only.
 7. This Agreement shall be governed by and construed in accordance with the laws of the State of _____ and any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in the State of _____. The prevailing party in any such proceeding shall be entitled to receive from the other party all reasonable attorneys' fees incurred by such prevailing party and all costs reasonably incurred in connection therewith
 8. The RECIPIENT represents and warrants that no technical data furnished by the DISCLOSER shall be exported from the United States without first complying with all requirements of the Export Administration Regulations, including the requirement for obtaining any export license, if applicable. Disclosure to foreign nationals will not take place until all export control requirements have been met. The RECIPIENT shall first obtain the written consent of DISCLOSER prior to submitting any request for authority to export any such technical data.
 9. Neither party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.
 10. Each party warrants that it has the right to make the disclosures under this Agreement. **NO OTHER WARRANTIES, INCLUDING WARRANTIES AGAINST INFRINGEMENT, ARE MADE UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS".**

The period of time during which the parties may disclose Proprietary Information to each other under the terms of this Agreement shall be one (1) year from the effective date of this Agreement, or as extended by written modification. This Agreement may be terminated upon thirty (30) days advance written notice to the other party. Termination of this Agreement shall not extinguish any obligations accrued hereunder at the time of termination, and such obligations shall survive termination to the extent

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necessary to permit their complete fulfillment or discharge. The effective date of this Agreement shall be determined by the date affixed hereto by the party last signing this Agreement.

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____