



579 Tenney Mountain Highway
Plymouth, NH 03264-3154
www.nhec.coop
603-536-1800 / 800-698-2007

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

BETWEEN New Hampshire Electric Cooperative, Inc. and _____

This Confidentiality and Nondisclosure Agreement (the "Agreement") is entered into this ___ day of _____, 20___ by New Hampshire Electric Cooperative, Inc. ("NHEC")

headquartered at 579 Tenney Mountain Highway, Plymouth NH 03264 and between

_____ headquartered at

_____ (Collectively, "the Parties").

BACKGROUND

The Parties have entered into a NHEC Competitive Supplier Services Agreement and may also have entered into a Supplemental Agreement to Provide Consolidated Billing Service for Competitive Energy Supplier (the "**Services Agreements**"). In the course of their business dealings the Parties may request of each other, and each Party (the "**Disclosing Party**") may during the term hereof provide, or may have prior to the execution hereof provided, to the other Party (the "**Receiving Party**"), in written, electronic or any other form, certain information, including, without limitation, any information relating to aspects of the Disclosing Party's business, operations and financial condition and prospects, financial models, pricing, commercial strategies, analyses and financial, technical and other information which the Disclosing Party considers confidential (the "**Information**"). The purpose of this document is to establish an agreement between the Parties governing the use, safe-keeping and disclosure of such Information.

AGREEMENT

In consideration of the Parties entering into this Agreement and the mutual promises and agreements contained in this Agreement, the Parties agree that:

1. **Obligation of Confidentiality:** Subject to paragraphs 3 and 8, the Receiving Party shall keep the Information confidential and shall not itself, nor permit its directors, officers, employees, professional advisors or affiliates (the “**Representatives**”), at any time to, use any of the Information in any way, reveal, report, publish, transfer or otherwise disclose to any person, corporation or other entity any of the Information without the prior written consent of the Disclosing Party.
2. **Precautions and Care:** Notwithstanding the absolute requirement of confidentiality set out in paragraph 1, the Receiving Party shall safeguard the Information against disclosure by employing means to protect the Information which are at least as stringent as those means used to protect its own non-public, confidential or proprietary information; provided, however, that if the Disclosing Party requests that the Receiving Party employ specific reasonable measures against disclosure (e.g., restrictions on copying), the Receiving Party shall, by accepting the Information, be bound by such measures, provided that the Disclosing Party makes such request in writing on or before the date the Information is provided and identifies with specificity the Information that is to be subject to such specific reasonable measures.
3. **Permitted Disclosure and Responsibility:** The Receiving Party may distribute the Information, subject to any specific reasonable measures directed against disclosure in the manner set out in paragraph 2 hereof, to Representatives who have a need to know such Information for the specific purposes the business relationship between the Parties, provided that any disclosure by a Representative of the Receiving Party in violation of the provisions of this Agreement shall be a breach of this Agreement by the Receiving Party. The Receiving Party shall ensure that the Representatives to whom it discloses Information pursuant to this paragraph comply with the terms and conditions set out in this Agreement.

4. **Use of/Ownership of Information:** The Receiving Party shall use the Information only for the strictly limited purpose of the business relationship between the Parties, as contemplated by this Agreement. Nothing in this Agreement shall be construed as granting any rights to the Receiving Party, by license or otherwise, to any of the Disclosing Party's Information, except the limited right to use described in this paragraph.
5. **Return of Information:** Immediately upon request by the Disclosing Party, the Receiving Party shall promptly return all Information in documentary form and all copies or other reproductions thereof in any form whatsoever and delete the Information from all retrieval systems and data bases or destroy the same. Information that has been included in analyses, studies, compilations, interpretations and other documents prepared by or for the Receiving Party shall be held by the Receiving Party subject to the terms of this Agreement or destroyed upon the Disclosing Party's reasonable request, provided the Receiving Party may retain corporate documents which contain Information which it is required by law or its formal internal procedures to retain, however such Information remains confidential and subject to the terms of this Agreement. The Receiving Party agrees to represent in writing to the Disclosing Party that it has complied with the provisions of this paragraph. Notwithstanding any return or destruction of Information, the Receiving Party shall continue to be bound by this Agreement.
6. **Non-Circumvention:** In consideration of Disclosing Party's disclosure of its Information, the Receiving Party shall not attempt in any manner to commercially exploit Disclosing Party's Information.
7. **Provision of Information:** This Agreement does not impose upon either Party any obligation to provide any Information to the other Party.
8. **No Representations or Warranties:** No Party providing Information shall be deemed to have made any representation or warranty in connection with such Information.
9. **Required Disclosure:** Notwithstanding any other provision hereof, in the event that the Receiving Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, and access to information request or

similar process) to disclose any of the Information, the Receiving Party shall give the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy limiting or restricting the disclosure, and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not sought or obtained, or that the Disclosing Party waives compliance with the terms hereof, the Receiving Party legally compelled to disclose the Information agrees to provide only that limited portion of the Information that is legally required to be disclosed and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Information.

10. **Exceptions:** The term “Information” does not include any information which: (i) at the time of disclosure (or thereafter, but then only after such subsequent availability) is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not and was not known by the Receiving Party to be bound by a confidentiality agreement that was applicable to the information; or (iii) has been independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement.
11. **Applicable Law:** This agreement shall be governed by and construed in accordance with the laws of New Hampshire. The Parties hereby irrevocably agree to submit any dispute arising out of, or in connection with, this Agreement to the exclusive jurisdiction of the competent court of New Hampshire.
12. **Counterparts:** This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement. This Agreement may be delivered by facsimile or as a PDF file.
13. **Transaction Obligations:** No agency or partnership relationship is created between the Parties by this Agreement.

14. **Entire Agreement:** This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior and collateral communications, reports and understandings, if any, between the Parties. All additions, modifications and waivers to this Agreement must be made in writing and signed by both Parties.
15. **Assignment:** This Agreement is binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign (whether by operation of law or otherwise) or subcontract its interest in this Agreement without the prior written consent of the other Party. No assignment will operate so as to relieve the assigning Party of any of its obligations under this Agreement.
16. **Notices:** Any notice or other communication required or permitted to be given in connection with this Agreement will be given in writing either by personal delivery or by transmittal by facsimile addressed to the recipient thereof as follows:

(a) To: New Hampshire Electric Cooperative, Inc.

579 Tenney Mountain Highway

Plymouth, NH 03264

Attn: Jeremy Clark

(b) To: _____

Either Party may change its address for the purposes hereof by notice given in accordance with this paragraph. Any notice given by personal delivery will be conclusively deemed to

have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the day during which such normal business hours next occur if not given during such hours on any day; provided there is confirmation of receipt of the facsimile transmission.

17. **Severability:** In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, then such provision will be considered separate and apart from the remainder of this Agreement which will remain in full force and effect.

18. **Term and Survival:** This Agreement shall become effective upon the date of execution and shall continue until either of the **Services Agreements** is terminated. Termination of this Agreement shall have no effect upon the rights or obligations relative to the Information disclosed under this Agreement prior to the effective date of such expiration. The obligations to protect the confidentiality of any Information shall continue until such time as the Disclosing Party provides written notice that the Information is no longer confidential.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

For Supplier:

Signed - _____ - _____ - _____ -
Date Printed Name

Title - _____ -

State of - _____ -, County of: - _____ -

Before me personally appeared: _____ -

Who on this: _____ - day of _____ - year _____ -

Acknowledge the foregoing to be his/her/their voluntary act and deed:

Justice of the Peace/Notary Public

For NH Electric Cooperative:

Signed - _____ - _____ - _____ -
Date Printed Name

Title - _____ -

State of - _____ -, County of: - _____ -

Before me personally appeared: _____ -

Who on this: _____ - day of _____ - year _____ -

Acknowledge the foregoing to be his/her/their voluntary act and deed:

Justice of the Peace/Notary Public