



WESTCONNECT CONFIDENTIALITY AGREEMENT

Version 2.1

This WestConnect Confidentiality Agreement (“Agreement”) is being entered into by and between the WestConnect Planning Management Committee (“PMC”), through its Designated Representative, _____, and _____ (“Data Recipient”). Data Recipient agrees to the following terms and conditions pertaining to the use of any Non-Public Information received, from the WestConnect PMC through its Designated Representative in connection with the WestConnect regional transmission planning process:

1. Non-Public Information:

- a. Non-Public Information shall include any and all information Data Recipient receives from WestConnect in connection with the WestConnect regional transmission planning process, including, but not limited to, information received through a login to the website maintained by the WestConnect PMC or its regional planning consultant, which:
 - i. Is the type of information that WestConnect classifies and/or identifies as confidential information or Non-Public Information at the time it is provided to Data Recipient, or is otherwise considered non-public under the Western Electricity Coordination Council (“WECC”) Information Sharing Policy or a WECC Confidentiality Agreement; or
 - ii. Meets the definition of Confidential Information as set forth in Section 1500 of the Rules of Procedure of the North American Electric Reliability Corporation (“NERC”) or the definition of non-public Transmission Function Information¹ as set forth in the Federal Energy Regulatory Commission (“FERC”) Standards of Conduct²; or
 - iii. Trade secrets, commercial or financial information, or information of a kind that would customarily not be released to the public; or

¹ Non-public Transmission Function Information means: “Information relating to the planning, directing organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests” that is not public. See *18 C.F.R. § 358.3(h) and (j) (2020)*.

² For purposes of this Section, Section 1 – Non-Public Information, and Section 3.d – Non-public Transmission Function Information, the definitions related to FERC Standards of Conduct encompass transmission function information and all individuals and entities that functionally meet such definitions, without regard to whether the transmission function information, individuals or entities are subject to the FERC Standards of Conduct.

- iv. Constitutes Critical Energy/Electric Infrastructure Information (“CEII”) or Bulk Electric System (“BES”) Cyber System Information (“BCSI”) as defined by the FERC, or which has been marked with the legend ‘CEII’, ‘BCSI’, ‘Critical Energy Infrastructure Information,’ ‘BES Cyber System Information’ or similar marking. A CEII or BCSI designation under this Section 1.a.iv will remain in effect until the owner or submitter of the CEII or BCSI data, or a court of competent jurisdiction, determines that such information is no longer CEII or BCSI. Otherwise, a CEII or BCSI designation will remain in effect so long as permitted by law.
 - b. For the purposes of this Agreement, Non-Public Information shall not include:
 - i. Information that is or becomes available in the public domain through no fault or action of the Data Recipient;
 - ii. Information that is or has been acquired by Data Recipient from a source other than WestConnect in a manner which is not otherwise subject to confidentiality restrictions;
 - iii. Information that Data Recipient has received permission to disclose from the owner of the information; or
 - iv. Information that Data Recipient, without violation of this Agreement, independently develops or has developed on its behalf without reference to, or use of, any Non-Public Information.
 - c. Execution of this Agreement does not necessarily allow Data Recipient access to all information used in the WestConnect regional transmission planning process. Data Recipient acknowledges that certain types of information used in the WestConnect regional transmission planning process may warrant more stringent protections or more limited access than that provided under this Agreement.
- 2. Limitation on Use of Non-Public Information: Data Recipient shall use the Non-Public Information solely for the purpose of Data Recipient’s participation in the WestConnect regional transmission planning process (“Purpose”).
- 3. Treatment and Protection of Non-Public Information: Data Recipient agrees to keep confidential all Non-Public Information that has been or will be provided to it by WestConnect pursuant to this Agreement in accordance with the following terms:
 - a. Data Recipient shall protect Non-Public Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but, in any case, using no less than a reasonable degree of care.
 - b. Data Recipient shall not make available, disclose, provide or communicate Non-Public Information to any third party, except to:

- i. Employees of Data Recipient, employees of that Data Recipient's affiliated centralized service company (as long as the affiliated centralized service company is not participating in a separate WestConnect sector than Data Recipient), or to third party consultants retained by Data Recipient who, in all such cases, have a need to know for the Purpose and who are bound to maintain the confidentiality of the Non-Public Information, subject to the further limitation on Transmission Function Information below;
 - ii. WestConnect staff (project manager and/or planning consultant); or
 - iii. The owner or submitter of the Non-Public Information.
- c. If Data Recipient is requested or required by law, rule or regulation or by legal or administrative process to disclose any Non-Public Information, Data Recipient will promptly notify WestConnect's Designated Representative and the owner or submitter of the Non-Public Information³ of such request or requirement, if and to the extent allowed by such law, rule, regulation or process so that WestConnect or the owner or submitter of the Non-Public Information to WestConnect may seek an appropriate protective order or other relief. Data Recipient may disclose such Non-Public Information in accordance with such request or requirement, but Data Recipient:
 - i. May disclose only that portion of the Non-Public Information that is required to be disclosed;
 - ii. Must use commercially reasonable efforts to avoid disclosing any portion of the Non-Public Information that is subject to a pending request for a protective order;
 - iii. Must use commercially reasonable efforts to ensure that the Non-Public Information so disclosed is treated confidentially; and
 - iv. Must notify WestConnect's Designated Representative and the owner or submitter of the Non-Public Information as soon as reasonably practicable of the items of Non-Public Information so disclosed, if and to the extent allowed by applicable law, rule, regulation or process.
- d. Non-Public Transmission Function Information: In addition to treating and protecting non-public Transmission Function Information that Data Recipient may receive from WestConnect in accordance with the requirements of this Section 3, Data Recipient further agrees not to provide or disclose any non-public Transmission Function Information to any individual engaged in Marketing Functions⁴.

³ The Data Recipient may access a list of the owners or submitters of the Non-Public Information to WestConnect on the WestConnect website under the listing of "Planning Management Committee Members."

⁴ Marketing Functions means "the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric

- e. CEII/BCSI: In addition to treating CEII or BCSI information that Data Recipient may receive from WestConnect in accordance with the requirements of this Section 3, Data Recipient further agrees to: (i) maintain all CEII/BCSI in a secure place that is not accessible to the employees and agents of Data Recipient who do not have a need to know its contents; (ii) assure that access to BCSI by any employees or agents of Data Recipient or any third party shall only be granted in accordance with NERC Critical Infrastructure Protection Standards; and (iii) assure that access to CEII by any employees or agents of Data Recipient or any third party shall occur only in accordance with applicable regulatory requirements.

4. Disclaimer and Limitations:

- a. Data Recipient acknowledges and agrees that:
 - i. Neither WestConnect nor any owner or submitter of Non-Public Information makes any representation or warranty as to the completeness, accuracy, relevance, or usability of the Non-Public Information; and
 - ii. There is no obligation on the part of WestConnect or any owner or submitter of Non-Public Information to supplement, update, or correct any Non-Public Information, even if the Non-Public Information is supplemented, updated, or corrected for other purposes.
- b. Data Recipient releases WestConnect, any owner or submitter of Non-Public Information, and any employees and agents of such entities or persons from any liability or responsibility whatsoever to Data Recipient for: 1) any errors or omissions in Non-Public Information or 2) any use of Non-Public Information by Data Recipient, including, but not limited to, business decisions made by Data Recipient in reliance on, any Non-Public Information disclosed under this Agreement.

ALL NON-PUBLIC INFORMATION MADE AVAILABLE TO DATA RECIPIENT IS MADE AVAILABLE AS IS AND WITHOUT WARRANTY, EXPRESS OR IMPLIED.

- c. To the extent permitted by law, Data Recipient agrees to indemnify, hold harmless, and defend WestConnect, all owners and submitters of Non-Public Information, and any employees and agents of such entities or persons from all claims of any kind whatsoever from any third party arising from: 1) Data Recipient's use, handling, or receipt of Non-Public Information or 2) Data Recipient's performance or nonperformance of its obligations under this Agreement.

energy made by providers of last resort (POLRs) acting in their POLR capacity...." See 18 C.F.R. § 358.3(c) (2020). The prohibition encompasses individuals engaged in Marketing Functions without regard to whether the individuals or entities are subject to the FERC Standards of Conduct.

5. Effective Date, Term and Termination:

- a. This Agreement shall become effective as of the last date it is signed by both Parties ("Effective Date").
 - i. For a WestConnect member, this Agreement shall remain in effect so long as Data Recipient remains a member of WestConnect. If Data Recipient's membership in WestConnect ends or is terminated by Data Recipient or WestConnect for any reason, this Agreement shall terminate effective as of the date such membership terminates. In addition, should a member of WestConnect cease being considered an active member of the region in the manner set forth in the Planning Participation Agreement, this Agreement is deemed terminated upon failure to cure their inactive status within two PMC meetings following notification of inactive member status, triggering the obligations identified in subpart (c), (d), and (e) below.
 - ii. For Data Recipients that are not members of WestConnect, this Agreement shall terminate 6 months after the conclusion of the planning cycle in which the Effective Date occurred, unless it is deemed terminated earlier pursuant to Sections 6(b) or 6(g) below.
- b. This Agreement may be terminated by WestConnect or Data Recipient at any time with 30 calendar days prior written notice to the other Party. Notices to WestConnect must be made to NDA@westconnect.com. Notices to the Data Recipient must be made to the Authorized Representative of the Data Recipient. The Data Recipient is obligated to notify WestConnect through NDA@westconnect.com of any and all changes to its Authorized Representative.
- c. Upon termination of this Agreement, Data Recipient shall return to WestConnect all Non-Public Information in Data Recipient's possession or, at Data Recipient's sole discretion, destroy all Non-Public Information in Data Recipient's possession, and in either case certify to WestConnect in writing that all Non-Public Information has been returned or destroyed. Non-Public Information contained in the Data Recipient's computer system backup media as a result of its automatic archiving or backup procedures (such as, for example, email backup tapes) need not be promptly returned to WestConnect or promptly destroyed by the Data Recipient so long as the backup media are maintained in confidence, are not readily accessible to users, are not retrieved and distributed, are overwritten or destroyed in the ordinary course of erasing or re-using such system backup media, and are handled in accordance with all the other requirements of this Agreement.
- d. The Data Recipient may also retain one copy of Non-Public Information for government-imposed record retention requirements or compliance with legal holds associated with litigation in administrative forums or in the courts so long as the Non-Public Information is maintained in confidence, is not readily accessible, is overwritten or destroyed in the ordinary course upon the

expiration of the minimum-required document retention period, and is handled in accordance with all the other requirements of this Agreement.

- e. The obligations contained herein with respect to Non-Public Information shall survive until all Non-Public Information in the possession of the Data Recipient has been returned or destroyed or the information no longer constitutes Non-Public Information as defined in Section 1 of this Agreement.
- f. This Section 5 does not preclude WestConnect, through its Project Manager, after notice to and discussion with the owners and submitters of the Non-Public Information, from permitting access to Non-Public Information to the FERC in response to a written agency request for such access.
- g. This Section 5 does not preclude the WestConnect Project Manager or other WestConnect representative from performing its assigned duties set forth in the WestConnect Data Protocol.
- h. Upon termination of this Agreement, WestConnect will revoke Data Recipient's access to all Non-Public Information, including, but not limited to, access to Non-Public Information made available through a login to the WestConnect website.
- i. If Data Recipient is not a member of WestConnect and ceases its active participation in the WestConnect regional transmission planning process, this Agreement shall be deemed terminated at such time (if neither Data Recipient nor WestConnect has terminated it sooner), thereby triggering the obligations set forth in Section 5(d) above. A Data Recipient who is not a member of WestConnect and that has not attended any WestConnect meetings for a period of nine (9) consecutive months shall be deemed to have ceased its active participation in the WestConnect regional transmission planning process. For purposes of enforcing this provision, the Project Manager shall review the lists of identified attendees of WestConnect meetings, as logged in the meeting minutes.

6. Miscellaneous Terms: Data Recipient further agrees to the following terms:

- a. This Agreement shall be for the sole benefit of WestConnect and the owner or submitter of the Non-Public Information. This Agreement shall be fully enforceable by WestConnect or any entity or individual whose Non-Public Information is covered by this Agreement.
- b. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.
- c. Powerflow data and associated models that WestConnect receives from WECC are subject to WECC-required non-disclosure commitments and shall only be disclosed by WestConnect to Data Recipient in accordance with such

commitments. If Data Recipient desires access to WestConnect data or models that are based on or derived from WECC data and models, Data Recipient must have in effect and provide to WestConnect a copy of an approved WECC Confidentiality Agreement. If Data Recipient is not already a WECC Member or does not already have an approved WECC Confidentiality Agreement with WECC, it must enter into the WECC Confidentiality Agreement and provide a fully executed copy to WestConnect prior to being provided access to any Non-Public Information.

[Signatures appear on following page.]

IN WITNESS HEREOF, Data Recipient enters into this Agreement voluntarily, wishing to be legally bound.

ACKNOWLEDGED AND AGREED this ____ day of _____, _____
[Leave this line item blank. WestConnect will fill in this Acknowledged and Agreed line item after review of Data Recipient's signed form]:

DATA RECIPIENT

WESTCONNECT

Company/Organization

Signature

Signature

Printed Name of WestConnect's
Designated Representative

Printed Name of Company's
Authorized Representative

Title/Position

Date

Please submit all completed and signed forms to:
Email: NDA@WestConnect.com
Re: WestConnect NDA