



# Commission Staff Report

February 4, 2019

**COMMISSION MEETING DATE:** February 21, 2019

**SUBJECT:** Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property

**AGENDA CATEGORY:** Consent

<b>FROM:</b>	Tony Zimmer	<b>METHOD OF SELECTION:</b>
	AGM, Power Management	N/A
Division:	Power Management	<i>If other, please describe:</i>
Department:	Power Management	

<b>IMPACTED MEMBERS:</b>		
All Members	<input checked="" type="checkbox"/>	
Alameda Municipal Power	<input type="checkbox"/>	
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	
City of Biggs	<input type="checkbox"/>	
City of Gridley	<input type="checkbox"/>	
City of Healdsburg	<input type="checkbox"/>	
City of Lodi	<input type="checkbox"/>	
City of Lompoc	<input type="checkbox"/>	
City of Palo Alto	<input type="checkbox"/>	
City of Redding	<input type="checkbox"/>	
City of Roseville	<input type="checkbox"/>	
City of Santa Clara	<input type="checkbox"/>	
City of Shasta Lake	<input type="checkbox"/>	
City of Ukiah	<input type="checkbox"/>	
Plumas-Sierra REC	<input type="checkbox"/>	
Port of Oakland	<input type="checkbox"/>	
Truckee Donner PUD	<input type="checkbox"/>	
Other	<input type="checkbox"/>	
<i>If other, please specify</i>		
_____		
_____		

## **RECOMMENDATION:**

Northern California Power Agency (NCPA) staff recommends that the Commission adopt and approve the Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property (Amended and Restated NDA), and authorize the General Manager of NCPA, acting on behalf of NCPA, to execute the Amended and Restated NDA upon execution by Member or Customer.

## **BACKGROUND:**

Pursuant to Commission Resolution 13-42, adopted on March 21, 2013, NCPA implemented the Agreement Regarding the Use and Non-Disclosure of Information for NCPA Projects (NDA) to establish a process and requirements used to protect certain commercially sensitive information (Confidential Information) that may be released by NCPA, and to ensure that parties who may receive such Confidential Information use and manage such information properly.

## **DISCUSSION:**

The NDA was developed at a time when the primary software tool used by NCPA to distribute Confidential Information was the NCPA Data Portal, and as such, many of the provisions contained within the NDA specifically refer to use of the NCPA Data Portal for such purpose. NCPA has since developed a number of additional software tools and applications through which NCPA may distribute Confidential Information (e.g., NCPA Connect), and NCPA staff now believe it is necessary to revise the NDA to generalize references contained in the NDA regarding the types of electronic media NCPA may use for such purpose. NCPA has also developed a number of software tools and applications (Intellectual Property) that NCPA allows its Members and Customers to use to conduct their business activities. To ensure NCPA's Intellectual Property is protected, NCPA staff believe the NDA should also be revised to clarify that while NCPA may provide a nonexclusive license to its Members and Customers for use of NCPA's Intellectual Property, in doing so NCPA is not selling, giving or transferring such Intellectual Property to anyone, including its Members and Customers.

To address the items described above, NCPA staff have developed an Amended and Restated NDA to replace the existing NDA. The Amended and Restated NDA includes language that is inclusive of all electric media through which NCPA may distribute Confidential Information, and includes provisions to manage and protect the use of NCPA's Intellectual Property. A copy of the Amended and Restated NDA has been attached hereto for your reference.

## **FISCAL IMPACT:**

Work associated with developing the Amended and Restated NDA was undertaken pursuant to approved NCPA budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

## **ENVIRONMENTAL ANALYSIS:**

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

**COMMITTEE REVIEW:**

The Amended and Restated NDA provided herein was reviewed by the Facilities Committee on January 2, 2019, and was recommended for Commission approval. In addition, the Legal Committee reviewed the Amended and Restated NDA during its meeting on January 11, 2019.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments: (2)

- Resolution 19-10
- Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property

## RESOLUTION 19-10

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND NON- DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY

(reference Staff Report #113:19)

WHEREAS, pursuant to Commission Resolution 13-42, adopted on March 21, 2013, Northern California Power Agency (NCPA) implemented the Agreement Regarding the Use and Non-Disclosure of Information for NCPA Projects (NDA) to establish a process and requirements used to protect certain commercially sensitive information (Confidential Information) that may be released by NCPA, and to ensure that parties who may receive such Confidential Information use and manage such information properly; and

WHEREAS, the NDA was developed at a time when the primary software tool used by NCPA to distribute Confidential Information was the NCPA Data Portal, and as such, many of the provisions contained within the NDA specifically refer to use of the NCPA Data Portal for such purpose; and

WHEREAS, NCPA has developed a number of additional software tools and applications through which NCPA may distribute Confidential Information (e.g., NCPA Connect), and NCPA staff now believe it is necessary to revise the NDA to generalize references contained in the NDA regarding the types of electronic media NCPA may use for such purpose; and

WHEREAS, NCPA has developed a number of software tools and applications (Intellectual Property) that NCPA allows its Members and Customers to use to conduct their business activities; and

WHEREAS, to ensure NCPA's Intellectual Property is protected, NCPA staff believe the NDA should also be revised to clarify that while NCPA may provide a nonexclusive license to its Members and Customers for use of NCPA's Intellectual Property, in doing so NCPA is not selling, giving or transferring such Intellectual Property to anyone, including its Members and Customers; and

WHEREAS, to address the items described herein, NCPA staff have developed an Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property (Amended and Restated NDA) to replace the existing NDA; and

WHEREAS, the Amended and Restated NDA includes language that is inclusive of all electric media through which NCPA may distribute Confidential Information, and includes provisions to manage and protect the use of NCPA's Intellectual Property; and

WHEREAS, work associated with developing the Amended and Restated NDA was undertaken pursuant to approved NCPA budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts and approves the Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property, and authorizes the General Manager of NCPA, acting on behalf of NCPA, to execute the Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property upon execution by a Member or Customer.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
 ROGER FRITH  
 CHAIR

ATTEST: \_\_\_\_\_  
 CARY A. PADGETT  
 ASSISTANT SECRETARY

**Below are redline changes since last draft presented to Legal Committee:**

5. Exceptions to Non-Disclosure.

(d) subject to the provisions of Paragraph 5, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction; ~~or~~

~~(d)~~(e) in the event that the Receiving Party is a federal, state, or local governmental entity and/or is subject to public records law or regulation including but not limited to the federal Freedom of Information Act (FOIA), U.S. Code Title 5, Section 552, as amended, or the California Public Records Act, California Government Code Sections 6250, et seq. and the information is disclosed pursuant to public records laws.

8. Cyber Security.

~~9-8. \_\_\_\_\_~~

9-8.

Receiving Party shall notify NCPA no less than 24-hours after discovery of a potential compromise of Receiving Party's network, computers, applications or electronic systems in any way that Receiving Party determines could provide unauthorized access or negatively impact the confidentiality, integrity, or availability of NCPA systems.

**NORTHERN CALIFORNIA POWER AGENCY  
AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND  
NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND  
LICENSE TO USE INTELLECTUAL PROPERTY**

The Northern California Power Agency (NCPA), a joint powers authority, and \_\_\_\_\_, a \_\_\_\_\_, a member or customer of NCPA (“Receiving Party”), hereby enter into this Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property (“Agreement”).

WHEREAS, pursuant to NCPA project power sale agreements, associated operating agreements, facility agreements, and other applicable services agreements (collectively referred to herein as “NCPA Agreements”), the Receiving Party, as a member or customer and in either case signatory to one or more NCPA Agreements, may be entitled to receive certain Confidential Information (as defined in Paragraph 2) from NCPA concerning the operations and settlements and have a license to use NCPA’s Intellectual Property (as defined in Paragraph 7[a]);

WHEREAS, NCPA intends to provide data, including Confidential Information, to the Receiving Party primarily through its Data Portal or other electronic or physical media (the “Delivery Media”);

WHEREAS, some of the Confidential Information provided includes data relating to the Receiving Party’s operational and settlement activities, including bids and costs;

WHEREAS, the parties recognize that data designated as Confidential Information has the potential to be misused for unlawful market purposes;

WHEREAS, the parties have agreed to put procedures in place to prevent the use or disclosure of the Confidential Information in a manner that might be construed to violate federal or California law;

WHEREAS, NCPA has developed Intellectual Property including software for analyzing energy market data, developing bidding strategies and providing that information to the California Independent System Operator;

WHEREAS, Receiving Party may want to use Intellectual Property developed by NCPA to process data, create bids, create bidding strategies, communicate that information to the California Independent System Operator or other energy market applications; and

WHEREAS, NCPA provides a nonexclusive license to its members and customers to use Intellectual Property while they are members or customers of NCPA and operating under NCPA Agreements but does not sell, give or transfer Intellectual Property to anyone including members and customers.

THEREFORE, in consideration of the mutual covenants in this Agreement, NCPA and the Receiving Party: 1) hereby terminate any Northern California Power Agency Agreement Regarding the Use and Non-disclosure of Information for NCPA Projects Agreement as it is superseded by this Agreement, and 2) agree to contractual limits and protection concerning the

disclosure and use of the Confidential Information and the use, nondisclosure or reproduction of Intellectual Property, as follows:

1. Purpose, Scope and Definition. The purpose of this Agreement is to permit the Receiving Party to review and use the Confidential Information to which it is entitled pursuant to an applicable NCPA Agreement for any lawful purpose, subject to the restrictions on disclosure to Third Parties and uses set forth herein. In addition, this Agreement provides a license to the Receiving Party to use NCPA Intellectual Property only for its own internal use through NCPA Delivery Media as specifically provided by NCPA, subject to restrictions on disclosure, ownership rights, and reproduction but does not grant Receiving Party any rights to use Intellectual Property once Receiving Party is no longer a member or customer of NCPA.

2. Definition of Confidential Information. Confidential Information consists of commercially sensitive information, which may include, but is not limited to Intellectual Property, price, quantity, location or timing of electric industry marketing decisions, provided by NCPA to the Receiving Party, whether through any Delivery Media or otherwise, pertaining to the Receiving Party's operational or settlement activities. Except as otherwise provided in Paragraphs 4 and 5, Confidential Information includes but is not limited to:

- (a) All written materials marked "Confidential" or "Proprietary" or "Sensitive" or other words of similar import provided by NCPA to the Receiving Party;
- (b) All observations of equipment or data, including computer screens, and oral disclosures that are indicated as "Confidential" or "Proprietary" or "Sensitive" or other words of similar import at the time of the observation or the disclosure; and
- (c) Notes, copies printouts or summaries of or regarding the Confidential Information prepared by the Receiving Party or its employees, agents, consultants, attorneys or participants.

3. Non-Disclosure. Subject to Paragraph 4 below, the Receiving Party shall keep the Confidential Information in strict confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity (a "Third Party") other than its employees, agents, consultants, attorneys, or participants who are reasonably necessary to assist the Receiving Party with decisions regarding its interest in a NCPA Agreement. Employees, agents, consultants, attorneys and participants shall be classified as follows:

- (a) Designated Reviewers are persons authorized by the Receiving Party Administrator to access the Delivery Media. The Receiving Party shall cause any such Designated Reviewer who is an employee of the Receiving Party to execute Exhibit A to the Receiving Party's Agreement prior to such employee receiving or viewing Confidential Information through the Delivery Media. The Receiving Party shall cause any such Designated Reviewer who is a consultant of the Receiving Party to execute Exhibit B to the Receiving Party's Agreement prior to such consultant receiving or viewing Confidential Information through the Delivery Media.
- (b) Designated Recipients are persons who are not authorized to access the Delivery Media, but who are authorized to view Confidential Information from the Delivery Media as part of their work in assisting the Receiving Party with decisions regarding its interest in the NCPA Agreement. The Receiving Party shall cause any such



Designated Recipient who is an employee of the Receiving Party to review this Agreement and shall take such measures as it deems prudent to ensure that the Designated Recipient understands both the Receiving Party's and his or her responsibilities with regard thereto. The Receiving Party shall cause any such Designated Recipient who is a consultant to execute Exhibit B to this Agreement prior to such consultant receiving or viewing Confidential Information.

(c) Decision Makers are persons who are members of the governing body, including, but not limited to, city council, governing board, and utility commissions, of the Receiving Party, executives of the Receiving Party or attorneys for the Receiving Party who are not authorized to access the Delivery Media but who may review reports and recommendations summarizing aggregated data that may be based on Confidential Information, in the course of making or approving decisions related to the Receiving Party's decisions about its NCPA Agreement interests. The Receiving Party shall take such measures as it deems prudent to ensure that Decision Makers understand the Receiving Party's and their responsibilities with regard thereto.

(d) A copy of each executed Exhibit A and/or B shall be provided to NCPA.

It is the ongoing responsibility of the Receiving Party to ensure that: (i) each Exhibit A and Exhibit B is accurate; (ii) each Exhibit A and Exhibit B permits access only to a current Designated Reviewer or Designated Recipient of the Receiving Party; (iii) each Designated Recipient or Designated Reviewer receiving the Confidential Information understands the scope of permissible use; (iv) each new Exhibit A and Exhibit B, and any notice of cancellation of an Exhibit A or Exhibit B, is immediately submitted to NCPA; and (v) NCPA is immediately notified of any unauthorized access to NCPA's Delivery Media or other breach of this Agreement.

4. Use of Confidential Information.

(a) It is understood and agreed by the Receiving Party that both parties have obligations under federal and California law to safeguard the Confidential Information against use or disclosure for purposes inconsistent with federal or California antitrust laws or for purposes of market manipulation.

(b) The Receiving Party may use the Confidential Information received hereunder for any lawful purpose, provided that it does not disclose the Confidential Information to Third Parties other than Designated Reviewers, Designated Recipients, or Decision Makers as provided in Paragraph 3, and receives similar commitments as provided in Paragraph 3.

(c) Receiving Party shall take all prudent measures to ensure that its Designated Reviewers, Designated Recipients and Decision Makers use the Confidential Information in compliance with this Agreement and with all laws and regulations, and safeguard its confidentiality.

5. Exceptions to Non-Disclosure. Notwithstanding Paragraph 2 above, a party to this Agreement shall not have breached any obligation under this Agreement if the Confidential Information is disclosed to a Third Party when the Confidential Information:

- (a) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; or
- (b) had been received by the Receiving Party prior to the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party without use of Confidential Information, as demonstrated through documentation; or
- (c) is subsequently disclosed to the Receiving Party by a Third Party without restriction on use imposed by the Third Party and without breach of any law, agreement or legal duty to the Third Party; or
- (d) subject to the provisions of Paragraph 5, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction; or
- (e) in the event that the Receiving Party is a federal, state, or local governmental entity and/or is subject to public records law or regulation including but not limited to the federal Freedom of Information Act (FOIA), U.S. Code Title 5, Section 552, as amended, or the California Public Records Act, California Government Code Sections 6250, *et seq.* and the information is disclosed pursuant to public records laws.

6. Notice of Pending Third Party Disclosure.

- (a) In the event that a court or other governmental authority of competent jurisdiction issues an order, subpoena or other lawful process requiring the disclosure of the Confidential Information, the Receiving Party shall notify NCPA immediately upon receipt thereof to allow NCPA to be involved in such proceeding for the purpose of safeguarding the Confidential Information.
- (b) In the event that the Receiving Party is a federal, state, or local governmental entity and/or is subject to public records law or regulation, including but not limited to the federal Freedom of Information Act (FOIA), U.S. Code Title 5, Section 552, as amended, or the California Public Records Act, California Governmental Code Sections 6250, *et seq.*, the Receiving Party shall: (i) notify NCPA immediately upon receipt of a request for public records that include all or part of the Confidential Information; and (ii) subject to sub-paragraph (c), treat the requested Confidential Information as exempt from disclosure.
- (c) The Receiving Party shall not be in violation of this Agreement if it complies with an order of a court or governmental authority, or a public records law or regulation, requiring disclosure of the Confidential Information, after: (i) NCPA has unsuccessfully sought to maintain the confidentiality of such information as provided herein; (ii) NCPA has notified the Receiving Party in writing that it will take no action to maintain such confidentiality; or (iii) counsel for the Receiving Party has determined that disclosure is required under a public records law or regulation, the counsel for the Receiving Party has provided NCPA with three (3) business days written notice of such determination, and NCPA has not responded or sought an order restraining disclosure within such time period.

7. Intellectual Property.

- (a) Definition of Intellectual Property. Intellectual Property includes all NCPA trademarks, trade names, service marks, logos, copyrights, patents, trade secrets, software, processes, computer code and other intellectual property rights now or hereafter owned by NCPA or used by NCPA pursuant to a licensing agreement.
- (b) NCPA hereby grants to Receiving Party a nonexclusive, nontransferable and nonsublicensable license for its own internal use to use NCPA's Intellectual Property in conjunction with the services provided by NCPA as part of NCPA Agreements and in accordance with the guidelines provided by NCPA from time to time including but not limited to that Intellectual Property accessed through Delivery Media or other direct or indirect electronic means. Receiving Party agrees that NCPA shall retain ownership of all such Intellectual Property. Any and all use of NCPA's Intellectual Property by Receiving Party shall inure to the benefit of NCPA.
- (c) Receiving Party shall not copy, reproduce, distribute, display, modify, or create derivative works based upon all or any portion of the Intellectual Property in any medium, electronic or otherwise, without the express written consent of NCPA. In addition, Receiving Party shall not provide Intellectual Property to Third Parties or services to Third Parties using Intellectual Property.
- (d) Upon termination of this Agreement or any of the NCPA Agreements, Receiving Party shall cease using the Intellectual Property and shall not thereafter adopt, use or reverse engineer any colorable imitation of any Intellectual Property.

8. Cyber Security. Receiving Party shall notify NCPA no less than 24-hours after discovery of a potential compromise of Receiving Party's network, computers, applications or electronic systems in any way that Receiving Party determines could provide unauthorized access or negatively impact the confidentiality, integrity, or availability of NCPA systems.

9. Term. This Agreement shall remain in effect unless and until NCPA provides ten (10) days' prior written notice to the Receiving Party of its termination. Termination shall not extinguish any claim, liability or cause of action under this Agreement existing at the time of termination. In addition, Receiving Party acknowledges and agrees that NCPA may suspend and ultimately terminate Receiving Party's access to Confidential Information and/or Intellectual Property in connection with any material breaches or material violation of this Agreement that have not been cured by Receiving Party within thirty (30) days of written notice of such breach or violation.

10. Provisions Surviving Termination. The provisions of Paragraphs 2, 3, 4, 5, 6, 7 and 8 shall survive the termination of this Agreement for a period of five (5) years.

11. Destruction of Documents. Nothing in this Agreement shall prevent the Receiving Party from otherwise lawful destruction of documents or files containing Confidential Information in the ordinary course of business, provided that the method of destruction safeguards the Confidential Information.

12. Notices.

- (a) Administrator(s) for Data Portal Access. Receiving Party shall designate one (1) person to act as Administrator on its behalf, and shall provide the name, street address, telephone number, facsimile number and email address of such Administrator to NCPA's Representative designated under sub-paragraph (b) prior to Receiving Party being granted access to the Data Portal. Either party may change the identity of its Administrator or the address for notice to its Administrator by providing notice to the other.

The Receiving Party's Administrator shall administer access to the Delivery Media on behalf of Receiving Party's employees, agents, consultants, attorneys or participants, including but not limited to making requests for new user accounts, maintenance and administration of existing user accounts, and administration of digital security certificates. NCPA's Administrator shall administer on behalf of NCPA all such requests by Receiving Party's Administrator.

All communications, pursuant to this sub-paragraph, from Receiving Party's Administrator to NCPA's Administrator shall be in writing, via email, to the following address: [dataportaladmin@ncpa.com](mailto:dataportaladmin@ncpa.com).

- (b) Representatives and Addresses. All notices, requests, demands, and other communications required or permitted under this Agreement other than those between Administrators shall be in writing and shall be either: (i) delivered in person; (ii) sent by email; (iii) sent by U.S. certified mail, postage prepaid; or (iv) sent by overnight delivery; addressed as follows:

**Receiving Party:**

Entity Name: \_\_\_\_\_

Name of Contact (person or position):  
\_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**NCPA:**

Tony Zimmer  
Assistant General Manager; Power Management  
651 Commerce Drive  
Roseville, CA 95678  
Telephone: (916) 781-4229  
Email: tony.zimmer@ncpa.com

and

Jane E. Luckhardt  
NCPA General Counsel  
651 Commerce Drive  
Roseville, California 95678  
Telephone: (916) 781-4268  
Email: [jane.luckhardt@ncpa.com](mailto:jane.luckhardt@ncpa.com)

- (c) Changed Representatives and Addresses. A party hereto may from time to time change its representative or address for the purpose of notices to that party by notice specifying a new representative or address.
- (d) Effective Date of Notices. All notices and other communications required or permitted under this Agreement that are addressed as provided in this Paragraph 12 shall be effective upon delivery.

13. Complete Agreement; No Other Rights.

- (a) This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement shall be effective unless agreed to in writing by the parties hereto. Any conflict between the language of this Agreement and any mark, stamp, annotation or other language identifying something received hereunder as Confidential Information shall be resolved in favor of this Agreement.
- (b) This Agreement is not intended to create any right in or obligation of any party or Third Party other than those expressly stated herein.

14. No Warranties or Representations. Any Confidential Information disclosed by NCPA under this Agreement carries no warranty or representation of any kind, either express or implied. Any Intellectual Property used by Receiving Party contains no warranty or representation of any kind, either express or implied, and no warranty regarding functionality, lack of software bugs or glitches, timely resolution of any problems or shortcomings and no guarantees that any Intellectual Property will be accessible at all times. The Receiving Party shall not be entitled to rely on the accuracy, completeness or quality of the Confidential Information or Intellectual Property, even for the purpose stated in Paragraph 1.

15. Injunctive Relief. The Receiving Party agrees that, in addition to whatever other remedies may be available to NCPA under applicable law, NCPA shall be entitled to obtain injunctive relief with respect to any actual or threatened violation of this Agreement by the Receiving Party, its Designated Recipients or any Third Party to whom Receiving Party disclosed Confidential Information or had access to Intellectual Property. The Receiving Party agrees that it shall bear all costs and expenses, including reasonable attorneys' fees that may be incurred by NCPA in enforcing the provisions of this paragraph, only if NCPA prevails in the litigation.

16. Governing Law. This Agreement is made in the State of California and shall be governed by and interpreted in accordance with its laws.

17. Assignment. This Agreement shall be binding upon the parties, their successors, and assigns. The Receiving Party shall not assign this Agreement without NCPA's prior written consent.

18. Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any party, but shall be construed in the manner that most accurately reflects the parties' intent as of the date they executed this Agreement.

19. Signature Authority. Each person signing below warrants that he or she has been duly authorized by the party for whom he or she signs to execute this Agreement on behalf of that party.

20. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth above.

NORTHERN CALIFORNIA POWER AGENCY

By: \_\_\_\_\_

Name: Randy Howard

Title: General Manager

Date:

RECEIVING PARTY:

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date:

**EXHIBIT A**

**INDIVIDUAL AGREEMENT TO BE BOUND BY NCPA'S AMENDED AND  
RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF  
CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY**

The undersigned, \_\_\_\_\_ (print or type name), employed as \_\_\_\_\_ (title) by the Receiving Party, \_\_\_\_\_, hereby acknowledges that he or she in his/her official capacity has received a copy of the NORTHERN CALIFORNIA POWER AGENCY AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY ("Agreement") in which the Receiving Party, \_\_\_\_\_, has an entitlement interest, dated \_\_\_\_\_ between the Northern California Power Agency and the Receiving Party designated therein ("Agreement").

1. The undersigned hereby acknowledges that the undersigned has read the Agreement and understands the importance of maintaining the confidentiality of Confidential Information (as defined in Paragraph 2 of the Agreement), the provisions of the Agreement relating to such confidentiality, and the limitations on the use of Confidential Information.
  
2. The undersigned hereby acknowledges that the undersigned has read the Agreement and understands the terms of the nonexclusive license to use Intellectual Property (defined in Paragraph 7(a) of the Agreement), and agrees to limit the use of Intellectual Property to uses allowed under NCPA Agreements and this Agreement including but not limited to limitations on term, disclosure and reproduction or reuse.

In consideration thereof, the undersigned agrees to be bound by all of the provisions of the Agreement.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT B**

**CONSULTANT STATEMENT TO BE BOUND BY NCPA'S AMENDED AND  
RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF  
CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY**

Name of Consulting Entity: \_\_\_\_\_

Type of business and state in which business organization is formed (e.g. a California corporation): \_\_\_\_\_

Located at:  
(address of Consulting Entity): \_\_\_\_\_

Has been engaged to provide technical support and analysis to the following entity:  
\_\_\_\_\_

Consulting Entity hereby acknowledges that it has received a copy of the NORTHERN CALIFORNIA POWER AGENCY AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY ("Agreement") in which the Receiving Party, \_\_\_\_\_, has an entitlement interest, dated \_\_\_\_\_ between the Northern California Power Agency and the Receiving Party designated therein ("Agreement"). Consulting Entity hereby acknowledges and agrees that in order to access Confidential Information (as defined in the Agreement), Consulting Entity must comply with the provisions of the Agreement, and it agrees to do so. Furthermore, Consulting Entity hereby acknowledges and agrees that in order to access Intellectual Property, Consulting Entity must abide by the limitations to the term, disclosure and reproduction or reuse of Intellectual Property, and agrees to restrict the use of Intellectual property to uses allowed under NCPA Agreements and this Agreement.

Consulting Entity acknowledges and agrees that its review of Confidential Information and use of Intellectual Property is solely for the purpose of providing consultancy services to the Receiving Party and that its use of Confidential Information and Intellectual Property shall be limited to the same. To the extent that Consulting Entity provides technical support and analysis to parties who are not party to this Agreement, Consulting Entity agrees that disclosure of Confidential Information or Intellectual Property to such parties is prohibited by the terms and conditions of the Agreement.

The undersigned agrees that he or she is authorized by the Consulting Entity to execute this Consultant Statement to the Agreement.

Dated: \_\_\_\_\_

Consulting Entity: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_