

# Attachment A

## Confidentiality Agreement

This Confidentiality Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 2020, ("Effective Date") by and between \_\_\_\_\_ ("\_\_\_\_\_") and Central Electric Power Cooperative, Inc. ("Central Electric"), each of which in connection with Confidential Information, as defined below, provided by it will be a "Discloser" and in connection with Confidential Information received by it will be a "Recipient." \_\_\_\_\_ and Central Electric are each individually referred to as "Party" and collectively referred to as the "Parties".

WHEREAS, \_\_\_\_\_ will provide, or has provided, to Central Electric a submittal (the "Proposal") in response to Central Electric's "Request for Proposals for Electric Service to Duke Energy Carolinas Delivery Point" (the "Request for Proposals");

WHEREAS, Discloser may disclose Confidential Information, as defined below, to Recipient in connection with (1) certain discussions between the Parties concerning the possible undertaking of a business relationship associated with the Proposal among the Parties, and (2) the participation in, and continuation of, a business relationship associated with the Proposal in the event the Parties execute an agreement among themselves (collectively referred to as the "Business Relationship"); and

WHEREAS, each Party when acting as a Recipient agrees to hold such Confidential Information in confidence and in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. Confidential Information. The term "Confidential Information" as used in this Agreement shall mean: (i) any and all written materials provided by Discloser or its Affiliates, as defined below, to Recipient or its Affiliates, or ascertained through due diligence, investigation, or discussions between employees or agents of the Parties or their Affiliates if the Recipient was told the information was "confidential" (but notwithstanding the foregoing, however, if Central Electric is the Discloser, all information provided by Central Electric to \_\_\_\_\_ herein shall be considered Confidential Information regardless of whether so designated unless otherwise subject to an exception set forth in this Agreement); and (ii) all information, whether prepared by Discloser or otherwise, which is disclosed to Recipient, regardless of whether such information is disclosed intentionally or inadvertently, before or after the execution of this Agreement, regarding the Business Relationship whether of a technical, engineering, marketing, operational, economic, or financial nature, whether disclosed to or obtained by Recipient orally, in writing or otherwise, and including but not limited to reports, analyses, compilations, studies, or other documents or records which contain, or otherwise reflect or are generated from such information; provided, however, that "Confidential Information" shall not include information that: (a) prior to the disclosure hereunder, which the Recipient can demonstrate was legally already in Recipient's possession, as evidenced by written or electronic records, and is not subject to an obligation of confidentiality; (b) prior or subsequent to disclosure hereunder was or is obtained by Recipient from a third party who, to the best of Recipient's knowledge, was not in violation of any obligation of confidentiality or non-disclosure in making such disclosure, provided that such information obtained in the manner described

by this Paragraph 1(b) may be used by Recipient only in accordance with the terms under which it was disclosed; (c) prior to disclosure by Discloser, was in the public domain; or (d) subsequent to disclosure enters the public domain other than by or through Recipient or its Representatives (as defined in Paragraph 2.2) or others receiving information by virtue of this Agreement.

## 2. Restriction on Recipient's Use of Confidential Information.

2.1. Recipient, without the prior written consent of Discloser, shall not make any use whatsoever of Confidential Information other than as necessary for its analysis of whether it will participate with, or continue to participate with, Discloser in the Business Relationship.

2.2. Recipient shall not disclose, in whole or in part, Confidential Information to any third party, except that Recipient may disclose Confidential Information to Recipient's or its Affiliates' officers, directors, and employees, and to their agents, attorneys, accountants, potential and existing lenders, investment bankers and similar consultants or advisors (collectively referred to as "Representatives") who must be aware of such Confidential Information in order for Recipient to evaluate whether it will participate in, or continue to participate in, the Business Relationship. Recipient shall be liable for the breach by its Representatives of the disclosure restrictions of this Agreement.

2.3. If, due to applicable law, regulation, subpoena, civil discovery, civil investigative demand, regulatory proceeding or similar legal or regulatory process, Recipient or any of its Representatives is requested or required by oral questions, oral or written depositions, interrogatories, requests for information or production of documents to disclose any Confidential Information supplied to Recipient by Discloser, it is agreed that Recipient shall provide Discloser with prompt notice of such request(s) or requirement(s) prior to disclosure so that the Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. The foregoing shall not relieve Recipient of its obligations to protect such Confidential Information from disclosure to the extent reasonably possible and Recipient shall keep Discloser informed of its efforts in that regard.

2.4. Notwithstanding anything to the contrary in this Agreement, \_\_\_\_\_ acknowledges its understanding and agreement that: (i) Central Electric is a borrower with the Rural Utility Services ("RUS") and is therefore subject to certain disclosure requirements of the United States Government; (ii) Central Electric expects to provide a summary of the Proposal to RUS with the \_\_\_\_\_'s identity concealed; (iii) Central Electric also expects to provide RUS a list of all respondents to Central Electric's Request for Proposals; and (iv) Central Electric shall not be held responsible for any release of information, confidential or otherwise, by RUS.

2.5. Recipient acknowledges that Discloser makes no express or implied representations or warranties regarding the accuracy or completeness or fitness for a particular purpose of any Confidential Information provided hereunder and that Recipient therefore shall not be entitled to rely on the accuracy or completeness of such Confidential Information, and Recipient agrees that Discloser AND ITS REPRESENTATIVES shall have no liability or responsibility to the Recipient or to any person or entity relating to the Confidential Information or any errors therein or omissions therefrom.

## 3. Safekeeping of Confidential Information.

3.1. Recipient shall keep all Confidential Information secret and confidential. Without limiting the generality of the foregoing, Recipient shall, with respect to all materials containing any

Confidential Information, including but not limited to all sketches, drawings, reports, notes, reproductions, and translations: (i) prevent the unauthorized use or reproduction of any such materials, and (ii) prohibit any photocopying of said materials, except to the extent necessary to furnish such Confidential Information to Recipient's or Representatives who are permitted to access thereto in accordance with the terms hereof.

3.1. Recipient shall cause its Representatives receiving Confidential Information to agree to hold Confidential Information in accordance with the terms hereof, and Recipient will be liable to Discloser hereunder for any breach of this Agreement by any of its Representatives.

4. Return or Destruction of Confidential Information. Upon receipt of a written request, Confidential Information, other than Confidential Information that has been provided orally, shall be promptly destroyed or returned to the Discloser; provided, however, Recipient shall not be required to destroy or return: (i) Confidential Information that has been electronically archived or stored and is not readily or reasonably accessible by Recipient; (ii) Confidential Information that has been incorporated into analyses, compilation, studies or other documents prepared by Recipient or its Affiliates for the purposes of the Business Relationship ("Work Product") and that is not reasonably severable from such Work Product; and (iii) in the case of Central Electric as the Recipient, the Proposal. Confidential Information that is retained by Recipient pursuant to this Paragraph will be held and kept subject to the terms of this Agreement or destroyed. Recipient's records clerk, law department, or legal counsel may retain one copy of the Confidential Information if required for compliance with any applicable legal or regulatory requirements. Recipient shall then provide written certification to Discloser of the return or destruction of all Confidential Information, except as related to Work Product or for the one copy to be retained by Recipient's records clerk, law department, or legal counsel. Recipient shall keep all oral Confidential Information confidential in accordance with the terms of this Agreement upon the termination of the confidential discussions contemplated hereunder.

5. Notices. All notices, returns of material, requests, demands, consents, and other communication required, permitted, or desired to be given hereunder to be served upon or given to Recipient or Discloser shall be deemed duly served and given when received after being sent by confirmed facsimile transmission or delivered by hand, or three (3) days after being sent by registered or certified mail, return receipt requested, postage prepaid. Any Party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Party in the manner provided in this Paragraph.

Notices to Central Electric shall be sent to:

Gerry Fleming  
Director of Power Supply Operations  
Central Electric Power Cooperative, Inc.  
20 Cooperative Way  
Columbia, SC 29210  
RFP Email: [gffleming@cepci.org](mailto:gffleming@cepci.org)  
Phone: (803) 779-4975

Notices to \_\_\_\_\_ shall be sent to:

[Address line 2]

[Address line 3]

[Address line 4]

[Address line 5]

6. Amendments and Waivers. Amendments, modifications, supplementations, revocations or waivers of any of the provisions of this Agreement shall not be valid unless in writing and signed by a duly authorized representative of each of the Parties. No failure or delay by a 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 of the exercise of any right, power or privilege hereunder. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of a similar or dissimilar nature, unless expressly so stated in writing by a duly authorized representative of a Party.

7. Equitable Remedies. Each Party hereby accepts the representations that the Discloser's Confidential Information is of a special, unique, unusual, extraordinary, and intellectual character. Each Party further acknowledges that the Discloser's interests in such Confidential Information may be irreparably injured by disclosure of such Confidential Information. Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that in addition to all other rights and remedies, Discloser shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach. Each Party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. **NOTWITHSTANDING THE FOREGOING, THE RECIPIENT'S LIABILITY TO THE DISCLOSER IN CONNECTION WITH THIS AGREEMENT AND ANY ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE EVALUATION OF THE BUSINESS RELATIONSHIP SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL EXCLUDE ANY OTHER LIABILITY, INCLUDING WITHOUT LIMITATION LIABILITY FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE.**

8. Successors. This Agreement shall be binding upon each Party and its successors and permitted assigns, and shall inure to the benefit of, and be enforceable by the other Party and its successors and permitted assigns.

9. Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REGARD TO CONFLICTS OF LAW PROVISION. WITH RESPECT TO ANY DISPUTES REGARDING THE INTERPRETATION OR ENFORCEMENT OF OR PERFORMANCE UNDER THIS AGREEMENT, THE PARTIES CONSENT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE STATE OF SOUTH CAROLINA LOCATED IN COLUMBIA, SC, FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT.** The Parties irrevocably and unconditionally waive any objection to venue or inconvenient forum in such courts. In the event that a court of competent jurisdiction determines that any portion of this Agreement is unreasonable because of its term or scope, or for any other reason, the Parties agree that such court may reform such provision so that it is reasonable under the circumstances and that such provision, as reformed, shall be enforceable.

10. Termination and Survival of Obligations. This Agreement shall become effective as of Effective Date, and shall continue in force for a period of two (2) years from the Effective Date, and thereafter, from month to month until terminated by either Party giving the other Party sixty (60) days prior written notice of termination; provided, however, that the obligations and commitments established by this Agreement regarding the protection and the return or destruction of Confidential Information shall remain in full force and effect after termination and shall survive any such termination until the later of (i) two (2) years from the last date of disclosure of Confidential Information by Discloser, or (ii) to the extent retention is required by law or regulatory authority, the end of the period that Recipient's records clerk, law department or legal counsel is required by law or regulatory authority to retain a copy of the Confidential Information in accordance with Paragraph 4. Unless otherwise provided herein, upon termination of this Agreement, Recipient shall promptly return, destroy, or cause to be returned or destroyed, all written Confidential Information, including copies and abstracts thereof provided to Recipient by the Discloser, and shall also return or destroy all documents containing Confidential Information that have been prepared by the Recipient. Such return or destruction shall be completed and certified in writing in accordance with Paragraph 4 - Return or Destruction of Confidential Information above.

11. Entire Agreement. This Agreement contains and sets forth the entire agreement between the Parties with respect to the subject matter hereof. No prior or contemporaneous written or oral agreements and no subsequent oral agreements between the Parties with respect to the subject matter hereof shall be binding upon the Parties. This Agreement may be signed in counterparts.

12. No Further Obligation. This Agreement, or the discussions associated with the possible undertaking of a Business Relationship, shall not be construed as obligating any Party to participate in any possible relationship, project or other transaction whatsoever, including without limitation the Business Relationship. It is expressly understood that this Agreement does not obligate either Party to establish any joint venture, partnership or any other type of business entity or relationship. This Agreement shall not bind any Party to enter into any subsequent agreement.

13. Affiliate. The term "Affiliate" shall mean any corporation, partnership, or other entity or association that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a Party.

14. Indemnity. **RECIPIENT AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS DISCLOSER AND ITS REPRESENTATIVES FROM ANY CLAIM, ACTION, LOSS, LIABILITY, JUDGMENT, DAMAGE, INJURY, OR EXPENSE, INCLUDING REASONABLE ATTORNEY FEES, WHICH ARE INCURRED OR ASSERTED BY ANY THIRD PARTY AGAINST DISCLOSER OR ANY OF ITS REPRESENTATIVES THAT ARISE FROM RECIPIENT'S BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE RECIPIENT'S LIABILITY TO THE DISCLOSER IN CONNECTION WITH THIS INDEMNITY SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL EXCLUDE ANY OTHER LIABILITY, INCLUDING WITHOUT LIMITATION LIABILITY FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE.**

15. Severability. If any provision of this Agreement is declared void or otherwise unenforceable and cannot be reformed as provided in Paragraph 9 - Governing Law, such provision shall

be deemed to have been severed from this Agreement, which shall otherwise remain in full force and effect.

16. Assignment. No Party shall assign its rights and obligations under this Agreement without the prior written consent of the other Party. Any attempted assignment without prior written consent shall be null and void.

17. Attorney’s Fees and Costs. If, as a result of a breach of this Agreement by a Party, the other Party employs an attorney or attorneys to enforce its rights under this Agreement, then the breaching or defaulting Party agrees to pay such other Party the reasonable attorney’s fees and costs incurred to enforce this Agreement.

18. Authorization and Binding Obligations. Each Party represents to the other Party that the execution, delivery and performance of this Agreement have been duly authorized, and this Agreement has been duly executed and delivered by the signatory so authorized, and the obligations contained herein constitute the valid and binding obligations of such Party.

*{Signatures to Follow}*

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the Effective Date.

**CENTRAL ELECTRIC POWER COOPERATIVE, INC.**

**[RESPONDENT]**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_