



## **Universal Data Sharing Agreement**

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# Universal Data Sharing Agreement

## RECITALS

1. Peak Reliability, Inc. (“Peak”) is the Reliability Coordinator (“RC”) for the Western Interconnection, exclusive of the area operated by the Alberta Electric System Operator, and assumed the RC role from the Western Electricity Coordinating Council (“WECC”), under the Western Interconnection Reliability Coordinator and Interchange Authority Agreement executed on February 13, 2014.
2. WECC served as the administrator of the WECC Synchrophasor and Operating Reliability Data Sharing Agreement dated March 6, 2012 (“2012 UDSA”), which provided a consent-based platform for the exchange and protection of reliability-related information in the Western Interconnection.
3. WECC pursuant to the WECC Peak Omnibus Assignment and Assumption Agreement, effective February 13, 2014 (“Assignment Agreement”), delegated its rights and obligations under the 2012 UDSA to Peak.
4. The 2012 UDSA expired on March 31, 2015. Effective April 1, 2015, the Peak Board approved a Bridge Data Sharing Policy to ensure real-time reliability by enabling continued sharing of and access to operating reliability data pending execution of a new Universal Data Sharing Agreement (“Agreement”). This Agreement is intended to replace both the 2012 UDSA and the Bridge Data Sharing Policy on July 1, 2016.

## I. PARTIES

1. This Agreement is between and among each signatory hereto (individually, referred to as a “Party” and collectively referred to as the “Parties”).
2. **Eligible Parties to this Agreement.**
  - a. An Eligible Registered Entity may become a Party to this Agreement at any time without further approval by contacting Peak and providing Peak with a signed copy of this Agreement.

- b.** Other operating entities who need the Covered Data for reliability purposes and wish to obtain access to Covered Data hereunder, but that are not Eligible Registered Entities, may become a Party to this Agreement through the following process:
- (i) The entity shall provide Peak with a signed copy of this Agreement and a notice stating how it intends to use Covered Data;
  - (ii) Peak shall post a notice on its website setting forth the identity of the entity and its intended use of Covered Data;
  - (iii) Peak shall provide an email to each signatory to this Agreement stating that the notice is posted on its website; and
  - (iv) The entity shall become a Party only if 80% of the Parties provide written consent.
- c.** WECC may become a Party to this Agreement. WECC's receipt and use of Covered Data shall be fully subject to this Agreement, including, without limitation, restrictions on use of such data, disclosure limitations, liability, and remedies for breach or potential breach. In addition, WECC shall be strictly prohibited from using Covered Data to initiate or otherwise engage in monitoring registered entities' compliance with, or enforcement of, any Reliability Standard. WECC is prohibited from sharing Covered Data with the WECC compliance department in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of the NERC Rules of Procedure, or any procedures adopted pursuant to those authorities. Notwithstanding anything to the contrary herein with the exception of the prohibition on WECC's use of Covered Data to initiate or otherwise engage in monitoring registered entities, WECC may share Covered Data with FERC, NERC and Functional Entities, under appropriate confidentiality protections (including non-disclosure agreements with Functional Entities), as necessary to fulfill its delegated responsibilities; provided, however, WECC may not share data from non-U.S. Original Data Providers with FERC.

**d.** Natural gas pipeline operators, are not eligible to become Parties to this Agreement except through the process defined in Section I.2.b. above. However, after signing a non-disclosure agreement with Peak, which will be posted on the Peak website, obligating them to the same data protections defined in this Agreement, natural gas pipeline operators may receive the following information within the operations horizon (real-time/near term) to the extent that coordination with natural gas providers may impact the ability to ensure the reliability of the Western Interconnection:

- (i) Planned/unplanned outages;
- (ii) Load forecasts;
- (iii) Significant known or anticipated system conditions. (For example: energy emergency alerts, islanding, blackouts, restoration, mitigation); and
- (iv) Dual fuel capabilities.

Peak's intent is to include applicable BAs and TOPs in communications with natural gas pipeline operators about specific facility information when appropriate, and at a minimum, within a reasonable timeframe, notify them of communications that have taken place. Natural gas pipeline operators are subject to the prohibition against sharing any such data with Marketing Function employees, as defined by the FERC Standards of Conduct.

**3.** Executed Agreements provided under Sections I.2.a. and I.2.c., or approved by 80% of the Parties under Section I.2.b., shall be incorporated herein and treated as a part hereof upon counter-execution by Peak. Peak will maintain an up-to-date list of the signatories to this Agreement on its website accessible to all Parties, and shall make such list available to other entities as appropriate. This up-to-date list shall serve as notice to all Parties of the current Agreement signatories. Signatories that become Parties to this Agreement by these procedures shall have the same rights and obligations as all other Parties, except that these rights and obligations shall commence on the later of July 1, 2016 or the date that each new Party signs a copy of this Agreement.

## II. PURPOSE AND INTENT

1. The mutual promises and representations herein are deemed by each Party hereto to be good and sufficient consideration for this Agreement.
2. The intent and objective of this Agreement is to facilitate sharing of Covered Data for Permitted Purposes. Covered Data to be shared pursuant to this Agreement is to be treated as confidential, business sensitive, and potentially harmful to competition if inappropriately disseminated. Any recipient of Covered Data agrees, both as a condition to its right to receive Covered Data under this Agreement and as a contractual obligation under this Agreement, to treat any Covered Data received herein as follows:
  - a. The Covered Data is to be kept in strict confidence and protected from public or other unpermitted disclosure;
  - b. The Covered Data is to be used solely for the Permitted Purposes; and
  - c. The Covered Data is not to be used, or made available for use, in Merchant/Market Function activities as defined herein, except as permitted by the FERC Standards of Conduct.
3. Nothing in this Agreement shall be understood to authorize:
  - a. The sharing of information where prohibited by the FERC Standards of Conduct;
  - b. The release of Critical Energy Infrastructure Information or Critical Infrastructure Information;
  - c. The release of information where release is prohibited or limited by the North American Electric Reliability Corporation Reliability Standards; or
  - d. The release of information where release is prohibited or limited by another agreement or any other applicable law or regulation.

## III. DEFINITIONS

1. **Agreement.** This Universal Data Sharing Agreement and the list of signatory Parties maintained by Peak.
2. **Balancing Authority or BA.** As defined in the NERC Glossary.

3. **Bridge Data Sharing Policy.** Refers to the policy approved by the Peak Board of Directors (effective April 1, 2015) that replaced the 2012 UDSA (which expired on March 31, 2015).
4. **Bulk Electric System or BES.** As defined in the NERC Glossary.
5. **Compliance Enforcement Authority.** As defined in the NERC Rules of Procedure.
6. **Covered Data.** Synchrophasor Data, Operating Reliability Data, Remedial Action Scheme Data, and Transmission Network Model Data, whether or not “real time,” and Derived Information, including such data or information obtained under the 2012 UDSA or the Bridge Data Sharing Policy. Covered Data does not include data or information that:
  - a. Prior to its receipt under this Agreement, the 2012 UDSA or the Bridge Data Sharing Policy and evidenced by a Party’s written records, was (i) already in that Party’s possession without restriction on disclosure, or (ii) obtained from a third party legally free to disclose such information;
  - b. Is otherwise available from a public source;
  - c. Was developed by a Party independent of any disclosure made under this Agreement, as evidenced by that Party’s written records;
  - d. Is disclosed without restriction to a third party by the Original Data Provider; or
  - e. Is aggregated or masked (not including Synchrophasor Data) to a point that would not allow the Covered Data to be identified as related to a specific Party.
7. **Critical Data.** Data that, if released, could be used in conjunction with other types of data to significantly degrade the Bulk Electric System.
8. **Critical Energy Infrastructure Information.** Specific engineering, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:
  - a. Relates details about the production, generation, transmission, or distribution of energy;
  - b. Could be useful to a person planning an attack on critical infrastructure;

- c. Is exempt from mandatory disclosure under the Freedom of Information Act; and
  - d. Gives strategic information beyond the location of the critical infrastructure.
- 9. **Critical Infrastructure Information.** Information not customarily in the public domain and related to the security of critical infrastructure or protected systems, as defined in the Critical Infrastructure Information Act of 2002.
- 10. **Data Recipient.** Any Party receiving Covered Data pursuant to this Agreement. This includes all individual employees, contractors, delegees, agents, and attorneys of any such Party who have also been bound by this Agreement as signed by an authorized representative, and are thereby authorized under this Agreement to receive or have access to Covered Data.
- 11. **Derived Information.** Data or other information created from analysis of any Synchrophasor Data, Operating Reliability Data, Remedial Action Scheme Data, or Transmission Network Model Data received pursuant to this Agreement. Because Derived Information is included in the definition of Covered Data, it is to be considered, treated, and protected as such. Data or analysis that has been sufficiently aggregated or masked (except Synchrophasor Data) so that no Original Data Provider's Covered Data can be identified, such as data included in Peak performance metrics, is not considered Derived Information. In addition, any information or analyses derived from the Covered Data supplied by an Original Data Provider (or specified group of Original Data Providers) is not Derived Information if the Original Data Provider(s) authorizes disclosure of such information or analyses.
- 12. **Effective Date.** This Agreement shall become effective on July 1, 2016 (the "Effective Date").
- 13. **Eligible Registered Entities.** Entities: (1) registered with NERC as a Balancing Authority ("BA"), Transmission Operator ("TOP"), or Reliability Coordinator ("RC"), that are involved in operations, planning, or control of the BES of the Western Interconnection; or (2) similar Western Interconnection entity(ies) operating in Canada or Mexico and that could be registered in the NERC

Compliance Registry if operating in the United States; or (3) an Independent Market Operator or Administrator; or (4) otherwise eligible to be a Party pursuant to Section I.2 of this Agreement.

14. **FERC.** Federal Energy Regulatory Commission.
15. **Freedom of Information Law.** For a federal Party, the Freedom of Information Act, 5 U.S.C. § 552 et seq., and for a Party that is a state or local government entity, any state or local law or regulation requiring public disclosure of non-protected governmental information.
16. **Freedom of Information Request.** A request for information directed to a Party under any applicable Freedom of Information Law where the request, if granted, could reasonably be anticipated to lead to the public disclosure of Covered Data.
17. **FERC Standards of Conduct.** FERC requirements establishing the separation of transmission and energy merchant or market functions for FERC-jurisdictional entities, as set forth in the FERC Standards of Conduct, 18 CFR Part 358, as may be updated from time to time.
18. **Functional Entity.** As defined in the NERC Reliability Functional Model, version 5 (as may be updated from time to time), who is and maintains registration with NERC or a NERC Regional Entity, or similar entity operating in Canada or Mexico that could be registered by NERC if it operated in the United States.
19. **Grid.** The Bulk Electric System segment of the Western Interconnection.
20. **Independent Market Operator or Administrator.** An organization (1) responsible for independently operating or administering one or more centralized or organized markets for energy, capacity, and/or ancillary services within the Western Interconnection, (2) with authority to issue dispatch instructions to eligible resources in real time while respecting applicable reliability and operational limits, and (3) that has received from FERC (or equivalent provincial regulators with respect to operations in Canada, if appropriate) appropriate approval as a Market Operator and (4) can demonstrate cyber security protection consistent with NERC CIP Standards.

21. **Legal Process.** A discovery request, order, subpoena or other lawful request for information issued by a court, regulatory authority, or other governmental authority of competent jurisdiction.
22. **Merchant/Market Function.** 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. Merchant/Market Function does not include an entity acting as an Independent Market Operator or Administrator.
23. **NERC.** North American Electric Reliability Corporation.
24. **NERC Glossary.** The Glossary of Terms Used in NERC Reliability Standards, including any amendments or changes to that document that may be finally approved by FERC and included by NERC in the NERC Glossary.
25. **Non-Sensitive Data.** Data that is not generally available publicly, but is not commercially or operationally sensitive.
26. **Operating Reliability Data.** All system control information and metered data shared between Parties pursuant to this Agreement. Such information and data include, but are not limited to information or data related to voltages, line flows, interchange schedules, e-tags, load projections, planned generation and transmission outages, and breaker status. Computer applications and data exchange systems that carry Operating Reliability Data include, but are not limited to ICCP, the Interregional Security Network, the Reliability Coordinator Information System, the Electric Industry Data Exchange, the Western Interchange Tool, the System Data Exchange, ACE/frequency monitoring tools, and real time and other data displays, as identified by Peak.
27. **Original Data Provider.** Any Party to this Agreement, or other entities that own, collect or derive and provide Covered Data to Parties pursuant to this Agreement, including all individual employees, contractors, delegees, agents, and attorneys of any such Party or entity authorized to provide Covered Data on behalf of the Party.
28. **Peak.** Peak Reliability.

29. **Party/Parties.** Signatories to this Agreement.
30. **Permitted Purposes.** Use of Covered Data for (i) directly maintaining and improving the operational performance and reliability of the Grid, or reducing Grid operating costs; (ii) analysis for better theoretical or actual understanding of the operation and reliability of the Grid; and (iii) development of new technologies and applications to directly support the safe, reliable, and efficient operation of the Grid.
31. **Phasor Measurement Unit or PMU.** A device for collecting information related to and reflecting Grid qualities such as system balance, power flow, stability, widely separated voltages, and other complex or sinusoidal data that can be represented by vectors and phase angles.
32. **Public Data.** Data that is publicly available from Peak or other sources.
33. **Regional Entity.** As defined in the NERC Rules of Procedure.
34. **Reliability Coordinator or RC.** As defined in the NERC Glossary.
35. **Reliability Standard.** As defined in the NERC Glossary.
36. **Remedial Action Scheme or RAS.** As defined in the NERC Glossary; also referred to as a “Special Protection System” in the NERC Glossary.
37. **Remedial Action Scheme Data.** All data related to the operation, configuration and design of any Remedial Action Scheme, including, but not limited to, information related to the design, layout, logic, settings and operational characteristics of protective equipment associated with any Remedial Action Scheme, and information related to system configurations, voltages, power flows, and other factors around which a Remedial Action Scheme is designed.
38. **Restricted Data.** Data that, if released, could on its own be used to significantly degrade the BES.
39. **Remote Terminal Unit or RTU.** A microprocessor-controlled electronic device that interfaces objects in the physical world to a distributed control system or SCADA (supervisory control and data acquisition) system by transmitting telemetry data to a master system, and by using messages from the master supervisory system to control connected objects.

40. **Sensitive Data.** Data that is commercially or operationally sensitive. This includes Confidential Information (as defined in the NERC Rules of Procedure) and Transmission Function Information (as defined by the FERC Standards of Conduct).
41. **Synchrophasor Data.** Electrical grid phasor measurements regardless of periodicity of data being metered or exchanged, using a common time source for synchronization, and phasor registry information. Computer applications and data exchange systems that carry Synchrophasor Data include, but are not limited to PMUs, phasor data concentrators, and other real-time phasor and other data displays.
42. **Transmission Network Model Data.** Electricity transmission equipment attributes (both dynamic and steady state attributes), equipment connectivity, and operational data such as forecast data, scheduled transmission and generation outages, and measurement data used to depict an actual or studied state of the Western Interconnection BES and non-BES data. Transmission Network Model Data also includes data necessary to build an accurate picture of the Western Interconnection, such as information related to the operating characteristics and settings of relays, or other devices used for automatic protection actions of BES equipment. It includes updates following Peak’s validation of additions, modifications, and retirements of BES, and applicable sub 100kV, facility data received by Peak as the Reliability Coordinator pursuant to, among other potential requirements, NERC Reliability Standard IRO-010.
43. **Transmission Operator or TOP.** As defined in the NERC Glossary.
44. **WECC.** Western Electricity Coordinating Council.
45. **Western Interconnection.** The interconnected electrical systems that encompass all or portions of the 14 western states of the United States, the provinces of Alberta and British Columbia, Canada, and the northern portion of Baja California, Mexico. Parties operating in Canada or Mexico are also referred to herein as “non-US Parties.”

#### **IV. OTHER/CONTROLLING AUTHORITY**

1. This Agreement has been written and is to be interpreted so that Parties hereto can: (i) comply with laws, rules, regulations, orders and other requirements, now or hereafter in effect, of all legal or regulatory authorities having jurisdiction over the Covered Data, this Agreement, or any Party hereto, and (ii) protect Covered Data, as is intended by the Parties hereto. If a Party is required by any laws, ordinances, rules, regulations, orders or other similar requirement, now or hereafter in effect, to take any action that is different from those as contemplated under this Agreement, then that Party shall not be foreclosed by this Agreement from taking such action — provided, however, that said Party shall provide the notification, and take any other such action as further described in Section VI.2. below, to the extent such notification and other action is lawful.
2. Except as set forth in this Agreement with respect to Covered Data as defined herein, nothing in this Agreement modifies any other agreements that may be in place between or among Parties hereto. However, this Agreement supersedes the 2012 UDSA and the Bridge Data Sharing Policy.

#### **V. DATA SHARING AND USE**

1. The Parties will share “unprocessed” Covered Data: i.e., as originally generated, or, if so requested by the Data Recipient and approved by Peak, as necessary in order to achieve a Permitted Purpose, then in an alternative format that allows easier processing without loss of any underlying information.
2. Except as otherwise explicitly provided for in this Agreement, Covered Data shall be given to Data Recipients solely for Permitted Purposes. While Peak will generally be the clearinghouse for provision of Covered Data requested by Data Recipients as permitted through the execution of this Agreement, Parties to this Agreement are not restricted from sharing any data that is treated as Covered Data directly with each other.
  - a. Without limiting the foregoing, Covered Data shared under this Agreement may not be shared with any entity’s Merchant/Market Function, except:

- (i) During a Bulk Electric System Emergency as defined in the NERC Reliability Standards;
    - (ii) As may be compelled by law or judicial or regulatory order or directive; or
  - b.** The usage limitations set forth in this Agreement shall not apply if Covered Data is requested by FERC, NERC, a Compliance Enforcement Authority, or a governmental authority exercising proper jurisdiction over Peak or any Party. The requirements related to notice when Covered Data is requested by a third party or through Legal Process shall not apply where such notice is prohibited by investigative confidentiality or similar legal requirements.
- 3.** Parties may engage contractors to provide support for the performance of operational and management tasks under this Agreement. Any such contract support shall use Covered Data or information exchanged under this Agreement solely for Permitted Purposes, including administration of this Agreement. A Party's contractors shall be bound hereto in all respects and as fully as the Party itself.
  - 4.** The Original Data Provider shall maintain full control and ownership of Covered Data it provides. Any Original Data Provider's use or disclosure of its own Covered Data shall not be restricted by the terms of this Agreement or be deemed a breach of this Agreement.
  - 5.** Each Party, including Peak, shall have and maintain full control and ownership of any Derived Information that it creates; provided, however, that such Derived Information is subject to the terms and conditions of this Agreement.
  - 6.** Each Original Data Provider hereby grants to Peak, and all Data Recipients a non-exclusive, non-transferable license to process, copy, analyze, use, reformat, share or distribute the Original Data Provider's Covered Data for any Permitted Purpose, so long as it is otherwise consistent with the terms of this Agreement and any applicable data licensing agreement.
  - 7.** Transfer of Covered Data to a Data Recipient or any Party to this Agreement hereto does not imply:

- a. A grant of any:
  - (i) Authority to place on any other entity's system a RTU, PMU, synchrophasor, or any other similar or comparable measurement or analysis device; or
  - (ii) Right to access any other entity's own RTU(s), PMU(s), synchrophasor(s), or any other similar or comparable measurement or analysis device(s); or
  - (iii) Transfer of any responsibility for any Grid operational or reliability control.
- 8. Within 30 days of the effective date of a final rule on the designation and sharing of Critical Electric Infrastructure Security by FERC under section 215A(d)(2) of the Federal Power Act, Parties will engage in review of the Agreement and the previously adopted Exhibit A Peak Data Sharing Review Process to address how Peak will share data with third parties for the purpose of understanding, analyzing, reporting, or improving the operation of the BES, electric reliability, and related equipment and control systems. Parties will negotiate in good faith to create a data sharing review process, and any associated data categorization table for such data, to govern the sharing of Covered Data with third parties under this Agreement, in a manner that is consistent with the requirements of the final FERC rule.

## **VI. PROTECTION OF COVERED DATA**

- 1. Data Recipients shall keep the Covered Data provided by any Party to this Agreement in strict confidence and shall not disclose such information or otherwise make it, or any portion of it, available in any form or manner to any person or entity other than the Parties to this Agreement, its individual employees, contractors, delegees, agents and lawyers and only for a Permitted Purpose, unless (i) written permission to do so has been provided by the Original Data Provider, or (ii) if disclosure is authorized under Section IV.1., or (iii) if disclosure is required pursuant to Legal Process or a Freedom of Information Request, subject to the provisions of this Section VI.2.

- a.** Apart from these exceptions, a Data Recipient's obligation to protect the Covered Data shall include, but is not limited to: (i) prohibiting access to the Covered Data by all of Data Recipient's individual employees, contractors, delegees, agents and lawyers engaged in a Merchant/Market Function, if Data Recipient is a FERC jurisdictional entity, or (ii) in a manner substantially similar to the FERC Standards of Conduct, if Data Recipient is a FERC non-jurisdictional entity or subject to a FERC waiver from the Standards of Conduct, or (iii) substantially similar standards of conduct for functional separation of non-US Parties.
  - b.** Notwithstanding the preceding, or any other terms to the contrary in this Agreement; Peak retains the right to share its real-time system conditions studies or analyses including, but not limited to, its: (i) real-time contingency analysis results, (ii) state estimator results, (iii) operational planning analysis, and (iv) Peak's west-wide system model with Reliability Coordinators located in the Eastern Interconnection and Transmission Operators and Balancing Authorities in the Western Interconnection; and as part of Peak's regular course of business; or to meet regulatory or operational obligations as a Reliability Coordinator, as determined by Peak in its sole-discretion. Notwithstanding the foregoing, nothing in this Section VI.1.b. limits Peak's obligation to ensure Covered Data remains protected.
- 2.** Prior to disclosing Covered Data in response to any Legal Process or Freedom of Information Request, Data Recipients shall take appropriate actions to protect Covered Data prior to complying with the disclosure order or request, which shall include:

  - a.** Providing prompt notice to Peak and the affected Parties of any such request. The foregoing notice provisions shall not apply if Covered Data is requested by FERC, NERC, a Compliance Enforcement Authority, or a governmental authority exercising jurisdiction over Peak or a Party, where notice is prohibited by investigatory privilege or other confidentiality requirements;

- b.** Providing reasonable cooperation with Peak, the Original Data Provider, and any other interested party as may be requested, to prevent release of Covered Data by:
- (i) Consulting with Peak, the Original Data Provider, and other interested Parties to identify Covered Data and data that may be released without harm;
  - (ii) Providing timely notice and at least ten (10) business days, to the extent permitted by applicable law, for Peak, the Original Data Provider, and any other interested party to seek an injunction or take other legal action to prevent the release of Covered Data; and
  - (iii) Not opposing the participation of Peak, the Original Data Provider, and any other interested party (as, for example, a real party in interest or intervenor) in any legal proceeding seeking to prevent disclosure of Covered Data.
- c.** Reasonably cooperating with Peak and/or the Original Data Provider, in the event Peak and/or the Original Data Provider seeks the assistance of FERC or the United States Department of Homeland Security (“DHS”) and, as relevant, their Canadian and Mexican counterpart(s), for treatment and protection of the data as Critical Energy Infrastructure Information or Critical Infrastructure Information or both, under the respective regulations, at the cost of the Party seeking assistance from FERC, DHS, or as relevant, their Canadian and Mexican counterparts;
- d.** Releasing only that portion of the Covered Data that is compelled to be released under Freedom of Information Law or other applicable law, including redacting Covered Data where possible; and,
- e.** To the extent consistent with Freedom of Information Law or other applicable law, taking reasonable measures to maintain the confidentiality of any Covered Data that may be released, including, but not limited to, cooperating with Peak and/or the Original Data Provider in seeking a non-disclosure agreement with any third party to which Covered Data is released.

- 3.** The requirements of this Section VI do not apply to the use of Covered Data in proceedings before FERC or NERC, a Compliance Enforcement Authority, or any state or provincial utility commissions; or disclosures in investigations or inquiries conducted by FERC under 18. C.F.R. Part 1b procedures; or proceedings conducted under the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure or its successor; or any judicial proceedings resulting from or arising out of such proceedings or investigations, provided that the Party using or disclosing information in such proceedings or investigations requests confidential treatment of all Covered Data so used or disclosed.
- 4.** Notwithstanding any other terms of this Agreement, Data Recipients shall provide written notice to Peak, and Peak will notify any Party prior to, or as soon as practicable, following:

  - a.** Any and each release of Covered Data to a non-party, or other breach of confidentiality hereunder, with the details both of the release and breach and all measures taken to prevent a repetition thereof; and
  - b.** Every instance where Covered Data is shared with or provided to any entity's Merchant/Market Function during a BES Emergency, as defined in the NERC Reliability Standards, with an explanation of why said event qualified as an emergency.

Any notice provided under Section 2.b.ii. above, shall also constitute notice under this Section 4.

- 5.** Data Recipients must have sufficient internal controls in place to ensure that:

  - a.** Employees, contractors, delegees, agents and lawyers with access to Covered Data are required to protect the Covered Data consistent with this Agreement;
  - b.** The Covered Data can only be used for a Permitted Purpose consistent with this Agreement; and
  - c.** Covered Data is not accessible to any individual with responsibility for Merchant/Market Functions, except as permitted in the FERC Standards of Conduct.

6. Peak will provide notice on its website that the Covered Data is confidential and proprietary transmission data. The Data Recipient must acknowledge this assertion and agree to protect the Covered Data.
7. If a dispute arises between Parties as to the adequacy of the measures a Party is taking to protect Covered Data from disclosure as required by this Agreement, the Parties will meet together with their respective authorized representatives to try to resolve the dispute. If the Parties are unable to resolve the dispute, each Party shall retain their respective legal and equitable remedies including termination of this Agreement. In addition, any Party hereto may request review of actions where a Party is concerned about another Party's protection of Covered Data and may propose implementation of additional oversight procedures.

## **VII. INTEGRATION, AMENDMENT, AND SEVERABILITY**

1. This Agreement sets forth the entire agreement and understanding between or among the Parties, and supersedes all prior oral or written understandings, representations, and discussions between them respecting the subject matter thereof, effective upon execution of this Agreement.
2. No rights, obligations or terms other than those expressly stated herein are to be implied from any term of this Agreement.
3. This Agreement may be signed in multiple copies, each of which will be considered an original.
4. Any material changes or amendments to this Agreement must be made in writing and signed by an authorized representative of at least eighty percent (80%) of the then existing Parties. A change is material if it changes those who may receive Covered Data, a Party's rights in or obligation to protect Covered Data, Party status, or any other significant right of a Party.
5. Peak will post on its website any proposed non-material changes or amendments to this Agreement, email the same to the designated representative of each Party hereto, and provide a thirty (30) day comment period including the date of notification for Party objections and accompanying rationale. The proposed non-

material change will be effective at the end of the comment period provided it is not objected to by a simple majority of the Parties that existed on the day notice was provided.

6. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then – notwithstanding such invalidity or unenforceability – this Agreement shall continue in full force and effect and there shall be substituted for such invalid or unenforceable provision a like, but valid and enforceable, provision that as closely as legally possible reflects the intent and effect of the original provision. In the event a like but valid and enforceable provision cannot be so substituted, the invalid or unenforceable provision shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

#### **VIII. TERM AND TERMINATION**

1. The term of this Agreement shall commence on the Effective Date and shall automatically be renewed for successive periods of two (2) years. Any and all obligations to maintain and safeguard any Covered Data will remain in full force and effect and will not terminate until the data is no longer deemed to be Covered Data.
2. It is expressly understood that Peak may temporarily suspend, in whole or part, the provision of Covered Data to any Data Recipient in the event that Peak has a reasonable basis for doing so, including, without limitation, emergencies, maintenance, or other operational requirements of the Grid.
3. Any Party may terminate this Agreement as to that Party by notifying Peak in writing of its desire to terminate this Agreement, which shall be effective thirty (30) calendar days after receipt thereof. However,
  - a. Termination of a Party's participation in this Agreement shall not affect the continuation of this Agreement as between or among all other Parties hereto; and

- b.** Upon an Original Data Provider's failure to provide Peak with Covered Data, Peak may cease providing to the entity any Covered Data or other benefit associated with data sharing pursuant to this Agreement.
- 4.** Peak reserves the right to immediately terminate access to Covered Data by any Party that has breached any material requirements of this Agreement. In addition, within twenty-one (21) calendar days and by written notice, Peak may terminate the Party status of any Party to this Agreement where a Party has breached requirements under this Agreement. Such termination shall include a requirement that the Party immediately return or destroy any Covered Data provided to the Party prior to the termination, if requested by the Original Data Provider(s) and permitted under applicable law.
- 5.** Data Recipients shall continue to protect the Covered Data until it is returned to the Original Data Provider(s), destroyed, is otherwise deemed no longer confidential, or becomes publicly available through a lawful mechanism. Upon termination of or withdrawal of a Party to this Agreement, Data Recipients shall either return Covered Data to the Original Data Provider(s) or destroy it within thirty (30) calendar days of termination or withdrawal, and provide assurance that it has done so, if requested by the Original Data Provider(s), provided, however, Data Recipients are not obligated to immediately remove the Covered Data from their backed-up electronic records outside of normally scheduled retention policies so long as the Data Recipients do not make use of the Covered Data. The term of this provision shall apply to the Covered Data existing on electronic back-up files until such data is deleted in the normal course of business. Notwithstanding the preceding, Parties subject to an obligation to retain Covered Data under any Freedom of Information Law or other applicable law may retain Covered Data, subject to the terms of this Agreement, for so long as may be legally required.

## **IX. DISCLAIMER AND LIMITATION OF LIABILITY**

- 1.** Each Data Recipient acknowledges and agrees that Peak and other Original Data Providers have generated and gathered Covered Data solely to meet their

own Grid operational and reliability responsibilities and for the overall reliability of the Western Interconnection. Therefore, as described herein above, and even when Covered Data is provided at their own request in a more convenient “alternative” format, each Data Recipient shall receive any and all Covered Data “as is” and without regard to any faults, errors, defects, inaccuracies, and omissions therein. Further:

- a.** No Party makes any representations or warranties whatsoever with respect to the availability, timeliness, accuracy, reliability, or suitability of any Covered Data provided pursuant to this Agreement.
  - b.** Each Data Recipient expressly disclaims all right to enforce representations, warranties, and assurances of any kind, express or implied, with respect to Covered Data. By way of illustration and without limiting the generality of the foregoing, each Data Recipient expressly disclaims receipt of any warranty of merchantability, non-infringement, fitness for a particular purpose, efficacy, or safety.
  - c.** Each Data Recipient assumes any and all risk and responsibility for use of, and any reliance on, Covered Data, and disclaims and waives all other rights and remedies that it otherwise may have with respect thereto.
- 2.** Except for an intentional disclosure of Covered Data in violation or other breach of this Agreement, no Party shall be liable for any direct, indirect, consequential, punitive, or other damages suffered by any other Party resulting from access to or use of any Covered Data, including by way of illustration and without limiting the generality of the foregoing, loss of profit, loss of use, or loss of revenue or business opportunities connected in any way to any of the activities undertaken pursuant to this Agreement.

## **X. PREEMPTION, INTERPRETATION, AND REMEDIES**

- 1.** No rights, obligations or terms other than those expressly recited herein are to be implied from this Agreement. By way of illustration and without limiting the generality of the foregoing:

- a. Nothing contained in this Agreement shall be construed as creating any joint venture, teaming agreement, partnership, or other formal business organization, or agency arrangement.
  - b. No Party is required by virtue of this Agreement to enter into a future commercial or business relationship with another Party.
  - c. Nothing contained herein shall be construed as creating an exclusive dealing agreement.
  - d. 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 a Party's intent as of the date said Party executed this Agreement, and any amendment thereto properly made as specified above.
  - e. Notwithstanding anything in this Agreement that might otherwise be construed to the contrary, no Party, by entering into this Agreement, has or will be deemed to have consented to the jurisdiction of any governmental authority that has regulatory oversight over a Party; conceded that any such governmental authority may exercise authority over it or its operations; or waived or conceded any deference it may have, including sovereign immunity, intergovernmental immunity or lack of subject matter jurisdiction.
2. Each Data Recipient recognizes that unauthorized use or disclosure of Covered Data may give rise to irreparable injury to Peak and Parties to this Agreement that may be inadequately compensable in damages. Peak, in the first instance, or any aggrieved Party (which shall be deemed to include the Original Data Provider) may seek and obtain injunctive relief, specific performance or other form of equitable relief or any combination of the preceding that may be available against the breach or threatened breach of the Data Recipient's obligations under this Agreement, without proof of actual damages, and may seek and obtain other legal remedies that may be available to Peak or the aggrieved Party.

## **XI. FORM OF NOTICE**

1. All notices and other communications required or permitted under this Agreement shall be in writing, and shall be (a) delivered in person, (b) sent by U.S. overnight mail or commercial overnight delivery service with receipt notification, or (c) sent by email or other electronic transmission, such as facsimile transmission with receipt notification, with an original sent immediately thereafter by U.S. mail. All such notices and communications shall be properly addressed as provided in Exhibit B, as may be updated by each Party from time to time by notifying all other Parties in writing.
2. A Party may from time to time change its authorized signatory individual representative, or its address, by providing notice to Peak and specifying the new authorized individual or address. This Agreement remains binding upon any Party once its authorized representative signs, whether or not at some later date that representative ceases to be so authorized for said Party.

## **XII. ASSIGNMENT AND SUCCESSORS**

Neither this Agreement nor any rights under this Agreement are assignable or otherwise transferable by any Party, in whole or in part — provided, however, that any Party may assign or transfer this Agreement and its rights hereunder to any lawful successor entity upon (i) advance written notice to Peak, (ii) Peak's subsequent concurrence thereto in writing, which shall not be unreasonably delayed or withheld, and (iii) provided that such successor entity agrees in advance, in writing, to the terms and conditions hereof and agrees to become a Party hereto.

## **XIII. WAIVER**

No provision of this Agreement shall be deemed waived, and no breach shall be deemed excused, unless such waiver or consent is in writing and signed by Peak and all other aggrieved Parties, or where Peak itself is the breaching Party, by a duly authorized representative acting on behalf of all the Parties. No consent to, or waiver of, a breach by any Party, whether express or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach by said, or any other, Party.

#### **XIV. JURY WAIVER**

To the fullest extent permitted by law, each of the Parties waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this Agreement. Each Party further waives any right to consolidate, or to request the consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. Notwithstanding the foregoing, if a federal agency is a party to the dispute then no waiver of trial by jury will apply.

[SIGNATURE PAGE FOLLOWS]

**PEAK RELIABILITY**

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

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

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

Date: \_\_\_\_\_

**Signatory Organization:**

[ \_\_\_\_\_ ]

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

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

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

Date: \_\_\_\_\_

## Exhibit A - Reserved

## Exhibit B - Notice Instructions

For any notification required under this Agreement, the Party designates the following representative:

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

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

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

City, State, Zip: \_\_\_\_\_

Attn: **Authorized Individual**

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

E-mail address: \_\_\_\_\_