



NATIONAL ELECTRICAL MANUFACTURERS  
REPRESENTATIVES ASSOCIATION

## ***GUIDELINES***

### ***for Mutual Non-Disclosure Agreement***

*This sample Mutual Non-disclosure Agreement is provided to NEMRA members as an example of a non-disclosure agreement which could be developed by the member's legal counsel. It should not be construed as legal advice and in all instances, members should contact their legal counsel for guidance on this topic.*

## MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is made effective on DATE, by and between [PARTY 1] and [PARTY 2] (collectively "the parties").

Party 1 and Party 2 are evaluating the potential for, and the benefits of, entering into a business relationship and, therefore, desire to enter into an agreement to set out their understanding with respect thereto.

### IT IS AGREED:

1. The parties acknowledge that they will be receiving certain confidential, non-public information concerning each others' businesses, including, but not limited to, operational, technical and financial data, and that such information, shall be considered the confidential and proprietary information of the party providing the information ("Confidential Information"). Any materials prepared by the recipient party, its employees, advisors and other representatives using such Confidential Information shall also constitute Confidential Information. The parties agree to maintain all Confidential Information in strict confidence in accordance with the terms and conditions of this Agreement.
2. The Confidential Information is being provided solely for the purpose of enabling the parties to evaluate the potential for and benefits of the possible business relationship (the "Permitted Use"), shall only be disclosed to employees of the parties who are directly responsible for such evaluation and shall not be used for any other purpose.
3. Without the prior written consent of the party providing the Confidential Information, no party shall (i) disclose to any third party the fact that it has received any Confidential Information, including the fact that the transactions contemplated are being considered or the fact of any negotiations, discussions or other communications concerning matters contemplated by this Agreement, (ii) disclose to any third party any of the Confidential Information or permit any third party to have access thereto, or (iii) use the Confidential Information for any purpose other than the Permitted Use. Notwithstanding the foregoing, Confidential Information can be disclosed by a party to (A) its parent or affiliates under common ownership and control; (B) its employees and the employees of its parent and affiliates under common ownership and control; and (C) its consultants and advisors who have a reasonable need to know the Confidential Information for purposes of the Permitted Use and who agree in writing to be bound by the terms of this Agreement.
4. The aforesaid obligations shall not apply to any of the Confidential Information which the disclosing party can clearly demonstrate either: (i) has come within the public domain through no fault of, or action by, the disclosing party, its employees, agents or representatives; or (ii) is in the disclosing party's possession on the date hereof or is obtained after the date hereof by the disclosing party from any third party (not a party to this Agreement), provided that such Confidential Information was obtained by, or provided to, the disclosing party lawfully and not in violation of any contractual or legal obligation.
5. Notwithstanding the foregoing, nothing herein shall prevent a party from disclosing Confidential Information which it is required to disclose by court order or pursuant to the rules and regulations of a governmental agency or body, provided that, prior to any such disclosure, the disclosing party shall (i) notify the owning party promptly in writing of any such order or request; and (ii) cooperate with the owning party in any proceeding to obtain an appropriate protective order. Further, a party may make public disclosure of Confidential Information if the party has a legal obligation to publicly disclose such information and, as early as possible, the disclosing party provides the owning party with prior written notice of its intention to disclose and a written copy of such disclosure.

## MUTUAL NON-DISCLOSURE AGREEMENT

6. Each party agrees to indemnify the other party and its parents or affiliates for all costs, expenses (including attorney's fees), losses and damages arising from, or relating directly or indirectly to, any breach of the terms of this Agreement including, without limitation, use of the Confidential Information for any purpose other than the Permitted Use or disclosure of the Confidential Information by the party or its parent's or affiliate's present or future employees, agents or representatives.
7. This Agreement is not a commitment by, and does not obligate, either party to procure or to provide any products or services or to enter into any further or additional agreement or arrangement or to conclude any transaction whatsoever. This Agreement shall not prevent either party from entering into any agreements with third parties in the same industry or other industries concerning matters similar to, or the same as, the matters contemplated hereby, provided that no breach of the terms of this Agreement shall have occurred as a result thereof.
8. No party shall be deemed to have made any representation or warranty as to the accuracy or completeness of any of the Confidential Information.
9. Except as otherwise expressly provided herein, each party shall, when requested by the other party, or upon the expiration hereof, destroy or return and deliver to the requesting party any Confidential Information that the requesting party has provided to the possessing party or which otherwise belongs to the requesting party or is under the control, custody or care of the requesting party, any copies thereof, and all notes, correspondence, documents or other records relating to the Confidential Information then in the possessing party's possession or control.
10. Each party agrees not to solicit, entice or offer employment to any employees of the other party during the term of this Agreement; provided, however, that the foregoing shall not prohibit either party from (a) employing any individuals who have received notice of termination from, or ceased to be employed by, the other party prior to the first time such individuals discussed employment with the new employing party or any of its representatives or (b) individuals who have responded to a general job posting.
11. The parties acknowledge that unauthorized disclosure of the Confidential Information could cause substantial and irreparable damage to the business and competitive position of the owner and/or provider thereof, that monetary damages alone will not be an adequate remedy for any breach of the provisions of this Agreement and that, in addition to any other legal or equitable remedies, each of the parties shall be entitled, as a matter of right, to relief, including specific performance, in any court of competent jurisdiction with respect to any actual or threatened breach by the other party or its officers, employees, agents, representatives or contractors of this Agreement.
12. The Agreement shall remain in effect for a period of \_\_\_\_\_ years after the later of the date on which (i) one party notifies the other in writing that the negotiations giving rise to this Agreement have terminated or (ii) the business relationship, joint venture or other arrangement between the parties contemplated by this Agreement terminates.
13. This Agreement shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_, and the federal and state courts sitting in \_\_\_\_\_ County, STATE shall have non-exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

# MUTUAL NON-DISCLOSURE AGREEMENT

**ACCEPTED AND AGREED:**

[PARTY 1]

[PARTY 2]

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

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

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

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

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

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