

CONFIDENTIALITY AGREEMENT

This Agreement, dated this _____ day of _____, _____ by and between Northwest Open Access Network ("NoaNet") and _____ ("_____").

WHEREAS, NOANET and _____ wish to discuss and exchange (the "Discussions") certain information relating to certain projects and/or future business plans, which either or both NOANET and _____ have developed or are in the process of developing which are confidential and proprietary ("Confidential Information"), and

WHEREAS, the parties wish to protect disclosures of such Confidential Information;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree as follows.

1. Disclosures. For purpose of the Discussions, each party shall disclose to the other party such Confidential Information as the disclosing party, in its sole discretion, may choose to disclose. All Discussions between the parties shall be deemed to be disclosure of Confidential Information and neither party shall be required to take any further action to identify the information disclosed as Confidential Information. The parties will attempt as reasonably practicable to label as "Confidential" any Confidential Information before disclosure, but all documents exchanged pursuant to this Agreement shall be deemed to be Confidential Information without need for identification as such.

2. Confidentiality and Nonuse. The receiving party shall accept the Confidential Information of the disclosing party for the sole purpose of the Discussions between the parties and any activity of the parties in furtherance thereof and will not, without prior written consent of the disclosing party, use such Confidential Information except for such purpose. Except as provided herein, or as required by law, the receiving party further agrees not to disclose the Confidential Information to persons other than employees, officers, directors, attorneys, consultants, representatives, and agents of the receiving party who will perform all or a portion of the duties of the receiving party and who are obligated to keep such information in confidence (hereinafter designated as such parties' "Representatives"). The term "Representatives" shall also include NOANET' member utilities and their Representatives. Prior to disclosing Confidential Information to a party's Representatives, each such Representative will be made aware of the nature of the Confidential Information and will agree to be bound by this Agreement.

The obligation of the receiving party not to use or disclose Confidential Information of the disclosing party shall not apply to information which: (a) at the time of disclosure by the disclosing party is in the possession of the receiving party and was not acquired, directly or indirectly, from the disclosing party with knowledge of its confidential nature; (b) is acquired by the receiving party from third parties which, to the knowledge of the receiving party, have not received such information in confidence from the disclosing party or from other third parties; or (c) is now or hereafter becomes, through no fault of the receiving party, a part of the public domain by publication or otherwise; (d) is independently developed by the receiving party

without the use of Confidential Information; (e) is disclosed to any court, regulatory agency, or any other party as required by law; or (f) which, in the receiving party's judgment, it is required or deems its advisable upon advice of counsel to disclose under the Washington State Public Disclosure Act (RCW 42.17.250, *et seq.*), the Washington Open Public Meetings Act (RCW 42.30, *et seq.*), or any other applicable public disclosure requirement. In connection with any disclosure intended pursuant to exceptions (e) or (f), the receiving party (i.e., the party that initially received the Confidential Information that it intends to disclose) agrees to provide the disclosing party (i.e., the party that initially disclosed the Confidential Information) seven (7) days written notice of impending release and to cooperate with any legal action which may be initiated by the disclosing party to enjoin or otherwise prevent such release, provided that all expenses of any such litigation shall be borne by the disclosing party, including any damages, penalties, attorneys' fees, or costs awarded by reason of having opposed disclosure, and further provided that the receiving party shall not be liable for any release which is either compelled by process of law, or where notice was provided and the disclosing party took no action to oppose the release of information.

3. Duration of Confidentiality. Unless otherwise agreed to in writing, neither party shall have any obligations of secrecy under this Agreement after two years from the date of disclosure.

4. Documents Remain Property of Disclosing Party. All documents given to the receiving party as Confidential Information pursuant to this Agreement, and all copies thereof, whether whole or partial, shall be and remain the property of the disclosing party. Each party in its capacity as receiving party shall deliver all such documents and all copies or excerpts thereof to the disclosing party promptly upon the request of the disclosing party.

5. No License. Nothing in this Agreement shall be construed as giving either party a license or any other right to use the Confidential Information of the other party other than as provided in this Agreement. Neither party acquires any patent, copyright, trademark, or other intellectual property rights under this Agreement; neither party has an obligation under this Agreement to purchase any service or item from the other party, or to deal exclusively with the party in any field; and neither party has an obligation under this Agreement to offer for sale services, assets or products using or incorporating Confidential Information. Either party may, at its sole discretion, offer such services, assets or products for sale and may modify them or discontinue the sale at any time.

6. Remedies and Indemnification. The parties acknowledge that a breach of this Agreement by one party could cause damage to the other party which is irreparable and immeasurable in terms of monetary value. For this reason, the parties agree that this Agreement may be specifically enforced, and they consent to the entry of such restraining orders and injunctions as maybe necessary to prevent a breach of this Agreement and to carry out its terms. This remedy shall not be exclusive, and either party may have such other and further relief as may be permitted by law.

7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington.

8. Venue; Jurisdiction. The parties consent to the personal jurisdiction of the courts of the State of Washington with respect to any lawsuit to interpret or enforce this Agreement. The venue of any such lawsuit shall be King County, Washington unless otherwise agreed by the parties.

9. Attorneys' Fees. In the event either party to this Agreement finds it necessary to bring any suit, action, or other proceeding at law or in equity to interpret, enforce, or implement any of the terms, covenants, or conditions of this Agreement, the party prevailing in such action or proceeding shall be paid all of its reasonable attorneys' fees and costs by the losing party. If there is no prevailing party, the parties to the dispute shall each bear their own attorneys' fees and costs.

10. Severability. If any term, covenant, or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

11. Term. this Agreement shall (unless extended by mutual agreement in writing) terminate two years from its effective date, but may be earlier terminated by either party effective upon thirty days prior written notice to the other party. In no event, however, shall termination of this Agreement affect the rights and obligations arising under this Agreement with respect to Confidential Information disclosed prior to termination, including without limitation the two year confidentiality period set forth in paragraph 3 of this Agreement.

12. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and may not be modified except in writing signed by a duly authorized representative of each party. This agreement may not be assigned by a party without the express written permission of the other party. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may be executed in counterparts, each of which, together, shall be considered an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by their respective duly authorized representatives effective as of the day and year first above written.

NORTHWEST OPEN ACCESS
NETWORK

BY _____

Title:

Date:

BY _____

Title:

Date: