

**MUTUAL CONFIDENTIALITY AND
NON-DISCLOSURE AGREEMENT**

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the “*Agreement*”) is entered into as of the ____ day of _____, 2020 (the “*Effective Date*”) by and between Dixie Electric Membership Corporation (“*DEMCO*”) and _____, a _____ (“_____”). DEMCO and _____ are individually referred to as a “*Party*” and collectively as the “*Parties*”.

WHEREAS, the Parties intend to engage in discussions and negotiations (the “*Discussions*”) concerning the possible establishment of a business relationship between the Parties (the “*Relationship*”); and

WHEREAS, in connection with the Discussions and/or Relationship each Party is willing to provide the other with access to certain confidential and proprietary information, subject to the terms set forth herein (for purposes of this Agreement the Party providing such confidential information is referred to as the “*Provider*” and the Party receiving the information is referred to as the “*Recipient*”);

NOW, THEREFORE, for and in consideration for disclosure of certain proprietary and confidential information, each Party, on its own behalf and on behalf of its respective shareholders, directors, officers, employees, agents, subsidiaries, affiliates and advisers (collectively, “*Representatives*”), hereby agrees as follows:

1. ***Confidential Information.*** The Recipient and its Representatives will treat as confidential and, in accordance with the terms of this Agreement, will take or abstain from taking certain other actions herein set forth with respect to (a) any information (whether written or oral) furnished to the Recipient or its Representatives by or on behalf of the Provider, including but not limited to information contained on computer disks, emails and other forms of electronic or magnetic media and other information regarding the business, financial condition, customer lists, marketing strategy, names of employees, compensation amounts and formulas, billing amounts, operations and prospects of the Provider; (b) any analyses, compilations, forecasts, studies or other documents or records prepared by the Provider or its Representatives or Recipient or its Representatives to the extent they contain, or otherwise are generated from or derived from, in whole or in part, the information described in clause (a) above; and (c) any copies, reproductions or summaries of any of the foregoing (collectively, the “***Confidential Information***”). Confidential Information also includes (i) the facts that the Parties are in

Discussions (or, without limitation, any termination of the Discussions) and that Confidential Information has been disclosed; (ii) any terms, conditions or arrangements discussed, including, without limitation, any drafts or final agreements in furtherance of the Discussions; and (iii) any information of an affiliate provided as part of the Discussions. The term “Confidential Information” shall not, however, include any information which (x) is already in the Recipient’s possession, provided that such information is not subject to another confidentiality agreement with, or other obligation of secrecy to, the Provider or another party, (y) becomes generally available to the public other than as a result of Recipient’s or its Representatives’ breach of this Agreement, or (z) becomes available to the Recipient on a non-confidential basis from a source other than the Provider or its Representatives; *provided* that such source is not known by the Recipient after reasonable inquiry to be bound by a confidentiality agreement with or other obligation of secrecy to the Provider or another party.

2. ***Use of Confidential Information.*** Unless otherwise agreed to by the Provider in writing, the Recipient will, and will cause its Representatives to, keep confidential all Confidential Information and neither (i) disclose or reveal any Confidential Information to any persons or entities other than to those Representatives who clearly need such access to actively and directly participate in the Discussions and the Relationship, nor (ii) use, disclose or reveal any Confidential Information for any purpose other than as necessary to facilitate the objectives of the Discussions and/or the Relationship; provided however, DEMCO may share Confidential Information it receives with Jefferson Davis Electric Cooperative, Inc. (“*JDEC*”). Furthermore, the Recipient will, and will cause its Representatives to, not use the Confidential Information in any way detrimental to the Provider or any of its employees or customers. Before any of the Representatives are given access to Confidential Information, the Recipient will advise each such Representative of the confidential nature thereof and the terms of this Agreement. The Recipient will be responsible for any breach of this Agreement by any of its Representatives.

Please note that the Confidential Information obtained pursuant to and covered by this Agreement is restricted to the use by DEMCO for the purposes of the RFP process in Louisiana Public Service Commission Docket No. X-35500. Any future regulatory or governmental certification approval procedure will require a separate form of agreement to provide confidentiality protections for certain proprietary, confidential information, and/or highly sensitive proprietary materials.

3. ***Required Disclosure.*** In the event that the Recipient becomes legally compelled to disclose any Confidential Information, the Recipient agrees to provide the Provider with reasonable advance notice prior to any such disclosure to enable the Provider to seek a protective order or other appropriate remedy and agrees not to oppose any action by the Provider to obtain a protective order or other appropriate remedy. Whether or not such protective order or other remedy is obtained or the Provider waives compliance with the terms of this Agreement, the Recipient agrees that it and its Representatives will furnish only that portion of the Confidential

Information or other information which the Recipient is advised in writing by legal counsel is legally required.

4. ***Return of Confidential Information.*** In the event that at any time either Party terminates the Discussions and/or the Relationship, upon the request of the Provider, the Recipient agrees that it will (a) promptly return to the Provider all written Confidential Information and (b) not retain any copies, extracts or other reproductions (in any tangible medium of expression) in whole or in part of such written material. All Confidential Information consisting solely of information contained on computer tapes, computer disks or any other form of electronic or magnetic media, together with any analyses, compilations, studies or other documents, records or data prepared by the Recipient or its Representatives that contain or otherwise reflect or are generated from such information may, in lieu of being returned to the Provider, be destroyed in a manner that renders it incapable of being recovered or restored. Upon written request, such return, non-retention and destruction shall be certified in writing to the Provider by an authorized officer of the Recipient's organization supervising such return, non-retention and destruction. The obligations of the Recipient and its Representatives hereunder shall not terminate as a result of such return, non-retention and/or destruction.

5. ***Equitable Remedy.*** The Parties agree that in the event that the Recipient breaches or threatens to breach any of the provisions of this Agreement, monetary damages will be an inadequate remedy and, therefore, due to the immediate irreparable actual and substantial harm which will result from a breach or a threatened breach by the Recipient of the provisions of the Agreement, the Provider shall be entitled to specific performance and to obtain an immediate permanent injunction against such breach and such other equitable relief as is necessary or appropriate to enforce any and all of the provisions of this Agreement. The remedies afforded to the Provider by this paragraph shall be in addition to any and all other remedies available to the Provider for any violation, breach or threatened breach of this Agreement by the Recipient. The Recipient agrees to reimburse the Provider for all reasonable costs and expenses incurred by it in any proceeding commenced in connection with enforcing its rights hereunder, provided that the Provider in such proceeding is successful in establishing its entitlement to such an injunctive relief.

6. ***No Other Obligations.*** This Agreement imposes no obligation on either Party to disclose any Confidential Information or to negotiate for, enter into, or otherwise pursue the Relationship. The Disclosing Party makes no representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and will have no liability to Recipient or any other person relating to Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom. Only those representations or warranties which are made in a final definitive agreement regarding the Relationship, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect.

7. ***Retention of Rights.*** The Disclosing Party retains its entire right, title and interest in and to all of its Confidential Information, and no disclosure of Confidential Information

hereunder will be construed as a license, assignment or other transfer of any such right, title and interest to Recipient or any other Person.

8. **Term.** This Agreement and the obligations hereunder shall continue for so long as the Discussions and/or the Relationship continue and for a period of two years thereafter; *provided, however*, that insofar as this Agreement shall relate to any information which may be a “trade secret” as defined by applicable law, this Agreement shall continue indefinitely without any durational limit as to such matter, but only for so long as such matter retains its status as a “trade secret” under such law.

9. **Miscellaneous.**

(a) This Agreement may not be amended or modified except in writing signed by each of the Parties hereto and shall be governed by and construed in accordance with the laws of the State of Louisiana.

(b) Each Party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Louisiana and of the United States District Courts located in the State of Louisiana for any lawsuits, claims or other proceedings arising out of or relating to this Agreement and agree not to commence any such lawsuit, claim or other proceeding except in such courts. Each Party hereby irrevocably and unconditionally waives any objection to the laying of venue of any lawsuit, claim or other proceeding arising out of or relating to this Agreement in the courts of the State of Louisiana or the United States District Courts located in the State of Louisiana, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, claim or other proceeding brought in any such court has been brought in any inconvenient forum.

(c) No provision of this Agreement shall be deemed waived and no breach shall be deemed excused unless such waiver or consent shall be in writing and signed by a duly authorized representative of a Party waiving such provision or excusing such breach. No such consent to, or waiver of a breach hereof, whether express or implied, shall constitute a consent to, waiver of, or excuse for any subsequent or different breach.

(d) The rights of the Parties under this Agreement are in addition to and not in lieu of their rights under Louisiana law, including, but not limited to, the Trade Secrets Act.

(e) Each Party shall be responsible for any breach of this Agreement by its Representatives and shall hold harmless and indemnify the other Party from any damages caused by any unauthorized disclosure of Confidential Information by such Representatives.

(f) In the event any provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such illegality or unenforceability, this Agreement shall continue in full force and effect and there shall be substituted for such illegal or unenforceable provision a like but legal and enforceable provision which most carries into effect the intention of the original provision. In the event a like but legal and enforceable provision cannot be

Exhibit B

substituted, the illegal or unenforceable provision shall be deemed to be deleted, and the remainder of this Agreement shall remain in full force and effect.

(g) This Agreement shall be binding upon and for the benefit of the Parties and their respective Representatives, successors, and assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party.

(h) Notwithstanding any other provision of this Agreement, no Party shall be liable for any consequential, special, punitive, or indirect damages arising under, or as a result of a breach of this Agreement.

(i) This Agreement may be executed by the Parties in multiple counterparts (including by facsimile or email transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

DEMCO

Name: _____

Title: _____

Name: _____

Title: _____