

- Confidentiality agreement -

between

(A) **BMT Energy Transmission Development LLC**, a Delaware limited liability company, with registered office at 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801, hereby represented by its duly authorized representative (hereinafter, “**BMT**”)

- *on the one hand*

and

(B) [●], a [●] company, with registered office at [●], hereby represented by its duly authorized representative (hereinafter, “[●]”)

- *on the other hand*

(hereinafter, BMT and [●], jointly, the “**Parties**” and each a “**Party**”)

Whereas

- A. BMT is a company active in the technical, financial, environmental, legal and regulatory analysis and assessment – of energy transmission project infrastructures in North America;
- B. [●] is a company [●];
- C. the Parties intend to start discussions and potentially collaborate on ongoing transmission infrastructure developments being carried on by BMT in the Desert Southwest Region (the “**Project**”);
- D. in this context and for the purpose of the possible implementation of the Project, each Party may provide the other Party with a number of documents and information of a confidential and privileged nature;
- E. in light of the foregoing, the Parties intend to enter into this confidentiality agreement in order to regulate the criteria, terms and limits governing the exchange and use of such documents and information between the Parties (the “**Agreement**”).

Accordingly, the Parties stipulate and agree as follows

1 RECITALS AND DEFINITIONS

- 1.1 The recitals to this Agreement form an integral and substantial part thereof and they are binding for the Parties.
- 1.2 In addition to the terms and expressions defined in other clauses of this Agreement, the terms and expressions hereinafter defined with a capital letter shall have the meaning ascribed to them as follows:
 - 1.2.1 “**Business Day**” means any calendar day other than Saturdays, Sundays and other days on which credit institutions are not normally open for business;
 - 1.2.2 “**Confidential Information**” means:

- a) the existence and content of this Agreement;
- b) the existence and content of the discussions between the Parties concerning the Project;
- c) **(i)** all information, including, without limitation, deeds, documents, news, data, knowledge, *know-how*, *designs*, models, graphic representations, which comes into the possession of either Party, directly or indirectly, including through its Connected Persons, whether or not expressly designated by the Disclosing Party as “confidential” or “proprietary”, in the course of and in connection with the performance of the activities referred to in the foregoing Recitals C and D, orally or in writing or transmitted physically, in paper form, by optical, electronic, magnetic and/or any other means and **(ii)** all analyses, evaluations, reports and other documents, of whatever nature, reproduced on whatever medium, including electronic, prepared or originated by the Parties or their Connected Persons which contain, reproduce or are derived, in whole or in part, from the information referred to in item **(i)** above;

Notwithstanding the above, the following information shall not be considered as Confidential Information:

- a) information which at the time of its disclosure is, or subsequently becomes, publicly available as a result of publication or other means of communication, for reasons other than acts and/or omissions of either Party or one of their respective Connected Persons or otherwise as a result of a breach of this Agreement;
- b) information that the Receiving Party can demonstrate was, at the time it was made available to the Receiving Party, already in its lawful possession and was not acquired, directly or indirectly, in breach of any legal, contractual or fiduciary obligation by the entity providing such information;
- c) information that **(i)** is made available to the Receiving Party by a Third Party without any breach of this Agreement, any other confidentiality obligation with the Disclosing Party or any other legal obligation of confidentiality and **(ii)** was not otherwise acquired by the Third Party in breach of any legal, contractual or fiduciary obligation;
- d) information that has been independently developed and/or processed by, or on behalf of, the Receiving Party and/or of its respective Connected Persons without having used or made reference to the Confidential Information;
- e) information the disclosure of which has been previously authorised in writing by the Disclosing Party.

1.2.3 “**Connected Persons**” means, in respect of each Party and its Group Companies, their respective directors, representatives, officers, employees, collaborators and Consultants;

1.2.4 “**Consultants**” means, without limitation, the legal, technical, commercial, tax, financial and other advisers and agents of each of the Parties;

1.2.5 “**Control**” means – with respect to a Person – the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. The terms “Controlling”, “Controlled” and “under common Control” shall be construed accordingly;

1.2.6 “**Disclosing Party**” means the Party disclosing the Confidential Information to the other Party and/or to its Connected Persons;

1.2.7 “**Group Company**” means, in respect of each Party, each of its Controlled, Controlling or companies

under common Control with that Party;

1.2.8 “**Person**” mean any individual, corporation, firm, association, partnership, limited liability company or other legal entity or other form of business organization;

1.2.9 “**Receiving Party**” means the Party receiving the Confidential Information from the other Party and/or its Connected Persons;

1.2.10 “**Third Party**” means any Person other than the Parties and Connected Persons.

2 OBLIGATION OF CONFIDENTIALITY AND USE OF CONFIDENTIAL INFORMATION

2.1 The Receiving Party undertakes:

- (i) to consider and keep strictly confidential and, therefore, not to disclose, make known (directly or indirectly), publish, copy, modify, communicate or transmit the Confidential Information to Third Parties as well as to Connected Persons not directly involved in the Project, without the prior written consent of the Disclosing Party;
- (ii) to apply, with respect to the Confidential Information, all such security and diligence measures which are reasonably necessary or even appropriate to ensure the obligation of confidentiality set out in this Agreement and to prevent unauthorized access to the Confidential Information and any misappropriation or manipulation thereof; and
- (iii) not to make any announcement or communication to the public about the Project, except with the prior written consent of the Disclosing Party and except as expressly provided for in this Agreement.

2.2 The Receiving Party also undertakes to use the Confidential Information solely and exclusively for the purpose of carrying out the activities referred to in Recitals C and D and in any event in such a way as not to cause any prejudice to the Disclosing Party or to any of its Group Companies.

2.3 The Receiving Party may disclose Confidential Information only and exclusively to the Connected Persons involved in the activities of the Project and who will have a real and concrete need to know it. In this regard, before disclosing Confidential Information to a Connected Person, the Receiving Party undertakes to:

- (i) inform it of the confidential nature of the same, of the fact that such information shall not be disclosed, published, communicated or transmitted, in any way, directly or indirectly to Third Parties, and of the substantial content of this Agreement;
- (ii) cause its Connected Persons who have to receive the Confidential Information to comply with the terms of this Agreement as if they were parties to this Agreement; and

Notwithstanding the foregoing, the Receiving Party shall be directly liable to the Disclosing Party for any breach of the obligations under this Agreement and the related damaging arising therefrom, even if committed by the relevant Connected Persons who have had access to the Confidential Information.

2.4 Without prejudice to the provisions of this Article 2, the disclosure, in whole or in part, of Confidential Information shall not constitute a breach of this Agreement if such disclosure is:

- (i) due to comply with legal or regulatory requirements; and/or
- (ii) required by virtue of any order issued against the Receiving Party and/or its Connected Persons by a court, any other judicial, administrative or supervisory authority;

- (iii) necessary by virtue of guidelines, compliance or audit internal processes or procedures, it being understood that, in such latter case of disclosure, the Receiving Party shall remain bound by its confidentiality obligations under this Agreement and its responsibilities.
- (iv) becomes approved for release in writing by Disclosing Party.
- (v) is independently developed by Receiving Party and/or its Connected Persons without use of or reliance on the Confidential Information.

In the aforementioned cases provided for in this paragraph 2.4 the Receiving Party undertakes to:

- x) promptly inform the Disclosing Party in writing that any Confidential Information has to be disclosed for such purposes; and
- y) consult and co-operate with the Disclosing Party as to the timing and content of such disclosure and as to any action the Disclosing Party reasonably intends to take to challenge, where possible, the legality of such disclosure request.

The Receiving Party further acknowledges that any disclosure under the foregoing paragraph 2.4 paragraph above shall be limited to the minimum amount of Confidential Information required so that the obligation of the Receiving Party can be deemed to be legitimately satisfied.

2.5 In the event that the Receiving Party loses Confidential Information or improperly discloses or allows the disclosure of Confidential Information to Third Parties without the prior written consent of the Disclosing Party, the Receiving Party undertakes to immediately notify the Disclosing Party of such circumstances and to take all appropriate action necessary to recover the Confidential Information lost or improperly disclosed to Third Parties, without prejudice to any further obligations under this Agreement.

2.6 However, for the sake of clarity, it is understood that Confidential Information shall not be published and shall never be published. In the event that any of the results obtained as part of the activities referred to in the Recitals C and D may be subject to publication, such publication shall be authorized in advance by the Disclosing Party at its sole discretion.

3 DURATION AND TERMINATION

3.1 The obligations under this Agreement shall be effective for a period of time of 5 (five) years from the date of completion thereof.

3.2 At the end of the term or in the event of termination and/or loss of effectiveness of this Agreement, all Confidential Information in the possession or availability of the Receiving Party and the respective Connected Persons shall be destroyed, subject to the provisions of the following paragraph 4.2.

3.3 In the event that the Parties intend to proceed with the Project and enter into the relevant and specific confidentiality agreements between them relating to the Project, this Agreement shall automatically terminate, unless otherwise provided in writing by the Parties, who may, if necessary, extend its duration and effectiveness.

3.4 If the Parties interrupt the discussions on the Project and, in any case, in the event of termination and/or loss of effectiveness of this Agreement, it is agreed that the obligations under this Agreement shall continue in full force and effect between the Parties for the duration set forth in the preceding paragraph 3.1 unless otherwise agreed in writing by the Parties.

4 RETURN AND/OR DESTRUCTION OF CONFIDENTIAL INFORMATION

- 4.1 Within 15 (fifteen) Business Days from the written request of the Disclosing Party, the Receiving Party shall return and/or destroy — all documents and copies thereof containing Confidential Information, without retaining any copies thereof.
- 4.2 Without prejudice to the provisions of paragraph 3.2 above, if the Confidential Information must be kept pursuant to laws or regulations, by virtue of measures of the competent judicial, administrative or supervisory authorities, for internal procedures, or bona fide document retention policies (including electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems), or if the destruction of the latter is not technically possible, the Receiving Party may keep a copy thereof. In such case, the Receiving Party shall, also on behalf of its Connected Persons who continue to hold such Confidential Information, continue to comply with all obligations under this Agreement in accordance with the provisions of Article 3 (*Duration*) above and, in any event, for as long as such Confidential Information is being held.

5 DAMAGES AND REMEDIES

- 5.1 In the event of any breach of any obligation under this Agreement, the Party in breach shall be liable for the damage suffered by the other Party, which shall be the actual damage exclusively arising from such breach, provided that it has been established by a final court decision. Without prejudice to the foregoing, in the specific case of violation of the obligations set forth in the following Article 7 (*Ownership of Confidential Information and Intellectual Property*), the aforesaid indemnifiable damage shall include, in addition to the actual damage, also the damage for loss of profit, provided that it has been ascertained by a final judgment.
- 5.2 In any event, by entering into this Agreement, in view of the nature of the Confidential Information, the Receiving Party agrees and acknowledges that the **(i)** disclosure, **(ii)** unauthorized use of Confidential Information of the Disclosing Party and/or **(iii)** breach of the obligations under this Agreement, could cause significant damage to the Disclosing Party, which may be difficult or impossible to quantify. Accordingly, the Parties agree that the compensation for damages may not be an adequate remedy for the breach of any provision of this Agreement and that the Disclosing Party shall be entitled to obtain such measures and/or remedies as it deems appropriate to protect its rights in order to remedy or prevent any breach or potential breach of this Agreement (including, without limitation, injunctive relief).

6 LIABILITY AND EXCLUSIONS

- 6.1 The Parties agree and acknowledge that Confidential Information shall be provided by the Disclosing Party to the Receiving Party on an “as is” basis, with no representations or warranties being made as to the adequacy, completeness, correctness or conformity of the Confidential Information exchanged. Accordingly, except in cases of fraudulent misrepresentation, the Disclosing Party and their respective Connected Persons:
 - (i) shall in no way be liable to the Receiving Party and their respective Connected Persons for any loss, cost or damage that may arise from the use of Confidential Information disclosed pursuant to this Agreement;
 - (ii) shall not be under any obligation to provide further Confidential Information, to update the Confidential Information and/or to correct any inaccuracies in the Confidential Information.
- 6.2 The Parties expressly agree that no legally binding obligation to form a *partnership, joint venture, company, consortium, or any other business relationship* or any commitment to enter into any agreement or contractual obligations, whether preliminary or final, relating to the development, execution and/or implementation of the Project, shall result from the execution of this Agreement. Therefore, any pre-contractual liability of either Party is excluded in relation to the exchange of Confidential Information and/or to the execution of this Agreement. Furthermore, neither of the Parties shall be qualified, either

expressly or by conclusive facts, as agents or mediators towards third parties on behalf of and/or in the interest of the other Party as a result of the execution of this Agreement.

7 OWNERSHIP OF CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

7.1 The Receiving Party expressly acknowledges that:

- (i) the Confidential Information is and shall remain the sole property of the Disclosing Party;
- (ii) nothing in this Agreement shall be construed as granting or conferring any industrial and/or intellectual property rights of the Disclosing Party – whether by licence or otherwise, expressly, by implication or otherwise – including, without limitation, the rights of the Disclosing Party in any patents, copyrights, discoveries, inventions or improvements, whether conceived or acquired before or after the termination of this Agreement;
- (iii) under no circumstances shall the Receiving Party use, distribute or sell any product that uses, incorporates or is derived from the Confidential Information;
- (iv) neither it nor its Connected Persons shall be deemed to have acquired any right or interest in the Confidential Information as a result of the execution of this Agreement.
- (v) The Confidential information will be used only for the purpose described herein. The Receiving Party will not use or cause its Connected Persons to use such Confidential Information for the purpose of developing projects similar or in competition with the Project.

8 INTERNATIONAL SANCTIONS

8.1 Each Party hereby represents:

- (i) to comply, in the conduct of its business, with the international sanctions legislation applicable to it, namely any laws, regulations, decrees or orders or nominative lists or other restrictive measures concerning any trade, economic or financial sanctions, embargoes or restrictions adopted, issued, administered, implemented or imposed from time to time by or in:
 - a) the United States of America;
 - b) the United Kingdom of Great Britain a;
 - c) the United Nations;
 - d) the European Union and its Member States; or
 - e) any bodies, agencies or authorities owned by or acting from or acting on behalf of any of the jurisdictions/entities referred to from a) to d) above(the “**International Sanctions**”);
- (ii) not to be subject, directly or indirectly, to any International Sanctions;
- (iii) not to be owned 50% or more or controlled, directly or indirectly, by one or more persons or entities subject to International Sanctions; and
- (iv) that it is not located, organized, resident nor operating from any country or territory that is subject to comprehensive country wide or territory wide International Sanctions which create a general, export, import, financial or investment embargo, being, as of the date hereof: Cuba, the Crimea region of Ukraine, the so-called Donetsk People’s Republic and the so-called Luhansk People’s Republic, Iran, North Korea and Syria (the “**Embargoed Jurisdiction**”).

- 8.2 Each Party hereby undertakes:
- (i) to comply, in the conduct of its business, with the International Sanctions legislation applicable to it;
 - (ii) not to be located, organized, resident nor operating from any Embargoed Jurisdiction.
- 8.3 In the event that the representations and guarantees given by each Party are, in whole or in part, false or the commitments referred to paragraph 9.2 above are breached or at any time during the execution of this Agreement a Party becomes unable to confirm the representations and the undertakings under paragraphs 9.1 and/or 9.2 above, any discussions between the Parties shall be immediately interrupted and no further Confidential Information shall be exchanged, without prejudice to the Confidential Information already exchanged which shall remain subject to the confidentiality obligations under this Agreement.
- 8.4 In any case, each Party undertakes to inform immediately the other Party in relation to any circumstances which may determine such Party to be in the positions referred in paragraph 9.3 above.

9 MISCELLANEOUS

- 9.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements, understandings, communications or undertakings relating to the same subject matter. No rights or obligations, other than those expressly set forth herein, shall be deemed to be assumed with the execution of this Agreement.
- 9.2 Forbearance. Failure by either Party to exercise or delay in exercising any right, power, reason or action to which it is entitled under this Agreement shall not operate as a waiver of the right, power, reason or action concerned or any other right, power, reason or action to which it is entitled under this Agreement.
- 9.3 Severability. Notwithstanding the mandatory provisions of the law, the nullity, invalidity, ineffectiveness or objective inapplicability of any clause of this Agreement shall not affect the validity, effectiveness and enforceability of any other clause and, in any case, this Agreement shall be interpreted in such a way as to allow the survival of any clause which is not null, invalid, ineffective or objectively inapplicable. The Parties undertake to do whatever is necessary to agree in good faith replacing clauses having the content as close as possible to the one of the null, invalid, ineffective or objectively unenforceable clauses.
- 9.4 Expenses. Each Party shall bear the costs of its own professional assistance in connection with the negotiation, execution and performance of this Agreement.
- 9.5 Amendments. Any supplement or amendment to this Agreement shall not be valid and effective unless made in writing and signed by authorised representatives of both Parties.
- 9.6 Assignment. Neither Party may assign this Agreement or any of its rights or obligations under it, in whole or in part, without the prior written consent of the other Party.
- 9.7 Notices. Any communication required or to be made in accordance with this Agreement shall be made in writing and sent by e-mail or by registered letter with acknowledgement of receipt to the following addresses:

- If to **BMT**:

BMT Energy Transmission Development LLC

1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801

e-mail: [●]

to the attention of: [●]

- If to [●]:

[company name]

[address]

e-mail: [●]

to the attention of: [●]

Or to such other address as may be communicated by either Party to the other Party in accordance with this paragraph. 9.7.

10 - APPLICABLE LAW AND COMPETENT COURT

10.1 This Agreement shall be governed by and construed in accordance with the laws and regulations of the State of New York without regard to its conflicts of law provision.

10.2 Any dispute relating to or in any way connected with this Agreement shall be submitted to the exclusive jurisdiction of the Courts of the State of New York.

BMT Energy Transmission Development LLC

Signed by: [●], [role]

For acceptance:

[●]

Signed by: [●], [role]