APS Supply chain management

**Confidentiality Agreement**

**Between**

**Arizona Public Service Company**

**And**

**Grid Protection Alliance INC**

Arizona Public Service Company

400 North 5th Street

Phoenix, AZ 85004

SCM Representative: Lesley Austin

E-Mail: Lesley.austin@aps.com

1. **PARTIES.** This Confidentiality Agreement (“Agreement”) by and between Contracting Party Name Name (“Counter Party”), having its principal place of business at Contracting Party Address, and Company Name(“Company”), having its principal place of business at 400 North 5th Street, Phoenix, AZ85004, acting on its own behalf and for the benefit of Pinnacle West Capital Corporation (“PNW”), is effective Effective Start Date (the “Effective Date”).
2. **RECITALS.**
   1. Company and Counter Party intend to have discussions and exchange information, in connection with a possible transaction between them regarding \_\_\_\_\_\_ (the “**Permitted Purpose**” ).
   2. During and in connection with the discussions and exchange of information, the Company may disclose Confidential Information to the Counter Party. “Confidential Information” means all nonpublic information relating to the Company’s business, whether or not marked “confidential,” and all notes, analyses, summaries, and other materials prepared by the Counter Party or any of its representatives that reflect any Confidential Information.
   3. The parties desire to enter into this Agreement for the purpose of establishing the terms and conditions under which said Confidential Information is to be disclosed and protected.
   4. In consideration of the foregoing recitals, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Counter Party hereby agree as follows:
3. **DUTY OF NON-DISCLOSURE.** Absent Company’s prior written consent, Counter Party will not: (A) disclose any Confidential Information to any third party; (B) use any Confidential Information for any purpose other than the Permitted Purpose; or (C) reproduce Confidential Information in whole or in part.
4. **EXCLUSIONS.**  Confidential Information does not include:

(A) information in the public domain through no fault of Counter Party;

(B) information lawfully known by Counter Party prior to disclosure by Company;

(C) information rightfully learned from a third party not under restriction of disclosure; and

(D) information that is independently developed by the Counter Party without breach of this Agreement or any other obligations of confidentiality.

1. **PERMITTED DISCLOSURE.** The Counter Party may disclose Confidential Information only to Counter Party Personnel who have a need to know the Confidential Information solely for the Permitted Purpose of this Agreement and who have agreed to maintain confidentiality in accordance with this Agreement. For the purposes of this Agreement, Counter Party Personnel includes any person working for or on behalf of Counter Party, including its officers, directors, and employees, (“**Counter Party Personnel**”).Counter Party and Counter Party Personnel will use the same degree of care that the Counter Party ordinarily uses with respect to its own proprietary information, but not less than reasonable care. The Counter Party will be fully liable for any breach of confidentiality obligations by Counter Party Personnel. this Agreement by such persons.
2. **DISCLOSURE REQUIRED BY LAW.** If the Counter Party receives any subpoena, court order, or regulatory request requiring or requesting disclosure of Confidential Information, the Counter Party will immediately notify the Company and fully cooperate with the Company in any action the Company deems necessary to protect the Confidential Information. The Counter Party will provide only that portion of the Confidential Information which it is advised in writing by legal counsel is legally required to be disclosed and will exercise all reasonable efforts to obtain a reliable assurance that the Confidential Information will be treated as strictly confidential by any recipient of it.
3. **LIMITED SCOPE.** Each Party agrees that unless and until a definitive agreement regarding a possible transaction between the Parties has been executed by the Parties, and in such event, only to the extent provided in such definitive agreement, neither Party shall be under any legal obligation of any kind whatsoever with respect to any possible transaction or project between the Parties by virtue of this Agreement, except for the obligations of confidentiality specifically agreed to herein.
4. **SECURITIES**. The Counter Party acknowledges that the Counter Party is aware (and that its directors, officers, employees, affiliates, representatives, agents and advisors who are apprised of this matter have been advised) that the United States securities laws prohibit any person who has material non‑public information about a company (which would include the Confidential Information) from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities and that the Counter Party will not use nor permit the use of such Confidential Information for its or others own benefit or in a manner that would be in violation of such laws.
5. **NO WARRANTIES.** THE COMPANY PROVIDES CONFIDENTIAL INFORMATION ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY WHATSOEVER. THE COMPANY HEREBY NEGATES AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, WHETHER STATUTORY OR ARISING FROM COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, PROFITABILITY, SUITABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE COUNTER PARTY UNDERSTANDS AND AGREES THAT THE CONFIDENTIAL INFORMATION PROVIDED BY THE COMPANY MAY BE INACCURATE, INCOMPLETE OR UNRELIABLE. THE COUNTER PARTY ACKNOWLEDGES THAT ANY RELIANCE ON THE CONFIDENTIAL INFORMATION IS AT THEIR OWN RISK.
6. **TERM AND TERMINATION.** The term of this Agreement will continue from the Effective Date and will govern all disclosures of Confidential Information thereafter until no later than [[Contract.EndsOn]], unless terminated earlier by either party upon 30 days’ written notice to the other party.
7. **SURVIVAL OF OBLIGATIONS.** Unless the parties agree otherwise, these confidentiality obligations will survive for three (3) years after termination or expiration of this Agreement, except that such obligations will not expire for any Confidential Information that includes (a) trade secrets, (b) personal information that permits the identity of an individual to be directly or indirectly inferred, linked or linkable to an individual, (c) financial or medical information of an individual, and (d) cybersecurity, and physical security information related to Company.
8. **RETURN OF CONFIDENTIAL INFORMATION.** Within fifteen (15) days following the earlier of: (A) the Company’s request; or (B) termination of this Agreement under which Confidential Information was provided to Counter Party; the Counter Party will promptly, at its own expense, return to the Company (or, at Company’s option, destroy or erase) all Confidential Information and any copies or other physical embodiments of the Confidential Information. In such case the Counter Party will certify in writing to Company that all such Confidential Information has been so returned, erased, or destroyed.
9. **COSTS AND EXPENSES**. Each party will pay its own costs and expenses incurred in connection with this Agreement and the Permitted Purpose.
10. **OWNERSHIP OF CONFIDENTIAL INFORMATION.** All Confidential Information provided by the Company remains its property and the Counter Party obtains no right of any kind to any Confidential Information provided to it.

1. **NO LICENSES.** Except as otherwise expressly stated herein, each party acknowledges that this Agreement is not intended to and does not grant, expressly or by implication, any right or license to any permit, patent, trademark, copyright, trade secret, improvement, or any other intellectual property right or similar proprietary right of any kind that the other party may possess.
2. **REMEDIES.** The unauthorized disclosure of Confidential Information may cause irreparable harm to the Company and the Company may choose to enforce its rights in a legal proceeding. In such a proceeding, the Counter Party will not assert that the Company has an adequate remedy at law with respect to actual or threatened disclosure and will not seek to require the Company to post a bond. The Counter Party agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement.
3. **NO WAIVER.** No statement, course of conduct, course of dealing, or other action will be construed as a waiver. Any waiver must be in writing and signed by the party granting the waiver.
4. **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party, or otherwise dispose of any right, title or interest in all or part of this Agreement, including assignment by operation of law or otherwise, without such consent. Either party may grant or withhold consent in its sole discretion; provided, however, that Company may assign this Agreement, in whole or in part, without Counter Party’s consent, to its parent, PNW, or to any affiliate or subsidiary of PNW. Any assignment or delegation by either party in breach of this Section will be null and void and of no legal force or effect. The terms and provisions of this Agreement will be binding upon and inure to the benefit of any permitted successor of either party.
5. **SEVERABILITY.** If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, the rest of this Agreement will remain in full force and effect.
6. **ENTIRE AGREEMENT.** This Agreement contains the final and complete agreement between the parties concerning its subject matter and supersedes all prior and contemporaneous communications pertaining to the Permitted Purpose.
7. **GOVERNING LAW.** This Agreement will be governed by and interpreted under Arizona law, without regard to any conflict of laws provision. Any legal suit, action or proceeding arising directly or indirectly out of this Agreement will be initiated in state or federal court in Maricopa County, Arizona.
8. **AMENDMENTS.** Any amendment to this Agreement must be in a writing signed by an authorized representative of each party.
9. **NOTICES.** All communications relating to the day to day activities under this Agreement will be between the designated representatives named below. Any other notices required under this Agreement will be sent to the individuals identified below, by email and certified mail, return receipt requested. Notices will be effective on the date the certified mail is delivered. Notices and communications will be delivered or mailed to the parties as follows:
   1. Day to Day communications:

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| **If to Company:** | **If to Counter Party:** |
| Company Name | Contracting Party Name |
| Address | Contracting Party Address |
| Attn: Contact Person | Attn: Contracting Party Contact Person,  Contracting Party Contact's Designation |
| Telephone: [insert phone] | Telephone: [insert phone] |

* 1. All other notices:

|  |  |
| --- | --- |
| **If to Company:** | **If to Counter Party:** |
| Company Name | Contracting Party Name |
| Address | Contracting Party Address |
| Attn: Contact Person | Attn: Contracting Party Contact Person,  Contracting Party Contact's Designation |
| Telephone: [insert phone] | Telephone: [insert phone] |

1. **NO REVERSE ENGINEERING.** Counter Party will not modify, create derivative works from, reverse engineer, reverse assemble, decompile or reverse compile any software or other material contained in the Confidential Information.
2. **EXPORT CONTROL.** Counter Party agrees that no technical data or information received hereunder will be exported or disclosed to any individual who is a foreign national, including foreign nationals employed by or associated with the Counter Party, or any foreign firm or country, without first complying with the U.S. export control and economic sanctions laws and regulations, including obtaining an export license, if applicable. Irrespective of any other provisions in this Agreement, the obligations set forth in this section will be binding so long as relevant United States Government regulations remain in effect.
3. **EXECUTION.** This Agreement is executed by the authorized representatives of the parties.

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| Company Name  “Company”  On its own behalf and for the benefit of Pinnacle West Capital Corporation | Contracting Party Name  “Counter Party” |  |
| By: | By: |
| Printed Name: | Printed Name: |
| Title: | Title: |
| Date Signed: | Date Signed: |