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

**MUTUAL CONFIDENTIALITY**

# PARTIES.

This Confidentiality Agreement ("Agreement”) is by and between Arizona Public Service Company ("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”) and Grid Protection Alliance, Inc.,E ("Counter Party"), having its principal place of business at 1100 Market Street, Chattanooga, TN 37402, is effective May 15, 2024 (the “Effective Date”).

# RECITALS.

* 1. Company and Counter Party intend to have discussions and exchange information, in connection with a possible transaction between them regarding Event Data Retrieval Proof of Concept (the **"Permitted Purpose"**).
  2. During and in connection with the discussions and exchange of information, the parties may disclose to one another Confidential Information. “**Confidential Information**” means all nonpublic information relating to the Company and the Counter Party’s business, and all notes, analyses, summaries, and other materials prepared by the Company and the Counter Party or any of their 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:

# DUTY OF NON-DISCLOSURE.

Absent the other party’s prior written consent, Company and 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. The parties shall mark all the Confidential Information in tangible form with the legend ‘confidential’, ‘proprietary’, or with similar legend. With respect to Confidential Information disclosed orally, the parties shall describe the Confidential Information as such at the time of disclosure and shall provide a written confirmation of this description to the other party within seven (7) days after the date of the oral disclosure. Regardless of whether so marked or described, however, any nonpublic information regarding the customers, employees or contractors of Company shall be deemed to be the Confidential Information of Company.

# EXCLUSIONS.

Confidential Information does not include:

1. information in the public domain;
2. information lawfully known by a party prior to disclosure by the other party;
3. information rightfully learned from a third party not under restriction of disclosure; and
4. information that is independently developed, as established by documentary evidence, by a party without breach of this Agreement or any other obligations of confidentiality.

# PERMITTED DISCLOSURE.

The Company and Counter Party may disclose Confidential Information only to Company Personnel and 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, Company Personnel includes any person working for or on behalf of Company, including its officers, directors, and employees, (“Company Personnel”). Counter Party Personnel includes any person working for or on behalf of Counter Party, including its officers, directors, and employees, (“Counter Party Personnel”). Company and Company Personnel and Counter Party and Counter Party Personnel will use the same degree of care that the parties ordinarily use with respect to its own proprietary information, but not less than reasonable care. The Company and the Counter Party will be fully liable for any breach of confidentiality obligations by Company Personnel and Counter Party Personnel.

# DISCLOSURE REQUIRED BY LAW.

If the Company or Counter Party receives any subpoena, court order, or regulatory request requiring or requesting disclosure of Confidential Information, the Company and Counter Party will immediately notify the other party and fully cooperate with the other party in any action the other party deems necessary to protect the Confidential Information. The Company and 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.

# 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.

# RELATIONSHIP OF THE PARTIES.

Each party agrees that unless and until a definitive agreement regarding a possible transaction between the parties has been executed and delivered 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.

# NO WARRANTIES.

THE PARTIES PROVIDE CONFIDENTIAL INFORMATION ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY WHATSOEVER. THE PARTIES HEREBY NEGATE AND DISCLAIM 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 RECEIVING PARTY UNDERSTANDS AND AGREES THAT THE CONFIDENTIAL INFORMATION PROVIDED BY THE DISCLOSING PARTY MAY BE INACCURATE, INCOMPLETE OR UNRELIABLE. THE RECEIVING PARTY ACKNOWLEDGES THAT ANY RELIANCE ON THE DISCLOSING PARTY’S CONFIDENTIAL INFORMATION IS AT THEIR OWN RISK.

# TERM AND TERMINATION.

The term of this Agreement shall continue from the Effective Date and will govern all disclosures of Confidential Information thereafter until no later than Contract Expiration Dateunless terminated earlier by either party upon 30 days’ written notice to the other party.

# 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.

# RETURN OF CONFIDENTIAL INFORMATION.

Within fifteen (15) days following the earlier of: (A) the Company or Counter Party’s request; or (B) termination of this Agreement under which Confidential Information was provided to Company or Counter Party; the Company or Counter Party will promptly, at its own expense, return to the other party (or, at the other party’s option, destroy or erase) all Confidential Information and any copies or other physical embodiments of the Confidential Information. In such case the Company or Counter Party will certify in writing to the other party that all such Confidential Information has been so returned, erased, or destroyed.

# COSTS AND EXPENSES.

Each party will pay its own costs and expenses incurred in connection with this Agreement and the Permitted Purpose.

# OWNERSHIP OF CONFIDENTIAL INFORMATION.

All Confidential Information provided by the Company or the Counter Party remains its property and the other party obtains no right of any kind to any Confidential Information provided to it.

# 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.

# REMEDIES.

The unauthorized disclosure of Confidential Information may cause irreparable harm to the Company or Counter Party and the Company or Counter Party may choose to enforce its rights in a legal proceeding. In such a proceeding, the Company or Counter Party will not assert that the other party has an adequate remedy at law with respect to actual or threatened disclosure and will not seek to require the other party to post a bond. The parties agree 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, although neither party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort, or otherwise.

# 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.

# 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, Pinnacle West Capital Corporation ("PNW"), or to any affiliate or subsidiary of PNW. Any assignment or delegation by either party in breach of this Section shall be null and void and of no legal force or effect. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of any permitted successor of either party.

# 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.

# ENTIRE AGREEMENT.

This Agreement contains the final and complete agreement between the parties concerning its subject matter and supersedes all prior communications pertaining to the Permitted Purpose.

# GOVERNING LAW.

This Agreement shall 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 and federal court in Maricopa County, Arizona.

# AMENDMENTS.

Any amendment to this Agreement must be in a writing signed by an authorized representative of each party.

# NOTICES.

All notices and communications required or permitted under this Agreement shall be in writing and may be delivered by email, or certified mail, return receipt requested. Notices shall be effective on the date the certified mail is delivered. Notices and communications shall be delivered or mailed to the parties as follows:

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| If to Company: | If to Counter Party: |
| Arizona Public Service Company | Grid Protection Alliance, Inc. |
| 400 North 5th Street |  |
| Phoenix, AZ 85072-3999 |  |
| Attn: Manager, Supply Chain Support Services,  MS9172 | Attn: Erika L. Wills, Senior Manager, Product Development |
| Telephone: 602-250-3219 | Telephone: (423) 702-8136 |
| Facsimile: 602-250-3689 | Facsimile: N/A |

# NO REVERSE ENGINEERING.

Neither party shall modify, create derivative works from, reverse engineer, reverse assemble, decompile or reverse compile any software or other material contained in the Confidential Information of the other party.

# EXPORT CONTROL.

The receiving party agrees that no technical data or information received hereunder shall be exported or disclosed to any individual who is a foreign national, including foreign nationals employed by or associated with the receiving party, or any foreign firm or country, without first complying with the U.S. Export Administration Regulations and/or U.S. International Traffic in Arms Regulations, including obtaining an export license, if applicable. Irrespective of any other provisions in this Agreement, the obligations set forth in this section shall be binding so long as relevant United States Government regulations remain in effect.

# EXECUTION.

This Agreement is executed by the authorized representatives of the parties.

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| Arizona Public Service Company, "**Company**"  On its own behalf and for the benefit of Pinnacle West Capital Corporation and its Subsidiaries  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Grid Protection Alliance, Inc. **“Counter Party”**    By: \_\_\_\_\_\_ \_ \_\_\_  Printed Name: Dr. Christoph Lackner  Its: Operating Officer\_\_\_\_  Date Signed: \_\_May 15, 2024\_\_\_\_\_\_ |
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