

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of the \_\_\_\_\_ day \_\_\_\_\_ 2008 by and between ARIZONA PUBLIC SERVICE COMPANY ("APS") and \_\_\_\_\_ ("Counterparty") (all of the foregoing referred to individually as "Party" or collectively as the "Parties").

WHEREAS, the Parties are currently exploring a possible transaction (the "Transaction") pursuant to the Request for Proposal dated August 14, 2008, by which APS is seeking proposals for distributed energy resources.

WHEREAS, in order to evaluate the Transaction, the Parties may request of each other that certain non-public, confidential or proprietary information be kept confidential (the "Information").

THEREFORE, in consideration of the receipt by the Parties from each other of such Information for their mutual benefit in connection with the Transaction, the Parties hereby agree:

1. The Parties shall safeguard the Information against disclosure by employing the same means to protect the Information as that Party uses to protect its own non-public, confidential or proprietary information, but in no event less than commercially reasonable means.

2. No receiving Party shall itself, nor shall it permit its employees, consultants and/or agents to, disclose to any person, corporation or other entity the Information without the prior written consent of the Party providing the Information, except a receiving Party may distribute the Information to its board members, officers, employees, agents and consultants and others who have a need for such Information for purposes of evaluating the Transaction and/or the RFP process. The Parties acknowledge, however, that APS may need to disclose the Information in connection with its regulatory filings or to otherwise satisfy its regulatory requirements. In the event that APS intends to disclose any of the Information to regulatory authorities including, but not limited to, the Arizona Corporation Commission ("ACC"), the Residential Utility Consumer Office ("RUCO"), the Federal Energy Regulatory Commission ("FERC"), or any employee, staff member, consultant, and/or agent of the foregoing, it shall give Counterparty prompt prior written notice of its intention so that Counterparty may seek a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained, Counterparty waives compliance with the terms hereof with respect to such Information. Nothing herein shall be deemed to permit Counterparty to disclose the Information to the foregoing regulatory agencies, or any other party, unless such disclosure is otherwise permitted by this Agreement. In addition, Counterparty specifically agrees not to use APS' name in connection with the Transaction in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service, without the express written consent of APS. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Information to the media and the Parties anticipate that, in such event, they will enter into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Agreement shall be binding with respect to such disclosure.

3. In the event that any Party receiving the Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the legally compelled Party shall give the other Party providing the Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Information.

4. The term "Information" does not include any information which (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement), (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Information, provided that such source is not and was not known by the receiving Party to be bound by a confidentiality agreement that protected the Information, or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

5. This Agreement shall be interpreted, governed and construed under the laws of the State of Arizona as if it were executed and to be performed wholly within the State of Arizona without regard to its conflict of laws principles.

6. Each Party acknowledges that the unauthorized disclosure of any Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore 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, 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. The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of the other Party's Information provided during the RFP process.

7. The Parties' obligations under this Agreement will expire one (1) year from the date that the Parties execute a binding contract governing the Transaction, but in no event more than two (2) years from the date hereof.

8. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

9. This Agreement shall in no way be construed to (i) preclude in any way either Party from pursuing any business opportunities; (ii) establish any relationship between the parties with respect to such business opportunities; or (iii) establish any relationship between the parties with respect to the Transaction that is the subject of this Agreement.

10. This Agreement (i) may only be amended by both Parties in writing, and (ii) represents the entire understanding of the Parties with respect to the matters that are the subject hereof.

IN WITNESS WHEREOF, the Parties have duly executed this Confidentiality Agreement as of the date first above written.

ARIZONA PUBLIC SERVICE COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_