

**SAMPLE AGREEMENT
BETWEEN
ARIZONA PUBLIC SERVICE COMPANY
AND**

**For
GOODS**

SAMPLE

PARTIES.

This Agreement for Goods (this "**Agreement**") is entered into and made effective _____, 20____ (the "**Effective Date**") by and between _____, having its principal place of business at _____ ("**Supplier**"), and **Company** (as defined in **Section 3**), having its principal place of business at 400 North 5th Street, Phoenix, AZ 85004.

1. RECITALS.

Supplier represents to Company that it is a _____ **[Insert one or more of the following terms: (manufacturer) (distributor) (fabricator) (assembler)]** of the Goods (defined in **Section 3**) and has the resources to provide and support the Goods in accordance with this Agreement. Supplier acknowledges that Company has relied upon these representations in entering into this Agreement. Company proposes to purchase Goods from Supplier, and Supplier desires to sell the Goods to Company. This Agreement sets forth the terms and conditions pursuant to which Supplier shall supply and Company shall purchase the Goods.

2. SECTION HEADINGS AND DEFINITIONS.

Section headings in this Agreement are for convenience of reference only, and do not define, limit, or fully describe the scope or intent of these provisions. This Agreement and any other documents attached to or incorporated in this Agreement shall be interpreted according to their plain meaning and without regard to factors such as the party who prepared them or the relative bargaining power of the parties. The following words shall have these meanings when used in this Agreement: (a) "**including**" means "including but not limited to" the specifically enumerated things, states, or actions; (b) "**or**" means "one or the other or all" of the specifically enumerated things, states, or actions; (c) "**parties**" means Company and Supplier; and (d) "**shall**" or "**will**" means the listed duties or actions are mandatory.

"Agreement" – This Master Agreement for Goods, including all documents attached to or incorporated in this Agreement.

"Applicable Law" – All applicable laws, statutes, and ordinances, rules and regulations of any governmental authority (including city, county, state, federal, and tribal governmental authorities).

"Best Efforts" – Those efforts and resources that a skilled, competent, experienced, and prudent supplier would use to perform and complete the requirements of this Agreement in a timely manner, exercising the degree of skill and competence customarily required of a supplier performing similar work for the relevant industry in the United States.

"Change Notice" – A written document issued by Company and addressed to Supplier, signed by authorized representatives of the parties, which authorizes a change in this Agreement, including appendices or other documents referenced herein.

"Claim" – Any claim, action, dispute, demand, or right of action, whether in law or in equity, of every kind and character.

"Commercial Use" – The date on which: (a) Company begins the commercial operation of the Goods following their installation, start-up, testing, or maintenance, and (b) Company notifies Supplier in writing that the Goods comply with the Specifications.

"Company" – **[Insert one of the standard Company Definitions.]**

"Company Documentation" – All Documentation created by Supplier after the Effective Date.

"Company Indemnitee" – The Company, any Participant and each of their officers, directors, employees, agents, advisers, representatives, affiliates, successors, and assigns.

"Company Responsible Party" – The Company, its officers, directors, employees, agents (including, any subcontractors of Company), suppliers, or anyone for whose acts Company is liable (other than any Supplier Indemnitee).

"Documentation" – All written, printed, and electronic documents, and, if applicable, software, including, Specifications, notes, records, reports, drawings, data, manuals, designs, software programs, and technical information, that are created, provided or used by Supplier in its performance under this Agreement.

"Force Majeure" – An unforeseeable event beyond the reasonable control of and not the fault of or caused by the negligence of the affected Party and which the affected Party is unable to overcome by the exercise of its reasonable diligence. Force Majeure includes the following to the extent they also meet the foregoing requirements: a restraint imposed by government, act of a public enemy, war, blockade, insurrection, riot, act of God, epidemic, landslide, earthquake, fire, storm, lightning, flood, unscheduled plant outage or breakdown. Force Majeure events specifically exclude the following: (a) strikes and work stoppages, (b) economic hardship, and (c) changes in Applicable Law.

"Goods" – All goods or equipment, and all other incidental materials, services, supplies, structures, or similar items as described in APPENDIX A, DESCRIPTION OF GOODS.

"Indemnified Action" – Any willful, wanton or reckless misconduct or any negligent or intentional act or omission (including acts or omissions resulting in strict liability) arising out of, resulting from, or related to a party's performance or non-performance under this Agreement.

"Intellectual Property" – Any and all United States and foreign: (a) patents and patent applications, patent disclosures awaiting filing determination, inventions and improvements thereto; (b) trademarks, service marks, trade names, trade dress, logos, business and product names, slogans, and registrations and applications for registration thereof; (c) copyrights (including software) and registrations thereof; (d) trade secrets and confidential or proprietary information including, confidential or proprietary processes, methods, designs, formula, know-how, and models; (e) intellectual property rights similar to any of the foregoing; and (f) copies and tangible embodiments thereof (in whatever form or medium, including electronic media).

"Losses" – All liabilities, losses, damages, fines, penalties, and costs and expenses of any kind or nature, whether or not covered by insurance, including reasonable attorneys' fees and expenses incurred in the investigation or defense of any of the same or in the enforcement of a party's rights under this Agreement.

"Participants" – Entities participating with Company, as owners, leaseholders, or tenants in common, in Company's operations or other facilities related to this Agreement, and each additional entity who may acquire an ownership or leasehold interest in these facilities or any other facility owned in whole or part or operated by Company. When entering into this Agreement for Participants, Company is acting as their agent. All benefits, rights, and remedies of Company under this Agreement, including those pertaining to indemnity, insurance, and ownership, shall also inure to the benefit of each Participant if this Agreement involves a Site that is either jointly owned or leased by Company and those Participants, or solely owned or leased by Participants with Company as operating agent (collectively **"Participant Sites"**). In addition, any Goods, other tangible items and intangibles, in which Company has acquired property rights in accordance with this Agreement, may also be the property of Company and those Participants if this Agreement involves a Participant Site.

"Price" – The amount to be paid by Company for the Goods, excluding any taxes, as specified in APPENDIX B, PRICE.

"Site" – The ultimate destination and place of use of the Goods or the area(s) at Company's facilities, including ingress and egress, where Supplier shall perform any incidental services.

"Specifications" – The requirements that the Goods must meet as described in APPENDIX D, SPECIFICATIONS, or any other documents attached to or referenced in this Agreement that specify such requirements.

"Subcontractor" – Any subcontractor or supplier who provides goods or services to Supplier in connection with this Agreement.

"Supplier Indemnitee" – Supplier and each of its officers, directors, employees, agents, advisers, representatives, affiliates, successors, and assigns.

"Supplier Personnel" – Supplier or its Subcontractors, and their employees, agents, or representatives.

"Supplier Responsible Party" – Supplier, its officers, directors, employees, agents (including, any subcontractors of Supplier), suppliers, or anyone for whose acts Supplier is liable.

3. ENTIRE AGREEMENT.

3.1. This Agreement contains the final and complete agreement between the parties for provision of Goods specified therein and supersedes all prior and contemporaneous conduct, agreements, statements, representations, negotiations, course of conduct, course of dealing, and communications pertaining to those Goods, whether written or oral. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not set forth in this Agreement.

3.2. To accept this Agreement, Supplier shall sign and return one copy to Company. Timely commencement of Supplier's performance shall also be deemed an expression of acceptance. If Supplier commences performance in response to a request for a quotation or proposal or without Company's written authorization, there is no agreement and Supplier takes this action at its own risk. Any additional or different terms included by Supplier in its acceptance shall not become part of this Agreement, nor shall Company's acceptance of the Goods be deemed an acceptance of any additional or different terms, unless the additional or different terms are expressly accepted by Company in a Change Notice that is transmitted to Supplier. This Agreement includes all documents either attached hereto or incorporated herein by reference. Specifically included as appendices and attached to and incorporated in this Agreement are:

APPENDIX A – DESCRIPTION OF GOODS
APPENDIX B – PRICE
APPENDIX C – SCHEDULE
APPENDIX D – SPECIFICATIONS
APPENDIX E – SHIPPING TERMS
APPENDIX F – (Form) SUBCONTRACTOR UTILIZATION

4. PRECEDENCE.

If there is any conflict between this Agreement and any other document referenced in this Agreement, the documents shall be read in this order of priority: (a) any Site-specific appendices attached to or incorporated by reference in this Agreement; (b) this Agreement; (c) APPENDIX D, SPECIFICATIONS; (d) other appendices to this Agreement; (e) any other documents referenced in this Agreement or its appendices. If any Change Notice(s) is issued, then the Change Notice shall have priority over the document it expressly amends. Any Change Notice(s) shall be read in reverse chronological order from latest to earliest. Unless stated otherwise, any amended document shall have the same order of priority stated in this Section.

5. SCOPE.

Supplier shall provide the Goods in accordance with APPENDIX D and the terms of this Agreement.

6. SCHEDULE, SHIPMENT, DELAYS.

6.1. Schedule. Supplier shall deliver the Goods according to the schedule specified in the APPENDIX C, SCHEDULE (the "**Schedule**"). Performance in accordance with the Schedule is material to this Agreement. Supplier shall not demand payment or any other performance from Company unless the Goods are delivered in accordance with the Schedule. If Supplier fails to comply with the Schedule (except for delays caused by Company or an "Excusable Delay" under **Section 7.3**, Company at its option may: (a) approve a revised Schedule; or (b) treat the failure to meet the Schedule as a material breach of this Agreement if such failure is not cured within 10 days of Company's written notice of such failure to Supplier (notwithstanding anything to the contrary under **Section 21, TERMINATION**). Supplier shall adhere to the Schedule, even if in doing so, it must add additional employees or work outside normal business hours, all of which shall be at Supplier's sole cost. Any expense incurred by Supplier to meet the Schedule shall be at Supplier's expense, unless the expense is caused by Company's delay through no fault of Supplier, in which case the parties shall agree upon an equitable adjustment to the Price to compensate Supplier for its direct expenses actually incurred in providing the Goods and caused by that delay.

6.2. Shipment. The Goods shall be shipped in accordance with the shipment terms specified in APPENDIX E, SHIPPING TERMS.

6.3. Excusable Delay.

6.3.1. A party whose performance is affected by reason of a Force Majeure is a "**Nonperforming Party**." When a delay due to a Force Majeure occurs, if a Nonperforming Party complies with the notice provisions in **Section 7.3.2**

and is granted an extension of performance time, then such delay is an “**Excusable Delay**” subject to this **Section 7.3**. Delay or nonperformance due to an event for which no notice has been given and an extension of performance time has not been granted by the other party shall be deemed an unexcused delay.

6.3.2. The Nonperforming Party shall give the other party written notice of the occurrence of the Force Majeure event within 5 business days after the Nonperforming Party becomes aware or reasonably should have become aware of the event, and may request, in its notice, an extension of time for its performance. The written notice shall include a detailed description of the event, its effects on the Nonperforming Party’s timely performance, an estimate of the length of the delay, and a plan to remedy any actual or potential delay or nonperformance. The Nonperforming Party shall promptly give written notice of the ending of the event to the other party.

6.3.3. A Nonperforming Party that complies with the notice provisions in **Section 7.3.2** shall be granted in writing an extension of time for performance equal to the time performance is delayed by the Force Majeure, only if (a) the Force Majeure directly, adversely and materially affects the Nonperforming Party’s performance, and (b) the Nonperforming Party can establish that the Force Majeure will cause a delay in the Nonperforming Party’s performance in accordance with this Agreement.

6.3.4. Notwithstanding the foregoing, the other party may evaluate its agreement on a continuing basis, reserving the right to terminate this Agreement, without further liability, if at any time the cumulative period of the delay equals or exceeds 30 days or such party determines the delay, notwithstanding its duration, has a significant adverse effect on its operations. If the Force Majeure affects Supplier’s performance, or that of its Subcontractors, Company may procure substitute performance from third parties during the period of such Force Majeure without being in breach of this Agreement and may terminate the portion of this Agreement for the amount of any third party performance. Notwithstanding anything to the contrary herein, no event of Force Majeure will result in an adjustment to the contract price.

6.3.5. To the extent the Nonperforming Party is able, it shall use its Best Efforts to remedy the effects of the Force Majeure. The Nonperforming Party shall offer partial performance of its obligations under this Agreement. Upon receipt of this offer, the other party may either accept or refuse the partial performance.

6.3.6. The provisions of this **Section 7.3** are intended to replace not supplement the parties’ rights under common law or statutory doctrines of impossibility, frustration of purpose and commercial impracticability.

7. PRICE AND PAYMENT.

7.1. The unit prices of the Goods will not exceed the prices shown in APPENDIX B, PRICE. These prices will apply to all Company’s purchases for 3 years from the Effective Date. Thereafter, they may be adjusted as mutually agreed to by the Parties. Supplier warrants that it will maintain competitive prices for the Goods, so that the prices offered to the Company will be at least comparable to those received by Supplier’s most favored customers for similar goods under comparable conditions. The Price shall include Supplier’s charges for crating, boxing, cartage, and other shipping preparation requirements, and for putting the Goods in the possession of the carrier.

7.2. Payment of Price, applicable taxes and freight will be made according to APPENDIX B. Unless otherwise specified in this Agreement, the Price shall include all labor, travel expenses, subsistence, material, consumables, and equipment.

7.3. The original invoice(s), containing the Agreement number, an adequate description of the Goods, and a detailed breakdown of the invoice amount, shall be accompanied by reasonable documentation, including receipts or invoices for any reimbursable direct expenses. Applicable taxes for which Company will pay Supplier in accordance with **Section 10**, TAXES, and freight will be reflected as separate line items on the invoice(s) and a basis for the amount invoiced will be included. Invoices, with supporting documentation, should be submitted to:

Pinnacle West Capital Corporation
Disbursement Accounting, MS 9540
PO Box 53940
PHOENIX, AZ 85072-3940

7.4. The time for payment of invoices, or for accepting discounts offered, will run from the later of the date Company receives the Goods or Company receives correct invoices for such Goods (“**Receipt Date**”). Company shall pay Supplier within **45 days** of the Receipt Date.

7.5. In the event of disagreements regarding any particular invoice, Company will pay the undisputed amount, and the parties will exercise good faith in promptly resolving any issues with respect to the disputed portion. If Company withholds payment based upon a bona fide dispute, such withholding will not be considered an event of default. Company shall not be obligated to make full and final payment, however, until all of the following conditions have been satisfied: (a) Supplier satisfactorily delivers the Goods in accordance with the Schedule and Company accepts the Goods; (b) the Goods have been placed in Commercial Use or 60 days have elapsed since the Goods were delivered to the Site, whichever comes first; (c) if Company requires, lien waivers or releases from Supplier and from any Subcontractors; and (d) Company receives any items specified in this Agreement, including any Documentation.

8. DESIGNATED REPRESENTATIVE AND NOTICE.

8.1. All communications relating to the day-to-day activities under this Agreement shall be between the designated representatives. The designated representatives authorized to act on behalf of Company (except issuing Change Notices) and Supplier respectively are:

Company ("Company Designated Representative"):

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

Supplier ("Supplier Designated Representative"):

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

Company's buyer of record for this Agreement ("Buyer of Record") is:

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

8.2. All notices and communications required under this Agreement shall be in writing and may be delivered personally to a party, may be delivered by facsimile or electronic mail, or may be mailed by deposit in United States certified mail, return receipt requested, or by deposit with a reputable overnight delivery service. Notices shall be effective: (a) on the date delivered by personal delivery, facsimile, or electronic mail; (b) 3 business days following the date deposited in the United States mail; or (c) the next business day following delivery to a reputable overnight delivery service. Notices and communications shall be delivered or mailed to the parties' designated representatives, with a copy sent to the Buyer of Record.

8.3. Designated representatives of either party or the Buyer of Record may be changed at any time upon providing the other party prior written notice of such change.

9. TAXES.

9.1. The Price shall not include and Supplier shall be exclusively liable for and shall pay when due all taxes of every kind, including sales, excise, privilege, gross receipts, use, compensating and like taxes or assessments, including any related penalties or interest imposed by a taxing authority. If this Agreement so provides, Company shall pay Supplier for applicable transactional taxes imposed by a taxing authority and actually remitted by Supplier subject to the following conditions:

9.1.1. Supplier is obligated to obtain the benefit of any and all tax exclusions, exemptions, credits, or deductions.

9.1.2. Supplier shall refund to Company any related tax savings that Supplier may realize at any time, including those resulting from any tax exclusions, exemptions, credits, or deductions.

9.1.3. If Supplier is required to be licensed or is licensed to do business in Arizona **[Specify State of Site location if not Arizona.]** and the purchase is taxable, transactional taxes shall be charged by Supplier and shown as a separate line item on the invoice.

9.1.4. If Company indicates that this Agreement, or any part of this Agreement, is exempt by law from certain taxes, but taxes are imposed by any taxing authority, Supplier shall give written notice to Company within 10 business days after receiving notice of the tax assessment. Supplier shall not pay these taxes except "under protest" and in accordance with Company's written instructions. If Supplier complies with this Section, Company shall reimburse Supplier for all taxes, penalties, and interest finally determined by the taxing authority to be payable as a result of this Agreement.

9.1.5. Any corrections to taxes shall be invoiced within 120 days of completion or termination of this Agreement.

9.2. Supplier shall also be exclusively liable for and shall pay when due all taxes, assessments, or contributions, whether imposed by law or otherwise, arising out of its employment relationship with employees, agents, representatives, and Subcontractors, including income tax withholding, social security, unemployment compensation, workers' compensation, and health, retirement or other employment related benefits.

10. TITLE AND RISK OF LOSS.

Title and risk of loss to the Goods shall pass directly from Supplier to Company as specified in the Agreement. If this Agreement provides that the Goods are to be shipped "F.O.B. Origin", the passing of title and risk of loss to the Goods shall occur upon carrier's acceptance to transport the Goods. If this Agreement provides that the Goods are to be shipped "F.O.B. Destination", passing of title and risk of loss shall occur upon commencement of unloading of the Goods at the delivery destination specified in the Agreement. Supplier shall be responsible for any loss of or damage to the Goods occurring up to the carrier's acceptance if the Goods are shipped "F.O.B. Origin" or, occurring up to commencement of unloading of the Goods if the Goods are shipped "F.O.B. Destination". Supplier shall promptly repair or replace any damaged Goods for which it bears the risk of loss in accordance with this Section, and shall use its Best Efforts to avoid any delay or stoppage in Company's operations.

11. GENERAL REQUIREMENTS.

11.1. Provision of Goods; Work at Site. Supplier shall provide the Goods and shall perform all obligations specified in this Agreement. Supplier represents that it is familiar with the Site, including the nature, location, environment, and any special conditions for use of the Goods specified in this Agreement. In addition, Supplier shall maintain the work area in a neat, clean, and safe condition and shall comply with all Company Site rules and regulations, including, computer security and internet use, in effect at the time it performs under this Agreement. Supplier will plan and conduct its operations so that the work of Supplier Personnel does not delay, endanger or avoidably interfere with the operations of the Site. Continuity of service of the operating facilities at the Site is of the essence.

11.1.1. Supplier shall not connect, interface, install or otherwise introduce (collectively, "**Connect**", or "**Connection**") any computer equipment, peripheral devices or software, including Supplier's employees' personal computers, laptops or other devices, to Company's computers, computer network, or computer equipment (collectively, "**Company's Computers**") without the prior written consent of Company's Information Services Department. Upon any Connection, Supplier shall (a) routinely scan for and screen viruses and other malicious code from its software and computer equipment, whether such software and computer equipment are located at Supplier's facilities, at the Site, or at other locations; and (b) provide and use current industry standard anti-virus scanning software that will scan for and screen viruses and other malicious code from all data and software sources, including those obtained from the Internet, diskette, computers, networks, peripheral devices or other means. Supplier shall perform the foregoing requirements each time it Connects to the Company's computers. Supplier shall also require its Subcontractors to comply with this **Section 12.1.1.**

11.2. Subcontractors. Supplier shall not subcontract any part of the Goods without Company's prior written approval. This Agreement shall not create any contractual relationship between Company and any Subcontractor, nor obligate Company to pay or see that payment is made to any Subcontractor. Supplier shall promptly pay all monies owed to Subcontractors for goods or services provided to Supplier in connection with this Agreement.

11.3. Installments. Subject to Company's prior written approval, Supplier may ship the Goods in separate installments. If Company approves installment shipments, Company may treat each individual installment as if it is a separate order.

11.4. Expediting. The Goods furnished under this Agreement shall be subject to coordination with Company or its designated representative, including reasonable access to the Goods at Supplier's facilities, in order to hasten the efficient and timely processing of this Agreement by Supplier.

11.5. Spare Parts. Supplier shall make spare parts available for the useful life of the Goods.

11.6. Bonds. Supplier agrees to procure any bonds requested by Company, at any time and at the expense of Company, until all obligations and rights created by this Agreement have been terminated.

11.7. Drug and Alcohol Abuse. Company prohibits any individual involved in any illegal drug activity, abuse or inappropriate use of alcohol or prescribed drugs from working at any Company facility. Accordingly, Company reserves the right to deny access to and to remove from any Company facility, any Supplier Personnel believed, in Company's sole judgment, to be in violation of this policy, without recourse by Supplier, any Subcontractor, or any of their personnel. Company may also deny access to and remove from any Company facility, any Supplier Personnel in possession of alcoholic beverages while on duty or in or on Company property, without recourse by Supplier, any Subcontractor, or any of their personnel.

11.8. General Requirements. Supplier shall, in providing the Goods: (a) act as an independent contractor and not as an employee or agent of Company; and (b) comply with all codes, standards, rules, and regulations applicable to the Goods.

11.9. Firearms. Company prohibits the unauthorized possession of firearms, ammunition, explosives or other weapons at any Company facility or in the course of performing work or services for Company. Accordingly, Company reserves the right to deny access to and to remove from any Company facility, any Supplier Personnel believed, in Company's sole judgment, to be in violation of this policy, without recourse by Supplier, any Subcontractor, or any of their personnel.

12. PURCHASING OF GOODS AND SERVICES FROM SUSTAINABLE SUPPLIERS

Company seeks to create a sustainable energy future for Arizona which involves a proactive commitment to responsible resource utilization for the benefit of Arizona's environment and its communities ("Sustainability"). From time to time, but no more than once per year, Company may request and Supplier shall provide information about how and to what extent Supplier's operations or purchasing strategies directly or indirectly contribute to Sustainability.

13. DAMAGE TO COMPANY'S PROPERTY.

With respect to any of Company's property that is not covered by **Section 19.7**, Supplier shall be liable to Company for any damage to such property caused by either: (a) a breach of warranty under **Section 19**, or (b) Supplier's: (i) negligence; (ii) intentional act or omission; or (iii) willful, wanton, or reckless misconduct.

14. DOCUMENTATION.

14.1. If not otherwise made available by Supplier, Company may request, and Supplier shall provide, the following Documentation for the Goods: (a) applicable equipment and design descriptions; (b) instructions for installation, operation, maintenance, repair, storage, and handling; and (c) parts catalogues, operational manuals, manufacturers' warranties, as-built drawings and other data as specified in the Specifications. Supplier shall provide such Documentation in the form specified or requested by Company.

14.2. Unless otherwise instructed by Company, Supplier shall maintain all Documentation for 3 years following completion or termination of this Agreement. Upon Company's request, Supplier shall provide Documentation prepared specifically for Company in a form that is pre-approved by Company. Such Documentation shall be complete, accurate, and otherwise of a quality satisfactory to Company. Company shall have no duty to comment on any Documentation, in preliminary or final form. Acceptance or incorporation of Company's comments into the Documentation shall not relieve Supplier from its responsibility under this Agreement. Supplier will promptly correct, by providing replacement or updates, any errors or deficiency in the Documentation that Supplier becomes aware of or about which Company notifies Supplier that may result in a loss of Company's operations or could result in a safety hazard. Supplier shall also promptly submit to Company all Documentation prepared by Supplier or any Subcontractor, as it becomes available or is modified from time to time.

14.3. Supplier hereby grants to Company a perpetual, non-exclusive, irrevocable, royalty-free right and license to duplicate, disclose, use or make derivative works of any Supplier Documentation, but only to the extent necessary for Company to support the manufacture, use, installation, or maintenance of the Goods within the scope of Company's internal operations.

15. INSURANCE.

15.1. Until all obligations under this Agreement are satisfied, and without limiting Supplier's indemnification obligations under **Section 16**, INDEMNIFICATION, Supplier shall provide and maintain the insurance policies set forth below. All insurance required by this Section shall be carried by insurers with an AM Best rating of B+ VI or a comparable rating. Supplier shall also cause each of its Subcontractors to comply with this Section.

15.1.1. Workers' Compensation covering obligations imposed by federal and state statutes with jurisdiction over Supplier's (and any Subcontractor's) employees and Employer's Liability insurance of at least \$500,000.

15.1.2. Commercial General Liability insurance with a minimum combined single limit of \$2,000,000 each occurrence for bodily injury and broad form property damage. The policy shall cover bodily injury, property damage, personal injury, products and completed operations, and broad form contractual liability coverage including, but not limited to, the commercially insurable liability assumed under **Section 16**.

15.1.3. Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of a minimum limit of \$1,000,000 each occurrence with respect to any and all vehicles of Supplier's (and any Subcontractor's), whether owned, hired, leased, borrowed, or non-owned, assigned to or used in connection with the Goods.

15.1.4. If any Goods require a Material Safety Data Sheet (MSDS) or create a risk of environmental exposure, excluding any and all exposure to a "nuclear incident" (as defined in the Atomic Energy Act of 1954, as amended), then Supplier shall purchase Environmental Impairment Liability insurance with a minimum combined single limit and annual aggregate of \$1,000,000 that shall include coverage for all actions, omissions, or active or passive negligence, for bodily injury, property damage, defense costs and environmental remediation costs with respect to occurrences involving the Goods.

15.1.5. If applicable, Aircraft Public Liability insurance covering fixed wing and rotorcraft aircraft, whether owned, hired, or non-owned, with a combined single limit for bodily injury and property damage of \$2 million including passenger liability coverage.

15.2. Except for Workers' Compensation, all the policies required by this Section shall name Company as an additional insured. The policies shall stipulate that the insurance shall be primary insurance and that any insurance or self-insurance carried by Company shall not be contributory insurance.

15.3. Supplier shall waive, and require its insurers to waive, any and all recovery rights to which any insurer of Supplier may have against the Company by virtue of the payment of any loss under any insurance.

15.4. To the extent that the insurance policies required by this Section are not occurrence based policies, except for Workers' Compensation, Supplier shall either (i) maintain claims made policies for at least 3 years following termination of this Agreement or any Order, or (ii) obtain extended discovery periods for such policies of at least 3 years following termination of this Agreement or any Order. Further, all policies required by this Section, except Workers' Compensation, shall contain a severability of interest provision, and shall not contain any commutation clause or any other provision that limits third party actions over claims.

15.5. Upon Company's request, Supplier shall provide documentary evidence in a form and content acceptable to Company, confirming to its satisfaction that the required insurance policies have been obtained and will remain in effect as required by this Section.

15.6. Supplier shall provide Company with at least 30 days written notice prior to any material changes in or cancellation of any insurance policies.

15.7. Company does not represent that the coverage types or amounts of insurance required by this Section are adequate to protect Supplier against all potential losses Supplier may incur. Supplier shall determine the amount and/or additional types of insurance it deems necessary to adequately protect itself. Any additional insurance that Supplier deems necessary shall be purchased at its sole cost.

16. INDEMNIFICATION.

16.1. Indemnification by Company. To the fullest extent permitted by law, the Company will indemnify, defend, and hold harmless any Supplier Indemnitee for, from and against any and all Losses that any Supplier Indemnitee may

hereafter incur in connection with any Claim arising out of, or resulting from (either directly or indirectly) any bodily injury, including death, to any person other than an employee of Supplier, or any damage or destruction of any tangible third party property, to the extent caused by any Indemnified Action of a Company Responsible Party.

16.2. Indemnification by Supplier. To the fullest extent permitted by law, the Supplier will indemnify, defend, and hold harmless any Company Indemnitee for, from and against any and all Losses that any Company Indemnitee may hereafter incur in connection with any Claim arising out of, or resulting from (either directly or indirectly) any of the following: (a) any bodily injury, including death, to any person, or any damage or destruction of any tangible third party property, to the extent caused by any Indemnified Action of a Supplier Responsible Party; (b) any actual or alleged non-compliance with Applicable Law by any Supplier Responsible Party; (c) any actual or alleged infringement, misuse, derogation, or violation of any third party Intellectual Property rights except to the extent that such Claim is based on Supplier's manufacture of Goods in accordance with Company's detailed designs or specifications; (d) any lien or claim by any Subcontractor; or (e) the failure by any Supplier Responsible Party to timely pay any required taxes, assessments, or contributions.

16.3. Indemnification Procedures. If a third party asserts a claim against a party entitled to indemnification under this Agreement (the "**Indemnified Party**"), the Indemnified Party will give written notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after the Indemnified Party has actual knowledge of any claim as to which indemnity may be sought. The Indemnified Party's failure to give notice of the claim as required by the preceding sentence will not relieve the Indemnifying Party of its indemnification obligations except to the extent that the Indemnifying Party is materially damaged as a result of such failure. The Indemnified Party will permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any claim or any litigation resulting therefrom, provided that (a) the counsel for the Indemnifying Party who conducts the defense of such claim or litigation is reasonably satisfactory to the Indemnified Party, and (b) the Indemnified Party may participate in such defense at the Indemnified Party's expense. If the Indemnified Party determines in good faith that the conduct of the defense of any claim might adversely affect the Indemnified Party's ability to conduct its business, or that the Indemnified Party may have available to it one or more legal defenses that are different from, additional to, or inconsistent with those that may be available to the Indemnifying Party, the Indemnified Party will have the right to participate in the defense of such action at the Indemnifying Party's expense. Neither the Indemnified Party nor the Indemnifying Party may settle or compromise any Claim without the prior written consent of the other party, which consent shall not be unreasonably withheld. The Indemnified Party will have the right to defend any Claim, at the Indemnifying Party's expense, if the Indemnifying Party does not undertake the defense of the Claim. In any event, the Indemnifying Party and the Indemnified Party will cooperate in the defense of any Claim and the records of each will be available to the other with respect to such defense.

16.4. Miscellaneous Indemnification Provisions.

16.4.1. The parties' indemnification obligations will not be limited in any way by any limitation on the amount or type of costs, compensation or benefits payable under workers' or workmen's compensation laws, disability benefit laws or other employee benefit laws.

16.4.2. In addition to any rights of setoff or other rights that Company may have in this Agreement, at common law or otherwise, Company will have the right to withhold and deduct any sum that may be owed to any Company Indemnitee from any amount otherwise payable by Company to Supplier under this Agreement. The withholding and deduction of any such sum will operate for all purposes as a complete discharge (to the extent of such sum) of the obligation to pay the amount from which such sum was withheld and deducted.

16.4.3. Each Supplier Indemnitee and Company Indemnitee is a third party beneficiary of this Agreement with respect to the enforcement of indemnification rights under this Section.

17. LIMITATION OF LIABILITY/EXCLUSION OF DAMAGES.

NEITHER PARTY, NOR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISERS, REPRESENTATIVES, AFFILIATES, OR SUCCESSOR OR ASSIGNS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES FOR ANY ACTIONS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PROFESSIONAL LIABILITY, CONTRIBUTION, OR OTHERWISE. PROVIDED, HOWEVER, THAT, TO THE EXTENT THAT ONE PARTY IS ENTITLED TO INDEMNIFICATION FROM THE OTHER PARTY AS A RESULT OF A THIRD PARTY CLAIM, ANY DAMAGES AWARDED TO SUCH THIRD PARTY (DIRECT, CONSEQUENTIAL, OR OTHERWISE) SHALL BE DEEMED TO BE DIRECT DAMAGES OF THE

INDEMNIFIED PARTY, FOR WHICH THE INDEMNIFYING PARTY SHALL BE LIABLE. ANY PARTY WHOSE LIABILITY IS LIMITED PURSUANT TO THIS SECTION IS INTENDED TO BE A THIRD PARTY BENEFICIARY UNDER THIS AGREEMENT WITH RESPECT TO THE ENFORCEMENT OF SUCH LIABILITY LIMITATION.

18. CHANGES.

18.1. Any change to this Agreement may only be made by a Change Notice. Company's authorized representative for the purpose of issuing a Change Notice shall be the Buyer of Record. Price increases or extensions of time for performance arising out of or resulting from any change, whether requested by Company or Supplier, shall not be binding on either party unless evidenced by a Change Notice. If Supplier proceeds with any change without a Change Notice, Supplier waives all rights or claims Supplier may have as a result of the change.

18.2. Company may order changes in this Agreement, including suspending its performance, at any time and for any reason. If Supplier thinks any proposed change may result in any alteration of Supplier's actual cost or affect Schedule, Supplier shall within 10 days following receipt of any notice of a proposed change, submit to Company a detailed written proposal for adjustment of Price or Schedule necessary for Supplier to perform the change. Unless otherwise agreed in writing by Company, Supplier shall not make any changes in or relating to (a) the Goods; or (b) any Subcontractors that have been approved by Company. If Supplier desires to make any change, Supplier shall propose such change to Company by providing Company a detailed written proposal describing the change and the effect it may have on the Goods, Price and Schedule. Sufficient detail shall be given in the proposal to permit its thorough analysis and evaluation by Company. All changes, including any adjustment to Price or Schedule shall be mutually agreed upon by both parties and authorized in a Change Notice pursuant to the terms of this Agreement before commencement of the change. Supplier shall only make such changes that Company has specifically approved in writing. No claim shall be made by Supplier based on the quantity or volume of changes made.

19. SUPPLIER'S WARRANTIES.

19.1. Title Warranty. Supplier warrants that it owns and has the ability to deliver good title to the Goods, has the right to sell the Goods, and will deliver the Goods free and clear of any liens or other encumbrances.

19.2. Goods Warranties. Supplier warrants that the Goods shall (a) be new (except as otherwise specified or agreed to in advance by Company) and of good quality; (b) be free from defects in design except to the extent the Goods are manufactured in accordance with detail designs provided by Company set forth in APPENDIX D, SPECIFICATIONS, to this Agreement, (c) be free from defects in material and workmanship; (d) meet the requirements of this Agreement, including any Specifications; and (e) be safe and suitable for the ordinary purposes for which the Goods are to be used. Supplier also warrants that the Documentation provided by Supplier and any Subcontractors shall be complete, accurate and may be relied upon by Company.

19.3. Suitability. Supplier acknowledges that Company may rely on Supplier's skill and judgment to select or furnish the Goods for the particular purpose for which the Goods are intended. Supplier warrants that the Goods will be suitable for, and will accomplish, the purposes for which they are intended.

19.4. Manufacturers' Warranties. In addition to the warranties in this Section, Supplier shall assign to Company, any and all manufacturers' warranties and guarantees applicable to the Goods and shall deliver to Company copies of all contracts providing for such warranties and guarantees. Supplier shall not, and shall cause its Subcontractors not to, take any action that could release, void, impair or waive any warranties or guarantees on any goods or services that it procures from others.

19.5. Warranty Period. The warranty of title has no expiration date, and the expiration date for all warranties shall not apply to Goods that contain latent defects. The warranties set forth in this Agreement, other than title, shall expire as follows: (a) 18 months after delivery of the Goods; or (b) 12 months after Commercial Use, whichever of (a) or (b) occurs first. Any corrective action taken by Supplier under these warranties shall be similarly warranted for 18 months after completion of the corrective action or 12 months after Commercial Use, whichever occurs first. All manufacturers' warranties that have a warranty period longer than the warranty period provided under this subsection shall continue until expiration of such longer warranty period, except for latent defects. Company's approval of Supplier's materials or designs, or inspection or acceptance of, or payment for the Goods shall not relieve Supplier of warranties set forth in this Section.

19.6. Corrective Action. In the event of a breach of warranty, Company shall notify Supplier as set forth in **Section 19.8**, and, in order to correct the breach of warranty, Supplier shall, at its sole expense, promptly take all the

necessary corrective actions, which corrective actions shall be subject to Company's written approval. In addition, at Company's request, Supplier shall actively participate with Company at the Site to determine the cause of the breach of warranty. . Supplier's actions shall include any necessary adjustments, modifications, change of design, removal, repair, replacement or installation, and Supplier shall provide all necessary parts, materials, tools, equipment, transportation and labor. Supplier shall perform the corrective work at the Site so as to minimize the loss of use of the Goods. With respect to any of Supplier's corrective action, Company shall be responsible for providing access to parts and components of the Goods or Equipment, but Company's direct costs of providing this access shall be borne by Supplier, including the costs for removal, disassembly, replacement, or reinstallation of any equipment or structures not supplied by Supplier pursuant to this Agreement. In addition, Supplier at its sole expense shall perform any standard tests Company may require to verify that Supplier's repair, replacement, or other corrective action complies with this Agreement.

19.7. Conditions of Warranties. The warranties of this Section are subject to the following conditions applicable to the portion of the Goods for which Company claims a breach of warranty:

19.7.1. Company shall give Supplier notice of any breach of warranty in writing or by any other means reasonably calculated to give Supplier actual notice of breach within a reasonable time after Company becomes aware of the breach.

19.7.2. Company shall have the right to continue to fully or partially use or operate the Goods requiring corrective action until Company elects to remove the Goods from service, in whole or in part. If Supplier advises Company not to use or operate the Goods requiring corrective action, and Company elects to continue the use or operation of the Goods despite such advice, Company shall release Supplier from any additional claims for any further failure or damage incurred as a result of the continued use or operation.

19.7.3. Company shall store, install (if not installed by Supplier), operate, and maintain the Goods in accordance with the operation and maintenance procedures agreed upon by Company in writing. Any non-compliance on the part of Company shall not void Supplier's warranties under this Section except to the extent that such non-compliance caused a defect or deficiency.

19.8. Owner's Corrective Action. If Company determines, in its reasonable discretion, that either Supplier failed to promptly correct or take steps to correct any breach of warranty so that the Goods are no longer in breach of the warranties herein, or an emergency exists, Company may cause the breach to be corrected, including acquisition of replacement goods or equipment, performing the services itself or obtaining similar or the same services elsewhere. Warranty corrective action undertaken by Company under this subsection shall not void Supplier's warranties and Supplier shall be liable for Company's direct damages, as limited by **Section 17**.

20. INSPECTION AND ACCEPTANCE.

20.1. Upon reasonable prior written notice, Supplier shall permit Company representatives to observe Supplier's manufacture of the Goods and otherwise view the part of Supplier's facility that is associated with the manufacture of the Goods.

20.2. If, after receipt and inspection of the Goods, Company determines that, for any reason, all or any part of the Goods are defective or do not otherwise conform to this Agreement ("Non-Conforming Goods"), Company may, without providing for a cure period for breach, or resorting to its remedies for breach of warranty, elect, in its sole discretion, to: (a) reject the Non-Conforming Goods; (b) reject the entire shipment of Goods; or (c) accept an equitable adjustment in the price of the Goods. If Company accepts Non-Conforming Goods, Company, may revoke its acceptance if Company, in its sole discretion, determines that Supplier cannot cure the Non-Conforming Goods. Company may also revoke its acceptance of any Goods that are, subsequent to acceptance, discovered by Company to be, for any reason, Non-Conforming Goods. Company's acceptance of Goods shall only be effective upon its written notice to Supplier. All returns of Goods as a result of rejection or revocation of acceptance shall be at Supplier's expense.

21. TERMINATION.

21.1. **For Convenience.** Upon 10 days' prior written notice, Company may for its convenience (a) terminate this Agreement; or (b) suspend the performance of this Agreement for such period as may be determined by Company in its discretion. Such suspension or termination shall be effective upon the date stated in the written notice.

21.2. For Cause. Either party may terminate this Agreement at any time if the other party, its employees, agents or subcontractors are in material breach of any provision of this Agreement and such breach continues uncured for a period of 30 calendar days following receipt of the non-breaching party's written notice. All rights or remedies of the parties shall be cumulative, and not exclusive.

21.3. For Material Changes in Financial Condition. This Agreement will immediately terminate upon written notice by Company to Supplier, without the necessity of prior notice, in the event that (a) a material adverse change in the financial condition of Supplier occurs which affects or will affect Supplier's performance under this Agreement, (b) Supplier makes an assignment for the benefit of creditors, (c) proceedings are filed by or against Supplier under federal bankruptcy or state insolvency statutes, and a proceeding instituted against Supplier is not dismissed within 30 days, or Supplier takes advantage of any insolvency statute or similar statute, or (d) a receiver or trustee is appointed for the property and assets of Supplier and the receivership is not discharged within 30 days of such appointment.

21.4. Setoff. After a breach by a party under this Agreement, the non-breaching party may from time to time setoff any amounts that the breaching party owes to the non-breaching party (whether or not then due) against any amounts that non-breaching party owes to the breaching party (whether or not then due). The non-breaching party will give written notice to the breaching party following any exercise of this right of setoff. If an amount subject to setoff is not liquidated, the non-breaching party may in good faith estimate the amount for purposes of setoff, providing an accounting to the breaching party when the estimated amount becomes liquidated. The right of setoff described in this Section is in addition to, and does not operate as a waiver of, any other setoff right, offset, combination of accounts, lien, or other right of the non-breaching party, whether created by operation of law, contract, or otherwise.

21.5. Settlement for Work or Performance Completed Prior to Suspension or Termination. Upon receipt of a written notice under this Section, Supplier shall, unless the notice specifies otherwise, (a) place no additional orders or subcontracts for any goods, material, services, or supplies related to the suspended or terminated work or performance; (b) use its Best Efforts to obtain suspension or termination of all orders and subcontracts related to the suspended or terminated work or performance, upon terms satisfactory to Company; (c) take reasonable precautions to protect and preserve Company's property in Supplier's possession, or in the possession of Subcontractors; and (d) otherwise avoid or mitigate costs to Company. Supplier shall immediately contact Company's designated representative for clarification if it is unable to determine the actions necessary to preserve and protect any work or performance in progress. In the event of termination pursuant to **Section 21.1**, payment for the Goods delivered, or in the process of completion at the time the notice of suspension or termination is received, shall be adjusted between Supplier and Company in a fair and reasonable manner, but Supplier shall have no claim and shall receive no payment for undelivered Goods, and anticipated profits thereon. Such payment for Goods delivered or in the process of completion shall be the total compensation due to Supplier for termination by Company for convenience. Supplier shall continue performance of its obligations under this Agreement to the extent not suspended or terminated under this Section.

22. RECORDS AND AUDITING.

Supplier shall maintain accurate and complete records relating to its performance of this Agreement, including accounting records in support of all billings to Company. These records shall be retained by Supplier and be reasonably available for Company's inspection and audit for 4 years after completion or termination of this Agreement.

23. LAWS AND REGULATIONS.

23.1. Supplier and its Subcontractors, employees, agents, and representatives shall at all times comply with Applicable Law.

23.2. Supplier certifies that (i) Supplier is not acting directly or indirectly for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department, through its Office of Foreign Assets Control ("OFAC") or otherwise, as a terrorist, "Specially Designated Nation", "Blocked Person", or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by OFAC or another department of the United States government, and (ii) Supplier is not engaged in this transaction (directly or indirectly) on behalf of, or instigating or facilitating this transaction (directly or indirectly) on behalf of, any such person, group, entity or nation.

24. WAIVER.

A party's failure or delay in enforcing the terms and conditions of this Agreement or in insisting upon strict performance of any of the other party's obligations shall not be interpreted as a waiver thereof. Waiver of any provision of this Agreement by either party shall only be effective if in writing and shall not be interpreted as a waiver of any subsequent breach or failure under the same or any other provision of this Agreement. No conduct, statement, course of conduct, course of dealing, oral expression, or other action shall be construed as a waiver.

25. ASSIGNMENT.

Supplier shall not assign its rights or delegate its duties under this Agreement, or otherwise dispose of any right, title, or interest in all or any part of this Agreement, without the prior written consent of Company. Company may grant or withhold consent in its sole discretion. Any assignment or delegation by Supplier in breach of this Section shall be null and void and of no legal force or effect.

26. SURVIVAL OF OBLIGATIONS AND LIABILITIES.

Termination of this Agreement shall not relieve either party of any obligation under this Agreement which expressly or by implication survives termination of this Agreement, including its obligations under the following section headings: Insurance, Documentation, Indemnification, Limitation of Liability, Supplier's Warranties, Records and Auditing, Intellectual Property, Confidentiality and Advertising, Governing Law, Dispute Resolution and Attorney's Fees.

27. SPECIAL CONDITIONS RELATING TO CONTRACTS WITH THE FEDERAL GOVERNMENT.

27.1. Supplier acknowledges that Arizona Public Service Company provides utility service to the United States Government under an Areawide Service Agreement with the United States, through the General Services Administration (the "Prime Contract") and is therefor considered a prime contractor with respect to such service. If this Agreement is entered into under or in the performance of the Prime Contract (hereinafter referred to as "Areawide Subcontract"), the following clauses from the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text. These FAR clauses are those in effect as of the date of the Prime Contract. Upon request, the Company will make their full text available. In the following clauses, except where the context requires otherwise, the following substitutions are made where necessary to make the context of the clauses applicable to the Areawide Subcontract:

'Contractor' or 'Offeror' shall mean Supplier.

'Contract' or 'Schedule' shall mean this Agreement.

'Government,' 'Contracting Officer,' or any term of similar import shall mean Company.

'Subcontractor' means Supplier's subcontractor.

<u>48 CFR Ref.</u>	<u>Clause Title</u>
<u>52.202-1</u>	Definitions (DEC 2001) (all Areawide Subcontracts)
52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1995) (all Areawide Subcontracts over \$100,000)
52.203-7	Anti-Kickback Procedures (JUL 1995) except (c)(1) (all Areawide Subcontracts over \$100,000)
52.215-19	Notification of Ownership Changes (OCT 1997) (if cost or pricing data required or pre-award or post-award cost determination will be made)
52.219-9	Small Business Subcontracting Plan (JAN 2002) (all Areawide Subcontracts offering further subcontracting opportunities and all Areawide Subcontracts in excess of \$500,000)
52.222-21	Prohibition of Segregated Facilities (FEB 1999) (all Areawide Subcontracts over \$10,000)
52.222-26	Equal Opportunity (APR 2002)

52.223-14	(all Areawide Subcontracts over \$10,000) Toxic Chemical Release Reporting (OCT 2000) (paras. a-d) (all Areawide Subcontracts over \$10,000)
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27.2. If Arizona Public Service Company is a party to this Agreement, and this Agreement is not entered into under or in the performance of the Prime Contract, Supplier shall comply with the FAR 52.222-26 Equal Opportunity (APR 2002) clause, modified as set forth above.

27.3. In the event that Arizona Public Service Company is not a party to this Agreement, and this Agreement is not entered into under or in the performance of the Prime Contract, Supplier shall comply with the affirmative action and equal opportunity clauses at 41 C.F.R. §§ 60-250.5 and 741.5 (affirmative action clauses) and 41 C.F.R. § 60-1.4(a) (equal opportunity clause), and CFR § 60-4.3(a), Equal Employment Contract Specifications (if this Agreement involves any construction work and is in excess of \$10,000) which are incorporated herein by reference.

28. SUPPLIER DIVERSITY.

28.1 Company is a strong supporter of the development of diverse businesses and sets utilization goals to optimize the use of certified diverse businesses. Supplier shall provide certified diverse businesses the maximum practicable opportunity consistent with efficient contract performance to participate in the course of performing this Agreement or any Order.

28.2 If the price charged to company for the work or services provided under any Order exceeds a total cumulative amount of \$500,000, Supplier shall submit to Company a written report within thirty days of the close of each calendar year and upon the completion of the Order with respect to its subcontractor utilization in connection with that Order. The report shall meet the requirements of FAR 52.219-9(j) and be in the form set forth on Company's website at http://www.pinnaclewest.com/main/pnw/AboutUs/commitments/sdd/sddprogram/SDDprogram_6.html.

28.3 Supplier shall optimize its involvement of certified diverse businesses and work toward achieving utilization of at least _____% of the final total dollars payable under this Contract while not incurring any additional costs.

29. ETHICAL COMPLIANCE.

Supplier will not:

29.1. Offer or provide, directly or indirectly, compensation of any nature, including bribes, gratuities, loans or payments, to Company's employees or members of the employees household;

29.2. Offer or provide, directly or indirectly, special treatment, free services or special discounts to Company's employees or members of the employees household;

29.3. Offer or pay for business entertainment, including meals that would be considered excessive by Company's management, in its reasonable discretion; or

29.4. Pay for travel expenses for Company's employees and members of the employee's household.

30. THIRD PARTY BENEFICIARIES.

Except as specifically provided herein, this Agreement is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party.

31. INTELLECTUAL PROPERTY.

31.1. Without limiting the generality of Supplier's indemnification obligations under **Section 16**, INDEMNIFICATION, should any Goods or part thereof become or in Supplier's opinion are likely to become the subject of any claim, suit, or proceeding for infringement, misappropriation or unauthorized use of any Intellectual Property, or in the event use of the Goods or part thereof is enjoined, Supplier shall, at its own expense and in the following order of preference, either (a) secure for Company the right to continue using such Goods or part thereof, or if efforts are unavailing, (b) replace or modify such Goods or part thereof to make it noninfringing and equal in operation or performance, or if efforts are unavailing, (c) discontinue or, upon Company's written approval, remove such Goods or part thereof and adjust Company's payment obligations accordingly or refund all payments related to such Goods or part thereof.

31.2. Documentation and Company Intellectual Property.

31.2.1. Company shall own all worldwide right, title and interest in and to Company Documentation.

31.2.2. Supplier will promptly disclose to Company, in writing, any and all inventions, works of authorship, improvements, developments, or discoveries conceived, authored, made or reduced to practice by Supplier Personnel, either solely or in collaboration with others, including Company personnel, in the course of and in connection with performing under this Agreement, or based upon Company's Confidential Information (collectively "**Company Intellectual Property**"). Company shall own all right, title and interest in and to Company Intellectual Property. To the extent necessary to effectuate the terms of this **Section 31.2**, Supplier agrees to assign (or cause Supplier Personnel to assign) and does hereby assign fully to Company all its or their worldwide right, title and interest in and to Company Intellectual Property. Company shall retain any and all rights to prepare patent applications and obtain patent protection, copyright registrations and/or seek other forms of protection thereon at its sole expense.

31.2.3. Supplier agrees to (a) assist Company, at Company's expense, to obtain, perfect, defend and enforce its rights in and to the Company Intellectual Property worldwide, including the disclosure to Company of all pertinent information and data with respect thereto, and (b) execute all applications, assignments, conveyances and all other instruments which Company shall deem necessary to effectuate the terms of this **Section 31.2**. Upon Company's request, Supplier shall obtain an agreement in writing from Supplier Personnel consistent with this Section.

31.2.4. Supplier hereby grants to Company a perpetual, non-exclusive, irrevocable, royalty-free right and license to use or practice methods embodying any Intellectual Property or other proprietary rights, which rights are or were previously developed or acquired by Supplier, which are not otherwise granted to Company in this Agreement, and which are embodied or incorporated in any Goods.

32. CONFIDENTIALITY AND ADVERTISING.

32.1. All nonpublic information that Company provides to Supplier or that Supplier acquires from any source in connection with this Agreement shall be deemed to be Company's confidential information ("**Confidential Information**") unless and until Company specifically authorizes Supplier in writing to treat the information as public. Confidential Information includes: (a) any reports, specifications, know-how, strategies or technical data, processes, business documents or information, market research or other data, customer or client lists, and all other information concerning the business and affairs of Company that are owned, used, or possessed by or for the benefit of Company; (b) Company Intellectual Property; (c) Company Documentation; and (d) all confidential information or materials obtained by Supplier from a third party in connection with performance of this Agreement, unless and until Company specifically authorizes Supplier in writing to treat the information as non-confidential. Confidential Information does not include: (i) information in the public domain through no fault or breach of this Agreement by Supplier; (ii) information previously and lawfully known by Supplier prior to disclosure by Company; and (iii) information rightfully learned from a third party not under restriction of disclosure. Supplier shall not publish, release, disclose, or announce to any member of the public, press, official body, or other third party any Confidential Information, or use any of it for Supplier's own purposes or for the purposes of a third party, without the prior written consent of Company (which may be withheld by Company in its sole discretion), except disclosures required by law.

32.2. Supplier shall not make copies, reproductions, abstracts or excerpts of the Confidential Information in whole or in part, except as authorized by Company. All copies, reproductions, excerpts or abstracts are deemed to be Confidential Information to the same extent as any originals. Upon (a) completion of the use authorized in this Agreement; (b) Company's request at any time; or (c) termination of business relations between the parties, Supplier shall promptly return to Company all Confidential Information and all copies thereof or other physical embodiments of the Confidential Information.

32.3. If Supplier receives any subpoena or court order requiring disclosure of Confidential Information or otherwise believes in good faith that a disclosure of Confidential Information is required by law, Supplier shall immediately notify Company. Supplier shall, at Company's direction, cooperate fully with Company in challenging any subpoena or court order requiring the disclosure of Confidential Information. If required by Company, Supplier shall require each person or entity to whom Confidential Information is provided to execute a certification that the person or entity understands the limitations on disclosure and use and will maintain the confidentiality of the Confidential Information and not use it other than as contemplated by this Agreement. Unless the parties agree otherwise, the confidentiality and other obligations imposed by this Section shall survive for a period of 3 years after termination or expiration of this Agreement pertaining to the Confidential Information.

32.4. Supplier acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult or impossible to ascertain. Supplier 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. Supplier shall not allege or assert that Company has an adequate remedy at law in respect to the relief sought in any such proceeding, nor shall Supplier seek the posting of a bond by Company in any such action.

32.5. Supplier and its Subcontractors shall not do any of the following without Company's prior written consent (which may be withheld by Company in its sole discretion): (a) use the name of Company, its trademarks or the name of the Site in any advertising or other promotional context; (b) photograph the Site; or (c) provide to third parties any photographs of the Site that are permissibly taken by Supplier with Company's written consent; or (d) use such photographs in any advertising or other promotional context.

33. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona and of the United States without giving effect to the doctrine of conflict of laws. This Agreement shall be deemed made and entered into in Maricopa County, Arizona. Any suit to enforce this Agreement shall be instituted only in the Superior Court of Maricopa County, Arizona, or the Federal District Court for the District of Arizona, and such Courts shall have exclusive jurisdiction.

34. DISPUTE RESOLUTION.

If a dispute arises concerning this Agreement, a meeting of the parties shall be held within 10 business days after either party gives the other party written notice of the dispute (the "**Dispute Notice**"). The Dispute Notice shall set forth in reasonable detail the aggrieved party's position and its proposal for resolution of the dispute. A representative of each party who has authority to resolve the dispute shall be in attendance at all meetings. If the dispute is not resolved within 30 calendar days after the first meeting of the parties, either party is free to use any other available remedy, including litigation. The Dispute Notice and 30-day discussion period are conditions precedent to each party's right to resort to any other method. A party's failure to comply with this Section shall entitle the other party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision. Notwithstanding the foregoing, Company may immediately take any action it reasonably determines is necessary to conduct its operations in an efficient, safe, and secure manner, including removal of Supplier and its equipment from any site or any other interim or provisional remedy.

35. ATTORNEY'S FEES.

The prevailing party in any proceedings instituted by either party regarding a dispute concerning this Agreement shall be entitled to recover its reasonable attorney's fees, costs, and expenses.

36. SEVERABILITY.

If any term or condition of this Agreement is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, that holding shall not affect the validity or enforceability of any other term or condition of this Agreement, unless enforcing the balance of this Agreement would deprive either party of a fundamental benefit of its bargain.

37. MATERIALS AND CHEMICAL SUBSTANCES IDENTIFICATION AND CONTROL.

37.1. Supplier shall notify Company's designated representative in writing, on an on-going basis, at least 15 days prior to its use, of all materials or chemical substances to be used in performance of this Agreement that may be considered toxic, hazardous to health or the environment, or that could become hazardous waste, as determined in accordance with Applicable Laws.

37.2. Each written notification under this Section shall include the following:

37.2.1. The identity and quantity of each material and chemical substance to be used, by trade name, chemical name, and manufacturer's name. Copies of all manufacturer's Material Safety Data Sheets ("**MSDS**") for each material and chemical substance shall be included.

37.2.2. The detailed chemical constituents of each material and chemical substance, or the process to be used that makes it a hazardous waste once expended.

37.2.3. The quantities of hazardous waste that Supplier anticipates will result from use of each material and chemical substance referred to above.

37.2.4. The use proposed for each material or chemical substance in connection with this Agreement.

37.2.5. A description of Supplier's procedures for handling hazardous waste generated during performance of this Agreement. A copy of any written plan or procedure in effect shall be included.

37.2.6. The identity of the support, special facilities, and other assistance from Company, if any, Supplier will require for the on-Site handling of the materials, chemical substances, and hazardous wastes referred to above. Company will dispose of all such hazardous wastes, unless otherwise specified in this Agreement.

37.3. All materials and chemical substances shall be properly labeled before being brought onto the Site, in accordance with OSHA and any other applicable labeling requirements, including those for preservation of labels from manufacturers' containers and the labeling of secondary containers.

37.4. Company reserves the right to prohibit any materials and chemical substances from being brought onto the Site or used in performance of this Agreement.

38. WAIVER OF JURY TRIAL.

THE PARTIES WAIVE TRIAL BY JURY AND AGREE THAT ANY ACTION TO ENFORCE THIS AGREEMENT SHALL BE TO THE JUDGE WITHOUT A JURY.

39. EXECUTION AND EFFECTIVE DATE.

This Agreement has been executed by the duly authorized representatives of the parties, effective as of the Effective Date.

Arizona Public Service Company,
On its own behalf and for the benefit of Pinnacle
West Capital Corporation and its Subsidiaries

By: _____

Printed Name: _____

Its: _____

Date Signed: _____

"Company"

By: _____

Printed Name: _____

Its: _____

Date Signed: _____

"Supplier"