

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is effective as of _____, 2023 (“Effective Date”) and is by and between **Public Service Company of New Mexico**, a New Mexico corporation (“PNM”) and _____ (“Recipient”). PNM and Recipient may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Recipient wishes for PNM to perform one or more modeling runs or to provide data or other information as part of the integrated resource planning facilitated stakeholder process, as provided for by 17.7.3.9 NMAC, and for PNM to share all resultant modeling reports and information (“Authorized Purpose”); and

WHEREAS, PNM may release Confidential Information (as defined below) to Recipient in connection with the Authorized Purpose; and

WHEREAS, PNM has engaged with and received Confidential Information (as defined below) from one or more consultants, including but not limited to Anchor Power Solutions, Horizons Energy LLC, and Astrapé Consulting LLC in connection with the Authorized Purpose; and

WHEREAS, employees, affiliates, subcontractors, or any other representatives of any entity that either is currently, or in the future will likely be, actively participating in wholesale electric energy transactions or PNM competitive solicitation for resources shall not be eligible to receive the Confidential Information; and

WHEREAS, Recipient wishes to receive the Confidential Information and agrees to keep such Confidential Information confidential in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in this Agreement, PNM and Recipient agree as follows:

1. Confidential Information. “Confidential Information” shall mean all non-public information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by PNM or otherwise, which is disclosed to Recipient, regardless of whether such information is disclosed before or after the execution of this Agreement, in connection with the Authorized Purpose and including but not limited to all records, reports, proposals or other responses to requests for proposals and/or information, analyses, notes, memoranda, documentation, data, specifications, diagrams, statistics, systems or software, manuals, business plans, operational information or practices, processes (whether or not patented, patentable or reduced to practice), customer lists, contractual arrangements with, and information about, PNM’s suppliers, distributors and customers, the existence of the discussions between the Parties concerning the Authorized Purpose, or other information that is based on, contains or reflects any such Confidential Information. All information received from PNM shall be considered Confidential Information, unless it is specifically designated as non-proprietary and non-confidential. For the avoidance of doubt, the Confidential Information specifically includes data disclosed by or through PNM, its parent, its affiliates, or their respective officers, directors, employees or representatives.

2. Protection and Use of Confidential Information.

(a) Recipient shall use the Confidential Information only for the Authorized Purpose;

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(b) Recipient shall not disclose the Confidential Information to any other person or entity (except to the employees or contractors of Recipient or those of its affiliates, in accordance with the terms of this Agreement) without the prior written consent of PNM;

(c) Recipient shall not make any copies of the Confidential Information except as is specifically needed for and directly related to the Authorized Purpose, and in the event such copies are made, all copies shall be treated in the same fashion as and considered to be the same as the originals for purposes of this Agreement (as Confidential Information), and shall be subject to the terms and conditions of this Agreement; and

(d) Recipient shall safeguard the Confidential Information with the same degree of care to avoid unauthorized disclosure as it uses to protect its own confidential and proprietary information and trade secrets, but in no event less than reasonable care.

3. Exceptions. The obligations of Recipient pursuant to Section 2 shall not apply to any Confidential Information that Recipient can demonstrate:

(a) is or becomes available to the public through no breach of this Agreement;

(b) is received from a third party that is not, and was not, prohibited from disclosing such Confidential Information to Recipient by a contractual or other obligation to PNM;

(c) is independently developed by Recipient without the use of any Confidential Information;

(d) is approved for release by written authorization of PNM, but only to the extent of and subject to such conditions as may be imposed in such written authorization;

(e) is required to be disclosed under applicable stock exchange requirements or to auditors, taxing authorities, or accountants preparing tax reports and filings; or

(f) is required to be disclosed by a government agency to further the objectives of this Agreement, by applicable law, rule or regulation, or by a proper court of competent jurisdiction, including in connection with any approval sought from, filing with, request for information through administrative process of, or compliance obligation imposed by, any governmental authority; provided, however, that Recipient shall first provide PNM reasonable notice of the disclosure deadline as set forth in Section 15 so that PNM has an opportunity to seek to obtain a protective order or other confidential treatment of the Confidential Information.

4. Ownership and Return of Confidential Information. Confidential Information, including all copies thereof, shall remain the property of PNM (or its applicable affiliate). Upon written request by PNM, Recipient shall return to PNM or destroy all Confidential Information received in tangible form (including any copies thereof), within fifteen (15) business days following expiration or termination of this Agreement, unless PNM requests return or destruction of the Confidential Information on an earlier date. Recipient shall also, within five (5) business days of a written request by PNM, certify in writing that it has satisfied its obligations under Sections 2 and 4 of this Agreement.

5. Injunctive Relief. Recipient understands and agrees that an impending or existing violation of

any provision of this Agreement could cause PNM irreparable injury for which it would have no adequate remedy at law, and that PNM shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other remedies available to it at law or in equity. Nothing in this Section 5 or in this Agreement shall prohibit PNM from recovering monetary damages from Recipient for a

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violation or breach of this Agreement if a court of competent jurisdiction makes such an award. PNM shall be entitled to recover its attorneys' fees in any action brought by it in respect of any impending or existing violation of any provision of this Agreement or to otherwise enforce the terms of this Agreement, provided PNM is the prevailing party in such action.

6. No Rights or Warranties. Recipient expressly acknowledges and agrees that no patent, copyright, trademark or other proprietary right or license is granted to it by PNM's disclosure of Confidential Information pursuant to this Agreement, except for the right to use such information in accordance with this Agreement. Further, Recipient expressly acknowledges and agrees that PNM is making no warranties of any kind with respect to the Confidential Information disclosed under this Agreement or any use thereof.

7. Term. This Agreement shall be effective on the Effective Date and shall terminate five (5) years from the Effective Date, or thirty (30) calendar days following written notice by either Party to the other of its desire to terminate this Agreement, whichever occurs first. Notwithstanding termination of this Agreement, the obligations to maintain the confidentiality of Confidential Information and strictly comply with the restrictions on use as set forth in this Agreement will survive.

8. Validity and Enforceability. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision that so far as possible achieves the Parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

9. No Guarantee of Further Agreements. This Agreement is not intended to and does not obligate either Party to enter into any further agreements or to proceed with any relationship or other transaction, including in connection with the Authorized Purpose, or to require PNM to disclose any information under this Agreement.

10. Disclosure to Representatives. Recipient shall be responsible for ensuring that its or its affiliates' Representatives who are given access, either directly or indirectly, to the Confidential Information are aware of the terms of this Agreement and agree to be bound by those terms. In any event, Recipient shall be liable under this Agreement for any disclosure of Confidential Information by its or its affiliates Representatives in violation of the terms of this Agreement.

11. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. PNM and Recipient may retain a duplicate copy (e.g., electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

12. Governing Law. This Agreement shall be governed in all respects by the laws of the State of New Mexico, without reference to the conflict of laws provisions thereof. Any action at law or in equity or judicial proceedings instituted by a Party for the enforcement of this Agreement shall be instituted only in the state courts of the State of New Mexico or the federal courts sitting within the State of New Mexico.

13. Notices. Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, mailed certified mail, return receipt requested, or transmitted by electronic mail with date and sending Party identified to the following addresses:

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For PNM: Public Service Company of New Mexico
Attn: Nicholas Phillips
414 Silver Avenue SW
Albuquerque, NM 87102
Telephone: 505-241-2676
Email: Nicholas.Phillips@pnm.com

For Recipient: [Company Name] _____
Name and Title: _____
Address: _____

Telephone: _____
Email: _____

14. No Assignment. This Agreement may not be assigned by either Party unless the other Party's prior written consent is obtained; however, upon written notice, either Party may assign this Agreement (including the right to enforce its terms) to a parent, affiliate or subsidiary at its sole discretion without the other Party's consent.

15. Non-Waiver. No waiver of any provision of this Agreement shall be deemed to be nor shall constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

16. Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT.

17. Publicity. Vendor shall not make any public disclosures regarding PNM or the subject matter hereof, including, without limitation, any advertisements, publications or documents, or by representations of partnerships, agreements or positions contained within the resulting modeling runs or reports, or any presentation or other disclosures concerning the material therein, without the prior written approval of PNM.

18. Further Conditions. PNM's performance of modeling as contemplated herein does not constitute, and shall not be construed as, its agreement with the results of the modeling runs nor shall the modeling results supersede the results of any related analyses performed by PNM.

19. Entire Agreement; Amendments. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings related thereto. The provisions of this Agreement may not be modified,

amended or waived, except by a written instrument duly executed by both Parties.

[Signature page(s) follow]

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IN WITNESS WHEREOF, the Parties caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

Public Service Company of New Mexico

By: _____

Name:

Title:

[Recipient]

By: _____ Name:

_____ Title:
