

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (“Agreement”) is made and entered into as of this ___ day of _____, 2023 by and between Chugach Electric Association, Inc. (“Party”), a Alaska Corporation having its principal place of business at 5601 Electron Drive, Anchorage, Alaska, 99518 and _____ (“[COUNTERPARTY]”), a _____ [STATE] [LEGAL ENTITY] having its principal place of business at _____ [ADDRESS, CITY, STATE, ZIP CODE] (each of which are referred to herein as a “Party” and collectively as the “Parties”).

WHEREAS, the Parties may wish, for their mutual benefit, to disclose to each other Proprietary Information (as defined below) in connection with their discussions regarding a potential business relationship, transaction or other strategic commercial arrangement between the Parties (the “Potential Transaction”); and

WHEREAS, the Parties wish to set forth the conditions and obligations that will govern the use, duplication, and disclosure of any Proprietary Information that may be disclosed by one Party to the other in connection with the Potential Transaction.

NOW, THEREFORE, the Parties agree as follows:

1. It is anticipated that each Party hereto (the “Disclosing Party”) will disclose to the other Party (the “Receiving Party”) certain Proprietary Information in connection with the Potential Transaction. For purposes of this Agreement, “Proprietary Information” means information that is either identified or reasonably could be deemed confidential and/or proprietary regarding the Disclosing Party or its Affiliates (as defined herein) that the Disclosing Party discloses to the Receiving Party either orally or in writing (electronically or in tangible form), including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (i) trade secrets, inventions, patents and pending patents, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iii) information acquired during any facilities tours; (iv) any portions of summaries, notes, reports or analyses or other documents created by the Receiving Party or its Representatives (as defined herein) that refer to, discuss, constitute, or embody all or any portion of Proprietary Information; and (v) all other information disclosed to the Receiving Party that is not otherwise generally available to the public other than as a result of a disclosure by the Receiving Party or any of its Representatives in breach of this Agreement.
2. The Receiving Party will neither disclose to any unauthorized third party nor use the Proprietary Information it receives from the Disclosing Party for any purpose other than for evaluating, negotiating or consummating the Potential Transaction unless the Disclosing Party shall expressly agree otherwise in writing. The Receiving Party shall be permitted to disclose the Proprietary Information only to its Affiliates and its and their directors, officers, employees, control persons, advisors, agents or representatives, including, without limitation, legal counsel, accountants, consultants, contractors and financial advisors (collectively, “Representatives”), who need to know such information for the purpose of participating in the evaluation of the Potential Transaction, and who have an obligation of confidentiality with respect to the Proprietary Information substantially similar to obligations set forth in this Agreement. The Receiving Party shall be liable to the Disclosing Party for any breach of the terms and conditions contained herein by any of its Representatives. For purposes of this Agreement, (i) “Affiliate,” with respect to a Party, means any entity controlled, directly or indirectly, by the Party, any entity that controls, directly or indirectly, the

Party, or any entity directly or indirectly under common control with the Party; and (ii) "control" of a Party means ownership of a majority of the voting power of the Party.

3. The Receiving Party agrees to take reasonable and appropriate measures to keep Proprietary Information received from the Disclosing Party confidential and to safeguard such Proprietary Information from theft or loss. The Receiving Party shall exercise with respect to such information the same degree of care used to protect its own proprietary and non-public information of similar importance, but in all events such degree of care shall be reasonable in all respects.
4. Information shall not be considered Proprietary Information for purposes of this Agreement if it:
 - a. is or becomes a part of the public knowledge or literature or becomes publicly available other than as a result of a breach of this Agreement by the Receiving Party;
 - b. was rightfully in the possession of the Receiving Party prior to the date of disclosure by the Disclosing Party;
 - c. is supplied without restriction on disclosure to the Receiving Party by a third party which is not known to the Receiving Party to be prohibited from disclosing such information; or
 - d. was independently developed by the Receiving Party without reference to or reliance upon the Proprietary Information.
5. Should the Receiving Party be requested or required (by applicable law, statute, regulation, legal process, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigation demand or other similar process) to disclose any of the Proprietary Information received hereunder, the Receiving Party shall, to the extent permitted by law, promptly notify the Disclosing Party in writing of such request or requirement prior to disclosure so that the Disclosing Party may, if it so elects, seek an appropriate protective order or otherwise seek to contest, limit or protect the confidentiality of any such requested or required disclosure. With respect to any disclosure made by the Receiving Party pursuant to this Paragraph 5, the Receiving Party agrees to furnish only that portion of the Proprietary Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand and to exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Proprietary Information. The Receiving Party will provide reasonable cooperation to the Disclosing Party and its legal counsel with respect to performance of the covenants undertaken pursuant to this Paragraph 5.
6. Should the Receiving Party become aware of any actual or suspected breach of this Agreement, the Receiving Party shall promptly notify the Disclosing Party thereof in writing and shall take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such actual or suspected breach.
7. The Receiving Party agrees that money damages may not be a sufficient remedy for any breach of this Agreement and that Disclosing Party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity. Notwithstanding the foregoing, the Receiving Party's liability to the Disclosing Party in connection with this Agreement and any activities undertaken in connection with the evaluation of the Potential Transaction shall be limited to direct damages and shall exclude any other liability, including without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.
8. The Disclosing Party shall own all rights, title and interest in (a) its Proprietary Information, whether or not fixed in tangible media, (b) any copies thereof, and (c) any media on which any such

Proprietary Information was delivered by the Disclosing Party. Neither this Agreement nor the disclosure of Proprietary Information hereunder shall be construed as granting any ownership right or license to the Proprietary Information or to any invention, patent, or other property now or hereafter owned or controlled by the Disclosing Party, nor shall any such disclosure constitute any representation, warranty, assurance, or guaranty, with respect to non-infringement of patent or other rights of others. No warranty or representation as to the accuracy, completeness or technical or scientific quality of any Proprietary Information is provided herein. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE FOR ANY PURPOSE OF THE PROPRIETARY INFORMATION. Neither the Disclosing Party nor any of its Representatives shall be subject to liability resulting from the use of the Proprietary Information by the Receiving Party.

9. Each Party shall bear its own costs incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party, including without limitation the Potential Transaction. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or co-ownership between the Parties.
10. Unless terminated earlier by either Party by written notice to the other, this Agreement shall be in force and effect upon execution and continuing for a period of five (5) years from the effective date hereof; provided, however, the obligations contained herein with respect to Proprietary Information shall survive for five (5) years after the disclosure of such Proprietary Information; and provided further, notwithstanding the foregoing, the obligations contained herein with respect to Proprietary Information that also qualifies as a trade secret shall survive so long as such Proprietary Information continues to qualify as a trade secret.
11. Upon expiration or termination of this Agreement or upon written request by the Disclosing Party, the Receiving Party shall immediately cease use of all Proprietary Information furnished to it by the Disclosing Party hereunder and shall, within ten (10) business days, return to the Disclosing Party, delete or destroy, all such written Proprietary Information in any medium, together with all copies made thereof by the Receiving Party. Upon request, the Receiving Party shall send the Disclosing Party a certificate signed by a duly authorized officer of the Receiving Party confirming the destruction, deletion or return of all Proprietary Information delivered hereunder. Notwithstanding the foregoing, Receiving Party may retain copies of Proprietary Information and any reports or other documents generated by Receiving Party containing Proprietary Information: (i) automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel; or (ii) to the extent necessary to comply with applicable law, regulation or bona fide document retention policies. Any Proprietary Information retained by Receiving Party pursuant to the preceding sentence shall remain subject to all restrictions and obligations contained in this Agreement until such time as the Proprietary Information is returned to the Disclosing Party or destroyed.
12. The Parties shall comply with all applicable U.S. laws and regulations including without limitation those that are related to the export of technical information. The Receiving Party certifies that no Proprietary Information will be exported to any country in violation of applicable United States export control laws or regulations.
13. All notices, requests and other communications to any Party hereunder shall be in writing and delivered by hand, by nationally-recognized delivery service that guarantees overnight delivery, or by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to Chugach:

Chugach Electric Association, Inc.
Attention: Ron Vecera, Vice President, Risk Management & Administrative Services
P.O Box 196300
Anchorage, AK 99519-6300
(907) 762-4759

if to: _____ [COUNTERPARTY]:

_____ [COUNTERPARTY]
Attention: _____

_____ [ADDRESS]

_____ [CITY, STATE, ZIP CODE]

Telephone: _____

or to such other address as such Party hereafter may specify for the purpose by notice to the other Party. Each such notice, request or other communication shall be effective upon delivery or refusal of delivery at the address specified in this Paragraph 13.

14. This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by either Party without the prior written consent of the other Party.
15. The validity, interpretation, effect, and enforcement of this Agreement shall be governed by the laws of the State of Alaska, exclusive of its principles of conflict of laws. The Parties hereto irrevocably submit to jurisdiction in the State of Alaska with respect to any dispute between them arising out of, relating to, or in connection with this Agreement, and venue will lie in a state or federal court located in Anchorage, Alaska.
16. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, commitments, understandings, and representations with respect thereto. No variation or modification of this Agreement or waiver of any terms or provisions hereof shall be deemed valid unless in writing and signed by authorized representatives of both Parties.
17. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.
18. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Any executed counterpart may be delivered to the other Party by facsimile or any image transmitted by electronic mail (such as a PDF file).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CHUGACH ELECTRIC ASSOCIATION, INC. _____ [COUNTERPARTY]

Name:
Title:

Name:
Title: