

**CONSULTING SERVICES TERMS AND CONDITIONS (LR)**

1. **COMPLETE AGREEMENT:** These terms and conditions (the “Terms”), the corresponding contract to which these Terms are attached or incorporated by reference and Tri-State’s specifications or scope of work (collectively, the “Contract”) constitute the complete agreement of the parties concerning the subject matter and supersede any previous agreement or understanding, whether oral or written. The services, materials, equipment, work product, and supplies procured by Tri-State under the Contract (collectively, the “Services”) shall be furnished by the vendor identified on the face of the Contract (“Consultant”) subject to the Terms. As used in the Contract, “Consultant Representatives” includes Consultant’s employees, agents and subcontractors (at any tier). No other terms or conditions shall be binding upon Tri-State unless accepted by it in writing. Consultant’s written acceptance or performance of all or a portion of the Services shall constitute acceptance of the Contract. The terms of any written proposal referred to in the Contract are included and made a part of the Contract only to the extent that such proposal describes the Services, the price and the manner of performance, and only to the extent that such terms do not conflict with the Contract.
  
2. **MANNER OF PERFORMANCE:** Consultant shall perform the Services set forth on the face of the Contract. Consultant shall employ persons who possess the skill and training required to properly perform the Services. Consultant shall appoint a project manager, who shall be available at all times while the Services are in progress. The project manager shall be competent with experience in the type of Services being performed and capable of properly interpreting the Contract. The project manager shall have full authority to act upon instructions from Tri-State.

Consultant represents as of the date of the Contract to each of the following:

- A. Consultant has investigated and carefully examined the scope of the Services and understands the nature and character of the Services to be performed.
- B. Consultant and Consultant Representatives have the relevant experience and specialized knowledge to perform the Services.
- C. Consultant, to the best of its knowledge, is not owned by, controlled by, or subject to the jurisdiction or direction of a “foreign adversary” and none of the Services were or will be designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a “foreign adversary,” where the term “foreign adversary” has the meaning set forth in the Executive Order on Securing the United States Bulk-Power System, issued on May 1, 2020 (“Bulk Electric Executive Order”) and any rules or regulations issued pursuant to the Bulk Electric Executive Order.
- D. Consultant is licensed under applicable state law to engage in the Services, it is in compliance with all laws and regulations applicable to the Services, and it is aware that Tri-State is relying on Consultant’s skill and judgment in providing the Services to Tri-State.
- E. The Services and other work performed by Consultant do not infringe upon any copyright, patent, trade secret, or other intellectual property right of any third party, and Consultant has neither assigned nor otherwise entered into an agreement (oral or written) by which it purports to assign or transfer any right, title, or interest in any technology or intellectual property right that would conflict with its obligations under the Contract.

**3. ACCEPTANCE OF SERVICES; WARRANTY:**

- A. Acceptance. The Services shall be subject to review, inspection and testing by Tri-State at all times and places. If, prior to final acceptance and final payment, any Services are found to be incomplete or not as specified, Tri-State may (i) reject them and require Consultant to correct them without charge or (ii) require delivery of such Services at a reduction in price that is equitable under the circumstances. Consultant shall bear risk for all rejected Services. If Consultant is unable or refuses to correct the Services within a time deemed reasonable by Tri-State, Tri-State may terminate the Contract in whole or in part for Consultant's default.
- B. Warranty. Consultant warrants that the Services furnished shall comply with the Contract and the Services shall be performed in a professional manner and with the degree of skill and diligence normally practiced by recognized engineering and consulting firms performing the same or similar services. If during the 18 months following final acceptance and final payment, the Services do not conform to such standards, Consultant shall, upon notice from Tri-State within the warranty period, promptly re-perform and make corrections to such Services, at its own expense, to the extent necessary to satisfy the requirements of the Contract. The provisions of this Section shall then apply to said repaired or replaced Services for a period of 18 months from the date such repairs or replacements were completed. If Consultant is unable or refuses to correct warranted Services within a reasonable time, Consultant shall reimburse Tri-State for the reasonable costs incurred by Tri-State to correct such nonconformance.

4. **ORDER MODIFICATION:** Tri-State may notify Consultant of changes to the Services and subsequently confirm such changes in writing. If the price or time required for performance is affected, Tri-State shall equitably adjust the price or time, as applicable. No change by Consultant shall be recognized without written approval of Tri-State. Consultant must make a written claim for an adjustment to the performance period or price within 10 days from the date of receipt of notice of a change in the Services. Nothing in this Section shall excuse Consultant from proceeding with performance of the Services as modified by Tri-State.

**5. TERM; SUSPENSION; TERMINATION; REMEDIES:**

- A. The Contract shall automatically terminate after final acceptance of the Services and final payment by Tri-State, except that this Section 5 and Sections 3, 6(F), 7-10, 13, 14, 17-18, 20 and 23- 26 of these Terms shall survive any such termination.
- B. Except as provided in Sections 16 and 17, Tri-State may suspend performance of the Services in whole or in part for up to 30 days at any time on written notice to Consultant and in such event, Tri-State shall issue a change order reflecting an equitable adjustment to the price or time, as applicable, upon resumption of the Services.
- C. Tri-State may terminate the Contract in whole or in part for convenience at any time on written notice to Consultant and in such event, Tri-State shall compensate Consultant through the effective date of termination for the unit or pro rata price for Services performed and accepted.
- D. Tri-State may terminate the Contract in whole or in part if Consultant defaults in the performance of the Services or breaches any provision in the Contract and: (i) Consultant does not cure such default or breach after written notice from Tri-State within a reasonable time as determined by Tri-State or (ii) Tri-State determines in its reasonable discretion that such default or breach cannot be cured. Consultant shall be liable to Tri-State for all costs and expenses in connection with such default or breach.

- E. Tri-State may terminate the Contract in whole or in part upon written notice to Consultant if Tri-State reasonably believes such termination is necessary in order to comply with the Bulk Electric Executive Order, including any rules or regulations issued pursuant to the Bulk Electric Executive Order. In such event, Consultant shall promptly refund to Tri-State any payments made by Tri-State and Tri-State shall promptly return, at the expense of Consultant, any equipment or facilities already delivered by Consultant. Tri-State shall have no further obligation or liability to Consultant arising out of this termination.
- F. Tri-State's rights and remedies in this Section shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity including injunctive relief and specific performance.

**6. SECURITY REQUIREMENTS:**

- A. Consultant shall ensure that it is in compliance with all Federal and state employment laws and regulations governing verification of eligibility of employment for individuals hired by Consultant and Consultant Representatives prior to permitting such persons to perform Services.
- B. Consultant and Consultant Representatives will enter and exit Tri-State's facilities through security access areas, if any. In instances where Consultant or Consultant Representatives require access to highly secure areas of Tri-State's facilities and systems, at Tri-State security's discretion, Consultant or Consultant Representatives may be required to: (i) undergo a background check, (ii) respond to security questionnaires, (iii) verify social security numbers and (iv) complete any other training required by Tri-State. Tri-State may deny access to certain areas based on information obtained through this additional screening process and may contact appropriate authorities if the situation warrants.
- C. Consultant Representatives shall be required to show a valid US Government photo ID (state or Federal), such as a driver's license, law enforcement ID, U.S. military ID, U.S. passport, or current INS card, prior to obtaining a badge and entering the worksite. Individuals without valid photo ID will not be permitted to enter the worksite or receive a badge.
- D. Prior to commencing the Services at a worksite, Consultant shall deliver a detailed list to Tri-State of all Consultant Representatives who will perform the Services at the worksite. The list shall include each person's name, type of valid photo ID and its unique ID number. This list shall be updated weekly and delivered to Tri-State's security staff for purposes of checking individuals into and out of a worksite.
- E. Specific badging instructions unique to any of Tri-State's facilities shall be covered at pre-work or pre-outage safety briefings. Badging procedures may vary depending on, among other things, the particular services, the number of workers, or the time required to perform the Services. Badges issued by Tri-State shall be visibly displayed at all times while on the worksite. Failure to do so will result in removal from the worksite by Tri-State's security personnel.
- F. If a Consultant Representative quits or is terminated, Consultant shall promptly return any ID badge issued by Tri-State on behalf of such individual. If an ID badge is lost or stolen, Consultant shall immediately notify Tri-State and provide written documentation describing the particular event. Any Tri-State-related costs for replacement of missing badges shall be charged to Consultant's account.
- G. No weapons of any type, including, but not limited to, firearms, archery equipment, explosive or incendiary devices, drugs (unless prescription drugs authorized by a doctor), alcohol or pets are allowed on Tri-State's facilities. Any person observed with any such prohibited item may be immediately removed from the worksite and detained for local law enforcement authorities.

- H. Tri-State's security staff may examine or search any items brought on or removed from the worksite and may examine or search at any time, in the presence of Consultant or a Consultant Representative, any enclosure on the worksite, including, but not limited to, storage bins, tool cribs, boxes, vehicles, construction equipment, office trailers, tool trailers, and lunch boxes. Items belonging to Consultant or a Consultant Representative shall also be subject to search, with or without the presence of Consultant or a Consultant Representative.
- I. On request, Consultant shall provide Tri-State with a list of worksite equipment, tools, parts and materials, which list may be used to conduct inventory inspections.
- J. Consultant is responsible for transporting Consultant Representatives to the worksite and responsible for securing its worksite at Tri-State's facility, including, but not limited to: fencing of laydown areas, locks and keys, fabrication, electrical power connections, coverings for equipment or materials, warehousing, lighting, etc.
- K. To the extent Consultant is providing control or monitoring systems that will interface with Tri-State's control systems via transmission control protocol/internet protocol (TCP/IP), Consultant shall promptly provide, upon request and at no additional cost, information related to each cyber system as Tri-State may request including operating and application system information and ports.
- L. Consultant shall confine Consultant Representatives to that portion of Tri-State's facilities where the Services are performed or to roads or areas leading to and from such worksites and to any other area which Tri-State has expressly permitted Consultant and Consultant Representatives to use.
- M. Harassment of any type, threats of violence, or actual violence, will not be tolerated. Allegations of any of the above will be investigated and if substantiated, the perpetrator will be removed from the worksite and not allowed to return. If necessary, the perpetrator may be detained by security personnel until local law enforcement authorities arrive.
- N. Consultant Representatives performing work at Tri-State facilities shall immediately notify Tri-State after becoming aware that they have a communicable disease. The Consultant Representative shall cease performing work at Tri-State facilities until the communicable disease is no longer transmissible.
- O. Tri-State may deny access, or remove and ban from its facilities, anyone who violates the foregoing security provisions, has a questionable background, behaves erratically or suspiciously, or jeopardizes Tri-State's security measures, equipment, facilities, or personnel. Physical force may be authorized to prevent security incidents and law enforcement may be notified. Tri-State may change its security procedures at any time without explanation. Changes in security procedures may result in complete lockdown of worksites, increased searches, denial of access to worksites, or other measures.
- P. To the extent Consultant will be deploying or connecting any cyber asset (such as a laptop, cell phone, and tablet) or removable media device (such as a compact disk, USB flash drive, and external hard drive) to Tri-State's distributed control system(s), prior to such deployment or connection, Consultant shall comply with any request by Tri-State for Tri-State to scan such device for malicious code.

**7. RESERVED.**

- 8. **PRICES, INVOICES, AND PAYMENTS:** Prices are as indicated on the face of the Contract. Import and export duty/tariffs and brokerage fees shall be included in the price. Any increase or change in any import or export duty/tariffs or brokerage fees shall not entitle or permit Consultant to increase the price, suspend or delay delivery of the Services, or claim a force majeure event or commercial

impracticability. Consultant shall submit an invoice, together with appropriate supporting information such as subcontractor invoices, expense receipts over \$25, and any other reasonable backup documentation as Tri-State may require, covering compensation due Consultant for Services rendered under the Contract during the preceding month. Sales, purchase, use, and any other taxes shall be itemized separately from the Services on Consultant's invoice. Unless otherwise specified or required by law, Tri-State shall review, approve and pay each non-disputed invoice within 30 days of receipt thereof, unless a delay is caused by any condition within the control of Consultant. Until Consultant has provided the information required by Tri-State and completed any forms required by Tri-State to allow payment by electronic means, all payments will be made to Consultant by check. If Consultant's payment address or method of payment changes, Consultant must contact Tri-State's Accounts Payable Department via [AccountsPayableDept@tristategt.org](mailto:AccountsPayableDept@tristategt.org) at least thirty (30) days prior to the effective date of such change. Tri-State shall have the right to set off any payments owed by Consultant to Tri-State. The review, approval and payment of any invoice by Tri-State shall not preclude the right of Tri-State from thereafter disputing any of the items involved in the invoice. Each invoice shall have the Contract number clearly stated on the first page of the invoice.

9. **PAYROLL TAXES:** Consultant shall pay all contributions, taxes and premiums measured upon its employee payroll or applicable to the Services, and Consultant shall hold Tri-State harmless from liability for any such contributions, taxes and premiums.
10. **EXAMINATION OF RECORDS:** Tri-State may examine and copy any pertinent books, documents, papers and records of Consultant in connection with the Services until the expiration of 3 years after final payment.
11. **INDEPENDENT CONTRACTOR:** Consultant and each Consultant Representative shall be an independent contractor, and no action, tax, assessment or liability of Consultant or a Consultant Representative becomes, by reason of the Contract, Tri-State's obligation.
12. **CHARACTER OF SERVICES:** Consultant shall furnish all equipment, personnel, and material sufficient to perform the Services in accordance with the Contract expeditiously and efficiently during the hours and shifts and at the locations designated by Tri-State. Time is of the essence in the performance of the Services and Consultant shall abide by all applicable project schedules in its performance.
13. **INDEMNIFICATION:**
  - A. To the maximum extent permitted by law, Consultant shall indemnify, defend and hold harmless Tri-State and its directors, members, subsidiaries, officers, employees and agents from and against all claims, demands, causes of action or suits of whatever nature for losses, liability, damages, fines, penalties, awards, judgments, reasonable attorneys' fees, costs, or expenses including bodily injury or death to persons or property damage caused by or resulting from one or more of the following: (i) Consultants or a Consultant Representative's negligence or intentional misconduct (but only to the extent of such negligence or intentional misconduct) in connection with performance of the Services; (ii) all laborers', materialmen's, and mechanics' liens threatened or filed of record against Tri-State's property in connection with the Services; (iii) any misrepresentation or breach of a covenant, representation or warranty of Consultant in connection with the Contract; (iv) any violation or failure of Consultant or a Consultant Representative to comply with applicable laws, rules and regulations (including health, safety

and environmental laws, rules and regulations); and (v) any third party claim of infringement of any patent, trademark, copyright, trade secret or other intellectual property right utilized in connection with the Services. If use of an intellectual property right is enjoined, Consultant shall procure for Tri-State the right to continue to use such intellectual property, or shall promptly provide a non-infringing substitute acceptable to Tri-State. Consultant shall also promptly notify Tri-State in writing of any claim, demand, cause of action or suit brought in connection with the Services.

- B. **Anti-Indemnity Language.** Nothing in the Contract is intended to create or shall be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless, insure or defend declared by NMSA 1978, § 56-7-1 et seq., as heretofore and hereafter amended, to be against public policy, void or unenforceable. Notwithstanding any other term or condition in the Contract, to the extent, if at all, any agreement to indemnify, hold harmless, insure (including the requirement to name the additional party as an additional insured), or defend another party (including such party's directors, members, officers, employees and agents) contained anywhere in the Contract is found by a court to be within the scope of NMSA 1978 §56-7-1 et seq., for its enforceability, then such agreement will not extend to liabilities, claims, damages, losses or expenses, including reasonable attorneys' fees, arising out of bodily injury or death to persons or property damage caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its directors, members, officers, employees and agents.

14. **LIENS:** Consultant shall not receive final payment from Tri-State until it delivers evidence to Tri-State of a complete release of all liens arising in connection with the Contract, and an affidavit signed by an authorized officer of Consultant that Consultant has paid in full all laborers, materialmen and suppliers; but Consultant may, if any subcontractor or supplier refuses to furnish a release, furnish a bond satisfactory to Tri-State indemnifying Tri-State against any claim by lien or otherwise. If any lien or claim remains unsatisfied after final payment from Tri-State, Consultant shall promptly refund to Tri-State all monies necessary to discharge such lien or claim, including all costs and reasonable attorneys' fees.

15. **PERSONNEL:** Consultant shall employ persons who are skilled and properly trained for the Services, at least 18 years of age, and shall devote only the best-qualified personnel to perform the Services. Should Tri-State deem, in its sole discretion, anyone incompetent or unfit to perform the Services and so inform Consultant, Consultant shall immediately remove such person from employment under the Contract.

16. **SAFETY:** Consultant shall protect the health and safety of all personnel and the general public and shall comply with all applicable health and safety laws, regulations and requirements. If safety or health deficiencies are observed by Tri-State during the performance of the Services, Tri-State may, in its sole discretion, issue a written "safety deficiency notice" or oral notice to Consultant for items such as, but not limited to, unsafe conditions, unsafe personnel, or non-compliance with Occupational Safety and Health Administration regulations. Such notice may, in Tri-State's sole discretion and without prejudice to any of Tri-State's other rights, require that Consultant stop all or any part of the Services. Consultant shall address and correct the conditions identified in the notice in a timely fashion and notify Tri-State when such conditions have been corrected. Tri-State will not compensate Consultant for costs and expenses associated with such safety or health notices or stoppage of work. Consultant will not be allowed to add time to schedules, or avoid other obligations under the Contract due to such safety or health notices or stoppage of work.

**17. ENVIRONMENTAL COMPLIANCE:** Consultant shall perform the Services in compliance with all Environmental Laws. In the event of any noncompliance with Environmental Laws, Consultant shall promptly notify Tri-State and take corrective action in accordance with Tri-State's instructions. If Consultant fails to comply with its obligations under this Section, Tri-State may (i) take all necessary corrective action, the cost of which shall be reimbursed by Consultant; and (ii) withhold any amounts due to Consultant until the matter has been remedied to Tri-State's satisfaction. Consultant shall not be entitled to an extension of time or additional compensation for its compliance under this Section. The term "Environmental Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to or imposing liability or standards of conduct concerning environmental protection, health or safety matters, as they may now exist or be hereinafter amended, including all requirements pertaining to reporting, licensing, permitting, investigation, removal or remediation of emissions, discharges, releases, or threatened releases of hazardous materials, chemical substances, pollutants or contaminants or relating to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, or handling of hazardous materials, chemical substances, pollutants or contaminants, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§ 9601, et seq., the Toxic Substances Control Act ("TSCA"), as amended, 15 USC §§ 2601, et seq., the Solid Waste Disposal Act, as amended, including the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 USC §§ 6901, et seq., the Clean Air Act ("CAA"), as amended, 42 USC §§ 7401, et seq., the Federal Water Pollution Control Act (Clean Water Act or "CWA"), as amended, 33 USC §§ 1251, et. seq., the Federal Insecticide, Fungicide, Rodenticide Act ("FIFRA"), as amended, 7 USC §136 et. seq., and the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 USC §§ 5101, et seq.

**18. INSURANCE REQUIREMENTS:**

- A. Consultant shall, and require Consultant's subcontractors to, take out and maintain throughout the term of the Contract and for a period of 1 year after termination of the Contract and during any on-site warranty work insurance in the following types and amounts:
- i. Workers' compensation insurance with minimum statutory limits to cover obligations imposed by federal and state statutes applicable to its employees and employers' liability insurance for bodily injury by accident of \$500,000 each accident, bodily injury by disease of \$500,000 each employee and \$500,000 each accident; and
  - ii. Commercial general liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 annual aggregate. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Limits may be achieved by a combination of commercial general liability and follow form claims made excess liability coverage. Such policy shall provide completed operations coverage for additional insured; and
  - iii. Comprehensive automobile liability insurance with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Such policy must cover owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads; and

- iv. Professional liability (E&O) insurance with a 1 year extended reporting period in an amount of \$1,000,000 per claim and \$1,000,000 annual aggregate.
- B. Insurance policies may include a deductible or self-insured retention reasonably acceptable to Tri-State. The required insurance policies (except workers' compensation and professional liability), through policy endorsement, shall each state that they are primary and non-contributing with respect to any insurance maintained by Tri-State or its subsidiaries. The certificates of insurance shall state that each of such policies is primary and non-contributing with respect to any insurance carried by Tri-State or its subsidiaries. There shall be no endorsement or modification limiting coverage for liability assumed under an insured contract.
- C. Consultant and its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Tri-State and its subsidiaries, officers, employees and agents for all claims and suits. The certificates of insurance must reflect the waiver of subrogation endorsement.
- D. The policy for commercial general liability insurance must include cross liability coverage either by way of separation of insureds clause or otherwise. Tri-State, its subsidiaries, its officers, employees, and agents must be named as an additional insured with respect to the Services and must be indicated on all certificates of insurance required by this Section (except workers' compensation and professional liability).
- E. Prior to performing Services pursuant to the Contract, Consultant shall provide Tri-State acceptable certificates of insurance evidencing the required coverages, endorsements, and, if requested, insurance policies. Consultant shall provide copies of all insurance policies and endorsements required in this Section to Tri-State within 10 days of Tri-State's written request. Each insurance policy shall provide by endorsement for 30 days written notice to Tri-State prior to the effective date of any cancellation or material adverse change, and in the event of cancellation for non-payment of premium, 10 days prior written notice; provided, however if Consultant is unable to abide by such requirements, Consultant must notify Tri-State immediately should any of the above described policies be cancelled before the expiration date, if the insured receives a non-renewal notice from its carrier, or any material adverse change of coverage. Consultant must cease operations under the Contract and not resume operations until required coverage is in place and proof is provided to Tri-State.
- F. At Tri-State's request, Consultant shall, at its expense, promptly repair or reimburse the party for any damage caused by Consultant or Consultant's Representatives to Tri-State's or a third party's property.
- G. In the event any of the Services are to be performed in Wyoming, Consultant is not a resident of Wyoming, and the performance of the Services in Wyoming will take longer than three (3) days, Consultant shall be required to purchase workers' compensation insurance coverage, with statutory liability limits, directly from the State of Wyoming's monopolistic state fund. Coverage cannot be purchased from a private insurance company or agent. Additionally, because employer's liability insurance is not available in Wyoming, Consultant must purchase a "stop-gap" endorsement to its commercial general liability policy. Prior to performing any Services on any Tri-State property in Wyoming, Consultant shall provide satisfactory written evidence to Tri-State that such workers' compensation and stop-gap coverage are in place. If Consultant is not a resident of Wyoming, and Services are to be performed in Wyoming, Consultant shall comply with Wyoming statute §27-1-106 et. seq. regarding surety bonds or other security. Prior to performing any Services, Consultant will provide satisfactory written evidence to Tri-State of such compliance.

19. **PERMITS; COMPLIANCE WITH LAW:** Unless otherwise stated on the face of the Contract, Consultant shall procure all permits and licenses and abide by all applicable laws, regulations, and ordinances in the locale where the Services are performed.
20. **WORK PRODUCT:** Upon payment for the Services, title and rights to all drawings, specifications, reports, and other work product of the Services prepared and furnished under the Contract shall vest in Tri-State.
21. **WAIVERS:** If Tri-State fails at any time, or from time to time, to enforce or require the strict performance of the Contract, such failure shall not constitute a waiver by Tri-State of a breach of the Contract, or the right of Tri-State to seek any remedy available to it for any such breach.
22. **ASSIGNMENT:** The Contract is assignable by Tri-State at any time. The Contract may not be assigned by Consultant and none of Consultant's obligations may be delegated or subcontracted without Tri-State's advance written consent.
23. **CONFIDENTIALITY:** Consultant shall keep confidential and not, and Consultant shall ensure that each Consultant Representative shall keep confidential and not, disclose (i) any information furnished to it by Tri-State that is either marked "proprietary" or "confidential" or under the circumstances, could reasonably constitute confidential or proprietary information and (ii) all work product or deliverables developed by it as part of the Services (collectively, "Confidential Information"); provided that Consultant may disclose such Confidential Information to Consultant Representatives who have a "need to know" so long as such persons agree to protect the confidentiality of such information in accordance with this Section. Consultant and each Consultant Representative shall not use the Confidential Information for any purpose other than performing the Services. Consultant and each Consultant Representative shall use the same degree of care to protect such Confidential Information as such party uses with respect to its own confidential information, but in no event, less than a reasonable degree of care. Consultant shall implement reasonable security procedures and practices designed to protect the Confidential Information from unauthorized access, use, modification, disclosure or destruction. Consultant shall immediately notify Tri-State of any breach by Consultant or Consultant's Representative of this Section. The obligations contained in this Section shall not apply to information that: (y) was already in Consultant's (or a Consultant Representative's) possession other than through a breach of this Section or (z) was or becomes generally available to the public other than through a breach of this Section.
24. **SEVERABILITY:** If any of the part of the Contract is held invalid by a court having jurisdiction, Tri-State may substitute a term or provision as similar in terms as possible to such invalid term, and, in any event, the remainder of the Contract shall remain in full force and effect.
25. **GOVERNING LAW; JURISDICTION, WAIVER OF JURY TRIAL:** Unless otherwise required by law, the Contract is governed by the laws of the State of Colorado without regard to its choice of law provisions. Jurisdiction and venue for any legal proceedings in connection with the Contract shall be in Adams County, Colorado. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION RESULTING FROM THE CONTRACT.

26. **COUNTERPARTS:** The Contract, including these Terms, if applicable, may be executed in counterparts, each of which shall constitute an original agreement, but all of which together shall constitute one and the same instrument. The parties agree that the Contract, including these Terms, if applicable, may be electronically signed. The parties agree that the electronic signatures appearing on the Contract, including these Terms, if applicable, are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
27. **SANCTIONS:** Consultant shall refrain, and cause its subsidiaries to refrain, from doing business in a sanctioned country or with a sanctioned person, in each case in violation of the economic sanctions of the United States administered by the Treasury's Office of Foreign Assets Control ("Sanctions"). Consultant shall not (a) directly or indirectly use the money paid by Tri-State pursuant to the Contract or otherwise make available such money to any person to fund, any activities of or business with any person, or in any sanctioned country, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any person of Sanctions or (b) directly or indirectly use the money paid by Tri-State pursuant to the Contract for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar legislation in other jurisdictions.
28. **EEO CERTIFICATION:** The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable; and the Consultant and Consultant's subcontractor(s) shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.