

OFF-SITE SERVICES TERMS AND CONDITIONS

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 (“Seller”) subject to the Terms. As used in the Contract, “Seller Representatives” includes Seller’s employees, subcontractors, suppliers, and agents (at any tier). No other terms or conditions shall be binding upon Tri-State unless accepted by it in writing. Seller’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:** Seller shall perform the Services set forth on the face of the Contract. Seller shall employ persons who possess the skill and training required to properly perform the Services. Seller 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.

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

- A. Seller has investigated and carefully examined the scope of the Services and understands the nature and character of the Services to be performed.
 - B. Seller and Seller Representatives have the relevant experience and specialized knowledge to perform the Services.
 - C. Seller, 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. Seller 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 Seller’s skill and judgment in providing the Services to Tri-State.
 - E. The Services and other work performed by Seller do not infringe upon any copyright, patent, trade secret, or other intellectual property right of any third party, and Seller 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 Seller to correct them without charge or (ii) require delivery of such Services at a reduction in price that is equitable

under the circumstances. Seller shall bear risk for all rejected Services. If Seller 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 Seller's default. Notwithstanding acceptance and payment, Seller shall be liable for latent defects. Title and risk of loss or damage to the Services shall transfer from Seller to Tri-State upon acceptance.

- B. **Warranty.** Seller warrants that the Services furnished shall comply with the Contract and the Services shall be performed with the degree of skill and diligence normally practiced by a service provider performing the same or similar services and be free from all defects or failures. If during the 18 months following final acceptance and final payment, the Services do not conform to such standards, Seller 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 Seller is unable or refuses to correct warranted Services within a reasonable time, Seller shall reimburse Tri-State for the reasonable costs incurred by Tri-State to correct such nonconformance.
4. **ORDER MODIFICATION:** Tri-State may notify Seller 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 Seller shall be recognized without written approval of Tri-State. Seller 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 Seller 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, 7–11, 14, 18, 20 and 23-26 of these Terms shall survive any such termination.
 - B. 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 Seller 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 Seller and in such event, Tri-State shall compensate Seller 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 Seller defaults in the performance of the Services or breaches any provision in the Contract and: (i) Seller 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. Seller 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 Seller 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, Seller shall promptly refund to Tri-State any payments made by Tri-State and Tri-State shall promptly return, at the expense of Seller, any equipment or facilities already delivered by Seller. Tri-State shall have no further obligation or liability to Seller 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. **EMPLOYEE REQUIREMENTS:** Seller 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 Seller or Seller Representatives prior to permitting such persons to perform Services.
 7. **RESERVED.**
 8. **LIABILITY FOR TRI-STATE-FURNISHED PROPERTY:** Seller assumes all liability for any tools, equipment, materials or other items loaned or provided by Tri-State to Seller or a Seller Representative in connection with the Contract, and Seller shall compensate Tri-State for any lost or broken tools or equipment and any materials spoiled by Seller or a Seller Representative.
 9. **PRICES, INVOICES, AND PAYMENT:** 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 Seller to increase the price, suspend or delay delivery of the Services, or claim a force majeure event or commercial impracticability. Seller 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 Seller 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 Seller's invoices. 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 Seller. Until Seller 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 Seller by check. If Seller's payment address or method of payment changes, Seller must contact Tri-State's Accounts Payable Department via 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 Seller. The review, approval and payment of any invoice by Tri-State shall not preclude 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.
 10. **PAYROLL TAXES:** Seller shall pay all contributions, taxes and premiums measured upon its employee payroll or applicable to the Services, and Seller shall hold Tri-State harmless from liability for any such contributions, taxes and premiums.
 11. **EXAMINATION OF RECORDS:** Tri-State may examine and copy any pertinent books, documents, papers and records of Seller in connection with the Services until the expiration of 3 years after final payment.
 12. **INDEPENDENT CONTRACTOR:** Seller and each Seller Representative shall be an independent contractor, and no action, tax, assessment or liability of Seller or a Seller Representative becomes, by reason of the Contract, Tri-State's obligation.

13. **CHARACTER OF SERVICES:** Seller shall furnish all equipment, personnel, and material sufficient to perform the Services in accordance with the Contract expeditiously and efficiently. Time is of the essence in the performance of the Services.

14. **INDEMNIFICATION:**

- A. To the maximum extent permitted by law, Seller 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) Seller's or a Seller 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 Seller in connection with the Contract; (iv) any violation or failure of Seller or a Seller 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, Seller 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. Seller shall also promptly notify Tri-State in writing of any claim, demand, cause of action or suit brought in connection with the Services.
- B. 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.

15. **PERSONNEL:** Seller 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 anyone incompetent or unfit to perform the Services and so inform Seller, Seller shall immediately remove such person from employment under the Contract.

16. **SAFETY:** Seller 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.

17. **ENVIRONMENTAL MATTERS:** Seller shall comply with all applicable environmental laws, rules and regulations as they apply to the Services. Seller shall promptly notify Tri-State of any non-compliance and take appropriate corrective action.

18. INSURANCE REQUIREMENTS:

- A. Seller shall, and require Seller'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 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. Professional liability (E&O) insurance with a 1 year extended reporting period in an amount of \$2,000,000 per claim and \$2,000,000 annual aggregate; provided that such insurance is only required if the Services involve professional services including, but not limited to, engineering, architectural, surveying or consulting services.
- B. Seller 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.
- C. Prior to performing Services pursuant to the Contract, Seller shall provide Tri-State acceptable certificates of insurance evidencing the required coverages, endorsements, and if requested insurance policies. Seller 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 Seller is unable to abide by such requirements, Seller 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. Seller must cease operations under the Contract and not resume operations until required coverage is in place and proof is provided to Tri-State.

19. **PERMITS; COMPLIANCE WITH LAW:** Seller 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 Seller and none of Seller's obligations may be delegated or subcontracted without Tri-State's advance written consent.

23. **CONFIDENTIALITY:** Seller shall keep confidential and not, and Seller shall ensure that each Seller 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 Seller may disclose such Confidential Information to Seller 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. Seller and each Seller Representative shall not use the Confidential Information for any purpose other than performing the Services. Seller and each Seller 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. Seller shall implement reasonable security procedures and practices designed to protect the Confidential Information from unauthorized access, use, modification, disclosure or destruction. Seller shall immediately notify Tri-State of any breach by Seller or Seller’s Representative of this Section. The obligations contained in this Section shall not apply to information that: (y) was already in Seller’s (or a Seller 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:** Seller 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”). Seller 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 Seller and Seller’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.