

KANSAS ELECTRIC, INC.

GENERAL TERMS AND CONDITIONS FOR SERVICES

1. Applicability.

(a) These terms and conditions for services (these "**Terms**") are the only terms that govern the provision of services by Kansas Electric, Inc. ("**Kansas Electric**") to any ("**Customer**").

(b) The accompanying contract for services, proposal or bid (the "**Base Contract**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Base Contract, these Terms shall govern, unless the Base Contract expressly states that the terms and conditions of the Base Contract shall control.

(c) These Terms prevail over any of Customer's general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

2. Services. Kansas Electric shall provide the services to Customer as described in the Base Contract (the "**Services**") in accordance with these Terms, but no other services without written agreement.

3. Performance Dates. Kansas Electric shall use reasonable efforts to meet any performance dates specified in the Base Contract, and any such dates shall be estimates only. Unless agreed to otherwise in writing, all services shall be performed during standard business hours and days.

4. Customer's Obligations. Customer shall:

(a) cooperate with Kansas Electric in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Kansas Electric, for the purposes of performing the Services;

(b) respond promptly to any Kansas Electric request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Kansas Electric to perform Services in accordance with the requirements of this Agreement;

(c) provide such Customer materials or information as Kansas Electric may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and

(d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

5. Customer's Acts or Omissions. If Kansas Electric's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Kansas Electric shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. Change Orders.

(a) If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. Kansas Electric shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (i) the likely time required to implement the change;
- (ii) any necessary variations to the fees and other charges for the Services arising from the change;
- (iii) the likely effect of the change on the Services; and
- (iv) any other impact the change might have on the performance of this Agreement.

(b) Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with the Section labeled Amendment and Modification below.

(c) Kansas Electric may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Base Contract.

7. Fees and Expenses; Payment Terms; Interest on Late Payments.

(a) In consideration of the provision of the Services by Kansas Electric and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Base Contract.

- (i) Any quote, estimate or contract is based on labor rates for an eight-hour day and a forty-hour week, or such shorter week period as may be regularly established and such overtime, if necessary, as may be required to substantially complete the services as specified. If Customer orders overtime work, which will

require premium pay, Kansas Electric will be entitled to add such premium pay to the Price, plus a reasonable overhead and profit.

(b) Customer agrees to reimburse Kansas Electric for all reasonable travel and out-of-pocket expenses incurred by Kansas Electric in connection with the performance of the Services.

(c) Customer shall pay all invoiced amounts due to Kansas Electric within thirty (30) business days from the date of Kansas Electric's invoice.

(d) In the event payments are not received by Kansas Electric within thirty (30) business days after becoming due, Kansas Electric may:

(i) charge interest on any such unpaid amounts at a rate of 1% per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and

(ii) suspend performance for all Services until payment has been made in full.

(iii) If any third party action is initiated to collect any sums due, Customer shall also be liable for full costs of collection including reasonable attorneys' fees and expenses.

8. Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder.

9. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Kansas Electric in the course of performing the Services, including any items identified as such in the Base Contract (collectively, the "**Deliverables**") except for any Confidential Information of Customer or Customer materials shall be owned by Kansas Electric. Kansas Electric hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

10. Confidential Information.

(a) All non-public, confidential or proprietary information of Kansas Electric, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "**Confidential Information**"), disclosed by Kansas Electric to

Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by Customer without the prior written consent of Kansas Electric. Confidential Information does not include information that is:

- (i) in the public domain;
- (ii) known to Customer at the time of disclosure; or
- (iii) rightfully obtained by Customer on a non-confidential basis from a third party.

(b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables.

(c) Kansas Electric shall be entitled to injunctive relief for any violation of this Section.

11. Representation and Warranty.

(a) Kansas Electric represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

(b) The Kansas Electric shall not be liable for a breach of the warranty set forth in this Section unless Customer gives written notice of the defective Services, reasonably described, to Kansas Electric within 365 days of the time when Customer discovers or ought to have discovered that the Services were defective.

(c) Subject to this Section, Kansas Electric shall, in its sole discretion, either:

- (i) repair or re-perform such Services (or the defective part); or
- (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND KANSAS ELECTRIC'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN HEREIN.

12. Disclaimer of Warranties. **EXCEPT FOR THE WARRANTY SET FORTH IN THE ABOVE SECTION, KANSAS ELECTRIC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A**

PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

13. Limitation of Liability.

(a) IN NO EVENT SHALL KANSAS ELECTRIC BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT KANSAS ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL KANSAS ELECTRIC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED TWO TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO KANSAS ELECTRIC PURSUANT TO THIS AGREEMENT.

(c) The limitation of liability set forth in this Section above shall not apply to
(i) liability resulting from Kansas Electric's gross negligence or willful misconduct and
(ii) death or bodily injury resulting from Kansas Electric's negligent acts or omissions.

14. Termination. In addition to any remedies that may be provided under this Agreement, Kansas Electric may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:

(a) fails to pay any amount when due under this Agreement thirty (30) business days after Customer's receipt of written notice of nonpayment];

(b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or

(c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

15. Alternative Dispute Resolution. The parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "**Dispute**"), under the provisions of this Section. The procedures set forth in this

Section shall be the exclusive mechanism for resolving any Dispute that may arise from time to time.

(a) Negotiations. A party shall send written notice to the other party of any Dispute ("**Dispute Notice**"). The parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves, including not fewer than two (2) negotiation sessions attended by senior management with the full authority to resolve the dispute. In the event that such Dispute is not resolved on an informal basis within thirty (30) business days after one party delivers the Dispute Notice to the other party, the parties shall proceed to mediation.

(b) After subparagraph (a) above, the parties may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The parties shall cooperate with one another in selecting a mediation service, and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties.

(c) The parties further agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(d) Litigation or Arbitration as a Final Resort. If the parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either party to agree to enter into mediation or agree to any settlement proposed by the mediator, within twenty (20) business days after a request for mediation, either party may commence binding arbitration in accordance with the following:

(i) Any controversy or claim arising out of or relating to this contract shall be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(ii) The number of arbitrators shall be one;

(iii) The place of arbitration shall be Wichita, Kansas;

(iv) The Arbitrator may permit limited discovery keeping in mind the benefits of arbitration, and may assess arbitration costs as deemed just and equitable.

16. Waiver. No waiver by Kansas Electric of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Kansas Electric. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Kansas Electric hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") [reasonable] control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as pandemics, public health emergencies, stay at home orders, quarantine, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns or other industrial disturbances; and (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within thirty (30) business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section, either party may thereafter terminate this Agreement upon ten (10) days' written notice.

18. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Kansas Electric. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

19. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Kansas without giving effect to any choice or conflict of law provision or rule.

22. Submission to Jurisdiction. Subject to the paragraph labeled Alternative Dispute Resolution, any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Kansas in each case located in Harvey County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

23. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth in the Base Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) [or email] or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, [Governing Law,] [Insurance,] [Submission to Jurisdiction,] and Survival.

26. Amendment and Modification. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

Effective April 1, 2022.