

Kalispel Tribal Utilities

Terms and Conditions of Service

SECTION 1: APPLICABILITY

This schedule applies to Kalispel Tribal Utilities (KTU) Rate Schedules 110, 210, 220, 300, 400, and 500.

SECTION 2: DEFINITIONS

For purposes of any applicable Rate Schedule and any Customer Contract, the terms set out below are defined as follows:

2.1. Customer's Premises means the physical location and immediately adjacent area rented, leased, occupied or used by the Customer.

2.2 Customer Service Documents means the documents defining the terms and conditions of KTU's provision of Electric Power to the Customer, comprising the Rate Schedules, the Customer Service Policies, Regulations, the Customer Contract, if any, and any other contract agreed to between KTU and the Customer setting forth the terms and conditions of any special condition of service or undertaking (such as redundant delivery points) related to provision of Electric Power by KTU to the Customer, provided that, contracts related to the provision of energy conservation services, demand response services, customer-owned generation, and leasing of transformers and other electrical equipment shall not be included in the definition of Customer Service Documents.

2.3 Electric Power means electric energy and capacity.

2.4 KTU means Kalispel Tribal Utilities.

2.5. Point of Delivery means: (a) the Point of Delivery identified in the Customer Contract, if any; (b) if no Customer Contract is in place, the Point of Delivery as defined in the Customer Service Policies; and, (c) if no Customer Contract is in place and the Customer belongs to a class for which no definition appears in the Customer Service Regulations, the Point of Delivery shall be the Customer side of KTU's meter used to serve the Customer (it being understood that KTU owns the meter and associated equipment). However, Customer may own facilities that connect the KTU meter to the secondary terminals of the KTU transformer, for which Customer has exclusive responsibility.

2.6 Rates, if not otherwise defined in the Customer Contract, mean at any given time, the then-current rates and charges, as set forth in the Rate Schedule applicable to power purchasers in the Customer's rate class, as they may be amended from time to time and approved at any time by the Kalispel Tribal Utilities Commission (the "Commission"), payable by the Customer for Electric Power and related services under the Customer Service Documents.

2.7. Regulations means KTU's Customer Service Regulations for Electric Service, or any successor thereto.

2.8. Schedules, if not otherwise defined in the Customer Contract, means KTU's Rate Schedule applicable to the Customer plus these Terms and Conditions of Service, collectively.

2.9 Term, unless otherwise specified with respect to a particular obligation undertaken by KTU in a Customer Contract, means the period during which the Customer takes Electric Power from KTU, provided that any obligation arising prior to termination of service shall remain in force until satisfied.

All capitalized terms used but not defined herein will have the respective meanings set forth in these Terms and Conditions or other applicable Rate Schedule, in the Regulations, or in the Customer Contract, if any. Unless otherwise expressly stated, the terms of the Rate Schedules shall prevail over any conflicting terms in a Customer Contract or the Regulations, and the terms of a Customer Contract shall prevail over any conflicting terms in the Regulations.

SECTION 3: TERMS AND CONDITIONS OF SERVICE; LIMITATION OF LIABILITY

(A) PAYMENTS

(i) Invoices. Promptly after the end of each calendar month during the Term, KTU will submit to the Customer an invoice for the amount due to KTU for the Electric Power delivered to the Customer during the month. The amount due will be computed from the meter readings recorded by KTU and the Rates applicable to the Customer's service, including any applicable taxes. Each invoice will set forth the amount of Electric Power delivered in the month, the Rate or Rates applied, and the amount due. The invoice shall be delivered to the address specified in the Customer's account with KTU or as set forth in the notices provision of the Customer Contract, if any.

(ii) Payment of Invoice Amounts. The amounts due under any invoice of KTU will be paid by the Customer within 14 business days of presentation, in accordance with the provisions of Customer Service Documents. The Customer shall render payment in full for all amounts due under any invoice of KTU. In the event the Customer disputes all or any portion of an invoice of KTU, the Customer will nonetheless pay the entire amount due on or before the applicable payment due date. Any amount which subsequently may be determined (whether by agreement or otherwise) not to have been properly due from the Customer will promptly thereafter be refunded by KTU to the Customer or credited against any outstanding amounts owed by Customer to KTU.

(iii) KTU Account. Payment by the Customer of the amount due under any invoice of KTU will be made by electronic funds transfer, credit card payments, Customer checks, or other means acceptable to KTU. Checks shall be sent by first-class mail or hand delivered to the address specified in KTU's invoice.

(iv) Special Undertakings by KTU. In the event that, for the purpose of providing requested service to the Customer, KTU, with the prior approval of the Customer, enters into any separate or special obligation or undertaking on behalf of the Customer, including any special conditions of service set forth in the Customer Contract, KTU and the Customer will agree on the amount of any separate rates, charges or contribution which may be payable by the Customer for or in connection therewith prior to initiation of service by KTU.

(B) FACILITIES AND EQUIPMENT

(i) Ownership and Control of Facilities. KTU will install, own, maintain and control all equipment and facilities for the distribution and delivery of Electric Power to the Customer, including but not limited to the revenue metering equipment and facilities that are located on KTU's side of the Point of Delivery ("KTU's Facilities"), and the Customer will install, maintain and control all electrical equipment and facilities, excluding KTU-owned revenue metering facilities, owned or controlled by the Customer on the Customer side of the Point of Delivery ("Customer's Facilities").

(ii) Maintenance of the Customer's Facilities. The Customer shall maintain the Customer's Facilities in proper and safe working order, and in compliance with any and all applicable national, state and local electrical codes and standards. KTU will, upon reasonable advance notice to the Customer, and subject to the Customer's safety and security rules and regulations, be entitled to inspect all or any portion of the Customer's Facilities at any time and from time to time during the Term; provided, however, that, without in any way limiting the foregoing, the Customer acknowledges and agrees that KTU will not at any time have any obligation to inspect the Customer's Facilities (or any portion thereof). Any inspection by KTU will be for the limited purpose of determining that the Customer's Facilities are compatible with KTU's Facilities and will not be made to determine whether the Customer's Facilities are installed and/or being operated as required by law, specifically including any electrical, safety or building code. Inspection by KTU will not establish or imply any duty on the part of KTU to discover or report any code violations or the existence of hazards of any nature.

(iii) Customer Impairment of KTU Service. The Customer agrees to operate the Customer's Facilities in such a manner as not to impair the electric service rendered by KTU to any other customers of KTU. In the event that KTU reasonably determines that the Customer's use of its electric equipment and facilities in any manner impairs KTU's electric service to any other customers of KTU, the Customer will promptly after notice thereof from KTU take such measures as are necessary to remedy such impairment, including but not limited to the installation of proper corrective apparatus.

(iv) KTU Disconnect Rights. In the event that, in the judgment of KTU, any violation by the Customer of Sections (2)(B)(ii-iii) of this Schedule 1 or any other provision of Customer Service Documents creates an emergency condition that threatens any person or property, including but not limited to the integrity of KTU's electrical distribution system or any of KTU's Facilities, or impairs KTU's electric service to any other customers of KTU, KTU may, at its sole option, without any liability whatsoever to the Customer or any other person and without waiving any other right which it may have under the Customer Contract or applicable law, disconnect electrical service to the Customer's Premises until such condition has been remedied to the satisfaction of KTU.

(v) No Dedication of Facilities. No undertaking by the Customer or KTU under or pursuant to any provision of Customer Service Documents will constitute or be deemed to constitute a dedication of all or any portion of the electrical system of either KTU or the Customer to the other or to the public.

(C) KTU ACCESS AND EASEMENT RIGHTS

The Customer shall grant to KTU any and all easements, entry and access rights and rights of way, including but not limited to any and all utility easements, which KTU may deem necessary or appropriate for the transmission and delivery of electricity to the Point of Delivery, and for the purposes of installation, repair, inspection, maintenance, removal or improvement of KTU's Facilities for service to Customer's Premises or to other customers. The Customer agrees to provide suitable space and facilities at the Customer's Premises for the installation of KTU's electricity meters and associated equipment,

and hereby grants to KTU all rights of access to and entry upon the Customer's property, which KTU may deem necessary or appropriate for purposes of reading, inspection, maintenance, repair or removal of such meters and associated equipment. Upon the expiration or termination of the service for any reason, KTU will be entitled to remove any and all of KTU's Facilities from the Customer's Premises. The Customer agrees to prepare, execute, acknowledge and record any and all instruments and agreements, including grants of easements, which KTU may deem necessary or appropriate to confirm and better assure provisions of this section.

(D) FORCE MAJEURE

(i) Suspension of Obligations. Neither Party will be liable to the other for, or be considered to be in breach of or in default under the Customer Service Documents because of, any failure or delay in performance by such Party under the Customer Service Documents to the extent such failure or delay is caused by or results from any cause or condition which is beyond such Party's reasonable control, or which such Party is unable to prevent or overcome by exercise of reasonable diligence (any such cause or condition, a "Force Majeure"), including but not limited to: failure or threat of failure of facilities or equipment; fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other natural disasters or acts of the elements; court order and act, or failure to act, of civil, military or governmental authority; strike, lockout and other labor dispute; epidemic, riot, insurrection, sabotage, cyber-attack, war and other civil disturbance or disobedience; labor or material shortage; failure of supply to KTU of Electric Power which KTU intended to use in its service to the Customer; and electric disturbance originating in, transmitted through, or otherwise affecting KTU's electric facilities or any electric facilities with which KTU's facilities are interconnected.

(ii) Notice; Required Efforts to Resume Performance. Except where KTU is responding to an outage caused by a storm, accident, or electrical disturbance or disruption, any Party claiming Force Majeure will give the other Party maximum practicable advance notice of any failure or delay resulting from a Force Majeure, and will use its reasonable best efforts to overcome the Force Majeure and to resume performance as soon as possible; provided, however, that nothing in the Customer Service Documents will be construed to require either Party to settle any strike or labor dispute in which it may be involved.

(iii) No Excuse of Payment Obligations. Notwithstanding any other provision of the Customer Service Documents, in no event will a Force Majeure excuse a Party's failure or delay to pay any amounts due and owing to the other Party under or pursuant to the Customer Service Documents.

(E) SERVICE INTERRUPTIONS AND SUSPENSIONS

(i) Customer Responsible for Protective Equipment. KTU will use reasonable diligence to provide uninterrupted service to the Customer. However, the Customer will be responsible for installing any and all electrical protection equipment, such as back-up generators, surge protection devices, fusing, circuit breakers, relay protection controls and single phase protection (including but not limited to suitable protective apparatus on all motor installations to protect against single phasing of three-phase motors), that may be necessary or appropriate to prevent damage from reasonably foreseeable potential electrical disturbances such as reduced voltage, loss of service, over voltage, loss of phase wire and short circuit faults.

(ii) Notwithstanding any other provision of the Customer Service Documents, neither KTU nor any electric utility or federal power marketing agency with which KTU is interconnected will be in breach of or default under the Customer Service Documents, or have any responsibility or liability whatsoever to the Customer or any other person under the Customer Service Documents or otherwise, for or in connection with any service interruption, suspension, curtailment or fluctuation or disturbance of electric energy originating outside and passing through the electrical system of KTU, whatever the cause, or any service interruption, suspension, curtailment or fluctuation or disturbance of electric energy originating inside the electrical system of KTU caused by or resulting from any cause other than the gross negligence or willful misconduct of KTU. The Customer hereby waives and releases KTU and its officers, management, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from any and all liabilities, losses, claims, damages, costs, expenses, demands, fines, judgments and penalties in any manner caused by, resulting from or arising out of or in connection with any service interruption, suspension, curtailment or fluctuation or disturbance of electrical energy originating in, or passing through, or in parallel with, or intended for delivery to, the electrical system of KTU, except to the extent (and only to the extent) that such interruption, suspension, curtailment, fluctuation or disturbance originated inside the electrical system of KTU and was caused by the gross negligence or willful misconduct of KTU. Notwithstanding any other provision of the Customer Service Documents, in no event will the liability of KTU or its officers, management, employees and agents or any of the heirs, personal representatives, successors and assigns of any of the foregoing for any interruption, suspension, curtailment, fluctuation or disturbance originating inside the electrical system of KTU and caused by the gross negligence or willful misconduct of KTU exceed, in the aggregate, the aggregate amount paid by the Customer to KTU for and with respect to Electric Power purchased from KTU under the Customer Contract during the six months immediately preceding such interruption, suspension, curtailment, fluctuation or disturbance. Without in any way limiting the foregoing, in the event that any service interruption, suspension, curtailment or fluctuation or disturbance of electric energy extends for a period in excess of 24 continuous hours, KTU will reduce the Customer Charge for such month on a pro-rata basis in proportion to the length of such service interruption, suspension, curtailment or fluctuation or disturbance of electric energy.

(iii) Emergency Interruptions. KTU will have the right, at any time during the Term, without any liability whatsoever to the Customer or any other person, to interrupt, suspend or curtail service to the Customer in the event that KTU determines that a failure to do so may endanger any person or property, or is otherwise contrary to prudent utility practice as such term is used in the electric utility industry at the time of such interruption, suspension or curtailment. KTU will give the Customer the maximum practicable advance notice of any such action, and will resume service to the Customer as soon as possible after the condition giving rise to the endangerment to person or property or the violation of prudent utility practice, as applicable, is resolved.

(F) INDEMNIFICATION

(i) Indemnification by Customer. Except as otherwise provided in the Customer Service Documents, the Customer hereby indemnifies and agrees to hold harmless and release KTU and each and all of its officers, management, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all liabilities, losses, claims, damages, costs, demands, fines, judgments and penalties, together with reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any of the foregoing ("Covered Liabilities") caused by, resulting from, or arising out of or in connection with (i) any of the Customer's Facilities or any other facilities or equipment of the Customer, (ii) any negligence or intentional misconduct of the Customer or

any of its officers, employees, agents, contractors or subcontractors, or (iii) any failure of the Customer duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the Customer. In any and all claims against KTU by any employee of the Customer, the indemnification and hold harmless obligation herein will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Customer under workers compensation acts, disability benefit acts, or other employee benefit acts; and the Customer hereby specifically and expressly waives the immunity of the Customer under such acts; provided, however, that the Customer's waiver of immunity by the provisions of this section extends only to claims against KTU by or on behalf of an employee of the Customer, and does not include, or extend to, any claims by the Customer's employees directly against the Customer.

(ii) Indemnification by KTU. Except as otherwise provided in the Customer Service Documents, KTU hereby indemnifies and agrees to hold harmless and release the Customer and its directors, officers, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all Covered Liabilities caused by, resulting from, or arising out of or in connection with (i) any of KTU's Facilities, (ii) any negligence or intentional misconduct of KTU or any of its officers, employees, agents, contractors or subcontractors, or (iii) any failure of KTU duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of KTU. In any and all claims against the Customer by any employee of KTU, the indemnification and hold harmless obligation herein will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for KTU under workers compensation acts, disability benefit acts, or other employee benefit acts; and KTU hereby specifically and expressly waives the immunity of KTU under such acts; provided, however, that KTU's waiver of immunity by the provisions of this section extends only to claims against the Customer by or on behalf of employees of KTU, and does not include, or extend to, any claims by KTU's employees directly against KTU.

(G) LIMITATION ON LIABILITY.

Notwithstanding any other provision of the Customer Service Documents, neither the Customer nor KTU will be liable under or pursuant to the Customer Service Documents for indirect, incidental, special, exemplary, punitive or consequential damages, including but not limited to damages for lost profits, revenues or benefits, loss of use of property, cost of capital, cost of purchased or replacement power or (except only as and to the extent otherwise expressly provided in a Customer Contract) claims for service interruption, even if such Party has been advised of the possibility or existence of such damages.

(H) DEFAULT AND TERMINATION.

(i) Default by the Customer. If any of the following events will occur:

(a) Material breach or material default by the Customer in the performance of any term, condition, covenant or agreement of the Customer Service Documents to be performed by the Customer, which breach or default: (i) if reasonably capable of being cured within 30 days, is not cured within 30 days after notice to the Customer from KTU; or (ii) if not so capable of being cured within such 30-day period, the Customer does not commence to cure within such 30-day period or does not diligently proceed thereafter to cure with reasonable promptness; or

(b) A repeated failure or refusal by the Customer to perform, substantially in accordance with the Customer Service Documents, any or all of its obligations under the Customer Service Documents, thereby committing a material breach which substantially impairs the value of the Customer Contract to KTU, which failure or refusal recurs after notice to the Customer from KTU that such material breach will, if repeated, constitute a default entitling KTU to terminate service to the Customer; or

(c) The institution against the Customer of any proceeding seeking to adjudicate the Customer as a bankrupt or insolvent, or the making by the Customer of a general assignment for the benefit of its creditors, or the appointment of a receiver on account of the insolvency of the Customer, or the filing by or against the Customer of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, composition, or readjustment of debts and, in the case of any such proceeding instituted against (but not by) the Customer, such proceeding is not dismissed within 60 days after such filing and notice to the Customer from KTU;

then, in such event, KTU will be entitled, at its sole option, and without prejudice to any other rights or remedies available to KTU under the Customer Service Documents or applicable law, to terminate the Customer Service Documents and each and all of its obligations thereunder, effective immediately upon notice to the Customer, without liability to KTU or any other person, except as otherwise expressly provided in this section.

(ii) Default by KTU. If any of the following events will occur:

(a) Material breach or material default by KTU in the performance of any term, condition, covenant or agreement of the Customer Service Documents to be performed by KTU, which breach or default: (i) if reasonably capable of being cured within 30 days, is not cured within 30 days after notice to KTU from the Customer; or (ii) if not so capable of being cured within such 30-day period, KTU does not commence to cure within such 30-day period or does not diligently proceed thereafter to cure with reasonable promptness; or

(b) A repeated failure or refusal by KTU to perform, substantially in accordance with the Customer Service Documents, any or all of its obligations under the Customer Service Documents, thereby committing a material breach which substantially impairs the value of the Customer Contract to the Customer, which failure or refusal recurs after notice to KTU from the Customer that such material breach will, if repeated, constitute a default entitling the Customer to terminate the Customer Contract.

Then, in such event, the Customer will be entitled, at its sole option, and without prejudice to any other rights or remedies available to the Customer under the Customer Service Documents or applicable law, to terminate the Customer Service Documents (as they apply to Customer) and each and all of its obligations thereunder, effective immediately upon notice to KTU, without liability to the Customer or any other person, except as otherwise expressly provided in this section.

(iii) Provisions Exclusive for Termination for Breach. This Section (2)(H) provides the exclusive means to terminate the Customer Service Documents for breach absent agreement between the Parties; provided, however, that without in any way limiting the foregoing, nothing in this section will preclude or limit any other remedy which a Party may have at law or in equity for breach by the other Party.

Section 4: TAXES

(A) Taxes. In addition to the Rates payable by the Customer hereunder for Electric Power, the Customer will pay all taxes, which are applicable for or with respect to such purchase of Electric Power, at the applicable rates.

(B) Tax Increases or Surcharges. In the event that federal, state or local regulatory changes during the Term result in an increase in any taxes or surcharges payable by KTU for or with respect to sales of Electric Power or other services provided under or in connection with the Customer Service Documents, KTU will, in accordance with any and all requirements of applicable law and of the applicable policies and procedures of KTU, and effective upon notice to the Customer, be entitled to increase the Rates payable by the Customer hereunder by an amount which KTU determines on a fair and nondiscriminatory basis to be the amount of such increased taxes or surcharges attributable to such sales or services under or in connection with the Customer Service Documents.

SECTION 5: EFFICIENT USE OF ENERGY

The Customer will consider installing cost-effective energy efficiency measures and will consider buying cost-effective energy efficient equipment when purchasing new equipment or replacing existing equipment. KTU will offer suggestions for efficient energy use and inform the Customer of financial and technical assistance available through KTU or regional programs for energy conservation and efficiency purposes.

SECTION 6: INDEPENDENT CONTRACTORS

The Parties to the Customer Service Documents are independent contractors and will not be deemed to be partners, joint venturers, franchisors, franchisees, or agents of each other for any purpose whatsoever under or in connection with the Customer Service Documents.

SECTION 7: ASSIGNMENT; BINDING AGREEMENT

(i) Assignment Prohibited Without Consent. The Customer shall not, without the prior written consent of KTU, which consent will not be unreasonably withheld, assign, pledge or transfer all or any part of, or any right or obligation under, the Customer Service Documents, whether voluntarily or by operation of law. Any attempted assignment, pledge or transfer of all or any part of, or any right or obligation under, the Customer Service Documents by Customer, in violation of the foregoing requirements will be null and void.

(ii) Contract Binding on Successors and Assigns. The Customer Service Documents are binding on and will inure to the benefit of KTU and the Customer and their respective successors and assigns and legal representatives.

SECTION 8: NO THIRD-PARTY BENEFICIARIES

Except as expressly set forth in these Terms and Conditions, none of the provisions of the Customer Service Documents will inure to the benefit of or be enforceable by any third party.

SECTION 9: ENTIRE AGREEMENT

The Customer Service Documents set forth the entire agreement of the Parties and supersede any and all prior agreements with respect to the subject matter of the Customer Service Documents. The rights and obligations of the Parties thereunder will be subject to and governed by the Customer Service Documents. The headings used herein are for convenience of reference only and will not affect the meaning or interpretation of the Customer Service Documents.

SECTION 10: WAIVERS

Except as otherwise provided herein, or as agreed by KTU and the Customer, no provision of the Customer Service Documents may be waived, except if documented or confirmed in writing. No waiver at any time by a Party of any right with respect to a default under the Customer Service Documents, or with respect to any other matter arising in connection therewith, will be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified in the Customer Service Documents. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice will not be considered a waiver with respect to any subsequent notice required under the Customer Service Documents.

SECTION 11: INVALID PROVISION

The invalidity or unenforceability of any provision of the Customer Service Documents will not affect the other provisions of the Customer Service Documents, and the Customer Service Documents will be construed in all respects as if such invalid or unenforceable provisions were omitted.

SECTION 12: FURTHER ASSURANCES

Each Party hereto covenants and agrees to do all things necessary or advisable, including but not limited to the preparation, execution, delivery and recording of any instruments or agreements, in order to confirm and better assure the intent and purposes of the Customer Service Documents.

SECTION 13: GOVERNING LAW; VENUE

The Customer Service Documents shall be governed by and construed in accordance with the laws of the Kalispel Tribe of Indians (regardless of the laws that might otherwise govern under applicable principles of conflicts of law). Any lawsuit or judicial action or proceeding arising out of or relating to the Customer Service Documents must be heard in Kalispel Tribal Court, subject to all applicable requirements of notice and exhaustion of remedies at KTU.

SECTION 14: RULES OF CONSTRUCTION

Whenever in the Customer Service Documents the context so suggests, references to the masculine shall be deemed to include the feminine, references to the singular shall be deemed to include the plural, and references to "or" shall be deemed to be disjunctive but not necessarily exclusive. No provision of the Customer Service Documents shall be construed in favor of or against either any Party by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by

reason of the extent to which such provision or any other provision or provisions of the Customer Service Documents is or are inconsistent with any prior draft thereof.