

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 17 2015

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

THE APPLICATION OF KENERGY CORP.) CASE NO. 2014-00376
FOR AN ORDER ISSUING A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY)

KENERGY CORP.'S SUPPLEMENTAL RESPONSES TO DATA REQUESTS

KENERGY CORP. ("Kenergy") submits the attached Responses to Data
Requests.

DORSEY, GRAY, NORMENT & HOPGOOD
318 Second Street
Henderson, KY 42420
Telephone (270) 826-3965
Telefax (270) 826-6672
Attorneys for Kenergy Corp.

By



J. Christopher Hopgood
chopgood@dkgnlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing original plus ten copies was served by mailing the original to the Kentucky Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 by Federal Express on this 16th day of March, 2015.



Counsel for Kenergy Corp.

CASE NO. 2014-00376
VERIFICATION

I hereby verify that the supplemental response to Commission Staff's Initial Request for Information Item 4(g) in the above case is true and correct to the best of my knowledge and belief.



John Newland

STATE OF KENTUCKY

COUNTY OF Henderson

The foregoing was signed, acknowledged and sworn to before me by JOHN NEWLAND, this 16th day of March, 2015

My commission expires 5-3-2018



Notary Public, State of Kentucky at Large

(seal)

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KENERGY CORP.

SUPPLEMENTAL RESPONSE OF KENERGY CORP.

TO INITIAL REQUEST FOR INFORMATION OF COMMISSION STAFF

CASE NO. 2014-00376

4(g). Does Kenergy anticipate selecting a meter which could remain in service as new technology becomes available through a software upgrade?

Response 4(g) Yes, Kenergy has a firm commitment from Landis+Gyr that it will support the system for a minimum of 15 years. All meters installed in this project are able to be remotely upgraded. **See the attached contract provided herein under Petition for Confidentiality.**

Witness) John Newland

MASTER PURCHASE AND SERVICES AGREEMENT

THIS MASTER PURCHASE AND SERVICES AGREEMENT is effective as of the last signature date below ("**Effective Date**") and is between Kenergy Corp., a customer-owned electric distribution cooperative, ("**Kenergy**") with principal offices located at 6402 Old Corydon Road, Henderson, KY 42420, and Landis+Gyr Technology, Inc., a Delaware corporation ("**Landis+Gyr**") with principal place of business at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022.

WHEREAS, Kenergy desires to engage Landis+Gyr to perform Services and to provide Products to Kenergy for the provision of a Gridstream RF solution as referenced in this Agreement for Kenergy's deployment and implementation of the Gridstream RF AMI system.

WHEREAS, Landis+Gyr will supply to Kenergy the Products and perform the Services as set forth herein and as described in the attached Exhibit(s) to this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1.0 Definitions

The terms listed below are defined as follows:

- 1.1 "**Agreement**" means this Master Purchase and Services Agreement, including all exhibits, which is by and between Kenergy and Landis+Gyr. In the event there are any conflicting provisions or requirements among the Agreement documents, the provisions and requirements of the Agreement documents shall be enforced in the following order of descending priority (i) any amendment to this Agreement, and (ii) the body of this Agreement.
- 1.2 "**Collector**" means the Landis+Gyr two-way radio base station that transmits data between the Meters, Routers and the data center.
- 1.3 "**Confidential Information**" means any information, technical data, or know-how marked or otherwise explicitly identified as proprietary or confidential by the disclosing party or any of its affiliates including, but not limited to, the disclosing party or any of its affiliate's trade secrets, commercially sensitive or proprietary information, research, development, inventions, processes, methods, specifications, protocols, designs, drawings, diagrams, know-how, engineering, marketing data, techniques, documentation, Kenergy information, pricing information, procedures, data concepts, business and marketing plans or strategies, financial information, business opportunities, requests for proposals or information, software and related documentation, hardware information, services and products (both existing and planned), and product roadmaps disclosed by either party, any of its affiliates, either directly or indirectly in any form whatsoever, including in writing, orally, machine readable form or through access to party's premises.
- 1.4 "**Defective Equipment**" means any equipment that does not perform to Landis+Gyr's specifications and the other requirements of this Agreement.
- 1.5 "**Kenergy Data**" means (i) any and all end users of Kenergy's information relating to electricity, load profile, billing history, or credit history that is or has been obtained or compiled by Kenergy in connection with supplying electric services, gas services and/or water services to that Kenergy or group of Kenergy ("**Personal Information**") (regardless of the media in which it is contained) that may be disclosed at any time to Landis+Gyr or to the Field Tools by Kenergy or its employees, agents, consultants, contractors, suppliers or Kenergy in anticipation of, in connection with, or incidental to Landis+Gyr's performance of the Services for or on behalf of Kenergy; (ii) any and all Personal Information created, obtained, used or accessed by Landis+Gyr (or the Field Tools) in its performance of the Services, or derived from such information or materials; and (iii)

all data and information of Kenergy, its employees or customers.

- 1.6 **“Effective Date”** means the obligations of the Parties under the Agreement will not commence until the Effective Date. The Effective Date will occur on the date of execution of this Agreement.
- 1.7 **“Endpoint”** means a sensory-type device, e.g., electric meter, DA device, load control switch, etc., that is equipped with an AMI module.
- 1.8 **“Equipment”** means Network Equipment, Endpoints and/or hardware that Kenergy purchases from Landis+Gyr.
- 1.9 **“Event of Bankruptcy”** means any of the following events or circumstances with respect to a party:
 - a) That party makes a general assignment for the benefit of creditors;
 - b) That party institutes proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it;
 - c) That party is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent;
 - d) That party seeks reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or
 - e) That party has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party’s property or providing for the liquidation of such party’s property or business affairs.
- 1.10 **“Field Tools”** means the Landis+Gyr proprietary field tools named RadioShop and Endpoint Test Manager for RF.
- 1.11 **“Firmware”** means software embedded in and provided with the Equipment.
- 1.12 **“First Article Testing”** (FAT) means that for each meter form that is to be used during the deployment of Landis+Gyr’s AMI solution, a quantity of four meters of each type are set up and run through Landis+Gyr’s production process and validated for physical and meter programing accuracy by both Landis+Gyr and Kenergy. Once the results of the meter testing are approved, Landis+Gyr’s standard production runs of any quantity can then be sent through Landis+Gyr’s manufacturing facility.
- 1.13 **“Network Equipment”** means the Collectors, Routers, and radios that are in these devices for RF that are or will be under this Master Agreement physically deployed in the Kenergy service territory. The term does not include the system backhaul, the network operations center, any system equipment that is not located in the Kenergy service territory, Meters, or any aspect or component of the system components that is not used by Kenergy.
- 1.14 **“Meter”** means a device that measures the supply of electricity provided by Kenergy to Kenergy’s consumer.
- 1.15 **“Products”** means Equipment, Firmware, Software, and/or any other items purchased or licensed from Landis+Gyr as described on Exhibit A attached hereto, if any, or that Kenergy purchases or licenses from Landis+Gyr and is not described on Exhibit A.
- 1.16 **“Purchase Order”** means a Kenergy purchase order offered by Kenergy, to purchase Products from Landis+Gyr that Landis+Gyr accepts. Each Purchase Order will reference this Agreement as the terms and conditions of the Purchase Order.
- 1.17 **“Router”** means Landis+Gyr-furnished Network Equipment that provides intermediate

communication and data processing between Endpoints and Collectors. Routers may also communicate with other Routers.

- 1.18 "Services" means project management services, training, project delivery services, and/or other services described in Exhibit A.
- 1.19 "Software" means computer application and programs in any form that Kenergy licenses from Landis+Gyr, including Command Center head-end, RadioShop, Endpoint Test Manager (ETM) and any other software referenced in Exhibit A.
- 1.20 "System" means Landis+Gyr's Equipment, Firmware, Field Tools and Software used by the Kenergy to monitor and manage its consumer's usage of Kenergy offerings.
- 1.21 "System Acceptance Test" means a pre-defined set of test criteria will be performed on meters that have been deployed and have successfully registered in the AMI system to determine if desired results are achieved. System Acceptance Test will be performed for Phase I and upon completion of full deployment.
- 1.22 "Third Party Products" means, if any, goods and software that Kenergy purchases or sub-licenses from Landis+Gyr that are not manufactured or provided by Landis+Gyr that display the logo or copyright of another manufacturer, or that are not proprietary to Landis+Gyr.
- 1.23 "Unavailable Endpoint" means an Endpoint that is not available to provide reading services due to one of the following reasons: (i) the Endpoint is damaged, (ii) the Endpoint has no power supplied to it, (iii) the Endpoint, related Network Equipment, and/or the Command Center head-end software has not been maintained by Kenergy, or (iv) the information for such Endpoint does not have up to date Kenergy data at the Command Center head-end software regarding the change-out, removal or change in status.

2.0 Orders; Cancellations and Modifications

- 2.1 Equipment Deliveries The basis for the contract shall be the scope of equipment and delivery schedule as outlined in Exhibit B.
- 2.2 Change Orders All changes to the scope of work, performance, costs or delivery schedules shall be documented by a change order. Change orders must be agreed to and signed by both parties. Signed change orders will be deemed amendments to this Agreement and are incorporated into this Agreement by reference. Execution of the requested work cannot begin until both parties have accepted the change order in writing.
- 2.3 Cancellation and Modifications. Kenergy may, without penalty, cancel or reduce an Equipment Order on written notice to Landis+Gyr no later than sixteen (16) weeks prior to scheduled delivery of the Equipment Order. Kenergy may not cancel or modify an Equipment Order within sixteen (16) weeks prior to delivery. Notwithstanding the foregoing, cancellation charges do not apply to Software or Services Orders.
- 2.4 Equipment Intellectual Property. Landis+Gyr retains ownership of all intellectual property rights in the Equipment. Kenergy agrees that Kenergy shall not, and that Kenergy shall not allow any third party, to attempt to reverse engineer, de-compile, or disassemble the Equipment or the Firmware or otherwise discover the trade secrets in the Firmware for any reason.

3.0 Shipment

- 3.1 Shipments. Landis+Gyr will ship or deliver Equipment to Kenergy's warehouse or other designated location. Landis+Gyr will be responsible for shipping all Equipment to Kenergy [REDACTED]. Transfer of title and risk of loss shall transfer to Kenergy upon [REDACTED].

Kenergy agrees to inspect Equipment within [REDACTED] upon receipt and to promptly notify Landis+Gyr of any defects. Kenergy will be deemed to have accepted the Equipment unless Kenergy notifies Landis+Gyr [REDACTED] after receipt of the Equipment that the Equipment is rejected. The acceptance of any Equipment by Kenergy shall not preclude the subsequent removal thereof if such Equipment shall be found to be defective after installation; in such event, the Agreement's warranty terms shall apply.

4.0 Prices and Taxes

4.1 Prices. The sum of the System and services that comprise of the [REDACTED] as represented in Exhibit A, Appendix 1, Kenergy's Purchase Order will state Product prices and, if the ordered Product is a Product described on Exhibit A hereto, if any, the Purchase Order will state the applicable price set forth thereon. If the Purchase Order is for a Product not set forth on Exhibit A, the price will be Landis+Gyr's then-current price. Landis+Gyr may increase Kenergy's price for items ordered by Kenergy but not included in Exhibit A if it increases its price after it accepts the Purchase Order, and the Purchase Order specifies delivery more than one hundred twenty (120) days after the price increase becomes effective. Landis+Gyr shall notify Kenergy of the price increase, and Kenergy shall have the option of cancelling or otherwise modifying its order, without penalty. Also, price increases for Services or Software licensed for a periodic fee will apply to subsequent billing periods. The above notwithstanding, set forth in Exhibit A are unit prices for Products contemplated in the event Kenergy expands its system.

4.2 Price Adjustment for Pricing in Exhibit A. Pricing by Landis+Gyr set forth in Exhibit A will remain firm through [REDACTED], at which time pricing set forth in the pricing table in Exhibit A shall be subject to an annual increase equal to the percentage annual adjustment in the CPI. The CPI will be obtained from U.S. Bureau of Labor Statistics (www.bls.gov/cpi) and is designated as of the June-to-June twelve-month percentage change to the Consumer Price Index – Urban Wage Earners and Clerical Workers, Not seasonally adjusted.

4.3 Taxes and Other Charges. Unless otherwise stated, Product and Services prices do not include shipment and installation charges, charges associated with preparing the Kenergy site; and all taxes that relate to Kenergy's acquisition or use of Products and Services, including sales, use, VAT and property (ad valorem) taxes, other governmental charges and taxes, and assessments after audit. Sales tax and freight will be added to the invoices as applicable. Local sales tax is estimated to be 6% should Kenergy be subject to that tax. Incremental shipping charges may apply for less than full truck load quantities. Kenergy agrees to pay these charges and taxes, except for taxes based on Landis+Gyr's net income. If Kenergy qualifies for tax exemptions, Kenergy must provide Landis+Gyr with appropriate exemption documentation.

5.0 Invoice and Payment

5.1 Invoice and Payment. Landis+Gyr will issue invoices to Kenergy for all amounts owed to Landis+Gyr hereunder. Invoices (i) for Equipment will be issued upon shipment of the Equipment, (ii) for Services shall be issued upon performance of the Services; and (iii) for Software license in advance of delivery. Payment is due within [REDACTED] of the invoice date. Late payments will be subject to interest from the due date of one percent (1%) per month.

5.2

[REDACTED]

6.0 Software

- 6.1 Firmware License. The Firmware is licensed to Kenergy, not sold. Kenergy is granted a non-transferable, non-exclusive license to use the firmware solely in connection with Kenergy's use of the Equipment during the term of this Agreement and for use solely with Gridstream communication network. Kenergy understands and agrees that it is not permitted to distribute the firmware in any form, or to use the firmware except as it is embedded in the Equipment.
- 6.2 License to Field Tool Software and Software. Landis+Gyr hereby grants to Kenergy a non-exclusive, non-sublicensable, non-transferable limited license to use the Field Tool Software and Software (collectively, the "**Software**") in object code form only in the Kenergy service territory on the terms of this license. Landis+Gyr hereby licenses the use of Software by Kenergy solely for use in conjunction with Landis+Gyr Systems. Kenergy agrees that Kenergy shall not and that Kenergy shall not allow any third party (i) to attempt to reverse engineer, de-compile, or disassemble the Software or otherwise discover the trade secrets in the Software for any reason, (ii) to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs without express permission from Landis+Gyr. Software is also subject to the license terms included in schedules or agreements executed for specific Software if any. Kenergy agrees not to copy Software without express written authorization from Landis+Gyr, except that Kenergy may copy Software as a part of file backups or archivals. Kenergy must reproduce and include the copyright notices on any such copies. Landis+Gyr (and/or its third party licensors) retains title to the original Software provided to Kenergy and any copies made from it. Kenergy's employees, consultant and contractors (if any) shall be deemed authorized users of the Software provided that each such employee, consultant and/or contractor has agreed to comply with the terms hereof, and further provided that Kenergy remains liable for any breach of the terms of the license by such employee(s), consultant(s) or contractor(s).
- 6.3 Intellectual Property Rights. All proprietary and intellectual property rights in and to the Firmware and Software provided hereunder are owned by Landis+Gyr (or its third party licensors) and Landis+Gyr (and/or its third party licensors) retains title to the original Firmware and Software provided to Kenergy and any copies made from it.

7.0 Services; Solution Testing

- 7.1 Services. Landis+Gyr will provide the Services as set forth in Exhibit A. Exhibit A sets forth the system design criteria, description of the Services, pricing, duration and any other terms specific to the Services described therein. The project services start at the project kickoff meeting mutually agreed upon and conclude twelve (12) months thereafter. Additional services beyond twelve (12) months can be performed on a time and materials basis or based on a mutually agreed upon scope of work.

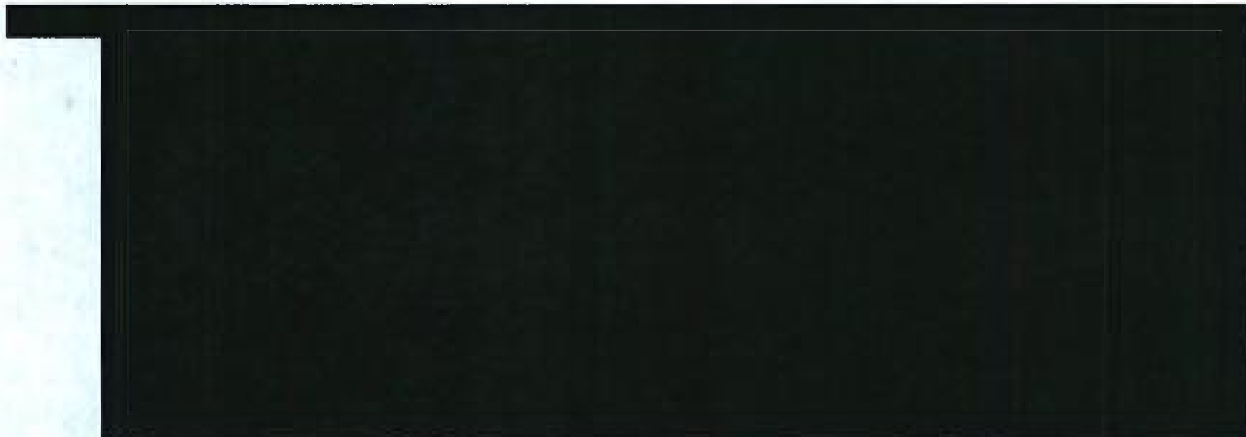
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8.0 Limited Warranties



- 8.1 Software Warranty. To the extent applicable, Landis+Gyr warrants that all Landis+Gyr Software will materially comply with the software documentation provided for a period of ninety (90) days from the date of delivery. As sole and exclusive remedy for nonconforming software, Landis+Gyr will use commercially reasonable efforts to remedy the performance issue associated with the Software. The warranties provided by Landis+Gyr do not extend to third party software that is identified as being sublicensed to Kenergy by Landis+Gyr hereunder. To the extent as permitted, Landis+Gyr will "pass through" or assign to Kenergy the warranties provided by such third party. Landis+Gyr will provide those warranties in writing at the time of delivery.
- 8.2 Services Warranty. Landis+Gyr warrants that it will provide Services in a professional workmanlike manner, and the Services warranty period shall be ninety (90) days after performing a Service. Kenergy's sole remedy for breach of this warranty is to have Landis+Gyr reperform the Services or to receive a refund of any fees paid in the event that reperforming the Services is not possible.



[REDACTED]

[REDACTED]

8.5 Warranty Limitations and Exclusions. Landis+Gyr's Products warranty obligations do not apply to the extent caused by: Kenergy's or a third party's infrastructure or data; Kenergy's or a third party's misuse of Products; installation by Kenergy or a third party not in compliance with training or manuals provided by Landis+Gyr; operation or use by Kenergy or third parties not in compliance with applicable training, manuals or specifications provided by Landis+Gyr; Kenergy's or a third party's neglect, modification, accident, vandalism or other intentional damage; exposure to adverse conditions exceeding performance levels required by applicable specifications; or any other limitation or exclusion described herein.

8.6 **DISCLAIMER. OTHER THAN THE EXPRESS WARRANTIES SET FORTH HEREIN, LANDIS+GYR MAKES NO REPRESENTATIONS OR IMPLIED WARRANTIES TO KENERGY WITH RESPECT TO ANY EQUIPMENT, NETWORK EQUIPMENT, FIELD TOOLS, SOFTWARE, FIRMWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR WARRANTIES THAT MAY BE IMPLIED BY TRADE USAGE OR CUSTOM.**

8.7 Third Party Products. The warranties provided by Landis+Gyr do not extend to third party products that are manufactured by a third party. For avoidance of doubt, Landis+Gyr makes no representations or warranties with respect to any third party product. Landis+Gyr will use commercially reasonable efforts to assign to Kenergy the warranties provided by such third party.

8.8 Exclusive Remedies. Each party's rights and remedies set forth in this Section are exclusive and in lieu of all other rights and remedies.

9.0 **General Indemnity; Infringement Indemnity**

9.1 General Indemnity. Each party (the "**Indemnifying Party**") will indemnify, hold harmless and defend the other party and its officers, directors, shareholders, agents, employees, and representatives (collectively, the "**Indemnified Party**") from all third party claims, and related liabilities, fines, interest, costs, expenses and damages (including reasonable attorneys' fees) incurred by the Indemnified Party (collectively, the "**Indemnified Losses**"), for any property damage, injury, death, loss or destruction of any kind to persons or property, to the extent the damage, injury, death, loss or destruction arises out of or is related to the conduct, negligence, willful misconduct or misrepresentation on the part of the Indemnifying Party or any of its servants, representatives, agents, employees or contractors.

9.2 Infringement Indemnity by Landis+Gyr. Landis+Gyr agrees to indemnify, hold harmless and defend Kenergy and its officers, directors, shareholders, agents, employees, and representatives from and against any third party claim alleging that any Products or any resulting use of the Products constitutes an infringement of any patent or copyright or misappropriation of any trademark or trade secret, or constitutes a breach of any intellectual property right of any third party.

9.3 If the sale or use of any of the Products is enjoined in connection with any such claim, Landis+Gyr agrees to, at its option, without cost or expense to Kenergy:

- (a) procure for Kenergy and its customers the right to use such Products;
- (b) replace such Products with equivalent non-infringing products; or
- (c) modify such Products so they become non-infringing.

Notwithstanding the foregoing, Landis+Gyr will have no liability pursuant to this Section or otherwise for any claim of infringement to the extent such a claim is caused by (i) the misuse or unapproved modification of the Products by or at the direction of Kenergy (ii) the failure of Kenergy to use corrections or enhancements made available to Kenergy at no cost to Kenergy or (iii) use of the Products in combination with other equipment or software not provided by Landis+Gyr but only to the extent such claim is attributable to the combination or other equipment or software and if such claim would have been avoided but for such combined use. The parties agree that Kenergy will consult with Landis+Gyr, as the subject matter expert in this space, before making any unilateral change(s) to the operating environment. If Landis+Gyr advises Kenergy that making the proposed change(s) would likely lead to an infringement claim and Kenergy moves forward with those changes despite Landis+Gyr's advisement, then Landis+Gyr will have no liability pursuant to this Section or otherwise for any resulting claim of infringement. This Section 9.3 sets forth the entire liability of Landis+Gyr with respect to patent infringement.

9.4 Indemnification Procedures. In the event any third party asserts any claim with respect to any matter as to which the indemnities in this Agreement may relate, the Indemnified Party shall give written notice to the Indemnifying Party in writing (electronic mail acceptable where recipient specifically confirms receipt of notice) within twenty (20) days upon becoming aware of claim. The Indemnified Party shall have the right at its election to participate in the defense or settlement of the third party claim at its own expense by giving prompt written notice to the Indemnified Party. If the Indemnifying Party does not give such notice and does not proceed diligently so to defend the third party claim promptly after receipt of the notice of the third party claim, the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make as to those claims and shall reimburse the Indemnified Party for its losses and expenses related to the defense or settlement of the third party claims but only if it is determined that the Indemnifying Party's indemnity and defense obligations under this Agreement covers such third party claim. The parties shall cooperate in defending against any asserted third party claims. In the Indemnifying Party's defense of the third party claim, the following provisions shall apply:

- (a) the Indemnified Party shall be entitled to participate in (but not control) the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim;
- (b) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim, if pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief would be imposed against the Indemnified Party; and
- (c) the Indemnifying Party shall not permit any lien, encumbrance or other adverse charge to exist upon any asset of the Indemnified Party or its affiliates.

9.5 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify, hold harmless or defend Indemnified Party against any claim (whether direct or indirect) if such claim or corresponding Losses arise out of or result from, in whole or in part, Indemnified Party's:

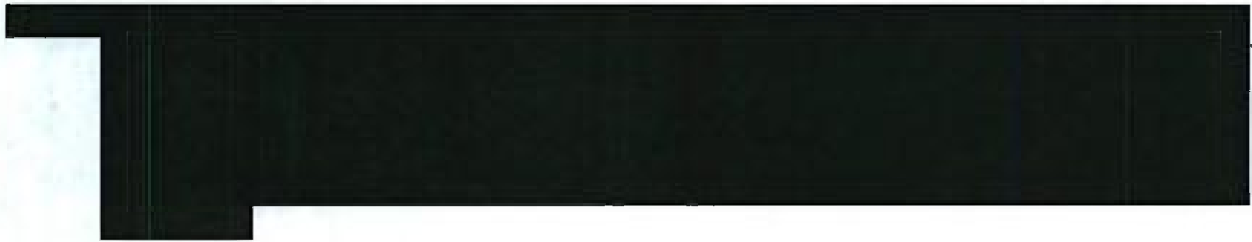
- (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

- (b) use of the Products in any manner that does not materially conform with the usage guidelines or specifications provided by Landis+Gyr.

10.0 Term; Termination

- 10.1 Term. This Agreement shall become effective on the Effective Date and continue in full force and effect until [REDACTED] unless sooner terminated or extended in accordance with the provisions hereof.
- 10.2 Right to Terminate. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party for failure of such party to fulfill any of its material obligations hereunder. In the event that the breaching party corrects the breach within the sixty (60) day period, this Agreement shall continue in full force and effect as it would have had such breach not occurred. Failure to perform due to a force majeure shall not be considered a substantial or material default under this Agreement. A party hereto may, at its option, terminate this Agreement upon an Event of Bankruptcy of the other party.
- 10.3 Termination for Convenience. Kenergy shall have the right to terminate for convenience upon thirty (30) days written notice. In consideration of such right to terminate for convenience, Kenergy agrees that Orders issued prior to the termination date will continue to be governed by the terms of this Agreement and Software that remains in use will continue to be governed by the terms of this Agreement.
- 10.4 Effect of Termination. The expiration or termination of this Agreement, for any reason, shall not release either party from any liability to the other party, including any payment obligation that has already accrued hereunder. If Kenergy shall terminate this Agreement other than for reasons of a default by Landis+Gyr, Kenergy shall:
- (a) immediately discontinue use of the Software;
 - (b) within 30 days, at Landis+Gyr's option and at Kenergy's expense, return to Landis+Gyr or destroy all copies of the Software, Documentation and all materials containing Landis+Gyr's Confidential Information.
 - (c) Within 30 days, certify in writing to Landis+Gyr that all such copies and materials have been returned or destroyed, and that Kenergy's use of the Software has been discontinued.

Survival. The provisions of Section 1, 6 through 10, and 12 through Section 15 shall survive the expiration or earlier termination of this Agreement for any reason, provided that with respect to Section 12, each party's obligations under this Section 10.4, shall survive the expiration or earlier termination of this Agreement for a period of two (2) years from the date of such expiration or termination, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

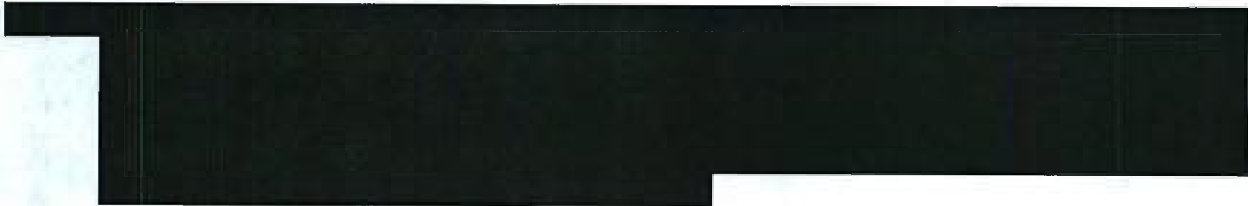




11.0 Intentionally Blank

12.0 Governing Law; Dispute Resolution

12.1 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Kentucky and shall for all purposes be construed and enforced in accordance with Kentucky law.



12.3 Court Actions. Except as permitted in this section, neither party may bring a case in court. If Landis+Gyr or Kenergy disregards this restriction, files a court case and fails to dismiss it promptly upon being notified of this provision, that party will pay the other party's costs and expenses, including attorney's fees, incurred after the notice in defending the court case. Landis+Gyr retains the right to obtain an injunction in court to prevent Kenergy's misuse of its intellectual properties.

13.0 Confidentiality

13.1 Landis+Gyr, its affiliates, and Kenergy may exchange Confidential Information with each other, and each party shall take all reasonable precautions to prevent such Confidential Information from being disclosed to third parties, including officers and employees not having a legitimate need for the information, and shall not disclose any Confidential Information to third parties unless the discloser of such Confidential Information has consented to disclosure in writing. These non-disclosure obligations shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter. Information need not be marked "Confidential" to be considered Confidential Information. "Confidential Information" includes any Confidential Information disclosed prior to the effective date of this Agreement. Kenergy Confidential Information shall also be deemed to include Kenergy Data and shall not be subject to the exceptions referenced below in Section 13.4.

13.2 No Rights in Confidential Information. Kenergy and Landis+Gyr hereby acknowledge and agree that all Confidential Information of the other party shall remain the sole and exclusive property of such other party and that the receiving party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.

13.3 Destruction of Confidential Information. Upon termination for any reason, or at any other time that Kenergy or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of Confidential Information, as appropriate, to the requesting party all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control.

13.4 Non-Confidential Information. Notwithstanding the definition of Confidential Information, the following information shall not be considered Confidential Information:

- a. Information which is already generally available to the public;

- b. Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the receiving party in breach of this Agreement;
- c. Information known to the receiving party on a non-confidential basis prior to receipt by the disclosing party;
- d. Information that is independently developed without access to the disclosing party's Confidential Information; and
- e. Information disclosed under legal compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the receiving party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure.

14.0 Limitation of Liability

- 14.1 No Consequential or Indirect Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE OR PROFIT, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION UPON WHICH A CLAIM FOR DAMAGES MAY BE BASED, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

- 14.3 Exceptions. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 14 SHALL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM: (A) PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED EITHER PARTY'S NEGLIGENT ACTS OR OMISSIONS, OR WILLFUL MISCONDUCT OR (B) BREACHES UNDER SECTION 9.2 (INFRINGEMENT INDEMNIFICATION) OR SECTION 13 (CONFIDENTIALITY).

15.0 General

- 15.0 Complete Agreement, Modification and Assignment. The parties agree that this Agreement and any ancillary agreements, exhibits or schedules constitutes the complete and exclusive agreement between them with respect to its subject matter and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of Kenergy and Landis+Gyr. Kenergy may not assign this Agreement, a Purchase Order, or its rights or obligations under them without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.
- 15.1 Notices. Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For Kenergy: Kenergy Corp.
P.O. Box 18
6402 Old Corydon Road
Henderson, KY 42420
Attn: Director of Procurement & Contracts
Facsimile No: 270.826-3999

For Landis+Gyr: Landis+Gyr Technology, Inc.
30000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile No: 678.258.1686

[REDACTED] Force Majeure. Except for payment obligations, neither party is liable for failing to fulfill its obligations due to acts of God, extreme weather, unforeseen regulatory actions, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control. To the extent a party is delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practicable, then the parties shall extend the time for performance by written agreement one day for each day that the Force Majeure event persists. **[REDACTED]**

- 15.3 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr and Kenergy shall have any legally enforceable rights under this Agreement.
- 15.4 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.
- 15.5 Waiver; Severability. No delay or omission by Kenergy or Landis+Gyr in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect or be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the parties thereto. If any term of this Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Kenergy and Landis+Gyr set forth in this Agreement, and all other terms will remain in full force and effect.
- 15.6 Independent Contractor. Nothing in this Agreement shall be read as appointing either party as the agent or legal representative of the other party for any purpose whatsoever, nor shall either party hold itself out as such. This Agreement does not create or is intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the parties, and both parties are acting as independent contractors and principals for their own accounts. Neither party is granted any right or responsibility for or on behalf of the other or otherwise to bind the other. In providing the Services and Products and, Landis+Gyr shall have sole responsibility for all persons employed by it in connection with the performance of such Services; and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.
- 15.7 EEOC and Affirmative Action.
- a. **Landis+Gyr is in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as**

amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.

- b. Landis+Gyr and subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

15.8 Insurance - (1) Landis+Gyr shall take out and maintain throughout the period of this Order insurance of the following minimum types and amounts to protect Landis+Gyr and Kenergy: (a) Worker's compensation and employer's liability insurance, as required by Kentucky law, covering all their employees and statutory employees who perform any of the obligations of the contractor, engineer, and architect under the contract. Employers Liability Insurance limits shall be at a minimum of \$500,000 each accident, \$500,000 by disease each employee, and \$500,000 by disease policy limit. If any employer or employee is not subject to worker's compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the worker's compensation laws; (b) Commercial General Liability insurance covering all operations under the contract shall have a combined single limit of not less than \$1 million each occurrence, including bodily injury or death, property damage, as well as products and completed operations and \$2 million general aggregate limit as well as products and completed operations aggregate limit for accidents during the policy period. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form; (c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have a combined single limit of not less than \$1 million per occurrence of bodily injury or death, as well as property damage. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form. (2) Kenergy shall be named as Additional Insured on all policies of insurance required in (1)(b) and (1)(c) of this section and/or any excess or umbrella insurance applicable and given a waiver of subrogation for each requirement stated in 1(a); 1(b); and 1(c). Such insurance shall be primary over any other insurance coverage available to Kenergy. Any other insurance coverage available to the Kenergy, or any insurance maintained by Kenergy, shall be excess and non-contributory to the insurance extended by Landis+Gyr under this agreement. (3) The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to Kenergy. Landis+Gyr shall furnish Kenergy a certificate evidencing compliance with the foregoing requirements that shall provide not less than 30 days prior written notice to Kenergy of any cancellation or material change in the insurance.

15.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.

Acknowledged and agreed by the authorized representatives of the parties.

Kenergy

Landis+Gyr

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date