



**TERMS AND CONDITIONS
FOR
DISTRIBUTION ACCESS SERVICE**

AUC Decision 2008-134

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2009 Interim Tariff Application

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ARTICLE 1 – PREAMBLE

In accordance with the provisions of the *Electric Utilities Act* ("EUA") and the Regulations made thereunder ("Regulations"), after 31 December 2000, ATCO Electric Ltd. ("ATCO Electric") will, for certain Customers, act solely as a wire services provider which will not be responsible for providing electricity directly to these end-use Customers. In its role as a wire service provider ATCO Electric will enable Retailers to acquire access to its electric distribution system for the purposes of allowing them to sell electricity directly to end-use Customers. An end-use Customer may also act as a Self-Retailer by carrying out retailer functions to obtain electricity services solely for its own use.

These Terms and Conditions are intended to apply to the relationship between ATCO Electric, as a wire services provider and all Retailers or any party who will be acting as an Agent on behalf of the Retailer for transactions, including, but not limited to, retail billing and load settlement. These Terms and Conditions will also govern the relationship between ATCO Electric and Customer(s) for whom the Retailer or any other party is acting as an Agent in its dealings with ATCO Electric. These Terms and Conditions serve as a companion to the Terms and Conditions for Distribution Service Connections which are intended to govern the relationship between ATCO Electric and Customer(s), or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Electric, regarding the provision of wire service on its electric distribution system.

These Terms and Conditions outline the rules that Retailers and Agents must follow to engage in retailer transactions with the Company.

The service provided by ATCO Electric hereunder is regulated by the Alberta Energy and Utilities Board ("EUB" or "AEUB"), and parties having any inquiries or complaints regarding these Terms and Conditions may direct such inquiries or complaints directly to ATCO Electric or to the Board. These Terms and Conditions have been approved by the EUB.

ARTICLE 2 – DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in these Terms and Conditions or a Retail Service Agreement, shall have the meanings set forth below:

"Act" means the *Electric Utilities Act*, S.A. 2003, c. E-5.1, as amended from time to time;

"Agent" means a person who deals and performs functions including, but not limited to, retailer transactions with the Company on behalf of a Self-Retailer or Retailer;

"Board" or "EUB" or "AEUB" means the Alberta Energy and Utilities Board established under the *Alberta Energy and Utilities Board Act*, R.S.A., 2000, c. A-17, as amended from time to time;

"Business Day" means a business day is any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act*.

"Company" means ATCO Electric Ltd. or its successor;

"Customer" means a person purchasing electricity for that person's own use from a Retailer;

"Customer Information" means Customer name, Customer telephone number, Customer mailing address, site contact name, site contact phone number and other safety related information required to provide safe electric service to Customers;

"Customer Usage Information" means information regarding the historical electricity consumption of a Customer and includes:

- Site ID;
- Read Date;
- Net Measured Energy (kW.h); and if available
- Net Measured Demand (kW); and
- Net Measured Demand (kV.A).

"Default Supplier" means a Retailer appointed pursuant to Section 3 of the RRR.

"Distribution Access Service" means the service required to transport electricity to Customers by means of an electric distribution system;

"Distribution Tariff" means a distribution tariff prepared by the Company in accordance with the *Distribution Tariff Regulation, A.R. 162/2003*, as amended from time to time;

"Electricity Services" means the services associated with providing electricity to a person, including the exchange of electric energy, making financial arrangements to manage financial risk associated with the pool price, distribution access service, system access service, ancillary services, billing, metering, performing load settlement, and any other services specified in the regulations made by the Minister under Section 115 of the *Electric Utilities Act, S.A. 2003, c. E-5.1*;

"Facilities" means a physical plant (including, without limitation, transmission and distribution lines, transformers, meters, equipment and machinery);

"Force Majeure" means circumstances not reasonably within the control of the Company, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, the intervention of federal, provincial, state or local government or from any of their agencies or boards excluding Decisions and/or Orders made by the AEUB in the normal course of it exercising its authority to establish the revenue requirement of the parties to this agreement, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise;

"Independent System Operator" or "ISO" means the corporation established pursuant to Section 7 of the *Electric Utilities Act, S.A. 2003, c. E-5.1*, and carrying out the name of "Alberta Electric System Operator" or "AESO";

"Point of Service" means the point at which the Company's service conductors are connected to the conductors or apparatus of a Customer;

"Power Pool" means the scheme established pursuant to Section 7 of the Electric Utilities Act, S.A. 2003, c. E-5.1;

"RRR" means the *Roles, Relationships and Responsibilities Regulation, A.R. 169/2003*, as amended from time to time;

"Retail Service Agreement" means an agreement for the provision of Distribution Access Service pursuant to these Terms and Conditions between the Company and a Retailer, in the form attached as Schedule A hereto;

"Retailer" means a person who sells or provides Electricity Services directly to Customers and who is entitled to enroll Customers for Distribution Access Service under the Company's Terms and Conditions for Distribution Access Service, and includes Default Supplier, the person for whom the Company has made arrangements to provide the regulated rate tariff to eligible Customers, and Self-Retailers;

"Retailer Business Function Identification" means the 2 character identification as identified in the Settlement System Code;

"Retailer Business Number" means the 9 digit number used to uniquely identify each person entering into a Retail Service Agreement with the Company. The Canada Customs and Revenue Agency business number will be used as the Retailer Business Number;

"Retailer Guide" means the guide prepared by the Company which describes the business processes for the transactions between the Company and the Retailer in relation to the provision of Service under these Terms and Conditions;

"Retailer Identification" means the number assigned by the ISO to a Retailer who has identified a Site or a number of Sites to be enrolled under the same Retailer Identification;

"*Retailer of Record*" means the Retailer who is listed in the Company's records through the procedures outlined in these Terms and Conditions, and thereby recognized by the Company and the Settlement System Code (SSC), as a particular Customer's Retailer for a Point of Service at a particular time;

"*Self-Retailer*" means a person, carrying out Retailer functions to obtain electricity services solely for its own use;

"*Settlement System Code*" means the specifications, standards, methods, calculations and conventions established under the AESO rules for load settlement;

"*Site*" means a unique end-use Point of Service, being the finest level at which settlement recognizes retailer assignments, and receives consumption data;

"*Site ID*" means a unique identification number assigned by the Company for each unique end-use Point of Service;

2.2 Conflicts

- (a) If there is any conflict between a provision expressly set out in an Order of the Board and these Terms and Conditions, the Order of the Board shall govern.
- (b) If there is any conflict between a provision expressly set out in these Terms and Conditions, as may be amended from time to time, and a Retail Service Agreement, the express provision of these Terms and Conditions shall govern, as of their effective date.

2.3 Headings

The division of these Terms and Conditions into sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2.4 Schedules and Appendices

The following schedules and appendices are attached to and form part of these Terms and Conditions:

- Schedule A – Retail Service Agreement
- Schedule B – Disconnect Customer Site
- Schedule C – Supplementary Service Charges

ARTICLE 3 – GENERAL PROVISIONS

3.1 Board Approval

These Terms and Conditions have been approved by the Board. The Company may amend these Terms and Conditions by filing a notice of amendment with the Board. Included in the notice to the Board shall be notification of which Retailers are affected by the amendment and an explanation of how affected Retailers will be notified of the amendments. The amendment will take effect 60 days after such notice is filed, unless the Board otherwise directs.

3.2 Distribution Tariff

The Company's Electric Distribution Tariff is available for public inspection during normal business hours at the business offices of the Company and at the offices of the Board and can be accessed at ATCO Electric's website at: **www.atcoelectric.com**. These Terms and Conditions form part of the Distribution Tariff and are established pursuant to Section 2 of the Distribution Tariff Regulation, A.R. 162/2003.

3.3 Effective Date

These Terms and Conditions come into force on January 1, 2008. Whenever the Company files notice of an amendment to these Terms and Conditions, or when the Board approves an amendment to these Terms and Conditions, revisions will be issued, with the effective date of the amendments indicated thereon.

3.4 Terms and Conditions Prevail

- (a) These Terms and Conditions, as amended from time to time, apply to the Company and to each Retailer. These Terms and Conditions also govern the relationship between the Company and Customer(s) for whom the Retailer is acting as an Agent in its dealings with ATCO Electric.
- (b) These Terms and Conditions also apply to any party appointed as Agent for a Retailer pursuant to an executed Agency Appointment Agreement, as set out in the Retailer Guide.
- (c) No agreement can provide for the waiver or alteration of any part of these Terms and Conditions unless such agreement is first filed with and approved by the Board.

3.5 Retailer Guide

The Company has developed the Retailer Guide to help Retailers and Customers understand the normal practices of the Company. The Retailer Guide is available on the Company website at <http://www.atcoelectric.com>. The Retailer Guide will be updated, from time to time, to reflect changes to the electric utility industry, or the changing needs of the Retailers or Customers. The Company is committed to follow practices in the Retailer Guide. However, as these practices will likely not cover every situation that arises, it may be necessary to deviate from the Retailer Guide in certain circumstances.

3.6 Ownership of Facilities

- (a) The Company remains the owner of all Facilities necessary to provide Distribution Access Service, unless an agreement between the Company and the Retailer or Customer specifically provides otherwise.
- (b) Payment made by Retailers or Customers for costs incurred by the Company in installing Facilities does not entitle Retailers or Customers to ownership of any such Facilities, unless an agreement between the Company and the Retailer or Customer specifically provides otherwise.

3.7 New Facilities and Service Additions

The Company reserves the right to communicate directly with the Customer in respect of any requests made by the Customer, or a party acting on its behalf, for the construction of new facilities or additional services as provided for in the *Billing Regulation, A.R. 159/2003*, as may be amended from time to time. The Company reserves the right to charge the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections. Retailers shall refer to the Company's Customer Guide to New Extensions for details of the requirements with respect to new facilities and service additions.

ARTICLE 4 – GENERAL OBLIGATIONS OF RETAILERS

4.1 Timeliness, Due Diligence and Security Requirements

- (a) The Retailer shall exercise due diligence and use reasonable efforts in meeting its obligations hereunder, and perform same in a timely manner.
- (b) The Retailer shall adhere to all credit, deposit and security requirements specified in these Terms and Conditions.
- (c) The Retailer shall make every effort to ensure that its Customers are aware of the provisions of these Terms and Conditions that may affect the Customer(s).

4.2 Arrangements with Customers

Unless otherwise stated herein, the Retailer shall be solely responsible for having appropriate contractual or other arrangements with Customer(s) necessary to provide service to Customers. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements and shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's failure to perform its obligations to its Customer(s).

4.3 Responsibility for Electric Purchases

The Retailer will be solely responsible for the purchase of electricity from the Power Pool and for arranging the delivery of such electricity to the Point of Service for Customers, subject to these Terms and Conditions.

4.4 Retailer Authorization

The Retailer shall be responsible for obtaining authorization from each Customer authorizing the enrollment of the Customer for receipt of Distribution Access Service by such Retailer.

4.5 Retailer Identification

Any information exchange or communications between the Retailer and the Company under these Terms and Conditions shall employ a Retailer Identification number as set out in the Settlement System Code.

4.6 Single Retailer for Customer

The Company shall not be required to recognize and deal with more than one Retailer in respect of a Point of Service at any given time. Nothing in these Terms and Conditions shall prohibit a Customer from entering into arrangements with multiple Retailers for a Distribution Point of Service, provided that a single Retailer is designated to be the Customer's Retailer for the purposes of these Terms and Conditions.

4.7 Fees and Other Charges

The Company will provide all standard services hereunder pursuant to the Distribution Tariff. All additional and supplementary services provided by the Company to a Retailer will be charged a separate rate or fee, such as those included, without limitation, in Schedule C. Payment for these services shall be in accordance with the provisions of these Terms and Conditions.

ARTICLE 5 – CUSTOMER INQUIRIES AND CUSTOMER INFORMATION

5.1 Customer Inquiries

For Customers requesting information on Distribution Access Service, the Company will make available the following information:

- (a) notification and informational materials to consumers about competition and consumer choices;
- (b) direct Customers, on request, to a source where they may obtain the current list of licensed Retailers maintained in accordance with the *Fair Trading Act, RSA 2000, c. F-2 ("Fair Trading Act")*. The Company is under no obligation to assure the accuracy of this list.

5.2 Customer Inquiries Related to Emergency Situations and Outages

Retailers shall make every effort to ensure Customers contacting the Retailer regarding distribution emergency conditions, outages, safety or environment situations related to the Company's distribution system are referred directly to the Company immediately. The Company reserves the right, without providing notice to the Retailer, to test or audit the response time of the Retailer. The Company will communicate any unacceptable patterns to the Retailer to be corrected.

5.3 Customer Information

5.3.1 *Provision of Customer Information to a Retailer*

- (a) The Company shall provide standard Customer Usage Information to a Retailer that has a Retail Service Agreement in place with the Company upon request and upon receiving consent from the Customer for:
 - (1) the 12-month period preceding the date of the request, or
 - (2) for any shorter period for which the Company has collected that information.

- (b) A Retailer may request Customer Usage Information prior to an application for enrollment by obtaining and submitting to the Company the authorization from the Customer in a form as set out in the Retailer Guide.
- (c) The Retailer shall submit written requests for Customer Usage Information based on Site ID. If the number of Sites on a request exceeds twenty (20), the Site ID list must be provided electronically as set out in the Retailer Guide.
- (d) The Company will normally process requests within five (5) Business Days of receiving notification from the Retailer. If the Company determines that it cannot process the request within five (5) Business Days, the Company shall notify the Retailer of the approximate delivery date.
- (e) Requests for Customer Usage Information will be provided by the Company at no additional cost for requests made once per year per account. The Company reserves the right to assess a charge for additional Customer Usage Information requests as set forth in Schedule C hereof.
- (f) Any request for Customer Usage Information from a Retailer that has been the Retailer of record for twelve (12) months or greater will be assessed a charge as set forth in Schedule C hereof.

5.3.2 Provision of Customer Information to the Company

The Retailer must notify the Company as promptly as reasonably practical of any changes to Customer Information, as the Company relies on this information to reasonably perform its wire obligations to Customers. Such information shall be provided in a form described in the Settlement System Code. The Company shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's failure to provide up-to-date and accurate Customer

Information to the Company. The Company reserves the right to assess a charge for additional processing work undertaken by the Company as a result of inaccurate Customer Information provided by the Retailer.

ARTICLE 6 – PROVISION OF SERVICE

6.1 Qualification for Service

The Retailer must fulfill the following requirements to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer:

- (a) submit to the Company a fully completed, executed Retail Service Agreement and a Retailer of Record and Credit Application Form as set out in the Retailer Guide;
- (b)
 - (1) for Retailers providing service to Customers whose annual consumption is below 250,000 kWh, furnish a certified copy of the license issued to it and warrant in writing to the Company that it is licensed pursuant to and will comply with the provisions of the *Fair Trading Act*, and any regulations or policies made thereunder;
 - (2) for Retailers providing service to Customers whose annual consumption exceeds 250,000 kWh, warrant in writing to the Company that it will comply with the provisions of the *Fair Trading Act*, and any regulations or policies made thereunder;
- (c) the Retailer, with the exception of the Retailer for whom the Company has made arrangements to provide the regulated rate tariff, must satisfy the credit requirements of the Company as set forth in Article 11 hereof;
- (d) warrant in writing to the Company that it will comply with the guidelines established in the Settlement System Code;
- (e) meet the compliance testing protocol of the Company in respect of information exchange, which protocol is set forth in the Retailer Guide;

- (f) warrant in writing to the Company that it has been qualified by the Power Pool as a participant therein, and can receive electricity from the Power Pool; and
- (g) meet any other requirements that the Company, acting reasonably, may impose in order to provide Distribution Access Service hereunder to the Retailer. If the Company determines that a Retailer must satisfy additional requirements in order to qualify for Distribution Access Service, the following process will apply:
 - (i) where the Company is confronted with a situation which would likely materially alter the risk to the Company, or in order to comply with applicable legislation, the Company may implement the additional requirement and then apply to the Board for approval of same; or,
 - (ii) where the Company is not confronted with the circumstances outlined in (i), above, the Company shall apply to the Board for approval of the proposed additional requirement prior to implementing same.

Upon satisfaction of the above requirements, the Company will provide Distribution Access Service to the Retailer, subject to these Terms and Conditions set out herein. Subject to complying with all applicable laws, and the directions or requirements of any of the entities mentioned above, the Company reserves the right, upon giving the Retailer ten (10) Business Days notice, acting reasonably, to discontinue Distribution Access Service to the Retailer if at any time the Retailer no longer fulfills the above requirements.

6.2 Application for Site Enrollment

- (a) In order to initiate the provision of Distribution Access Service by the Company, the Retailer shall complete and provide to the Company an enrollment for Distribution Access Service in the form and manner set out in the Retailer Guide and in compliance with the Settlement System Code. The Retailer shall provide updated Customer Information with each application for Site enrollment where applicable.

- (b) The Company will, subject to the Retailer meeting the provisions of these Terms and Conditions, accept an enrollment by a Retailer for provision of Distribution Access Service hereunder. The Company reserves the right to verify the identity of the Customer and the accuracy of the Customer Information.
- (c) Upon receipt of a valid enrollment from a Retailer in the form and manner set out in the Settlement System Code, the Company will recognize the Retailer as the Retailer of Record for that particular Site.
- (d) Enrollments will be processed by the Company on a first-come, first-served basis as set out in the Settlement System Code.
- (e) Once the enrollment is submitted, the Company will provide the Retailer, in accordance with the Settlement System Code, a status notification informing the Retailer whether the enrollment has been accepted or rejected.
- (f) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not obtain an actual read at the time of the enrollment, the Company will estimate a meter read. At the request of the Retailer, or with the Retailer's consent, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer as set forth in Schedule C hereof.
- (g) If a Retailer finds that it has enrolled an incorrect Site, that Retailer shall notify the Company as soon as reasonably possible. Upon receiving notice from the Retailer, the Company will notify the previous Retailer to enroll the Site. The Company may assess a charge for processing an enrollment under this section as set forth in Schedule C, part 2(a).
- (h) If the Company determines that the Site (Customer) who has been enrolled with the Retailer is indebted to the Company, the Company reserves the right to disconnect electric service to that Customer as set forth in Article 10 hereof.

- (i) The Retailer will not be liable to the Company for any outstanding indebtedness of the Customer to the Company, which accrued prior to the receipt by the Retailer of Distribution Access Service hereunder.
- (j) The Company may assess a charge for processing an enrollment as set forth in Schedule C, part 2(a) hereof.

ARTICLE 7 – BILLING & PAYMENT

7.1 Retail Billing

The Company will bill the Retailer for Distribution Access Services provided to the Retailer in accordance with the billing procedures set out as follows:

- (a) The Company will invoice the Retailer each billing cycle for Distribution Access Service provided by the Company for the period prior to the billing cycle.
- (b) The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer. The Retailer shall process Customer payments and handle collection responsibilities. The Company may, at its sole discretion and in addition to any other remedies available to it, restrict enrollment or terminate Distribution Access Service to the Retailer, if such Retailer does not pay all outstanding bills in accordance with these Terms and Conditions.
- (c) The Company reserves the right to bill the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections. The Retailer shall refer to the Customer Guide to New Extensions or the Terms and Conditions for Distribution Service Connections with respect to these services.
- (d) Retailers or any party acting as an Agent on behalf of Retailers are required to provide Customers with notification of a Company distribution rate change in the billing envelope, or through the electronic billing and payment process, that accompanies the first charge to the Customer at the new rate.

7.2 Payment and Collection Terms

- (a) The Retailer shall pay to the Company, on or before the 11th Business Day following the Business Day on which the Retailer was invoiced, the amount invoiced by the Company for the preceding period.
- (b) The Company will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding, the Company will accept payment by cash or certified cheque if agreed to by the Company.
- (c) The Company has established two electronic billing options for Retailers electing to send and receive payments electronically. The Preauthorized Payment Agreement ("Authorization") and the Electronic Payment Transfer Agreement, as set out in the Retailer Guide, set forth the terms and conditions for making payments and providing remittance information electronically.
- (d) The Retailer shall pay all amounts owed to the Company for any of the Distribution Access Services provided by the Company whether or not the Customer has paid the Retailer.
- (e) Failure to receive an invoice does not release a Retailer from the obligation to pay the amount owing for any of the Distribution Access Services provided by the Company.

7.3 Late or Unpaid Bills

If a Retailer defaults or is late in paying charges, the Company will provide the Retailer notice as required by Section 12 of the *Distribution Tariff Regulation, A.R. 162/2003*, and will be entitled to draw on the credit facility of the Retailer if the Retailer's arrears are not paid within three (3) Business Days after the date of the notice. The Company may require an additional deposit to replace the funds drawn down because of the default or late payment by the Retailer. The Company shall charge interest on the late payment as set forth in Schedule C hereof.

7.4 Adjustment of Bills

7.4.1 Billing Error

Should the Retailer dispute any amount owing, the Retailer shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, the Company will return any amount found owing to the Retailer forthwith. Subject to Sections 17 and 18 of the Regulated Rate Option Regulation, A.R. 262/2005, the right or ability of either party to dispute a bill for service provided hereunder shall only apply to bills rendered during a period of two (2) years prior to the date of a written notice of such dispute. The Company may assess a charge to the Retailer for reviewing billing disputes, in circumstances where the Company has not been responsible for any billing error as established in Schedule C, Part g hereof.

7.4.2 Unauthorized Use

Where the Company determines that there has been unauthorized use of electric service including, but not limited to, meter tampering, unauthorized connection or reconnection, theft or fraud whereby the Company is denied full compensation for Distribution Access Services provided, the Company will bill the Retailer for the Company's estimated energy and wires charges of such unauthorized use, including repairs of damage or reconstruction of Company Facilities. Nothing in this section shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

ARTICLE 8 – DISTRIBUTION ACCESS SERVICE INTERRUPTION

8.1 Continuous Supply

The Company shall make all reasonable efforts to maintain a continuous electricity supply to the Retailer's Customers, but the Company cannot guarantee an uninterrupted electricity supply.

8.2 Interruption

Without liability of any kind to the Company, the Company shall have the right to disconnect or otherwise curtail, interrupt or reduce service to the Retailer (and the Retailer's Customers):

- (a) whenever the Company reasonably determines, or when the Company is directed by the ISO, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's Facilities;
- (b) to maintain the safety and reliability of the Company's distribution system; or,
- (c) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of the Company's distribution system or Force Majeure.

8.3 Reasonable Efforts

The Company shall use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the Customer with prior notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume Distribution Access Service as promptly as reasonably practicable.

ARTICLE 9 – DISCONTINUANCE OF DISTRIBUTION ACCESS SERVICE

This Article, as amended from time to time, specifies the processes for the transactions between the Company and the Retailer in relation to de-enrollment (“de-select”) of a Site, which includes, without limitation, the circumstances when a Retailer chooses not to arrange for Distribution Access Service to the Customer or when the Company discontinues Distribution Access Service to the Retailer as set forth in Section 9.2 herein. This section does not cover the provisions under which a Customer requests its service to be salvaged.

9.1 Discontinuance by the Retailer

- (a) To discontinue Distribution Access Service, a Retailer shall complete and provide to the Company a notice of de-select in the form and manner set out in the Retailer Guide and in compliance with the Settlement System Code. Such notice shall clearly specify the Retailer's reason(s) for seeking to de-select the Site (Customer).
- (b) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not schedule an actual read at the time of the de-select, the Company will estimate a meter read. At the request of the Retailer or with the Retailer's consent, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer as set forth in Schedule C hereof.
- (c) The Company may reject the notice from the Retailer to de-select any Customer if any information provided in the application, including the Customer Information, provided by the Retailer is false, incomplete or inaccurate in any respect.
- (d) The Retailer is responsible to ensure that its Customers are provided notice of the de-select, and the consequences thereof, and that the Company will not be held liable for any Customer disputes with the Retailer.
- (e) Upon receipt of a valid notice of de-select of Distribution Access Service from a Retailer in the form and manner set out in the Settlement System Code , the Company will accept the de-select request of the Retailer and notify the Customer of the pending transaction. If the Site is not enrolled by a replacement Retailer within the period as set out in the Retailer Guide, the Company will notify the Default Retailer or the Retailer for whom the Company has made arrangements to provide the regulated rate tariff to enroll the Site.
- (f) The Retailer shall remain responsible for Electricity Services to the Customer Site until a replacement Retailer is appointed and in place for the Customer Site.

- (g) The Retailer may revoke a notification to de-select a Customer Site as set out in the Retailer Guide. The Company may assess a charge for processing a revoke de-select under this section as set forth in Schedule C, part c.

9.2 Discontinuance by the Company

The Company may discontinue or restrict Distribution Access Service to the Retailer if any of the following occur:

- (a) the Retailer's license has been revoked by Alberta Government Services, or
- (b) the Retailer has failed to meet its obligations under these Terms and Conditions or the Retail Service Agreement with the Company, or
- (c) the Retailer has failed to meet its credit requirements pursuant to Article 11.

Notification of discontinuance will be made electronically to the Retailer and by mail to the Customer. The Company will provide the Retailer ten (10) Business Days notice before the Company discontinues Distribution Access Service to the Retailer. Upon discontinuance of Distribution Access Service pursuant to this Article, the provisions of the affected service(s) will be assumed by the Default Supplier for non-eligible Customers, and the person for whom the Company has made arrangements to provide the regulated rate tariff for eligible Customers.

ARTICLE 10 – SERVICE DISCONNECTS AND RECONNECT

This Article, as amended from time to time, specifies the processes for the transactions between the Company and the Retailer in relation to the physical disconnect of a Point of Service. For greater certainty, “disconnect” is synonymous with the term “de-energize” as that term is used in the Settlement System Code.

10.1 Disconnection of Service

10.1.1 *Disconnection by the Company*

- (a) The Company reserves the right to disconnect electric service to the Customer in a number of circumstances, including but not limited to non-payment of the Company bills or any past due charges by the Customer; evidence of safety violations or fraud by the Customer; or the Customer failing to meet its obligations under the Terms and Conditions for Distribution Service Connections or any of the terms of the Customer's Electric Service Agreement.
- (b) If the disconnect is a result of a safety violation, the Company will reconnect the service when the safety problem is resolved and when the Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance. The Company may assess a reconnect charge to the Retailer as set forth in Schedule C hereof.

10.1.2 *Disconnection at Request of Retailer*

- (a) In accordance with Section 105(1)(k) of the EUA, the Retailer shall have the right to request that the Company disconnect service to a particular Customer, and the Company shall comply with that request, unless such action is inconsistent with the Company's approved policies contained in Schedule B to these Terms and Conditions.
- (b) If a Retailer requests the Company to disconnect service to a particular Customer for idle service, the Company reserves the right to charge the Retailer the Customer's monthly idle service charges or any other applicable charges. If the Point of Service is not enrolled with a Retailer, the charges will be charged directly to the Customer.

- (c) The Retailer shall provide the Company, Customer, and if applicable, the REA Board, Band Council, Metis Settlement Council with written notice at least ten (10) Business Days in advance of the proposed disconnect pursuant to clause (a).
- (d) The Retailer shall remain responsible for Electricity Services to the Customer until a replacement Retailer has enrolled the Customer at the Site.
- (e) The Company reserves the right to assess charges to the Retailer to disconnect service or attempts to disconnect service to a Customer as set forth in Schedule C hereof.
- (f) The Company will notify the Retailer if a disconnect request was not successfully completed and include the reason why it was not successfully completed. If the Retailer still requires a disconnect, the Retailer must re-issue a disconnect request the following Business Day.

10.1.3 Disconnection at Request of Customer

In accordance with the Settlement System Code, any requests to disconnect service from a Customer shall be made by the Customer's Retailer. If the Customer notifies the Company that the disconnect is short-term and required for reasons including but not limited to equipment testing and inspection, the Company reserves the right to complete the request for disconnect and subsequent reconnect. If the Company determines the disconnect request falls under the provisions of idle service, the Company will administer the request as per the disconnect and idle service provisions set out in the Terms and Conditions for Distribution Service Connections.

10.2 Reconnect Service

Before reconnecting or restoring service to a particular Customer:

- (a) the Retailer must provide the Company with sufficient notice to reconnect service;
- (b) the Company reserves the right to charge the Retailer for each month of disconnection, if the service was previously on idle and is reconnected within 12 months of disconnection, in accordance with the idle service provisions outlined in the Terms and Conditions for Distribution Service Connections;
- (c) if the reason for the reconnect request is to resume access service after a Site was disconnected for Customer indebtedness (CONP) to the Customer's Retailer, and the Customer on the reconnect request matches the Customer on the original CONP disconnect request then the Company will not reconnect until such time as a disconnect release is received by the Company from the Retailer that issued the disconnect request. Such release shall be sent to the Company within 24 hours of the Retailer receiving payment;
- (d) the Company reserves the right to assess a reconnection charge as set forth in Schedule C hereof.

ARTICLE 11 – PRUDENTIAL REQUIREMENTS

In circumstances where the Retailer has multiple Retailer Identification numbers, the review, setting, and maintaining of prudential requirements shall be based on the Retailer Business Number level.

11.1 Setting of Prudential Requirements

- (a) The Retailer, with the exception of the Retailer for whom the Company has made arrangements to provide the regulated rate tariff, must fulfill the requirements as set forth in this Article to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer.
- (b) Subject to review and reassessment of the Prudential Requirements of a Retailer

by the Company from time to time, a Retailer shall meet and maintain such financial and other Prudential Requirements as set out in the *Distribution Tariff Regulation, A.R. 162/2003* to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations.

- (c) The Company will confirm the credit rating of the Retailer, affiliate or person which guarantees the financial obligation of the Retailer. The credit rating will mean the bond rating according to Standard and Poor's Bond Rating Service or an equivalent bond rating from Dominion Bond Rating Service or Moody's Investors Service.

The minimum credit rating that will qualify a Retailer for a reduction in security or allowing a person to provide an irrevocable guarantee of the Retailer's financial obligation is BBB-, as set out in Section 9(3) of the *Distribution Tariff Regulation, A.R., 162/2003*, as may be amended from time to time.

If a Retailer has obtained more than one credit rating, the lowest credit rating will be used in the assessment.

- (d) Subject to review and reassessment, the Company shall determine the amount of the security reduction available for each Retailer, and the maximum amount of any guarantee required from the person guaranteeing the financial obligations of the Retailer, subject to Sections 8 and 9 of the *Distribution Tariff Regulation, A.R., 162/2003*. The Company shall notify the Retailer of its security requirement within 20 (twenty) Business Days from the receipt of the Retailer's complete application for service.
- (e) For the purposes of calculating the Retailer's payments under the Company's Distribution Tariff pursuant to Section 8(2)(b) of *Distribution Tariff Regulation, A.R., 162/2003*, the total of (i) 20 days, plus (ii) the number of days between consecutive bills issued by the owner to the Retailer, plus (iii) the number of days from the issuance of a bill by an owner until payment is due from the Retailer, shall equal forty-five (45) calendar days.

- (f) Subject to Section 9 of the *Distribution Tariff Regulation, A.R., 162/2003*, the Retailer shall provide security in the manner set out in the Retailer Guide, in the form of a financial deposit, a bond, an irrevocable letter of credit or an irrevocable guarantee. An irrevocable guarantee may only be provided from a person, other than the Retailer, with a qualifying credit rating.

11.2 Maintaining Prudential Requirements

- (a) If a Retailer's actual outstanding charges under the Company's Distribution Tariff are materially greater than the value projected by the Retailer under Section 11.1 of these Terms and Conditions, the Company will update the projection and, if additional security is required based on the updated projection, require the Retailer to provide additional security within five (5) Business Days of the Company's request.
- (b) The Company requires Retailers to report any downgrading of their corporate bond rating to the Company within two (2) Business Days of said rating revisions, and must provide any additional security required as a result of the downgrading within five (5) Business Days of the downgrading.
- (c) If a Retailer fails to pay any amount billed, subject to Section 7.3 of these Terms and Conditions, the Company will apply all or any portion of that Retailer's security deposit to the unpaid amount. The Retailer will then be required to replenish the security deposit as outlined above.
- (d) Subject to Sections 7.3 and 9.2 of these Terms and Conditions, if the Retailer fails to pay any amount billed or fails to present additional security as outlined herein, the Company reserves the right to suspend the provision of additional Distribution Access Service to the Retailer, or discontinue Distribution Access Service entirely to the Retailer.

Upon discontinuance of Distribution Access Service pursuant to this Article, the provisions of the affected service(s) will be assumed by the Default Supplier for non-eligible Customers, and the person for whom the Company has made arrangements to provide the regulated rate tariff for eligible Customers.

- (e) A Retailer that is required to provide security in accordance with these Terms and Conditions must maintain that amount of security until all obligations of the Retailer under the Company's Distribution Tariff are satisfied.
- (f) In the event of a default by a Retailer, the Company is entitled to recover any costs not covered by the security posted by the Retailer through the Company's Distribution Tariff, in accordance with the *Distribution Tariff Regulation A.R., 162/2003*, as may be amended from time to time.

11.3 Confidentiality

All information provided by the Retailer in relation to its financial standing and designated by the Retailer as confidential will be treated as such under the Confidentiality Agreement between the Retailer and the Company. The terms and conditions of the Confidentiality Agreement are set out in the Retailer Guide.

11.4 Costs

All costs associated with obtaining financial security and meeting prudential requirements under this section are the responsibility of the Retailer.

11.5 Interest of Security Deposits

Interest on each Retailer's cash security deposit held by the Company will be calculated at the rate specified from time to time in, The Residential Tenancies Act, but not less than 2.5% per annum. Interest will be paid to the Retailer annually.

ARTICLE 12 – METERING

12.1 Provision and Ownership

The meters used by the Company to assess the level of Distribution Access Service charges to the Retailer will be the same meters used to provide Customer billing information to the Retailer. The Company will provide, install and seal all meters for each Point of Service of a Customer of the Retailer in accordance with the Company's Terms and Conditions for Distribution Service Connections. Time of use or interval

meters shall be installed for a Customer who has a connected load exceeding 500 kW. Each meter shall remain the property of the Company.

12.2 Meter Reading

- (a) Billing will be based on meter readings made by the Company from time to time or on estimates for those billing periods when the meter is not read. The Company reserves the right to assess a charge to the Retailer for additional reads above the Company's standard practices as set forth in Schedule C hereof.
- (b) For small general service Customers whose load requirements are small, consistent, and can be accurately predicted, the billing demand and energy may be determined, at the sole discretion of the Company, by methods such as but not limited to, the nameplate rating of the Customer's equipment rather than being metered.

12.3 Changes to Metering Equipment

- (a) Should a Retailer request or consent to a Customer request for new metering equipment beyond the basic service, the Company shall provide, install, test and maintain the required metering equipment. The metering equipment must be requested or consented to in writing by the Retailer and meet the Company's requirements. The Retailer shall bear the cost of providing and installing the metering equipment, and ongoing operating costs as set forth in Schedule C hereof. For changes to metering equipment on primary distribution voltage levels, the cost of providing, installing, and the ongoing operating costs will be determined on a case by case basis.

The metering equipment shall become the property of the Company and will be maintained by the Company. The Company shall complete installation of the metering equipment within thirty (30) days of delivery from the supplier. The Company shall bill the Retailer upon installation, and the Retailer shall pay the Company in full within thirteen (13) Business Days of receipt thereof. If payment is not received within thirteen (13) Business Days, the Company shall charge interest on the late payment as set forth in Schedule C hereof.

- (b) Should a Retailer request or consent to a Customer request to return the metering equipment to its previous basic form, the Retailer shall bear the cost of removal and installation of the metering equipment.
- (c) At the request by the Retailer, or with the Retailer's consent, the Company may provide other metering services, above standard metering service, in its discretion, acting reasonably, and may charge separate fees for such service.

12.4 Meter Test and Adjustments

- (a) The Company may inspect and test a meter at any reasonable time. At the request of a Retailer, the Company shall arrange for on-site meter verification and if necessary, shall arrange for a meter to be tested by an official designated for that purpose by Measurement Canada or accredited agency as may, from time to time, be designated for this purpose.
- (b) If a test determines that the meter is not accurate within the limits set by government standards, the Retailer's bill will be adjusted back to the time that the error can reasonably be determined to have commenced, subject to Sections 17 and 18 of the *Regulated Rate Option Regulation, A.R. 262/2005*.

Where it is impossible to determine when the error commenced, it shall be deemed to have commenced three (3) months before the test or the date of the meter installation, whichever occurred later, in accordance with the Electricity and Gas Inspection Act, E-4. The Company shall not be liable to the Customer or Retailer for any additional costs that are associated with such metering or meter reading errors.

- (c) The Company reserves the right to assess a charge to the Retailer for a meter test, in circumstances where the Company has not been responsible for any metering error, as set forth in Schedule C hereof. This charge does not apply to circumstances when the meter has been tested to be faulty.

ARTICLE 13 – LOAD SETTLEMENT**13.1 Request for Additional Information**

A Retailer may request additional settlement information above the basic service provisions specified in the Settlement System Code or information previously provided by the Company providing:

- (a) the Retailer provides a written request to the Company outlining the purpose for the additional settlement information; and
- (b) the additional settlement information applies only to the Customers of the Retailer.

Upon satisfaction of the above requirements, the Company will advise the Retailer in a written proposal of the type of work, time of delivery and charges necessary to provide the additional settlement information to the Retailer.

13.2 Liability

The Company shall not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provision of this article. No express or implied warranties of any kind shall apply to information or services provided by the Company to any person as part of such good faith performance, including without limitation implied warranties of fitness for a particular purpose.

ARTICLE 14 – DEFAULT**14.1 Events of Default**

An event of default under these Terms and Conditions and the Retail Service Agreement will occur if either the Company or the Retailer (“Defaulting Party”):

- (a) is the subject of a bankruptcy, insolvency or similar proceeding;

- (b) makes an assignment for the benefit of its creditors;
- (c) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (d) fails to pay the other party ("Non-Defaulting Party") when payment is due, or to satisfy any other material obligation under these Terms and Conditions or the Retail Service Agreement including, without limiting the generality of the foregoing, fulfilling the creditworthiness requirements as set forth in Article 11, in accordance with these Terms and Conditions, and fails to remedy the failure or satisfy the obligation, as the case may be, within ten (10) Business Days after receipt of written notice thereof from the Non-Defaulting Party.

14.2 Rights Upon Default

In an event of default, the Non-Defaulting Party shall, subject to these Terms and Conditions and any applicable regulatory requirements, be entitled to pursue any and all available legal and equitable remedies and terminate the Retail Service Agreement without any liability or responsibility whatsoever, except for obligations arising prior to the date of termination. The non-defaulting party shall provide written notice to the defaulting party of its intention to terminate Distribution Access Service hereunder.

ARTICLE 15 – LIABILITY AND INDEMNITY

15.1 Indemnity

- (a) Each party (as applicable, the "Indemnitor") will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives ("Indemnitee(s)") from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claims, cause of action, action, suit or proceeding by a third party ("Claim") which arises from damage to property or injury to or death of persons resulting from the Indemnitor's failure to perform its obligations under these

Terms and Conditions which failure is caused by the negligence or willful act of the Indemnitor or any of its directors, officers, employees, agents or representatives acting within the scope of their authority or employment. The indemnity under this Section 15.1(a) will be limited to an amount in proportion to the degree to which the Indemnitor or its directors, officers, employees, agents or representatives acting within the scope of their authority or employment are at fault. For the purpose of this Section 15.1(a) "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under these Terms and Conditions.

- (b) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Section 15.1 such Indemnitee will give the Indemnitor prompt notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Subject to Section 15.1(d) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Section 15.1(a) in respect of:
 - (1) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third party claimant (and, if applicable, to the court or other tribunal determining the Claim), the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and the Indemnitor shall be entitled, at its option, to take carriage of the

defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee shall cooperate with the Indemnitor to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or

- (2) some, but less than all, of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the Indemnitee is of the opinion that the Indemnitor's interests are not in conflict with its own, the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to that portion of the Claim in respect of which the Indemnitor has an obligation to indemnify the Indemnitee and consult with the Indemnitor in respect thereof.

The Indemnitee shall not make any admission of the liability regarding, or settle or compromise, that portion of the Claim in respect of which the Indemnitor has acknowledged its obligation to indemnify the Indemnitee without the written consent of the Indemnitor, which consent shall not be unreasonably withheld.

- (d) The provisions of Section 15.1(a) hereof shall not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.
- (e) Except to the extent to which either party is required to indemnify the other party (and those other persons specified in this Article 15) by the express terms of Article 15, neither party, nor its directors, officers, agents, employees, and representatives, will be liable to the other party for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the other party, its directors, officers, employees, agents and representatives howsoever and

whenever caused, and each party, for itself and as agent for its directors, officers, agents, employees and representatives hereby forever release the other party, its directors, officers, agents, employees and representatives from any liability or obligation in respect thereof. For greater certainty, neither party shall be limited in a claim against the other for specific performance or other equitable relief in relation thereto, or direct damages only and related costs and expenses (including reasonable legal fees), arising from a breach of these Terms and Conditions.

15.2 Consequential Loss

Notwithstanding anything to the contrary contained in these Terms and Conditions, neither party will be liable to the other party, and Company shall not be liable to the Customer with respect to matters for which Retailer is acting as agent for the Customer, for any damage, cost, expense, injury, loss or other liability of an indirect, special or consequential nature suffered by the other party or claimed by any third party against the other party which arises due to such party's failure to perform its obligations under these Terms and Conditions or for any other reason (including negligence on its part or on the part of any person for whose acts it is responsible), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits, loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity and energy, cost of capital and loss of the use of any facilities or property owned, operated, leased or used by the other party.

ARTICLE 16 – FORCE MAJEURE

16.1 Force Majeure Relief

The Company or Retailer, as the case may be, is relieved of its obligations hereunder, and shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, any event of Force Majeure.

16.2 Exclusions

Notwithstanding the definition of Force Majeure, lack of funds shall not be an event of force majeure.

16.3 Notice

The party claiming relief from liability under the provisions of this Article 16 shall promptly give the other party notice of the force majeure including full particulars thereof and shall promptly give the other party notice when the force majeure event ceases to prevent performance pursuant to these Terms and Conditions.

16.4 Obligation to Remedy

The party claiming relief from liability under the provisions of this Article 16 shall promptly remedy the cause and effect of the force majeure insofar as it is reasonably able to do so.

16.5 Strikes and Lockouts

Notwithstanding any other provision of these Terms and Conditions the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming relief from liability and such party may settle such strike, lockout or industrial disturbance at such time and on such terms and conditions as it may deem appropriate and no failure or delay in settling such strike, lockout or industrial disturbance shall constitute a cause or event within the control of such party or deprive such party of the benefits of this Article 16.

ARTICLE 17 – DISPUTE RESOLUTION**17.1 Resolution by Company and Retailer**

If any dispute between the Company and a Retailer arises at any time in connection with these Terms and Conditions, the Company and the Retailer acting reasonably and in good faith, shall use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved pursuant to this

Article 17, the chief executive officers of the Company and the Retailer shall meet to attempt to resolve the dispute.

17.2 Resolution by Arbitration

If any dispute has not been resolved pursuant to Section 17.1 hereof within 30 days after notice from the Company or the Retailer to the other of its desire to have the dispute resolved, then the dispute shall be resolved pursuant to Sections 17.3 to 17.11 hereof. The Company and the Retailer shall abide by the terms of any award rendered by the arbitrator(s) appointed hereunder without delay.

17.3 Arbitrators

All disputes or differences between the Company and a Retailer in connection with these Terms and Conditions shall be referred (unless the Company and the Retailer concur in the appointment of a single arbitrator) to a board of arbitrators consisting of one (1) arbitrator to be appointed by each of the Company and the Retailer who shall, by instrument in writing, appoint a third arbitrator immediately after they are themselves appointed. Notwithstanding the foregoing, any disputed matters between the Company and a Retailer relating to an order or direction made or approved by the Board or falling within the exclusive jurisdiction of the Board, shall be referred to the Board for resolution.

17.4 Failure to Concur

The Company and a Retailer shall be deemed to have failed to concur in the appointment of a single arbitrator if such an arbitrator shall not have been appointed within fifteen (15) days after the serving by either the Company or the Retailer on the other of notice requesting it to concur in the appointment of such an arbitrator.

17.5 Refusal to Appoint an Arbitrator

If either the Company or the Retailer shall neglect or refuse to appoint an arbitrator within fifteen (15) days after the other party (provided such other party has appointed its arbitrator) has served the Company or the Retailer, as the case may be, with notice to make the appointment, the party who has appointed its arbitrator shall be entitled to apply, upon notice to the other party, to a Justice of the Court of Queen's Bench of Alberta to appoint an arbitrator for the party in default.

17.6 Failure to Appoint a Third Arbitrator

If the arbitrators appointed by the Company and the Retailer have not, within fifteen (15) days after their appointment or the appointment of the arbitrator last appointed, as the case may be, appointed a third arbitrator, either the Company or the Retailer shall be entitled to apply upon notice to the other party to a Justice of the Court of Queen's Bench of Alberta to appoint such an arbitrator.

17.7 Technical Competence

Any arbitrator appointed under the provisions of this clause whether by concurrence of the Company and the Retailer, by either party, by the arbitrators, or by a Justice of the Court of Queen's Bench of Alberta shall, in the opinion of the persons making such appointment, be possessed of such technical or other qualifications as may be reasonably necessary to enable him to properly adjudicate upon the dispute or difference.

17.8 Compensation of Arbitrators

Each party shall be responsible for the costs of the arbitrator appointed by it hereunder. The costs of the third arbitrator shall be divided evenly between the parties.

17.9 Application of the Arbitration Act (Alberta)

Except as herein modified, the provisions of the *Arbitration Act, S.A., 1991, c. A-43.1*, as amended from time to time, shall apply to any arbitration proceeding.

17.10 Decisions Binding

A decision of the single arbitrator or the majority of the three arbitrators named or appointed shall be final and binding upon each of the parties to the dispute or difference.

17.11 Continuity of Service

All performance required under these Terms and Conditions by the Company and the Retailer and payment therefore shall continue during the dispute resolution proceedings contemplated by this Article 17, provided that in the case of any such proceedings pertaining to amounts payable under these Terms and Conditions, any payments or

reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings and interest shall be paid thereon by the party required to make the payment or reimbursement on the amount thereof at the rate specified from time to time in, The Residential Tenancies Act, but not less than 2.5% from the date so determined until paid.

ARTICLE 18 – MISCELLANEOUS

18.1 Compliance with Applicable Legal Authorities

The Company and the Retailer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other actions of the ISO or of governmental authorities having applicable jurisdiction. The Company will not violate, directly or indirectly, or become a party to a violation of any requirement of the ISO or any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Distribution Access Service to the Retailer (or a Customer of the Retailer). The Company's obligation to provide Distribution Access Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of such Distribution Access Service will have been obtained and will be maintained in force during such period of Distribution Access Service.

18.2 No Assignment

Neither the Company nor the Retailer shall assign any of its rights or obligations under these Terms and Conditions or the Retail Service Agreement without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. No assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or the Retail Service Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void. However, the Company may assign any or all of its rights and obligations under these Terms and Conditions and the Retail Service Agreement, without the Retailer's consent, to any entity succeeding to all or substantially all of the assets of the Company, if the assignee agrees, in writing, to be bound by all of the terms and conditions hereof and if any necessary regulatory approvals are obtained.

18.3 No Waiver

The failure of either party to insist on any one or more instances upon strict performance of any provisions of these Terms and Conditions or a Retail Service Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of these Terms and Conditions or a Retail Service Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.

18.4 Law

These Terms and Conditions and the Retail Service Agreement between the Company and the Retailer shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these Terms and Conditions and the Retail Service Agreement shall be brought in the courts of the Province of Alberta.

ARTICLE 19 – NOTICE

Unless otherwise stated herein, all notices, demands or requests required or permitted under these Terms and Conditions or a Retail Service Agreement shall be in writing and shall be personally delivered or sent by courier-service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

- (a) If to the Retailer, to the address and the addressee set out in the Retail Service Agreement between the Retailer and the Company.

- (b) If to the Company to: ATCO Electric Ltd.
10035 - 105 Street, Edmonton, Alberta, T5J 2V6
Attention: Chief Regulatory Officer
Fax: (780) 420-5098

Notice received after the close of the Business Day shall be deemed received on the next Business Day.

SCHEDULE A – RETAIL SERVICE AGREEMENT

MEMORANDUM OF AGREEMENT made the (day) of (month), (year)

BETWEEN: **(RETAILER NAME)**

(address)

Retailer Business Number: _____

(hereinafter called the "Retailer")

- and -

ATCO ELECTRIC LTD., a body corporate with its Head Office in the City of Edmonton in the Province of Alberta ("ATCO Electric" or "Company")

WHEREAS the Retailer has requested the Company to provide the Retailer with Distribution Access Service for the purpose of serving its electricity customer(s) ("the Customer"):

The Retailer and the Company agree as follows:

1. The Retailer is solely responsible for the provision of accurate and timely Customer Information to the Company. The Retailer agrees to provide the following information by electronic form to the Company, and represents and warrants that such information is true and accurate:
 - (a) Retailer Identification No(s): Refer to Appendix A
 - (b) Customer Information, in a form acceptable to the Company, for each Customer of the Retailer:

Should any of the above Customer Information change during the term of this Retail Service Agreement, the Retailer shall advise the Company of the change, by electronic

means, as soon as is reasonably practicable in the circumstance, and in any event within five (5) Business Days of the Retailer becoming aware of the change.

2. This Retail Service Agreement is subject to the ATCO Electric Ltd. – Terms and Conditions for Distribution Access Service ("Terms and Conditions"), as amended from time to time, which are approved by the Alberta Energy and Utilities Board ("EUB").
3. The Retailer acknowledges that it has been offered a copy of ATCO Electric's Terms and Conditions, has reviewed and understands these Terms and Conditions and agrees to be bound by them, and any amendments thereto, in all transactions with ATCO Electric or its Customers.
4. No person, whether an employee or agent of ATCO Electric or otherwise, can agree to change, alter, vary or waive any provision of the Terms and Conditions without the express approval of the EUB.
5. The Retailer acknowledges that it has been offered a copy of ATCO Electric's Retailer Guide and is aware of the policies and business practices of the Company detailed therein.
6. This Retail Service Agreement shall be effective on the date first noted herein, and thereafter shall remain in effect until terminated by either party in accordance with Article 9 or Article 10, as applicable, of the Terms and Conditions; or for the reasons set out in Article 14 of the Terms and Conditions.
7. The Retailer understands and agrees that the Distribution Access Service provided hereunder is provided solely for the Retailer's use at the locations and for the Customers identified to the Company in accordance with paragraph 1 hereof. The Retailer shall not use the Distribution Access Service provided by the Company for any other purpose.
8. If the Retailer, at any time, becomes aware that any Customer is using the service(s) provided by the Retailer or the Company in a manner which is inconsistent with the Terms and Conditions, which could potentially create safety, health or environment concerns or damage the Company's Distribution System or facilities, the Retailer shall immediately notify Company of such circumstances.

9. In providing service to its Customer, the Retailer shall not, in any way, damage or interfere with or otherwise disturb, alter or tamper with the facilities of the Company. The Retailer shall notify the Company immediately of any problem or defect relating to Company's facilities, which is discovered by or brought to the attention of the Retailer.
10. The Retailer agrees to pay all rates, charges, invoices or fees levied or billed to it by the Company in accordance with Article 7 of the Terms and Conditions.
11. The Retailer acknowledges, understands and agrees that the Company will not perform any billing or collection activities on its behalf. The Retailer agrees to pay all amounts due and owing to the Company in accordance with Article 7 of the Terms and Conditions, regardless of any billing or collection disputes the Retailer may have with its Customer(s).
12.
 - (a) The Retailer agrees to comply with the Company's Prudential Requirements established pursuant to Article 11 of the Terms and Conditions and Section 8 and 9 of the *Distribution Tariff Regulation, A.R. 162/2003*, for purposes of enabling the Company to assess the Retailer's credit risk and required security.
 - (b) The Company shall be entitled to access the financial security provided by the Retailer in the event of late payment or default on any invoices or bills of the Company, in accordance with Articles 7 and 14 of the Terms and Conditions.
- 13.. This Retail Service Agreement is subject to all applicable legislation, including the *Electric Utilities Act* and the Regulations made thereunder, and all applicable orders, rulings, regulations and decisions of the EUB or any other regulatory authority having jurisdiction over the Company or the matters addressed herein.
14. This Retail Service Agreement shall enure to the benefit of and be binding and enforceable by the parties hereto and their respective executors, administrators, successors and, where permitted, assigns.

15. If any provision of this Retail Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Retail Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.
16. Neither Party may disclose any Confidential Information obtained pursuant to this Retailer Service Agreement to any third Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include all business, financial, and commercial information pertaining to the Parties, Customers of either Party, suppliers for either Party, personnel of either Party, any trade secrets and other information of a similar nature, whether written or otherwise that is marked "proprietary" or "confidential" with the appropriate owner's name.

Notwithstanding the preceding, a receiving Party may disclose Confidential Information to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling or order, providing that:

- (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and
- (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

17. All notices required hereunder shall be in writing and may be given personally, by facsimile or prepaid registered mail addressed to the party for which the notice is intended to its address designated hereunder or to such other address as may be substituted therefore from time to time.

The Retailer's address for notice is:

Retailer Name

Retailer Address

Attention:

Facsimile:

The Corporation's address for notice is:

ATCO Electric Limited

10035 – 105 Street
P.O. Box 2426
Edmonton, Alberta, T5J 2V6

Attention: Customer Care Services

Facsimile: (780) 420-8984

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day first above mentioned.

[RETAILER NAME]

ATCO ELECTRIC LTD.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

APPENDIX "A"

MEMORANDUM OF AGREEMENT made the (day) of (month), (year)

APPENDIX "A" to the Retail Service Agreement between **<RETAILER NAME>**, **<RETAILER BUSINESS NUMBER>**, and **ATCO Electric**.

RETAILER IDENTIFICATION NUMBERS

The following Retailer Identification numbers have been assigned by the ISO to the Retailer noted above as of the effective date noted herein:

- (1)
- (2)
- (3)

The Retailer must notify the Company as promptly as reasonably practical of any additions or changes to the Retailer Identification Numbers. This Appendix "A" supercedes the Appendix "A" made the (day) of (month), (year).

[RETAILER NAME]

ATCO ELECTRIC LTD.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

SCHEDULE B – DISCONNECT CUSTOMER SITE

In accordance with Section 105(1)(k) of the EUA a Retailer shall have the right to request that the Company disconnect service to a particular Customer, and the Company shall comply with that request. The same policies shall apply to all Retailers. The Company's policy (as approved in these Terms and Conditions) with respect to disconnecting Customers for non-payment is set out below.

1. Where a Retailer requests the Company to disconnect a Customer for non-payment, the Retailer shall provide to the Company updated Customer Information, the payment amount the Retailer can accept in the event the Customer provides ability of payment, and a direct phone number to the Retailer's collection department for circumstances when the Customer is required to contact the Retailer immediately to resolve payment issues. The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer.
2. Unless otherwise directed by the Retailer, the Company:
 - (a) will schedule a disconnect between 8 AM and 2 PM;
 - (b) will not disconnect on Friday, Saturday, Sunday, a legal holiday, or a day before a legal holiday; and
 - (c) in certain remote areas where travel is difficult, will schedule the disconnect on one day of the month.
3. In accordance with the Distribution Tariff Regulation A.R. 162/2003, the Company may not disconnect a residential or farm premise between the months of October 15 to April 15, or between April 16 to October 14 when the overnight temperature is forecast to drop below zero (0) degree Celsius in the 24-hour period immediately following the proposed disconnection within the ATCO Electric service area. During this time a limiter may be installed.
4. The Company will not disconnect a premise if it houses elderly people or contains medical equipment. During this time a limiter may be installed.

5. The Company will not disconnect a premise if the community at large or the occupant is under bereavement. At its discretion, the Company will return within 24 hours.
6. Request to disconnect a Customer located in a REA or native areas (reserve or Metis Settlement) will be reviewed and discussed with the REA Board, Band Council, or Metis Settlement Council before the disconnect is undertaken.
7. The Retailer shall provide the Company, Customer, or if applicable, REA, or native areas (reserve or Metis Settlement), with a written notice at least ten (10) Business Days in advance of the proposed disconnect.
8. The Company will not disconnect if the Customer produces a receipt showing it has paid the most current bill, or amount specified in part 1 of this Agreement, of the Retailer.
9. The Retailer shall remain responsible for Electricity Services to the Customer until a replacement Retailer is appointed and in place for the Customer or until that Customer is disconnected, whichever is earlier.
10. The Company will provide to a previous Retailer of Record at the Site the right to request a disconnect for a period of 8 months since it last provided Distribution Access Service at the Site.
11. The Company may upon visiting the Site delay the disconnection until the Company is satisfied that all conditions for disconnection are met. These may include, but are not limited to:
 - (a) Customer Information does not match Customer Information provided by the Retailer;
 - (b) Customer has payment in hand at the Site and is prepared to meet the payment conditions set by the Retailer.
 - (c) Immediate danger may exist to the occupants or the Company's representative.

SCHEDULE C – SUPPLEMENTARY SERVICE CHARGES**1.0 APPLICABILITY**

Applicable to every Retailer participating in Distribution Access Service within the Company's service area.

The service charges outlined herein are also outlined in the Company's Terms and Conditions for Distribution Service Connections. This is done to ensure the Customer and Retailer is aware of the charges that may apply. For greater certainty, the listing of these charges in both sets of Terms and Conditions does not entitle the Company to recover charges under both sets of Terms and Conditions.

2.0 SCHEDULE OF CHARGES

All charges and provisions of the Customer's applicable price schedule shall apply in addition to the following charges for the service being provided.

	<u>Application</u>	<u>Fee</u>
(a) SETUP FEE	This fee applies when a new Customer takes service at a Site and requests the setup during the Company's regular business hours. This fee does not apply to street light and private light accounts.	\$10.00 per Site
(b) RETAILER RE-ENROLLMENT FEE	This fee applies when a Retailer finds that it has enrolled an incorrect Site and the Company initiates a re-enrollment of the Customer back to the previous Retailer. This fee will be assessed to the Retailer that made the error.	\$10.00 per Site

(c) REVOKE DE-SELECT

This fee applies if the Company has already processed the initial de-select request. This fee will be assessed to the Retailer that requested the initial de-select. \$10.00 per Site

(d) RECONNECTION AND DISCONNECTION OF SERVICE\$45.00

- (1) Reconnection of electric service to any premises during the Company's normal business hours: \$ Company's actual costs
(\$45.00 minimum)
- (2) Reconnection of electric service to any premises after the Company's normal business hours, if requested by the Retailer (or Customer): \$ Company's actual costs
(\$45.00 minimum)
- (3) Disconnection of electric service to any premises after the Company's normal business hours, if requested by the Retailer (or Customer): \$ Company's actual costs
(\$45.00 minimum)
- (4) Failed attempts to disconnect electric service to any premises during or after the Company's normal business hours: \$ Company's actual costs
(\$45.00 minimum)

(e) REQUEST FOR INTERVAL METER

Customer request for interval metering at secondary distribution voltages for connected load under 500 kW: Cost of Material and
Installation plus \$70.00 per
month per meter for ongoing
operating and maintenance
costs

(f) SUPPLEMENTARY METER READS ^{1/}

This fee applies for additional meter reads above the

