

## **Direct Energy Regulated Services**

### **Terms and Conditions of REA Regulated Rate Service**

**Effective January 1, 2008**

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## TERMS AND CONDITIONS OF REA REGULATED RATE SERVICE

### ARTICLE 1

#### PREAMBLE

ATCO Electric Ltd. ("ATCO Electric") has made arrangements with Direct Energy Regulated Services ("DERS"), a business unit of Direct Energy Marketing Limited, to provide Regulated Rate Service to Rural Electrification Association Customers residing within the service area of Rural Electrification Associations that have consented to such arrangements.

DERS' REA Regulated Rate Tariff consists of these Terms and Conditions and the attached Rate and Fee Schedules that sets out the rates and fees for certain services related to the provision of REA Regulated Rate Service.

DERS' REA Regulated Rate Tariff is available for public inspection at DERS' website [www.directenergyregulatedservices.com](http://www.directenergyregulatedservices.com) and during normal business hours at DERS' Calgary business office.

### ARTICLE 2

#### DEFINITIONS AND INTERPRETATION

##### 2.1 Definitions

The following words and phrases, whenever used in the REA Regulated Rate Tariff, shall have the following meanings:

**"Association"** means the Rural Electrification Association or its successor in whose Service Area DERS provides REA Regulated Rate Service.

**"Association Member"** means a member of the Association.

**"ATCO Electric"** means ATCO Electric Ltd.

**"Association Terms and Conditions"** means the Association's Terms and Conditions for Distribution Access Service and any terms and conditions applicable to distribution service connections.

**"Business Day"** means any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act*, R.S.A., 2000, c. I-8.

**"Customer"** means an Association Member that is an Eligible Customer and purchases Electricity for that Person's own use on a site located within the Association's Service Area and in respect of which the Association Member is entitled to receive REA Regulated Rate Service.

**"Customer of Record"** means the Association Member for whom DERS has opened an account pursuant to Section 4.1.

**"DERS"** means Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited.

**"Distribution Access Service"** has the meaning ascribed to that term in the EUA and provided to Customers by means of the Association's Distribution System.

**"Distribution System"** has the meaning ascribed to that term in the EUA.

**"Distribution Tariff"** means the Association's tariff for the provision of Distribution Access Service approved by the REA Board and as amended from time to time.

**"Electricity"** has the meaning ascribed to that term in the EUA, expressed in kilowatt hours.

**"Electricity Services"** has the meaning ascribed to that term in the EUA.

**"Eligible Customer"** has the meaning ascribed to that term in the *Regulated Default Supply Regulation*, AR 168/2003, as amended.

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"**EUA**" means the *Electric Utilities Act*, S.A. 2003, c.E - 5.1, including the regulations enacted thereunder, as amended.

"**Facilities**" means physical plant including, without limitation, transmission and distribution lines, transformers, meters, equipment and machinery.

"**Fee Schedule**" means the schedule of service items and prices attached to the Rate Schedules.

"**Force Majeure**" means circumstances not reasonably within the control of DERS, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, 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, interruption of supply, goods or services including Electricity or Distribution Access Service, the intervention of federal, provincial, state or local government or from any of their agencies or boards, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise.

"**Independent System Operator**" means the meaning ascribed to that term in the EUA.

"**Interconnected Electric System**" has the meaning ascribed to that term in the EUA.

"**Person**" means a person, firm, partnership, corporation, organization or association, and includes an individual member thereof.

"**Minor Routine changes**" means necessary routine administrative changes, such as, corrections to paragraph numbers, punctuation or grammatical errors where the changes do not alter the meaning of the clause.

"**Rate Schedules**" means the rate schedules to the REA Regulated Rate Tariff and includes the Fee Schedule.

"**REA**" means an incorporated Rural Electrification Association that has consented to the arrangements between ATCO Electric and DERS under which DERS will provide REA Regulated Rate Service;

"**REA Board**" means the Board of Directors of the Association.

"**REA Regulated Rate Service**" means the service that is required by the EUA to be provided in accordance with a regulated rate tariff.

"**REA Regulated Rate Tariff**" means DERS' regulated rate tariff including these Terms and Conditions and the Price Schedule applicable to the provision of REA Regulated Rate Service to Association Members.

"**Retailer**" has the meaning ascribed to that term in the EUA.

"**Service Connection**" means the Facilities that deliver Electricity to a Site

"**Site**" means the point where a Customer receives Electricity by means of a Service Connection.

"**Terms and Conditions**" means these Terms and Conditions of REA Regulated Rate Service, as amended from time to time.

"**WSP**" means a Person that the Association has authorized to act on its behalf pursuant to sections 104 of the EUA.

## **2.2 Conflicts**

If there is any conflict between these Terms and Conditions and a provision of the EUA, the provision of the EUA shall govern.

If there is any conflict between these Terms and Conditions and the corresponding Rate Schedules, the Rate Schedules shall govern.

### **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 Extended Meanings**

In these Terms and Conditions, words importing the singular number only shall include the plural and visa versa, words importing the masculine gender shall include the feminine and neuter gender and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

### **2.5 Charges and Fees**

All rates, charges and fees referred to in these Terms and Conditions are as set out in the Rate Schedules and/or the Fee Schedule for DERS.

## **ARTICLE 3 GENERAL PROVISIONS**

### **3.1 Effective Date**

These Terms and Conditions are effective on the date shown below.

### **3.2 Customers Bound by Terms and Conditions**

The Terms and Conditions of REA Regulated Rate Service apply to each Customer. As a condition of receiving REA Regulated Rate Service, the Customer agrees to be bound by these Term and Conditions and agrees to pay the rates and fees applicable for such service, as prescribed in the Rate Schedules whether the Customer signs a service agreement or not..

### **3.3 Modification of REA Regulated Rate Tariff**

No agreement can provide for the waiver or amendment of any part of these Terms and Conditions unless such agreement is first filed with and approved by the REA Board.

### **3.4 Approval and Amendment**

These Terms and Conditions have been approved by the REA Board and filed with the Alberta Energy and Utilities Board for information. DERS may amend these Terms and Conditions by filing a notice of amendment for approval with the REA Board.

### **3.5 Applicable Taxes**

The Customer shall pay all taxes, fees or assessments that DERS is required to collect from time to time as required pursuant to any statute, regulation, or other governmental directive, order or decision that applies to REA Regulated Rate Service.

### **3.6 Landlord Information**

DERS may require the Customer to indicate if the Customer is the owner of the premise or a tenant. Where the Customer is a tenant, DERS may request landlord information. The landlord information will be retained by DERS to continue service after service to the Customer is terminated and no new tenant has assumed service. DERS will verify with the landlord the information provided and will notify the landlord when the service is being transferred to the landlord, along with the reason for the transfer. In no circumstances shall the landlord be responsible for any arrears owed by the tenant unless the landlord expressly indicates it is assuming such liability.

DERS will provide landlords with the opportunity to register all Sites that they own and are responsible for in the case of a vacancy. This will not bind the landlord to be responsible for past charges of a tenant unless specifically requested by the landlord.

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## RENTAL PREMISES

As option for service to rental premises, an owner or operator who wishes DERS to consider dealing directly with a tenant or tenants may enter into a premise vacancy agreement with DERS which provides for responsibilities of the owner or operator in relation to payment for service used in the premises. Notwithstanding any premise vacancy agreement DERS may, at its sole option at any time and from time to time, either:

- (i) deal directly with the owner or operator of the premises as a customer of record in respect to any and/or all services to the premises, or
- (ii) subject always to the provisions of any premise vacancy agreement, deal directly with each tenant as a customer of record.

Nothing in these Terms and Conditions require a landlord to enter into such an agreement. Should the landlord elect not to enter into a premise vacancy agreement, DERS will deal directly with the tenant.

## **ARTICLE 4**

### **REA REGULATED RATE SERVICE**

#### **4.1 Requirements for Obtaining REA Regulated Rate Service**

Eligibility for a prospective Customer to obtain REA Regulated Rate Service shall be determined in accordance with the EUA and Regulations. DERS may require any potential Customer to provide such proof of identification as DERS considers appropriate in the circumstances.

A potential Customer, who is not receiving REA Regulated Rate Service from DERS, may be required to complete an application in writing, or via telephone, to obtain REA Regulated Rate Service at a Site.

When an application is required, DERS will provide an application form outlining the required information to be provided. For an existing premise or property, DERS will open an account and commence REA Regulated Rate Service within 7 days of receiving a completed application from a Customer. Where circumstances beyond the control of DERS prevent DERS from opening an account and commencing REA Regulated Rate Service within 7 days, DERS will notify the customer and will provide the customer with an estimate of when the account will be opened.

Expedited connection of REA Regulated Rate Service may be available at an additional charge in accordance with the Rate Schedules.

If DERS approves a Customer's application for REA Regulated Rate Service, DERS will open an account for the Customer for REA Regulated Rate Service at the applied for Site and the Customer shall be the "Customer of Record" for such Site.

Subject to Section 8.2, the Customer will be responsible to pay to DERS all amounts charged in accordance with these Terms and Conditions and applicable Rate Schedules to the account for services provided from the time the account is opened, or the customer becomes responsible for charges, until the account is closed as provided in Section 6.1, or if REA Regulated Rate Service is discontinued or disconnected as provided in Sections 4.4 and 8.7.

## **4.2 Refusal of REA Regulated Rate Service**

DERS reserves the right to refuse to provide REA Regulated Rate Service to a prospective Customer when:

- (a) the prospective Customer cannot demonstrate a satisfactory credit rating or credit history as outlined in Section 4.3 below and the prospective Customer has not provided the deposit required by DERS pursuant to Section 5.1;

- (b) the prospective Customer has an outstanding balance with DERS or a regulated affiliate for REA Regulated Rate Service; or
- (c) the prospective Customer has not complied with the applicable provisions of these Terms and Conditions.

DERS reserves the right to refuse to provide REA Regulated Rate Service to a prospective Customer at a Site when a previous Customer at the Site had a history of non-payment and DERS has reasonable grounds to believe that the defaulting Customer would continue to occupy the premises located at the Site.

Subject to limitations outlined in applicable regulations, and on 48 hours oral or written notice to a Customer and without further notice, DERS may disconnect service if DERS has not been provided with sufficient information to bill the customer or the premises or property reasonably appears to be vacant or not occupied by the known Customer.

#### **4.3 Credit Information**

DERS may, at any time, request the following information from a prospective Customer, such information that DERS considers reasonably necessary to determine the prospective Customer's credit history and credit risk. For a prospective Customer, information may include:

- (a) information such as full name, address, telephone number (home, work and cellular), birthdates to allow DERS to determine a customer's credit rating, and/or
- (b) demonstration of the Customer's credit history with another regulated utility, and/or
- (c) other personal information to identify the prospective customer.

Customers returning from a competitive retail service may be required to provide the same information as new customers.

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#### **4.4 Failure to Provide Information**

If, after notice of a deficiency, and reasonable opportunity to remedy any deficiencies, a prospective Customer or existing Customer fails to provide information requested in accordance with Section 4.3 and does not provide a security deposit in accordance with Article 5, then DERS may either:

- (a) refuse to provide REA Regulated Rate Service to the prospective Customer, or
- (b) discontinue or request a disconnection of REA Regulated Rate Service to the existing Customer.

### **ARTICLE 5 FINANCIAL SECURITY REQUIREMENTS**

#### **5.1 Requirement for Deposit**

DERS may require a deposit or an increase in an existing deposit by a Customer in circumstances it considers appropriate, including in the following circumstances:

- (a) if the prospective Customer making the application for service cannot demonstrate a satisfactory credit rating to DERS as outlined in Section 4.3;
- (b) the existing Customer has paid two consecutive bills late in any twelve month period or three non-consecutive bills late in any twelve month period;
- (c) the Customer has issued more than one payment that has been returned for non-sufficient funds in any six month period;

- (d) there has been more than a 50% increase in the Customer's average monthly consumption of Electricity over the prior six month period; or
- (e) the Customer makes a request for reconnection of service after having been disconnected for non-payment.

## **5.2 Waiver of Deposit Requirement**

DERS may waive the requirement for a deposit by Customer:

- (a) where the Customer has a previous good payment history with DERS;
- (b) where a result satisfactory to DERS is obtained from an external credit check;
- (c) where the Customer can demonstrate that it has a previous good payment history with another regulated utility;
- (d) where the Customer provides to DERS an indemnity bond or irrevocable letter of credit from a financial institution satisfactory to DERS.

## **5.3 Maximum Deposit**

The maximum deposit DERS will require from a Customer under this REA Regulated Rate Tariff is equal to 30% of the annual total charge payable by the Customer, as reasonably estimated by DERS.

If the required deposit is large, at the discretion of DERS, DERS may grant a Customer request that the Company allow an initial payment for a portion of the deposit and payment of the remainder of the deposit over a reasonable time period.

#### **5.4 Use of Deposit for Non-Payment**

A deposit provided by a Customer may be applied against any amounts owing for unpaid bills for REA Regulated Rate Service. A new security deposit will be assessed on the account in this case.

#### **5.5 Return of Deposit**

A deposit made by a Customer must be returned to the Customer after a satisfactory payment history after a period of 12 consecutive months or when the Customer's REA Regulated Rate Service is terminated and the Customer's account is closed..

Where a Customer's REA Regulated Rate Service is terminated and the Customer's account is closed for non-payment, prior to any refund, the deposit will be applied to the balance owing by the Customer to DERS.

#### **5.6 Interest Payable on Deposits**

Deposits, unless otherwise applied, will be refunded with interest at a rate equivalent to the one-year non-redeemable Royal Bank GIC rate for investments of \$500 to \$99,999.99 to the Customer after the Customer establishes a satisfactory payment record.

The interest rate applied to security deposits will be updated quarterly and will be the one-year non-redeemable Royal Bank GIC rate for investments of \$500 to \$99,999.99 in effect five business days prior to the start of the quarter.

Interest shall accrue monthly beginning with the initial date of deposit. Interest will only be payable to customers after twelve months of satisfactory payment history.

## **ARTICLE 6**

### **CLOSING AN ACCOUNT**

#### **6.1 Notice to Close an Account**

A Customer may close an account for REA Regulated Rate Service at a Site by giving DERS at least three full Business Days notice to close the account. DERS may request reasonable proof that the Customer will no longer be responsible for the Site after that date.

#### **6.2 Notice to Transfer to an Unregulated Retailer**

A customer transferring to an unregulated retailer must provide DERS with 30 days notice prior to the intended transfer date.

#### **6.3 Relocation of Customer**

If the Customer wishes to relocate from the Site, the customer must notify DERS at least three full business days prior to relocation of the address of its new location.

#### **6.4 Customer Change of Name or Information**

The Customer must notify DERS as soon as reasonably possible of a change of name, mailing address or telephone number. Such notification shall be provided in writing if requested by DERS.

## **ARTICLE 7**

### **MEASUREMENT OF ENERGY CONSUMPTION**

#### **7.1 Measurement provided by WSP**

The WSP provides to DERS under its Distribution Tariff, meter readings and estimates of consumption of Electricity by Customers. Billings to Customers under these Terms

and Conditions shall be based on those meter readings and estimates. DERS assumes no liability to the Customer for meter readings and estimates provided the WSP.

## **7.2 Meter Testing**

If a Customer believes his or her meter to be in error, the customer will arrange to have the meter tested by the WSP. The Customer will pay DERS all charges for meter testing incurred by DERS in accordance with the WSP's Terms and Conditions.

There shall be no cost to the Customer if the meter is found to be in error.

## **ARTICLE 8 BILLINGS AND PAYMENT**

### **8.1 Billing Practices**

DERS provides REA Regulated Rate Services to Customers and does not require payment in advance, except where a deposit is required in accordance with these Terms and Conditions. DERS will bill in accordance with related regulations.

### **8.2 Responsibility for Payment**

The Customer is responsible for payment for all REA Regulated Rate Service provided to the Customer up to the time DERS has closed the account and, until payment for final charges for consumption has been made.

If a Customer's REA Regulated Rate Service is discontinued by DERS or disconnected under the Association Terms and Conditions, the Customer is responsible for payment for all REA Regulated Rate Service provided to the Customer up to the time of such discontinuation or disconnection, and until payment for final charges for consumption has been made.

### **8.3 Responsibility to Pay**

A bill issued to the Customer by DERS shall be paid in full by the due date specified on the bill, such due date not to be less than 13 business days following the issuance of the bill. If a Customer loses their bill, they shall not be relieved of the obligation to pay the bill in full by the due date. Payments shall be without prejudice to the Customer's right to contest any rate or fee charged.

### **8.4 Adjustments to Bills**

Bills rendered by DERS shall contain the information prescribed in applicable legislation. Bills rendered by DERS may be adjusted from time to time to, among other things, reflect adjustments by the Association under its Distribution Tariff and DERS will issue refunds or charges as appropriate to the affected customers.

### **8.5 Late Payment Charge**

If a Customer does not pay a bill in full by the due date, subject to disputed charges as outlined in Section 10, a late payment charge may be applied. The outstanding unpaid amount, including the late payment charge, shall be added to the charges that become due and payable in the next bill. DERS will disclose the late payment fee in its Fee Schedule.

### **8.6 Remedies for Non-Payment**

If a bill remains unpaid after the due date or grace period, DERS may require a deposit or an increase in the amount of an existing deposit.

Subject to any restrictions under the EUA and Regulations or Section 10 of these Terms and Conditions, failure to pay a bill may result in DERS either discontinuing the Customer's REA Regulated Rate Service or requesting a disconnection of such service.

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In addition, DERS may commence collection action. Prudent and reasonable collection costs incurred by DERS may be added to the Customer's bill.

If a Customer's REA Regulated Rate Service is discontinued by DERS or disconnected by the WSP, any unpaid charges in the account may be transferred to any other REA Regulated Rate Service account held by the same Person and any deposit held in respect of such account may be applied against the unpaid charges.

DERS will notify the Customer when an account is in arrears and will provide an opportunity to resolve any arrears prior to taking action. Normal credit actions may include, but is not limited to the following:

- (a) written notice and/or telephone call and/or door to door notice to the customer indicating payment has not been received and timing for future action if payment or other arrangements have not been made.
- (b) written notice and/or telephone call indicating pending notice of disconnection and timing of disconnection action.
- (c) subject to limitations on disconnection outlined in legislation and regulations, initiate disconnection.
- (d) the use of collection agencies.
- (e) legal action.

## **8.7 Restoration of REA Regulated Rate Service**

In order for REA Regulated Rate Service to be restored after it has been discontinued or disconnected for non-payment, the Customer must pay all outstanding bills in full, provide a deposit to DERS and pay the reconnection fee prescribed in the Rate Schedule. At DERS' discretion, DERS may allow the Customer to make payment arrangements to settle arrear amounts over a reasonable amount of time.

## **8.8 Partial Payments**

Partial payments on an account will be applied to the unpaid amounts outstanding on the longest outstanding bills. Interest will not be paid on credit balances.

## **8.9 Over Payments**

If the Customer pays DERS an amount in excess of what is owed to DERS, the excess amount will be carried as a credit balance on the Customer's account and applied to bills for future REA Regulated Rate Services unless the Customer requests a refund.

## **8.10 Dishonored Payments**

In addition to any late payment charge under Section 8.2 of these Terms and Conditions, a Customer whose payment is dishonored shall pay the charge as specified in the Rate Schedules.

## **8.11 Novelty Payments**

DERS may refuse to accept payment when the Customer attempts to make payment by a cheque drawn on a form other than a bank cheque. DERS follows the coin acceptance limitations specified in the *Currency Act*, S.C. 1985, c. C-52 as follows:

Payment in coin may be made to the maximum amount of:

- Forty dollars if the denomination is two dollars or greater but does not exceed ten dollars,
- Twenty-five dollars if the denomination is one dollar,
- Ten dollars if the denomination is ten cents or greater but less than one dollar,
- Five dollars if the denomination is five cents, and
- Twenty-five cents if the denomination is one cent.

### **8.12 Other Occupants' Liability for Payment**

Where a Customer of Record for a Site has defaulted on payment of a bill for REA Regulated Rate Service and DERS reasonably believes that the occupant receiving service at the site is related to or associated with the previous Customer of Record, the other occupants will be deemed the current Customer of Record.

### **8.13 Disconnection for Insufficient Information**

If DERS has not been provided with sufficient information to bill a Customer, or the premises or property served by a Site reasonably appears to be vacant or not occupied by the Customer of Record, DERS may provide written notice of the deficiency to the customer or owner or to the site location. Following a reasonable opportunity to provide the requested information, if the Customer has not provided such information and subject to limitations on disconnections outlined in legislation and regulations, DERS may request the WSP to disconnect service.

## **ARTICLE 9 RESPONSIBILITY AND LIABILITY**

### **9.1 Requirements in the *Electric Utilities Act* and Regulations**

In addition to any rights and obligations contained in these Terms and Conditions, DERS is governed and bound by the EUA and Regulations.

DERS shall maintain security standards, including control of access to data and other information, consistent with the highest standards of business practice in the industry.

### **9.2 Interruption of REA Regulated Rate Service**

DERS does not own or operate the Association's Distribution System or any other part of the Interconnected Electric System and does not guarantee continuous REA Regulated Rate Service.

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DERS will endeavor at all times to provide regular and uninterrupted REA Regulated Rate Service to Customers.

### **9.3 Force Majeure**

DERS, is relieved of its obligations under the REA Regulated Rate Tariff including these Terms and Conditions, and shall not be liable for any failure to perform any service under the REA Regulated Rate Tariff or 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.

Should a residence or business being served be suspended or discontinued, due to fire or any other causes beyond the control of the Customer, any services, and related fees and charges except pass through charges from the WSP, upon request by the Customer, shall become inoperative until business is resumed, except for unbilled amounts due to DERS for service theretofore rendered by it, at which time any service and related fees shall again become operative. Upon resumption of service, the Customer's credit standing with DERS will be no worse than it was prior to the suspension of service.

### **9.4 Limitation of DERS' Liability to Customer**

Except for direct physical damage, loss or injury to a Customer or a Customer's property resulting from the negligence, willful misconduct of, or breach of these Terms and Conditions by DERS or its employees, agents or contractors acting within the scope of their employment, DERS shall not be liable to a Customer, whether in tort, contract, strict liability or otherwise, for any loss, damage, expense, charge, cost or other liability of any kind suffered or incurred by the Customer arising out of or in any way connected with any interruption, defect, irregularity, failure, curtailment or reduction in REA Regulated Rate Service. Under no circumstances or for any reason shall DERS be liable to a customer for any loss, injury or damage of an indirect, special, exemplary, punitive or consequential nature including, without limitation, loss of revenues, loss of

profits, loss of earnings, loss of contract, loss of opportunity, cost of capital, business interruption, claims of a Customer's customers, contractors or other third parties or any other similar loss, damage, expense, cost or liability whatsoever, whether or not any such loss, damage, expense, cost or liability was foreseeable.

Any claim by a Customer for loss, injury or damage, must be filed with DERS within two years from the date of occurrence of the incident that is the subject of the claim, failing which DERS shall have no liability to the Customer for any such loss, injury or damage.

### **9.5 Association's Distribution Tariff**

Each Customer shall be responsible for the Service Connection to a Site to permit the Customer to receive REA Regulated Rate Service. As a condition of receiving REA Regulated Rate Service, each Customer agrees to be bound by, and shall comply with, all provisions of the Association's Distribution Tariff applicable to the Customer.

### **9.6 Indemnification by Customer**

Each Customer shall indemnify and hold DERS and its employees, agents and contractors harmless from and against any claim for any loss, damage, expense, charge, cost, penalty or other liability of any kind suffered or incurred by DERS (including charges or liability arising under the Association's Distribution Tariff arising out of or in any way connected with any failure by the Customer or its Facilities to comply with any of the provisions of the Association's Distribution Tariff applicable to the Customer or its Facilities or any legal or regulatory requirement related to Distribution Access Service required to be complied with by the Customer.

Without limiting the generality of the foregoing, Customer shall be liable to compensate DERS for any costs, expenses or liabilities that it incurs under the provisions of the Association's Terms and Conditions arising out of or connected with any action or inaction of the Customer related to REA Regulated Rate Service.

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## **9.7 Indemnification by DERS**

DERS shall indemnify and hold a Customer harmless from and against direct physical loss, injury or damage to the Customer or the Customer's property resulting from the negligence or willful misconduct of DERS or its employees, agents or contractors acting within the scope of their employment or breach of these Terms and Conditions. Under no circumstances or for any reason shall DERS be liable to a Customer for any loss, injury or damage of an indirect, special, exemplary, punitive or consequential nature including, without limitation, loss of revenues, loss of profits, loss of earnings, loss of contract, loss of opportunity, cost of capital, business interruption, claims of a Customer's customers, contractors or other third parties or any other similar loss, damage, expense, cost or liability whatsoever, whether or not any such loss, damage, expense, cost or liability was foreseeable.

Any claim by a Customer for indemnity for loss, injury or damage, must be filed with DERS within two years from the date of occurrence of the incident that is the subject of the claim, failing which DERS shall have no obligation to indemnify the Customer for any such loss, injury or damage.

## **ARTICLE 10 DISPUTE RESOLUTION**

### **10.1 Disputed Charges**

The Customer has a right to dispute any charge shown on the Customer's bill by contacting DERS either in writing or by telephone. DERS will investigate all disputes and make any adjustments DERS determines appropriate. If the dispute is within DERS' control and is not resolved within 30 days from the notice, the Customer can escalate the dispute as provided in Section 10.2 and 10.3 and the Customer will not be required to pay any charges for the disputed period that are in excess of the average monthly bill of the Customer as reasonably determined by DERS. The Customer will be responsible to pay all past and future charges while the specific charge in dispute is

being resolved. Any outstanding disputed amount shall be due and payable within 10 business days of resolution. No additional charges will be applied to disputed amounts.

## **10.2 Resolution by DERS and Customer**

If any dispute between DERS and a Customer arises at any time in connection with these Terms and Conditions, DERS and the Customer, acting reasonably and in good faith, shall use their reasonable efforts to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved pursuant to this Section 10.2, a senior representative of DERS and the Customer shall meet to attempt to resolve the dispute.

During the course of a dispute that has been escalated in accordance with this Section 10.2 of these Terms and Conditions DERS shall not terminate or suspend service for reasons of the escalated dispute, but may terminate or suspend service if a Customer is on contravention of other aspects of these Terms and Conditions or in violation of the Association Terms and Conditions.

## **10.3 Resolution by a Third Party**

If any dispute has not been resolved pursuant to Section 10.2 within a reasonable time, DERS and the Customer may pursue in Alberta any remedies available to them under applicable laws, including arbitration pursuant to the *Arbitration Act (Alberta)*.

# **ARTICLE 11 MISCELLANEOUS**

## **11.1 Compliance with Applicable Legal Authorities**

DERS and the Customer 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 Independent System Operator or of governmental authorities having applicable jurisdiction. DERS or the Customer will not be required to violate, directly or indirectly,

or become a party to a violation of any requirement of the Independent System Operator or any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide or receive REA Regulated Rate Service. DERS' obligation to provide any REA Regulated Rate Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of the REA Regulated Rate Service will have been obtained and will be in force during the period of the agreement between DERS and the Association.

### **11.2 No Assignment**

Service under the REA Regulated Rate Tariff is not assignable.

The benefits and obligations of any service contract shall begin when DERS commences to supply REA Regulated Rate Service, and shall inure to the benefit of and be binding upon the respective heirs, personal representatives, and successors.

This limit on assignment is not intended to infringe on or limit the right of customer to sell, remove or otherwise lawfully dispose of customer's property, subject to the termination clauses of these Terms and Conditions. Upon termination, any outstanding balances will remain the obligation of the customer.

### **11.3 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 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 provision of these Terms and Conditions 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.