

APPENDIX 11

**DIRECT ENERGY REGULATED SERVICES
ELECTRICITY REGULATED RATE TARIFF
TERMS AND CONDITIONS OF REGULATED RATE SERVICE
EFFECTIVE JANUARY 1, 2008**

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TERMS AND CONDITIONS OF 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 Eligible Customers in the service area of ATCO Electric. DERS provides Regulated Rate Service to Eligible Customers under its Regulated Rate Tariff that has been approved by the Board.

DERS' Regulated Rate Tariff consists of these approved 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 Regulated Rate Service.

DERS' Regulated Rate Tariff is available for public inspection at DERS' website www.directenergyregulatedservices.com and during normal business hours at DERS' business office.

ARTICLE 2

DEFINITIONS AND INTERPRETATION

2.1 Definitions

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

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

"ATCO Electric" means ATCO Electric Ltd.

"ATCO Terms and Conditions" means ATCO Electric's Terms and Conditions for Distribution Access Service and Terms and Conditions of Distribution Service Connections, as the case may be.

"Board" 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 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 Eligible Customer who has not selected a retailer.

"Customer of Record" means the Customer 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 ATCO Electric's Distribution System.

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

"Distribution Tariff" means ATCO Electric's tariff for the provision of Distribution Access Service approved by the 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 Rate Option Regulation*, AR **262/2005**, as amended.

"EUB" means the Alberta Energy and Utilities Board.

"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. Any order or direction of the Board is expressly excluded from this definition.

"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.

"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.

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

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

"Regulated Rate Service" means the service that is required by the EUA to be provided in accordance with a Regulated Rate Tariff.

"Regulated Rate Tariff" means DERS' regulated rate tariff approved by the Board including these Terms and Conditions and the Rate Schedules.

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

"Service Connection" means the Facilities of ATCO Electric's Distribution System 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 Regulated Rate Service, as amended from time to time.

"UCA" means the Utilities Consumer Advocate.

2.2 Conflicts

If there is any conflict between these Terms and Conditions and a provision expressly set out in an order of the Board, the provision of the Board's order shall govern.

If there is any conflict between these Terms and Conditions and a provision of the EUA or related Regulations, 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 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 have been approved by the Board in Decision ___-___, and are effective as of _____, 20___.

3.2 Customers Bound by Terms and Conditions

The Regulated Rate Tariff and the Rate Schedules approved by the Board apply to each Customer. As a condition of receiving 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 Regulated Rate Tariff

No agent, employee or other representative of DERS is authorized to modify any provision or rate contained in the Regulated Rate Tariff or to bind DERS to perform in

any manner inconsistent with the Regulated Rate Tariff. Any request for the waiver or alteration of any part of the Regulated Rate Tariff must be filed with and approved by the Board. DERS may make Minor Routine changes by filing updated Terms and Conditions with the Board.

3.4 Regulatory Approval and Amendment

Other than Minor Routine changes as per Section 3.3, DERS may only amend these Terms and Conditions with approval of the Board. Whenever the Board approves an amendment to these Terms and Conditions or an amendment otherwise takes effect, these Terms and Conditions will be revised to incorporate such amendments. The Board will acknowledge the notice of the amendment to the Terms and Conditions within 60 days after such notice is filed or the Board will direct a further process to deal with the requested changes as the Board deems to be appropriate.

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 or order or decision of the Board that applies to 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.

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 REGULATED RATE SERVICE

4.1 Requirements for Obtaining Regulated Rate Service

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

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

A residential customer may request service via telephone or other means defined by DERS.

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

If DERS approves a Customer's application for Regulated Rate Service, DERS will open an account for the Customer for 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 service 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 Regulated Rate Service is discontinued or disconnected as provided in Sections 4.4 and 8.7.

4.2 Refusal of Regulated Rate Service

DERS reserves the right to refuse to provide 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 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 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 numbers (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.

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 Regulated Rate Service to the prospective Customer, or
- (b) discontinue or request a disconnection of 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 its 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 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 Regulated Rate Service is terminated and the Customer's account is closed.

Where a Customer's 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 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 DERS shall comply with any billing standards code as published by the Board

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 ATCO Electric. The Customer will pay DERS all charges for meter testing incurred by DERS in accordance with the ATCO 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 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 or Board directives on billing processes and quality.

8.2 Responsibility for Payment

The Customer is responsible for payment for all 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 Regulated Rate Service is discontinued by DERS or disconnected under the ATCO Terms and Conditions, the Customer is responsible for payment for all

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 ATCO Electric 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 Regulated Rate Service or requesting a disconnection of such service.

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 Regulated Rate Service is discontinued by DERS or disconnected under the ATCO Terms and Conditions, any unpaid charges in the account may be transferred to any other 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 Regulated Rate Service

In order for 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 Schedules. 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.

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 Regulated Rate Services unless the Customer requests a refund. Interest will not be paid on credit balances.

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 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 ATCO Electric 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 Regulated Rate Service

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

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

9.3 Force Majeure

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

Each Customer shall be responsible for the Service Connection to a Site to permit the Customer to receive Regulated Rate Service. As a condition of receiving Regulated Rate Service, each Customer agrees to be bound by, and shall comply with, all provisions of the 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 ATCO Electric'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 ATCO Electric'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 ATCO Terms and Conditions arising out of or connected with any action or inaction of the Customer related to Regulated Rate Service.

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

Without limiting any party's right under the EUA or Regulations to make complaints to the Board, both parties, acting in good faith shall endeavor to resolve differences prior

to taking any action to the Board. Customers are encouraged to contact DERS first with any issues prior to escalating the issue to the UCA or the EUB.

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 Customers

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 to the EUB in accordance with Section 10.1 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 in contravention of other aspects of these Terms and Conditions or in violation of the ATCO 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 the matter with the EUB if the matter is within the EUB's jurisdiction, or 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 EUB, Independent System Operator or 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 Regulated Rate Service. DERS' obligation to provide any Regulated Rate Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of the Regulated Rate Service will have been obtained and will be in force during the period of Regulated Rate Service.

11.2 No Assignment

Service under the Regulated Rate Tariff is not assignable.

The benefits and obligations of any service contract shall begin when DERS commences to supply 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 in 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.