

**APPENDIX 2**

**ENMAX ENERGY CORPORATION**

**TERMS AND CONDITIONS FOR THE REGULATED RATE TARIFF**

**EFFECTIVE JANUARY 1, 2011**

Effective January 1, 2011

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## ARTICLE 1 PREAMBLE

ENMAX Power has made arrangements with ENMAX Energy to perform ENMAX Power's obligations to provide Regulated Rate Service to Customers in the Service Area. ENMAX Energy provides Regulated Rate Service under its Regulated Rate Tariff that has been approved by the Commission and includes these RRT Terms and Conditions and the Price Schedules. The Price Schedules set out the rates, charges and fees approved by the Commission for Regulated Rate Service provided by ENMAX Energy.

These RRT Terms and Conditions set forth the terms and conditions upon which ENMAX Energy will provide Regulated Rate Service to Customers in the Service Area.

## ARTICLE 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

The following words and phrases, whenever used in these RRT Terms and Conditions or the Price Schedules, shall have the respective meanings set out below:

- (a) "**Alberta Interconnected Electric System**" means "interconnected electric system" as defined in the EUA.
- (b) "**Applicable Law**" means statutes, regulations, regulatory requirements, governmental requirements, or orders, directives, rules or procedures or other similar instruments applicable to the provision or receipt of Regulated Rate Service, that are implemented, promulgated, issued, ordered or adopted by any court, government, government agency, regulatory body, the ISO or any other body having jurisdiction over ENMAX Energy or the Customer.
- (c) "**Business Day**" means a day other than a Saturday or a "holiday" as that term is defined in the *Interpretation Act*, R.S.A. 2000, c. I-8.
- (d) "**Charge**" and "**Charges**" have the meanings given to such terms in Section 7.2.
- (e) "**Claims**" means all claims, actions, costs, fees (including legal fees and disbursements on a full indemnity basis), judgments, fines, penalties and any liability in law, equity, tort or contract for any loss, damage, injury or claim of any nature whatsoever.
- (f) "**Commission**" means the Alberta Utilities Commission, or any predecessor or successor organization with jurisdiction under Applicable Law or the Regulation.
- (g) "**Customer**" means a "regulated rate customer" as defined in the Regulation who applies for, accepts, uses or receives Regulated Rate Service.

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- (h) "**Deposit**" means the cash security for payment for Regulated Rate Service, as determined by ENMAX Energy pursuant to Section 5.1, and includes accumulated interest pursuant to Section 5.5, if applicable.
- (i) "**Disconnected**" and "**Disconnection**" and derivatives of such terms mean the de-energization of a Site or the installation of a current limiting device at a Site by ENMAX Power.
- (j) "**Distribution Access Service**" means "distribution access service" as defined in the EUA provided to Customers by means of ENMAX Power's Distribution System.
- (k) "**Distribution System**" means "electric distribution system" as defined in the EUA.
- (l) "**Distribution Tariff**" means the ENMAX Power's tariff for the provision of Distribution Access Service approved by the Commission and in effect from time to time.
- (m) "**ENMAX Energy**" means ENMAX Energy Corporation.
- (n) "**ENMAX Power**" means ENMAX Power Corporation, being the owner of the Distribution System in the Service Area.
- (o) "**Electricity**" means "electricity" as defined in the EUA.
- (p) "**Electricity Services**" means "electricity services" as defined in the EUA.
- (q) "**EUA**" means the *Electric Utilities Act*, S.A. 2003, c.E-5.1, including the regulations enacted thereunder, as re-enacted, amended, supplemented or replaced from time to time.
- (r) "**Facilities**" means physical plant including, without limitation, transmission and distribution lines, transformers, meters, equipment and machinery.
- (s) "**Force Majeure**" means circumstances not reasonably within the control of ENMAX Energy 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, or diminution, impairment or interruption of supply, goods or services including Electricity or Distribution Access Service, the intervention of federal, provincial, or local government or from any of their agencies or boards (excluding decisions and/or orders made by the Commission in the normal course of 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, provided however, that a force majeure shall not include inability to pay or a lack of financial resources.

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- (t) "**ISO**" means the Independent System Operator as established pursuant to the EUA, or any successor entity existing from time to time.
- (u) "**Owner**" means the owner or owners of a Premise, and includes their respective agents (i.e. property managers), successors and assigns.
- (v) "**Person**" means an individual, trustee, executor, administrator, legal representative, partnership, corporation, organization, association or other legal entity, and includes an individual member thereof as applicable.
- (w) "**Premise**" means a property, together with any building(s) thereon, which are serviced by one or more Sites.
- (x) "**Price Schedules**" means the rate and fee schedules forming part of the Regulated Rate Tariff that set out the charges that will be charged to Customers for Regulated Rate Service, as amended from time to time.
- (y) "**Regulated Rate Service**" means the Electricity Services that are required by the EUA and the Regulation to be provided to Customers in accordance with a regulated rate tariff.
- (z) "**Regulated Rate Tariff**" means ENMAX Energy's tariff approved by the Commission comprised of these RRT Terms and Conditions and the Price Schedules, and pursuant to which Regulated Rate Service is provided to Customers in accordance with the Regulation.
- (aa) "**Regulation**" means the *Regulated Rate Option Regulation*, AR 262/2005, as amended or replaced, from time to time.
- (bb) "**RRT Terms and Conditions**" means these terms and conditions for the Regulated Rate Tariff, as amended from time to time.
- (cc) "**Service Area**" means ENMAX Power's service territory.
- (dd) "**Service Connection**" means the Facilities at the point where ENMAX Power's Distribution System connects to a Site.
- (ee) "**Site**" means the end-use electricity delivery point where a Customer receives Electricity by means of a Service Connection.
- (ff) "**Tenant**" means a Person, other than an Owner, who has the use of or occupies a Premise, and applies for and obtains Regulated Rate Service.

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## **2.2 Conflicts**

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

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

## **2.3 Headings**

The division of these RRT 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 RRT Terms and Conditions.

## **2.4 Extended Meanings**

In these RRT Terms and Conditions, words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter gender and vice versa.

## **2.5 Charges**

The Charges referred to in these RRT Terms and Conditions are as set out in Section 7.2.

# **ARTICLE 3 GENERAL PROVISIONS**

## **3.1 Effective Date**

These RRT Terms and Conditions have been approved by the Commission in Decision \_\_\_\_ - \_\_\_\_\_, and are effective as of \_\_\_\_\_, \_\_\_\_, 2008 and shall remain in force until such time as the Commission approves a new Regulated Rate Tariff.

## **3.2 Customers Bound by Regulated Rate Tariff**

The Regulated Rate Tariff approved by the Commission applies to each Customer. As a condition of receiving Regulated Rate Service, the Customer agrees to be bound by these RRT Terms and Conditions. By taking Regulated Rate Service at any Site the Customer agrees to pay the Charges.

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

No agent, employee or other representative of ENMAX Energy is authorized to modify any provision or Charge contained in the Regulated Rate Tariff or to bind ENMAX Energy to perform in any manner inconsistent with the Regulated Rate Tariff. Any waiver or alteration of any part of the Regulated Rate Tariff must be filed with and approved by the Commission. Notwithstanding the foregoing, ENMAX Energy may make minor routine administrative changes to the Regulated Rate Tariff, such as corrections to punctuation, grammar or numbering, provided that the changes do not alter the meaning of the clause and ENMAX Energy files such updated RRT Terms and Conditions with the Commission. Whenever the Commission approves an amendment to these RRT Terms and Conditions or an amendment otherwise takes effect, these RRT Terms and Conditions will be automatically revised to incorporate such amendments.

### **3.4 Rental Premise**

Except as set out below, for purposes of these RRT Terms and Conditions and the provision of Regulated Rate Service to a Premise, the Owner of such Premise will be deemed the Customer. If a Tenant contacts ENMAX Energy with respect to the provision of Regulated Rate Service to a Premise, then ENMAX Energy will assume that the Owner has permitted the Tenant to be the Customer while such Person is a Tenant, unless the Owner advises ENMAX Energy otherwise. An Owner will automatically revert to being the Customer for a Premise on the date that there is no longer a Tenant for such Premise, provided that ENMAX Energy will provide the Owner with written notice as soon as practicable when the Owner reverts to being the Customer. The Owner will not be responsible for paying any Charges incurred by a Tenant while such Tenant was the Customer for the Premise, unless the Owner agrees or instructs ENMAX Energy otherwise. An Owner will be liable to pay any Charges relating to identifying, searching for and contacting an Owner as a result of there being no Tenant for a Premise. In its sole discretion acting reasonably, ENMAX Energy will determine the date upon which there was no Tenant for a Premise, and in doing so, it may rely on information received from either the Owner or Tenant, or otherwise obtained.

## **ARTICLE 4 REGULATED RATE SERVICE**

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

- (a) To obtain and continue to receive Regulated Rate Service a Person must:
- (i) be, or be capable of becoming, a Customer with respect to a Site in the Service Area;
  - (ii) be either an Owner or a Tenant with respect to a Site in the Service Area;

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- (iii) provide ENMAX Energy with sufficient billing information, and if requested, proof of identification, existence or status (if a corporation), as ENMAX Energy considers appropriate in the circumstances. Such information will be required to be given to ENMAX Energy by every Customer, notwithstanding that such Customer may have previously provided similar information to another regulated rate service provider or electricity services retailer;
  - (iv) provide ENMAX Energy with (i) sufficient information to satisfy ENMAX Energy, acting reasonably, of the Customer's creditworthiness and (ii) if so determined by ENMAX Energy a Deposit pursuant to Section 5.1;
  - (v) receive and maintain service from ENMAX Power pursuant to the Distribution Tariff, and comply with all of the Customer's obligations under the Distribution Tariff and Applicable Law;
  - (vi) pay all amounts that become due under these RRT Terms and Conditions on or before the applicable due date; and
  - (vii) abide by its obligations under the Regulated Rate Tariff.
- (b) ENMAX Energy reserves the right to verify the age, existence or status (if a corporation), identity of the Customer and the accuracy of any other information provided pursuant to subsection (a) above before providing Regulated Rate Service to a Site.

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

ENMAX Energy reserves the right to (i) refuse to provide Regulated Rate Service to a Customer or (ii) terminate Regulated Rate Service being provided to a Customer pursuant to Section 8.5, where:

- (a) the Customer does not have a satisfactory credit rating or credit history, as determined by ENMAX Energy, and fails to pay a Deposit;
- (b) the Customer has an outstanding balance with ENMAX Energy for Regulated Rate Service;
- (c) a previous Tenant at the Premise had a history of non-payment and ENMAX Energy can reasonably demonstrate that such prior defaulting Tenant would continue to be a Tenant of the Premise; or
- (d) the Customer fails to meet any of the requirements set forth in Section 4.1.

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### **4.3 Accuracy of Information**

The Customer represents and covenants to ENMAX Energy that all oral or written information furnished by or on behalf of the Customer relating to the Regulated Rate Service, whether financial or otherwise, is accurate and complete in every respect on the date that such information is provided. The Customer must notify ENMAX Energy as soon as reasonably possible of a change of name, mailing address, telephone number, vacancy at a Premise, sale of a Premise or other pertinent information.

### **4.4 Request for Regulated Rate Service**

A Customer may request Regulated Rate Service by contacting ENMAX Energy by telephone.

## **ARTICLE 5 FINANCIAL SECURITY REQUIREMENTS**

### **5.1 Requirement for Deposit**

ENMAX Energy may require the Customer to pay a Deposit in an amount determined by ENMAX Energy, including without limitation, in the following circumstances:

- (a) if the Customer does not have a satisfactory credit rating or credit history, as reasonably determined by ENMAX Energy;
- (b) the Customer has paid two (2) consecutive bills late in any twelve (12) month period or three (3) non-consecutive bills late in any twelve (12) month period;
- (c) the Customer has issued more than one (1) payment that has been returned for non-sufficient funds in any six (6) month period;
- (d) there has been more than a 50% increase in the Customer's average monthly consumption of Electricity over the prior six (6) month period; or
- (e) the Customer makes a request for reconnection and resumption of Regulated Rate Service following a Disconnection for non-payment.

### **5.2 Maximum Deposit**

The maximum Deposit ENMAX Energy may require from the Customer is not to exceed thirty (30) percent of the annual total bill payable by the Customer for the Site, as reasonably estimated by ENMAX Energy.

### **5.3 Use of Deposit**

ENMAX Energy may, in its sole discretion, apply a Deposit, or portion thereof, to any Charges that were not paid when due.

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#### **5.4 Return of Deposit**

A Deposit will be credited to the Customer's Regulated Rate Service account after the Customer has demonstrated a satisfactory payment history over a period of twelve (12) consecutive months. If the Customer discontinues Regulated Rate Service or the Customer's Regulated Rate Service is Disconnected the Deposit will be applied as a credit against any outstanding Charges. Any credit balances arising under this Section shall be dealt with pursuant to Section 7.8. Notwithstanding the foregoing, if a Customer has another account with ENMAX Energy for Regulated Rate Service being provided to another Site then ENMAX Energy may apply the Deposit to such other account.

#### **5.5 Interest Payable on Deposits**

The Deposit, until applied to the Customer's account or refunded to the Customer, will accumulate interest at a rate equivalent to the one-year non-redeemable Royal Bank GIC rate in effect ten (10) Business Days prior to the start of the applicable calendar year for investments of \$500 to \$99,999.99. Such interest rate will be updated annually.

### **ARTICLE 6 MEASUREMENT OF ENERGY CONSUMPTIONS**

#### **6.1 Measurement of Electricity**

Under the Distribution Tariff ENMAX Power provides ENMAX Energy with meter readings and estimates of consumption of Electricity by Customers. Additionally, ENMAX Energy may estimate consumption of Electricity by a Customer. Billings to Customers under these RRT Terms and Conditions shall be based on those meter readings and estimates. ENMAX Energy assumes no liability to the Customer for meter readings and estimates provided by ENMAX Power.

#### **6.2 Meter Testing**

If a Customer believes the meter to be in error, the Customer must contact ENMAX Energy to request that the meter be tested. ENMAX Energy agrees to promptly request ENMAX Power to test such meter. The Customer will pay ENMAX Energy all Charges incurred by ENMAX Energy relating to the meter testing in accordance with the Distribution Tariff, provided however that the Customer will not be responsible for paying such Charges if a meter has been proven to have been in error.

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## ARTICLE 7 BILLINGS AND PAYMENT

### 7.1 Billing Practices

ENMAX Energy will use reasonable efforts to bill the Customer for Regulated Rate Service provided at the Site in accordance with the Price Schedules on a monthly basis. Notwithstanding ENMAX Energy's failure to bill a Customer on a monthly basis, such Customer will nonetheless remain obligated to pay any Charges incurred within 12 months of the date of a bill as provided in Section 17 of the *Regulated Rate Option Regulation* (AR 262/2005). ENMAX Energy will issue a separate bill for each Site, however, upon notice from the Customer ENMAX Energy may agree to issue one (1) bill for all charges for Regulated Rate Service delivered at more than one Site.

Bills shall be deemed delivered to the Customer if delivered personally, or when mailed to or left at the Premise where Regulated Rate Service is provided or the last known address of the Customer. Failure to receive a bill from ENMAX Energy or loss of a bill by the Customer will not entitle the Customer to claim (i) that the Customer is not responsible for any Charges, (ii) any delay in the payment of such bill, or (iii) any extension of the date after which a late payment charge, or any other remedy, becomes applicable. Payments shall be without prejudice to the Customer's right to contest any Charge pursuant to Section 7.11.

### 7.2 Charges

Subject to Section 7.11, in consideration of ENMAX Energy providing the Customer with Regulated Rate Service at a Site the Customer agrees to pay for:

- (a) actual Electricity consumed, or estimated consumption at the Site as determined by ENMAX Energy or ENMAX Power, at the rate set out in the Price Schedules;
- (b) other charges, security deposits, and fees set out in the Regulated Rate Tariff, including the Price Schedules;
- (c) charges, adjustments and fees levied pursuant to the Distribution Tariff;
- (d) any taxes, charges, assessments, fees and duties of any kind levied or imposed by any government or public authority, including without limitation goods and services tax and any other similar sales and excise taxes, which relate to the Regulated Rate Service and that ENMAX Energy is required to collect pursuant to Applicable Law; and
- (e) any other charges, fees, other amounts or riders as may be approved by the Commission from time to time as part of the Regulated Rate Tariff;

(collectively the “Charges” and individually a “Charge”).

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### **7.3 Responsibility for Payment**

The Customer is responsible for payment of the Charges for a Site from the time that Regulated Rate Service is obtained until such time as Regulated Rate Service is discontinued, the Site is Disconnected or the Customer ceases being a Tenant pursuant to Section 3.4. The Customer shall remain responsible for payment of all Charges until full payment of the same has been received by ENMAX Energy.

### **7.4 Payment**

Charges owing will be set forth on a bill issued to the Customer by ENMAX Energy. Charges are due on the date specified on the bill, but in any event shall be paid in full no later than the date specified on the bill. Payment of a bill shall be made by way of cash, bank cheque, automatic debit or such other electronic instrument explicitly permitted by ENMAX Energy.

### **7.5 Late Payment Charge**

Late payment charges, at a rate specified in the Price Schedules and set forth on a bill, will be applied to the any unpaid current Charges, no less than twenty-five (25) days following the date specified on the bill. Such unpaid Charges, including the late payment charge, will be added to new Charges that become due and payable on the next bill.

### **7.6 Remedies for Non-Payment**

Without limitation of other remedies available to it, ENMAX Energy may take one or more of the following actions should the Customer fail to pay billed amounts in full on time:

- (a) request a Deposit or an increased Deposit;
- (b) provide written notice, make a telephone call or provide personal notice to the Customer that payment has not been received, and stipulating the timing for future action if payment or other arrangements are not made;
- (c) provide written notice or make a telephone call indicating pending notice of Disconnection and timing of Disconnection action;
- (d) subject to limitations on Disconnection outlined in Applicable Law, initiate Disconnection;
- (e) use collection agencies; and
- (f) take legal action.

Collection costs incurred by ENMAX Energy as set forth in the Price Schedules and any other related charges set forth in the Distribution Tariff will be added to the Customer's outstanding account.

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### **7.7 Partial Payments**

Partial payments on an account will be applied to the unpaid amounts outstanding on the longest outstanding bills.

### **7.8 Overpayments**

If at any given time an on-going Customer's account contains a balance in excess of what is owed to ENMAX Energy, the excess amount will be carried as a credit balance on the Customer's account and applied to future Charges, provided however, that should the credit balance exceed the sum of one hundred (100) dollars the Customer may request a refund of the credit balance. If the Customer has discontinued Regulated Rate Service for a Site or is Disconnected, ENMAX Energy will refund any credit balance of ten (10) dollars or more. The Customer may obtain a refund of credit balances that are less than ten (10) dollars if, within twelve (12) months of the Customer's discontinuance of Regulated Rate Service or Disconnection, the Customer requests such refund from ENMAX Energy.

### **7.9 Dishonoured Payments**

Receipt by ENMAX Energy of a cheque or other payment instrument that is dishonoured, rejected or reversed by any financial institution when presented for payment by ENMAX Energy shall not be considered valid payment. ENMAX Energy reserves the right to reject post-dated cheques. In addition to any late payment charge, the Customer shall pay any amounts relating to dishonoured payments specified in the Price Schedules.

### **7.10 Novelty Payments**

ENMAX Energy follows the coin acceptance limitations specified in the *Currency Act, S.C. 1985, c. C-52* as follows:

- (a) Payment in coin may be made to the maximum amount of:
  - (i) Forty (40) dollars if the denomination is two (2) dollars or greater but does not exceed ten (10) dollars;
  - (ii) Twenty-five (25) dollars if the denomination is one (1) dollar;
  - (iii) Ten (10) dollars if the denomination is ten (10) cents or greater but less than one (1) dollar;
  - (iv) Five (5) dollars if the denomination is five (5) cents; and
  - (v) Twenty-five (25) cents if the denomination is one (1) cent.

### **7.11 Dispute of Bill**

The Customer may dispute Charges shown on a bill by contacting and advising ENMAX

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Energy of the reason for the dispute. ENMAX Energy will promptly investigate all disputes and advise the Customer of its findings. The Customer will not be required to pay any Charges in dispute on a bill that are in excess of the average monthly bill of the Customer, as reasonably determined by ENMAX Energy. The Customer will be responsible to pay all non-disputed past and future Charges while a specific Charge is in dispute. Any unpaid disputed Charges, including accrued late payment charges thereon, shall be due and payable within ten (10) Business Days if the dispute is resolved in favour of ENMAX Energy.

#### **7.12 Transfer of Outstanding Amounts**

If Regulated Rate Service is cancelled by the Customer, discontinued by ENMAX Energy or Disconnected, any unpaid Charges in the Customer's account may be transferred to any other Regulated Rate Service account held by ENMAX Energy with the same Customer, and any Deposit held in respect of such other account may be applied against said unpaid Charges.

### **ARTICLE 8 MOVING, DISCONTINUING AND DISCONNECTING SERVICE**

#### **8.1 Notice to Close Account**

A Customer may discontinue and close an account for Regulated Rate Service for a Site by giving ENMAX Energy at least three (3) business days prior notice. ENMAX Energy may request proof that the Customer will no longer be responsible for the Site after that date. If such Customer was a Tenant then following such notice the Owner will be deemed the Customer pursuant to Section 3.4. If such Customer was the Owner, then ENMAX Energy will request Disconnection of the Site.

#### **8.2 Relocation of Customer**

If the Customer wishes to transfer their account from a Site to another Site, the Customer must notify ENMAX Energy of the address for the new Site at least three (3) business days prior to the relocation.

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### **8.3 Disconnection for Safety and System Security Reasons**

ENMAX Energy does not own or operate the Distribution System or any other part of the Alberta Interconnected Electric System, and does not guarantee continuous Regulated Rate Service, including an uninterrupted supply of Electricity. ENMAX Energy may discontinue or otherwise curtail, interrupt or reduce the supply of Electricity or Regulated Rate Service whenever ENMAX Energy reasonably determines, or when ENMAX Energy is directed by ENMAX Power, ISO, or any governmental, regulatory or civil authority that such a discontinuation, curtailment, interruption or reduction is necessary to facilitate safety, law enforcement or the construction, installation, operation, maintenance, reliability, repair, replacement or inspection of any Facilities, the Distribution System or the Interconnected Electric System; or due to any other reason, including emergencies, forced outages, potential damage to any Facilities, the Distribution System or any part of the Interconnected Electric System, or Force Majeure. Notwithstanding the foregoing, ENMAX Energy will endeavor to, at all times, provide regular and uninterrupted Regulated Rate Service to the Customer.

### **8.4 Tampering with Facilities**

If ENMAX Energy determines that there has been unauthorized use of Electricity or Regulated Rate Service at a Site, including but not limited to tampering with a meter or other Facilities, unauthorized connection or reconnection, or theft, fraud, intentional or unintentional use of Electricity whereby ENMAX Energy is denied full compensation for services provided, ENMAX Energy may request that the Site be Disconnected. The Customer shall be responsible to pay ENMAX Energy all Charges relating to the Electricity that was taken at a Site without authorization.

### **8.5 Disconnection Other Than for Safety Reasons**

ENMAX Energy may at any time, after having given at least forty-eight (48) hours prior notice to the Customer and without any further notice, initiate Disconnection if the Customer:

- (a) violates any provision of these RRT Terms and Conditions (including the provision of a Deposit when requested, failure to pay for the Regulated Rate Service or failure to provide requested information);
- (b) has instituted by or against it any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of the affairs of the Customer;
- (c) ceases to carry on business, makes or agrees to make a bulk sale of assets without complying with Applicable Law or commits an act of bankruptcy, or otherwise acknowledges its insolvency;
- (d) provides ENMAX Energy with incorrect information;
- (e) makes fraudulent or unauthorized use of Regulated Rate Service; or

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- (f) ENMAX Energy has not been provided with sufficient information to bill the Customer or the Premise served by the Site reasonably appears to ENMAX Energy to be vacant or not occupied by a known Customer.

### **8.6 Restoration of Service**

Following a Disconnection, ENMAX Energy may require that the Customer, prior to receiving further Regulated Rate Service, perform any one or more of the following:

- (a) pay any unpaid amounts owing to ENMAX Energy;
- (b) pay a Deposit, or increase an existing Deposit, in such amount, if any, as determined by ENMAX Energy; or
- (c) meet all requirements for Regulated Rate Service set forth in Section 4.1.

### **8.7 Service Guarantee**

ENMAX Energy must provide a credit of \$75 to any customer who is subject to one of the following errors made by ENMAX Energy:

- (a) Customer was provided written notice of pending disconnection of service in error;
- (b) Customer was provided written notice of pending referral to a credit agency in error;
- (c) Customer was referred to a credit agency in error; or
- (d) Customer experienced disconnection of service in error.

Payment of the \$75 credit is not required where no error has been made by ENMAX Energy, and in particular is not required in the following circumstances:

- (a) ENMAX Energy's written notice of pending disconnection or pending referral to a credit agency was not issued in error, and such notice and the customer's payment crossed in the mail.
- (b) ENMAX Energy's written notice of pending disconnection or pending referral to a credit agency was not issued in error, and such notice was in mail transit at the time the customer made or attempted to make payment by visiting the premises of an authorized payment acceptance establishment, such as a bank, trust company or credit union.
- (c) The electric or gas distributor disconnected a customer in error, rather than as instructed by ENMAX Energy.
- (d) ENMAX Energy's written notice of pending disconnection or pending referral to a credit agency was not issued in error, and such notice was properly mailed, but the

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customer did not pick up the mail from locations such as a post office, super mail box, or home mail box.

- (e) ENMAX Energy's written notice of pending disconnection or pending referral to a credit agency was not issued in error, and such notice was undelivered by the mail delivery service.
- (f) The customer attempted to make payment to the person dispatched by the electric or gas distributor to disconnect the service, where such disconnection was not made in error, but that person was not authorized to accept payment.

## **ARTICLE 9 RESPONSIBILITY AND INDEMNITY**

### **9.1 Requirements in the EUA**

In addition to any rights and obligations contained in these RRT Terms and Conditions, ENMAX Energy agrees to comply with its obligations respecting the Regulated Rate Services set out in the EUA, the Regulations and, directives and decisions of the Commission.

ENMAX Energy shall maintain security standards, including control of access to data and other information, consistent with industry standards.

### **9.2 Use of Regulated Rate Service**

The Customer assumes full responsibility for the proper use of Electricity or Regulated Rate Service provided by ENMAX Energy, including undue interference with any other Customer's use of Regulated Rate Service or any user of the Alberta Interconnected Electric System, and for the condition, installation, suitability and safety of any and all Facilities or any other equipment, wires, cables, devices or appurtenances on the Customer's Premise.

### **9.3 Distribution Tariff**

The Customer shall be obligated for the Service Connection to the Site to permit the Customer to receive Regulated Rate Service. The Customer is bound by, and shall comply with, all provisions of the Distribution Tariff applicable to the Customer.

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#### 9.4 Force Majeure

If an event or circumstance of Force Majeure occurs that affects ENMAX Energy's ability to provide Regulated Rate Service or any other services provided under these RRT Terms and Conditions, so far as they are affected by the Force Majeure or its consequences, the Regulated Rate Service shall be suspended until the Force Majeure or its consequences are remedied, and for such period thereafter as may reasonably be required to restore the Regulated Rate Service. ENMAX Energy is not liable to the Customer or any other Person in law, equity, contract or tort for any Claim arising from or connected in any way with the amount or lack of notice given by ENMAX Energy of an event of Force Majeure.

#### 9.5 Limitation of ENMAX Energy's Liability to Customer

Except for direct physical damage, loss or injury to the Customer or the Customer's property resulting from the breach of these RRT Terms and Conditions by ENMAX Energy, or negligence or willful misconduct of ENMAX Energy or its employees, agents or contractors acting within the scope of their employment, ENMAX Energy shall not be liable to the Customer or any other Person for Claims arising out of or in any way connected with ENMAX Energy's performance under these RRT Terms and Conditions, the provision of Regulated Rate Service or any other services provided under these RRT Terms and Conditions, or any failure, estimated data errors, defect, fluctuation, reduction, de-energization, suspension, curtailment or interruption in the provision of Regulated Rate Service or any other services provided under these RRT Terms and Conditions. ENMAX Energy shall not be liable to the Customer or any other Person for any Claims arising from the Disconnection of a Site pursuant to Sections 8.3, 8.4 or 8.5.

#### 9.6 Indemnification by Customer

The Customer shall indemnify and hold harmless, and at the option of ENMAX Energy, defend ENMAX Energy and its affiliates, contractors, agents, authorized representatives and assigns, and the directors, officers and employees (while those employees are acting within the course and scope of their employment) and each of them (collectively the "**Indemnified Parties**"), from and against all Claims, brought against any of the Indemnified Parties which arise from, result from, or are in any way connected with any act, omission or failure of the Customer arising from, resulting from or in any way connected with these RRT Terms and Conditions or ENMAX Energy's Regulated Rate Tariff, or under any other arrangement or agreement between the Customer and ENMAX Energy, or between the Customer and any third party.

Without limiting the generality of the preceding paragraphs, the Customer shall indemnify and hold harmless, and at the option of ENMAX Energy, defend each of the Indemnified Parties from and against all Claims brought against any of the Indemnified Parties or by any Person, which arise from, result from, or are in any way connected with:

- (a) the presence in or use of Electricity over the Facilities or any wires, cables, devices or other facilities owned, controlled, operated or used by the Customer;

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- (b) the failure of the Customer to perform any of the Customer's duties and obligations as set out in these RRT Terms and Conditions;
- (c) the Customer's improper or unauthorized use of Electricity or of electric wires, cables, devices or any Facilities; or
- (d) the initiation of a Disconnection in accordance with these RRT Terms and Conditions.

Nothing in this section shall be deemed to constitute a waiver of any other rights of redress, which may be available to ENMAX Energy, or to limit in any way any legal recourse which may be open to ENMAX Energy. Any Claim brought by ENMAX Energy for indemnity of a Claim must be filed with the Alberta courts within two (2) years from the date of occurrence of the incident that is subject of the Claim, failing which, the Customer shall have no obligation to indemnify ENMAX Energy hereunder.

#### **9.7 Indemnification by ENMAX Energy**

Subject to Sections 9.5 and 9.8, ENMAX Energy shall indemnify and hold the Customer harmless from and against direct physical loss, injury or damage suffered by the Customer or the Customer's property (including legal fees and disbursements on a full indemnity basis) resulting from the breach of these RRT Terms and Conditions by ENMAX Energy, or negligence or willful misconduct of ENMAX Energy or its employees, agents or contractors acting within the scope of their employment in connection with the provision of Regulated Rate Service. Any Claim brought by the Customer for indemnity of a Claim must be filed with the Alberta courts within two (2) years from the date of occurrence of the incident that is subject of the Claim, failing which, ENMAX Energy shall have no obligation to indemnify the Customer hereunder.

Nothing in this section shall be deemed to constitute a waiver of any other rights of redress, which may be available to the Customer, or to limit in any way any legal recourse which may be open to the Customer.

#### **9.8 Consequential Loss**

ENMAX ENERGY SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING OR ARISING OUT OF PERFORMANCE UNDER THESE RRT TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OR DAMAGE RESULTING FROM LOSS OF USE, REVENUE, PROFIT OR OPPORTUNITY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

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## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Compliance with Applicable Legal Authorities**

ENMAX Energy and the Customer are subject to, and shall comply with, all existing or future Applicable Law. ENMAX Energy will not violate, directly or indirectly, or become a party to a violation of any requirement of any Applicable Law in order to provide Regulated Rate Service. ENMAX Energy shall obtain and maintain all requisite governmental and regulatory approvals necessary for the provision of Regulated Rate Service to the Customer.

### **10.2 No Waiver**

The failure of either Party to insist in any one or more instances upon strict performance of any provisions of these RRT 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 term or condition of these RRT 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.

### **10.3 Law**

These RRT Terms and Conditions 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 RRT Terms and Conditions shall be brought in the courts of the Province of Alberta.

### **10.4 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under these RRT Terms and Conditions shall be in writing and shall be personally delivered, mailed or dropped off, or sent by facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) as follows:

- If to the Customer: to the addressee at the address or to the facsimile number, on record with ENMAX Energy.
- If to ENMAX Energy regarding billing, credit, or customer information:

ENMAX Energy Corporation  
141 – 50th Avenue SE  
Calgary, Alberta  
T2G 4S7  
Phone Number: (403) 310-2010  
Fax Number: (403) 219-2146

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The Customer or ENMAX Energy may change the address above from time to time by giving written notice of such change to the other party in accordance with this Section. Any notice, demand or request made, given or delivered hereunder is considered delivered; when sent by facsimile, on the next Business Day following a confirmed facsimile; when mailed, at the end of the fourth (4<sup>th</sup>) Business Day after mailing; when hand delivered, at the time of delivery where proof of delivery date is provided.