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Effective: 2021-01-01  
Supercedes: 2020-01-01

of de-enrolment, EDTI will, within seven (7) Business Days (or such other time as may be required under the System Settlement Code), process the de-enrolment.

## ARTICLE 6 – BILLING AND PAYMENT

### 6.1 Billing

EDTI will bill Retailers the amounts payable for Distribution Tariff Services in accordance with these Terms and Conditions and the *Billing Regulation, 2003*, A.R. 159/2003, as amended from time to time.

EDTI will bill the Retailer each billing cycle for Distribution Access Service and Miscellaneous Services provided by EDTI in relation to Customers for which the Retailer is the Retailer of Record for the period prior to the billing period plus any other amounts owing by the Retailer under EDTI's Distribution Tariff including these Terms and Conditions and the Rate Schedule.

EDTI will not assume any billing or collection obligations or responsibilities related to billing Customers or collecting from Customers for, or on behalf of, a Retailer. The Retailer shall process Customer payments and handle collection responsibilities. EDTI may, at its sole discretion and in addition to any other remedies available to it, terminate Distribution Tariff Services to the Retailer, if such Retailer does not pay all outstanding bills in accordance with these Terms and Conditions.

EDTI reserves the right to bill the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Connection Services.

### 6.2 Determination of Applicable Rates

EDTI bills the Retailer of Record based on the charges set out in its Rate Schedules in the Distribution Tariff. EDTI's Rate Schedules indicate to what type of service each Rate Schedule applies. Each Point of Service is billed as a separate service. EDTI's applicable Distribution Tariff Policies will apply to the determination of the charges.

The rate selection criteria are specified on each Rate Schedule. If the operational characteristics of the Point of Service change and subsequently a different rate is applicable, the Customer may be required to pay an additional Customer Contribution under the Terms and Conditions for Distribution Connection Services. A change of service under this section will not be made more than once in any twelve (12) month period.

### 6.3 Minimum Charges

A Minimum Charge will be calculated in accordance with the Rate Schedules.



Page: Page 15 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

#### **6.4 Billing Period and Information for Distribution Access Service**

The billing period for the Retailer in respect of Distribution Access Service is generally the calendar week directly proceeding the week in which the associated bill is issued to the Retailer. The amount charged to the Retailer for the billing period reflects the aggregate of charges for Distribution Access Service provided to Customers of the Retailer, with consumption periods that end within the billing period.

A bill to the Retailer for Distribution Access Service will set out the following information with respect to the billing period for which the bill is rendered:

- (a) the total amount due from the Retailer for Distribution Access Service provided by EDTI to Customers of the Retailer;
- (b) details of the amount due from the Retailer for Distribution Access Service provided by EDTI as applicable to each of the Retailer's Customers; and
- (c) any other information required to be provided by EDTI to the Retailer on a bill pursuant to the Act and Regulations.

#### **6.5 Billing Period and Information for Miscellaneous Services**

The billing period for the Retailer in respect of Miscellaneous Services is generally the calendar month directly preceding the month in which the associated bill is issued to the Retailer. The amount charged to the Retailer for the billing period reflects the aggregate of charges for Miscellaneous Services provided to the Retailer within the billing period.

A bill to the Retailer for Miscellaneous Services will set out the following information with respect to the billing period for which the bill is rendered:

- (a) the total amount due from the Retailer for Miscellaneous Services provided by EDTI to the Retailer;
- (b) any other information required to be provided by EDTI to the Retailer on a bill pursuant to the Act and Regulations.

#### **6.6 Payment and Collection**

The Retailer shall pay to EDTI, on or before the (fifth) 5<sup>th</sup> Business Day following the Business Day on which the Retailer was invoiced for Distribution Access Service and on or before the (twentieth) 20<sup>th</sup> Business Day following the Business Day on which the Retailer was invoiced for Miscellaneous Services, the amount invoiced by EDTI for the preceding period.

EDTI will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding such procedure, EDTI will accept payment by cash



Page: Page 16 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

or cheque if agreed to by EDTI. A bill will be deemed to have been paid when a valid payment has been received by EDTI for the full amount of the bill by way of cheque or electronic fund transfer.

Should the Retailer dispute any amount owing, the Retailer shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, EDTI will return any amount found owing to the Retailer forthwith. Subject to the RRO Regulation, the right or ability of either EDTI or a Retailer to dispute a bill provided hereunder shall only apply to bills rendered during a period of twelve (12) months prior to the date that the disputing party first gives notice of such dispute to the non-disputing party.

The Retailer shall pay all amounts owed to EDTI for any of the Distribution Access Service provided by EDTI whether or not the Customer has paid the Retailer.

Failure to receive a bill in a timely way does not release a Retailer from the obligation to pay the amount owing on the bill.

### **6.7 Late or Unpaid Bills**

If a Retailer defaults or is late in paying charges, EDTI shall assess a late payment fee of 1% of the amount of a weekly bill and 2% per month (26.82% per annum) of the amount on monthly bills.

### **6.8 Adjustment of Bills in Event of Billing Error**

Where EDTI overcharges or undercharges on a bill as a result of a billing error including, but not limited to, incorrect meter reads or any calculation, rate application or clerical errors, EDTI shall render an adjusted bill for the amount of the undercharge, without interest, and shall issue a refund or credit to the Retailer for the amount of the overcharge, without interest, in accordance with the following procedures:

- (a) If a Retailer is found to have been overcharged due to billing error, EDTI will calculate the amount of the overcharge (for refund to the Retailer on the Retailer's next bill following the discovery of the billing error) for those billing periods during which a billing error occurred up to a maximum of eight (8) years immediately preceding the month in which the billing error was discovered. However, if the period of billing error cannot be determined with reasonable accuracy, the overcharge will be calculated for the three (3) month period immediately preceding the month in which the billing error was discovered.
- (b) If a Retailer is found to have been undercharged due to billing error, subject to the RRO Regulation, EDTI will bill the Retailer for those billing periods during which a billing error occurred up to a maximum of eleven (11) months immediately





Page: Page 17 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

preceding the month in which the billing error was discovered. However, if the period of billing error cannot be determined with reasonable accuracy, the undercharge will be calculated for the three (3) months period immediately proceeding the month in which the billing error was discovered.

Notwithstanding (a) and (b) above, where the rate that applies to a site is Direct Connect or DC under EDTI's Rate Schedules, any credit or debit resulting from an overcharge or undercharge on a bill in respect of the site as a result of a billing error will be addressed in accordance with the applicable provisions of the Independent System Operator's approved Terms and Conditions of Service and the ISO Rules & Standards.

Whenever EDTI adjusts any bills to the Retailer in the event of billing error, and issues an adjusted bill to the Retailer in respect thereof, the Retailer shall be responsible for adjusting bills and issuing refunds or credits as appropriate to the affected Customers.

EDTI may assess a charge to the Retailer for reviewing billing as set forth in the Fee Schedule, where EDTI has not been responsible for any billing error.

## **6.9 Unauthorized Use**

Where EDTI determines that there has been unauthorized use of electric service at a Site including, but not limited to, meter tampering, unauthorized connection or reconnection, theft or fraud whereby EDTI is denied full compensation for Distribution Access Service provided, EDTI may make changes in its meters, appliances or facilities or take other appropriate corrective action, including where necessary the disconnection of the Service Connection for the Site and will bill the Retailer of Record for the Site for EDTI's estimate of such unauthorized use. Nothing in this Section shall limit any other rights or remedies that EDTI may have in connection with such unauthorized use.

## **6.10 Collection of Taxes**

EDTI shall collect from the Retailer all franchise fees and sales, excise or other taxes imposed by governmental authorities that are applicable to Distribution Tariff Services, including Distribution Access Service and Miscellaneous Services, provided by EDTI to Customers of the Retailer.

# **ARTICLE 7 – DISCONTINUANCE OF DISTRIBUTION ACCESS SERVICE**

## **7.1 Discontinuance at Request of Customer**

Customers arrange termination of Distribution Access Service through their Retailer of Record. If Distribution Access Service is no longer required, the Retailer of Record must notify EDTI at least five (5) Business Days before the service is to be discontinued.



Page: Page 18 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

## 7.2 Discontinuance by De-energization

A Retailer may request that EDTI De-energize a Site. To discontinue Distribution Access Service through De-energization, a Retailer shall, at least five (5) Business Days (or such other time as may be required under the System Settlement Code) before the site is to be De-energized, complete and provide to EDTI a notice of De-energization pursuant to the requirements of the Retailer Handbook and the Settlement System Code. Such notice of De-energization shall clearly specify the Retailer's reasons for seeking to De-energize a site.

EDTI reserves the right, but is not obligated, to verify the identity of the Customer of the Retailer pursuant to which De-energization has been requested, and the accuracy of the Customer Information that has been provided by the Retailer.

Upon receipt of such notice EDTI will either:

- (a) process the De-energization within five (5) Business Days (or such other time as may be required under the System Settlement Code); or
- (b) notify the Retailer within two (2) Business Days (or such other time as may be required under the System Settlement Code) that the notice of De-energization has been rejected and the reasons for such rejection. Upon receipt of the rectified notice of De-energization, EDTI will, within five (5) Business Days (or such other time as may be required under the System Settlement Code), process the De-energization.

Notwithstanding the foregoing:

- (c) EDTI may reject the notice of De-energization if EDTI, acting reasonably, determines that any information required in the application, including the Customer Information provided by the Retailer, is false, incomplete or inaccurate in any respect;
- (d) EDTI will not process a De-energization if:
  - (i) EDTI believes De-energization could cause any actual or threatened danger to life or property or
  - (ii) the Customer is a residential rate classification Customer, the request for the De-energization is for non-payment and the De-energization would occur at any time during the period from October 15 to April 15 or at any other time when the temperature is forecast to be below 0 degrees Celsius in the 24-hour period immediately following the proposed De-energization provided that EDTI may, in its discretion, install a device or program to limit or reduce the amount of Energy provided to the Customer.



Page: Page 19 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

At the request of the Retailer or the Customer, EDTI will leave all of its Facilities in place after the Point of Service has been de-energized provided that, if the Point of Service remains de-energized for a period in excess of three (3) months, EDTI may remove its Facilities.

Upon De-energization, the Retailer will remain as the Customer's Retailer of Record unless a De-Select Request is submitted by the Retailer to EDTI and the process has been completed successfully.

The Retailer is responsible to ensure that its Customer is provided notice of a De-energization and for the consequences of the De-energization. EDTI will have no liability for any disputes between the Customer and the Retailer in relation to a De-energization.

### 7.3 Discontinuance by EDTI

EDTI may discontinue Distribution Access Service to a Retailer if any of the following occur:

- (a) if the Retailer sells Electricity to Customers whose annual consumption is below 250,000 kWh, the Retailer's license issued pursuant to the *Consumer Protection Act*, R.S.A. 2000, c. F-2, has been revoked or not renewed, or
- (b) the Retailer has failed to meet its obligations under these Terms and Conditions or its Distribution Services Agreement with EDTI, or
- (c) the Retailer has failed to meet its security requirements pursuant to Article 8

Notification of discontinuance will be made electronically to the Retailer.

## ARTICLE 8 – SECURITY REQUIREMENTS

### 8.1 Security

The Retailer shall provide the security deposit required under the Distribution Tariff Regulation to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations.

The Retailer's application to EDTI for service under the Distribution Tariff must include the Retailer's projected value of its payments to EDTI under EDTI's Distribution Tariff over the period provided in section 8 of the Distribution Tariff, the Retailer's current Credit Rating, if it is seeking a reduction in its security deposit, and the current Credit Rating of any proposed guarantors, if the Retailer's security deposit will include a guarantee.

For the purposes of projecting the Retailer's payments under EDTI's Distribution Tariff pursuant to section 8(2)(b) of Distribution Tariff Regulation the total of:



Page: Page 20 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

- (a) twenty (20) days; plus
- (b) the number of days between consecutive bills issued by EDTI to the Retailer; plus
- (c) the number of days from the issuance of a bill by EDTI until payment is due from the Retailer;

shall equal thirty-four (34) days.

EDTI will confirm the Credit Rating of the Retailer, if provided, and the Credit Rating of any guarantor, if any, providing a guarantee as a security deposit. If the Retailer or guarantor has obtained more than one Credit Rating, the lowest Credit Rating will be used in the assessment.

EDTI, subject to review and assessment, shall confirm the amount of security required to be provided by the Retailer, taking into account any reduction that the Retailer may be entitled to under section 9 of the Distribution Tariff Regulation and notify the Retailer of its security requirement within twenty (20) Business Days of the Retailer's complete application for Distribution Access Service.

Subject to section 9 of the Distribution Tariff Regulation, the Retailer shall provide security in the form of a financial deposit, a bond, an irrevocable letter of credit or an irrevocable guarantee from a person, other than the Retailer, with a Credit Rating, or a combination thereof, in each case in a form acceptable to EDTI.

## 8.2 Maintenance of Security

As required by section 8 of the Distribution Tariff Regulation, if a retailer's actual outstanding charges under EDTI's Distribution Tariff are materially greater than the projected value provided by the Retailer under Section 8.1 of these Terms and Conditions, EDTI will update the projection and, if additional security is required based on the updated projection, require the Retailer to provide additional security. The Retailer must provide the additional security within five (5) Business Days of EDTI's request to do so as required under section 8 of the Distribution Tariff Regulation.

A Retailer whose security deposit has been reduced pursuant to the Distribution Tariff Regulation by virtue of its Credit Rating shall report to EDTI any downgrading of its Credit Rating within two (2) Business Days of the downgrading and must provide any additional security required as a result of the downgrading within five (5) Business Days of the downgrading as required under section 9 of the Distribution Tariff Regulation.

If the Retailer fails to provide any additional security that it is required to provide, EDTI reserves the right to suspend the provision of additional Distribution Access Service until the Retailer provided EDTI with the required security.



Page: Page 21 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

A Retailer must maintain the required amount of security deposit until all obligations of the Retailer under EDTI's Distribution Tariff are satisfied.

### **8.3 Use of Security**

If a Retailer defaults in paying any amounts owing under EDTI's Distribution Tariff, EDTI will provide the Retailer notice as required by section 12 of the Distribution Tariff Regulation and will be entitled to draw on the security deposit of the Retailer to recover the Retailer's arrears including any accrued interest if they are not paid within three (3) Business Days after the date of the notice, provided that EDTI shall be entitled to draw on the security deposit without notice if, in the opinion of EDTI, the giving of such notice would impair EDTI's ability to make a claim against the Retailer's security or to deduct the unpaid arrears from the Retailer's financial deposit. EDTI may require additional security to replace the security drawn down because of the default by the Retailer. The Retailer must provide the additional security within five (5) Business Days of EDTI's request to do so.

### **8.4 Suspension of Service**

If the Retailer fails to provide any security that it is required to provide under this Article 8, EDTI reserves the right to suspend the provision of additional Distribution Access Service until the Retailer provides EDTI with the required security.

### **8.5 Costs of Security**

All costs associated with the provisions of the security required to be provided by a Retailer for its obligations under EDTI's Distribution Tariff are the responsibility of the Retailer.

## **ARTICLE 9 – METERING**

### **9.1 Meter Reading**

EDTI shall make an actual meter reading for each Point of Service for which it provides Distribution Access Service for Customers of the Retailer in accordance with EDTI's meter reading schedule. At the request of a Retailer of Record, EDTI shall make an actual meter reading that does not fall within EDTI's meter reading schedule, off-cycle, as may be requested by the Retailer and EDTI will charge the Retailer for additional meter reading expense as set forth in the Fee Schedule as "Off-Cycle Meter Reads".

### **9.2 Record**

An accurate record of meter readings will be kept by EDTI which will be the basis for billing by EDTI to the Retailer in accordance with the Distribution Tariff.

### **9.3 Estimated Consumption and Demand**



Page: Page 22 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

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The amount of energy used by a Customer will be estimated by EDTI based on the best available sources of information and evidence in the following circumstances:

- (a) where the Customer's Point of Service is not metered;
- (b) where a meter is inaccessible due to conditions on the Customer's premises;
- (c) where the meter is not scheduled to be read;
- (d) where it is determined that the amount of energy used was different from that recorded or billed due to incorrect billing procedures;
- (e) where a meter reading schedule or a meter change creates a transition period in EDTI's billing cycle; or
- (f) if the seal of a meter is broken or if the meter does not register correctly, regardless of the cause.

For small general service Customers whose load requirements are small, consistent, and can be accurately predicted, the billing demand may be determined, at the sole discretion of EDTI, from the nameplate rating of the Customer's equipment rather than being metered.

The demand of certain equipment which is used for short periods of time, such as arc welders, does not fully register on the thermal demand meters. Points of Service which include this type of equipment may be billed on an estimated demand.

If requested by the Retailer, EDTI will provide the Retailer with a description of the methodology used to estimate the use of energy by the Customers of the Retailer.

#### **9.4 Other Metering Services**

At the request by the Retailer, or with the Retailer's consent, EDTI may provide other metering services, above standard metering service, in its discretion, acting reasonably, and may charge separate fees for such service.

#### **9.5 Meter Testing**

At the request of a Retailer, EDTI shall arrange for on-site meter verification and if necessary, shall arrange for a meter to be tested by an official designated for that purpose by Measurement Canada or accredited agency as may, from time to time, be designated for this purpose. EDTI charges a fee as set forth in the Fee Schedule. If the meter is inaccurate, EDTI will refund the fee and make appropriate adjustments to the applicable Retailer's bills. If the meter is found to be accurate, EDTI will keep the fee to cover the cost of testing the meter.



Page: Page 23 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

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## 9.6 Adjustments for Faulty Metering

EDTI may make consumption and demand adjustments for faulty metering:

- (a) if the seal of a meter is broken or if the meter does not register correctly regardless of the cause;
- (b) when a Point of Service has been unmetered or incorrectly metered, regardless of the cause, or when a meter is found to be inaccurate in accordance with the *Electricity and Gas Inspection Act*, R.S. 1985, c. E-4 as amended from time to time; in these cases EDTI will make adjustments for a period not exceeding three (3) months, unless it can be shown that the error was due to some specific reported cause, the date of which can be fixed, in which case the actual date shall be used; or
- (c) where a Point of Service is unmetered and any seal attached to motors or other equipment is broken or any unauthorized change in the Facilities has been made.

Notwithstanding the section “Adjustment of Bills in Event of Billing Error”, in any of the above noted cases EDTI may make adjustments for the lesser of the period of the error or one (1) year.

## ARTICLE 10 – LOAD SETTLEMENT

### 10.1 Request for Information

A Retailer may request profiling and settlement information above the basic service provisions for Load Settlement specified in the Settlement System Code providing:

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

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

### 10.2 Liability

The process of Retailer Load estimation involves statistical samples and estimating error. EDTI shall not be responsible for any sampling or estimating errors and shall not be liable to any Retailer for any costs that are associated with such errors.





Page: Page 24 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

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## ARTICLE 11 – LIABILITY AND INDEMNITY

### 11.1 EDTI Liability

Notwithstanding any other provision of these Terms and Conditions or any provision of any agreement between EDTI and a Retailer relating to the provision of Distribution Tariff Services (an “EDTI Agreement”) EDTI, its directors, officers, agents, employees and representatives (“EDTI Parties”) shall not be liable to the Customer, its directors, officers, agents, employees and representatives (collectively, the “Retailer Parties” and, individually, a “Retailer Party”) for any loss, injury, damage, expense, charge, cost or liability of any kind suffered or incurred by the Retailer Parties, or any of them, whether of a direct, indirect, special or consequential nature, howsoever or whensoever caused, and whether in any way caused by or resulting from the acts or omissions of the EDTI Parties, or any of them, except for direct property damages incurred by the Retailer as a direct result of a breach of these Terms and Conditions or applicable EDTI Agreement or other act or omission by an EDTI Party, which breach or other act or omission is caused by the negligence or willful act or omission of harm of such EDTI Party. Any liability under this Section will be limited to an amount in proportion to the degree to which the EDTI Party acting negligently or willfully is determined to be at fault. For the purpose of the foregoing and without otherwise restricting the generality thereof, “direct property damage” shall not include loss of revenue, loss of profits, loss of earnings, loss of production, loss of contract, cost of purchased or replacement capacity and energy, cost of capital, and loss of use of any facilities or property, or any other similar damage or loss whatsoever.

### 11.2 Release

Subject to Section 11.1 above, none of the EDTI Parties (as defined above) will be liable to any of the Retailer Parties (as defined above) for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the Retailer Parties or any of them, howsoever and whensoever caused, and each Retailer Party hereby forever releases each of the EDTI Parties from any liability or obligation in respect thereof.

### 11.3 Retailer Liability

#### 11.3.1 General

In addition to any other liability provisions set out in these Terms and Conditions or any provision in an EDTI Agreement (as defined above), a Retailer Party (as defined above) shall be liable for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by EDTI Parties (as defined above), whether of a direct or indirect nature, caused by or arising from any acts or omissions of a Retailer Party that result in a breach (“Breach”) of these Terms and Conditions or the applicable EDTI Agreement, or any negligent or willful acts or omissions of harm of a Retailer Party outside of a Breach. Any





Page: Page 25 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

liability under this section will be limited to an amount in proportion to the degree to which the Retailer Party is at fault.

### **11.3.2 Indemnification by Retailer of EDTI for Third Party Claims**

- (a) A Retailer (the “Indemnitor”) shall indemnify and hold harmless EDTI Parties (as defined above) (“Indemnitee(s)”) from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claims, causes of action, actions, suits or proceedings by a third party (“Claim”) which arise from damage to property or injury to or death of persons resulting from the Indemnitor’s failure to perform its obligations under these Terms and Conditions or the applicable EDTI Agreement (as defined above), which failure is caused by the negligence or willful act or omission of harm of the Indemnitor acting within the scope of its authority or employment. The indemnity under this section will be limited to an amount in proportion to the degree to which the Indemnitor is at fault.
- (b) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Section, such Indemnitee will give the Indemnitor prompt notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Subject to Section 11.3.2(b) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Section 11.3.2(a) in respect of:
- (i) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within ten (10) days following the Indemnitor’s receipt of the Indemnitee’s notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third-party claimant (and, if applicable, to the court or other tribunal determining the Claim), the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and the Indemnitor shall be entitled, at its option, to take carriage of the defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee shall cooperate with the Indemnitor



Page: Page 26 of 31  
 Effective: 2021-01-01  
 Supercedes: 2020-01-01

to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or

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

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

The provisions of this Section 11.3.2(c) shall not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.

## **ARTICLE 12 – FORCE MAJEURE**

### **12.1 Force Majeure Relief**

If an event or circumstance of Force Majeure occurs that affects EDTI's ability to provide any Distribution Access Service, EDTI's obligations and responsibilities hereunder and under any agreement relating to the provision of Distribution Access Service, so far as they are affected by the Force Majeure or the consequences thereof, shall be suspended until such Force Majeure or the consequences thereof are remedied and for such period thereafter as may reasonably be required to restore the Distribution Access Service. A Retailer will be required to continue to pay the Minimum Charge, if applicable, during the period in which EDTI claims relief by reason of Force Majeure.

### **12.2 Notice**

EDTI shall promptly give the relevant party notice of the Force Majeure including full particulars hereof and shall promptly give the relevant party notice when the Force Majeure ceases to prevent performance of EDTI's obligations.



Page: Page 27 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

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### **12.3 Obligation to Remedy**

EDTI shall promptly remedy the cause and effect of the Force Majeure insofar as it is reasonably able to do so.

### **12.4 Strikes and Lockouts**

Notwithstanding any other provision of these Terms and Conditions, the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of EDTI and EDTI may settle such strike, lockout or industrial disturbance at such time and on such terms and conditions as it may deem appropriate. No failure or delay in settling such strike, lockout or industrial disturbance shall constitute a cause or event within the control of EDTI or deprive EDTI of the benefits of this Article 12.

## **ARTICLE 13 – DISPUTE RESOLUTION**

### **13.1 Resolution by EDTI and Retailer**

If any dispute between EDTI and a Retailer arises at any time in connection with these Terms and Conditions, EDTI and the Retailer acting reasonably and in good faith, shall use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved pursuant to this Article 13, the chief executive officers of EDTI and the Retailer shall meet to attempt to resolve the dispute.

### **13.2 Resolution by Arbitration**

If any dispute has not been resolved pursuant to Section 13.1 hereof within thirty (30) days after notice from EDTI or the Retailer to the other of its desire to have the dispute resolved, then the dispute shall be resolved pursuant to Sections 13.3 to 13.11 hereof. EDTI and the Retailer shall abide by the terms of any award rendered by the arbitrator(s) appointed hereunder without delay.

### **13.3 Arbitrators**

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



Page: Page 28 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

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#### **13.4 Failure to Concur**

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

#### **13.5 Refusal to Appoint an Arbitrator**

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

#### **13.6 Failure to Appoint a Third Arbitrator**

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

#### **13.7 Technical Competence**

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

#### **13.8 Compensation of Arbitrators**

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

#### **13.9 Application of the Arbitration Act (Alberta)**

Except as herein modified, the provisions of the *Arbitration Act*, R.S.A., 2000, c. A-43, as amended from time to time, shall apply to any arbitration proceeding.

#### **13.10 Decisions Binding**

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



Page: Page 29 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

### **13.11 Continuity of Service**

All performance required under these Terms and Conditions by EDTI and the Retailer and payment therefore shall continue during the dispute resolution proceedings contemplated by this Article 13, provided that in the case of any such proceedings pertaining to amounts payable under these Terms and Conditions, any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings and interest shall be paid thereon by the party required to make the payment or reimbursement on the amount thereof at the rate quoted by the Royal Bank of Canada as its “prime rate” from the date so determined until paid.

## **ARTICLE 14 – ADDITIONAL PROVISIONS RELATING TO SERVICES**

### **14.1 Independent System Operation or Transmission Facility Owner Requirements**

The Retailers acknowledge and agree that EDTI is bound by all operating instructions, policies and procedures of the ISO and transmission facility owners which are needed to maintain the integrity of the Interconnected Electric System. The Retailers acknowledge and agree that they will cooperate with EDTI so that EDTI will be in compliance with all such operating instructions, policies and procedures which include, but are not limited to, those operating instructions, policies and procedures pertaining to minimum and maximum generation emergencies, and supply voltage reduction or full interruption of Customer load by either manual or automatic means.

### **14.2 Compliance with Applicable Legal Authorities**

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

### **14.3 Service Interruption**

While EDTI takes all reasonable efforts to guard against interruptions, it does not guarantee uninterrupted service. Without liability of any kind to EDTI, EDTI shall have the right to disconnect or otherwise curtail, interrupt or reduce Distribution Tariff Service to Customers whenever EDTI reasonably determines, or when EDTI is directed by the ISO, that such a disconnection, curtailment, interruption or reduction is:



Page: Page 30 of 31  
Effective: 2021-01-01  
Supercedes: 2020-01-01

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- (a) necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of EDTI's Facilities;
  - (b) to maintain the safety and reliability of EDTI's distribution system; or,
  - (c) due to any other reason including dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of EDTI's distribution system or Force Majeure.

#### **14.4 No Assignment**

A Retailer shall not assign any of its rights or obligations under these Terms and Conditions or any other agreement with EDTI relating to Distribution Tariff Services without obtaining any necessary regulatory approvals and EDTI's approval where required in such agreement. No assignment shall relieve the Retailer of any of its obligations under these Terms and Conditions until such obligations have been assumed by the assignee and EDTI has agreed to the novation. Any assignment in violation of this section shall be void.

#### **14.5 No Waiver**

The failure of EDTI or a Retailer to insist on any one or more instances upon strict performance of any provisions of these Terms and Conditions or any other agreement between EDTI and a Retailer relating to Distribution Tariff Services, or to take advantage of any of its rights hereunder or thereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of these Terms and Conditions or any other agreement between EDTI and a Retailer relating to Distribution Tariff Services 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.

#### **14.6 Law**

These Terms and Conditions and any other agreement between EDTI and a Retailer relating to Distribution Tariff Services shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these Terms and Conditions or any other agreement relating to Distribution Tariff Services shall be brought in the courts of the Province of Alberta.