Direct Energy Regulated Services
Gas Default Rate Tariff

Terms and Conditions of Default Rate Service

Pursuant to the Provisions of the *Gas Utilities Act* and the *Default Gas Supply Regulation*

July 1, 2023

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TERMS AND CONDITIONS OF DEFAULT RATE SERVICE

ARTICLE 1
PREAMBLE

ATCO Gas has made arrangements with Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited, to provide Default Rate Service to Customers in the service territory of ATCO Gas. Direct Energy Regulated Services provides Default Rate Service to Customers under its Default Rate Tariff.

The Default Rate Tariff is approved by the Alberta Utilities Commission and consists of these approved Terms and Conditions and the Rate Schedules that set out the rates and fees for certain services related to the provision of Default Rate Service.

The Default Rate Tariff is available for public inspection at www.directenergyregulatedservices.com and during normal business hours at our business office in Calgary or Edmonton.

ARTICLE 2
DEFINITIONS AND INTERPRETATION

2.1 Definitions

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

"Account" means an electronic record of the current or past Default Rate Service associated with a Customer of Record which is used to track and record information including but not limited to the Customer of Record's personal information, Site, billing data and records, length of service, Customer interactions and financial transactions. An

Account can have more than one Site associated with it. A Customer of Record can have more than one Account.

"Active Account" means an Account associated with one or more Site(s) that are receiving Default Rate Service. An Account is no longer an Active Account when it is closed and/or not associated with one or more Site(s) receiving Default Rate Service. Once closed, an Account can become an Active Account again once it is associated with one or more Site(s) receiving Default Rate Service.

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

"ATCO Gas" means ATCO Gas and Pipelines Ltd.

"AUC" or "Commission" means the Albert Utilities Commission established under the *Alberta Utilities Commission Act*, R.S.A., 2007, c. A-37.2, 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 a Person who is receiving Default Rate Service(s), or has received Default Rate Service(s).

"Customer of Record" means the Customer for whom DERS has created an Account pursuant to section 4.2.

"Default Rate Service(s)" means the service(s) that is (are) required by the GUA to be provided in accordance with a default rate tariff and that are provided by DERS.

"Default Rate Tariff" means DERS' default rate tariff approved by the Commission including these Terms and Conditions and the Rate Schedules, as amended from time to time.

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

"Distribution Service" means the "gas distribution service," as defined in the GUA that is provided to Customers by ATCO Gas by means of the Gas Distribution System.

"Distribution System" means the "gas distribution system," as defined in the GUA, that is owned by ATCO Gas.

"Distribution Tariff" means ATCO Gas' Retailer Terms and Conditions for Gas Distribution Service or ATCO Gas' Customer Terms and Conditions for Gas Distribution Service, as applicable, including any associated schedule of fees, rates or charges, as amended from time to time.

"Facilities" means physical plant including, without limitation, pipes, meters, works, equipment and machinery.

"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 Gas Services, Gas Distribution Service or Default Rate 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 Commission is expressly excluded from this definition.

"Gas" has the meaning ascribed to that term in the GUA.

"Gas Service(s)" has the meaning ascribed to that term in the GUA.

"GUA" means the *Gas Utilities Act*, R.S.A. 2000, c.G-5 **-,** including the regulations enacted thereunder, as amended.

"Landlord" means (i) a Person who is the Property Owner of a property that is leased or rented or otherwise in the use of or occupied by a Tenant; or (ii) a Person authorized to manage such a property on behalf of the Property Owner.

"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.

"Permissible Disconnection Period" has the meaning ascribed in section 3.4.1(1) of AUC Rule 003: *Service Quality Reporting for Energy Service Providers*.

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

"Property Owner" means:

(a) the registered owner of a parcel of land in the register maintained by the Registrar of Titles under the Land Titles Act; or

(b) a person who has purchased the parcel from the person mentioned in sub clause (a) pursuant to an agreement for purchase and sale.

"Rate Schedules" means the rate schedules to the Default Rate Tariff .

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

"Service Connection" means the Facilities of the Distribution System that deliver Gas to a Site.

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

"Tenant" means any Person who has the use of or occupies a premise or property owned by another Person.

"Terms and Conditions" means these Terms and Conditions of Default Rate Service.

"UCA" means the Office of 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 Commission, the provision of the Commission's order shall govern.

If there is any conflict between these Terms and Conditions and a provision of the GUA or related Regulations, the provision of the GUA shall govern.

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

2.3 Headings

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

2.4 Extended Meanings

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

2.6 Default Rate Tariff is an Enactment

The Default Rate Tariff is an “enactment” within the meaning of the word in the *Interpretation Act*, R.S.A. 2000 c. I-8.

ARTICLE 3
GENERAL PROVISIONS

3.1 Effective Date

These Terms and Conditions have been approved by the Commission in Decision TBD, and are effective as of TBD.

3.2 Customers Bound by Terms and Conditions

The Default Rate Tariff applies to each Customer. As a condition of receiving Default Rate Service, the Customer agrees to be bound by the Default Rate Tariff and, for greater certainty, agrees to pay the rates and fees, as prescribed in the Rate Schedules whether or not the Customer signs a service agreement or is a Customer of Record.

3.3 Modification of Default Rate Tariff

No agent, employee or other representative of DERS is authorized to modify any provision or rate contained in the Default Rate Tariff or to bind DERS to perform in any manner inconsistent with the Default Rate Tariff. Any request for the waiver or alteration of any part of the Default Rate Tariff must be filed with and approved by the Commission. DERS may make Minor Routine Changes by filing updated Terms and Conditions with the Commission.

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 Commission. Whenever the Commission 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 Commission will acknowledge the notice of the amendment to the Terms and Conditions within 60 days after such notice is filed or the Commission will direct a further process to deal with the requested changes as the Commission 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 Commission that applies to Default Rate Service.

ARTICLE 4
DEFAULT RATE SERVICE

4.1 Availability

Default Rate Service is available to Eligible Customers strictly in accordance with the Default Rate Tariff.

4.2 Requirements for Obtaining Default Rate Service

Eligibility for a Person to obtain Default Rate Service shall be determined in accordance with the GUA and Regulations. Notwithstanding a Person's eligibility for Default Rate Service, the provision of Default Rate Service is contingent upon the Person meeting the requirements described in sections 4.2.1 or 4.2.2. DERS may refuse the provision of Default Rate Service in accordance with section 4.3.

4.2.1 Application by a Person to Receive Default Rate Service

A Person or Customer who wishes to receive Default Rate Service at a Site must:

(a) apply over the phone or electronically through the DERS website;

(b) provide the information required by DERS to create an Account including but not limited to the Person's full name, service address, mailing address, telephone numbers (home, work, and cellular); and

(c) provide the information to DERS necessary to show that the Person is an Eligible Customer.

4.2.2 Notification by a Customer Receiving Default Rate Service at a Site

A Customer that is receiving or has received Default Rate Service at a Site must:

(a) notify DERS that they are responsible for the Default Rate Service at the Site and for what period; and

(b) provide the information required by DERS to create an Account including but not limited to the Customer's full name, service address, mailing address, telephone numbers (home, work, and cellular).

If DERS accepts a Person's or Customer's application, the Person or Customer shall become the Customer of Record for the Site and be responsible for payment for the Default Rate Service to the Site from the date of the application (by default); at an agreed-upon date (if Default Rate Service is requested to start after the date of application); or from the date the Person became a Customer (if Default Rate Service has been provided before the date of application), whichever is earliest. DERS may require any Person or Customer to provide documentation to confrim the Person's or Customer's identity and/or the date the Person became a Customer at a Site.

DERS may, at its sole discretion, create an Account prior to the completion of the application for Default Rate Service such as described in section 8.11.

DERS, requires at least three Business Days' notice to ensure a timely connection of Default Rate Service at a Site.

Expedited connection of Default Rate Service, if available, must be requested by the Customer of Record and is subject to the payment of any additional charges that DERS is obligated to pay to ATCO Gas on behalf of the Customer of Record in relation to the expedited connection.

Subject to Article 8.2, the Customer of Record will be responsible to pay to DERS all amounts owed in accordance with these Terms and Conditions and applicable Rate Schedules

4.2.3 Landlord Information

DERS may require the Customer to indicate whether the Customer is the Property Owner, Landlord or a Tenant of the Site.

Pursuant to the Property Owner's liability for payment described in section 8.11 and possibility of service disconnection described in section 8.12, DERS will provide Landlords with the opportunity to register all Sites that they own or are responsible for such that in the case of a vacancy the Landlord will automatically become the Customer of Record. This will not bind the Landlord to be responsible for past charges of a Tenant while that Tenant was the Customer of Record at the Site unless specifically requested by the Landlord.

4.3 Refusal of Default Rate Service

DERS reserves the right to refuse to provide Default Rate Service to a Person at a Site when:

a) the Person does not provide the information required by DERS in accordance with section 4.2

b) a previous Customer of Record at the Site had a history of non-payment and DERS has reasonable grounds to believe that the previous Customer of Record would continue to occupy the premises located at the Site or is the Person applying for Default Rate Service;

c) the Person cannot demonstrate a satisfactory credit rating or credit history as outlined in section 4.4 below or has not provided the security deposit required by DERS pursuant to section 5.1;

d) the Person has an outstanding balance with DERS; or

e) the Person is not an Eligible Customer; or

f) the Person has not complied with the applicable provisions of these Terms and Conditions.

If DERS refuses Default Rate Service, it may request the disconnection of the Gas Service as outline in section 8.12.

4.4 Credit Information

As a condition of providing Default Rate Service to a Person, DERS may, at any time, request from the Person, such information as DERS considers reasonably necessary to determine the Customer's credit history and credit risk. Such information may include:

a) The Person’s full name, address, telephone numbers (home, work and cellular), and birthdate to allow DERS to determine a Person’s credit rating, and/or

b) demonstration of the Person’s credit history with another Retailer, and/or

c) other personal information sufficient to identify the Person and determine the Person's credit history and credit risk.

DERS may at any time exchange the information provided by a Person with one or more Canadian credit bureaus with respect to payments and/or non-payments for Gas Services by the Person.

4.5 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.

4.6 Protection of Customer Information

DERS is committed to protecting the personal information of its Customers. By receiving Default Rate Service, a Customer is deemed to have consented to the collection, use and disclosure of personal information for the purpose of receiving Default Rate Service and associated support, unless a Customer indicates otherwise in writing.

Complete details of DERS' privacy policy and practices are available online at www.directenergyregulatedservices.ca, or in printed form by request of the Customer to DERS.

ARTICLE 5
FINANCIAL SECURITY REQUIREMENTS

5.1 Requirement for Security Deposit

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

a) the Person making the application for Default Rate Service cannot demonstrate a satisfactory credit rating to DERS as outlined in Section 4.4 or the Person has refused to provide credit information to DERS;

b) the Customer of Record has paid two consecutive bills or three non-consecutive bills late in accordance with Article 8 in any twelve-month period;

c) the Customer of Record 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 of Record's average monthly consumption of Gas over the prior six-month period;

e) the Person was previously terminated as Customer of Record and requests a new connection or reconnection of Default Rate Service; or

f) the Person makes a request for reconnection of Default Rate Service after having been disconnected for non-payment.

5.2 Waiver of Security Deposit Requirement

DERS, may waive the requirement for a security deposit by a 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 Retailer; or

d) where the Customer provides to DERS an indemnity bond or irrevocable letter of credit from a financial institution satisfactory to DERS.

5.3 Fees for credit check

DERS may charge the cost of performing an external credit check to the Customer.

5.4 Maximum Security Deposit

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

At the discretion of DERS, DERS may grant a Customer request that DERS allow an initial payment for a portion of the security deposit and payment of the remainder of the deposit over a reasonable period.

5.5 Use of Security Deposit for Non-Payment

A security deposit provided by a Customer of Record may be applied against any amounts owing for unpaid bills for Default Rate Service. A new security deposit may be assessed to the Customer of Record's Account in this case.

5.6 Return of Security Deposit

A security deposit made by a Customer of Record and held on the Customer of Record's Account must be returned to the Customer of Record after a satisfactory payment history of 12 consecutive months or when the Account is no longer an Active Account, whichever is later.

Prior to any refund, the security deposit will be applied to any balance owing by the Customer of Record to DERS related to any Account.

5.7 Interest Payable on Security Deposits

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 the Customer of Record with the return of a security deposit in accordance with section 5.6.

ARTICLE 6
CLOSING AN ACCOUNT

6.1 Notice to Close an Account

Subject to section 6.2 a Customer of Record may close an Account for Default 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 of Record will no longer be responsible for the Default Rate Service at the Site after that date. In accordance with section 8.12, in the absence of a subsequent application for Default Rate Service at the

Site, DERS may request disconnection of Default Rate Service at the Site on or after the date requested by the Customer of Record to close the Account.

6.2 Notice to Transfer to a Retailer

In the case of a Customer of Record transferring to a Retailer, DERS may wait to terminate Default Rate Service and close the Account until the notification of the transfer is received from ATCO Gas.

6.3 Relocation of Customer

If the Customer of Record wishes to continue to receive Default Rate Service but to relocate from the current Site to a new Site, as in the case of a move of residence, the Customer of Record must notify DERS at least three full Business Days prior to the Customer of Record's desired relocation date.

DERS may request proof that the Customer will no longer be responsible for the original Site after the relocation

6.4 Termination of Customer of Record

DERS may, at its sole discretion, terminate the provision of Default Rate Service to a Customer where the Customer fails to comply with sections 4.2, 4.5, 5.1 or 8.1, but only after following the processes set out in section 8.5 and 8.12.

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ARTICLE 7
MEASUREMENT OF ENERGY CONSUMPTION

7.1 Measurement by ATCO Gas

ATCO Gas provides to DERS under its Distribution Tariff meter readings and estimates of consumption of Gas by Customers. Billings to Customers under these Terms and Conditions shall be based on those meter readings and estimates. DERS assumes no liability to the Customer for meter readings and estimates provided by ATCO Gas.

7.2 Meter Testing

If a Customer believes the meter to be in error, the Customer will arrange to have the meter tested by ATCO Gas. The Customer will pay DERS all charges for meter testing incurred by DERS in accordance with the Distribution Tariff.

ARTICLE 8
BILLINGS AND PAYMENT

8.1 Billing Practices

DERS issues bills to Customers in accordance with the Default Rate Tariff, applicable Commission orders and applicable enactments. Subject to the foregoing, it does not issue bills to Customers in advance of providing Default Rate Service. DERS may require a security deposit in accordance with Article 5 of these Terms and Conditions.

Once per month, or within a period reasonably close to a month, DERS will issue a Customer of Record a bill for Default Rate Service provided to the Customer of Record during the previous month, or an amount of time reasonably close to a month, calculated

in accordance with the Rate Schedules. The Customer of Record's bill will be issued electronically and can be viewed on the date of issue via DERS' online Customer portal. Upon request by the Customer of Record, the bill may also be issued by mail or via email.

In the event that a Customer does not provide DERS with notice in accordance with section 4.2, the issuance of the bill may be delayed.

The Customer of Record's obligation to pay the amount set out in the bill shall continue regardless of when it is issued by DERS or when it is received or viewed by the Customer of Record.

8.2 Responsibility for Payment after Account Closure

The Customer is responsible for payment for all Default Rate Service provided to the Customer up to the time the Customer's Default Rate Service is discontinued by DERS or disconnected under the Distribution Tariff, whichever is sooner. The Customer remains liable for payment until payment for final charges related to Default Rate Service has been made, regardless of whether the Customer's Account is no longer an Active Account.

8.3 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 Gas under its Distribution Tariff and DERS will issue refunds or charges as appropriate to the affected Customers.

If a Customer of Record believes an error exists on their bill, including service dates, the Customer of Record must contact DERS as soon as the supposed error is identified to request investigation and correction.

8.4 Late Payment Charge

The amount due shown on a bill is owing to DERS on the statement date specified on the bill. If a Customer does not pay a bill in full within seventeen (17) calendar days after the statement date specified on the bill, subject to disputed charge as outlined in Article 10, the payment will be considered late and 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 Rate Schedules.

8.5 Remedies for Non-Payment

Failure to pay any amount billed by DERS with the exception defined in section 10.1 shall be a default of payment under these Terms and Conditions and the Customer of Record shall be subject to DERS' collection policies as outlined in this section 8.5 and to the discontinuance or termination of Default Rate Service and disconnection of the Customer of Record's Service Connection(s) as provided under this section 8.5.

Subject to any restrictions under the GUA or Article 10 of these Terms and Conditions, failure to pay a bill may result in DERS either discontinuing the Customer of Record's Default Rate Service or requesting a disconnection of such service in accordance with section 8.12.

a) Without limitation of other remedies available to it, DERS may take one or more of the following actions should the Customer of Record fail to pay the amount billed in full:subject to Article 5, require a security deposit or an increase to an existing security deposit;

b) provide notice to the Customer of Record through any means deemed reasonable by DERS, including but not limited to, a bill message, telephone

call, SMS message, email or letter indicating payment has not been received and timing for future action if payment or other arrangements are not made by the date indicated in the notice.

c) provide notice through any means deemed reasonable by DERS including but not limited to telephone call, SMS message, email or letter of a pending disconnection of Gas Service and the timing of such disconnection;

d) subject to limitations on disconnection outlined in legislation and regulations, initiate disconnection of Service in accordance with section 8.12.

e) the use of third-party vendors to assist in collections; and

f) legal action.

Prudent and reasonable collection costs incurred by DERS may be added to the Customer of Record's bill. If a Customer of Record's Default Rate Service is discontinued by DERS and/or the Customer of Record's Service Connection is disconnected under the Distribution Tariff, any unpaid charges or other amounts owing on any of the Customer of Record's current, or previously held Accounts, may be transferred to any other Account held by the same Person and any security deposit held in respect of such Account may be applied against the unpaid charges.

8.6 Restoration of Default Rate Service

In order for Default 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 any security deposit required by DERS and pay the reconnection fee prescribed in the Distribution Tariff. At DERS' discretion, DERS may allow the Customer to make payment arrangements to settle amounts in arrears over a reasonable amount of time.

8.7 Partial Payments

Partial payments on an Account will be applied to the unpaid amounts outstanding on the oldest bills.

8.9 Over Payments

If the Customer pays DERS an amount more than what is owed to DERS, the excess amount will be carried as a credit balance on the Customer of Record's Account and applied to future bills for Default Rate Service. A Customer of Record may request the refund of a credit balance on an Active Account if the credit is at least $200. Interest will not be paid on credit balances.

8.9 Dishonored Payments

In addition to any late payment charge under section 8.4 of these Terms and Conditions, a Customer of Record whose payment is dishonored shall pay the charge as specified in the Rate Schedules.

8.10 Legal Tender

DERS accepts the legal tender of Canada as defined in the *Currency Act*, S.C 1985, C-52 for payments. DERS may refuse to accept payment when the Customer of Record 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 coins 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,and
- Five dollars if the denomination is five cents.

8.11 Property Owner's Liability for Payment

In circumstances where there is no Customer of Record associated with a Site receiving Default Rate Service from DERS, the Property Owner will be deemed to be the Customer of Record and will be liable for payment for Default Rate Services provided in accordance with the Default Rate Tariff until the date a new Customer of Record is determined by DERS, provided that a rural Property Owner will not be deemed to be the Customer of Record or made responsible for paying Default Rate Tariff charges related to Default Rate Service for an energy company's oil and natural gas facilities located on the rural Property Owner's Site(s) unless the rural Property Owner directly requested the Default Rate Service or will receive a benefit from the continuation of the Default Rate Service.

8.12 Disconnection of Service Connection by DERS

Subject to limitations outlined in applicable regulations DERS may request disconnection of the Service Connection if:

(a) the Customer requests the disconnection;

(b) the Customer of Record's Account is in arrears and the disconnection will occur within the Permissible Disconnection Period;

(c) the Customer is receiving Default Rate Service but fails to provide sufficient information in accordance with Article 4 or provides incorrect information for billing purposes and the disconnection will occur within the Permissible Disconnection Period; or

(d) the premises or property served by a Site reasonably appears to be vacant or unoccupied.

8.13 Lost Bills

If a Customer of Record's bill is lost or not received, the Customer of Record should contact DERS to determine the amount owed or view the bill on DERS' online Customer portal. The loss of a bill or the failure to view a bill does not release a Customer from the obligation to pay the amount owing to DERS. DERS may in its discretion apply the late payment charge according to section 8.4.

ARTICLE 9
RESPONSIBILITY AND LIABILITY

9.1 Requirements in the *Gas Utilities Act* and Regulation

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

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 Default Rate Service

DERS does not own or operate the Gas Distribution System and does not guarantee continuous Default Rate Service.

9.3 Force Majeure

DERS, is relieved of its obligations under the Default Rate Tariff including these Terms and Conditions, and shall not be liable for any failure to perform any service under the Default 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 shall upon request by the Customer become inoperative until business is resumed (except for pass-through charges from ATCO Gas and 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 or 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 Default 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 Default Rate Service. As a condition of receiving Default 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 the Distribution Tariff) arising out of or in any way connected with any failure by the Customer or its Facilities to comply with any of the provisions of the Distribution Tariff or any legal or regulatory requirement related to the Distribution Tariff 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 Distribution Tariff arising out of or connected with any action or inaction of the Customer related to Default 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 GUA or Regulations to make complaints to the Commission, both parties, acting in good faith shall endeavour to resolve differences prior

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

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 sections 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 AUC 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 Distribution Tariff.

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 AUC if the matter is within the AUC'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 AUC, 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 any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide or receive Default Rate Service. DERS' obligation to provide any Default Rate Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of the Default Rate Service will have been obtained and will be in force during the period of Default Rate Service.

11.2 Service Guarantee Credit

(1) In accordance with AUC Rule 003, DERS must provide a service guarantee credit of $150 to any Customer of Record who is subject to one of the following errors made by DERS:

a) Customer of Record was provided written notice of pending disconnection of service in error;

b) Customer of Record was provided written notice of pending referral to a credit agency in error;

b) Customer of Record was referred to a credit agency in error; or

c) Customer of Record experienced disconnection of service in error.

In the case of a discrepancy between these Terms and Conditions and AUC Rule 003 in regard to the service guarantee credit amount, or of the applicable errors in which a Customer may be provided a service guarantee credit, AUC Rule 003 shall prevail.

(2) Payment of the service guarantee credit is not required where no error has been made by DERS, and in particular is not required in the following circumstances:

a) The Customer requests the disconnection;

b) The Customer's Account is in arrears and the disconnection will occur within the Permissible Disconnection Period;

c) The Customer is receiving Default Rate Service but fails to provide information or provides incorrect information for billing purposes and the disconnection will occur within the Permissible Disconnection Period;

d) The premises or property served by a Site reasonably appears to be vacant or unoccupied.

11.3 No Assignment

Service under the Default Rate Tariff is not assignable.

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

11.4 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 or thereunder, 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 excuses.