

## **Direct Energy Default Supply**

### **Terms and Conditions of Default Retailer Service and Default Supplier Service**

**Pursuant to the Provisions of the  
*Electric Utilities Act, S.A. 2003, c. E-5.1*  
and the  
*Roles, Relationships and Responsibilities Regulation, 2003,*  
**AR 169/2003, as amended, and the  
*Roles, Relationships and Responsibilities Regulation,*  
**AR 82/2000, as amended******

**Effective March 1, 2024**



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**TERMS AND CONDITIONS  
OF  
DEFAULT RETAILER SERVICE  
AND  
DEFAULT SUPPLIER SERVICE**

**ARTICLE 1**

**PREAMBLE**

ATCO Electric Ltd. ("ATCO Electric") has made arrangements with Direct Energy Default Supply ("DFS"), a Direct Energy Partnership business managed by Direct Energy Marketing Limited, to provide Default Retailer Service and Default Supplier Service to Customers in the service area of ATCO Electric.

DFS Terms and Conditions of Default Retailer Service and Default Supplier Service include the attached Price Schedule that sets out the prices for certain services related to the provision of Default Retailer Service and Default Supplier Service.

DFS Terms and Conditions of Default Retailer Service and Default Supplier Service are available for public inspection at [www.directenergy.ca/defaultsupply](http://www.directenergy.ca/defaultsupply) and during normal business hours at the DFS Calgary business office.

**ARTICLE 2**

**DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

The following words and phrases, whenever used in these Terms and Conditions, the Price Schedule or a contract or agreement for service shall have the following meanings:

**"Adjusted Pool Price"** means "pool price" as defined in the EUA, and includes additional costs passed through by the Independent System Operator including, without limitation, trading costs,

curtailment payments, import costs, the cost of losses and unaccounted for electric energy, as allocated by the Independent System Operator.

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

**"ATCO Electric Distribution System"** means the Distribution System owned by ATCO Electric.

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

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

**"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.

**"Commission"** means the Alberta Utilities Commission established under the Alberta Utilities Commission Act, R.S.A., 2007, c. A-37.2, as amended from time to time.

**"Customer"** means a Person that is eligible to obtain either Default Retailer Service or Default Supplier Service.

**"Customer of Record"** means the Customer for whom DFS has opened an account pursuant to Section 4.3.

**"Default Retailer Service"** means the service that is required by the *Roles, Relationships and Responsibilities Regulation*, AR 86/2000, as amended, to be provided by a default retailer.

**"Default Supplier Service"** means the service that is required by the *Roles, Relationships and Responsibilities Regulation, 2003*, AR 169/2003, as amended, to be provided by a default supplier.

**"DFS"** means Direct Energy Default Supply, a Direct Energy Partnership business managed by Direct Energy Marketing Limited.

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

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

**"Distribution Tariff"** means ATCO Electric's tariff for the provision of Distribution Access Service approved by the Commission and as amended from time to time.

**"Effective Date"** means the date in which these Terms & Conditions take effect, which is March 1, 2024.

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

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

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

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

**"Final Settlement"** has the meaning ascribed to that term in the Settlement System Code.

**"Force Majeure"** means circumstances not reasonably within the control of DFS, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, interruption of supply, goods or services including Electricity or Distribution Access Service, the intervention of federal, provincial, state or local government or from any of their agencies or boards, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise.

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

**"Initial Settlement"** has the meaning ascribed to that term in the Settlement System Code.

**"Interim Settlement"** has the meaning ascribed to that term in the Settlement System Code.

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

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

**"Price Schedule"** means, at any point in time the Price Schedule filed with the Commission by DFS and in effect at such time regarding Default Retailer Service and Default Supplier Service.

**"REA"** means incorporated rural electrification association.

**"Security"** includes, but is not limited to, a cash deposit, guarantee, indemnity bond, and/or irrevocable letter of credit acceptable to DFS.

**"Service"** means Default Retailer Service or Default Supplier Service, as applicable.

**"Service Connection"** means the Facilities of the ATCO Electric Distribution System that deliver Electricity to a Site.

**"Settlement System Code"** means the rules governing the roles, standard practices and process of the various organizations involved in load settlement in Alberta, made by the Independent System Operator pursuant to section 20(1)(h) of the EUA.

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

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

**"Terms and Conditions"** means these Terms and Conditions of Default Retailer Service and Default Supplier Service, as amended by DFS from time to time.



## **2.2 Conflicts**

If there is any conflict between a provision in these Terms and Conditions and an agreement for Default Retailer Service or Default Supplier Service, the express provisions of these Terms and Conditions shall govern as of their effective date.

## **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 neuter gender and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

# **ARTICLE 3 GENERAL PROVISIONS**

## **3.1 Effective Date**

These Terms and Conditions are effective on the Effective Date, defined herein.

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

As a condition of obtaining Default Retailer Service or Default Supplier Service, the Customer agrees to be bound by these Terms and Conditions and the attached Price Schedule. Without limiting the generality of the foregoing, the receipt by the Customer of Record shall constitute



acceptance by the Customer of all the provisions of these Terms and Conditions. Customers must comply with these Terms and Conditions.

### **3.3 No Modification of Terms and Conditions**

No agreement can provide for the waiver or amendment of any part of these Terms and Conditions.

### **3.4 Charges and Fees**

All charges and fees referred to in these Terms and Conditions are as set out in the Price Schedule.

### **3.5 Filing and Amendment**

These Terms and Conditions and the attached Price Schedule do not require approval of the Commission. DFS may amend these Terms and Conditions and the attached Price Schedule. Amendments will take effect fifteen (15) days after DFS posts amended Terms and Conditions, or the Price Schedule on the Direct Energy website, unless otherwise indicated in the amended document(s).

### **3.6 Customer Authorization**

Becoming a Customer shall constitute consent and authorization from the Customer for DFS to enroll the Customer for receipt of Distribution Access Service.

### **3.7 Applicable Taxes**

The Customer shall pay all taxes, fees or assessments that DFS 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 relates to Default Retailer Service or Default Supplier Service.

### **3.8 Use of Default Retailer Service or Default Supplier Service**

Service is provided for the Customer's use only, and the Customer shall not sell or otherwise permit another person to acquire such service.

## **ARTICLE 4 PROVISION OF SERVICE**

### **4.1 Provision of Default Retailer Service or Default Supplier Service**

- (a) Default Retailer Service is available to Default Retailer Customers strictly in accordance with these Terms and Conditions.
- (b) Default Supplier Service is available to Default Supplier Customers strictly in accordance with these Terms and Conditions.

### **4.2 Service Enrollment**

- (a) DFS may enrol a Person for Default Retailer Service only if the Person is a Customer who was receiving Default Retailer Service on June 1, 2003.
- (b) DFS may enrol a Person for Default Supplier Service only if the Person is a Customer referred to in section 3(2) of the *Roles, Relationships and Responsibilities Regulation, 2003*, AR 169/2003, as amended.

### **4.3 Qualification for Service**

A prospective Customer must fulfill the following requirements to the satisfaction of DFS before DFS will provide Service to that Person.

- (a) All Customers must be of legal age to contract for service with DFS. DFS reserves the right to verify the identity of the Customer and the accuracy of the information provided.
- (b) All Customers must supply information regarding the location of the Site to be served, the Customer's connected load and preferred supply conditions and the manner in which the Service Connection will be utilized, credit information and any other information that may be required by DFS.
- (c) All Customers must provide written acceptance specifying that the Customer has agreed to these Terms and Conditions, where required by DFS at its sole discretion.
- (d) All Customers who are not paying by electronic funds transfer must submit a pre-authorized payment agreement.
- (e) All Customers must satisfy the credit requirements of DFS set forth in Article 5.
- (f) All Customers must meet any other requirements that DFS, acting reasonably, may impose in order to provide Service hereunder to the Customer.

Upon satisfaction of the above requirements, DFS will open an account for the prospective Customer for Service at the applied for Site and the Customer shall be the Customer of Record for the Site and, where applicable, will be required to pay DFS a one-time set up fee for opening the account in accordance with the Price Schedule. The Customer will be responsible to pay DFS all amounts charged to the account from the time the account is opened until Final Settlement has occurred. Service will be provided to the Customer, subject to these Terms and Conditions. DFS reserves the right to discontinue Service to the Customer if at any time the Customer fails to meet these requirements.

#### **4.4 Refusal of Service Enrollment**

DFS reserves the right to refuse Service enrollment to a prospective Customer at any Site where:

- (a) DFS determines, in its sole discretion, that the prospective Customer is not creditworthy or a previous account held by that Person with DFS is in arrears; or
- (b) the Customer has an outstanding balance with DFS for Service; or
- (c) the prospective Customer fails to provide Security acceptable to DFS in accordance with Article 5; or
- (d) a previous Customer at the Site had a history of non-payment and DFS believes, on reasonable grounds, that the defaulting Customer would continue to occupy the premises located at the Site; or
- (e) the prospective Customer has not complied with the applicable provisions of these Terms and Conditions to the satisfaction of DFS; or
- (f) any representation made by the prospective Customer, directly or on its behalf, to DFS for the purpose of obtaining Service is, in DFS's opinion, fraudulent, untruthful or misleading; or
- (g) the prospective Customer has not, when requested by DFS to do so, provided a signed written application for Service.

#### **4.5 Account and Service May Not Be Assigned**

A Customer cannot assign its account for Service or any rights in relation to Service for a Site to a new occupant or owner of the premises at which the Site is located. The new occupant or owner must apply for Service at the Site. The Customer is responsible for payment for all Service

provided to the Customer up to the time DFS has closed the account and final charges for consumption have been applied.

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

The Customer must notify DFS 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 DFS.

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

#### **5.1 Credit Information**

DFS may at any time request information from an existing or prospective Customer to determine the Customer's credit history and its credit risk, including, without limitation, bank reference, trade references and credit ratings. If a prospective or existing Customer refuses to provide the requested information, then DFS may refuse or discontinue Service to the Customer.

#### **5.2 Requirement for Deposit**

DFS, in its sole discretion, may require Security or an increase in Security from a prospective or existing Customer in circumstances it considers appropriate, including in the following circumstances:

- (a) if the prospective Customer making the application for service cannot demonstrate a satisfactory credit rating to DFS;
- (b) the Customer has paid a bill late more than once in any four-month period;
- (c) the Customer has issued more than one cheque that has been returned for non-sufficient funds in any four-month period;

- (d) the Adjusted Pool Price has increased;
- (e) there has been more than a 50% increase in the Customer's average monthly consumption of Electricity over the prior four-month period;
- (f) the Customer makes a request for reconnection of service after having been disconnected for non-payment;
- (g) the Customer is or may be requiring temporary Service at a Site; or
- (h) where the Customer can reasonably be found to be in financial difficulty.

### **5.3 Waiver of Deposit Requirement**

DFS, in its sole discretion, may waive the requirement for Security by the Customer.

### **5.4 Amount of Security**

DFS, in its sole discretion, will determine the amount of Security required to be provided by a Customer based on current market conditions. The amount of Security will cover up to 120 days of consumption, as estimated by DFS, Distribution Tariff charges, Electricity commodity costs and administrative fees.

### **5.5 Refund of Security**

- (a) Security will not be returned to the Customer until Final Settlement has taken place.
- (b) Subject to (a), Security may be returned to the Customer when the Customer's Service is terminated, the Customer's account is closed, and the Customer has paid all amounts owing to DFS.

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

Security provided by a Customer may be applied against any amounts owing for unpaid bills.

## **5.7 Interest Payable on Cash Deposits**

Interest will be paid on each Customer's cash deposit at the end of each calendar year or when the deposit is refunded. Interest will be calculated using simple interest on the daily balance of any cash deposit held by DFS in respect of the Customer. The interest rate applicable for each year is the greater of 2.5 percent per annum or the interest rate specified from time to time under the *Residential Tenancies Act*, RSA 2000, c. R-17. Interest payable under this section may be applied against any amounts owing for unpaid bills.

# **ARTICLE 6 RENDERING AND PAYMENT OF BILLS**

## **6.1 Customer Billing**

DFS will bill the Customer for Service provided to the Customer in accordance with the billing procedures set out as follows:

- (a) DFS will invoice the Customer each billing cycle for Service provided by DFS for the period prior to the billing cycle.
- (b) Bills to Customers will reflect all applicable charges and fees, including without limitation, charges for Electricity consumption, Distribution Tariff charges, and administrative fees charged to the Customer's account in accordance with the Price Schedule.



## **6.2 Measurement of Electricity Consumption**

ATCO Electric provides to DFS under the ATCO Electric Distribution Tariff meter readings and estimates of Electricity consumption. Billings to Customers under these Terms and Conditions shall be based on those meter readings or estimates, as applicable. If a meter reading is not received from ATCO Electric, DFS will bill the Customer based on the estimate provided by ATCO Electric. DFS assumes no liability to the Customer for meter readings and estimates provided by ATCO Electric.

## **6.3 Meter Testing**

At the request of a Customer, DFS will arrange to have a meter tested by ATCO Electric and the Customer shall be responsible to pay to DFS the charge for meter testing prescribed in the Price Schedule.

## **6.4 Proration of Bills**

For all new accounts, DFS may add the charges for service provided during the initial period to the bill for the following billing period.

## **6.5 Payment and Collection Terms**

- (a) The amount due shown on a bill is owing to DFS on the statement date.
- (b) The Customer shall pay to DFS by electronic funds transfer or DFS pre-authorized payment plan, or other form of payment as may be approved by DFS in its sole discretion, on or before the late payment penalty date specified on the invoice, the amount invoiced by DFS for the preceding period.

- (c) Failure to receive a bill from DFS will not entitle the Customer to any delay in the settlement of each account or to any extension of the late payment penalty date.
- (d) Any bill rendered to a Customer for which valid payment has not been received by the late payment penalty date indicated on the bill shall be considered past due. The late payment charge prescribed in the Price Schedule will be applied to the balance of a bill that is past due.
- (e) If a Customer's bill is not received, the Customer should contact DFS to determine the amount owed.
- (f) Should the bill remain outstanding after the due date, DFS may commence collection action. In addition, DFS may require Security in accordance with Article 5.
- (g) A Customer who fails to pay any amount billed by DFS under these Terms and Conditions shall be subject to DFS collection policies, and to the discontinuance or termination of Service and disconnection of the Customer's Service Connection(s) as provided under Article 7.
- (h) In addition to any late payment charge under Section 6.5(c) of these Terms and Conditions, and where DFS has agreed to accept any other form of payment, a Customer whose payment is dishonoured shall pay the charge prescribed in the Price Schedule.
- (i) DFS may refuse to accept payment when Customer attempts to make payment in a form other than those explicitly listed in Section 6.5(b). DFS follows the coin acceptance limitations as specified in the Currency Act, S.C. 1985, c. C-52.

## **6.6 Summary and Consolidation Billing**

DFS will issue a separate bill for each Site. However, the Customer and DFS may agree that DFS will issue one bill totaling charges for Service billed and delivered at more than one Site.

## **6.7 Adjustment of Bills**

### **6.7.1 Billing Error**

Should the Customer dispute any amount owing, the Customer shall nonetheless pay such disputed amount and submit the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, DFS will issue refunds or impose additional charges, as appropriate, to affected Customers. The right or ability of either party to dispute a bill for Service provided hereunder shall only apply to bills rendered during a period of one (1) year prior to the date of a written notice of such dispute.

### **6.7.2 Distribution Charges**

Bills rendered by DFS under these Terms and Conditions will include, among other things, charges payable by DFS to ATCO Electric under the Distribution Tariff. Those charges are or may be subject to adjustment under the ATCO Electric Distribution Tariff. Bills rendered by DFS under these Terms and Conditions may be adjusted from time to time to, among other things, reflect adjustments by ATCO Electric under its Distribution Tariff and DFS will issue refunds or impose additional charges, as appropriate, to affected Customers.

## **6.8 Load Settlement**

Bills rendered by DFS under these Terms and Conditions will include charges payable by the Customer for Electricity consumption. These charges are or may be subject to adjustment in accordance with the Settlement System Code. DFS will issue refunds or impose additional charges as appropriate to affected Customers and reserves the right to collect any amounts owing from

Customers as a result of Initial Settlement, Interim Settlement or Final Settlement, even after the Customer has terminated Service.

### **6.9 Partial Payments**

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

### **6.10 Responsibility for Collection Costs**

Recovery of any balance on a Customer's bill that has not been paid by the date that payment is due may be referred to a collection agency. Prudent and reasonable external collection costs incurred by DFS will be added to the Customer's bill.

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

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

## **ARTICLE 7 DISCONTINUING AND RESTORING SERVICE**

### **7.1 Discontinuance of Service by DFS**

DFS may, in its sole discretion, discontinue or terminate Service to the Customer, and require ATCO Electric to disconnect the Customer's Service Connection(s) and discontinue Distribution Access Service to the Customer, or otherwise exercise and enforce any other right or remedy DFS may have in a number of circumstances including, but not limited to:

- (a) non-payment of DFS bills or any past due charges by the Customer; or
- (b) failure by the Customer to meet its obligations under these Terms and Conditions, including, without limiting the generality of the foregoing, fulfilling the creditworthiness requirements as set forth in Article 5; or
- (c) failure by the Customer to meet its obligations under the Distribution Tariff.

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

## **7.2 Restoration of Service**

In the event of discontinuance or termination of Service, or disconnection of a Service Connection of a Customer for non-payment or for any other reason, to have Service restored, the Customer shall pay:

- (a) any amount owing to DFS;
- (b) the security deposit, if any, required under Article 5 herein; and
- (c) the reconnection fee prescribed in the Price Schedule.

## **ARTICLE 8**

### **ACCOUNT CLOSURE AND CONTRACT EXIT PROVISIONS**

#### **8.1 Notice for Request to Close an Account**

A Customer may request the closure of an account for Service at a Site by giving DFS at least three (3) full Business Days' notice to close the account. An early termination fee, as prescribed

by and determined under the Price Schedule, will be applied to a Customer's account for the failure to provide the minimum three (3) Business Days' notice.

## **8.2 Responsibility for Payment**

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

## **8.3 Final Meter Reading**

When a Customer elects to terminate Service under these Terms and Conditions, DFS will determine whether a final meter reading is required.

## **8.4 No Account Closure Prior to Final Settlement**

When a Customer elects to terminate Service under these Terms and Conditions, the Customer's account will not be closed until after Final Settlement has taken place. The Customer remains liable for all charges up to the point of Final Settlement. If a Customer's account is closed, any outstanding charges may be transferred to any other Default Retailer Service or Default Supplier Service account held by the same person.

# **ARTICLE 9**

## **COMPANY RESPONSIBILITY AND LIABILITY**

### **9.1 Continuous Supply**

DFS shall make all reasonable efforts to maintain a continuous supply of Electricity to its Customers served under these Terms and Conditions, but DFS cannot guarantee an uninterrupted supply of Electricity.

## 9.2 Interruption

- (a) If Service is interrupted, defective, curtailed, reduced, irregular, or fails from causes or circumstances beyond DFS control or through negligence of its employees, servants or agents, DFS shall not be liable to the Customer or any other Person for the interruption, defect, reduction, irregularity or failure.
  
- (b) Without limiting the generality of the foregoing, DFS does not own or operate the ATCO Electric Distribution System or any other part of the Interconnected Electric System and does not guarantee continuous Service. Under the Distribution Tariff, ATCO Electric, among other things, reserves the right to disconnect or otherwise curtail, interrupt or reduce Distribution Access Service to Customers of DFS and to withhold connection or disconnect a Customer's Service Connection in various circumstances with or without notice to DFS or its Customers. DFS is also required to cooperate with ATCO Electric regarding operating instructions, policies and procedures of the Independent System Operator and transmission facility owners, which may include such things as reducing supply voltage to Customers and full interruption of Customers' Loads. Further, from time to time, Distribution Access Service and Default Retailer Service or Default Supplier Service may be interrupted, defective, irregular or fail by reason of actions by ATCO Electric, transmission system owners, the Independent System Operator or conditions on the ATCO Electric Distribution System or otherwise on the Interconnected Electric System. Such actions (including actions by ATCO Electric pursuant to its Distribution Tariff) and conditions and compliance by DFS with the ATCO Electric Distribution Tariff shall constitute circumstances beyond the control of DFS for which DFS shall not be liable.

### **9.3 Company Liability**

Notwithstanding anything to the contrary contained in these Terms and Conditions, DFS shall not be liable for any loss, injury, damage, expense, charge, cost or liability of any kind, whether of direct, indirect, special or consequential nature, (excepting only direct physical loss, injury or damage to a Customer or the Customer's property, resulting from the gross negligence or willful misconduct of DFS, its employees or agents or affiliates) arising out of or in any way connected with any failure, defect, fluctuation, reduction or interruption in the provision of Service by DFS to its Customers. For the purpose of the foregoing and without otherwise restricting the generality thereof, "direct physical loss, injury or 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, arising out of or in any way connected with the failure, defect, fluctuation, reduction or interruption in the provision of service to a Customer.

Any claim by a Customer for loss, injury or damage must be filed with DFS within 180 days from the date of occurrence of the incident that is the subject of the claim, failing which DFS shall have no liability to the Customer for any such loss, injury or damage.

### **9.4 Force Majeure**

Should DFS be unable, because of an event of Force Majeure, to provide a continuous supply of Electricity to a Customer, DFS responsibilities, so far as they are affected by the Force Majeure, shall be relieved and suspended during the duration of such circumstances and DFS shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, an event of Force Majeure. Where practical, DFS shall give notice to the affected Customers of such Force Majeure.



## **9.5 Indemnification by Customer**

Each Customer shall indemnify and hold DFS and its employees, agents and contractors harmless from and against any claim for any loss, damage, expense, charge, cost (including legal fees on a solicitor-and-his-own-client basis), penalty or other liability of any kind suffered or incurred by DFS (including charges or liability arising under the ATCO Electric 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 ATCO Electric Distribution Tariff applicable to the Customer or its Facilities or any legal or regulatory requirement related to Distribution Access Service required to be complied with by the Customer.

Without limiting the generality of the foregoing, Customer shall be liable to compensate DFS for any costs, expenses or liabilities that it incurs under the provisions of the ATCO Electric Terms and Conditions arising out of or connected with any action or inaction of the Customer related to Service.

## **ARTICLE 10 DISPUTE RESOLUTION**

### **10.1 Resolution by DFS and Customer**

If any dispute between DFS and a Customer arises at any time in connection with these Terms and Conditions and the attached Price Schedule, DFS and the Customer, 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 Section 10.1, a senior representative of DFS and the Customer shall meet to attempt to resolve the dispute.

## **10.2 Resolution by Arbitration**

If any dispute has not been resolved pursuant to Section 10.1 hereof within thirty (30) days after notice from DFS or the Customer to the other of its desire to have the dispute resolved, then unless otherwise agreed to in writing by the parties the dispute shall be resolved pursuant to Sections 10.3 to 10.11 hereof.

## **10.3 Arbitrators**

All disputes or differences between DFS and a Customer in connection with these Terms and Conditions and the attached Price Schedule shall be referred (unless DFS and the Customer agree on the appointment of a single arbitrator) to a board of arbitrators consisting of one (1) arbitrator to be appointed by each of the parties and the two (2) appointed arbitrators shall appoint a third arbitrator immediately.

## **10.4 Failure to Agree on the Appointment of a Single Arbitrator**

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

## **10.5 Refusal to Appoint an Arbitrator**

If either DFS or the Customer 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 DFS or the Customer, 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.

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

If the arbitrators appointed by DFS and the Customer 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 DFS or the Customer 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.

## **10.7 Technical Competence**

Any arbitrator appointed under the provisions of this Article 10 whether by concurrence of DFS and the Customer, 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 person(s) making such appointment, be possessed of such technical or other qualifications as may be reasonably necessary to enable such arbitrator to properly adjudicate upon the dispute or difference.

## **10.8 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.

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

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

## **10.10 Decision Binding**

A decision of the single arbitrator or the majority of the three arbitrators appointed shall be final and binding upon each of the parties to the dispute or difference. The parties shall abide by the terms of the decision without delay.

### **10.11 Continuity of Service**

All performance required under these Terms and Conditions by DFS and payment therefore by the Customer shall continue during the dispute resolution proceedings contemplated by this Article 10, 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 payment or reimbursement on the amount thereof at the rate specified from time to time in the *Residential Tenancies Act*, R.S.A. 2000, c. R-17, but not less than 2.5 per cent per annum from the date so determined until paid.

## **ARTICLE 11 MISCELLANEOUS**

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

DFS and the Customer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other actions of the Independent System Operator or of governmental authorities having applicable jurisdiction. DFS will not be required to violate, directly or indirectly, or become a party to a violation of any requirement of the Independent System Operator or any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Service to any Customer. DFS obligation to provide Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of the Service will have been obtained and will be in force during the period of Service.

### **11.2 No Assignment**

The rights of a Customer under these Terms and Conditions are not assignable. Any assignment in violation of this Section shall be void.

### **11.3 No Waiver**

The failure of DFS to insist on any one or more instances upon strict performance of any provisions of these Terms and Conditions, or to enforce 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 term or condition or breach of a term or condition of these Terms and Conditions shall be waived unless the waiver is in writing and duly executed by an authorized officer of DFS.

### **11.4 Law**

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, shall govern these Terms and Conditions and any agreement between DFS and the Customer. Any lawsuit arising in connection with these Terms and Conditions or any agreement between DFS and the Customer shall be brought in the courts of the Province of Alberta.

## PRICE SCHEDULE

### 1. One-Time Set-up Fee

A one-time set-up fee will be charged to Customers as follows:

- Customers with 1 to 5 service accounts on Default Supplier Service will be charged \$600.
- Customers with 6 to 10 service accounts on Default Supplier Service will be charged \$1200.
- Customers with 11 or more service accounts on Default Supplier Service will be charged \$1800.

### 2. Administrative Fees

For each account on Default Retailer Service or Default Supplier Service, an administrative fee of \$0.025 per kWh will be charged for all electricity consumed.

### 3. Commodity Pricing

At Sites that are metered with interval meters, Electricity consumed at the Site will be charged to the Customer by multiplying the hourly Adjusted Pool Price by the corresponding hourly consumption.

At Sites that are metered with conventional meters, including Automatic Meter Reading (AMR) meters, Energy consumed at the Site will be charged to the Customer by multiplying the weighted average monthly Adjusted Pool Price by the monthly consumption at the Site.

Regardless of the type of metering used at a Site, the Adjusted Pool Price will include any uplifts passed through from the Independent System Operator, including but not limited to trading fees, curtailment fees, import costs and any other charges that may be imposed by the Independent

System Operator. The Adjusted Pool Price will be grossed up to account for all losses and unaccounted for electric energy that the Independent System Operator assigns to DFS. DFS shall have the right to flow through to its Customers (and former Customers) any volume and price adjustments from the Independent System Operator that result from Interim Settlement and Final Settlement.

DFS billing for a particular service account will reflect any credits received from the Balancing Pool that are applicable to that service account.

#### **4. Taxes**

The Customer will pay any taxes that are associated with the provision of Service at the Site, including, without limitation, GST.

#### **5. Delivery Charges**

Charges for Distribution Access Service (including without limitation, all charges for System Access Service) will be flowed through, with no markup, to the Customer in accordance with the ATCO Electric Distribution Tariff.

#### **6. Early Termination Fee**

If a Customer fails to provide the minimum three (3) Business Days' notice required pursuant to Section 8.1, an early termination fee will be applied to the Customer's account consisting of any administrative fees payable under this Price Schedule for the number of days that fall short of the three (3) Business Days' notice. For purposes of calculating the early termination fee, the administrative fee will be based on the Customer's average daily consumption in the prior month, or other shorter period for which sufficient information is available.

#### **7. Connection Fees**

The charge for a connection will be the applicable charge under the ATCO Electric Distribution Tariff plus \$10.00.

**8. Reconnection Fees**

The charge for reconnecting a Customer’s Site, whether on an expedited basis or not, will be the applicable charge under the ATCO Electric Distribution Tariff plus \$50.00.

**9. Late Payment Charge**

The amount due shown on a bill is owing to DFS on the statement date. If a Customer does not pay a bill in full within seventeen (17) days after the statement date specified on the bill, a late payment charge of 1.5% per month may be applied. The outstanding unpaid amount, including the late payment charge, shall be applied to the charges that become due and payable in the next bill.

**10. Other Charges**

The following charges shall apply, as applicable:

- |  |   |
|--|---|
| a. Meter Reads, Supplementary Meter Reads, Meter Disputes or Meter Testing | Amount of any applicable charge under the ATCO Electric Distribution Tariff |
| b. Interval Meter Usage Data   | Amount of any applicable charge under the ATCO Electric Distribution Tariff |
| c. Dishonoured Cheque  | \$25.00   |