



EPCOR DISTRIBUTION & TRANSMISSION INC.

RETAILER CERTIFICATION PACKAGE

Version Date: December 1, 2021

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SAMPLE

DISTRIBUTION AND SYSTEM ACCESS SERVICE AGREEMENT

THIS DISTRIBUTION AND SYSTEM ACCESS SERVICE AGREEMENT (the “Agreement”) is entered into this date _____ (the “Effective Date”) between EPCOR Distribution & Transmission Inc. (“EDTI”), the owner of an electric distribution system, having its principal place of business in Edmonton, Alberta and _____, an entity validly authorized under the laws of Alberta to sell electricity to retail customers in Alberta (“Retailer”, and together with EDTI, the “Parties”).

RECITALS

WHEREAS EDTI provides electric distribution and transmission services (“**D&T Services**”) pursuant to its Distribution Access Service Tariff and its System Access Service Tariff as approved from time to time by the Alberta Utilities Commission (the “**Commission**”); and

WHEREAS EDTI desires to provide D&T Services to the Retailer and the Retailer desires to obtain D&T Services from EDTI, upon and subject to the provisions of this Agreement.

NOW THEREFORE in consideration of the premises and mutual promises and agreements of the Parties contained in this Agreement, the Parties, intending to be legally bound, agree as follows:

1.0 DEFINED TERMS AND INTERPRETATION

Capitalized words and phrases used in this Agreement and not otherwise defined have the respective meanings ascribed thereto in EDTI’s Terms and Conditions for Distribution Access Services and Terms and Conditions for Distribution Connection Services (collectively, the “**Terms and Conditions**”). Words importing the singular number include the plural and vice versa. Words importing gender include masculine, feminine and neuter. The meanings specified are applicable to both the singular and the plural and other forms of the applicable capitalized words.

2.0 PROVISION OF D&T SERVICES AND INCORPORATION OF TERMS AND CONDITIONS

The Terms and Conditions are expressly incorporated in and made a part of this Agreement by reference. The Parties shall perform their respective obligations as set forth in the Terms and Conditions as amended from time to time.

2.1 Provision of D&T Services

EDTI will provide D&T Services to the Retailer and the Retailer will purchase D&T Services from EDTI, upon and subject to the provisions of this Agreement and the Terms and Conditions.

2.2 Incorporation of Terms and Conditions

The Terms and Conditions are expressly incorporated in and made a part of this Agreement by reference. The Parties shall perform their respective obligations as set forth in the Terms and Conditions as amended from time to time.

2.3 Terms and Conditions Prevail

In the event that a provision in this Agreement conflicts with the Terms and Conditions, or a conflict with the Terms and Conditions develops during the term of this Agreement, the Terms and Conditions shall prevail.

3.0 ENFORCEABILITY

Each Party represents that it has taken all necessary corporate action to authorize the execution of this Agreement, that the execution and performance of this Agreement does not and will not violate or result in the breach of any law, rule, regulation or agreement to which it is subject or a party and that, upon execution, this Agreement shall constitute a valid and binding obligation, enforceable against it in accordance with its terms, except to the extent enforceability thereof is limited by bankruptcy, moratorium, or similar laws affecting creditors' rights generally, or general principals of equity.

4.0 TERM

This Agreement shall become effective as of the Effective Date. Subject to any termination rights in Section 5.1 and Article 6, the term of this Agreement shall continue for a period of six (6) months and shall continue thereafter from month to month unless terminated by either Party by written notice given to the other Party at least thirty (30) days prior to the intended termination date.

5.0 RETAILER RESPONSIBILITY

5.1 Valid Authorization

Retailer represents that it is validly authorized under Alberta law to sell and provide Electricity Services to retail Customers in Alberta. The Retailer shall notify EDTI immediately upon any change in its status to conduct, sell and provide Electricity Services in Alberta. Failure of the Retailer to maintain its authorization in good standing under Alberta law shall be grounds for immediate termination of this Agreement by EDTI.

5.2 Taxes

EDTI shall have no responsibility for reporting or remitting to the appropriate taxing authority any taxes applicable to the sale by Retailer of electricity to Customers.

5.3 Notifications

5.3.1 Retailer shall notify EDTI immediately if:

- (a) Retailer ceases to operate in Alberta;
- (b) Retailer is no longer permitted to provide electricity services under the conditions of the Retailer's license under the *Fair Trading Act* and the regulations made under that Act; or
- (c) Retailer is no longer permitted to exchange electric energy through the Power Pool in accordance with the rules of the Power Pool.

6.0 TERMINATION

6.1 Termination

Notwithstanding any contrary terms elsewhere in this Agreement, EDTI may, by written notice to the Retailer, terminate this Agreement or suspend further performance by it without terminating this Agreement upon the occurrence of any of the following:

- (a) Retailer fails to fulfill the requirements under the Terms and Conditions;
- (b) Retailer ceases to operate in Alberta or is no longer permitted to provide Electricity Services under the

conditions of Retailer's license under the *Consumer Protection Act* (Alberta) and the regulations made under that Act or Retailer is no longer permitted to exchange electric energy through the Power Pool in accordance with the rules of the Power Pool;

(c) Retailer becomes subject to any bankruptcy or insolvency proceeding, becomes bankrupt or insolvent, becomes subject to control of a trustee, receiver or similar authority, or makes an assignment for the benefit of creditors;

(d) Retailer fails to make, when due, any payment owing to EDTI under this Agreement or the Terms and Conditions and has not cured such failure within five (5) days after receipt of written notice from EDTI; or

(e) Retailer commits a material breach of any of its other obligations under this Agreement and has not cured such breach within thirty (30) days after receipt of a written notice from EDTI specifying the nature of the breach.

6.2 No Waiver

Any delay by EDTI in enforcing any of its rights under this Agreement shall not be deemed a waiver of such rights, and a waiver of one default shall not be deemed a waiver of any other or subsequent default.

6.3 Remedies not Limited

The enumeration of remedies in this Article 6 shall not be deemed a waiver of any other remedies to which EDTI is legally entitled.

7.0 DISPUTE RESOLUTION

Any dispute arising between the Parties in connection with this Agreement shall be governed by the terms of Article 13 of the EDTI's Terms and Conditions for Distribution Access Services.

8.0 MISCELLANEOUS PROVISIONS

8.1 Notices

Except as otherwise provided in this Agreement, any notice or other communication required or permitted to be given by either Party to the other Party under this Agreement shall be in writing and shall be deemed given to the other Party if addressed to the other Party as follows and delivered personally or electronic mail at the following address or email address for the other Party:

If to EDTI:

EPCOR Distribution & Transmission Inc.
8743 58 AVE NW
Edmonton, AB
T6E 5W4
Attention: Senior Manager, Meter, Data & Billing

Email: retcomm@epcor.com

If to:

Attention:

Email:

Any communication received by a Party after the close of business shall be deemed to have been received on the next Business Day. A Party may change its address, contact person or email address for communications by a communication given in accordance with this Section 8.1; provided that the change will only be effective upon receipt thereof by the other Party.

8.2 Governing Law

This Agreement is made under and shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, regardless of Alberta conflict of law provisions. Subject to Article 13 of the EDTI's Terms and Conditions for Distribution Access Services, the courts of the Province of Alberta shall have jurisdiction to determine all disputes and claims arising between the Parties and each Party hereby attorns to the jurisdiction of the courts of the Province of Alberta.

8.3 Restriction on Assignment

The rights of the Retailer under this Agreement are not assignable.

8.4 Amendments in Writing

This Agreement may be amended only by a written instrument duly executed by the Parties hereto that makes express reference to this Agreement.

8.5 Counterpart and Electronic Execution and Delivery

This Agreement may be executed simultaneously in two or more counterparts, and delivered by electronic mail or other electronic transmission, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

8.6 Headings for Reference

The captions and headings appearing in this Agreement are inserted merely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and provisions thereof.

8.7 Severability

In the event that any of the terms, covenants, or conditions of this Agreement, or the application of any such terms, covenants, or conditions to a Party, shall be held by any court or regulatory authority having competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of its terms, covenants and conditions to the Party shall not be affected thereby.

IN WITNESS WHEREOF the Parties have caused their names to be subscribed to this Agreement, each by its appropriate agent, hereto duly authorized, as of the date below.

I am authorized to sign on behalf of the Retailer:

EPCOR DISTRIBUTION & TRANSMISSION INC.

SAMPLE

STATUTORY DECLARATION

C A N A D A) IN THE MATTER of EPCOR Distribution & Transmission Inc’s
PROVINCE OF ALBERTA) Distribution Access Tariff and System Access Tariff
)
)
TO WIT:)

As an authorized representative of _____, DO SOLEMNLY DECLARE:

- 1. That I have read the Distribution and System Access Service Agreement dated, _____ between EPCOR Distribution & Transmission Inc. and _____.
 - 2. That I have received a copy of EPCOR Distribution & Transmission Inc.’s Distribution Access Tariff and System Access Tariff that contain among other things the terms and conditions relevant to the said Distribution and System Access Service Agreement.
 - 3. That I confirm that this Statutory Declaration is made for the purpose of inducing EPCOR Distribution & Transmission Inc. to allow access to its transmission and distribution systems by _____.
 - 4. The Prudential Requirement Estimator attached to this Statutory Declaration as Exhibit “A” estimated annual tariff to be paid by _____ to EPCOR Distribution & Transmission Inc. in the amount of \$ _____.
- OR
- 4 (a). That I confirm that _____ has established a credit rating of _____ from Standard and Poor’s bond rating service or an equivalent bond rating from Dominion Bond Rating Service or Moody’s Investors Service.

IN WITNESS WHEREOF the Parties have caused their names to be subscribed to this Declaration, each by its appropriate agent, hereto duly authorized, as of the date below.

I am authorized to sign on behalf of the Retailer:

EPCOR DISTRIBUTION & TRANSMISSION INC.

REPRESENTATION AND WARRANT AGREEMENT

This Agreement effective

Between:

EPCOR Distribution & Transmission Inc., an Alberta corporation

(“EDTI”)

-and-

, (hereinafter referred to as the “Retailer”)

WHEREAS the Retailer is a party to a Distribution & Transmission Inc. Service Agreement with EDTI and is bound by the obligations and liabilities under the Distribution & Transmission Inc. Service Agreement and EDTI Terms and Conditions;

AND WHEREAS the Retailer may request EDTI to disclose to the Retailer site-specific historic usage information pursuant to Alberta Utilities Commission (“AUC”) Rule 10;

AND WHEREAS the Retailer's request for historic usage information must be accompanied by a Representation and Warrant Document that will be relied upon by EDTI as being demonstrative proof that customer consent was obtained by the Retailer each time the Retailer makes a request for historic usage information pursuant to AUC Rule 10;

AND WHEREAS this Agreement constitutes a Representation and Warrant Document pursuant to AUC Rule 10;

AND WHEREAS the Retailer acknowledges that EDTI is relying upon information provided by the Retailer in disclosing historic usage information to the Retailer;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants hereinafter contained the parties agree as follows:

(1) DEFINITIONS

In this Agreement, the following words and phrases mean:

- (a) “party” means the Retailer is a party to EPCOR Distribution & Transmission Inc. Service Agreement with EDTI and is bound by the obligations and liabilities under the EPCOR Distribution & Transmission Inc. Service Agreement and EDTI Terms and Conditions for EDTI Distribution & Transmission Service.

- (b) “Agreement” means this instrument and all schedules and appendices hereto which are added by agreement of the parties, as well as any amendment from time to time as administered by EDTI.

(2) TERM AND TERMINATION

This Agreement shall commence on the date first written above and will continue until:

- (a) the termination of the EPCOR Distribution & Transmission Inc. Service Agreement to which the Retailer is a party;
- (b) the mutual written agreement by the Retailer and EDTI to terminate this agreement;
- (c) a governing body, having appropriate jurisdiction, orders the termination of this Agreement; or
- (d) 30 days after EDTI provides written notice to the Retailer that EDTI is unilaterally terminating this Agreement.

(3) SERVICES TO BE PROVIDED

Under the terms of this Agreement, EDTI may provide historic usage information regarding end-use customers at the request of the Retailer.

(4) EDTI WARRANTY

The Retailer acknowledges that EDTI makes no representation or warranty to the Retailer regarding the accuracy of any historic usage information provided to the Retailer by EDTI.

(5) RETAILER WARRANTY

Each time that the Retailer requests EDTI to disclose to the Retailer site-specific historic usage information, the Retailer represents and warrants to EDTI as follows:

- (a) The Retailer has obtained from each of the customers to which the requested historic usage information relates, all consents that are required under all applicable laws, for EDTI to disclose to the Retailer, and for the Retailer to receive from EDTI such historic usage information.
- (b) Where a Retailer is required to obtain consent, such consent must be written in a hard copy or in an electronic form so that it is verifiable. The Retailer will retain records of all consents in a form that verifies proof of consent in accordance with applicable laws, and will produce those records on request by EDTI or the Market Surveillance Administrator, as defined in the *Electric Utilities Act* (Alberta), as amended, or any authorized government agency.
- (c) The Retailer will maintain the confidentiality of, and will not use or disclose, the requested historic usage information, except in accordance with all the applicable laws.

(6) INDEMNIFICATION

The Retailer shall indemnify and save harmless EDTI, its directors, officers, agents, employees and representatives (collectively, the “EDTI Parties”) from and against all suits, actions, legal or administrative proceedings, claims, demands, proceedings, losses, damages, liabilities, costs and expenses (including all legal costs on a solicitor and his own client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) suffered or incurred by the EDTI Parties, or any of them, or which may be brought against or suffered by the EDTI Parties, or any of them, or which the EDTI Parties,

or any of them, may sustain, pay or incur as a result of or arising directly or indirectly out of or in connection with any breach by the Retailer of, or any inaccuracy of, any of these representations or warranties of the Retailer, except to the extent that such breach or inaccuracy was a result of or arose directly or indirectly out of or in connection with any negligence or wilful misconduct of the EDTI Parties.

(7) ASSIGNMENT

The Retailer shall not, without the written consent of EDTI, which consent EDTI may in its discretion withhold, assign the benefit of or delegate its obligations under this Agreement in whole or in part.

(8) ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the Retailer and EDTI. The parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No additional charges, amendments or modifications of any of the terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both parties.

(9) NOTICE

Any notices or other documents required or permitted to be given under this Agreement shall be in writing and signed by the party giving such notice and shall be deemed to have been received on the date given when hand delivered, or 5 days after mailing when mailed or on the date if transmitted by fax or electronic mail. Notices shall be effective if given as provided herein and to the following persons or at such other addresses as the parties may from time to time advise each other in writing.

If to EDTI:

EPCOR Distribution & Transmission Inc.
8743 58 AVE NW
Edmonton, AB
T6E 5W4
Attention: Senior Manager, Meter, Data & Billing
Email: retcomm@epcor.com

If to

Attention:

Email:

(10) FORCE MAJEURE

In the event either party is delayed or unable to perform any part of its obligations under this Agreement due to labour disputes, strikes, walkouts, unusual delay by common carriers, unavoidable catastrophe, or circumstances of any kind beyond the control of such party including without restricting the generality of the foregoing, acts of God, fire, war governmental regulations, or otherwise, such party shall be excused from the performance of such obligation to the extent that performance is prevented, hindered or delayed by such causes. Upon the occurrence of these events, the affected party shall notify the other party of the same and use its reasonable efforts to remedy or correct the delay or failure to perform as soon as possible. In no circumstances shall the party delayed, hindered or prevented from performing any part of its obligations be liable to the other party for any damages, howsoever sustained by the other party or for any failure to perform any act, or non-performance of any obligations due to these circumstances.

(11) SEVERABILITY

Any term, condition or provision of this Agreement, which is or shall be deemed to be void, prohibited or unenforceable, shall be severable and be ineffective to the extent of such avoidance, prohibition or unenforceability without in any way invalidating the remaining terms, conditions or provisions; and any such avoidance, prohibition or unenforceability shall not invalidate or render unenforceable, any other term, condition or provision.

(12) WAIVER

The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement or to exercise any rights under same shall not constitute a waiver or relinquishment of any such terms, conditions or rights. The mere passage of time or the giving of notices or the execution of revisions, modifications or extensions to this Agreement shall not affect other terms, conditions or rights in and under this Agreement unless expressly stated.

(13) HEADINGS

The insertion of headings in this Agreement is for convenience only and shall not affect the interpretation.

(14) INUREMENT

This Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

(15) INTERPRETATION

Words importing the singular number shall include the plural and vice versa. Words importing the neuter gender shall include the masculine and feminine genders, and words importing personal shall include firms and corporations and vice versa.

(16) TIME OF THE ESSENCE

Time shall be of the essence in this Agreement.

(17) GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws in force in the Province of Alberta and the Retailer and EDTI irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta. Furthermore, conflict of laws principles or rules that would impose the laws of any jurisdiction other than the laws of Alberta on the construction of this Agreement shall be excluded. The Retailer agrees that a judgment, after exhaustion of all available appeals, in any action or proceeding under this Agreement is conclusive and binding upon the Retailer and may be enforced in any other jurisdiction by a suit upon that judgement, a certified copy of which is conclusive evidence of the judgement.

IN WITNESS WHEREOF the Parties have caused their names to be subscribed to this Agreement, each by its appropriate agent, hereto duly authorized, as of the date below.

I am authorized to sign on behalf of the Retailer:

EPCOR DISTRIBUTION & TRANSMISSION INC.