

# ENMAX Energy Corporation

## Default Supplier Terms and Conditions

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## ENMAX Energy Corporation Default Supplier Terms and Conditions

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These Terms and Conditions set forth the terms and conditions upon which ENMAX Energy Corporation will provide Default Supplier Service to Customers. The Rate Schedule and Fee Schedule are applicable under these Terms and Conditions.

### 1.0 DEFINITIONS

The following words and phrases, whenever used in these Terms and Conditions, the Rate Schedule or the Fee Schedule, shall have the respective meanings set out below.

- (a) **“Alberta Interconnected Electric System”** means “interconnected electric system” as defined in the *EUA*.
- (b) **“AUC”** means the Alberta Utilities Commission.
- (c) **“Business Day”** means a day other than a Saturday, Sunday or Statutory holiday in the Province of Alberta.
- (d) **“Current Bill Date”** means the Current Bill Date as indicated on a Customer’s bill.
- (e) **“Customer”** means a Person who is eligible to obtain Default Supplier Service.
- (f) **“Default Supplier”** means EEC as the retailer appointed by the Owner of the Distribution System to sell or provide Electricity Services and perform all functions of the Default Supplier as contemplated by the *Regulation*.
- (g) **“Default Supplier Service”** means the service that is required by the *Regulation* to be provided by a Default Supplier.
- (h) **“Default Supplier Tariff”** means the tariff comprised of these Default Supplier Terms and Conditions and the Fee Schedule and Rate Schedule under which Electricity Services are provided to Customers.
- (i) **“Disconnection”** means the de-energization of any Site in the name of the Customer or the installation of a current limiting device at any such Site by the Owner of the Distribution System.
- (j) **“Distribution System”** means “electric distribution system” as defined in the *EUA*.
- (k) **“Distribution Tariff”** means the applicable distribution tariff in effect with respect to the Distribution System.
- (l) **“EEC”** means ENMAX Energy Corporation.
- (m) **“Electricity”** means “electricity” as defined in the *EUA*.
- (n) **“Electricity Services”** means “electricity services” as defined in the *EUA*, and also includes Default Supplier Service.
- (o) **“EUA”** means the *Electric Utilities Act*, S.A. 2003, c.E-5.1, including regulations enacted thereunder, all as re-enacted, amended, supplemented or replaced from time to time.

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- (p) **“Facilities”** means physical facilities including, without limitation, transmission and distribution lines, wires, transformers, meters, meter reading devices and other electrical apparatus.
- (q) **“Fee Schedule”** means the fee schedule that sets out the additional charges to Customers for the provision of Electricity Service by EEC as Default Supplier, as amended from time to time.
- (r) **“Force Majeure”** means acts of God, strikes, walkouts, 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, laws, orders, restraints or acts of courts or other public, civil or military authorities, civil disturbances, explosions, breakdown or accident or necessity of repairs to equipment or lines of the electric transmission and distribution systems, loss, diminution or impairment of electrical service from generating plants, suppliers or the systems of others with which the Distribution System is interconnected, failure of any supplier to perform, failure, curtailment, interruption or reduction of the transmission or distribution systems’ capacity and any other event or circumstance, whether of the kind herein enumerated or otherwise, not reasonably within the control of EEC; provided that in no event shall the lack of finances or inability to perform due to financial condition or similar financial predicament constitute *Force Majeure*.
- (s) **“Interest Rate”** means a rate equivalent to 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, which rate will be updated quarterly.
- (t) **“ISO”** means the Independent System Operator as established pursuant to the *EUA*.
- (u) **“ISO Rules”** means the rules established by the ISO from time to time pursuant to section 20(1) of the *EUA*
- (v) **“Legislation”** means statutes, regulations, regulatory requirements, governmental requirements, ISO Rules, orders, directives, rule or procedures or other similar instruments implemented, promulgated, issued, ordered or adopted by any government, government agency, regulatory body, the ISO or any other body having jurisdiction over EEC, Customers or Electricity Services as re-enacted, amended, supplemented or replaced from time to time.
- (w) **“Owner of the Distribution System”** means the local distributor of electricity within a service territory, for example, ENMAX Power Corporation for the Calgary service territory.
- (x) **“Person”** includes an individual, firm, partnership, association, joint venture, body corporate, corporation, trustee, executor, administrator, legal representative, or organization.
- (y) **“Rate Schedule”** means the rate schedule that sets out charges to Customers for the provision of Electricity Services by EEC as Default Supplier, as amended from time to time.
- (z) **“Regulation”** means the *Roles, Relationships and Responsibilities Regulation, 2003*, AR 169/2003 enacted under the *EUA* as re-enacted, amended, supplemented or replaced from time to time.
- (aa) **“Site”** means the point of end use consumption.
- (bb) **“Terms and Conditions”** means these Default Supplier Terms and Conditions, as may be amended from time to time.

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### 2.0 INTERPRETATIONS

#### 2.1. Conflicts

If there is any conflict between provisions expressly set out in the Rate Schedule, the Fee Schedule and these Terms and Conditions, the express provision of the Rate Schedule or Fee Schedule, as the case may be, shall govern.

#### 2.2. 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.

### 3.0 GENERAL PROVISIONS

#### 3.1. Default Supplier

EEC is the Default Supplier appointed by the Owner of the Distribution System to perform the services of the Default Supplier, as contemplated in the *Regulation*.

#### 3.2. Tariff

EEC furnishes Default Supplier Service under the Default Supplier Tariff, which includes these Terms and Conditions and the Rate and Fee Schedules. Customers will be billed for:

- Electricity consumed by the Customer at a Site at the rate as set out in the Rate Schedule;
- other charges, security deposits, and fees set out in the Default Supplier Tariff, including the Fee Schedule;
- charges and fees as levied by the Owner of the Distribution System pursuant to the Distribution Tariff;
- other charges, local access fees, surcharges or taxes imposed by the Customer's local municipal authority or the Owner of the Distribution System; and
- any other charges, fees, other amounts or riders as may be part of the Default Supplier Tariff.

#### 3.3. Terms and Conditions

These Terms and Conditions are available for public inspection during normal business hours at the business offices of EEC, they are filed with the AUC for information purposes and they are posted on EEC's internet website. These Terms and Conditions will be in force until other Terms and Conditions, if any, are adopted by EEC.

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### 3.4. Amendment of the Default Supplier Tariff

EEC may amend these Terms and Conditions, and the Rate and Fee Schedules. Amendments will take effect fifteen (15) days after EEC posts amended Terms and Conditions, Rate Schedule or Fee Schedule on its Internet website, unless otherwise indicated in the amended document(s).

### 3.5. Acceptance of Terms and Conditions

The application for, or the taking of, Default Supplier Service by the Customer at any Site constitutes acceptance by the Customer of these Terms and Conditions and the assumption of all obligations set forth herein with respect to the Default Supplier Tariff.

### 3.6. Modification of Default Supplier Tariff

No agent or employee of EEC is authorized to modify any provision, charge, or rate contained in the Default Supplier Tariff or to bind EEC to perform in any manner inconsistent with the Default Supplier Tariff.

## 4.0 DEFAULT SUPPLIER SERVICE

### 4.1. Provision of Default Supplier Service

EEC will provide Electricity Services to Customers under the Default Supplier Tariff in accordance with the Rate Schedule, Fee Schedule and these Terms and Conditions.

### 4.2. Eligibility for Default Supplier Service

In order to receive Electricity Services under the Default Supplier Tariff at any time, a Customer must receive service from the Owner of the Distribution System pursuant to the Distribution Tariff and the Customer must comply with all of its obligations under the Distribution Tariff and applicable Legislation.

The owner of the property or premises requiring Electricity Services with respect to a Site may open an account and be the Customer, unless there is a tenant or other Person who has provided acceptable notice, in writing or by telephone, to EEC that it will be financially responsible for the Electricity Services with respect to that Site, and if EEC's credit requirements are met, such tenant or other Person shall be the Customer. In the event such tenant or other Person provides notice to EEC that it is vacating the Site, or such tenant or other Person vacates the Site, the owner of the property or premises will again become financially responsible for Electricity Services with respect to that Site and shall be the Customer.

If a Customer is not of legal age, a deposit may be required in order to obtain Electricity Services.

A Customer may be required to supply information relating to load, creditworthiness and the manner in which the Electricity Services will be utilized, and pay deposits, fees and charges as stated in EEC's Rate Schedule, Fee Schedule and Terms and Conditions. EEC reserves the right to verify the age, status and identity of the Customer and the accuracy of the information provided with respect to Electricity Services before Electricity Services are provided.

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### 4.3. Billing and Payment

#### 4.3.1. Payment of Bill

The Customer receiving Electricity Services at a Site will be billed monthly for such Electricity Services. When a change of occupancy occurs at a Site, advance notice, in writing or by telephone, of such change must be given to EEC. EEC may accept a change of occupancy notification from a third party willing to accept responsibility for payment for Electricity Services at a Site, subject to its qualification for receiving Electricity Services. The outgoing Customer may, at the discretion of EEC, be held responsible for all Electricity Services supplied to the Site until the later of the vacancy or the date the change of occupancy notice is received and accepted by EEC.

The Customer shall pay all amounts required to be paid under these Terms and Conditions, including the amounts set out in Section 3.2, upon receipt of a bill for such amounts. Unless specifically provided otherwise, EEC's rates are based upon the furnishing of continuing Electricity Services to the Customer's premises at a single Site. EEC will issue a separate bill for each Site. However, the Customer and EEC may agree that EEC will issue one bill totaling charges for Electricity Services delivered at more than one Site. Customers shall be billed for Electricity Services according to the rate set out in the Rate Schedule.

Bills will be based upon actual Electricity consumption or upon estimated consumption as determined by EEC or the Owner of the Distribution System. EEC may make adjustments to the Customer's bills for up to five (5) years from the time of receipt of Electricity Services.

Bills shall be deemed rendered, and other notices duly given when delivered to the Customer personally, when mailed to or left at the premises where Electricity Services are provided or when mailed to or left at the last known address of the Customer or when delivered to the address specified in Section 7.5 hereof. Failure to receive such a bill from EEC will not entitle the Customer to any delay in the settlement of each account nor to any extension of the date after which a late payment charge, or any other remedy, becomes applicable. In the case of a dispute between EEC and the Customer, the Customer shall pay the bill in full and then the Customer may dispute charges shown on the Customer's bill or any other matters by contacting EEC, either in writing or by telephone, and advising EEC of the reason for the dispute. EEC will promptly investigate all disputes and advise the Customer of the results.

Payment shall be made by way of cash, cheque, automatic debit or other electronic instrument in the manner specified by EEC. Payment of a bill is accepted conditionally until such funds are fully and finally paid to EEC.

Any bill rendered to a Customer is due on the Current Bill Date as indicated on the bill. Late payment charges, at a rate established by EEC from time to time and specified in the bill will be applicable to the total current charges outstanding no less than twenty five (25) days following the Current Bill Date. Customers who fail to make payments in full on time will also be subject to normal credit action, which may include, but is not limited to one or more of the following:

- reminder letters, telephone calls, emails or other correspondence of notification;
- use of collection agencies;

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- requiring prepayment and payment of all outstanding amounts before additional Electricity Services are provided at any Site in the name of the Customer;
- assessment of a deposit or additional deposit;
- transferring balances owing from one account in the name of the Customer to another account also in the name of the Customer;
- initiating Disconnection at any Site under any account in the name of the Customer; and
- legal action.

#### **4.3.2. Overpayments**

If the Customer pays EEC an amount in excess of what is owed to EEC, the excess amount will be carried as a credit balance on the Customer's account and applied to bills for future Electricity Services. If a Customer is no longer receiving Electricity Services, EEC will refund credit balances upon request.

#### **4.3.3. Returned Payment Fee**

EEC may assess a returned payment fee, as outlined in the Fee Schedule, to any Customer whose instrument for payment to EEC is dishonoured, rejected or reversed by any financial institution when presented for payment by EEC.

#### **4.3.4. Dishonoured Payment**

Receipt by EEC of a cheque or other payment instrument that is subsequently dishonoured shall not be considered valid payment. EEC reserves the right to reject post-dated cheques.

#### **4.3.5. Collection of Taxes**

EEC shall collect all sales, excise, or other taxes imposed by governmental authorities with respect to Electricity Services.

#### **4.3.6. Sustainability of Customer Equipment**

The Customer assumes full responsibility for the proper use of Electricity or Electricity Services provided by EEC and for the condition, installation, suitability and safety of any and all Facilities or any other equipment, wires, cables, devices or appurtenances on the Customer's premises or located on premises owned, controlled or occupied by the Customer

### **4.4. Electricity Services**

#### **4.4.1. Interruptions**

EEC cannot guarantee an uninterrupted supply of Electricity. EEC may discontinue or otherwise curtail, interrupt or reduce the supply of Electricity or Electricity Services without liability whenever EEC reasonably determines, or when EEC is directed by the ISO, the Owner of the Distribution System, or any governmental, regulatory or civil authority that such a discontinuation, curtailment, interruption or reduction is necessary to facilitate safety, law



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enforcement or the construction, installation, operation, maintenance, reliability, repair, replacement or inspection of any Facilities, the Distribution System or the Alberta Interconnected Electric System; or due to any other reason, including emergencies, forced outages, potential damage to any Facilities, the Distribution System or any part of the Alberta Interconnected Electric System or *Force Majeure*.

#### **4.4.2. Legislation**

The Customer acknowledges and agrees that both it and EEC are bound by the Legislation.

#### **4.4.3. Tampering with Facilities**

If EEC determines that there has been an unauthorized use of Electricity or Electricity Services including but not limited to any tampering with a meter or other Facilities, unauthorized connection or reconnection, or theft, fraud, intentional or unintentional use of Electricity whereby EEC is denied full compensation for services provided, EEC may initiate Disconnection and charge the Customer for any unauthorized use of Electricity, all damages suffered by EEC, and all costs incurred in recovering any such amounts. Nothing in this section shall be deemed to constitute a waiver of any other rights of redress, which may be available to EEC, or to limit in any way any legal recourse which may be open to EEC.

#### **4.4.4. Use of Electricity Services**

The Customer shall not use its Electricity or Electricity Services in a manner so as to cause undue interference with any other Customer's use of Electricity Services or any user of the Alberta Interconnected Electric System such as an abnormal disturbance to the voltage, frequency and waveform of the Electricity supply.

### **4.5. Disconnection of Service**

#### **4.5.1. Disconnection for Safety and System Security Reasons**

EEC reserves the right, without liability, to initiate Disconnection at any time without notice, or to refuse to make such Electricity Services available to the Customer, where, in EEC's reasonable opinion the use of Electricity Services or provision of Electricity may cause damage to Facilities, the Distribution System or the Alberta Interconnected Electric System or interfere with or otherwise disturb any other service provided by EEC.

EEC will resume Electricity Services when the condition has been rectified to EEC's satisfaction acting reasonably.

#### **4.5.2. Disconnection Other Than for Safety Reasons**

EEC may at any time, after having given at least 48 hours' prior oral or written notice to a Customer and without any further notice, initiate Disconnection if the Customer:

- violates any provision of these Terms and Conditions (including the provision of a deposit when requested or failure to pay for Electricity Services);
- has instituted by or against it any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of the affairs of the Customer;

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- ceases or threatens to cease to carry on business, makes or agrees to make a bulk sale of assets without complying with applicable law or commits an act of bankruptcy, or otherwise acknowledges its insolvency;
- tampers with any meters or any Facilities that may affect metering of Electricity consumption at a Site;
- provides EEC with incorrect information or makes fraudulent or unauthorized use of Electricity Services; or
- EEC has not been provided with sufficient information to bill a Customer or the premises or property served by a Site reasonably appears to EEC to be vacant or not occupied by a known Customer.

#### **4.5.3. Restoration of Electricity Services**

Following a Disconnection, the Customer shall pay the following amounts prior to receiving further Electricity Services:

- any unpaid amounts owing to EEC;
- an application fee; and
- a security deposit in such amount, if any, as determined by EEC in its sole discretion as contemplated in section 4.5.6 of these Terms and Conditions.

#### **4.5.4. Fee Schedule**

EEC reserves the right to impose fees and charges pursuant to the various provisions of these Terms and Conditions. The fees and charges shall be set out in Fee Schedule and may be amended from time to time as contemplated in Section 3.4 of these Terms and Conditions.

#### **4.5.5. Credit**

Upon the request of EEC, the Customer agrees to provide information, including the disclosure of its financial statements, banking information, payment history and credit standing and any other information reasonably required by EEC, to evaluate the Customer's creditworthiness. The Customer represents to EEC that all oral or written financial information furnished by or on behalf of the Customer to EEC is accurate and complete in every respect on the date that the information is provided. A security deposit may be assessed pursuant to Section 4.5.6 of these Terms and Conditions.

#### **4.5.6. Security Deposit**

A security deposit as security for payment in an amount, determined by EEC, in its sole discretion acting reasonably, may be required prior to or during the provision of Electricity Services pursuant to this Default Supplier Tariff. Security deposits, unless otherwise applied, will be refunded with interest at the Interest Rate to the Customer after the Customer establishes a satisfactory payment record.

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A security deposit will be applied by EEC against any indebtedness of the Customer to EEC. When the provision of Electricity Services is discontinued, EEC shall refund, with interest at the Interest Rate, to the Customer any portion of such deposit not applied previously to an outstanding balance.

### 4.5.7. Proof of Incorporation or Status

Customers may be required to provide proof of incorporation to set up an account in the name of a corporate entity. Similar documentation may be required from other entities seeking to set up an account.

## 5.0 LIABILITY AND INDEMNIFICATION

### 5.1. Definitions

5.1.1 In this Article:

5.1.1.1 direct loss or damage” means direct physical damage, injury or loss, but does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever;

5.1.1.2 “EEC” includes:

5.1.1.2.1 EEC, its affiliates, contractors, agents, authorized representatives and assigns, and the directors, officers and employees (while those employees are acting within the course and scope of their employment) of each of them; and

5.1.1.2.2 for the purposes of clause 5.1.1.2.1, “affiliate” has the meaning given to it in the *Business Corporations Act* (Alberta).

### 5.2. Limitation of Liability

EEC does not guarantee or promise uninterrupted service. Except for direct loss or damage caused by the negligence of EEC, EEC shall not be liable to any Customer or other Person in law, equity, tort or contract for any loss, damage, injury or claim of any nature whatsoever, arising out of or in any way connected with its performance under these Terms and Conditions, the provision of Electricity Services or any other services provided under these Terms and Conditions, or any failure, estimated data errors, defect, fluctuation, reduction, de-energization, suspension, curtailment or interruption in the provision of Electricity Services or any other services provided under these Terms and Conditions.

### 5.3. Indemnity

The Customer shall indemnify and hold harmless, and at the option of EEC, defend EEC from and against all claims, actions, costs, fees (including legal fees and disbursements on an indemnity basis), judgments, fines, penalties and any liability in law, equity, tort or contract for any loss, damage, injury or claim of any nature whatsoever, brought against EEC which arise from, result from, or are in any way connected with any act, omission or failure of the Customer arising from, resulting from or in any way connected with these Terms and Conditions or EEC’s Default Supplier Tariff, or under any other arrangement or agreement between the Customer and EEC, or between the Customer and any third party.

Without limiting the generality of the preceding paragraph, the Customer shall also indemnify and hold harmless, and at the option of EEC, defend EEC from and against all claims, actions, costs, fees

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(including legal fees and disbursements on an indemnity basis), judgments, fines, penalties and any liability in law, equity, tort or contract for any loss, damage, injury or claim of any nature whatsoever, brought against EEC by any Person, which arise from, result from, or are in any way connected with:

- the routine presence in or use of Electricity over the Facilities or any wires, cables, devices or other facilities owned or controlled by the Customer;
- the failure of the Customer to perform any of the Customer's duties and obligations as set out in these Terms and Conditions;
- the Customer's improper use of Electricity or of electric wires, cables, devices or any Facilities; or
- the initiation of a Disconnection in accordance with these Terms and Conditions.

### 5.4. Force Majeure

5.4.1 If an event or circumstance of *Force Majeure* occurs that affects EEC's ability to provide Electricity Services or any other services provided under these Terms and Conditions, so far as they are affected by the *Force Majeure* or its consequences, Electricity Services shall be suspended until the *Force Majeure* or its consequences are remedied, and for such period thereafter as may reasonably be required to restore Electricity Services.

5.4.2 EEC is not liable to Customers or any other Person in law, equity, contract or tort for any loss, damage, injury or claim of any nature whatsoever arising from or connected in any way with the amount or lack of notice given by EEC of an event of Force Majeure.

## 6.0 CONSEQUENTIAL LOSS

NEITHER EEC NOR THE CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING OR ARISING OUT OF PERFORMANCE UNDER THESE TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OR DAMAGE RESULTING FROM LOSS OF USE, REVENUE, PROFIT OR OPPORTUNITY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

## 7.0 MISCELLANEOUS

### 7.1. Compliance with Applicable Legal Authorities

EEC and the Customer are subject to, and shall comply with, all existing or future applicable Legislation. EEC will not violate, directly or indirectly, or become a party to a violation of any requirement of any applicable Legislation in order to provide Electricity Services. EEC's obligation to provide Electricity Services is subject to the condition that all requisite governmental and regulatory approvals for the provision of Electricity Services have been obtained and will be maintained in force during such period of service.

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### 7.2. No Waiver

The failure of either Party to insist on 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, which shall remain in full force and effect. No term or condition 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 excuse.

### 7.3. Law

These Terms and Conditions shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these Terms and Conditions shall be brought in the courts of the Province of Alberta.

### 7.4. Legislative Amendments

EEC reserves the right to terminate any service under the Default Supplier Tariff upon the happening of any change or amendment to applicable Legislation (or the application or implementation of same).

### 7.5. Notices

Unless otherwise stated herein, all notices, demands or requests required or permitted under these Terms and Conditions shall be in writing and shall be personally delivered, mailed or sent by facsimile transmission (with the original transmitted by mail or personal delivery) addressed as follows:

- If to the Customer: to the address and the addressee on record with EEC
- If to EEC:

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

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