

# Energy Plan Terms & Conditions

## PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.

This Agreement is between ATCO Energy Ltd. (“**ATCO**”, “**we**”, “**our**”, and “**us**”) and you, namely the customer identified in the accompanying Energy Plan Confirmation (“**Customer**”, “**your**”, and “**you**”). In this Agreement, ATCO and the Customer are sometimes collectively referred to as the “parties” and individually as a “party”.

You agree that this Agreement is like any written negotiated agreement signed by you, and you agree to be bound by its terms and to fully comply with those terms.

On the terms and subject to the satisfaction of the conditions set out in this Agreement, we agree to arrange for the supply of Energy to the Site(s). In return, you agree to pay ATCO the Energy Charge (which may include a Service Fee) and all other applicable charges, including (i) the Administration Charge, (ii) any Late Payment Charge, (iii) all Third Party Charges, and (iv) the Green Premium (as applicable).

In addition to the various terms defined in the opening paragraph of this Agreement, a number of capitalized terms used in the Agreement are defined in Section 14 below.

This Agreement is not an electricity or gas utility or government rebate program. Moreover, ATCO may not be able to supply energy cheaper than your current utility company.

## 1. ELIGIBILITY

### A. What conditions must I satisfy in order to: (i) be able to enter into this Agreement; and (ii) continue receiving Energy to the Site(s) during the Term?

In order for ATCO to arrange for the supply of Energy to the Site(s) and to have Energy supplied to the Site(s) throughout the Term, you must:

- (a) be authorized to enter into this Agreement;
- (b) represent that ATCO did not induce you to breach a contract with another person;
- (c) meet and maintain creditworthiness standards established by ATCO (which may be changed by

ATCO, in its sole discretion, from time to time during the Term);

- (d) provide us with any financial and credit information that we may reasonably request from time to time to assess your creditworthiness (“**Credit Information**”);
- (e) authorize us to request and receive any Credit Information from third parties as we may reasonably require to assess your creditworthiness;
- (f) authorize us to send any Credit Information in our possession to credit rating agencies as any such credit agency may reasonably request to assess your creditworthiness; and
- (g) provide us with a deposit or deposits from time to time within seven (7) days of any request for a deposit received from us.

### B. What are the requirements for the Site(s)?

In order for ATCO to arrange for the supply of Energy to the Site(s), each of the following requirements must be met continuously throughout the Term:

- (a) the Site(s) must be located in the Province of Alberta;
- (b) the Site(s) must be connected to a Distribution System;
- (c) the Site(s) cannot be used in connection with any illegal activity;
- (d) if you are purchasing electricity under this Agreement, the Site(s) cannot:
  - (i) be located in a self-operating Rural Electrification Association, or the City of Medicine Hat’s service area; or
  - (ii) use more than 250,000 kWh of electricity within any rolling twelve (12) month period during the Term; and
- (e) if you are purchasing natural gas under this Agreement, the Site(s) cannot:
  - (i) be located in a Rural Natural Gas Co-Op;
  - (ii) be a municipally-owned natural gas utility that has been enacted by a bylaw; or

(iii) use more than 2,500 GJ of natural gas within any rolling twelve (12) month period during the Term.

### **C. Will ATCO require a deposit from me?**

Depending upon our assessment of your creditworthiness, we may require a deposit from you:

(i) before arranging for the supply of Energy to the Site(s); or (ii) at any time during the Term. Any such deposit may be used to pay for any amounts owing under this Agreement or any other agreement that we may have with you. In the event that you provide us with a deposit and such deposit is not used to pay amounts owing by you under this Agreement or under any other agreement that we may have with you, the deposit will be returned to you as soon as reasonably practicable following the end of the Term.

## **2. SUPPLY**

### **A. Who will supply the Energy to the Site(s)?**

Under this Agreement, we are only responsible for *arranging* the supply of Energy to the Site(s). The Distribution Company, on the other hand, will be responsible for *supplying* the Energy to the Site(s), in accordance with the agreement that you enter into with your Distribution Company.

### **B. Does the Distribution Company have any additional terms and conditions that I need to comply with?**

Yes. You must comply with the distribution company's terms and conditions (the "**Distribution Company Agreement**"). Failure to comply with the distribution company agreement may result in you being: (i) disconnected by the distribution company from the distribution system; and (ii) subject to fees or other charges. You hereby confirm that you have read and agreed to the terms of the distribution company agreement.

### **C. By when can I expect the supply of Energy to the Site(s) to start?**

Subject to the terms and conditions of this Agreement, we expect that Energy should be supplied to the Site(s) within forty-five (45) days from the start of the Term; however, the actual date upon which Energy will be provided to you will depend on the Distribution Company's ability to: (i) enroll the Site(s); and (ii) designate ATCO as your retailer.

## **3. BILLING AND PAYMENT**

### **A. How much will it cost to have Energy supplied to the Site(s)?**

The Energy Charge that you must pay for the

provision of Energy to the Site(s) will depend on the Energy Plan that you have selected as confirmed in your Energy Plan Confirmation.

In addition to the Energy Charge (which may include a Service Fee), other charges may also apply (namely, (i) the Administration Charge, (ii) any Late Payment Charge, (iii) all Third Party Charges, and (iv) the Green Premium (as applicable)).

Please note that the portion of your invoice related to the consumption of Energy at the Site(s) is based on both: (i) your metered (i.e. actual) Energy consumption; and (ii) estimates of your Energy consumption that the Distribution Company may make. Therefore, your Energy Charge may be adjusted periodically to reflect any differences between your actual and estimated Energy consumption.

### **B. How often will I be invoiced?**

Upon the Start Date, ATCO will provide you with an invoice on a monthly basis; however, our ability to do so will depend upon the Distribution Company providing us with your billing information in a timely manner.

Your invoice will include the Energy Charge (which may include a Service Fee), and potentially various other charges set out in this Agreement (namely, (i) the Administration Charge, (ii) any Late Payment Charge, (iii) all Third Party Charges, and (iv) the Green Premium (as applicable)).

You agree that we may provide you with one (1) invoice for amounts owing under: (i) this Agreement; and (ii) any other agreement that ATCO may have with you for the supply of electricity or natural gas.

### **C. By when do I have to pay an invoice?**

You must pay all amounts by the due date indicated on an invoice in full by using any of the payment methods stated on it. This will apply even if you do not receive your invoice on time, or at all, for any reason, including an interruption in postal service or a situation where we do not have your correct Contact Information.

### **D. What happens if I am late making a payment?**

Please make sure you pay on time. If we do not receive your payment in full by the due date specified on your invoice, you will be charged and must pay interest at the rate of 1.5% per month (19.56% per year) (a "**Late Payment Charge**") on all overdue amounts calculated and compounded monthly from thirty (30) days after the date of the invoice until the date that

payment is received in full.

Returned payments from financial or lending institutions for insufficient funds or any other reason will result in a charge to you of \$50.00 or such higher amount as is charged by the applicable financial or lending institution with respect to such returned payment.

You will be responsible for all legal and collection fees (including fees paid to our legal counsel) that we may incur from trying to collect any amounts owing under any invoice(s).

#### **E. What should I do if I have a question about my invoice?**

We ask that you bring any questions, discrepancies or disputes about your invoice to ATCO's attention as soon as possible. Your invoice must be paid in full by the due date while any such questions, discrepancies or disputes are being addressed by ATCO.

#### **F. Can I get a refund?**

Any overpayment that is made to your invoice will be applied to your next invoice.

If, after the Term all amounts owed by you have been paid under this Agreement and any other agreement between you and ATCO, there is a credit balance of \$5.00 or more on your account, you will be issued a cheque in the amount of the credit balance. If the credit balance is less than \$5.00, any such amount will not be refunded to you.

### **4. INCENTIVES AND CREDITS**

#### **A. What is the Sign-up Incentive?**

The Sign-up Incentive is applied as a credit on your invoice so long as:

- (a) you are a new customer with ATCO;
- (b) you are eligible to receive such a credit (i.e. it was explicitly offered to you by ATCO on our website at [www.atcoenergy.com](http://www.atcoenergy.com) at the time you entered into this Agreement);
- (c) this Agreement has neither been cancelled or expired at the time any such credit is applied; and
- (d) you are not in breach of this Agreement.

For the avoidance of doubt, a Sign-up Incentive is one-time only and will be applied on "per customer" basis (and not on a "per plan" or "per account" basis). The Sign-up Incentive has no cash value: they simply serve to reduce some of the Energy Charges on an invoice. If any portion of the Sign-up

Incentive exists upon any cancellation or expiry of this Agreement, such credits will expire automatically at such time: they will not be paid to you as cash.

#### **B. What is the Anniversary Credit?**

An Anniversary Credit will be applied to your account one (1) year following the Enrollment Date and every year thereafter, so long as:

- (a) you are eligible to receive such credits (i.e. they were explicitly offered to you by ATCO on our website at [www.atcoenergy.com](http://www.atcoenergy.com) at the time you entered into this Agreement);
- (b) this Agreement has neither been cancelled or expired at the time any such credit is applied; and
- (c) you are not in breach of this Agreement.

Anniversary Credits have no cash value: they simply serve to reduce some of the Energy Charges on an invoice. If any portion of an Anniversary Credit exists upon any cancellation or expiry of this Agreement, such credits will expire automatically at such time: they will not be paid to you as cash.

### **5. TERM OF THE AGREEMENT**

#### **A. What is the term of this Agreement?**

Subject to its terms and conditions, this Agreement will: (i) commence on the date that you complete your application to have ATCO arrange for the supply of Energy to the Site(s) (be it in person, by phone or online); and (ii) continue until the expiry of the Energy Plan that you select (with the term of your selected Energy Plan starting on the Enrollment Date) (collectively, the "Initial Term").

#### **B. Will this Agreement renew automatically upon its expiry?**

When the Initial Term (or any Renewal Term) is about to expire, we may, at our sole discretion, provide you with notice of our intent to renew this Agreement at least thirty (30) days prior to the expiration of this Agreement. Provided that we have sent you a renewal notice (as contemplated in the foregoing sentence), you hereby consent to having this Agreement automatically renewed for a one (1) year term (each a "Renewal Term"). In the event that this Agreement is renewed, please note that: (i) Energy will, depending on the Energy Plan that you selected, continue to be provided to you during the Renewal Term at either a guaranteed or variable price; (ii) the guaranteed price will be ATCO's prevailing price for the natural gas, electricity or both, as applicable, as of the date of renewal; (iii) certain charges may apply

(namely, an Administration Charge, a Service Fee, the Green Premium, Third Party Charges, or any combination of these charges); and (iv) these Terms and Conditions will apply during any Renewal Period, unless we notify you otherwise.

Please remember that you always have the option to cancel this Agreement (see Section 5(C) below).

### **C. Can I cancel this Agreement?**

You may cancel this Agreement at any time (during the Initial Term or any Renewal Term) without penalty by giving us fifteen (15) days notice in a manner provided for in Section 8(B).

### **D. How else can I cancel this Agreement?**

You may also cancel this Agreement:

- (a) without cost or penalty within ten (10) days after we receive a signed copy of this Agreement from you, unless you entered into this Agreement over the telephone or Internet;
- (b) if you entered into this Agreement over the telephone, without cost or penalty within ten (10) days after you receive a copy of this Agreement from us by mail or, at your request, e-mail or fax; or (ii) without penalty within sixty (60) days after you receive your first invoice from us;
- (c) if you entered into this Agreement over the Internet, without cost or penalty within ten (10) days after you acknowledge this Agreement online; or
- (d) without cost or penalty at any time if there is another agreement already in place for the provision of electricity or natural gas to the Site(s) and that agreement does not expire on or before the commencement of this Agreement.

Finally, you may cancel this Agreement if you entered into this Agreement over the telephone, without penalty within one (1) year from the date this Agreement is entered into if ATCO:

- (e) does not set out a specified or ascertainable date the supply of Energy or services will begin;
- (f) does not begin the supply of Energy or services within thirty (30) days of that date (unless you expressly authorize the late start in writing); or
- (g) was not properly licensed under the *Fair Trading Act* (Alberta) when ATCO entered into this Agreement.

You agree that if you cancel this Agreement as provided above, you may, depending upon the circumstances, be responsible for the costs of any Energy supplied to you up to the Cancellation Date.

### **E. Can ATCO cancel this Agreement?**

We may cancel this Agreement or a portion of this Agreement (as it relates to the provision of electricity, natural gas, or both to the Site(s)), without cost or penalty *immediately* on notice to you if:

- (a) at any time you do not: (i) satisfy the eligibility requirements stated above in Section 1; (ii) fulfill any of your obligations under this Agreement (including paying your invoice in full or meeting our creditworthiness standards); or (iii) fulfill your obligations under any other agreement that we may have with you;
- (b) the Distribution Company is unable or chooses not to: (i) enroll the Site(s); or (ii) designate ATCO as your retailer;
- (c) you do anything that prevents us from arranging for the supply of Energy to the Site(s);
- (d) you do anything that prevents the Distribution Company from supplying Energy to the Site(s); or
- (e) the Site(s) is used for any illegal purpose.

We may cancel this Agreement or a portion of this Agreement (as it relates to the provision of electricity, natural gas, or both to the Site(s)), without cost or penalty, on thirty (30) days notice to you if:

- (f) you use more than 250,000 kWh of electricity or 2,500 GJ of natural gas at the Site(s) within a rolling twelve (12)-month during the Term; or
- (g) a change in law prevents us from arranging for the supply of Energy to the Site(s) or results in additional costs to us that we are not able to recover from you under this Agreement. If this Agreement or any portion of it ends as a result of a change in law, you are responsible for any outstanding obligations under the cancelled Agreement.

### **F. What happens once this Agreement is cancelled or expired?**

We will ask the Distribution Company to de-enroll the Site(s) upon the expiry or cancellation of this Agreement for any reason. Once the Site(s) is de-enrolled, you will receive energy from your default supplier or another retailer that you choose.

Please note that you will be responsible for all of your obligations under this Agreement up to the end of the Term, including the payment of any outstanding invoices.

### **G. Does any part of this Agreement**

## **continue after the cancellation or expiry of this Agreement?**

Yes. The following sections will survive any expiry or cancellation of this Agreement: Sections 3(A), (C), (D), and (F); Sections 5(F) and (G); Section 8; Section 12, Section 13, and Section 14.

## **6. APPOINTING US AS YOUR AGENT**

### **A. Will ATCO act as my agent?**

Yes. By entering into this Agreement, you appoint ATCO as your limited agent to deal with third parties for all purposes related to the arrangement of Energy to the Site(s). You acknowledge and agree that we are not your financial advisor, and therefore have no liability for your choices (including the choices that you make as confirmed in your Energy Plan Confirmation).

### **B. Why does ATCO need to be my agent?**

As your limited agent, we will seek to enroll the Site(s), arrange for the supply of Energy, and bill you for the Energy that you receive. When we act as your agent, we only do so for the limited purposes directly related to this Agreement.

You authorize the Distribution Company to give us your current and historical energy consumption information and any related information that we may require.

### **C. When will ATCO stop being my agent?**

We will stop being your agent at the end of the Term.

## **7. CHANGES TO THIS AGREEMENT**

### **A. Can ATCO make changes to this Agreement?**

Other than the Energy Charge, we may change, modify, add or remove portions of this Agreement (including, the Administration Charge and the Service Fee) at any time and at our sole discretion. Before doing so, however, we will provide you with at least thirty (30) days advance notice of the proposed change.

### **B. How will I be notified of any changes that ATCO makes to this Agreement?**

Notice of any changes that we make to this Agreement will be given to you in a manner provided for in Section 8(A) below. Please note that notice may include a link to our website where you can find more information on any of our changes to this Agreement.

Upon request, we can provide you with a written, hard-copy statement detailing the changes that we will be making to this Agreement.

### **C. What happens if I disagree with any of the changes that ATCO makes to this Agreement?**

If you disagree with any of the changes that we make to the Agreement, you may cancel this Agreement at any time without penalty by giving us fifteen (15) days notice (see Section 5(C) above). You will be responsible for all of your obligations under this Agreement up to the Cancellation Date, including the payment of any outstanding invoices.

If you do not provide us with notice before the changes take effect, you will be deemed to have accepted all of our changes, regardless of whether or not you have requested a written, hard-copy statement detailing the changes.

If we change this Agreement in accordance with this Section 7 and you accept, or are deemed to have accepted such changes, we will provide you with a revised copy of this Agreement at your request.

### **D. Can I make any changes to this Agreement?**

While you can update your Contact Information, you may not make any other changes to this Agreement.

## **8. NOTICE**

### **A. How will ATCO provide me with notice?**

Any written notice that ATCO is required to provide to you under this Agreement may be: (i) stated on your invoice; (ii) included as a separate notice with your invoice; or (iii) sent to you by fax, mail, or e-mail using the most current Contact Information that we have for you on file.

You agree to keep ATCO up to date with respect to any changes to your Contact Information. ATCO will not be responsible for any loss that you suffer as a result of not receiving a notice because ATCO did not have your most current Contact Information.

### **B. How do I provide ATCO with notice?**

If you wish to notify us of anything under this Agreement, including providing us with notice of your intention to cancel this Agreement or updating your Contact Information, you must:

- (a) call our Customer Service at 1-844-687-2826 (toll-free in Canada);
- (b) fax us at 1-844-873-2826; or
- (c) mail us at PO Box 1240 Stn  
Main Edmonton AB T5J 2M4

Alternatively, you may be able to contact us through our online portal (if and when it is made publically available).

### **C. When will notice be deemed to be delivered?**

Notices provided by one party to the other will be deemed received as follows:

- (a) if given by mail, on the day that is seven (7) business days following the date upon which it was sent;
- (b) if personally delivered during normal business hours, on the day that it is so delivered;
- (c) if given by facsimile, on the day of transmission and confirmation of transmittal unless such day is not a business day, in which case the notice will be deemed to have been received on the next business day; and
- (d) if given by e-mail, by telephone or through our online portal, on the day of such communication.

## **9. CHANGES TO YOUR ACCOUNT**

### **A. Can I add another person to my account?**

You may add another individual to your account who, in addition to yourself, may make decisions, provide information, or give directions regarding your account. You must notify us of this change in one of the ways described in Section 8(B). You agree that we may fully rely on this individual and that you will be bound by any decisions made by that individual (and communicated to us) and any information or directions provided by that individual to us. You may revoke this individual's authority over your account by providing us with appropriate notice at any time.

### **B. What happens when I move from the Site(s)?**

If you are moving to another Site(s), you must notify ATCO at least forty-five (45) days prior to the date you are moving in order to maintain your services without disruption. Your notice must: (i) specify the address of the new Site(s); and (ii) be provided in one of the ways described in Section 8(B). You are responsible for any interruption in the supply of Energy caused by your failure to give us forty-five (45) days notice, as well as any additional costs either of us incur in serving the new Site(s).

Providing that your new Site(s) is eligible, this Agreement will automatically be amended to apply to the new Site(s). If your new Site(s) is not eligible under Section 1 (or we cannot arrange for the supply of Energy to the new Site(s) for any other reason), this Agreement, as it applies to the portion of your Energy Plan that cannot be supplied, will be cancelled and the affected Site(s) de-enrolled with the Distribution Company. In that case, you remain responsible for any amounts owing under this Agreement (including Energy supplied until de-

enrollment of the affected Site(s)).

### **C. Can I suspend the provision of Energy during my move?**

If required by your move, you may request to arrange for the suspension of the delivery of Energy under this Agreement for up to ninety (90) days by giving us notice of the suspension at the time that you notify us of your move. After ninety (90) days, if the provision of Energy is still suspended, we may cancel this Agreement without penalty and without providing you with notice. In that case, you remain responsible for any amounts owing under this Agreement (including Energy supplied until the Cancellation Date).

### **D. Can I obtain the provision of Energy at two distinct addresses during my move?**

If required by your move, you may request to arrange for the delivery of Energy under this Agreement at both your new Site(s) and your old Site(s) for up to ninety (90) days by giving us notice that you require Energy at both Sites at the time that you notify us of your move. After ninety (90) days, we may cancel the delivery of Energy at the old Site(s) without penalty or cost, and without providing you with notice. In that case, you remain responsible for any amounts owing under this Agreement (including Energy supplied until the Cancellation Date).

Service to the new address will continue under the terms of this Agreement. You will be responsible for the costs of all Energy consumed at both addresses.

## **10. UNEXPECTED EVENTS**

### **A. What happens if ATCO is unable to perform its obligations under this Agreement due to an unexpected event?**

Certain events beyond our reasonable control may make it impossible for us to perform some or all of our obligations under the Agreement. We are not liable to you in those events, and we will resume our obligations as soon as we can reasonably do so. This Agreement will otherwise remain in full effect.

## **11. PRIVACY**

### **A. What happens to the personal information that I provide ATCO?**

By entering into this Agreement, you consent to us collecting, retaining, using, and disclosing your personal information in accordance with the terms of ATCO's privacy policy which can be viewed at <http://www.ATCOenergy.com>. If you have questions or concerns about how your information is protected,

please contact our Privacy Officer at Privacy@ATCOenergy.com.

## 12. LIMITATION OF LIABILITY

### A. How is ATCO's liability under this Agreement limited?

AS ATCO DOES NOT CONTROL AND IS NOT RESPONSIBLE FOR THE PHYSICAL INFRASTRUCTURE USED TO SUPPLY THE ENERGY, THE CONTINUITY OF YOUR ENERGY SUPPLY, OR THE QUALITY OF YOUR ENERGY (INCLUDING PRESSURE, VOLTAGE AND FREQUENCY), UNDER NO CIRCUMSTANCES WHATSOEVER SHALL ATCO BE LIABLE FOR:

- (a) ANY INTERRUPTION OR UNAVAILABILITY OF THE ENERGY;
- (b) THE QUALITY OF THE ENERGY;
- (c) ANY ACT OR OMISSION OF ANY THIRD PARTY (INCLUDING THE DISTRIBUTION COMPANY);
- (d) YOUR CONDUCT, ACTS OR OMISSIONS; OR
- (e) ANY EVENT BEYOND THE REASONABLE CONTROL OF ATCO, INCLUDING ANY ACTS OF GOD, INCLEMENT WEATHER (INCLUDING LIGHTNING), POWER FAILURES, LABOUR DISPUTES, RIOTS OR CIVIL DISPUTES, WAR OR ARMED CONFLICT, AND ANY LAW, GOVERNMENTAL ORDER, DECISION OR REGULATION, OR ORDER OF ANY COURT OF COMPETENT JURISDICTION.

WE ARE ONLY RESPONSIBLE FOR DAMAGE CAUSED DIRECTLY AND SOLELY BY OUR ACTIONS AND THE ACTIONS OF THOSE FOR WHOM WE ARE RESPONSIBLE AT LAW.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS, UNDER NO CIRCUMSTANCES SHALL ATCO, ITS AFFILIATES, OR ANY THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS BE LIABLE TO YOU OR TO ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY PUNITIVE, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, NOR FOR ANY LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF EARNINGS, LOSS OF CONTRACTS, LOSS OF BUSINESS OPPORTUNITIES, EVEN IF WE HAVE BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

## 13. GENERAL

### A. Entire Agreement

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the provision of Energy at the Site(s); and there are no representations, warranties, covenants, agreements or

collateral understandings, oral or otherwise, expressed or implied, affecting this Agreement which are not expressly set forth herein. For the avoidance of doubt, in the event that you initially enter into this Agreement for the provision of one form of Energy (i.e. natural gas or electricity) at the Site(s), any subsequent agreement that you enter into with ATCO for the provision of the other form of Energy to the Site(s) shall not supersede or cancel this initial Agreement. The word "including" when used in this Agreement is not intended to be exclusive and in all cases means "including without limitation".

### B. Headings/Gender

The headings of all articles or sections, excluding the questions incorporated herein, are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Except where the context otherwise indicates, words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender.

### C. No Resale

You agree that the Energy supplied to you pursuant to this Agreement is for your use only and may not be resold.

### D. Assignment

ATCO may transfer or assign all or part of this Agreement (including any rights in accounts receivable) at any time without prior notice or your consent. You may not transfer or assign this Agreement or any part thereof without ATCO's prior written consent, which may be withheld by ATCO in its sole discretion or given subject to such conditions as ATCO may stipulate in its sole discretion.

### E. Governing Law

The validity, interpretation, construction and performance of this Agreement shall be governed by the laws in force in the Province of Alberta (without reference to any conflict of laws principles that might result in the application of the laws of another jurisdiction). The competent courts in the Province of Alberta shall have the exclusive jurisdiction over all disputes relating to this Agreement. Each of the parties hereto irrevocably attorns and consents to the jurisdiction of such courts.

### F. Class Actions

YOU AGREE TO WAIVE ANY RIGHT YOU MAY HAVE TO COMMENCE OR PARTICIPATE IN ANY CLASS ACTION AGAINST ATCO RELATED TO ANY CLAIM WHERE SUCH WAIVER IS

PERMITTED. WHERE APPLICABLE, YOU ALSO AGREE TO OPT OUT OF ANY CLASS PROCEEDINGS AGAINST ATCO.

## G. Waiver

The waiver by either party of any default by the other party under this Agreement shall not operate as a waiver of any future default, whether of a like or different nature. Furthermore, failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and no waiver shall be effective unless made in writing and signed by the waiving party.

## H. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed to be severable and not invalidate or render unenforceable the remainder of this Agreement. In this event, such provision shall be changed and interpreted so as to best accomplish the objectives of such invalid or unenforceable provision within the limits of applicable law.

## 14. DEFINITIONS

Whenever used in this Agreement, the following words and terms will have the indicated meanings and grammatical variations of such words and terms will have corresponding meanings:

**“Administration Charge”** means the amount specified in your Energy Plan Confirmation that we charge for arranging the provision of Energy to the Site(s) and other associated administrative services.

**“Agreement”** means these Terms and Conditions together with the accompanying Energy Plan Confirmation.

**“Anniversary Credit”** means a credit in the amount specified at [www.atcoenergy.com](http://www.atcoenergy.com) that applies to the Energy Plan that you have selected (as confirmed in your Energy Plan Confirmation), if any, at the time you complete your application to have ATCO arrange for the supply of Energy to the Site(s) (be it in person, by phone or online). For the avoidance of doubt, we reserve the right, but have no obligation, to offer Anniversary Credits from time to time.

**“Cancellation Date”** means the date that the cancellation of this Agreement becomes effective.

**“Contact Information”** means your name, address, email address, and phone number(s).

**“Credit Information”** has the meaning found in Section 1(A).

**“Distribution Company”** means the entity that operates your natural gas or electricity distribution system, as applicable, as may be amended from time to time.

**“Distribution Company Agreement”** has the meaning found in Section 2(B).

**“Distribution System”** means the Distribution Company’s infrastructure used to deliver Energy to the Site(s).

**“Energy”** means the natural gas, electricity or both, to be supplied to you under this Agreement.

**“Energy Charge”** means the cost of Energy consumed based on, as applicable: (i) a Variable Electricity Price (which includes a Service Fee) or a Guaranteed Electricity Price; or (ii) Variable Natural Gas Price (which includes a Service Fee) or a Guaranteed Natural Gas Price; or (iii) a combination of both.

**“Energy Plan”** means the energy plan that you have selected for the provision of electricity or natural gas, or both, as confirmed in the Energy Plan Confirmation.

**“Energy Plan Confirmation”** means the written confirmation sent to you by ATCO that: (i) confirms your Energy Plan; and (ii) describes any incentives or other benefits that we may provide to you.

**“Enrollment Date”** means the date that the Site(s) is enrolled by the Distribution Company at ATCO’s request.

**“Green Electricity Price”** means, if applicable, the fee specified on your Energy Plan Confirmation (payable per kWh of electricity that you consume) for the provision of electricity that comes from a renewable resource.

**“Green Premium”** means, if applicable, the cost of electricity that comes from a renewable resource that you consume as a function of the Green Electricity Price.

**“Guaranteed Electricity Price”** means the applicable price per unit of electricity stated in your Energy Plan Confirmation.

**“Guaranteed Natural Gas Price”** means the applicable price per unit of natural gas stated in your Energy Plan Confirmation.

**“Initial Term”** has the meaning found in Section 5(A).

**“Late Payment Charge”** has the meaning found in Section 3(D).

**“Renewal Term”** has the meaning found in Section 5(B).

“**Rural Electrification Association**” means a not-for-profit cooperative, incorporated or continued under the *Rural Utilities Act* (Alberta), which owns electric distribution systems and supplies electric energy to members in a rural region of Alberta.

“**Rural Gas Co-Op**” means a not-for-profit cooperative, incorporated or continued under the *Rural Utilities Act* (Alberta), which owns its own distribution system and supplies natural gas to members in its rural franchise area of Alberta.

“**Service Fee**” means the service fee(s) specified on your Energy Plan Confirmation payable per unit of Energy that you consume as part of your Variable Natural Gas Price or Variable Electricity Price (if applicable). We may change this fee from time to time in accordance with Section 7(A) above.

“**Sign-up Incentive**” means a one-time credit in the amount specified at [www.atcoenergy.com](http://www.atcoenergy.com) that applies to the Energy Plan that you have selected (as confirmed in your Energy Plan Confirmation), if any, at the time you complete your application to have ATCO arrange for the supply of Energy to the Site(s) (be it in person, by phone or online). For the avoidance of doubt, we reserve the right, but have no obligation, to offer Sign-Up Incentives from time to time.

“**Site(s)**” means the home, business or other location identified in your Energy Plan Confirmation. (Note: as there are different site identification numbers with respect to the provision of electricity and natural gas, your home (for example) may consist of two different Sites.)

“**Start Date**” means the date you first receive Energy under this Agreement.

“**Taxes**” means any applicable federal, provincial or regulatory taxes, duties, and surcharges which may be assessed, levied or imposed with respect to the supply of Energy under this Agreement.

“**Term**” means the Initial Term together with any Renewal Term(s).

“**Terms and Conditions**” means these terms and conditions.

“**Third Party Charges**” means the amounts that are charged to ATCO by third parties (such as the Distribution Company) as they relate to the supply of Energy to the Site(s), including:  
(i) enrollment and de-enrollment/exit fees; (ii) franchise fees; (iii) tariffs; (iv) local access fees; (v) transportation charges; (vi) transmission and distribution charges; (vii) rate riders; (viii) UFG-Related Charges; (ix) delivery charges; (x) Taxes; and (xi) any similar or comparable charges.

“**UFG**” means your proportionate share of the Distribution Company’s line loss, unaccounted- for  
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natural gas and compressor fuel at the rate specified in the applicable natural gas distribution tariff.

“**UFG-Related Charges**” means the charges that apply to both the Guaranteed Natural Gas Price and the Variable Natural Gas Price and is calculated by multiplying your UFG by the sum of the AECO Daily 5A Index plus the Service Fee.

“**Variable Electricity Price**” means the floating (i.e. load-weighted average flow-through) price per unit of electricity provided to you through the Services as calculated by using the following formula:

$$\frac{\sum_{h=1}^n (PPP_h + PPT_h) * (CONS_h + UFE_h + LL_h)}{\sum_{h=1}^n CONS_h} + SF$$

*h = hour*

*n = the number of hours in the billing period*

*CONS<sub>h</sub> = Electricity consumption in kWh, allocated hourly based on customer class profile and distributor (for hour h)*

*PPP<sub>h</sub> = the actual hourly power pool price, represented in cents / kWh (for hour h)*

*PPT<sub>h</sub> = power pool trading charges, represented in cents / kWh (for hour h)*

*UFE<sub>h</sub> = unaccounted for energy, represented in kWh, allocated hourly based on customer class profile and distributor (for hour h)*

*LL<sub>h</sub> = distribution system line loss, represented in kWh, based on customer class profile and distributor (for hour h)*

*SF = the Service Fee, payable per kWh, for electricity provided to you through the Services. (Please note that this fee may change from time to time in accordance with this Agreement.)*

“**Variable Natural Gas Price**” means the floating (temperature-weighted average flowthrough) price per unit of natural gas provided to you through the Services as calculated by using the following formula:

$$\frac{\sum (\text{DailyHDD} \times \text{AECO C Daily Index})}{\sum (\text{DailyHDD})} + SF$$

*DailyHDD = the actual Heating Degree Days for each day in the billing cycle*

*AECO C Daily Index = the Daily Average Index Price for AECO-C, per GJ, for each day in the billing cycle*

*SF = the Service Fee, payable per GJ, for natural gas provided to you through the Services. (Please note that this fee may change from time to time in accordance with this Agreement.)*

# WESTJET PROGRAM AGREEMENT

This WestJet Program Agreement (the "**Agreement**") is between ATCO Energy Ltd. ("**ATCO**", "**we**", "**our**", and "**us**") and you, namely the customer identified in the accompanying Energy Plan Confirmation ("**Customer**", "**your**", and "**you**").

The Energy Plan Terms & Conditions available at <http://www.atco.com/home/terms-conditions.html> (the "**Terms & Conditions**") are incorporated by reference into this Agreement. PLEASE READ THE TERMS & CONDITIONS CAREFULLY AS THEY FORM PART OF THIS AGREEMENT.

Unless otherwise specified, capitalized terms used in this document will have the meanings set forth in the Terms & Conditions. To the extent that there is any discrepancies between this document and the Terms & Conditions, this document will govern.

## 1. What is the WestJet Program?

If you are a new customer to ATCO and arrange for ATCO to supply both electricity and natural gas to a residential Site(s) for a 3- or 5-year term at either fixed or variable rates (on the terms and subject to the satisfaction of the conditions set out in this Agreement) between 12:01 a.m. MST on December 29, 2017 and 11:59 p.m. MST on February 9, 2018, you may choose to receive one (1) electronic gift card for travel with WestJet Airlines Ltd. ("**WestJet**") in the amount of \$150 CAD (the "**Gift Card**").

If you elect to receive a Gift Card, we will arrange for one to be sent by (or on behalf of) WestJet to the email address that you have provided to us within approximately 20 days of entering into this Agreement.

Please note that ATCO will not substitute, exchange, or refund any Gift Card that will be, or has been, provided to you under this Agreement. Also note that the Gift Card has no cash value and cannot be combined with any other offer. Neither WestJet nor ATCO will be responsible for any Gift Card that cannot be delivered because of an invalid email address.

## 2. How can I use the Gift Card?

The conditions associated with the use of a Gift Card are as follows:

- (a) Gift Cards can only be redeemed for (i) new bookings; (ii) made on westjet.com or through a travel agent (iii) for eligible WestJet- and WestJet Encore-operated flights and advance seat selection fees (made at the time of booking only), including applicable taxes, fees and surcharges;
- (b) Gift Cards cannot be redeemed through: (i) a WestJet contact centre; (ii) at the airport; or (iii) onboard any flight;
- (c) WestJet Rewards members may potentially earn "WestJet Dollars" on flights booked with a Gift Card;
- (d) A maximum of one Gift Card can be redeemed on a single booking; multiple Gift Cards cannot be consolidated into a single Gift Card;
- (e) Gift Cards are not reloadable;
- (f) Gift Cards are not transferable; and
- (g) Gift Cards cannot be used as payment for any of the following:
  - (i) Baggage fees, change and cancellation fees, same-day airport changes, seat upgrade fees (made after booking), kennel fees, and unaccompanied minor fees;
  - (ii) WestJet Vacations packages;
  - (iii) WestJet Rewards redemption bookings;
  - (iv) Purchase of WestJet dollars;

- (v) Group bookings (vacations and air only);
- (vi) Any menu items (e.g. food, headphones, mobile device rentals, etc.) that are either purchased before or during the flight;
- (vii) WestJet Connect inflight entertainment;
- (viii) Cargo services;
- (ix) Car bookings, hotel reservations and travel insurance booked on westjet.com; and
- (x) Partner airline-operated flights.

### **3. What happens if I have any issues regarding the Gift Card or my ability to use it?**

To the extent that you have any questions, comments, issues, concerns or claims regarding your Gift Card, you acknowledge and agree that WestJet will be exclusively responsible for addressing or otherwise dealing with same.

ANY GIFT CARD PROVIDED TO YOU IS DONE SO ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS. ATCO DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS CONCERNING ANY GIFT CARD, INCLUDING ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY, NON-INFRINGEMENT, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS THAT MAY BE IMPLIED BY LAW.

ATCO IS NOT RESPONSIBLE FOR WESTJET, ITS AFFILIATES, ITS SERVICE PROVIDERS OR ANY GIFT CARD. AS SUCH, ATCO WILL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER THAT MAY ARISE FROM: (I) ANY ACT OR OMISSION BY WESTJET, ITS AFFILIATES OR SERVICE PROVIDERS; (II) ANY GIFT CARD; OR (III) ANY USE OF A GIFT CARD BY YOU OR ANYONE ELSE.

### **4. How will my personal information be handled by or on behalf of WestJet?**

In order for us to provide you with a Gift Card, you consent that we can provide your name and e-mail address to WestJet. If you have any questions about this, please contact our Privacy Officer at 1-844-786-2826 or [privacy@ATCO.com](mailto:privacy@ATCO.com).

The collection, use, and disclosure of your personal information by or on behalf of WestJet or its affiliates and service providers in connection with this Agreement will be subject to WestJet's privacy policy at [www.westjet.com/en-ca/about-us/legal/privacy-policy](http://www.westjet.com/en-ca/about-us/legal/privacy-policy). If you have any questions with respect to this policy, please contact WestJet directly.

### **5. Can I cancel this Agreement?**

You may cancel this Agreement at any time (during the Initial Term or any Renewal Term) by giving us fifteen (15) days' notice in a manner provided for in Section 7(B) of the Terms & Conditions.

In addition, notwithstanding anything else in this Agreement, you may cancel this Agreement without penalty within its first year if: (i) ATCO does not set out in this Agreement a specified or ascertainable date on which the supply of energy is to begin; (ii) ATCO does not begin the supply of energy within 30 days of that date (or an amended date agreed on in writing or electronic form between you and ATCO), or (iii) ATCO is not licensed under Part 1 of the *Alberta Energy Marketing And Residential Heat Sub Metering Regulation* at the time this Agreement was entered into. Your ability to so cancel the Agreement is only available if you have not expressly authorized the supply of Energy to begin after this thirty (30) day period has expired.

### **6. What happens if this Agreement is cancelled?**

As stated in the Terms & Conditions, we will ask the Distribution Company to de-enroll the Site(s) upon the expiry or cancellation of this Agreement for any reason. Once the Site(s) is de-enrolled, you will receive energy from your default supplier or another retailer that you choose