

# **Corix Utilities Inc.**

## **Ground Source Energy Terms and Conditions**

CONTAINING

DEFINITIONS, TERMS AND CONDITIONS AND RATES FOR SERVICE

Effective: January 1, 2010

This Terms and Conditions document is available for public inspection at the offices of Corix Utilities Inc. in Kelowna, British Columbia.

**INDEX**

<b>PART A</b>	<b>DEFINITIONS</b>	<b>4</b>
(a)	“Account Charge”	4
(b)	“Applicant”	4
(c)	“Basic Charge”	4
(d)	“Call-Back Charge”	4
(e)	“Collection Charge”	4
(f)	“Commercial Service”	4
(g)	“Company”	4
(h)	“Customer”	4
(i)	“Loop Field System”	4
(j)	“Person”	4
(k)	“Premise”	4
(l)	“Rate Schedule”	4
(m)	“Reactivation Charge”	5
(n)	“Residential Premise”	5
(o)	“Residential Service”	5
(p)	“Services”	5
(q)	“Services Agreement”	5
(r)	“Tenant”	5
<b>PART B</b>	<b>GENERAL TERMS AND CONDITIONS</b>	<b>5</b>
1.	APPLICATION FOR SERVICE.....	5
2.	RE-APPLICATION FOR SERVICE.....	6
3.	USE OF GROUND SOURCE ENERGY SERVICE.....	6
4.	ASSIGNMENT.....	6
5.	RATES.....	6
6.	SERVICE CONNECTIONS.....	6
7.	EQUIPMENT AND FACILITIES ON PRIVATE PROPERTY.....	7
8.	DISCONNECTION BY AUTHORIZED PERSONNEL.....	7
9.	SERVICE RECONNECTIONS.....	7
10.	CHANGE IN CUSTOMER.....	8
11.	SERVICE UPGRADES AND EXTENSIONS.....	8
12.	RESALE / UNAUTHORIZED SUPPLY OR USE.....	8
13.	BILLING.....	8

14. BACK BILLING .....	9
15. LATE PAYMENT CHARGE .....	10
16. RETURNED CHEQUE CHARGE.....	10
17. REFUSAL TO PROVIDE SERVICE AND DISCONTINUANCE OF SERVICE .....	10
18. SECURITY FOR PAYMENT OF BILLS .....	11
19. ACCOUNT CHARGE – EXISTING INSTALLATION .....	12
20. COLLECTION CHARGE.....	12
21. TERMINATION OF SERVICE.....	12
22. LFS PURCHASE.....	13
23. DELAYED CONSUMPTION.....	14
24. LIABILITY .....	14
25. ACCESS TO PREMISES AND EQUIPMENT .....	15
26. TAXES.....	15
27. RENTAL PREMISES .....	15
28. CONFLICTING TERMS AND CONDITIONS.....	15
29. AUTHORITY OF AGENTS OF THE COMPANY .....	16
30. CHANGES TO TERMS AND CONDITIONS.....	16

## Part A DEFINITIONS

The following terms, wherever used in these Terms and Conditions, shall have the meaning set forth below:

- (a) “**Account Charge**” means the single initial set-up charge required to be paid by a Customer for Services in the amount specified in the Standard Fees and Charges Schedule;
- (b) “**Applicant**” means any person applying for utility service from the Company and subject to this Terms and Conditions Document;
- (c) “**Basic Charge**” means the fixed charge required to be paid by a Customer for Services during a prescribed period in the amount specified in the Rate Schedule;
- (d) “**Call-Back Charge**” means the charge required to be paid by a Customer for call back in the amount specified in the applicable Standard Fees and Charges Schedule;
- (e) “**Collection Charge**” means the charge required to be paid by a Customer for collection of an overdue account in the amount specified in the Standard Fees and Charges Schedule;
- (f) “**Commercial Service**” means the provision of Service supplied to commercial, institutional or small industrial operations;
- (g) “**Company**” means Corix Utilities Inc. or any division or affiliate of Corix Utilities Inc. carrying on the business of a geothermal utility, and their respective duly authorized officers, agents and employees;
- (h) “**Customer**” means a Person who is an owner or occupant of a Premise which receives Services from the Company;
- (i) “**Loop Field System**” means the vertical shafts drilled on the property including the piping inserted therein and the piping extending to the point of entry to the building, referred to as the header, located on a Customer’s Premises;
- (j) “**Person**” means any individual, corporation, partnership, cooperative, association or other entity;
- (k) “**Premise**” means a single lot or piece of ground including improvements thereon, to which Service is or will be provided by the Company;
- (l) “**Rate Schedule**” means a schedule attached to and forming part of these terms and conditions, which sets out the charges for Service and certain other related charges in connection with the provision of Services;

- (m) “**Reactivation Charge**” means the charge required to be paid by a Customer for reactivation of Services in the amount specified in the Standard Fees and Charges Schedule;
- (n) “**Residential Premise**” means the Premise of a single Customer, whether single family dwelling, separately metered single-family townhouse, row house, apartment, or single-metered apartment blocks with four or less apartments;
- (o) “**Residential Service**” means the provision of Service provided to a Residential Premise;
- (p) “**Services**” means the provision of ground source energy services by the Company to a Premise by the Company’s Loop Field System and includes the operation and maintenance of the Loop Field System;
- (q) “**Services Agreement**” means either an oral or written application for Services of a Customer which has been approved by the Company and which is deemed to include the terms and conditions set out herein or an agreement for Services in a form determined by the Company and signed by the Customer; and
- (r) “**Tenant**” means a Person who has the temporary use and occupation of real property owned by another person.

## **Part B GENERAL TERMS AND CONDITIONS**

### **1. Application for Service**

The Company provides Services to Customers solely in accordance with the terms and conditions set out herein and the Rate Schedules attached hereto.

Every Person wishing to become a Customer shall apply to the Company for Services. Application for Services can be made in person, in writing, by phone call or e-mail. Applicants will be required by the Company to complete an application form or an agreement for Service in such form as determined by the Company from time to time. Applicants may be required to provide reference information and identification acceptable to the Company.

The application or agreement for Services will become a Services Agreement upon commencement of the provision of Services, and these terms and conditions will be part of said Services Agreement.

If an Applicant requests Services from the Company at more than one Premise, or for more than one separately operated business, the Applicant will be considered a separate Customer for each of the Premises and businesses. The Company will determine whether or not any building contains one or more Premises or any business is separately operated.

The Company may refuse to provide Services to an Applicant if an occupant of the Applicant's Premise has an unpaid account for Services incurred while the occupant previously occupied any Premise at the same time as the Applicant.

**2. Re-Application for Service**

If a Customer's Services Agreement is terminated, whether or not there is a physical disconnection by the Company, and if that Customer or the spouse, servant or agent of that Customer applies for new Services within 12 months of the most recent termination date for the same Premise, then the Applicant shall pay the greater of:

- (a) the costs that the Company estimates that it will incur in making the restoration or reconnection of the Services; and
- (b) the sum of the Basic Charges which the Customer would have paid between the time of termination and the time of application for new Services.

**3. Use Of Ground Source Energy Service**

A Customer shall use the Services only for the purposes permitted under the Rate Schedules for which application is or was made.

**4. Assignment**

A Customer shall not transfer or assign a Services Agreement to another Person without the written consent of the Company.

**5. Rates**

The Connection Fee, the Account Charge, the Basic Charge, the Ground Loop Access Fees and any other fees or charges to be charged by the Company, and paid by Customers to the Company for Services shall be the rates from time to time in effect. The current rates are set out in the Rate Schedules attached hereto and such rates may be amended in the sole discretion of the Company from time to time.

**6. Service Connections**

**6.1 Loop Field System**

The Company shall furnish, install and maintain all Loop Field Systems and the Loop Field Systems shall be and remain the property of the Company. The Company will normally serve each parcel of land with one Loop Field System. If a Customer requests more than one Loop Field System, on the same Rate Schedule, the Company may install the additional Loop Field System and charge the Customer the Application Fee as set out in the Standard Fees and Charges Schedule, as well as the full cost (including overhead) for the additional Loop Field System installation in lieu of the Loop Field System Connection Fee set out in the Standard Fees and Charges Schedules. The Company, at its discretion, may bill for the additional Loop Field Connection from a separate account.

## 6.2 Separate Service

Each Premise shall be served individually through separate Loop Field Systems, unless the Company approves some other arrangement because of special circumstances.

## 6.3 Winter Construction

During winter construction conditions such as ground frost or excessive snow accumulations, the Company may postpone construction until winter construction conditions subside.

## 7. Equipment and Facilities on Private Property

The Company is not responsible for any facilities and equipment on a Customer's Premise beyond the point of entry to the building. All Customer-owned equipment used to connect to the Company's Loop Field System shall be approved by, and installed in a manner satisfactory to the Company.

## 8. Disconnection by Authorized Personnel

Services shall not be disconnected from any Premise by any person who is not an agent of the Company, except temporarily by a person specially trained to work on geothermal heating and cooling systems in order to perform maintenance on facilities and equipment within the Premise connected to the Loop Field System.

## 9. Service Reconnections

A Customer shall pay a Reactivation Charge when Services are reconnected to a Premise previously disconnected from Services for the following reasons:

- (a) at the request of the Customer;
- (b) to permit the Customer to make alterations to or on the private property;
- (c) for breach of these terms and conditions.

The Reactivation Charge applies when the same Customer, or the spouse, employee, agent, contractor or partner of the same Customer requests reactivation of Services to the Premise within a period of one year.

A Customer shall not be required to pay a Reactivation Charge when the service disconnection was made for the reason of public safety or when the Company made the service disconnection for service requirements of the Company.

The Applicant for reactivation must pay the greater of:

- (a) the costs the Company incurs in reactivating the Service; and
- (b) the sum of the Basic Charges which the Customer would have paid between the time of termination and the time of reactivation of Services.

**10. Change in Customer**

It shall be the obligation of each Customer to notify the Company to terminate Services upon change of occupant or ownership of the Premises. The notice shall state the effective date for the change, which shall be no less than seven days after the notice is received by the Company.

Upon receipt of such notice, the Company shall prepare and submit to the Customer a final bill.

**11. Service Upgrades and Extensions**

The Customer may make application to the Company to upgrade or extend a Loop Field System beyond the normal standard. If approved by the Company, the Customer will pay for any costs incurred by the Company, including a reasonable mark up in providing the upgraded or extended Loop Field System.

**12. Resale / Unauthorized Supply or Use**

Unless authorized in writing by the Company, a Customer shall not sell or supply Services supplied to it by the Company to other Persons or use the Services supplied to it by the Company for any purpose other than as specified in the Service Agreement.

If any person makes any unauthorized connection to any Loop Field System, or any unauthorized extension of any existing Loop Field System, the Company shall, in addition to any and/or all other remedies, immediately discontinue Services to such unauthorized connection or extension. In the case of any dispute concerning the authority for any such connection or extension, the burden of proof shall be upon the Customer to establish the validity of such authority.

**13. Billing**

13.1 Bills will be rendered on the basis of the Customer's Service Agreement, the Rate Schedules under which the Customer is provided Services and the fees and charges contained in the Standard Fees and Charges Schedule.

13.2 Bills will be rendered as often as deemed necessary by the Company, but generally on a monthly or bi-monthly basis. The due date for payment of bills shown on the face of the bill is the first business day after:

- (a) the twenty first (21<sup>st</sup>) calendar day following the billing date; or
- (b) such other period as may be determined by the Company.

Bills shall be paid to the Company.

Customers requesting historic billing information may be charged the cost of processing and providing this information but shall be notified of such charge in advance.

## 14. Back Billing

14.1 The Company, in the circumstances specified herein, may charge, demand, collect or receive from its Customers in respect of Services rendered, a greater or lesser compensation than that specified in the subsisting Rate Schedules of the Company applicable to those Services. In the case of a minor adjustment to a Customer's bill, such adjustments do not require back-billing treatment to be applied.

14.2 Back billing means the re-billing by the Company for services rendered to a Customer because the original billings were discovered to be either too high (over-billed) or too low (under-billed). The discovery may be made by either the Customer or the Company and may result from the conduct of an inspection. The cause of the billing error may include any of the following non-exhaustive reasons or combination thereof:

- (a) the application of an incorrect rate;
- (b) fraud, theft or any other criminal act.

14.3 If there are reasonable grounds to believe that a Customer has tampered with or otherwise used the Company's Loop Field System or Services in an unauthorized way, or evidence of fraud, theft or other criminal act exists, then the extent of back-billing will be for the duration of the unauthorized use, subject to the applicable limitation period provided by law, and the provisions of Sections 14.8, 14.9, 14.10 and 14.11 below do not apply.

14.4 In addition, the Customer is liable for the direct administrative costs incurred by the Company in the investigation of any incident of tampering, including the direct costs of repair, or replacement of equipment.

14.5 Under-billing resulting from circumstances described above will bear interest at the rate normally charged by the Company on unpaid accounts from the date of the original under-billed invoice until the amount under-billed is paid in full.

14.6 In every case of under-billing or over-billing, the cause of the error will be remedied without delay, and the Customer will be promptly notified of the error and of the effect upon the Customer's ongoing bill.

14.7 In every case of over-billing, the Company will refund to the Customer all money incorrectly collected for the duration of the error, subject to the applicable limitation period provided by law. Simple interest, computed at the short-term bank loan rate applicable to the Company on a monthly basis, will be paid to the Customer.

14.8 Subject to Section 14.3 above, in every case of under-billing, the Company will back-bill the Customer for the shorter of the duration of the error and;

- (a) six months for Customers receiving Residential Services or Commercial Service;  
or

- (b) one year for all other Customers or as set out in a special or individually negotiated Services Agreement with the Company.

14.9 Subject to Section 14.3 above, in every case of under-billing, the Company will offer the Customer reasonable terms of repayment. If requested by the Customer, the repayment term will be equivalent in length to the back-billing period. The repayment will be interest free and in equal installments corresponding to the normal billing cycle. However, delinquency in payment of such installments will be subject to the usual late payment charges.

14.10 Subject to Section 14.3 above, if a Customer disputes a portion of a back-billing due to under-billing based upon either consumption, demand or duration of the error, the Company will not threaten or cause the discontinuance of Services for the Customer's failure to pay that portion of the back-billing, unless there are no reasonable grounds for the Customer to dispute that portion of the back-billing. The undisputed portion of the bill shall be paid by the Customer and the Company may discontinue Services if such undisputed portion of the bill is not paid.

14.11 Subject to Section 14.3 above, in all instances of back billing where changes of occupancy have occurred, the Company will make a reasonable attempt to locate the former Customer. If, after a period of one year, such Customer cannot be located, the over-or under-billing applicable to them will be cancelled.

**15. Late Payment Charge**

If the amount due on any bill has not been paid in full on or before the due date shown on such bill, and if the unpaid balance is \$15 or more, a further bill will be rendered to include the overdue amount plus a Late Payment Charge as set out in the Standard Fees and Charges Schedule. Notwithstanding the due date shown, to allow time for payments made to reach the Company, and to co-ordinate the billing of Late Payment Charges with scheduled billing cycles, the Company may, in its discretion, waive Late Payment Charges on payments not processed until a number of days after the due date.

**16. Returned Cheque Charge**

If a cheque received by the Company from a Customer in payment of any account is returned by the Customer's bank, trust company or financial institution for the reason of not sufficient funds, or any reason other than clerical error, a Returned Cheque Charge, as set out in the Standard Fees and Charges Schedule, for processing each returned cheque will be added to the amount due and payable by the Customer whether or not the service has been disconnected.

**17. Refusal to Provide Service and Discontinuance of Service**

17.1 The Company may refuse to provide Services or may, with 48 hours written notice, discontinue Services to any Customer or Applicant who:

- (a) failed to fully pay for Services at any Premises on or before the due date;
- (b) failed to pay any required security deposit, equivalent form of security, or post a guarantee or required increase in it, by the specified date;

- (c) is in receivership or bankruptcy, or operating under the protection of any insolvency legislation and has failed to pay any outstanding bills to the Company; or
- (d) occupied the Premise with another occupant who has an outstanding account incurred for Services while occupying any Premise at the same time as the Customer.

17.2 The Company may refuse to provide Services or may discontinue Services without notice, to any Customer or Applicant who:

- (a) refuses to provide reference information and identification acceptable to the Company, when applying for Services or at any subsequent time on request by the Company;
- (b) breaches the terms and conditions upon which Services are provided by the Company;
- (c) has defective pipes or appliances in the Customer's Premise;
- (d) uses the Loop Field System of the Services in such a manner, as in the Company's opinion may lead to a dangerous situation;
- (e) fails to make modifications or additions to the Customer's equipment which have been required by the Company in order to prevent the danger described in 17.2(d) above;
- (f) fraudulently misrepresents to the Company the Customer's use of the Field Loop System or the Services or vacates the Customer's Premise; or
- (g) has the Customer's Service Agreement terminated for any reason.

The Company shall not be liable for any loss, injury or damage suffered by any Customer by reason of the discontinuation of or refusal to provide Services.

#### **18. Security for Payment of Bills**

Customers who have not established or maintained credit to the satisfaction of the Company, may be required to provide a security deposit or equivalent form of security, the amount of which may not:

- (a) be less than \$50; or
- (b) exceed an amount equal to two months' Basic Charge plus two months' Ground Loop Access Fee.

A security deposit or equivalent form of security is not an advance payment.

The Company will pay interest on a security deposit at the rate and at the times specified in the Standard Fees and Charges Schedule. If a security deposit is returned to a Customer for any reason, the Company will credit any accrued interest to the Customer's account at that time. No interest is payable on:

- (a) any unclaimed deposit left with the Company after the account for which it is security is closed; or
- (b) on a deposit held by the Company in a form other than cash.

When a Customer pays the final bill, the Company will refund any security deposit plus any accrued interest or cancel the equivalent form of security.

If the Company is unable to locate the Customer to whom a security deposit is payable and it remains unclaimed for 10 years, the deposit then becomes the property of the Company.

If a Customer's bill is not paid when due, the Company may apply all or any part of the Customer's security deposit or equivalent form of security and any accrued interest towards payment of the bill. Under these circumstances, the Company may still elect to discontinue Services to the Customer for failure to pay for Services.

If a Customer's security deposit or equivalent form of security is appropriated by the Company for payment of an unpaid bill, the Customer must re-establish the security deposit or equivalent form of security before the Company will reconnect or continue Services to the Customer.

**19. Account Charge – Existing Installation**

When a change of Customer occurs, an Account Charge, as set out in the Standard Fees and Charges Schedule, shall be paid by the new Customer with respect to each Services applied for and for each account in that Customer's name for which a separate bill is rendered by the Company, except in the following cases:

- (a) if the new Customer is, or was, the spouse of the former Customer; or
- (b) if the new Customer is the owner or operator of multi-tenant Premises, one standard charge shall be paid with respect to all accounts for single-family dwellings for which that Customer will be the Customer in such Premise.

**20. Collection Charge**

A Collection Charge, as set out in the Standard Fees and Charges Schedule, shall be paid by the Customer for each time a Company representative attends the Customer's Premise to disconnect Services following issuance of a disconnect notice.

**21. Termination of Service**

Unless the Services Agreement or applicable Rate Schedule specifies otherwise, the Services Agreement will terminate on the date specified by the Customer in a written termination notice

to the Company, provided that the date of termination shall be at least 48 hours after delivery of the notice of termination. The Customer will be responsible for all charges outstanding for Services provided up to the date that the Services Agreement is properly terminated.

The Customer is not released from any previously existing obligations to the Company by terminating the Services Agreement.

After receiving a termination notice for a Premise, and after a reasonable period of time during which a new Customer has not applied for Services at the Premise, the Company may seal off the Loop Field System connected to the Premise.

The Company reserves the right to suspend or terminate Services at any time to prevent fraudulent use of the Loop Field System or the Services and to protect its property if the Customer fails to comply with the terms of the Customer's Service Agreement, or if the Company is ordered by a competent government authority to suspend or terminate such Services.

**22. LFS Purchase**

The Customer may at any time during the term of the Service Agreement purchase the Loop Field System (an "LFS Purchase") by providing to the Company:

- (a) written notice that the Customer wishes to purchase the Loop Field System (the "Purchase Notice"); and
- (b) a certified cheque or bank draft in the amount of the LFS Purchase Price, plus all applicable taxes, payable to the Company,

where:

LFS Purchase Price	=	Company retail cost of Loop Field System (including installation and all other associated services and charges)*	-	Discount based on period for which Loop Field System was in service preceding LFS Purchase*
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\* as determined by the Company in its sole discretion

The LFS Purchase will be completed and the Service Agreement will terminate upon confirmation by the Company of its receipt and acceptance of the Purchase Notice and the applicable LFS Purchase Price and taxes. The Customer agrees that any LFS Purchase will be subject to the following terms and conditions:

- (a) No Warranty. Each LFS Purchase will be completed on an "as is, where is" basis. No warranty, covenant or representation of any kind will be made by the Company in respect of the Loop Field System or in connection with any LFS Purchase.
- (b) Completion of LFS Purchase. The Company and Customer will take all steps reasonably necessary to complete the LFS Purchase in accordance with this section, including releasing any right of way or other access right registered against the Premise in favor of the Company in respect of the Loop Field System.

**23. Delayed Consumption**

If a Loop Field System has been installed at a Premise and:

- (a) within three months after installation of the Loop Field System no Customer has applied for Services at that Premise, the Company may charge the owner of such Premise the Basic Charge and the Monthly Access Fee for each billing period after such 3 month period; or
- (b) within one year after installation of the Loop Field System no Customer has applied for Services at that Premise, the Company may charge the owner of such Premise the full cost of Loop Field System less the total of the Basic Charges paid by the owner in respect of that Premise to that date.

If a Customer receives Services in the second year after installation of the Loop Field System, the Company will refund to the owner the payments made under Section 23(b). If such refund is made, the term of the Service Agreement will be one year from the time the Customer commences receiving Services.

**24. Liability**

The Company will use commercially reasonable efforts to provide regular and uninterrupted Services, but it does not guarantee continuous Services.

Services may be temporarily suspended to make repairs or improvements to the Loop Field System or in the event of fire, flood or other sudden emergency. The Company will, whenever practicable, give notice by phone, mail, hand delivery or other means determined by the Company of such suspension to the Customer and will restore Services as soon as reasonably possible.

The Company, its directors, officers, employees, contractors and agents are not responsible or liable for any loss, injury (including death), damage or expense incurred by any owner of a Premise or any Customer or other Person claiming by or through the Customer or owner, caused by or resulting from, directly or indirectly, any discontinuance, suspension, or interruption of, or failure or defect in the supply or delivery of the Services, unless the loss, injury (including death), damage or expense is directly attributable to the gross negligence or wilful misconduct of the Company, its directors, officers, employees, contractors or agents provided, however, that the Company, its directors, officers, employees, contractors and agents are not responsible for any loss of profit, loss of revenues or other economic loss or consequential loss even if the loss is directly attributable to the gross negligence or wilful misconduct of the Company, its directors, officers, employees, contractors or agents.

The Customer is responsible for all expense, risk and liability with respect to the use by the Customer of the Services and for any loss or damage to the Loop Field System caused by or resulting from the act or omission of the Customer or a Person for whom he Customer is responsible.

The Customer is responsible for all expense, risk and liability with respect to the facilities and equipment connected to the Loop Field System at the Customer's Premise.

The Customer will indemnify and hold harmless the Company, its directors, officers, employees, contractors and agents from all claims, loss, damage, costs or injury (including death) suffered by the Customer or owner of the Premise or by any Person claiming by or through the Customer or the owner or any third party caused by or resulting from the use of the Services by the Customer or the facilities and equipment connected to the Loop Field System at the Customer's Premise, or from the Customer or Customer's employees, contractors or agents damaging the Loop Field System.

**25. Access to Premises and Equipment**

The Company's agents, contractors and employees shall have, at all reasonable times, free access to the Loop Field System and the Customer's facilities and equipment connected to the Loop Field System at the Customer's Premise to ascertain the method of use of Services, as well as for the purpose of stopping leaks, and examining pipes, fittings, connections and appliances.

**26. Taxes**

The rates and charges set out in this Rate Schedules do not include Social Services Tax or any other tax which the Company may be lawfully authorized or required to add to its rates and charges.

**27. Rental Premises**

As a condition of providing Services to a rental Premise, an owner or operator who wishes the Company to consider dealing directly with the Tenant or Tenants may be required to enter into a rental premises agreement with the Company which provides for responsibilities of the owner or operator in relation to payment for Services used at the Premise. Notwithstanding any rental premises agreement, the Company may, at its sole option, at any time and from time to time, either:

- (a) deal directly with the owner or operator of the Premise as a Customer of the Company with respect to any or all Services to the Premise; or
- (b) subject always to the provisions of any rental premises agreement, deal directly with each Tenant as a Customer of the Company.

**28. Conflicting Terms and Conditions**

Whenever anything in these terms and conditions is in conflict with any special terms or conditions provided in any Rate Schedule, the terms or conditions provided in the Rate Schedule shall prevail and whenever anything in these terms and conditions or in any Rate Schedule is in conflict with the terms of any special contract the terms of such special contract shall prevail.

**29. Authority of Agents of the Company**

No employee, contractor or agent of the Company has authority to make any promise, agreement or representation not incorporated in these terms and conditions or in a Service Agreement, and any such unauthorized promise, agreement or representation is not binding on the Company,

**30. Changes to Terms and Conditions**

These terms and conditions and the rates set out in the Rate Schedules attached hereto may be amended from time to time at the sole discretion of the Company. The terms and conditions that are in effect at any given time may be inspected during business hours at the Company's office.

## STANDARD FEES AND CHARGES SCHEDULE

**Account Charge** \$10.00

The Account Charge is a single initial set up charge payable by each Applicant for Services.

**Connection Fee – Applicable January 1, 2008**

**Residential**

3 ton unit	\$1940.00
4 ton unit	\$2155.00
5 ton unit	\$2831.00
6 ton unit	\$3384.00
7 ton unit	\$3957.00
8 ton unit	\$4524.00
9 ton unit	\$5086.00
10 ton unit	\$5653.00

**Commercial** Determined at time of application

The Connection Fee is a one-time charge for the installation of the Loop Field System. The Connection Fee may be adjusted annually to reflect inflation and increased installation costs. The Connection Fee shall be paid by the first Applicant for Services at a Premise at the time of application and in advance of construction. Subsequent Applicants at a Premise shall not be required to pay a Connection Fee for that Premise.

**Reactivation Charge** (applies to each service reactivated) \$45.00

**Administrative Charges**

Collection Charge	\$50.00
Returned Cheque Charge	\$35.00 per returned cheque
Late Payment Charge on outstanding balance	1.5% per month (19.6% per annum compounded monthly)

**Interest on Cash Security Deposit**

The Company will pay interest on cash security deposit at the Company's prime interest rate minus 1.5 %. The Company's prime interest rate is defined as the floating annual rate of interest which is equal to the rate of interest declared from time to time by the Company lead bank as its "prime rate" for loans in Canadian dollars.

Payment of interest will be credited to the Customer's account in January of each year.