

1. Creditworthiness

1.1 Principles

1.1.1 Overall

~~1.1.1.1 Credit risks should not be shifted between a Supplier and Distribution Company without mutual agreement, appropriate compensation, or both.~~

~~1.1.1.2 Procedures for a Supplier and Distribution Company to establish creditworthiness with one another should be published so that applicants know the requirements prior to applying for credit. (DELETE – Covered by Model Business Practice 1.3.2.3)~~

~~1.1.1.3 Creditworthiness procedures for implementing retail access, determination of risk exposure, evaluation of creditworthiness and granting of credit should be performed in a non-discriminatory manner, consistent with standard commercial practices. (DELETE – Covered in MBP 1.3.2.2 and **NEW** MBP 1.3.3.1)~~

1.1.1.4 Creditworthiness procedures should be efficient to minimize the time and effort required by the parties to start/maintain a working relationship.

~~1.1.1.5 The Creditor should be prepared to provide the rationale for its determinations of risk exposure and Applicant's level of unsecured creditworthiness. (Eliminates need for two principles that were under "Determination of Risk Exposure") (DELETE – covered by REVISED MBP 1.3.3.12)~~

1.1.1.6 The evaluation process and methodology for determining credit limits and risk exposure should be reflected in the Supplier tariff or subject to approval approved by the Applicable Regulatory Authority and clearly stated in the appropriate Governing Document

1.1.2 Determination of Risk Exposure

1.1.3 Determination of Initial Unsecured Credit Limit

1.1.4 Reconsideration of Unsecured Credit Limit

~~1.1.4.1 The frequency of requesting reconsideration, absent a material change in the Applicant's credit rating or financial condition, should be limited to avoid overburdening the parties. (DELETE – Covered in MBP 1.3.4.7)~~

~~1.1.4.2 Creditworthiness re-evaluations should be performed promptly. (DELETE – Covered in MBP 1.3.4.2)~~

~~1.1.4.3 Either party should have the ability to request a reevaluation of creditworthiness when the Applicant's credit situation changes significantly. (DELETE – Covered in MBP 1.3.4.5 and 1.3.4.6)~~

1.1.4.4 The procedures and criteria used to perform a re-evaluation of creditworthiness should be the same as used for the initial determination.

~~1.1.4.5 The Applicant should notify the Creditor promptly of any material adverse change in its credit rating or financial condition. (DELETE – Covered in MBP 1.3.4.4)~~

~~1.1.4.6 When the Creditor is the Distribution Company (or similar regulated entity), there should be an expedited process for the Applicant to bring their challenge of a creditworthiness~~

~~determination before the applicable regulatory body. (Delete – Covered in 1.3.4.3)~~

1.1.5 Disqualification/Remedies

1.1.5.1 ~~When an adverse change in a Applicant's credit standing causes the Applicant to no longer qualify for unsecured credit from the Creditor, the Creditor has the right to require security, prepayment, or a deposit as specified herein. (DELETE – Covered in MBP 1.3.5.1)~~

1.1.5.2 ~~The amount of security required should be proportional to the value of the Creditor's exposure. (DELETE – Covered in MBP 1.3.5.1)~~

1.1.5.3 ~~If the Creditor's exposure exceeds the value provided for by the current security provided by the Applicant, the Creditor may require additional security appropriate to the amount of additional exposure. (DELETE – Covered in MBP 1.3.5.1)~~

1.1.5.4 ~~The Creditor should be able to reduce or terminate their business relationship with an Applicant who fails to maintain required security. (DELETE – Covered in MBP 1.3.5.5, 1.3.5.6 and 1.3.5.3)~~

1.1.6 Security Instruments

1.1.6.1 ~~Security instruments provide a means for a party to reasonably ensure that funds will be available to pay for acquired services in the event of default on payment for those services (DELETE – Covered in MBP 1.3.6.1).~~

1.1.6.2 ~~Creditors should provide alternative means for Applicants who do not qualify for unsecured credit to establish creditworthiness with the Creditor through conventional security instruments. (DELETE – Covered in MBP 1.3.6.1).~~

1.1.7 Calling on Security

1.1.7.1 ~~Creditors should be able to call on the security posted by the Applicant when the Applicant defaults. (DELETE – Covered in MBP 1.3.7.1).~~

1.1.7.2 ~~The Applicant should be provided with a reasonable cure period before the Creditor calls on the security. (DELETE – Covered in MBP 1.3.7.1).~~

1.1.8 Confidentiality

1.1.8.1 ~~The information content of the creditworthiness process should be deemed confidential and not subject to public disclosure (DELETE – Covered in MBP 1.3.8.1).~~

1.1.8.2 ~~The fact that an Applicant has applied for credit with a Creditor should be deemed confidential and not subject to public (DELETE – Covered in MBP 1.3.8.1) disclosure.~~

1.1.8.3 Any Confidential Information Provided should be used only for the purpose of establishing the Applicant's financial status in order to enable the parties to enter into contracts for the products/services to be provided. ~~(DELETE – Covered in~~ **REVISED** ~~MBP 1.3.8.4).~~

1.1.8.4 ~~If non-public information must be disclosed to the Applicable Regulatory Authority steps should be taken to insure the confidentiality of the information should be maintained consistent with the Applicable Regulatory Authority's rules and regulations. (DELETE – Covered in MBP 1.3.8.3).~~

1.1.8.5 ~~(Add statement about credit reporting?). (See new Model Business Practice 1.3.8.4)~~

1.2 Definitions

1.2.1 Overall

1.2.1.1 **Applicable Regulatory Authority:** The state regulatory agency or other local governing body that provides oversight, policy guidance, and direction to energy utilities and Market Participants through regulations and orders.

1.2.1.2 **Applicant:** The party seeking credit from another party. Either the Supplier or the Distribution Company may take on the role of Applicant.

1.2.1.3 **Billing Party:** The party performing billing services for another party under a Consolidated Billing arrangement. In most cases the Applicant Billing Party will receive Customer payments on behalf of both parties.

1.2.1.4 **Consolidated Billing:** The Billing Party produces a Customer bill consolidating the energy, transmission and distribution related charges of the Utility and the Supplier, for which a single payment from the customer is expected. A Customer billing option that combines Distribution Company and Supplier charges on one statement.

1.2.1.5 **Creditor:** The party granting credit to another party. Either the Supplier or the Distribution Company may take on the role of Creditor.

1.2.1.6 **Default Provider:** The provider of energy supply service to Customers in a competitive energy market who are not being served by a competitive energy Supplier for any number of reasons including the following: 1) The Customer's chosen Supplier no longer provides service for the Customer's account. This service is provided pursuant to rules established by the Applicable Regulatory Authority. (Glossary Comm.)

~~1.2.1.7~~ **Distribution Company:** A regulated entity that constructs and maintains the distribution facilities which deliver electricity to the Customer, and which may also provide generation services.

~~1.2.1.7~~ **1.2.1.8** **Market Participant:** Any of the parties involved in the process of supplying electricity to Retail Access Customers. Typical Market Participants include, but are not limited to the following: Supplier, Distribution Company, meter data management agents, and providers of “back-office” services.

~~1.2.1.8~~ **1.2.1.9** **Non-Billing Party:** The party whose charges are being combined into a statement (or invoice) prepared and rendered by another party.

1.2.1.10 **Single Retailer Model:** A competitive market model where the Billing Party (Supplier) purchases delivery service from the Non-Billing Party (Utility) and bills the Customer for both energy and delivery under its own name. The Supplier generally serves as the single point of contact for the Customer in this model. (USE CPS Def.)

~~1.2.1.9~~ **1.2.1.11** **Supplier:** Persons engaged in the competitive sale of electricity to end-users.

1.2.1.12 **Transmission Provider:** A regulated entity that constructs and maintains the transmission facilities which deliver electricity to the Customer's distribution system and may provide transmission-related ancillary services in a designated area.

1.2.2 Determination of Risk Exposure

1.2.2.1 None

1.2.3 Determination of Initial Unsecured Credit Limit

1.2.3.1 **Credit Application Form:** The Creditor's form for obtaining identification and financial data about an Applicant.

1.2.3.2 **Governing Documents:** Documents that determine the interactions between Market Participants, such as: regulatory documents (tariffs, rules, regulations), contractual agreements between the parties, and Distribution Company operational manuals.

1.2.3.3 **Guarantor:** The entity who agrees to guarantee the Applicant's financial obligations, recognizing that such entity will be ultimately obligated to meet the Creditor's creditworthiness requirements. A party that agrees to take on the financial obligations of the Applicant in the event the Applicant alone is unable to do so.
(Bob Krauss, please review/revise)

1.2.3.4 **Certificate of Incumbency (aka Secretary Certificate):** A document attesting to the name and signature of the officers of the Company authorized to sign the Guaranty~~**Incumbency Certificate:**~~ *(Bob Krauss, can you define this?)*

1.2.4 **Reconsideration of Unsecured Credit Limit**

1.2.4.1 **Challenge:** The Applicant's request for a review of the Creditor's creditworthiness determination made shortly after that determination.

1.2.4.2 **Event-driven Reconsideration:** A re-evaluation of an Applicant's creditworthiness performed in response to a material change in ~~their~~ its credit rating or financial condition.

1.2.4.3 **Material Change:** Any change in the Applicant's (or Applicant's guarantor) financial condition that might reasonably affect the amount of unsecured credit extended to that Applicant or may impact the Applicant's ability to perform on its obligations. ~~results in the Applicant's bond rating being changed by a major bond-rating agency.~~ *(This is a very first cut at this—please give your suggestions)*

1.2.4.4 **Periodic Reconsideration:** A routine ~~annual~~ review of an Applicant's creditworthiness.

1.2.4.5 **Reconsideration:** A periodic or event-driven reevaluation of an Applicant's creditworthiness.

1.2.5 **Disqualification/Remedies**

1.2.5.1 None

1.2.6 **Security Instruments**

~~1.0.1.1~~**Prepayment:** ~~Money provided by one party to the other to pay for goods or services not yet rendered, to secure performance of an agreement or compensate for possible loss or damage.~~

~~1.0.1.2~~**Cash Deposit:** ~~Money provided by one party to the other to secure performance of an agreement or compensate for possible loss or damage.~~

~~1.0.1.3~~**Letter of Credit:** ~~A letter issued by a bank authorizing the bearer to draw a stated amount of money from the issuing bank, its branches, or other associated banks or agencies, provided that the terms of the letter are met.~~

~~1.0.1.4~~**Letter of Guaranty:** ~~At the request or on the instructions of the principal, the guarantor undertakes to pay a fixed amount to the beneficiary, upon the latter's request and upon certain conditions contained in that guaranty being met.~~

~~1.0.1.5~~**Surety Bonds:** ~~An insurance policy that covers payments to the principle in the event that the other party does not perform under the contract~~

~~1.2.6.6~~1.2.6.1 **Security interest in collateral acceptable to the Creditor:** ~~A right, title, claim, or share in assets that exists by~~

~~contract as security for payment or performance of an obligation.~~
(Moved to Model Business Practices, section 1.3.6.1)

1.2.7 Calling on Security

1.2.7.1 None

1.2.8 Confidentiality

1.2.8.1 **Confidential Information:** ~~information that relates to the nonpublic financial~~ information concerning the financial condition of the Applicant, or any of the Applicant's affiliates, which is disclosed to the Creditor by the Applicant or Applicant's affiliates

1.3 Model Business Practices

1.3.1 Overall

1.3.1.1 Scope:

The procedures/processes described in these Model Business Practices apply to credit risks existing between a Supplier and a Distribution Company in the course of serving Retail Access customers, including one or more of the following:

- Risks associated with one party voluntarily doing the billing and receiving payments for the other party when billing is consolidated
- Risks associated with the Supplier's direct purchase of distribution services on behalf of their customers under the Single Retailer Model
- Risks associated with being the Default Provider or provider of last resort, who provides replacement power when a supplier defaults
- Risks associated with receiving payment for other services one party provides another.

Risks relating to wholesale transactions between a Supplier and a Distribution Company are excluded, such as:

- Provision of transmission-related ancillary services by a Distribution Company in the absence of those services being provided by an RTO or Transmission Provider
- Imbalance/settlement risk between a Supplier and a Distribution Company, where the Distribution Company is the effective provider of imbalance service.
- Purchase and sale of electricity/capacity for resale.

Risks to ~~consumers~~ customers resulting from a Supplier's failure or withdrawal from the market are also excluded (such as: contract prices, prepayments, or deposits).

When the Billing Party is regulated and is required by established regulation to provide Consolidated Billing services, these model business practices do not apply.

1.3.2 Determination of Risk Exposure

1.3.2.1 The credit exposure should be based on the dollar amount determined to be at risk and the period of time during which it remains at risk.

1.3.2.2 The same criteria and methodology for calculating credit exposure should be used for all Applicants presenting a given risk, such as the risk associated with Consolidated Billing, Provider of Last Resort, etc.

1.3.2.3 The methodology for calculating credit exposure for various risks should be published, so that Applicants have a general idea of the requirements.

1.3.2.4 Determination of how much credit to extend to a particular Applicant may be based on Applicant-Creditor agreement, regulatory policy, or both.

1.3.2.5 Specific methodologies should be developed for each of the major types of risks that incorporate the dollar amount at risk and the period of time it remains at risk.

Consolidated Billing: Issues include

- Total dollar amount billed
- Whether the Billing Party assumes the Non-Billing Party's receivables or the Pay-As-You-Get Paid method is employed
- Typical customer payment behavior (% late, % uncollectable, etc.)

Default ~~Generation Service (DGSP) Provider~~ or Provider of Last Resort (PLR) risks: Issues include

- Responsibilities if a party defaults
- Amount of load served by the party
- Likelihood of a default

Other Risks??

1.3.3 Determination of Initial Unsecured Credit Limit

1.3.3.1 The same criteria and methodology for determining the Applicants unsecured credit limit should be used for all Applicants presenting the same risk, such as the risk associated with Consolidated Billing, Provider of Last Resort, etc.

1.3.3.2 The Creditor should make available to all Applicants an Application Form that includes a checklist of required supporting financial documents.

~~1.3.3.21.3.3.3~~ 1.3.3.3 The Applicant should submit the original and two copies of the completed Application Form and three sets of the required supporting financial documents to the Creditor.

~~1.3.3.31.3.3.4~~ 1.3.3.4 The Applicant should submit the Application Form and supporting documents using a method that verifies that delivery took place, such as requiring a signature or requesting a return receipt.

~~1.3.3.41.3.3.5~~ 1.3.3.5 Timelines for processing a credit evaluation begin when the Application Form, complete with all required supporting documents, is received by the Creditor.

~~1.3.3.51.3.3.6~~ 1.3.3.6 The Creditor should evaluate the Applicant's submission for completeness and notify the Applicant of any missing elements within five (5) business days ~~(too short?/too long?)~~ of receipt of the application. Such notification should be in writing and specify the elements needed to complete the application. The written notice may be delivered in hard copy by overnight delivery, facsimile, or e-mail. The credit evaluation process timelines will be re-started when the Creditor receives the missing elements.

~~1.3.3.61.3.3.7~~ 1.3.3.7 The supporting financial information submitted with the Credit Application Form should cover at least a two-year period and include the most recent quarter for which financial data is available. For private companies the year-end financials should be audited and include notes and debt schedules, if available.

~~1.3.3.71.3.3.8~~ 1.3.3.8 The Applicant may present evidence of its rating level by a recognized rating agency(ies).

~~1.3.3.81.3.3.9~~ 1.3.3.9 Acceptable financial documents include:

- Two most recent Annual Reports;
- Most recent SEC Form 10-K and 10-Q and any independent auditor's letter to management; or if SEC Form 10-K is unavailable, substitute with audited annual financial information (including a balance sheet, income statement, and cash flow statement with notes; and any independent auditor's letter to management); and
- Most recent quarterly or monthly financial information (including a balance sheet, income statement, and cash flow statement with notes) accompanied by an attestation by Applicant's Chief Financial Officer that the information submitted is true, correct and a fair representation of Applicant's financial condition.

~~1.3.3.9~~ 1.3.3.10 When the creditworthiness requirement is being met through a guarantee arrangement, the Guarantor must meet the same creditworthiness requirements as the Applicant and submit the same financial documents, would be required of the guarantor with ~~They would also need to provide~~ additional documentation of the guarantee arrangements: ~~(wording to come later)~~

1.3.3.10.1. For a Parental Guarantee:

1.3.3.10.1.1. Incumbency Certificate with respect to signatory (party signing the contract and/or ancillary documents)

1.3.3.10.1.2. Board Resolution or bylaws demonstrating that the Guarantor can guarantee these type of transactions

1.3.3.10.2. For a Third-Party Guarantee

1.3.3.10.2.1. Incumbency Certificate with respect to signatory (party signing the contract and/or ancillary documents)

1.3.3.10.2.2. Board Resolution or bylaws demonstrating that the Guarantor can guarantee these type of transactions

1.3.3.10.2.3. Agency Agreement (the agreement that ties the Guarantor to the Applicant)

1.3.3.10.3. For a Foreign Guarantor:

1.3.3.10.3.1. Incumbency Certificate with respect to signatory (party signing the contract and/or ancillary documents)

1.3.3.10.3.2. Board Resolution, or equivalent (e.g. Articles of Association/Organization), with a copy of the by-laws demonstrating that the party has the authority to enter into such a guarantee arrangement.

~~1.3.3.9.3.3~~ 1.3.3.10.3.3. Legal opinion that states a judgment issued in the USA would be enforceable in the country of the Guarantor

~~1.3.3.10~~ 1.3.3.11 The Creditor should complete the creditworthiness evaluation within thirty (30) days of receipt of all required documents.

~~1.3.3.11~~ 1.3.3.12 The Creditor should provide the results of the evaluation to the Applicant in writing within five (5) business days of completing the evaluation. The written notice should include the rationale for the determination of the risk exposure and unsecured credit limits.

1.3.4 Reconsideration of Unsecured Credit Limit

1.3.4.1 An Applicant should be granted an opportunity to challenge an initial unsecured credit limit determination. The Challenge should be submitted within 30 days of receiving the written notification of the initial unsecured credit limit determination.

1.3.4.2 The Creditor should respond to a timely Challenge by providing the rationale for its determinations and any calculations supporting the resulting credit limit. The Creditor should also review the data used as inputs with the Applicant to ensure there were no errors or missing data that impacted the result. If there were material errors or omissions, the Creditor should re-evaluate the applicant's creditworthiness within ____ days (Same number of days as original evaluation) of receipt of corrected information.

1.3.4.3 If the Applicant remains dissatisfied with the outcome of the creditworthiness evaluation by a Creditor who is regulated, it may elevate its Challenge to the Appropriate Regulatory Authority.

1.3.4.4 An Applicant should notify the Creditor of any adverse Mmaterial adverse Cchange in its financial condition within three (3) days of such change occurring.

1.3.4.5 A Creditor may re-evaluate the creditworthiness of an applicant whenever it becomes aware of a adverse Mmaterial adverse Cchange in the Applicant's financial condition

1.3.4.6 An Applicant may request an Event-Driven Reconsideration. When there has been a favorable Material Change in their financial~~when there has been a material favorable change in their financial~~ status, such as an upgrading by a major bond rating agency

1.3.4.7 In addition to event driven reconsideration, aAn Applicant may request a re-evaluation of their creditworthiness no more than once every twelve ~~(six?)~~ months.

1.3.5 Disqualification/Remedies

1.3.5.1 Whenever the Creditor's exposure exceeds the amount covered by the Applicant's security arrangements the Creditor may immediately require additional security appropriate to the amount of additional exposure.

1.3.5.2 The Creditor's request to the Applicant for security/additional security should be made in writing.

1.3.5.3 If the required security or deposit is not tendered within the period specified in the appropriate governing document (e.g., Billing Services Agreement) twenty (20) (Five days has also been suggested, also 5 business days) calendar days of the after the Creditor's request, the Creditor may begin taking actions to reduce its exposure, including:

- (If the Applicant is a Supplier) Cease processing any Switch Requests that add to the Customers served by the Applicant;
- Moving any of the Applicant's Customers currently on Applicant Consolidated Billing to Dual Billing, effective on the Customer's next normally scheduled bill; and/or
- Reducing Discontinuing the sales of any other products or services the Creditor may have been selling to the Applicant Applicant until the credit exposure no longer exceeds the Applicant's credit limit.

~~1.3.5.4~~• ~~If the required security or deposit is not tendered within forty-five (45) days (Five days has also been suggested, also 30 days—tied to 5 days above) of the Creditor's request, the Creditor~~

~~may take Taking~~ remedial action, ~~including disqualification of the Applicant~~, as allowed by the Applicable Regulatory Authority.
~~1.3.5.51.3.5.4~~ ~~When the Applicant is a Supplier and they If a Supplier~~ can partially, but not fully, meet such a security or deposit in this time period, they can avoid disqualification by reducing the level of exposure they present to the ~~Utility Distribution Company~~ to an amount commensurate with the amount of security or deposit tendered.

1.3.6 Security Instruments

1.3.6.1 Creditors should offer ~~the option of~~ one or more of the following forms of secured credit to those Applicants ~~who do who do~~ not qualify for ~~sufficient~~ unsecured credit ~~for the risks that they present~~.

1.3.6.1.1. **Prepayment:** Money provided by one party to the other to pay for goods or services not yet rendered, to secure performance of an agreement or compensate for possible loss or damage.

1.3.6.1.2. **Cash Deposit:** Money provided by one party to the other to secure performance of an agreement or compensate for possible loss or damage.

1.3.6.1.3. **Letter of Credit:** A letter issued by a bank authorizing the bearer to draw a stated amount of money from the issuing bank, its branches, or other associated banks or agencies, provided that the terms of the letter are met.

1.3.6.1.4. **Letter of Guaranty:** At the request or on the instructions of the principal, the guarantor undertakes to pay a fixed amount to the beneficiary, upon the latter's request and upon certain conditions contained in that guaranty being met.

1.3.6.1.5. **Surety Bonds:** An insurance policy that covers payments to the principle in the event that the other party does not perform under the contract

1.3.6.1.6. **Security interest in collateral acceptable to the Creditor:** A right, title, claim, or share in assets that exists by contract as security for payment or performance of an obligation.

1.3.7 Calling on Security

1.3.7.1 Creditor may call upon the security posted by the Applicant ~~if the Applicant fails to pay the Creditor as specified in applicable agreements or tariffs or~~ after all of the following events occur:

- The Creditor provides notice to the Applicant of its intent to call upon the security posted by the Applicant unless the Applicant makes payment within five days (also suggested to replace 5 days with “the cure period”);
- Written notice of default is provided to the Applicant;
- Payment is not made within the timeframe specified; ~~and in applicable agreements or tariffs; and~~
- Any applicable cure period ends.

1.3.7.2 The Creditor may call upon the security posted by the Applicant without prior notice if the Applicant files a petition for bankruptcy (or equivalent, including the filing of an involuntary petition in bankruptcy against the Applicant, if the petition is not dismissed within 20 days).

1.3.7.3 A Distribution Company acting as the Creditor may immediately call upon the security posted by the Applicant (who is a Supplier) without prior notice if the Applicant for any reason ceases to provide service to all of its customers. ~~Within the under the Distribution Company's service territory program.~~

1.3.7.4 ~~If a Distribution Company acting as a Creditor is not paid all amounts owed within 30 days (Five days has also been suggested) of an Applicant (who is a Supplier) ceasing service to all Customers in the Utility's service territory, the Utility may call upon the security.~~

~~1.3.7.5 If the Applicant, acting as a Billing Agent, has posted security with a Creditor, the Creditor will may apply the security to the customers' delivery charges and customer late payment charges (if applicable) for any unpaid amounts due from customers.~~

1.3.8 Confidentiality

1.3.8.1 ~~Creditors should not disclose Applicant names, nor any financial or other information about Applicants. The fact that an Applicant has applied for credit and the informational content of the creditworthiness process should be deemed confidential and not subject to public disclosure. However, the Creditor may report its historical credit experience with the Applicant to credit agencies.~~

1.3.8.2 When entering into the creditworthiness evaluation process the Applicant and the Creditor should execute a non-disclosure agreement. A Non-disclosure Agreement is enclosed as Model 1.5.1.2

1.3.8.3 If the Creditor is required to disclose Confidential Information to the Applicable Regulatory Authority, it will:

- notify the Applicant in writing prior to doing so, and
- seek a protective order or other appropriate remedy from the Applicable Regulatory Authority.

1.3.8.4 ~~The Creditor may report its credit experience with the Applicant to credit agencies, but may not reveal any of the information provided by the Applicant in its application for credit.~~

1.4 Datasets – Data Dictionary

1.4.1.1 None

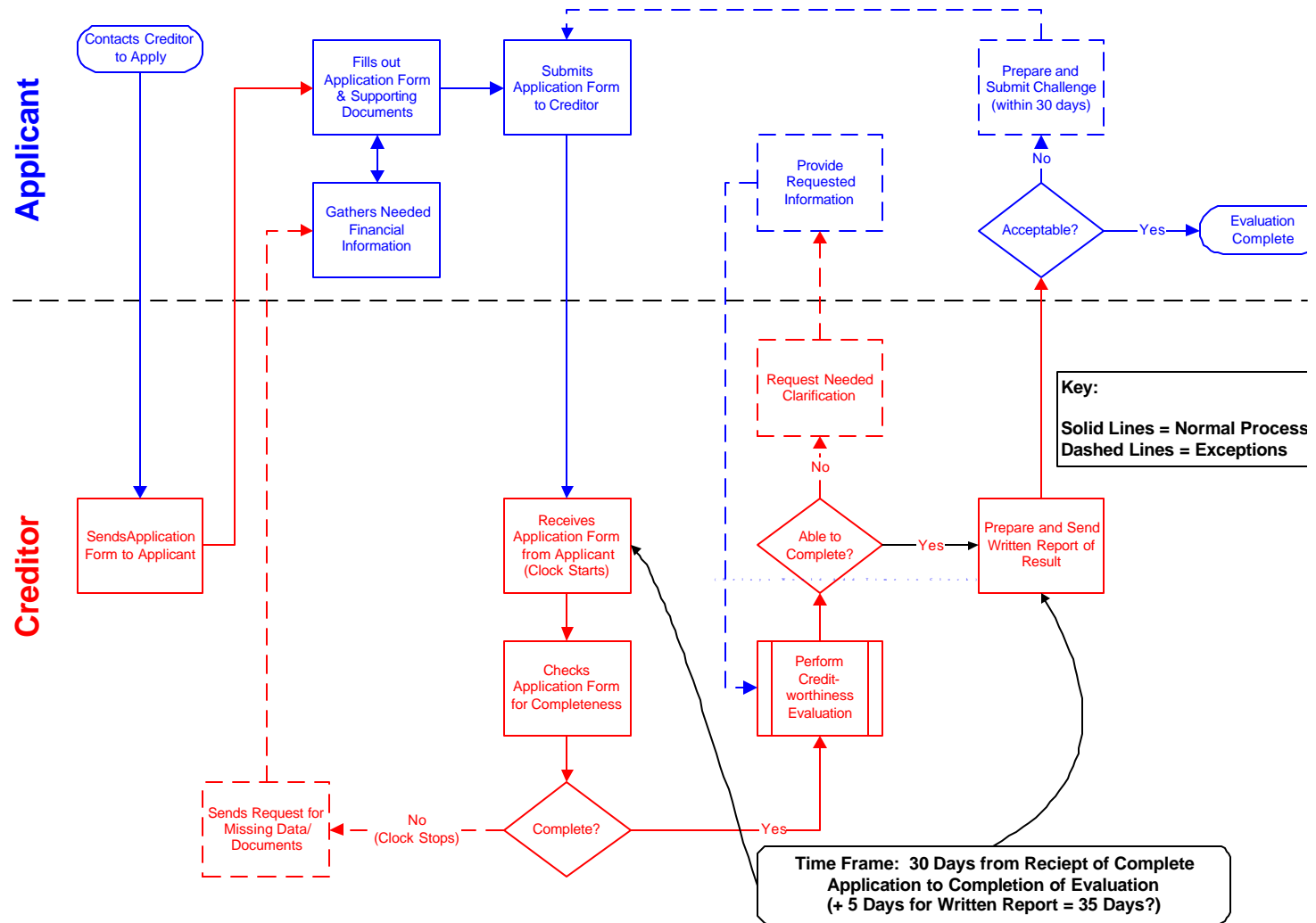
1.5 Models

1.5.1.1 Evaluation Process Flow Diagram (Next Page)

1.5.1.2 Sample Non- Disclosure Agreement: (2nd, 3rd following pages))

Creditworthiness Evaluation Process - Model

Creditworthiness Evaluation Process (Section 1.1.5.1) Draft #1 12/06/02



**NON-DISCLOSURE AGREEMENT
(Example)**

Non-Disclosure Agreement between _____ (*Applicant*), having offices at _____ (*Address, City, State, Zip Code*) (“Company”), and _____ (*Creditor*), having offices _____ (*Address, City, State, Zip Code*) (“Recipient”), is effective as of this the day of _____, 200_ (“Agreement”). Company and Recipient may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

1. "Confidential Information" means information that relates to the nonpublic financial information concerning the financial condition of Company or any of Company's Affiliates which is disclosed to Recipient by Company or any of Company's Affiliates. Confidential Information may be disclosed in written or other tangible forms (including on magnetic media), or by oral, visual, or other means. The term "Affiliate" as used in this Agreement means any person or entity directly or indirectly controlling, controlled by, or under common control with a Party.

2. Recipient of Confidential Information may use the Confidential Information only for the purpose of evaluating the financial status of Company and/or any of Company's Affiliates as such status relates to a determination by Recipient as to whether or not the Parties may enter into a written contract for the supply of electricity and/or gas.

3. Recipient shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder to (i) its Affiliates who agree, in advance, in writing, to be bound by this Agreement, and (ii) to its employees and independent contractors, and its Affiliates' employees and independent contractors, who have a need to know, for the purpose of this Agreement, and who are bound to protect the received Confidential Information from unauthorized use and disclosure under the terms of a written agreement. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of Company.

4. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:

- (a) Was publicly known at the time of Company's communication thereof to Recipient;
- (b) Becomes publicly known, through no fault of Recipient, subsequent to the time of Company's communication thereof to Recipient;
- (b) Was in Recipient's possession free of any obligation of confidence at the time of Company's communication thereof to Recipient;
- (c) Is rightfully obtained by Recipient from third parties authorized to make such disclosure without restriction; or
- (d) Is identified by Company as no longer proprietary or confidential.

5. In the event Recipient is required by law, regulation or court order to disclose any of Company's Confidential Information, Recipient will promptly notify Company in writing prior to making any such disclosure in order to facilitate Company seeking a protective order or other appropriate remedy from the proper authority. Recipient agrees to cooperate with Company, at Company's expense, in seeking such order or other remedy. Recipient further agrees that if Company is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, Recipient will furnish only that portion of the Confidential Information, which is legally required to be furnished, and Recipient will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

6. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

8. This Agreement shall become effective as of the date first written above and shall expire one (1) year thereafter **unless extended or renewed by Parties**.

9. Neither Party may assign any of its rights or obligations hereunder, except to an Affiliate or successor in interest, without the prior, written consent of the other Party, which consent shall not be unreasonably withheld.

10. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

11. This Agreement is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures concerning such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; and (c) SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF (Creditor's State) WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

12. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative.

(Applicant Name)

(Creditor Name)

[±] (state and type of organization),
organization).

a (state and type of

By :(if the above entity is a Limited Partnership
Partnership
enter name of its General Partner)

By: (if the above entity is a Limited
Partnership
enter name of its General Partner)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

Title: _____

Date: _____