

1. Creditworthiness

1.0 **Introduction**

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 (i.e., not when required by Applicable Regulatory Authority) doing the billing and receiving payments for the other party when Consolidated Billing is utilized;
- Risks associated with the Supplier's purchase of distribution services for resale to its customers under Single Retail Supplier Billing;
- Risks associated with the Distribution Company being the party that provides replacement energy when a Supplier defaults; and
- 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 or upstream transportation and related ancillary services by a Distribution Company;
- Imbalance/settlement risk between a Supplier and a Distribution Company, where the Distribution Company is the effective provider of imbalance service; and
- Purchase and sale of energy/capacity for resale.

Risks to customers resulting from a Supplier's failure or withdrawal from the market are also excluded (e.g., contract prices, prepayments, deposits).

1.1 Principles

1.1.1 Overall

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

1.1.1.2 The evaluation process and methodology for determining credit limits and risk exposure should be reflected in the applicable Governing Documents Distribution Company's Supplier tariff or subject to approval by the Applicable Regulatory Authority.

1.1.2 Determination of Risk Exposure

1.1.3 Determination of Initial Unsecured Credit Limit

1.1.4 Reconsideration of Unsecured Credit Limit

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

1.1.5 Disqualification/Remedies

1.1.6 Security Instruments

1.1.7 Calling on Security

1.1.8 Confidentiality

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 any parties involved in the process of providing energy to Retail Access Customers 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 one or more parties.

1.2.1.4 **Consolidated Billing:** The Billing Party produces a Customer bill consolidating the energy, transmission and distribution related charges of the Distribution Company and the Supplier, for which a single payment from the Customer is expected.

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.~~

~~**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. This service is provided pursuant to rules established by the Applicable Regulatory Authority.~~

~~1.2.1.7~~ 1.2.1.6 **Distribution Company:** A regulated entity that constructs and maintains the distribution facilities which deliver energy to the Customer.

~~1.2.1.8~~ 1.2.1.7 **Non-Billing Party:** The party whose charges are being combined into a statement (or invoice) prepared and rendered by another party.

~~1.2.1.9~~ 1.2.1.8 **Single Retailer Supplier Billing Model:** In this market model, a Supplier purchases energy, transmission and distribution related services and, therefore, all charges on the bill are Supplier charges. A single payment from the Customer is expected.

~~1.2.1.10~~ 1.2.1.9 **Supplier:** Persons engaged in the competitive sale of energy to end-users.

1.2.2 Determination of Risk Exposure

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—among parties, such as: regulatory documents (e.g., tariffs, rules, regulations), contractual agreements, and Distribution Company operational manuals.

1.2.3.3 **Guarantor:** The entity ~~who~~ that agrees to guarantee the Applicant's financial obligations, recognizing that such entity will be ultimately obligated to meet the Creditor's creditworthiness requirements.

1.2.3.4 **Certificate of Incumbency (Secretary Certificate):** A document attesting to the name and signature of the officers authorized to sign the ~~guaranty~~Guaranty.

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 its credit rating or financial condition.

1.2.4.3 **Material Change:** Any change in the Applicant's (or Guarantor's) financial or other 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.

~~1.1.4.4 Periodic Reconsideration: A routine review of an Applicant's creditworthiness.~~

1.2.5 Disqualification/Remedies

1.2.5.1 Switch Request: A request from a Supplier to switch a Customer to begin receiving service from that Supplier. (UBP Glossary Definition)

1.2.6 Security Instruments

1.2.7.1 **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.

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

1.2.7.3 **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.

1.2.7.4 **Guaranty:** A formal assurance of the Guarantor's obligation to pay up to a fixed amount to the beneficiary, upon certain conditions contained in that guaranty being met.

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

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

1.2.7 Calling on Security

1.2.7.1 **Cure Period:**

1.2.8 Confidentiality

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

1.3 **Model Business Practices**

1.3.1 Overall

1.2.1.1 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 (i.e., not when required by Applicable Regulatory Authority) doing the billing and receiving payments for the other party when billing is eConsolidated Billing is utilized;~~
- ~~•Risks associated with the Supplier's direct purchase of distribution services on behalf of their for resale to its customers under the Single Retailer Model;~~
- ~~•Risks associated with the Distribution Company being the Default Provider or provider of last resort, who that provides replacement energy when a Supplier defaults; and~~
- ~~•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 or upstream transportation and related ancillary services by a Distribution Company;~~
- ~~•Imbalance/settlement risk between a Supplier and a Distribution Company, where the Distribution Company is the effective provider of imbalance service; and~~
- ~~•Purchase and sale of energy/capacity for resale.~~

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

1.3.1.1 _____ Either the Supplier or the Distribution Company may take on the role of Applicant or Creditor.

1.3.1.2 The Applicant should provide the Creditor with the telephone number, e-mail address, facsimile number and mailing address of up to two authorized representatives who are designated to receive creditworthiness communications. The Creditor should provide comparable information to the Applicant. Both the Applicant and the Creditor should promptly notify the other party of any changes in this information. Both parties should manage internal distribution of communications that are received.

1.3.1.3 General information concerning the evaluation process and methodology for calculating credit exposure for various risks should be publicly available so that Applicants have access to the requirements prior to making their application.

1.3.2 ~~1.1.1~~ 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, ~~or an entity acting as the Default Provider, of Last Resort, etc.~~ or the risks associated with providing replacement power when a Supplier Defaults.

1.3.2.3 ~~The methodology for calculating credit exposure for various risks should be publicly available so that Applicants have a general idea of the requirements prior to making their application.~~

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

~~1.3.2.5~~ 1.3.2.4 Specific methodologies should be developed, where applicable, for each of the major types of risks that incorporate the dollar amount at risk and the period of time it remains at risk.

For 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; and
- When assuming receivables, typical Customer payment behavior (\$ past due, % late, % uncollectable, etc.).

For ~~Default Provider~~ risks associated with the Distribution Company providing replacement energy when a Supplier defaults risks, issues include:

- Responsibilities if a ~~party~~ Supplier defaults;
 - Amount of load served by the ~~party~~ defaulting Supplier;
- and
- Cost of replacement energy.

For ~~s~~ Services ~~o~~ one ~~p~~ party ~~p~~ provides ~~t~~ to ~~a~~ another, issues include:

- Total dollar amount for services provided; and
- Payment terms.

1.3.3 Determination of Initial Unsecured Credit Limit

1.3.3.1 Unsecured credit limits should be determined using the same criteria and methodology for all Applicants presenting the same a given risk, such as the risk associated with Consolidated Billing, or the Distribution Company providing replacement energy when a Supplier defaults, an entity acting serving as the Default Provider, etc.

1.3.3.2 Determination of the amount of credit to extend to a particular Applicant may be based on Applicant-Creditor agreement, regulatory policy, or both.

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

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

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

1.3.3.51.3.3.6 Timelines for processing a creditworthiness evaluation should begin when the Credit Application Form, complete with all required supporting documents, is received by the Creditor.

1.3.3.61.3.3.7 The Creditor should evaluate the Applicant's Credit Application Form and all supporting financial documents for completeness and notify the Applicant of any missing elements within five (5) business days of receipt. Such notification should be in writing and specify the elements needed to complete the application. The notice ~~may-should~~ be delivered by overnight delivery, facsimile, or e-mail. The creditworthiness evaluation process timelines will be re-started when the Creditor receives the missing elements.

1.3.3.71.3.3.8 The supporting financial documents 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.

1.3.3.81.3.3.9 The Applicant may present evidence of its rating level ~~by-from~~ a recognized rating agency(ies).

1.3.3.91.3.3.10 Supporting financial documents may 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 audited annual financial information (including a balance sheet, income statement, 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 all attestations required by the SEC that the information submitted is true, correct and a fair representation of Applicant's financial condition.

1.3.3.101.3.3.11 When the creditworthiness requirement is being met through a ~~G~~guarantee arrangement, ~~the creditworthiness requirements that apply to the Applicant also apply to~~ the Guarantor. ~~must meet the same creditworthiness requirements as the Applicant and submit similar supporting financial documents. In addition to submitting supporting financial documents, the Guarantor should also~~ They would also need to provide additional documentation of the ~~G~~guarantee arrangements, as applicable.

For a Parental Guarant~~ee~~:

- Certificate of Incumbency of the individual signing the contract and/or ancillary documents
- Board resolution or bylaws demonstrating that the Guarantor can guarantee this type of transaction for the Applicant

For a Third-Party ~~Guarantee~~Guaranty:

- Certificate of Incumbency of the individual signing the contract and/or ancillary documents
- Board resolution or bylaws demonstrating that the Guarantor can guarantee this type of transaction for the Applicant
- Agency agreement that ties the Guarantor to the Applicant

For a Foreign Guarantor:

- Certificate of Incumbency of the individual signing the contract and/or ancillary documents
- Board resolution, or equivalent (e.g., Articles of Association/Organization), with a copy of the bylaws demonstrating that the Guarantor has the authority to enter into such a ~~G~~guarant~~ee~~ arrangement
- Legal opinion that states a judgment for the Creditor would be enforceable in the country of the Guarantor

~~1.3.3.11~~ 1.3.3.12 The Creditor should complete the creditworthiness evaluation within ~~thirty (30)~~five (5) business days of receipt of all required documents.

~~1.3.3.12~~ 1.3.3.13 The Creditor should provide the results of the creditworthiness evaluation to the Applicant in writing within five (5) business days of completing the evaluation. The results ~~may~~should be delivered by overnight delivery, facsimile, or e-mail. 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 thirty (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 within five (5) business days of receipt by providing the rationale for its determinations and any calculations supporting the resulting credit limit. The Creditor should also review with the Applicant 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 ten (10) business days 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 Material Change in its financial condition within three (3) business days of such change.

1.3.4.5 A Creditor may re-evaluate the creditworthiness of an Applicant whenever it becomes aware of an adverse Material Change 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 its financial status, such as an upgrading by a major bond rating agency.

1.3.4.7 In addition to Event-Driven Reconsiderations, an Applicant may request a re-evaluation of its creditworthiness no more than once every twelve months.

1.3.5 Disqualification/Remedies

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

~~1.3.5.2~~ Whenever the Creditor's risk exposure becomes less than the amount covered by the Applicant's security arrangements, the Creditor should comply with the Applicant's request for an immediate reduction in the security held appropriate to the amount of risk exposure.

~~1.3.5.2~~~~1.3.5.3~~ Requests for security, additional security or reduction of security should be made in writing and delivered by overnight delivery, facsimile, or e-mail.

~~1.3.5.3~~~~1.3.5.4~~ When a Creditor requests security or a deposit ~~and~~ the required security or deposit is not tendered within the period specified in the appropriate ~~G~~governing ~~D~~documents (e.g., Billing Services Agreement) ~~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;
- Reducing the sales of any other products or services the Creditor may have been selling to the Applicant until the credit exposure no longer exceeds the Applicant's credit limit; and/or
- Taking remedial action, including disqualification of the Applicant, as allowed by the Applicable Regulatory Authority.

~~1.3.5.4~~~~1.3.5.5~~ When the Applicant is a Supplier and it can partially, but not fully, meet ~~such a request for~~ security or deposit in ~~this the~~ time period ~~specified in the appropriate~~ ~~G~~governing ~~D~~documents, it can avoid disqualification by reducing the risk exposure it presents to the 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 not qualify for sufficient unsecured credit for the risks that they present.

- Prepayment
- Cash Deposit
- Letter of Credit
- Guaranty
- Surety Bonds
- Security Interest in Collateral

Such credit option(s) should be acceptable to the Creditor, provided that the Creditor's acceptance should not be unreasonably withheld, and in accordance with standard industry practices. The Creditor and Applicant may mutually agree that the Applicant will provide other forms of credit options.

~~1.2.6.1.1. **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.~~

~~1.2.6.1.2. **Cash Deposit:** Money provided by one party to the other to secure performance of an agreement or compensate for possible loss or damage.~~

~~1.2.6.1.3. **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.~~

~~1.2.6.1.4. **Letter of Guaranty:** A formal assurance of the Guarantor's obligation to pay up to a fixed amount to the beneficiary, upon certain conditions contained in that guaranty being met. 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.~~

~~[NOTE: The above explains the process, but is not worded as a definition. No proposed language at this time.]~~

~~1.2.6.1.5. **Surety Bonds:** An insurance policy that covers payments to the principle in the event that the other party does not perform under the contract.~~

~~1.3.6.1.6.1.3.6.1.1. **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 that is acceptable to the creditor.~~

1.3.7 Calling on Security

1.3.7.1 Creditor may call upon the security posted by the Applicant 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 the Cure Period (5) days of receipt of the written notice (also suggested to replace 5 days with “the cure period”);~~

- Written notice of default is provided to the Applicant; ~~and~~
- Payment is not made within the ~~timeframe specified Cure Period;~~ ~~and~~
- ~~Any applicable cure period ends prior to the cure.~~

1.3.7.2 ~~The same criteria and methodology for establishing the length of the Cure Period should be used for all Applicants presenting a given risk, such as the risk associated with Consolidated Billing or an entity acting as the Default Provider.~~

1.3.7.3 ~~The length of the Cure Period for various risks should be publicly available so that Applicants have access to the requirements prior to making their application.~~

~~1.3.7.21.3.7.4~~ 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).

~~1.3.7.31.3.7.5~~ A Distribution Company acting as the Creditor may immediately call upon the security posted by the Applicant (~~who that~~ is a Supplier) without prior notice if the Applicant for any reason ceases to provide service to all of its customers within the Distribution Company's service territory.

1.3.8 Confidentiality

1.3.8.1 The fact that an Applicant has applied for credit and the informational content of the creditworthiness evaluation process 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. ~~This information, should be~~ deemed confidential, and should not be 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, unless non-disclosure is provided for within the Governing Documents.~~

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
- Cooperate with the Applicant in seeking a protective order or other appropriate remedy from the Applicable Regulatory Authority.

1.4 Datasets – Data Dictionary

None

1.5 Models (Review stopped here on 5/15/03)

~~1.0.41.2.8~~ **Determining Initial Unsecured Credit Limit**

1.5.3.1 Determining Initial Unsecured Credit Limit – Flow
Diagram

(Revised 4/23/03)

**1.0.21.2.9 Reconsideration of Unsecured Credit
Limit**

1.5.4.1 Challenging Initial Unsecured Credit Limit – Flow
Diagram

(New 4/23/03)

1.5.4.2 Reconsideration of Unsecured Credit Limit – Flow
Diagram

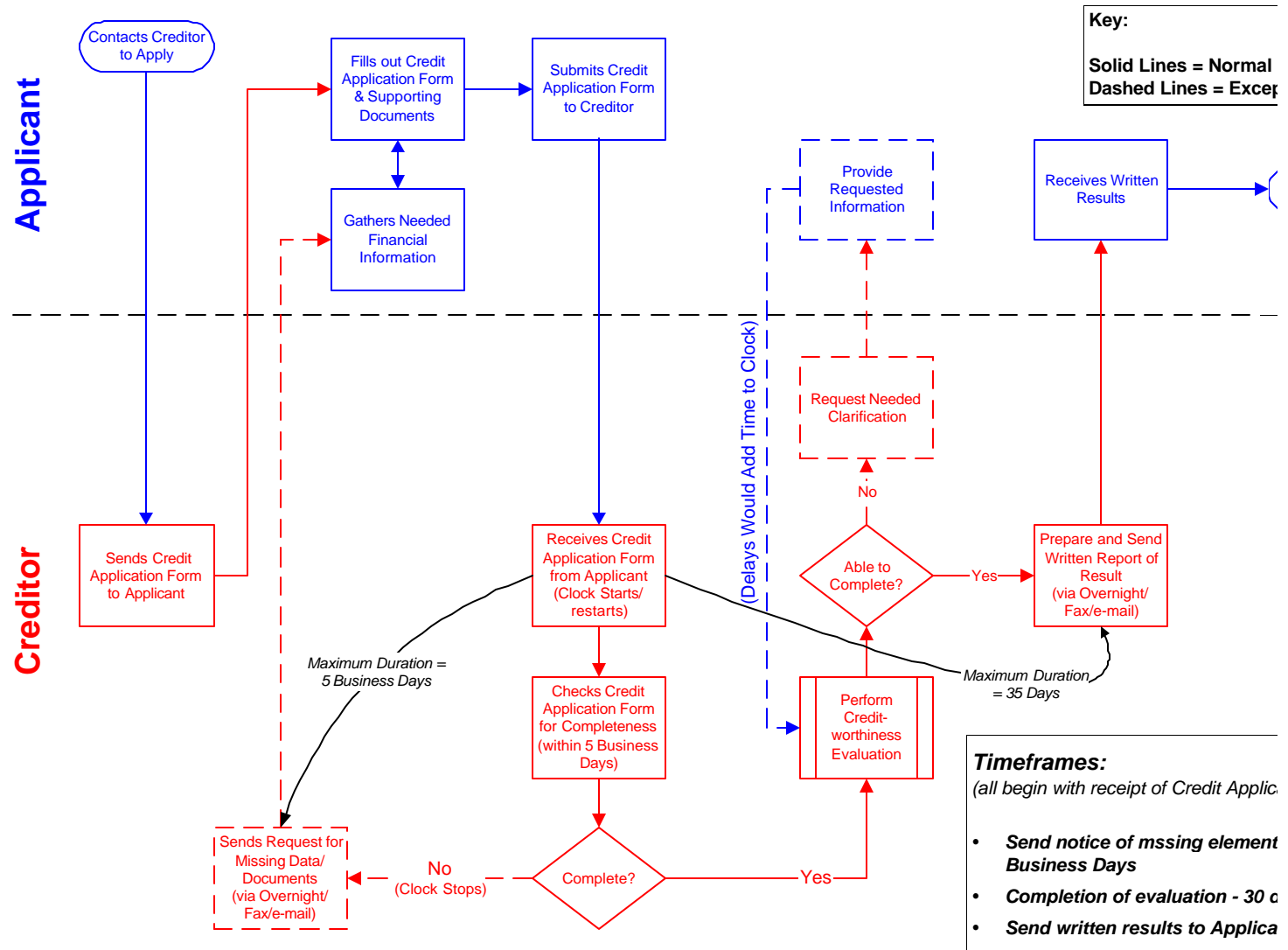
(New 4/23/03)

1.0.81.2.8 Confidentiality

1.5.8.1 Model Non- Disclosure Agreement

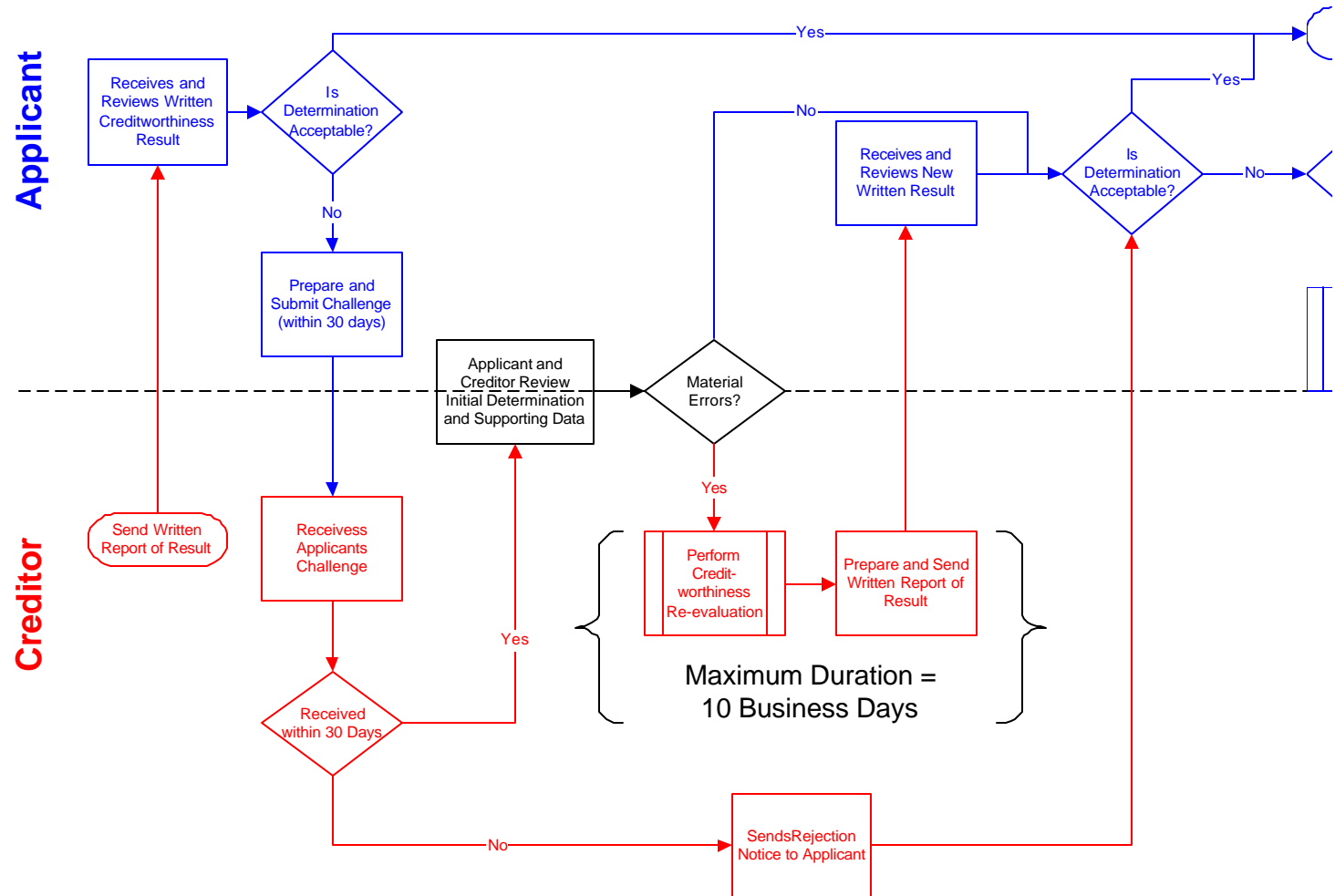
Determining Initial Unsecured Credit Limit - Model

Creditworthiness Evaluation Process (Section 1.3.3) Draft #7 (4/10/03)



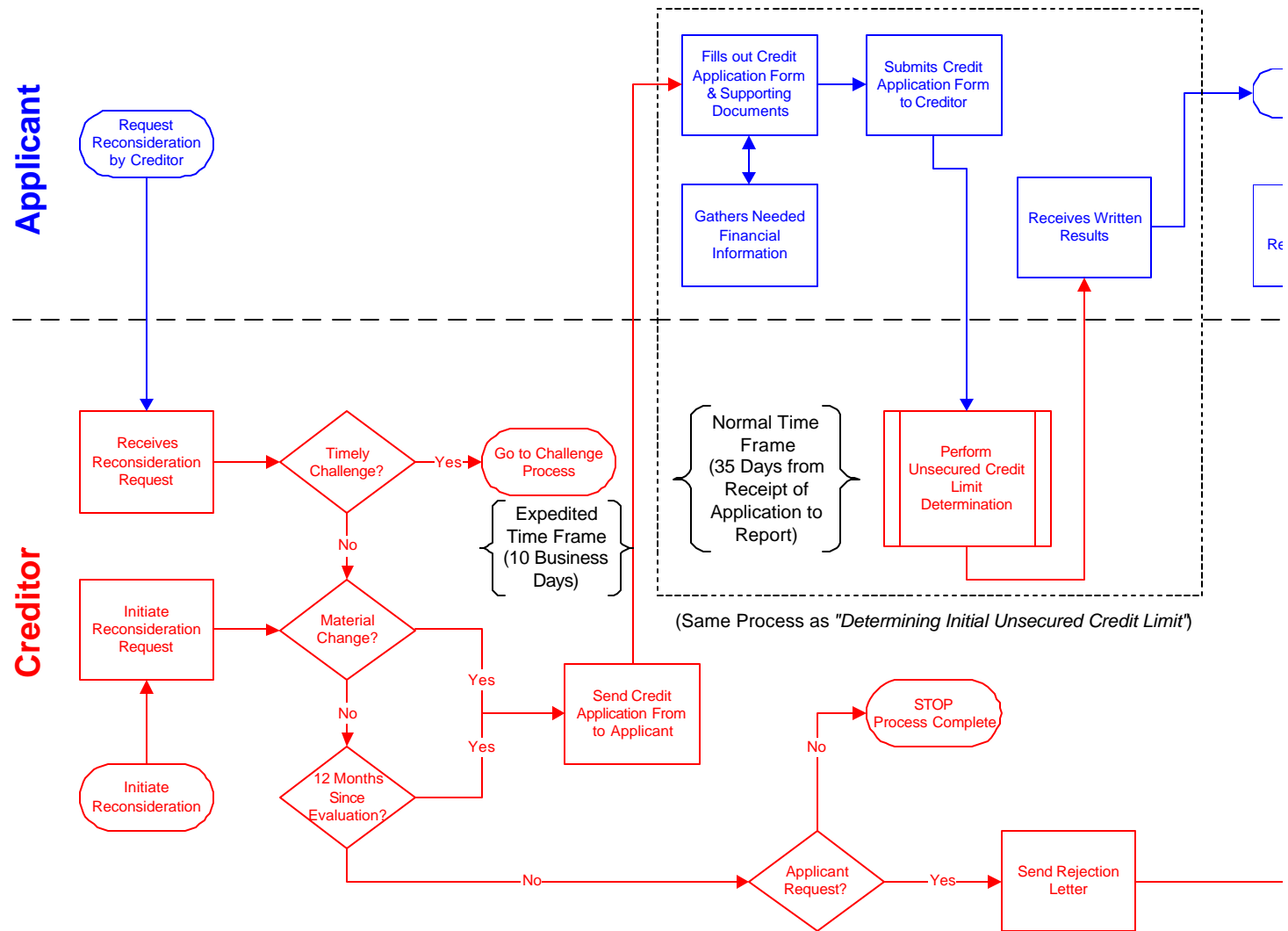
Challenging Initial Unsecured Credit Limit - Model

Creditworthiness Evaluation Process (Section 1.3.4) Draft #7 (4/10/03)



Reconsideration of Unsecured Credit Limit - Model

Creditworthiness Evaluation Process (Section 1.3.4) Draft #7 (4/10/03)



MODEL NON-DISCLOSURE AGREEMENT
(Example)

Non-Disclosure Agreement between _____ (*Applicant*), having offices at _____ (*Address, City, State, Zip Code*) (“Company”), and _____ (*Creditor*), having offices at _____ (*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-and that~~ is disclosed to Recipient by Company or any of Company's Affiliates and shall include the name of the Company, the existence of this Agreement, and the fact that Company has asked Recipient to evaluate its financial status. 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 or delivery of electricity and/or gas.

3. Recipient covenants that it will not, and will advise its officers, directors, employees, consultants and representatives and its affiliates and their officers, directors, employees, consultants and representatives to whom it discloses Confidential Information ("Representatives") not to purchase, sell, or otherwise trade in any securities of Company or its Affiliates (or facilitate or encourage the trading of any such securities by any other person) so long as the contents of the Confidential Information constitute material, nonpublic confidential information obtained pursuant to this Agreement, and have not been publicly disclosed by Company through any filing with the Securities and Exchange Commission.

~~34.~~ 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.

5. Recipient acknowledges that it and its Representatives owe a duty of confidence with respect to material nonpublic information of Company and/or Company's Affiliates, to the extent sufficient to preclude any duty of Company or Company's Affiliates to disclose (by reason of Regulation FD of the Securities and Exchange Commission) material nonpublic information communicated to Recipient or its Representatives in connection with the Confidential Information.

6. 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.

~~47~~. 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)(c)~~ Was rightfully in Recipient's possession free of any obligation of confidence at the time of Company's communication thereof to Recipient;
- ~~(e)(d)~~ Is rightfully obtained by Recipient from third parties authorized to make such disclosure without restriction; or
- ~~(d)(e)~~ Is identified by Company as no longer proprietary or confidential.

~~58~~. 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, in the opinion of counsel for Recipient, 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.

9. Confidential Information shall remain the exclusive property of the Company. The Recipient agrees that Confidential Information disclosed hereunder is being received subject to the Company's ownership rights in such Confidential Information and, further, subject to all relevant intellectual and/or proprietary property rights of the Company. The Recipient agrees that, at the conclusion of its review of the Confidential Information, or within five business days after Company's request, all copies of the Confidential Information in any form whatsoever (including, but not limited to, any reports, memoranda, or other materials prepared by the Recipient or at its discretion) will be returned to Company or destroyed and Recipient will, upon request, cause one of its Representatives to verify such return or destruction.

~~6~~10. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

~~8~~11. 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 in writing.

~~9~~12. 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.

~~40~~13. 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.

~~44~~14. This Agreement (a) 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.

4215. 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)

a (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
enter name of its General Partner)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[correct the font of the 'Date' line below]
Date: _____

Date: _____
