

VIII. (1) Exhibit to Market Participant Interactions: Outline for a Master Service Agreement Between a Utility and a Supplier

A. INTRODUCTION

The conditions that govern the relationship between a Utility and Supplier may be described in various documents. Although key contractual terms may be specified in a service agreement between the parties, other rules surrounding the interactions may be described in tariffs, regulations or guidelines. Each jurisdiction that has implemented Retail Access to date has addressed similar issues, but done so through different documentation practices.

The following outline for a “Master Service Agreement” attempts to address all of the issues surrounding the contractual relationship between a Utility and a Supplier. Recommendations pertaining to the details of many conditions in the service agreement can be found in the body of the UBP report.

The outline provides market participants with a framework from which to create a jurisdiction-specific service agreement based on the content and proposed contracts delineated in the UBP manual and the structure, rules and Governing Documents of that jurisdiction. An overriding requirement of the outline for the Master Service Agreement is that it be flexible. Each jurisdiction has its own set of Governing Documents that may or may not address the details of a contractual relationship between a Utility and a Supplier.

The outline is not intended to be a formal, legal document that dictates the terms and conditions of the contractual relationship between a Utility and a Supplier. Terms of the ultimate document will reflect the structure of the retail market. In most cases, Supplier-specific details can be addressed in appendices. The appendices of the document also can be used to incorporate other agreements between a Utility and Supplier (e.g., Billing Services Agreement, Meter Services Agreement).

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1 GENERAL AND ADMINISTRATIVE PROVISIONS

The opening section typically names the parties to which the Master Service Agreement (the Agreement) applies and the date on which the Agreement was signed.

1.1 The Purpose of this Agreement

This section identifies in general terms the purpose of the document and the general terms and conditions that bind the parties. Typical clauses may include the following:

- a.** This is a legally binding contract governing the business relationship between the parties as it pertains to electricity supply, metering services, billing, etc.
- b.** This agreement is not to be interpreted as a joint venture arrangement.
- c.** There are other applicable laws, regulations, codes, etc. that govern the relationship.

1.2 Definitions

This section includes definitions that are relevant to the Agreement. Where possible, definitions from the UBP glossary would be used, unless superseded by legislation, regulations or tariff provisions.

1.3 Term of Agreement

This section defines the effective date of the Agreement (which may differ from the date on which it is signed if, for example, the effective date of retail competition comes later) and the date the Agreement will terminate.

The date of termination may coincide with any of the following:

- a.** notification by a Supplier that no longer wishes to operate in a Utility's service territory;
- b.** the date that a modified or new service agreement commences; or
- c.** the date that certain automatic termination clauses come into effect, such as those described in Event of Default section.

This section also may include a description of the process by which one party may inform the other of Termination of Agreement.

1.4 Amendments and Modifications to this Agreement

This section identifies the rules for amending the Agreement.

1.5 Assignment, Delegation and Subcontracting

This section defines the terms and conditions under which a party to the Agreement may assign its rights or obligations to a third party. Typically, clauses would say that neither party may assign rights or obligations without the prior written consent of the non-assigning party. Such clauses usually distinguish between assignment and subcontracting. Subcontracting is not an assignment of rights or obligations, but rather a means of fulfilling the rights and obligations of the contracting party through a subcontractor.

1.6 Third Party Beneficiaries

This section reiterates the parties that are subject to this agreement and states that there are no third-party beneficiaries.

1.7 Enforceability

This section describes the enforceability of the Agreement under certain conditions. For example, if any provision of this Agreement or application thereof is held invalid or unenforceable, the remainder of the provisions in this Agreement shall not be affected and shall continue in full force, unless deletion of the provision makes the agreement fail to address its central purpose. This section also could reference the applicable venue under which the agreement will be enforced (e.g., state and federal laws).

1.8 Notices

This section indicates that all notices under the Agreement shall be in writing and acknowledges the rights of parties to change the contact persons' name and address to which notices should be sent. Any special requirements with respect to delivery options should be delineated here. Reference should be made to the contact persons and addresses listed in Appendix A.

1.9 Relevant Documents

This section might make reference to other applicable tariffs, laws, regulations, codes, regulatory guidelines, rules, operational manuals, etc. that govern or affect the relationship. A list of other Governing Documents would be included here, or in an appendix, depending on the length of the list.

In the event of a conflict, conditions and requirements in certain Governing Documents may take precedence over the terms and conditions in the Agreement. This section also should describe the hierarchy of documents (i.e., which document takes precedence in the event of a conflict).

Most jurisdictions promulgate detailed rules by which the competitive electricity retail market and retail market participants must operate. These rules tend to be described in documents separate from a contractual agreement (e.g., legislation, codes, regulatory guidelines). These rules¹ include processes by which a Utility and Supplier may interact. For example:

- ◆ Retail Settlements/Reconciliation
- ◆ Customer Information
- ◆ Customer Switching
- ◆ Load Obligations of the Supplier
- ◆ Load Profiles used by the Utility
- ◆ Utilization of Schedule Coordinators and Agreements
- ◆ System Operations/Curtailment
- ◆ Delivery and Balancing
- ◆ Tariffs and Fees

Details on these processes could be included in this Agreement by reference, or actually detailed in the Agreement itself. If these rules are incorporated by reference, a summary of the relevant documents could be included here or in an appendix. Alternatively, each of the above topics could be developed as separate sections.² To the extent the operating conditions are not spelled out in other documents, these conditions may need to be addressed specifically in the text of the Agreement.

¹Details on these topics is available in the Uniform Business Practices ("UBP") Manual

² For purposes of this outline, potential retail rules are simply listed in this section and are not developed in

1.10 Waivers

Although an Agreement usually is subject to the legislative and regulatory requirements of the jurisdiction, this section could be used to define any waivers of conditions in the relevant documents.

2 CONDITIONS PRECEDENT

This section would include a list of the things that must be in place prior to entering into the Agreement or prior to either the Agreement becoming effective or to commencing service under the Agreement. Examples might include:

- ♦ Each party is licensed as required under applicable laws and regulations.
- ♦ Each party is in compliance with applicable laws, regulations, license conditions, market rules, etc.
- ♦ The Supplier or Utility has satisfied all applicable creditworthiness requirements.
- ♦ The Supplier has entered into the appropriate agreements with schedule coordinators to allow the Supplier to serve load.
- ♦ The requisite electronic funds transfer arrangements are in place.

It may be noted that these conditions precedent are ongoing obligations of the parties and failure to continue to meet these conditions may provide grounds for default or eventual termination of the Agreement.

3 EVENTS OF DEFAULT AND REMEDIES FOR DEFAULT

This section defines the conditions under which a Supplier or Utility would be considered in default of the Agreement. Examples might include:

- a. Non-payment.
- b. Bankruptcy.
- c. Violation of license conditions or regulations, including Customer slamming.
- d. Non-compliance with terms and conditions of the Agreement, including security arrangements or Conditions Precedent.

This section would describe the actions that either party may or must take when a default occurs. Such remedies may be prescribed by applicable regulatory requirements or by general commercial law. This section also might include statements concerning the ongoing obligations of each party. Examples of remedies include the following:

- ♦ Description of notification requirements.
- ♦ Period of time during which a Party can correct the default before termination of the Agreement.

Specific remedies associated with particular events may be described in the relevant sections of the Agreement.

detail as separate sections. If these rules were set forth verbatim in the Agreement, the Agreement would be very large.

This section also might specify the interest rate that would be paid by a Supplier to a Utility or vice versa during periods of default. This section of the Agreement would be a logical place to delineate any “other arrangements” made between the parties to remedy defaults.

4 LIMITATION OF LIABILITY

This section would define the extent of liability of each party. Liability is often limited to direct or actual damages incurred as a result of a party’s action, lack of action, default or wrongful termination. Typically, damages such as consequential, indirect, special or punitive are specifically excluded by this section.

5 INDEMNIFICATION

This section typically provides that each party (the indemnifying party) shall hold harmless the other party (the indemnified party) from claims by a third party due to the negligence of the indemnifying party, subject to the limitations of liability. For example, in the event that the Utility is authorized to physically disconnect the Customer on behalf of the Supplier, the MSA should indemnify the Utility against any damages resulting from that action. Indemnification typically extends beyond the termination of the Agreement.

6 FORCE MAJEURE

This section relieves the parties of liability due to events beyond their control.

An Event of Force Majeure may be defined to include, but is not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome.

This section also should include a description of the process by which a party informs the other of the Event of Force Majeure.

7 SYSTEM OPERATION

This section of the Agreement would delineate the rights of the Utility to physically disconnect, curtail interrupt or reduce service to Customers whenever the Utility reasonably determines, or is directed by an appropriate third party (including an ISO, government agency, or civil authority), that such an act is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Utility’s facilities; to maintain the safety and reliability of the Utility’s distribution system; or due to other reasons, including Emergencies, forced outages, and potential overloading of the Utility’s distribution system. It would also address notifications to market participants and related issues.

8 SECURITY ARRANGEMENTS

[Details on this topic are available in the Uniform Business Practices (“UBP”) Creditworthiness Section]

This section of the Agreement would delineate in general terms the requisite creditworthiness requirements of the parties and describe any potential security arrangements that may be established between the parties. There are likely to be other documents that identify the methodology that must be used to determine the maximum allowable security between the parties. This section could be used to record the specific arrangements pertinent to each bilateral Agreement.

Details of any specific security arrangements required to meet creditworthiness requirements may be delineated in Appendix B.

9 METERING

[Details on this topic are available in the Uniform Business Practices (“UBP”) Vol. II: Unbundled Metering Section]

Access to competitive metering is likely to vary among jurisdictions. If metering is to be competitive, this section may describe the conditions under which a Supplier may provide such services.

This section might include a reference to any metering requirements stated in the applicable Governing Documents.

If metering services are not unbundled, and the Utility is responsible for metering service, this section would describe the metering options that are available to a Supplier. The ability of a Supplier to request and obtain an alternative meter option that would be installed whenever that Supplier obtained an accepted Switch notification could be included here.

Any technical metering requirements applicable to a Utility or Supplier also may be included here. Special optional metering services also would be identified in this section (e.g., provision of TOU metering and settlement, provision of prepaid metering, any special meter reading services, tailored read cycles).

Details of the specific metering arrangements for the Supplier may be delineated in Appendix C.

10 UNAUTHORIZED ENERGY USE

This section could be used to incorporate specific provisions, protections and penalties related to unauthorized energy use by either Party. Contractual terms usually would prohibit either party from participating in, assisting in or being the cause of unauthorized energy use from the Utility’s system. It also could be used to create an obligation on both parties to inform the other if unauthorized energy use is suspected.

In some jurisdictions, failure to comply with scheduling requirements may be considered energy theft. Details regarding this type of situation and potential remedies could be included in this section.

11 BILLING

[Details on this topic are available in the Uniform Business Practices (“UBP”) Billing and Payment Section]

This section would describe the standard billing arrangements, including the following information:

a. Any generic or default instructions that a Supplier may wish to have carried out by a Utility. For example, it might describe the default billing option that would be used for all consumers served by a Supplier unless some other option is identified in a transfer request.

b. The timing of information flow between a Supplier and Utility. For example, it might indicate that a Supplier would need to provide bill-ready information to a Utility within X business days of the date that a Utility posts consumption data for an individual Customer.

c. Delineation of the specific payment and billing schedule for settlement processing with Suppliers.

d. Specific details associated with optional billing services provided by a Utility to a Supplier.

e. Whether a Supplier or Utility will respond to consumer questions about usage and control of

usage. Any arrangements between the Supplier and Utility concerning who should handle such inquiries could be included in this section.

This section could address the issues in general terms, and detailed procedures and arrangements could be described in detail in Appendix D.

12 PAYMENT

This section would describe the form of payment under the specific arrangements negotiated by the Parties. Interest provisions for late payments could be described here. Reference could be made to a more detailed description of the process for monetary transfers in Appendix E.

13 COMMUNICATION PROCESS

This section would describe the communication process by which reports, data and information required to be exchanged are communicated between parties. Reference could be made to a separate Uniform Electronic Transactions Trading Partner Agreement in Appendix F.

14 CUSTOMER INQUIRIES

[Details on this topic are available in the Uniform Business Practices (“UBP”) Customer Call Center Section]

If applicable, this section would describe the process by which each party is obligated to handle Customer inquiries. This might include decision rules on which calls (if any) one party might handle for the other and the preferred method for getting the Customer in touch with the correct party (live transfer, referral, etc.) If delineated as a separate section, Customer inquiries related to billing could be included here. Reference to specific contact information to be provided to Customers (e.g., phone number, facsimile number, mailing address or e-mail address) could be included as Appendix G.

15 AUDITS

This section identifies the rights of each party and the circumstances under which one party has the right to audit the books and procedures of the other party that directly relate to the conditions of the Agreement. This section also could specify the time frame and other potential limitations on the right to audit.

16 DISPUTE RESOLUTION

[Details on this topic are available in the Uniform Business Practices (“UBP”) Dispute Resolution Section]

This section of the Agreement would be a logical place to define more precisely a common dispute process through identification of a specific set of procedures to which each Utility and Supplier must adhere. Alternatively, this section could describe general conditions required for a dispute resolution process and list the details of a specific set of procedures agreed to by the Parties in Appendix H.

17 NONDISCLOSURE/CONFIDENTIALITY

This section would define the type of information that is considered confidential and the responsibility of each party to the Agreement to maintain the confidentiality of such information. Confidential information typically would exclude any information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained from a third party that is not subject to any confidentiality agreement.

This section also would list the conditions under which confidential information may be disclosed.

18 REPRESENTATIONS AND WARRANTIES

This section would state that each Party represents that certain things are true, such as:

- a. Each Party is who the Party says.
- b. Legal name of Company(s) is correctly specified.
- c. Each Party is and shall remain in compliance with applicable laws and tariffs.
- d. Each Party is authorized to enter into the Agreement. Assurances that individuals have the authority to do so.
- e. Each Party will exercise reasonable care, diligence and good faith in performing duties under the Agreement.

Membership in Control Areas/Independent System Operators (or function equivalent) also could be referenced here.

19 SIGNATURE PAGE

For example:

[UTILITY]

Full Name (printed)	Signature	Date
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[SUPPLIER]

Full Name (printed)	Signature	Date
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APPENDIX A
Contact Information

Questions regarding this agreement or issues arising from this agreement should be referred to the following parties:

[UTILITY]

Mr. Mrs. Miss Ms. Other: _____	Last Name:	Full First Name:	Initial:
	Position Held:		

Contact Address (if R.R., give Lot, Concession No. and Township)

City	Province	Country	Postal/Zip Code
Phone Number	FAX Number	E-mail Address	

[SUPPLIER]

Mr. Mrs. Miss Ms. Other: _____	Last Name:	Full First Name:	Initial:
	Position Held:		

Contact Address (if R.R., give Lot, Concession No. and Township)

City	Province	Country	Postal/Zip Code
Phone Number	FAX Number	E-mail Address	

APPENDIX B
Security Arrangements to Meet Credit Requirements

[A description of the security arrangements negotiated between Parties should be included here. This section also may reference a credit application form.]

APPENDIX C
Meter Services Agreement

[A description of the metering arrangements negotiated between Parties should be included here.]

APPENDIX D
Billing Services Agreement

[A description of the billing services offered to Suppliers by the Utility would be included here. If the parties enter into a Consolidated Billing arrangement a detailed Billing Services Agreement or reference to applicable code should be included here (equally applicable to Supplier Consolidated Billing and Utility Consolidated Billing.)

APPENDIX E
Payment Arrangements

For example:

Payment shall be made according to the following instructions:

PAYMENT TO [UTILITY]

Electronic Business Transfer Other: _____	Legal Name
	Contact Information (if different than Appendix A)

Banking Institution		Account Number	
City	Province	Country	Postal/Zip Code
Phone Number	FAX Number	E-mail Address	

PAYMENT TO [SUPPLIER]

Electronic Business Transfer Other: _____	Legal Name
	Contact Information (if different than Appendix A)

Banking Institution		Account Number	
City	Province	Country	Postal/Zip Code
Phone Number	FAX Number	E-mail Address	

Specific details associated with payment between the Parties may be described and attached as a continuation of Appendix E and shall, at a minimum, describe the number of business days following issuance of an invoice that payment is due.

APPENDIX F

Uniform Electronic Transactions Trading Partner Agreement

[Description of the communication process by which reports, data and information required to be exchanged is communicated between parties. A detailed Uniform Electronic Transactions Trading Partner Agreement or reference to applicable code or rules could be included here. Parties should clearly describe technology standards, protocols and/or languages to be used for information exchange.]

APPENDIX G
Customer Inquiry Contact Information

[A description of the information that would be provided to a Customer in response to an inquiry could be included here.]

For example:

[UTILITY]

GENERAL INQUIRIES

Contact Address (if R.R., give Lot, Concession No. and Township)			
City	Province	Country	Postal/Zip Code
Phone Number	FAX Number	E-mail Address	

EMERGENCIES

Phone Number

[SUPPLIER]

Contact Address (if R.R., give Lot, Concession No. and Township)			
City	Province	Country	Postal/Zip Code
Phone Number	FAX Number	E-mail Address	

APPENDIX H
Dispute Resolution Process

[A description of the Dispute Resolution Mechanism negotiated between Parties could be detailed here. The details of dispute resolution practices also may be spelled out in any governing document. Such documents should refer to or cite applicable law, remedies, and responsibilities for the cost of frivolous allegations.]