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## TAB 1 Executive Summary

Successful development and operation of competitive energy markets require that all Market Participants have a clear understanding of their roles and obligations related to interactions between Distribution Companies and Suppliers. Role definition incorporates not only the processes and functions to be performed, but also describes interactions and communications necessary between Distribution Companies and Suppliers to enable the market to function efficiently.

Expectations, obligations and performance standards associated with the roles will be defined by the Governing Documents. Although the specifics of the documents will vary depending on the jurisdiction, following the guidelines proposed in these MPI Practices should ensure that key elements are in place so that all parties are aware of their responsibilities.

The focus of these MPI Practices is the process for establishing the operational business relationship between Distribution Companies and Suppliers. Use of these MPI Practices should ensure retail access customers are served in a consistent and efficient manner.

The relationships among Market Participants are defined by the following:

- Governing Documents
- Regulatory Documents
- Contractual Agreements
- Distribution Company Operational Manuals
- Performance Standards
- Supplier Certification

The relationships defined in the above list may include, but are not limited to: creditworthiness arrangements, dispute resolution, and working relationships when the parties jointly perform Customer activities (e.g. billing). Suggested business rules applicable to these activities may be the subject of other REQ Practices.

**TAB 2 Version Notes**

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### **TAB 3 Introduction**

The North American Energy Standards Board (“NAESB”) is a voluntary non-profit organization comprised of members from all aspects of the natural gas and electric industries. Within NAESB, the Retail Electric Quadrant (“REQ”) focuses on issues impacting the retail sale of energy to end-use Customers. The intent of the REQ Model Business Practices (“Practices”) is to furnish guidance to Distribution Companies, Suppliers, and other Market Participants involved in providing competitive energy services to end-use Customers.

These Practices are voluntary and do not address policy issues that are the subject of state legislation or regulatory decisions. Any industry participant seeking additional or amended Practices (including principles, definitions, data elements, process descriptions, and technical implementation instructions) should submit a request to the NAESB office, detailing the change, so that the appropriate process may take place to make additions to or amend the Practices.

The purpose of the Market Participant Interactions Practices (“MPI Practices”) is to describe the process for establishing the operational and business relationships between the Distribution Companies and Suppliers thus enabling them to work together in a more consistent and effective manner in a retail access environment. These MPI Practices were developed by industry participants based on their experience in the marketplace as well as currently accepted business processes. These MPI Practices have been adopted with the realization that as the industry evolves, additional and amended MPI Practices may be necessary.

## TAB 4 Business Processes and Practices

### RXQ.1 Overview

#### Scope

The procedures and processes described in these MPI Practices are intended to provide a consistent framework for identifying and documenting the roles of the various Market Participants involved in serving Customers' energy needs in competitive markets.

In practice, the Governing Documents described within these MPI Practices will guide the interactions between Market Participants including:

- Suppliers in their interactions with Distribution Companies
- Distribution Companies in their interactions with Suppliers
- Other Market Participants in their interactions with Suppliers, Distribution Companies, or both, including, but not limited to, entities that:
  - Perform the Registration Agent function (when not performed by the Distribution Company),
  - Perform meter reading,
  - Perform billing,
  - Aggregate (but not serve) Customer loads, or
  - Perform/support settlement.

## RXQ.1.1 Principles

- RXQ.1.1.1.1** The Governing Documents developed for a given geographical market area should be comprehensive and consistent with one another so that all Market Participants have a clear understanding of their roles and obligations.
- RXQ.1.1.2.1** Role definition should include not only the processes and functions to be performed, but also a description of interactions and communications necessary among Market Participants to enable the market to function efficiently.
- RXQ.1.1.3.1** All parties should strive to maximize flexibility while minimizing the number and complexity of Governing Documents.
- RXQ.1.1.4.1** Performance standards should be established for key processes and transactions to ensure that all parties fulfill their roles.
- RXQ.1.1.5.1** A testing/certification process, as defined in the Governing Documents, is desirable to ensure that new entrants to a market are qualified to perform their roles.

## RXQ.1.2 Definitions

- RXQ.0.2.1.1** **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.
- RXQ.0.2.4.1** **Billing Party:** The party performing billing services for one or more parties.
- RXQ.0.2.6.1** **Billing Services Agreement:** A legally binding document between the Distribution Company and the Supplier used when one of the parties is performing Consolidated Billing for the other party. Such document sets forth the expectations and responsibilities of each party.
- RXQ.0.2.12.1** **Consolidated Billing:** The billing option in which the Distribution Company or Supplier renders a Customer bill consolidating the energy, transmission / transportation and distribution charges of the Distribution Company and the Supplier, for which a single payment from the Customer is expected.
- RXQ.0.2.16.1** **Customer:** Any entity that takes gas and/or electric service for its own consumption.
- RXQ.0.2.17.1** **Distribution Company:** A regulated entity which provides distribution services and may provide energy and/or transmission/transportation services in a given area.
- RXQ.0.2.18.1** **Distribution Company Operational Manuals:** Documents prepared and published by Distribution Companies that describe, in detail the operating processes/procedures used to perform retail access functions.
- RXQ.0.2.19.1** **Distribution Company-Supplier Service Agreement:** A bi-lateral contractual agreement between the Distribution Company and the Supplier that determines the parties' roles, responsibilities, and interactions in serving retail access

Customers. Usually this will be the master agreement that will cover most aspects of providing retail access service. There may be one or more subsidiary agreements, covering specific functional areas.

- RXQ.0.2.22.1 Governing Documents:** Documents that determine the interactions among parties, including, but not limited to, regulatory documents (e.g., tariffs, rules, regulations), contractual agreements, and Distribution Company Operational Manuals.
- RXQ.0.2.27.1 Market Participant:** A party engaged in the process of providing competitive retail energy to end-use customers including, but not limited to, the Distribution Company, the Supplier, the Registration Agent, the settlement agent, and the meter reading entity.
- RXQ.0.2.28.1 Market Participant Service Agreements:** All contractual agreements between or among Market Participants that determine the parties' roles, responsibilities, and interactions in serving retail access Customers. These include the Distribution Company-Supplier Service Agreement and any other agreements executed by Market Participants to facilitate retail access (e.g. a contract between a meter reading entity, the Distribution Company, and the Supplier detailing how usage data will be provided).
- RXQ.0.2.30.1 Non-Billing Party:** The party whose charges are being combined into a statement (or invoice) prepared and rendered by another party.
- RXQ.0.2.35.1 Registration Agent:** An entity facilitating switches and performing record-keeping for a specified geographical area.
- RXQ.0.2.45.1 Trading Partner Agreement:** A legally binding agreement between any two Market Participants defining each party's expectations and responsibilities for doing business with each other using Uniform Electronic Transactions.

## Model Business Practices

### RXQ 1.3.1 Governing Documents

**RXQ.1.3.1.1** Typically, the following operational items are addressed in the Governing Documents:

- General
  - Any fees or charges
  - Creditworthiness
  - Standard operating rules
  - Performance standards
  - Dispute resolution process
  - Uniform Electronic Transactions
- Customer Enrollment/Switching
  - Release of Customer information
  - Switching processes and procedures
  - Customer authorization
- Customer Billing and Payment Processing
  - Meter reading and data management
  - Customer billing
  - Customer payment processing
  - Customer credit and collection processes and procedures
- Customer Service
  - Customer service processes and procedures
- Settlement
  - Energy losses
  - Load profiles
  - Scheduling processes and procedures
  - Retail settlement

**RXQ.1.3.2 Regulatory Documents**

**RXQ.1.3.2.1** Market Participants will utilize regulatory documents established by the Applicable Regulatory Authority to provide the policy framework for retail access, including the following:

- All fees and/or credits required for regulated services,
- Definitions of roles and responsibilities, including what has to be done, by when and by whom,
- Definitions of regulatory policy in such areas as: available metering and billing options, creditworthiness standards, and load profiling eligibility.

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### **RXQ.1.3.3 Contractual Agreements**

- RXQ.1.3.3.1** Market Participants should execute contractual agreements with one another to establish the legal relationship and obligations between the parties in providing retail access service to Customers.
- RXQ.1.3.3.2** At a minimum, the Distribution Company and the Supplier should execute a Distribution Company-Supplier Service Agreement encompassing, either directly or through subsidiary agreements, all aspects of providing retail access service where these parties depend upon one another.
- RXQ.1.3.3.3** To the extent that some functions required for retail access service are performed by third parties, other than a Distribution Company or Supplier, this third party should execute Market Participant Service Agreements with the Distribution Company or Supplier, as applicable, for the service(s) provided.
- RXQ.1.3.3.4** If applicable, Market Participants should also execute:
- Trading Partner Agreements and
  - Billing Services Agreements
- RXQ.1.3.3.5** In addition to specifying the roles and responsibilities, the Market Participant Service Agreement should also:
- Define the communication process between the parties,
  - Set forth performance expectations,
  - Define data required for interactions,
  - Specify the optional services, such as billing method or metering options that one party will supply to the other along with the relevant terms and conditions, and
  - Define the dispute resolution process.
- RXQ.1.3.3.6** The content of contractual agreements between Market Participants should adhere to the policies of the Applicable Regulatory Authority.

**RXQ.1.3.4      Distribution Company Operational Manuals**

**RXQ.1.3.4.1**      Detailed Distribution Company processes and procedures regarding retail access not covered in regulatory documents or contractual agreements should be stated in Distribution Company Operational Manuals.

**RXQ.1.3.4.2**      Operational manuals should be nondiscriminatory and publicly available.

**RXQ.1.3.4.3**      The content of Distribution Company Operational Manuals should adhere to the policies set in regulatory documents and applicable contractual agreements. Where required, the Distribution Company Operational Manuals should be approved by the Applicable Regulatory Authority.

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### **RXQ.1.3.5 Performance Standards**

- RXQ.1.3.5.1** Performance standards should be developed for key retail access processes and should be published in the Governing Documents.
- RXQ.1.3.5.2** Market performance should be monitored, compared to these standards, and appropriate actions taken to achieve performance that meets the standards.
- RXQ.1.3.5.3** Performance standards should be:
- nondiscriminatory;
  - publicly available;
  - collaboratively developed and modified; and
  - acknowledged by the Applicable Regulatory Authority.
- RXQ.1.3.5.4** Performance standards may be considered for the following operational items, as well as others:
- Customer Information Exchange
    - Customer information request responses issued within the appropriate time frame (indication of problems accessing and/or transmitting Customer information).
  - Customer Switching
    - Rejected Switch Requests (indication of problems obtaining necessary validation data from Customer and/or passing data from Supplier to Distribution Company);
    - Customer notification letters issued within the appropriate time frame (indication that Customers are notified of switching activity in time to take action if appropriate);
    - Customer rescissions (indication of Customer confusion, misinformation, and/or unauthorized switching); and
    - Switch responses to valid Switch Requests (or drop responses to valid drop requests) within specified time frame (indication of degree of automation and/or accuracy of switching systems and ability to implement Customer choices).
  - Meter Usage and Meter Attributes Data Transfer
    - Time frame for providing meter data (indication of degree of automation and/or accuracy of meter data management systems); and
    - Acceptable levels of estimated/missing data (indication of degree of automation and/or accuracy of meter reading and meter data management systems).

- **Billing**
  - Required turnaround of Bill Ready charges (indication of problems receiving, calculating and/or transmitting bill-ready billing information within the billing window);
  - Consolidated bills issued with all appropriate charges (indication that Customers are receiving timely and accurate consolidated bills); and
  - Amount of time to render bills after receipt of the Non-Billing Party charges (indication that consolidated bills are issued promptly).
- **Payments**
  - Customer payments provided by the Billing Party to the Non-Billing Party within an appropriate time frame (indication of problems exchanging cash transactions between the parties); and
  - Assumption of Receivables payments made by the Billing Party to the Non-Billing Party within the appropriate time frame (indication of problems exchanging cash transactions between the parties).

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## **RXQ.1.3.6 Supplier Certification**

- RXQ.1.3.6.1** Distribution Companies should have a process to certify a Supplier's, or other Market Participant's, ability to perform the roles required of them in that Distribution Company's service area.
- RXQ.1.3.6.2** Distribution Companies should apply the certification process in a non-discriminatory manner to all parties who have met all statutory/regulatory requirements for the relevant jurisdiction (e.g. if Supplier licensing is required, a license has been obtained).
- RXQ.1.3.6.3** Certification requirements should be met prior to enrolling customers (if a Supplier) or prior to providing a service (other Market Participants providing services such as meter reading or billing).
- RXQ.1.3.6.4** Key elements of certification include:
- Demonstrating the ability to exchange data and conduct business via the Uniform Electronic Transactions that have been developed for use in the jurisdiction.
  - Demonstrating the ability to handle reasonably expected volumes of transactions accurately while meeting performance standards applicable to the market area.
- RXQ.1.3.6.5** Certification requirements should be publicly available so that all potential Market Participants know what is expected.
- RXQ.1.3.6.6** Demonstrations of required abilities should include, but are not limited to, nondiscriminatory tests resulting in the successful transfer of funds and/or test data.

## **Models**

### **RXQ.1.4.1 Outline of a Non-Disclosure Agreement**

The following outline for a non-disclosure agreement (“Agreement”) attempts to address the issues surrounding information considered to be confidential which must be shared between two parties. This outline provides a framework from which to create a specific non-disclosure agreement and is not intended to be a formal, legal document.

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## **1 GENERAL AND ADMINISTRATIVE PROVISIONS**

The opening section typically names the parties to which the Agreement applies and the date on which the Agreement was initially signed.

### **1.1 Purpose of Agreement**

This section identifies in general terms the purpose of the Agreement and the general terms and conditions that bind the parties, either during the initial contact with a potential business partner or after a business relationship has been established.

Typical clauses may include the following:

- a. Neither party is obligated under this Agreement to purchase from or provide to the other party any service or product.
- b. There are other applicable laws, regulations, codes, etc. that govern the relationship.

### **1.2 Term of Agreement**

This section defines the effective date of the Agreement (which may differ from the date on which it is signed) and the date the Agreement will terminate. This section also includes a description of the process by which one party may inform the other of its desire to terminate the Agreement.

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

- a. The date that a modified or new Agreement commences;
- b. The date that certain automatic termination clauses come into effect.

### **1.3 Actions to be taken Upon Termination of Agreement**

This section describes the actions to be taken by either party upon termination of the Agreement (e.g. return or destruction of information considered confidential), including the timing of such actions.

This section also states what protections would continue after the termination of the Agreement.

### **1.4 Assignment**

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 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.

## **2 TYPES OF INFORMATION CONSIDERED CONFIDENTIAL**

This section defines the types of information considered confidential as covered by the Agreement. Such information may vary depending upon the nature of the specific Non-Disclosure Agreement.

This section also defines when the protections afforded by this Agreement may not apply to certain information.

Typically, protections may not apply to information that:

- a. Was publicly known at the time of the party's communication of this information to the receiving party;
- b. Becomes publicly known through no fault of the receiving party or affiliate subsequent to the time of the party's communication of this information to the receiving party;
- c. Was rightfully in the receiving party's or affiliate's possession free from any obligation of confidence at the time of the party's communication of this information to the receiving party;
- d. Is rightfully obtained by the receiving party or affiliate from third parties authorized to make such disclosure without restriction;
- e. Is identified by the party's communication to no longer be proprietary or confidential; or
- f. Is required to be disclosed by existing laws, regulations, or court orders.

### **3 USAGE AND PROTECTIONS OF INFORMATION CONSIDERED CONFIDENTIAL**

This section describes the specific usage of the information considered confidential as defined in the Agreement.

For example, if this is an Agreement for creditworthiness, this section could limit the usage of such information by the Creditor for the purpose of evaluation of the financial status of the Applicant and/or the Applicant's affiliates as it relates to a determination by the Creditor of whether or not the parties may enter into a written contract for the supply or delivery of energy.

The section also describes the protections of the information considered confidential.

For example, typical protections might be that the party receiving the information shall protect such information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance (i.e. physical or electronic access), but in any case using no less than a reasonable degree of care.

This section also defines who owns the information considered confidential.

### **4 DISCLOSURE OF INFORMATION CONSIDERED CONFIDENTIAL**

This section lists the conditions under which and to whom the information considered to be confidential may be disclosed.

- a. The party receiving the information could, for example, be limited to disclosing such information to affiliates, employees, agents, etc. based on those who have a need to know and are bound to protect the received information from unauthorized use and disclosure under the terms of the Agreement.
- b. In the event a party is required by law, regulation or court order to disclose any of the information, the party will promptly notify the other party prior to making any such disclosure.

## **5 ENFORCEABILITY**

This section describes the law and forum applicable to the Agreement.

This section also describes the enforceability of the Agreement under certain conditions.

For example, 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 expressed herein.

This section typically contains a statement that any delay or omission in enforcing any terms of the Agreement shall not be deemed a waiver of the right to enforce such terms and that any waiver of a breach of the Agreement shall not constitute a waiver as to any future breach.

## **6 REMEDIES**

This section describes the remedies available to the parties in the event either party fails to comply with the provisions of the Agreement (e.g. injunctive relief, damages).

## **7 REPRESENTATIONS AND WARRANTIES**

This section describes any representations and warranties provided.

## **8 CONTACT INFORMATION**

This section typically provides the name, address, telephone number, facsimile number, and e-mail address of the primary and alternate designated contacts for each party.

## **9 DISCLAIMERS**

This section typically lists disclaimers regarding items such as the responsibility for costs and the nature of the relationship.

This section may also disclaim accuracy, completeness, etc., of the information considered confidential as well as disclaiming liability resulting from the use of the information considered confidential.

## **10 MISCELLANEOUS PROVISIONS**

This section typically includes a statement that neither party shall be paid a fee for entering into this Agreement.

This section also typically includes a statement that this Agreement does not preclude the parties from collecting any additional costs as directed or authorized by a legislative body, administrative body, or court having jurisdiction over such issues.

This section may also include a statement as to the whether and under what circumstances the existence of this Agreement may be made public.

This section may include a statement that this Agreement constitutes the entire agreement between the parties and may be modified only in writing as mutually agreed to by the parties.

## 11 SIGNATURES

This section includes the names and signatures of the signatories to the Agreement for each party.

This section may also include a certification statement that says the signatory is duly authorized to sign for the party

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#### **RGQ.1.4.2      Distribution Supplier Service Agreement Outline**

The following outline for a “Distribution Company - Supplier Service Agreement” (“Agreement”) attempts to provide a framework in which to create a jurisdiction- specific Agreement consistent with the jurisdiction’s Governing Documents. The outline is not intended to be a formal, legal document that dictates the terms and conditions of the contractual relationship between the Distribution Company and Supplier. Each jurisdiction has its own set of Governing Documents that may or may not address the details of a contractual relationship between Distribution Companies and Suppliers. Thus, terms of the ultimate Agreement will reflect the structure of the individual retail market.

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## 1 GENERAL AND ADMINISTRATIVE PROVISIONS

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

### 1.1 Purpose of 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 agreement governing the business relationship between the parties as it pertains to gas 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 may be included to define terms that are relevant to the Agreement.

### 1.3 Term of Agreement

This section defines the effective date of the Agreement 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 Distribution Company'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 the "Event of Default" section.

This section may also include a description of the process by which one party may inform the other of its intent to terminate the Agreement.

### 1.4 Amendments and Modifications to Agreement

This section identifies the rules for amending or modifying 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. Subcontracting provisions may also say that neither party may utilize subcontractors without the prior written consent of the non-subcontracting party.

### 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:

- a. Severability: 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 results in the failure of the Agreement to address its central purpose.
- b. Governing law: This section identifies the applicable venue under which the Agreement will be enforced (e.g., state and federal laws).
- c. Effect of headings: This section states that headings and subheadings have no effect on interpretation of terms of the Agreement.

## 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 may be delineated here. Reference may be made to the contact persons and addresses listed in an appendix.

## 1.9 Relevant Documents

This section may reference other applicable tariffs, laws, regulations, codes, regulatory guidelines, rules, operational manuals, etc., which govern or affect the relationship.

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 gas 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 rules may include processes in which a Distribution Company and Supplier may interact. For example:

- a. Retail settlements/reconciliation
- b. Customer information
- c. Customer switching
- d. Load obligations of the Supplier
- e. Load profiles used by the Distribution Company
- f. Utilization of schedule coordinators and agreements
- g. System operations/curtailment
- h. Delivery and balancing
- i. 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. 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.

#### 1.10 Waivers

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

## 2 CONDITIONS PRECEDENT

This section would include a list of the conditions 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 may include:

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

This section may note 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 Distribution Company would be considered in default of the Agreement. Examples may 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 describes 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 may also include statements concerning the ongoing obligations of each party. Examples of remedies include the following:

- a. Description of notification requirements
- b. 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.

This section may specify the interest rate that would be paid by the defaulting party during periods of default. Any other arrangements made by the parties to remedy defaults may also be included.

#### 4 LIMITATION OF LIABILITY

This section defines 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 shall hold harmless the other 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 Distribution Company is authorized to physically disconnect the Customer on behalf of the Supplier, the Agreement should indemnify the Distribution Company 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. Such events are defined in this section.

A description of the process by which a party informs the other of the event of force majeure may also be included.

#### 7 SYSTEM OPERATION

This section may be included to delineate the rights of the Distribution Company to physically disconnect, curtail, interrupt or reduce service to Customers and/or require Suppliers to adjust the schedule or delivery of its supplies whenever the Distribution Company reasonably determines that such an act is necessary to maintain system reliability, or is directed to do so by an appropriate third party, such as a regional transmission authority, government agency, or civil authority. Notifications to Market Participants and related issues may also be included.

#### 8 SECURITY ARRANGEMENTS

This section delineates in general terms the requisite creditworthiness requirements of the parties and describes any potential security arrangements that may be established between the parties, or refers to other Governing Documents that specify creditworthiness requirements.

9 METERING

Where applicable, this section describes the conditions under which a Market Participant may provide competitive metering services. This section may also include a reference to any metering requirements stated in other Governing Documents.

If metering services are not unbundled, this section would describe the metering options made available to a Supplier by the Distribution Company.

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This section may be included to incorporate specific provisions, protections and penalties related to unauthorized energy use by the end use Customer. It also could be used to create an obligation on both parties to inform the other if unauthorized energy use is suspected.

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This section delineates, in general terms, the standard billing and payment arrangements that may be established between the parties, or refers to other Governing Documents that specify billing and payment requirements (e.g. a Billing Services Agreement).

12 BILLING AND PAYMENTS BETWEEN MARKET PARTICIPANTS

This section delineates, in general terms, the standard billing and payment arrangements that may be established between the parties, or refers to other Governing Documents that specify billing and payment requirements between the parties.

13 COMMUNICATION PROCESS

This section describes the communication process by which required reports, data, and information are communicated between parties.

14 CUSTOMER INQUIRIES

If applicable, this section describes the process by which each party is obligated to handle Customer inquiries. This may 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.).

15 AUDITS

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

16 DISPUTE RESOLUTION PROCESS

This section describes the dispute resolution process established between the parties, or refers to other Governing Documents that specify the dispute resolution process requirements.

## 17 NONDISCLOSURE/CONFIDENTIALITY

This section defines the type of information that is considered confidential and the responsibility of each party to maintain the confidentiality of such information, or refers to other Governing Documents that specify the parties' requirements for maintaining confidentiality. This section may also specify remedies for breaching the confidentiality requirements.

## 18 REPRESENTATIONS AND WARRANTIES

This section describes any representations and warranties provided.

## 19 MISCELLANEOUS PROVISIONS

### 19.1 Survival

This section states that certain obligations, such as confidentiality, payment of money due, warranties, remedies, and indemnity for events arising prior to termination or expiration, survive expiration or termination of the Agreement.

### 19.2 Non-Waiver

This section provides that a party's failure to insist on strict performance of any provision of the Agreement is not construed as a waiver of its right to enforce the provision in the future.

### 19.3 Entire Agreement

This section includes a declaration that:

- a. This Agreement contains the entire agreement of the parties;
- b. There are no other oral or written agreements between the parties on this subject matter that aren't reflected in this Agreement, and;
- c. This Agreement supersedes prior agreements.

### 19.4 Taxes

This section contains a provision that specifies responsibility for collection and payment of any applicable taxes.

## 20 CONTACT INFORMATION

This section typically provides the name, address, telephone number, facsimile number, and e-mail address of the primary and alternate designated contacts for each party.

## 21 SIGNATURES

This section includes the printed name, title, signature, and date for all signatories to the Agreement for each party.

This section may also include a certification statement that indicates the signatories are duly authorized to sign for the parties.

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**REQ.1.4.2      Distribution Supplier Service Agreement Outline**

The following outline for a “Distribution Company - Supplier Service Agreement” (“Agreement”) attempts to provide a framework in which to create a jurisdiction- specific Agreement consistent with the jurisdiction’s Governing Documents. The outline is not intended to be a formal, legal document that dictates the terms and conditions of the contractual relationship between the Distribution Company and Supplier. Each jurisdiction has its own set of Governing Documents that may or may not address the details of a contractual relationship between Distribution Companies and Suppliers. Thus, terms of the ultimate Agreement will reflect the structure of the individual retail market.

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## 1 GENERAL AND ADMINISTRATIVE PROVISIONS

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

### 1.1 Purpose of 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:

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

### 1.2 Definitions

This section may be included to define terms that are relevant to the Agreement.

### 1.3 Term of Agreement

This section defines the effective date of the Agreement and the date the Agreement will terminate.

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

- d. Notification by a Supplier that no longer wishes to operate in a Distribution Company's service territory;
- e. The date that a modified or new service agreement commences; or
- f. The date that certain automatic termination clauses come into effect, such as those described in the "Event of Default" section.

This section may also include a description of the process by which one party may inform the other of its intent to terminate the Agreement.

### 1.4 Amendments and Modifications to Agreement

This section identifies the rules for amending or modifying 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. Subcontracting provisions may also say that neither party may utilize subcontractors without the prior written consent of the non-subcontracting party.

## 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:

- d. Severability: 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 results in the failure of the Agreement to address its central purpose.
- e. Governing law: This section identifies the applicable venue under which the Agreement will be enforced (e.g., state and federal laws).
- f. Effect of headings: This section states that headings and subheadings have no effect on interpretation of terms of the Agreement.

## 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 may be delineated here. Reference may be made to the contact persons and addresses listed in an appendix.

## 1.9 Relevant Documents

This section may reference other applicable tariffs, laws, regulations, codes, regulatory guidelines, rules, operational manuals, etc., which govern or affect the relationship.

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 rules may include processes in which a Distribution Company and Supplier may interact. For example:

- j. Retail settlements/reconciliation
- k. Customer information
- l. Customer switching
- m. Load obligations of the Supplier
- n. Load profiles used by the Distribution Company
- o. Utilization of schedule coordinators and agreements
- p. System operations/curtailment
- q. Delivery and balancing
- r. 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. 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.

#### 1.10 Waivers

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

## 2 CONDITIONS PRECEDENT

This section would include a list of the conditions 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 may include:

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

This section may note 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 Distribution Company would be considered in default of the Agreement. Examples may include:

- e. Non-payment
- f. Bankruptcy
- g. Violation of license conditions or regulations, including Customer slamming
- h. Non-compliance with terms and conditions of the Agreement, including security arrangements or conditions precedent

This section describes 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 may also include statements concerning the ongoing obligations of each party. Examples of remedies include the following:

- c. Description of notification requirements
- d. 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.

This section may specify the interest rate that would be paid by the defaulting party during periods of default. Any other arrangements made by the parties to remedy defaults may also be included.

#### 4 LIMITATION OF LIABILITY

This section defines 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 shall hold harmless the other 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 Distribution Company is authorized to physically disconnect the Customer on behalf of the Supplier, the Agreement should indemnify the Distribution Company 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. Such events are defined in this section.

A description of the process by which a party informs the other of the event of force majeure may also be included.

#### 7 SYSTEM OPERATION

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**TAB 5 Related Model Business Practices**

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**TAB 6 Implementation Documents**

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