



## North American Energy Standards Board

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@naesb.org  
Home Page: www.naesb.org

### North American Energy Standards Board License Agreement From NAESB to the Certified Party

This Agreement (the "Agreement"), once signed below by both parties represents the agreement between North American Energy Standards Board ("NAESB") and [\_\_\_\_\_] (the "Licensee") with respect to Licensee's participation in the NAESB Certification Program and use of the NAESB certification service mark (the "Certification Mark"). Licensee and NAESB together will be referred to as "Parties" in this Agreement.

WHEREAS, NAESB has implemented a Certification Program for its Wholesale Gas Quadrant, Wholesale Electric Quadrant, Retail Electric Quadrant and Retail Gas Quadrant standards and model business practices ("MBPs") for software products and software solutions ("Software");

WHEREAS, requesting NAESB certification is a voluntary process and NAESB does not mandate that any person or entity be certified;

WHEREAS, NAESB's Certification Program depends on self-certification by the Licensee using the checklists provided by NAESB, depends on the truthfulness of the responses, and depends on the Licensee not omitting any material facts from its responses;

WHEREAS, NAESB has created a separate and distinct Certification Mark to permit Licensees that comply with NAESB's Certification Program and pay the appropriate license fee to demonstrate the compliance of their Software and achieve certification;

WHEREAS, the Licensee has developed and is marketing its Software to the energy market, and desires to demonstrate to that its Software complies with and implements NAESB standards and MBPs;

WHEREAS, the Licensee has carefully reviewed the appropriate self-certification checklist provided by NAESB, and determined in good faith that its Software is in compliance with the checklist and a duly authorized officer or principal of the Licensee has certified as to the accuracy and truthfulness of Licensee's responses; and

WHEREAS, this Agreement is a necessary component of the Certification Program since it governs the use of the Certification Mark and Licensee's Officer Certification that its Software is in compliance with NAESB's Certification Program;

NOW THEREFORE, for valuable consideration the Parties agree as follows:

#### 1. NAESB CERTIFICATION MARK.

- A. Display of the Certification Mark: If Licensee elects to display the Certification Mark on Licensee's Web site, it shall be at a location and in a manner consistent with the License granted herein. Licensee must provide NAESB with the URL(s) of the location(s) where the Certification Mark(s) are displayed. Licensee must also display the Certification Mark solely in connection with Software which has been certified, including instructional, advertising, or promotional materials, and Licensee must provide NAESB with copies of all materials which display the Certification Mark.



## North American Energy Standards Board

1301 Fannin, Suite 2350, Houston, Texas 77002

Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: [naesb@naesb.org](mailto:naesb@naesb.org)

Home Page: [www.naesb.org](http://www.naesb.org)

- B. Certification Program Identified: If Licensee elects to display the Certification Mark, it shall identify the quadrant (i.e., Wholesale Gas Quadrant, Wholesale Electric Quadrant or Retail Quadrants) and standards version (i.e., Version 1.7, Version 0, etc.) for which Licensee has been certified. To the extent that certification review covered only a portion of the functionality of the Software, Licensee shall note those functions that have been certified.
- C. Reviews: Licensee shall cooperate with NAESB to assess the level of consistency and quality of use of the Certification Mark on the Licensee's Web Site and other materials. Such reviews may consist of Web Site and material reviews (initial and periodic) conducted at NAESB's offices. On-site compliance reviews may be used as part of NAESB's oversight process should NAESB have reason to believe Licensee is in non-compliance with this Agreement. To comply with this review process, Licensee agrees to:
- i. At no charge to NAESB or its representatives, provide full access to the Licensee's Web Site (i.e., including password access to premium or members-only areas) and reasonable access to Licensee's records for the purpose of conducting reviews to ensure that Licensee's practices are consistent with this Agreement.
  - ii. Be subject to an on-site compliance review in response to complaints from third parties. If Licensee has breached this Agreement, Licensee agrees to reimburse NAESB for the reasonable cost of any such review and promptly rectify the inconsistent practice. NAESB shall provide, at a minimum, ten (10) days written notice to Licensee prior to initiation of an on-site review and shall perform its review during Licensee's normal business hours. NAESB shall use its reasonable effort to accommodate Licensee's schedule and shall perform its review in such a manner as to not unreasonably interfere with Licensee's operations.
  - iii. Respond within five (5) business days to all reasonable NAESB inquiries about Licensee's use of the Certification Mark.
- D. Licensee's Continuing Obligation: Licensee agrees to update its certified Software in the event NAESB issues an errata or minor correction for the standard quadrant and version certified under this Agreement. Licensee agrees to check NAESB's web site on a regular basis and make reasonable efforts to learn of the existence of any errata or minor corrections. NAESB's only obligation is to post all errata and minor corrections on its web site within a reasonable time of issuance; NAESB has no obligation to inform Licensee of the existence of any errata or minor corrections.
2. **LICENSE GRANT.** Subject to the terms and conditions of this Agreement, NAESB grants to Licensee a non-exclusive, royalty-free, worldwide, non-transferable license to use, reproduce, and publicly display copies of the Certification Mark in the form provided by NAESB to Licensee on the following Web Site(s) (the "Site"): [http://\\_\\_\\_\\_\\_](http://_____) and in materials solely related to the Software which has been certified. Licensee may not use or reproduce the Certification Mark in any manner other than as described in this Agreement. Licensee's use of the Certification Mark is limited to a certified Software, and no license is provided to use the Certification Mark on any other Site(s) or on any other products or materials of any kind produced by Licensee. Licensee may not sublicense the use of the Certification Mark, except as necessary to a third party who provides the hosting service for Licensee's Site(s) in order to allow the display of the Certification Mark on the Site(s).



## North American Energy Standards Board

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@naesb.org  
Home Page: www.naesb.org

3. **OFFICER OR PRINCIPAL CERTIFICATION.** An Officer or Principal of the Licensee agrees to certify and warrant, as set forth in Appendix A hereto, that Licensee (a) has reviewed NAESB's Certification Program checklist for the quadrant and version being certified, (b) has concluded that Licensee's Software meets or exceeds each and every requirement set forth in the relevant checklist, (c) has submitted truthful and accurate statements in all responses submitted to NAESB as of the date submitted and shall remain true and accurate during the term of this Agreement, (d) has not omitted any material fact necessary to make the statements not misleading, (e) has reviewed the content of the statement with legal counsel, (f) understands that this Agreement is limited to a two(2) year term, (f) will immediately notify NAESB of any material changes in the Software or discovery that a response is untrue, inaccurate or misleading, (g) consents to the public posting of the certification statement on NAESB's web site, and (h) has the right and authority to make these certifications and enter into this Agreement.

#### 4. **OWNERSHIP OF THE CERTIFICATION MARK - QUALITY CONTROL.**

- A. Acknowledgement; Non-assistance: Licensee acknowledges that NAESB (or its licensor) is the sole and exclusive owner of all trademarks, service marks, copyrights and other intellectual property rights of any kind in the Certification Mark. Licensee agrees that: (a) it shall do nothing inconsistent with such ownership either during the term of the Agreement or afterwards; (b) it shall use the Certification Mark in a manner that does not deviate from NAESB's rights in the Certification Mark; (c) it shall take no action that shall interfere with or diminish NAESB's right in the Certification Mark; and (d) it shall use the Certification Mark so as to create a separate and distinct impression from any other service Certification Mark or trademark that may be used.
- B. Non-Alteration: The Licensee shall not alter the Certification Mark in any form, change the data contained within the image, or artificially change the shape of the image(s). If the Certification Mark resides on a server other than Licensee's own server because a party provides a service to Licensee with regard to the Site, Licensee shall ensure that any such third party conforms to the requirements of this Agreement with regard to the Certification Mark.

#### 5. **WARRANTY, DISCLAIMER, AND INDEMNIFICATION. THE CERTIFICATION MARK IS LICENSED "AS IS" WITH NO WARRANTY OF ANY KIND.**

**CERTIFICATION APPROVAL DOES NOT STATE, AND NAESB DOES NOT REPRESENT OR WARRANT THE REQUESTER TO BE NAESB COMPLIANT IN ITS USE OF NAESB STANDARDS.**

**FURTHER, NAESB DISCLAIMS AND EXCLUDES, AND LICENSEE ACKNOWLEDGES AND AGREES TO THIS DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CERTIFICATION PROCESS OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER NAESB KNOWS OR HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. LICENSEE ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE**



## North American Energy Standards Board

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@naesb.org  
Home Page: www.naesb.org

**OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CERTIFICATION PROCESS OR USE OF THE CERTIFICATION MARK. NOTWITHSTANDING THE ABOVE, IN NO CASE SHALL NAESB'S LIABILITY TO ANY PARTY BEING CERTIFIED EXCEED TWO THOUSAND DOLLARS AND NO CENTS (\$2,000), OR THE ACTUAL DAMAGES, WHICHEVER IS LESS.**

**Licensee shall defend, indemnify and hold NAESB harmless from any third party claims against NAESB, its officers, directors, employees, agents, contractors or representatives, arising from or relating to the Licensee's use of the Certification Mark (except for claims that the Certification Mark or use of the Certification Mark infringes any rights of third parties).**

6. **TWO YEAR TERM.** Unless terminated earlier, this Agreement shall terminate two (2) years from the date that NAESB notifies Licensee that its Software has been certified. Upon termination of this Agreement, Licensee shall need to re-apply and re-qualify for a NAESB license under the then-current NAESB certification program or process, if any, if it wishes to use the Certification Mark for future periods.

### 7. TERMINATION.

A. Termination for Material Breach: NAESB may terminate this Agreement upon fourteen (14) calendar days prior written notice to Licensee of a material breach of this Agreement, unless the breach is corrected to NAESB's reasonable satisfaction within the fourteen (14) calendar day period. Material breaches include but are not limited to: (a) Licensee's use of the Mark in a manner inconsistent with the license granted under this Agreement, any use of the Mark on products or materials other than those certified, or any use otherwise contrary to the provisions of this Agreement or (b) Licensee's challenge to NAESB's ownership of the Mark or the validity of the Mark.

B. Partial Termination/Modification of Certification Mark: Upon ten (10) business days prior written notice, NAESB may terminate Licensee's right to use the Certification Mark on a server in a particular country in which NAESB reasonably determines that the continued use of the Certification Mark in such country may impose potential liability on NAESB or seriously threaten NAESB's ownership of the Certification Mark. In addition, if NAESB use of the Certification Mark is challenged by a third party or NAESB becomes aware of a significant risk of such a challenge, NAESB may at its option unilaterally provide its Licensees with a replacement for the Certification Mark which shall become the Certification Mark for all purposes under this Agreement.

C. Effect of Termination: Upon termination of this Agreement, Licensee shall immediately cease all use of the Certification Mark. Termination shall not create any obligation for NAESB to refund in whole, or in part, any license fees paid by Licensee regardless of the reason for termination.

8. **RIGHT OF PUBLICITY.** Licensee hereby grants NAESB a nonexclusive, royalty-free, worldwide license, during the term of this Agreement, to use and distribute Licensee's name in NAESB's Current List of Licensees located on NAESB's publicly accessible Web site, corporate brochures and printed materials. Upon termination or expiration of this Agreement, NAESB will remove the Licensee from NAESB's Current List of Licensees located on NAESB's publicly accessible Web site.



## North American Energy Standards Board

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: [naesb@naesb.org](mailto:naesb@naesb.org)  
Home Page: [www.naesb.org](http://www.naesb.org)

### 9. MISCELLANEOUS.

**A. Governing Law: This Agreement shall be construed in accordance with, and governed by, the laws of the State of Delaware without recourse to its choice of law or conflict of law provisions.**

B. Entire Agreement; Waiver; Relationship of the Parties: There are no promises, covenants, or undertakings between the Parties other than those expressly set forth in this Agreement. Licensee has read, understood and accepted this Agreement. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Parties.

Nothing contained in the Agreement shall be construed as creating a joint venture, partnership, agency or employment relationship between the Parties, and neither Party shall have any right to bind the other or incur any obligation on the other's behalf without the other's prior written consent.

This Agreement shall not confer any rights or remedies upon any person other than the Parties. This Agreement and the exhibits hereto constitute the entire Agreement between the Parties as to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations and understandings between them. This Agreement shall not be changed, modified, or amended except by writing signed by both Parties. This Agreement shall not be assigned by any Party without the other Party's express written approval, which shall not unreasonably be withheld.

C. Notices: For the purpose of this Agreement, all notices and/or communications given by either Party shall either be in writing or electronic notice. To be effective, any service hereunder shall be addressed as set forth below:

#### **NAESB**

Name: Rae McQuade  
Title: President  
Company Name: NORTH AMERICAN ENERGY STANDARDS BOARD  
Address: 1301 Fannin Street, Suite 2350  
Houston, Texas 77002  
Telephone: (713) 356-0060  
Telefax: (713) 356-0067  
URL: [www.NAESB.org](http://www.NAESB.org)  
Email Address: [NAESB@naesb.org](mailto:NAESB@naesb.org)



**North American Energy Standards Board**

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@naesb.org  
Home Page: www.naesb.org

**Licensee**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telefax: \_\_\_\_\_

URL: \_\_\_\_\_

Email Address: \_\_\_\_\_

This Agreement is accepted and agreed to by the Parties as of the last date appearing below.

**For NAESB:**

**For Licensee:**

By: _____	By: _____
Name: Rae McQuade	Name: _____
Title: President	Title: _____
Company: North American Energy Standards Board	Company: _____
Date: _____	Date: _____

Work Paper for JISWG



**North American Energy Standards Board**

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: [naesb@naesb.org](mailto:naesb@naesb.org)  
Home Page: [www.naesb.org](http://www.naesb.org)

---

**Appendix A**

Work Paper for JISWG



**North American Energy Standards Board**

1301 Fannin, Suite 2350, Houston, Texas 77002  
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@naesb.org  
Home Page: www.naesb.org

**OFFICER OR PRINCIPAL CERTIFICATION STATEMENT UNDER OATH**

Statement under oath of principal executive officer regarding facts and circumstances relating to the certification of his/her company's software as compliant with the below referenced standards of the North American Energy Standards Board ("NAESB").

Name of Company: \_\_\_\_\_  
Address, City, State and Postal Code: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Web Site: \_\_\_\_\_  
Name and Version of Software Product or Software Solution ("Software") Being Certified: \_\_\_\_\_

NAESB Standard or Model Business Practices Being Certified ("Standards Certified"):

- Wholesale Gas Quadrant, Version 1.4, 1.5, 1.6 or 1.7 (circle one)
- Retail Gas and Retail Electric Quadrants, Version 1.0
- Wholesale Electric Quadrant, Version 0

Scope of Certification (select all that apply):

- Data/Information Requirements
- Web Site Requirements (Informational Postings and Customer Activities)
- EDI/EDM Requirements

I, \_\_\_\_\_ [NAME OF PRINCIPAL EXECUTIVE OFFICER] \_\_\_\_\_, state, attest and certify that:

1. To the best of my knowledge, based upon a review of the Self-Certification Checklist for the above referenced Certified Standards and the Software source code:
  - a. The above referenced Software meets or exceeds each and every requirement contained in the Self-Certification Checklist for the Standards Certified;
  - b. No response to the Self-Certification Checklist for the Standards Certified contains an untrue statement of material fact as of the date of this Statement; and
  - c. No response to the Self-Certification Checklist for the Standards Certified omits a material fact necessary to make the statements in the Checklist not misleading as of the date of this Statement.
2. I have reviewed the contents of this Statement with the Company's legal counsel.
3. I understand that the certification is limited to the Software product or solution and version listed above, that certification is limited to the Standards Certified as indicated above, and that the certification shall automatically expire two (2) years from the date of this Statement.
4. In the event of a material change in the Software, or the discovery that a response to the Self-Certification Checklist is untrue, inaccurate or misleading, I will immediately notify NAESB and agree to cease using the Certification Mark.
5. I consent to the public posting of this Statement on NAESB's web site.
6. I have the right and authority to make the statements and representations herein and to enter into the corresponding License Agreement with NAESB.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

Secretary

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Officer or Principal Executive Officer's Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title