



# CITY OF HOUSTON

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**TO: NAESB Parliamentary Committee**

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I have had an opportunity to glance over the draft NAESB website terms and conditions and would like to offer the following suggestions and observations. Nothing contained herein shall constitute legal advice as NAESB has very competent counsel of its own on which to rely. The opinions expressed herein are my own, as a voting member of the NAESB Parliamentary Committee, and not those of the Mayor, City Attorney or municipality.

1. Consider deleting "... set by the NAESB Board of Directors" from the Copyright section. The Management Committee, President and General Counsel of NAESB all have, to varying degrees, a role to play in the efficient operation of the organization and the enforcement of its legal rights.
2. Does any part of the Disclaimer section need to be in all caps and bold face? It is a requirement in some jurisdictions.
3. The term "works" is not defined. Is this a legal term that is well judicated and common that does not require definition?
  - a. NEMA defines Works as "all information, text, articles, data, images, or other works of authorship"
  - b. EEI defines Content as "any message, information, data, text, software, images or other materials that you post or transmit on the EEI Web Site the List Server."
  - c. EEI also defines Information as "the editorial content an graphics on the EEI Web Site and/or List Server, as well as the computer programs used to generate the pages on the EEI Web Site and/or List Server."
4. There is not an indemnification provision.
  - a. See IEEE and AGA examples
5. Should the Trademark section begin as follows: "NAESB and the NAESB logo are registered trademarks and service marks ..."?
6. There is no provision for use of the NAESB email exploder or list server.
7. There is no disclaimer regarding the giving of legal advice, or lack thereof.
  - a. See AGA example
8. There is no caution regarding unauthorized access to secure areas (hacking).
  - a. See AGA example
9. There is no mention of submission and posting guidelines.
  - a. See AGA example and paragraphs 5 and 11 of EEI example
10. There is no disclaimer regarding use in a jurisdiction that does not enforce these terms and conditions. While certainly self-serving and self-executing, it could help in a legal defense.
  - a. See AGA example
11. There is no disclaimer of any legal obligation to monitor the website contents. Although all content is posted by NAESB and its staff, they are not aware of the appropriateness or legality of each and every post.
  - a. See EEI paragraph 13 for example.

On a positive note, I like that the Copyright Policy and Privacy Policy are incorporated by reference. To the extent the above suggestions are duplicated in these polices, I apologize for not reading close enough.

Faithfully submitted,  
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Senior Assistant City Attorney