

BOARD STAFF DRAFT FOR CONSULTATION PURPOSES ONLY MARCH 27, 2000

DRAFT

**Service Agreement
Between
[Distributor XYZ] and [Retailer ABC]**

[DATE]

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1. GENERAL AND ADMINISTRATIVE PROVISIONS

This Service Agreement (Agreement) is made and entered into as of this [DAY] of [MONTH], [YEAR], by and between [RETAILER ABC], a [CORPORATION, SOLE PROPRIETORSHIP, OTHER] organized and existing under the laws of [PROVINCE, STATE] (hereafter referred to as Retailer) and [DISTRIBUTOR XYZ] (hereafter referred to as Distributor), a corporation organized and existing under the laws of the Province of Ontario. From time to time, Retailer and Distributor shall be individually referred to herein as a “Party” and collectively as the “Parties.” All exhibits referenced to this Agreement and attached hereto shall be considered part of this Agreement and incorporated herein.

1.1 The Purpose of this Agreement

This Agreement is entered into pursuant to section 12 of the Retail Settlement Code and is a legally binding contract between Distributor and Retailer. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties by which Retailer shall offer electrical energy services in transactions with customers in Distributor’s service territory. This Agreement supersedes all other agreements or understandings, written or oral, and constitutes the sole agreement between the Parties related to the subject matter hereof.

Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Unless stated otherwise in this Agreement, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing in this Agreement is to be interpreted as establishing a joint venture between the Parties. Each Party shall be liable individually and severally for its own obligations under this Agreement.

The form of this Agreement has been developed as part of the Retail Settlements Code, has been approved by the Ontario Energy Board (the Board), and may not be waived, altered, amended or modified, except as provided herein or as authorized by the Board.

1.2 Definitions

In this Agreement:

“Act” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

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“Board” means the Ontario Energy Board;

“business day” means any day that is not a holiday;

“consumer” means a person who uses, for the person’s own consumption, electricity that the person did not generate;

“customer” means a person that has contracted for electrical service connection of a building or facility;

“Conditions of Service” means a document describing the services offered by distributors in accordance with section X of the Distribution System Code;

“distribute”, with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less;

“distribution services”, means services related to the distribution of electricity that the Board has authorized distributors to carry out, for which a charge or rate has been approved by the Board under section 78 of *Act*;

“distribution system” means a system for distributing electricity at voltages less than 50 kilovolts and includes any structures, equipment or other things used for that purpose;

“Distribution System Code” means the code, approved by the Board, and in effect at the relevant time, which, among other things, establishes the obligations of the distributor with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems;

“distributor” means a person who owns or operates a distribution system;

“Electricity Act” means the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule A;

“holiday” means a Saturday, Sunday, Statutory holiday, or any day that the Board’s offices are closed;

“Market Rules” means the rules made under section 32 of the *Electricity Act*;

“rate” means any rate, charge or other consideration, and includes a penalty for late payment;

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“Rate Handbook” means the document approved by the Board that outlines the regulatory mechanisms that will be applied in the setting of distributor rates;

“regulations” means the regulations made under the Electricity Act, or the Act;

“retail”, with respect to electricity means,

- a) to sell or offer to sell electricity to a consumer
- b) to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or
- c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity.

“Retail Settlements Code” means the code approved by the Board and in effect at the relevant time, which, among other things, establishes a distributor’s obligations and responsibilities associated with financial settlement among retailers and consumers and provides for tracking and facilitating consumer transfers among competitive retailers;

“retailer” means a person who retails electricity;

“service area”, with respect to a distributor, means the area in which the distributor is authorized by its license to distribute electricity;

“Service Transfer Request” means a written authorisation, unless otherwise specified in the Retail Settlement Code, that initiates a change from current service provision to an alternate service provision;

“Standard Supply Service Code” means the code approved by the Board and in effect at the relevant time, which, among other things, establishes the minimum conditions that a distributor must meet in carrying out its obligations to sell electricity under section 29 of the Electricity Act;

“unmetered loads” means electricity consumption that is not metered and is billed based on estimated usage;

1.3 Interpretations

Unless otherwise defined in this Agreement, words and phrases shall have the meaning ascribed to them in the *Ontario Energy Board Act, 1998* or the *Electricity Act, 1998* as the

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case may be. Headings are for convenience only and shall not affect the interpretation of this Agreement. Words importing the singular include the plural and vice versa. A reference to a document or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision of that document. An event that is required under this Agreement to occur on or by a stipulated day which is not a business day may occur on or by the next business day.

1.4 Term of Service

The term of this Agreement shall commence on the Effective Date defined as the later of:

- (a) the date of execution by both Parties; or
- (b) compliance with Conditions Precedent listed in paragraph 2.1.

This Agreement shall terminate on the earlier of:

- (a) the date Retailer informs Distributor that it no longer is operating as a retailer in Distributor's service territory;
- (b) the date of suspension, revocation, cancellation, or non-renewal of either Party's licence.

1.5 Amendments and Modifications to this Agreement

Other than the Appendices to this Agreement, the amendment or modification of any part of this Agreement must be approved by the Board. The Appendices to this Agreement may be modified or amended only by an instrument in writing, signed by both Parties. Once the amendment or modification has been accepted it shall be attached to this Agreement.

1.6 Assignment and Delegation

Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement. Notwithstanding this provision, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the Party that subcontracts its responsibility shall:

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- (a) remain fully responsible as a principal and not as a guarantor for performance of any subcontracted obligations;
- (b) serve as the point of contact between its subcontractor and the other Party; and,
- (c) cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

1.7 Enforceability

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.

1.8 Notices

Except as otherwise provided in this Agreement, any notices under the Agreement shall be in writing and sent to the contact persons at the addresses listed in Appendix A. Notices shall be effective upon delivery if delivered by:

- (a) hand;
- (b) registered mail; or
- (c) facsimile, with confirmation of receipt to the Party.

1.9 Relevant Statutes, Licences and Codes

This Agreement is subject to terms and conditions in the following documents:

- C *Ontario Energy Board Act, 1998;*
- *Electricity Act, 1998;*
- C Distributor's licence;
- C Retailer's licence;
- C Electric Distribution Rate Handbook;
- C Affiliate Relationships Code for Electricity Distributors and Transmitters;
- C Retail Settlement Code;
- C Distribution System Code; and
- C Electricity Retailer Code of Conduct.

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In the event of a conflict, conditions and requirements in these documents take precedence over the terms and conditions in this Agreement.

2. LIMITATION OF LIABILITY

- 2.1 Each Party is liable to the other Party for any loss, cost, claim, injury, liability or expense relating to or arising from any act or omission in its performance of this Agreement. This liability shall survive past the date of termination of the Agreement, with respect to any action, inaction or matter arising from the Agreement.
- 2.2 Each Party's liability to the other Party shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except to the extent caused wholly or in part by any negligent, grossly negligent or willful act or omission of the liable party.

3. INDEMNIFICATION

- 3.1 Both Parties shall hold each other harmless from claims by a third party due to the negligence of the Indemnifying Party with respect to any matter pertaining to this Agreement.
- 3.2 If a claim covered under paragraph 5.1 is brought against the indemnified Party, then the indemnifying Party shall:
 - (a) assume the defence of such claim; or,
 - (b) if it does not assume the defense of such claim, the indemnifying Party shall reimburse the indemnified Party on a monthly basis for any costs incurred by the indemnified Party for its defense.

This paragraph does not preclude the indemnified Party from participating in the defense at its own expense with counsel of its own choice and does not relieve the indemnifying Party of any of its obligations under paragraph 5.1.

- 3.3 The indemnifying Party's obligation to indemnify under this paragraph shall extend beyond termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the indemnifying Party.

4. FORCE MAJEURE

- 4.1 Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any Event of Force Majeure or other cause beyond the reasonable control of the Party.
- 4.2 An Event of Force Majeure includes, 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, 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.
- 4.3 The Party so affected by an Event of Force Majeure shall give written notice and description of such force majeure to the other Party within a reasonable time after the occurrence of the cause relied on.
- 4.4 Once written notice is received, the obligations of the Party affected by the Event of Force Majeure shall be suspended during the continuation of such inability and circumstance and shall be remedied with all reasonable dispatch.
- 4.5 In the Event of Force Majeure, both Parties shall take all reasonable steps to comply with this Agreement despite the occurrence of the force majeure event.

5. SECURITY ARRANGEMENTS

- 5.1 Distributor and Retailer shall negotiate the amount of security equal to or less than the maximum amount of security allowed under the Retail Settlement Code that shall be maintained by Retailer. Distributor and Retailer shall negotiate the methodology for calculating the required at any future point in time. The terms and conditions negotiated by Distributor and retailer shall be attached at Appendix B of this Agreement.
- 5.2 Appendix B shall also contain the following information:

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- (a) a description of the type of security that will be provided by Retailer;
 - (b) contact information for any financial or other institutions involved in the security arrangements;
 - (c) a listing of any legal documents such as a surety bond or letter of credit related to the security arrangements; and.
 - (d) any other terms and conditions related to security arrangements negotiated between Distributor and Retailer in addition to the matters referred to in paragraph 7.1.
- 5.3 A copy of the legal documents listed in accordance with clause 7.2(c) shall be appended to this Agreement.

6. METERING

- 6.1 Retailer may select a meter option for a specific consumer in conjunction with a Service Transaction Request as set out in section 10.6 of the Retail Settlement Code or Retailer may specify the default metering option to be provided by Distributor for Retailer's customers in Appendix C.

7. BILLING

- 7.1 The billing option Distributor will use for each of Retailer's customers shall be determined based on the Service Transaction Request submitted by a consumer or by a retailer on behalf of the consumer. Alternatively, Retailer may specify the default billing option to be provided by Distributor for Retailer's customers in Appendix D.
- 7.2 If Retailer chooses distributor-consolidated billing, Retailer shall provide bill-ready information to Distributor within the time period delineated in Appendix D. If bill-ready information is not provided within the designated time period, Distributor may send a bill to Retailer's consumer covering all charges for non-competitive services provided to the consumer by Distributor as defined by the Board in accordance with the Retail Settlement Code. Retailer remains liable to Distributor for all charges for competitive energy services incurred by Distributor on behalf of Retailer.

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7.3 Distributor shall bill Retailer for monies owed to Distributor under this Agreement in accordance with the Retail Settlement Code and the terms and schedule described in Appendix D.

8. PAYMENT

8.1 Payments from each Party to the other Party shall be made in accordance with the Retail Settlement Code.

10.2 The form of payment shall be in accordance with the specific arrangements negotiated by the Parties and described in Appendix E.

Each person executing this Agreement for the respective Parties expressly represents and warrants that the person has authority to bind the Party on whose behalf this Agreement is executed.

[DISTRIBUTOR XYZ]

Full Name	Title	Signature	Date

[RETAILER ABC]

Full Name (printed)	Title	Signature	Date

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APPENDIX A
Contact Information

[DISTRIBUTOR]

Mr. 9 Mrs. 9 Miss 9 Ms. 9 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	

[RETAILER]

Mr. 9 Mrs. 9 Miss 9 Ms. 9 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

A description of the security arrangements negotiated between Parties shall be contained in this Appendix as required under paragraph 7 of this Agreement.

APPENDIX C
Meter Services

The Retail Settlement Code and Distributor's Conditions of Service describe meter options and meter services a distributor may provide. Retailer may specify the meter option it would like to receive in this Appendix, as part of the Agreement. Unless otherwise specified in a Service Transaction Request, Distributor shall provide the following meter option for Retailer's customers that fall into the category identified below.

Residential and Small volume consumers (annual consumption below 150,000 kwhs)
(Check one)

- The default meter service provided under Distributor's Conditions of Service
- Remotely read interval meter
- Manually read interval meter
- Demand meter
- Other: Describe _____

All other consumers with a maximum demand greater than 50 kw or annual consumption of greater than 150,000 kwh.
(Check one)

- The default meter service provided under Distributor's Conditions of Service
- Remotely read interval meter
- Manually read interval meter
- Demand meter
- Other: Describe _____

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Unless otherwise specified in a Service Transaction Request, Distributor shall provide the following final meter read option for Retailer's customers that fall into the category identified below:

Residential and Small Volume General Service consumers with annual an consumption volume less than 150,000 kwh.

(Check one)

- Final meter read in accordance with Distributor's normal read cycle
- Special meter read on date specified in Service Transaction Request
- Last historical read if settlement bill has not been issued and transfer is from SSS to Retailer (must be based on written agreement with consumer)
- Estimated read by Distributor if transfer is from SSS to Retailer (must be based on written agreement with consumer)
- Card or Phone in Read by consumer
- Other (describe) _____

All other consumers with a maximum demand greater than 50 kw or annual consumption of greater than 150,000 kwh.

(Check one)

- Final meter read in accordance with Distributor's normal read cycle
- Special meter read on date specified in Service Transaction Request
- Last historical read if settlement bill has not been issued and transfer is from SSS to Retailer (must be based on written agreement with consumer)
- Estimated read by Distributor if transfer is from SSS to Retailer (must be based on written agreement with consumer)
- Card or Phone in Read by consumer
- Other (describe) _____

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Specific details associated with optional metering services provided by Distributor to Retailer may be described and attached as a continuation of Appendix C. These services may include, but are not limited to:

- T Detailed specifications (including manufacturer, make, functionality, etc.) for each non-standard meter type installed on behalf of Retailer
- T Non-standard meter reading frequency (e.g., monthly reading when Distributor's normal meter reading cycle is bimonthly)
- T Terms of direct access to meter by customer or by Retailer on behalf of customer.

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APPENDIX D Billing Services

The Retail Settlement Code describes billing options a distributor shall provide. Retailer may specify the billing option it would like to receive here, as part of the Agreement.

Unless otherwise specified in a Service Transaction Request, Distributor shall provide the following billing option for Retailer's customers:

(Check one)

- Retailer-consolidated billing
- Distributor-consolidated billing
- Split billing

If Retailer chooses distributor-consolidated billing, Retailer shall provide bill-ready information to Distributor within (to be specified) business days from the date that Distributor posts consumption data on the EBT System for Retailer's customer.

The bill submitted by Distributor to Retailer for monies owed to Distributor shall include, but is not limited to, the following information:

- T A summary of Distributor's meter reading practices by customer category
- T A list of languages in which the distributor provides billing service.
- T A summary of the relationship between the timing of an invoice to Retailer and the timing of meter reads (e.g., an invoice for all consumers whose meters are read on the same day will be issued within ___ business days following the meter reading date)
- T A summary of all charges that will be itemized by customer account on the invoice presented by Distributor to Retailer
- T A summary of charges for which Distributor will bill Retailer according to a different schedule than that described above or that will not be itemized by customer account, in accordance with sections 7.1.1, 7.2.1 and 7.3.1 of the Retail Settlement Code and the Rate Handbook.

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APPENDIX E Payment Arrangements

Payment shall be made according to the following instructions:

PAYMENT TO Distributor

Electronic Business Transfer 9	Legal Name
Other: _____ 9	Contact Information (if different than Exhibit A)

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

PAYMENT TO Retailer

Electronic Business Transfer 9	Legal Name
Other: _____ 9	Contact Information (if different than Exhibit 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.