

# Uniform Commercial Code Waiver

Version 1.0

February 6, 2007

## **Background Statement:**

EEI contract users have asked the EEI Drafting Committee to develop language to clarify their intent that the credit assurances provisions set forth in the contract reflect the entirety of the parties contractual, legal, and/or equitable rights to call for financial assurances, including collateral or other credit support, and that neither party may rely on or use law external to the contract, including any implied right arising from Section 2-609 of the Uniform Commercial Code or similar legal doctrines, as a way to require further financial assurances from a party already complying with the express provisions of the contract. Parties should only use this provision if they are comfortable that the four corners of the contract set forth all the circumstances under which they would want credit support from their counterparty. The waiver is limited and is not meant to waive the entirety of Section 2-609 of the Uniform Commercial Code or other legal doctrines to the extent that they relate to matters other than financial assurances.

Some EEI contract users believe that under existing law, this new provision is unnecessary, and that by checking the “Not Applicable” box for “Credit Assurances” on the Cover Sheet, a party has already waived any right implied by the Uniform Commercial Code to request or demand adequate assurances. Some of these users might therefore view this optional provision as unnecessary.

## **Provision:**

Section 8 of the Agreement and, if applicable, the Collateral Annex, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

- a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

- b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.