

MODEL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("**Agreement**") between (Applicant) , having offices at (Address, City, State, Zip Code) ("Applicant"), and (Creditor) , having offices at (Address, City, State, Zip Code) ("Creditor"), is effective as of ~~this~~ the _____ day of _____, 20__ (**"Agreement"**). Applicant and Creditor may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

If this is a stand alone document should there be a "definition of terms" listing attached?

1. "Confidential Information" means information that relates to the nonpublic information concerning the financial condition of the Applicant or any of the Applicant's Affiliates that is disclosed to the Creditor by the Applicant or any of Applicant's Affiliates. ***Is this definition consistent with Glossary definition?*** In addition, pursuant to the requirements of the ARA, ***spell out ARA; what is Glossary definition?*** the Parties may agree that Confidential Information includes the name of the Applicant, the execution of this Agreement between the Parties, and the fact that the Applicant has asked the Creditor to evaluate its financial status. Confidential Information may not be disclosed in written or other tangible forms (including on magnetic media), or by oral, visual, or other means. The term "Affiliate" as used in this Agreement means any person or entity directly or indirectly controlling, controlled by, or under common control with a Party. ***Is this definition consistent with Glossary definition?***
2. The Creditor may use the Confidential Information only for the purpose of evaluating the financial status of the Applicant and/or any of the Applicant's Affiliates as such status relates to a determination by the Creditor as to whether or not the Parties may enter into a written contract for the supply or delivery of electricity ~~and/or gas~~. ***No need to reference "gas" in an REQ document. Use "gas" in the sample RGQ document.***
3. The Creditor will take steps to restrict access to Confidential Information to those individuals who have a business reason for access. The Creditor will advise those individuals who have access of their obligation to comply with all applicable securities trading rules and laws. ***This would be cumbersome to administer. Other appropriate language could be crafted to express the intent of this issue.***
4. The Creditor shall protect such Confidential 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, electronic or computer access***), but in any case using no less than a reasonable degree of care.
5. The Creditor shall protect such Confidential Information to the extent sufficient to preclude any duty of the Applicant or the Applicant's Affiliates to disclose (by reason of Regulation FD of the Securities and Exchange Commission) material nonpublic information communicated to the Creditor or its Representatives ***Is Representative a defined term?*** in connection with the Confidential Information. (***Proposal to delete this paragraph???***)
6. The Creditor may disclose Confidential Information received hereunder to (i) its Affiliates who agree, in advance, in writing, to be bound by this Agreement, and (ii) to its employees and independent contractors, ***agents***, and its Affiliates' employees, independent contractors and agents, who have a need to know, for the purpose of this Agreement, and who are bound to protect the received Confidential Information from unauthorized use and disclosure under the terms of a written agreement. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of Applicant.[Is this clause already covered in paragraph 3 and is this paragraph in conflict with FERC and ARA rules?] ***This paragraph***

appears to impose an onerous requirement on Creditor. It is reasonable to require independent contractors, agents, and perhaps affiliates, to sign a non-disclosure agreement, but how feasible it is to have every employee to whom the information is disclosed to sign a written agreement? A procedure would need to be set up to assure that any disclosure by an affiliate to its employees and contractors would be conditioned upon a written agreement. Could be a logistical nightmare keeping up with who has signed what Agreement. Additionally, this seems inconsistent with M.B. P. 1.8.1.1.

7. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:

- (a) Was publicly known at the time of the Applicant's communication of this information to the Creditor;
- (b) Becomes publicly known, through no fault of the Creditor or Creditor's affiliates, subsequent to the time of the Applicant's communication of this information to the Creditor;
- (c) Was rightfully in the Creditor's or Creditor's affiliates possession free of any obligation of confidence at the time of the Applicant's communication of this information to the Creditor;
- (d) Is rightfully obtained by the Creditor or Creditor's affiliates from third parties authorized to make such disclosure without restriction;
- (e) Is identified by the Applicant as no longer proprietary or confidential; or
- (f) Is required to be disclosed by existing laws, regulations, or court order. *(Would be consistent with #8 below.)*

8. In the event the Creditor is required by law, regulation or court order to disclose any of the Applicant's Confidential Information, the Creditor will promptly notify the Applicant in writing prior to making any such disclosure. ~~in order to facilitate the Applicant seeking a protective order or other appropriate remedy from the proper a Applicable Regulatory Authority. The Creditor agrees not to oppose reasonable efforts by the Applicant in seeking such order or other remedy. The Creditor further agrees that if the Applicant is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, the Creditor will furnish only that portion of the Confidential Information, which is legally required to be furnished, and the Creditor will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.~~

9. *Delete and re-number subsequent sections.*

10. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

11. This Agreement shall become effective on the latest date indicated below ~~as of the date first written above.~~ *Effective date differs from many companies' policy for execution date. What if the Applicant signs the date before returning it to the creditor? The creditor would technically be responsible for keeping information confidential before they were even aware of the Non-Disclosure Agreement.*

12. Neither Party may assign any of 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.

13. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

14. This Agreement (a) is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures concerning such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; and (c) SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF (Creditor's State) WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

15. 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 as expressed herein.

Add: Any notices required by this Agreement shall be given in hand or sent by first class mail to the applicable address/fax/e-mail as provided below:

If...../to:

If...../to:

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative.

 (Applicant Name) ,
a (state and type of organization) ,

By: (if the above entity is a Limited Partnership
enter name of its General Partner)

By: _____
Name: _____
Title: _____
Date: _____

 (Creditor Name) ,
a (state and type of organization) ,

By: (if the above entity is a Limited Partnership
enter name of its General Partner)

By: _____
Name: _____
Title: _____
Date: _____

Responsibility for Costs. No fees or other amounts are payable as a result of the application of this Agreement. Each party shall be solely and independently responsible for its conduct and any expenses or costs incurred under this Agreements.

Nature of Relationship. The Parties hereto agree that no employment agency, joint venture, teaming, partnership, business arrangement, or fiduciary relationship shall be deemed to exist or arise between them with respect to this Agreement.