

**MODEL NON-DISCLOSURE AGREEMENT**  
**(Example)**

This Non-Disclosure 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 \_\_\_\_\_, 200\_\_\_\_ ("Agreement"). Applicant and Creditor may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

1. "Confidential Information" means information that relates to the nonpublic financial information concerning the financial condition of Applicant or any of Applicant's Affiliates ~~which that~~ is disclosed to Creditor by Applicant or any of Applicant's Affiliates and shall include the name of the Applicant, the existence of this Agreement, and the fact that Applicant has asked Creditor to evaluate its financial status. Confidential Information may 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.

2. Creditor may use the Confidential Information only for the purpose of evaluating the financial status of Applicant and/or any of Applicant's Affiliates as such status relates to a determination by Creditor as to whether or not the Parties may enter into a written contract for the supply or delivery of electricity.

3. Creditor covenants that it will not, and will advise its officers, directors, employees, consultants and representatives and its affiliates and their officers, directors, employees, consultants and representatives to whom it discloses Confidential Information ("Representatives") not to purchase, sell, or otherwise trade in any securities of Applicant or its Affiliates (or facilitate or encourage the trading of any such securities by any other person) so long as the contents of the Confidential Information constitute material, nonpublic confidential information obtained pursuant to this Agreement, and such information has not been publicly disclosed by Applicant through any filing with the Securities and Exchange Commission.

~~3~~4. 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, but in any case using no less than a reasonable degree of care.

5. Creditor acknowledges that it and its Representatives owe a duty of confidence with respect to material nonpublic information of Applicant and/or Applicant's Affiliates, to the extent sufficient to preclude any duty of Applicant or Applicant's Affiliates to disclose (by reason of Regulation FD of the Securities and Exchange Commission) material nonpublic information communicated to Creditor or its Representatives in connection with the Confidential Information.

6. 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 Applicant's communication thereof to Recipient;
- (b) Becomes publicly known, through no fault of Creditor, subsequent to the time of Applicant's communication thereof to Creditor;
- ~~(b)~~(c) Was rightfully in Creditor's possession free of any obligation of confidence at the time of Applicant's communication thereof to Creditor;

~~(e)~~(d) Is rightfully obtained by Creditor from third parties authorized to make such disclosure without restriction; or

~~(d)~~(e) Is identified by Applicant as no longer proprietary or confidential.

~~5~~8. In the event Creditor is required by law, regulation or court order to disclose any of Applicant's Confidential Information, Creditor will promptly notify Applicant in writing prior to making any such disclosure in order to facilitate Applicant seeking a protective order or other appropriate remedy from the proper authority. Creditor agrees to cooperate with Applicant, at Applicant's expense, in seeking such order or other remedy. Creditor further agrees that if Applicant is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, Creditor will furnish only that portion of the Confidential Information, which, in the opinion of counsel for Creditor, is legally required to be furnished, and Creditor will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

9. Confidential Information shall remain the exclusive property of the Applicant. The Creditor agrees that Confidential Information disclosed hereunder is being received subject to the Applicant's ownership rights in such Confidential Information and, further, subject to all relevant intellectual and/or proprietary property rights of the Applicant. At Applicant's request, at the conclusion of its review of the Confidential Information the Creditor agrees to promptly return or destroy all copies of the Confidential Information in any form whatsoever (including, but not limited to, any reports, memoranda, or other materials prepared by the Creditor or at its discretion) and Creditor will, upon request, cause one of its Representatives to verify such return or destruction.

~~6~~10. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

~~8~~11. This Agreement shall become effective as of the date when both parties have signed below and shall expire three (3) years thereafter unless extended or renewed by Parties in writing.

~~9~~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.

~~40~~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.

~~44~~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.

1215. 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.

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: \_\_\_\_\_