

Pre-work for January 13, 2004 SUIS meeting

At the December 3, 2003 SUIS Conference Call, the members agreed to change the Model Non-Disclosure Agreement to an Outline of a Non-disclosure Agreement and to move it to the Market Participant Interactions document. Below is a first draft of this non-disclosure agreement outline.

SUIS members should review this document as it will be discussed in the January 13 meeting in Atlanta.

*Cathy Heath
December 19, 2003*

Exhibit to Market Participant Interactions: Outline for a Non-Disclosure Agreement

A. Introduction

The following outline for a “Non-Disclosure Agreement” attempts to address all of the issues surrounding confidential information which must be shared between two parties. The outline provides a framework from which to create a specific non-disclosure agreement and is not intended to be a formal, legal document.

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1 GENERAL AND ADMINISTRATIVE PROVISIONS

The opening section typically names the parties to which the Non-Disclosure Agreement (the Agreement) applies and the date on which the Agreement was initially signed.

1.1 The Purpose of this Agreement

This section identifies in general terms the purpose of the document and the general terms and conditions that bind the parties. Typical clauses may include the following:

- a. Neither party is obligated under this Agreement to purchase from or provide to the other party any service or product.
- b. There are other applicable laws, regulations, codes, etc. that govern the relationship.

1.2 Term of Agreement

This section defines the effective date of the Agreement (which may differ from the date on which it is signed) and the date the Agreement will terminate. This section also includes a description of the process by which one party may inform the other of Termination of Agreement.

The date of termination may coincide with any of the following:

- a. The date that a modified or new Agreement commences;
- b. The date that certain automatic termination clauses come into effect.

1.3 Assignment

This section defines the terms and conditions under which a party to the Agreement may assign its rights or obligations to a third party. Typically, clauses would say that neither party may assign its rights nor 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.

2 DEFINITIONS OF CONFIDENTIAL INFORMATION

This section defines the “confidential information” to be included in the Agreement. The definition of confidential information shall differ depending upon the nature of the Non-Disclosure Agreement.

3 USAGE AND PROTECTIONS OF CONFIDENTIAL INFORMATION

This section describes the specific usage of the confidential information defined in the Agreement. For example, if this is an Agreement for creditworthiness, this section could limit the usage of confidential information by the creditor for the purpose of evaluation of the financial status of the applicant and/or the applicant’s affiliates as such 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.

The section also describes the protections of the confidential information as follows:

- a. The Party receiving the confidential information 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.

4 DISCLOSURE OF CONFIDENTIAL INFORMATION

This section lists the conditions under which and to whom the confidential information may be disclosed.

- a. The party receiving the confidential information could, for example, be limited to disclosing such information to affiliates, employees, agents, etc. based on those who have a need to know and are bound to protect the received information from unauthorized use and disclosure under the terms of the Agreement.
- b. In the event a Party is required by law, regulation or court order to disclose any of the confidential information, the Party will promptly notify the other party prior to making any such disclosure.

5 RESTRICTIONS

This section limits the restrictions of this Agreement on use and disclosure of confidential information. Restrictions will not apply to information that:

- a. Was publicly known at the time of the Party's communication of this information to the receiving Party;
- b. Becomes publicly known through no fault of the receiving Party or affiliate subsequent to the time of the Party's communication of this information to the receiving Party;
- c. Was rightfully in the receiving Party's or affiliates possession free from any obligation of confidence at the time of the Party's communication of this information to the receiving Party;
- d. Is rightfully obtained by the receiving party or affiliate from third parties authorized to make such disclosure without restriction;
- e. Is identified by the Party's communication that the information is no longer proprietary or confidential; or
- f. Is required to be disclosed by existing laws, regulations, or court orders.

6 ENFORCEABILITY

This section describes the enforceability of the Agreement under certain conditions. For example, 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 expressed herein.

7 REPRESENTATIONS AND WARRANTIES

This section describes any representations and warranties provided.

8 CONTACTS

This section provides the name, address, fax, and e-mail of two designated contact people.

9 SIGNATURE PAGE

This section includes the signatures of each party as well as witnesses to each signing.

10 DISCLAIMERS

This section lists disclaimers on "Responsibility for Costs" and Nature of Relationship".

