

The attached shows:

*(in yellow) those changes that were agreed upon on March 18, but which were not included in the April 12 version you sent out.

Nothing new has been added.

*(in green) incorporation of Phillip P's suggestions, as well as those comments by National Gas Fuel that we understood and agreed with.

This includes an addition to the Table of Contents -- a Section called "Non-Waiver".

(There were some comments from National Gas Fuel -- 8 b, c, d, e -- which we, like Phillip, did not understand the meaning of. See separate e-mail.)

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

A. Take out A. here – there is no B. Introduction

The following outline for a ~~“Non-Disclosure Agreement”~~ **non-disclosure agreement (“Agreement”)** attempts to address all of the issues surrounding information considered to be confidential which must be shared between two parties. This 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 Purpose of Agreement

This section identifies in general terms the purpose of the Agreement and the general terms and conditions that bind the parties, either during the **initial SHOULD BE INITIAL** contact with a potential business partner or after a business relationship has been established.

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 its desire to terminate the 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 Actions to be taken Upon Termination of Agreement

This section **Describes describes** the actions to be taken by either party upon termination of the Agreement (e.g. return or destruction of information considered confidential), including the timing of such actions.

This section would also state what protections would continue after the termination of the Agreement.

1.4 Assignment

This section **PUT SPACE HERE** 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 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.

2 TYPES OF INFORMATION CONSIDERED CONFIDENTIAL

This section **PUT SPACE HERE** defines the types of information considered confidential as covered by the Agreement. Such information may vary depending upon the nature of the specific Non-Disclosure Agreement.

This section also defines when the protections afforded by this Agreement may not apply to certain information.

Typically, protections may 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- affiliate's** 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 to no longer be proprietary or confidential; or
- f. Is required to be disclosed by existing laws, regulations, or court orders.

3 USAGE AND PROTECTIONS OF INFORMATION CONSIDERED CONFIDENTIAL

This section **PUT SPACE HERE** describes the specific usage of the information considered confidential as defined in the Agreement.

For example, if this is an Agreement for creditworthiness, this section could limit the usage of such information by the Creditor for the purpose of evaluation of the financial status of the Applicant and/or the Applicant's affiliates as it relates to a determination by the Creditor of whether or not the parties may enter into a written contract for the supply or delivery of energy.

The section also describes the protections of the information considered confidential:

For example, typical ~~Typical~~ protections might be that the party receiving the information shall protect such 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, ~~or~~ electronic ~~or computer~~ access), but in any case using no less than a reasonable degree of care.

4 DISCLOSURE OF INFORMATION CONSIDERED CONFIDENTIAL

This section **PUT SPACE HERE** lists the conditions under which and to whom the information considered to be **PUT SPACE HERE** confidential may be disclosed.

- a. The party receiving the 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 information, the party will promptly notify the other party prior to making any such disclosure.

5 ENFORCEABILITY

This section describes the law and forum applicable to the Agreement.

This section **PUT SPACE HERE** also describes the enforceability of the Agreement under certain conditions. **Make this a new paragraph** 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.

6 REMEDIES

This section describes the remedies available to the parties in the event either party fails to comply with the provisions **of the** Agreement (e.g. injunctive relief, damages)

7 REPRESENTATIONS AND WARRANTIES

This section describes any representations and warranties provided.

8 CONTACT INFORMATION

This section typically provides the name, address, telephone number, facsimile number, and e-mail address of the primary and alternate designated contacts **s people** for each party.

9 DISCLAIMERS

This section typically lists disclaimers regarding items such as the responsibility for costs and the nature of the relationship. **This section may also disclaim accuracy.**

completeness, etc., of the confidential information, as well as disclaiming liability resulting from the use of the confidential information.

10 NON-WAIVER

This section states that this Agreement does not preclude the parties from collecting any additional costs as directed or authorized by a legislative body, administrative body, or court having jurisdiction over such issues.

10 11 SIGNATURES PAGE

This section **PUT SPACE HERE** includes the names and signatures of the signatories to the Agreement for each party.

This section may also include a certification statement that says the signatory is duly authorized to sign for the parties.