



SAMPLE ONLY *GE Energy Financial Services*

CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT, dated _____, 2004, between GE Energy Financial Services, Inc., with its principal office at 120 Long Ridge Road, Stamford, Connecticut 06927, and _____, with its principal office at _____, each in connection with Confidential Information (as defined below) provided by it or on its behalf, a “Discloser” and, in connection with the Confidential Information received by it or on its behalf, a “Recipient”, and, together, the “Parties”.

WHEREAS, each Party to this Agreement, may be receiving from the other Party or its officers, directors, agents, employees, affiliates or representatives, including advisers and legal counsel (collectively, “Representatives”) information of a confidential and non-public nature for use by it and its Representatives in connection with certain financial, marketing and technical information regarding _____ (the “Transaction”), and the Parties desire to protect the confidentiality of such information in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. Confidential Information Defined. Each Party may receive certain non-public and confidential information from the other Party or its Representatives, including but not limited to technical and financial information, market projections or other confidential or proprietary information, in each case relating to the Transaction. All such technical, financial or other information thus supplied and designated in writing by the Discloser as “Confidential” is hereinafter called the “Confidential Information”. Information conveyed orally shall be covered hereunder to the extent designated as Confidential at the time of such oral conveyance and reduced to writing and so designated by the Discloser within thirty (30) days of disclosure.

2. Nondisclosure Obligation. The Recipient shall keep all Confidential Information received by it confidential and shall not disclose such information, in whole or in part, to any person other than its Representatives. The information shall be used by the Recipient solely in connection with its evaluation of the Transaction, and shall not be used for the Recipient’s own benefit or for any other purpose. For the purpose of complying with the obligations set forth herein, the Recipient shall use efforts commensurate with those it employs for the protection of comparable sensitive information of its own, but in no case less than a reasonable degree of care.



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3. Exceptions to Confidentiality. (a) This Agreement imposes no obligation upon the Recipient with respect to any Confidential Information disclosed under this Agreement that:

- (i) was in the Recipient's possession before receipt from the Discloser or its Representatives;
- (ii) is or becomes a matter of public knowledge through no fault or violation of the Recipient;
- (iii) is rightfully received by the Recipient from a third party who, to the Recipient's knowledge, is not under a duty of confidentiality to the Discloser;
- (iv) is disclosed by the Discloser or its Representatives to a third party without a duty of confidentiality to the Discloser imposed on such third party; or
- (v) is independently developed by the Recipient or its Representatives.

(b) The Recipient may disclose Confidential Information to the extent such disclosure is required by law, rule (including any stock exchange rule), regulation or legal process; *provided however*, that, to the extent practicable, the Recipient shall give prompt written notice of any such request for such information to the Discloser, and agrees to cooperate with Discloser, at the Discloser's expense, to the extent permissible and practicable, to challenge the request or limit the scope thereof, as the Discloser may reasonably deem appropriate.

4. No Representations or Further Obligations. Each Discloser warrants that it has the right to make the disclosures to be made by it or on its behalf under this Agreement. All disclosures made hereunder are at the sole discretion of the Discloser. It is understood that this Agreement does not obligate the Recipient to enter into any further agreements or to proceed with the Transaction or any other possible relationship or other transaction with the Discloser. The Discloser does not make any covenants, warranties or representations with respect to the accuracy or completeness of any Confidential Information disclosed hereunder, and the Discloser shall have no liability to the Recipient arising out of the use of Confidential Information supplied under this Agreement except to the extent set forth in a definitive agreement duly executed by the Parties with respect to the Transaction.

5. Destruction of Information. Upon the written request of the Discloser, the Recipient shall destroy all copies of the Confidential Information, except that one copy may be retained in the files of the Recipient's legal counsel and except for internal materials containing Confidential Information such as, for example, credit requests, approval papers and analyses that were prepared in connection with the Transaction by the Recipient or its Representatives.

6. Termination. This Agreement covers only Confidential Information that is disclosed on or after the date hereof. The Recipient's obligations with respect to the Confidential Information received under this Agreement expire on the earlier of (a) the second anniversary of



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the date hereof and (b) the execution of a definitive agreement containing confidentiality provisions between the parties in connection with the Transaction. In addition, the Parties may terminate their obligations hereunder upon a date mutually agreed in writing.

7. **Miscellaneous.** All additions or modifications to this Agreement must be made in writing and must be signed by both Parties. This Agreement is made under, and shall be construed and enforced in accordance with, the laws of the State of New York. The Recipient acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement, and that, accordingly, in the event of any such breach or threatened breach, the Discloser shall be entitled to equitable relief, including an injunction or specific performance. Nothing contained herein shall in any way limit the rights or activities of either Party to deal directly with any third party so long as it complies with its obligations hereunder. If any one or more provisions of this Agreement are determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall remain in effect and shall not be affected by such invalidity, illegality or unenforceability. This Agreement (a) constitutes the entire agreement of the Parties with respect to the subject matter and supersedes any prior agreement or understanding with respect to the subject matter hereof and (b) may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first above written.

GE ENERGY FINANCIAL SERVICES, INC. _____

By: _____
Name:
Title:

By: _____
Name:
Title: