

AGREEMENT



**Confidentiality Agreement -
Mediation**

Between

•

as Applicant

and

INDEPENDENT ELECTRICITY MARKET OPERATOR

Document Change History

Issue	Reason for Issue	Date
1.0	Initial QA Review	May 23, 2000

Related Documents

Document ID	Document Title
MDP_RUL_0002	Chapter 3, Section 2, Market Rules

Confidentiality Agreement - Mediation

THIS AGREEMENT made this ____ day of _____, 20__

BETWEEN:

_____, a _____ [insert form of business organization], duly [incorporated/formed/registered] and organized under the laws of _____, having its registered address at _____ and its principal place of business at _____ (the “*Applicant*”)

- and -

_____, a _____ [insert form of business organization], duly [incorporated/formed/registered] and organized under the laws of _____, having its registered address at _____ and its principal place of business at _____ (the “*Respondent*”)

WHEREAS:

- A. The *Applicant* and the *Respondent* are parties to a *Dispute* that is required by the *market rules* to be resolved using the dispute resolution process described in section 2 of Chapter 3 of the *market rules*.
- B. The *Parties*, having determined not to dispense with mediation, are required by the *market rules* to attempt to resolve the *Dispute* through mediation prior to pursuing arbitration.
- C. The *Parties* are further required by the *market rules* to enter into an agreement relating to the confidentiality of statements made during mediation.

NOW therefore, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the *Parties* agree as follows:

ARTICLE 1

INTERPRETATION

- 1.1 **Incorporation of Market Rules Definitions:** Subject to section 1.2, italicized expressions used in this *Agreement* have the meanings ascribed thereto in Chapter 11 of the *market rules*.
- 1.2 **Supplementary Definitions:** In this *Agreement*, the following italicized expressions shall have the meanings set out below:

“*Agreement*” means this Agreement, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“*Dispute*” means the dispute between the *Parties* that has been assigned dispute number [●]; and

“*Party*” means a party to this *Agreement* and “*Parties*” means every *Party*.

1.3 **Interpretation:** In this *Agreement*, unless the context otherwise requires:

- 1.3.1 words importing the singular include the plural and vice versa;
- 1.3.2 words importing a gender include any gender;
- 1.3.3 when italicized, other parts of speech and grammatical forms of a word or phrase defined in this *Agreement* have a corresponding meaning;
- 1.3.4 the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;
- 1.3.5 a reference to a thing includes a part of that thing;
- 1.3.6 a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this *Agreement*;
- 1.3.7 a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, orders in council, rules and by-laws of a legislative nature issued under that statute;
- 1.3.8 a reference to a document or provision of a document, including this *Agreement* and the *market rules* or a provision of this *Agreement* or the *market rules*, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- 1.3.9 a reference to a person includes that person’s heirs, executors, administrators, successors and permitted assigns;
- 1.3.10 a reference to sections of this *Agreement* or of the *market rules* separated by the word “to” (*i.e.*, “sections 1.1 to 1.4”) shall be a reference to the sections inclusively;
- 1.3.11 the expression “including” means including without limitation, the expression “includes” means includes without limitation and the expression “included” means included without limitation; and
- 1.3.12 a reference in this *Agreement* to the market rules includes a reference to any policies established by the IMO pursuant to the market rules

ARTICLE 2

MARKET RULES

2.1 **Market Rules Govern:** In the event of any inconsistency between this *Agreement* and the *market rules*, the *market rules* shall prevail to the extent of the inconsistency.

ARTICLE 3

CONFIDENTIALITY

- 3.1 **Confidentiality of Statements and Documents:** The *Parties* acknowledge and agree that:
- 3.1.1 statements made during the course of any mediation session relating to the *Dispute*;
 - 3.1.2 the views expressed by the *mediator* during joint or separate meetings with the *Parties* within the scope of the mediation of the *Dispute*;
 - 3.1.3 written or oral recommendations for settlement made by the *mediator* within the scope of the mediation of the *Dispute*; and
 - 3.1.4 all reports, records or other documents prepared for the mediation of the *Dispute* and received by the *mediator* while serving in that capacity, are confidential.
- 3.2 **Non-Disclosure:** Following completion or termination of the mediation of the *Dispute* for any reason, no *Party* may, without the consent of the other *Party*, voluntarily and of its own initiative disclose in any subsequent proceeding nor voluntarily and of its own initiative produce into evidence for any purpose the statements, views, recommendations or reports, records or other documents referred to in section 3.1.
- 3.3 **Statements Made Without Prejudice:** The *Parties* acknowledge and agree that all statements made during the course of any mediation session relating to the *Dispute* are made without prejudice.
- 3.4 **Use of Expert:** Following completion or termination of the mediation of the *Dispute* for any reason, no *Party* may, without the consent of the other *Party* and for the purposes of providing advice or assistance to the *Party* in respect of any subsequent proceedings relating to the *Dispute*, engage the services of any expert that provided advice or assistance to a *Party* or to the *mediator* within the scope of the mediation of the *Dispute*.
- 3.5 **Survival:** The provisions of this Article 3 and of Article 4 shall survive termination of this *Agreement* for any reason without limit as to time.

ARTICLE 4

REMEDIES

- 4.1 **Equitable Remedies:** The *Parties* acknowledge and agree that a breach or threatened breach of the provisions of this *Agreement* by one *Party* may cause irreparable harm to the other *Party* which may be difficult to quantify and/or which may not be compensable by monetary damages alone. Accordingly, the *Party* alleging such harm shall, in addition to any other rights and remedies which it may have, have the right to seek and obtain immediate injunctive relief against such breach or threatened breach by the other *Party*.

ARTICLE 5
REPRESENTATION AND WARRANTIES

- 5.1 Representations and Warranties of the Applicant:** The *Applicant* hereby represents and warrants as follows to the *Respondent* and acknowledges and confirms that the *Respondent* is relying on such representations and warranties without independent inquiry:
- 5.1.1 that the execution, delivery and performance of this *Agreement* by the *Applicant* has been duly authorized by all necessary corporate and/or governmental action; and
 - 5.1.2 that this *Agreement* constitutes a legal and binding obligation on the *Applicant*, enforceable against the *Applicant* in accordance with its terms.
- 5.2 Representations and Warranties of the Respondent:** The *Respondent* hereby represents and warrants as follows to the *Applicant* and acknowledges and confirms that the *Applicant* is relying on such representations and warranties without independent inquiry:
- 5.2.1 that the execution, delivery and performance of this *Agreement* by the *Respondent* has been duly authorized by all necessary corporate and/or governmental action; and
 - 5.2.2 that this *Agreement* constitutes a legal and binding obligation on the *Respondent*, enforceable against the *Respondent* in accordance with its terms.

ARTICLE 6
MISCELLANEOUS

- 6.1 **Amendment:** No amendment of this *Agreement* shall be effective unless made in writing and signed by the *Parties*.
- 6.2 **Assignment:** Neither *Party* to this *Agreement* may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this *Agreement* without the prior written consent of the other *Party*.
- 6.3 **Successors and Assigns:** This *Agreement* shall enure to the benefit of, and be binding on, the *Parties* and their respective heirs, administrators, executors, successors and permitted assigns.
- 6.4 **Further Assurances:** Each *Party* shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this *Agreement* that the other *Party* may reasonably require for the purposes of giving effect to this *Agreement*.
- 6.5 **Waiver:** A waiver of any default, breach or non-compliance under this *Agreement* is not effective unless in writing and signed by the *Party* to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a *Party* in respect of any default, breach or non-observance or by anything done or omitted to be done by the other *Party*. The waiver by a *Party* of any default, breach or non-compliance under this *Agreement* shall not operate as a waiver of that *Party's* rights under this *Agreement* in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

- 6.6 **Severability:** Any provision of this *Agreement* that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this *Agreement*, all without affecting the validity or enforceability of the remaining provisions of this *Agreement* or affecting the validity or enforceability of such provision in any other jurisdiction.
- 6.7 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this *Agreement* shall:
- 6.7.1 be given or made in the manner set forth in section 8.1 of Chapter 1 of the *market rules*; and
- 6.7.2 be addressed in accordance with the following:
- if to the *Applicant*:
[Address, email address and telephone/facsimile numbers]
- if to the *Respondent*:
[Address, email address and telephone/facsimile numbers]
- Either *Party* may change its address as set forth above by written notice to the other *Party* given as aforesaid. Such change shall not constitute an amendment to this *Agreement* for the purposes of the application of section 6.1.
- 6.8 **Governing Law:** This *Agreement* shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 6.9 **Counterparts:** This *Agreement* may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the *Parties* adopt any signatures received by a receiving facsimile machine as original signatures of the *Parties*; provided, however, that any *Party* providing its signature in such manner shall promptly forward to the other *Party* an original signed copy of this *Agreement* which was so faxed.
- 6.10 **Limitation of Liability:** The provisions of section 13 of Chapter 1 of the *market rules* apply to this *Agreement* and are hereby incorporated by reference herein, with all references in such section to a *market participant* being deemed to be references to the [*Applicant* and/or the *Respondent*].] [Note: this section only applies where the IMO is a party to the dispute]

IN WITNESS WHEREOF the *Parties* have, by their duly appointed and authorized representatives, executed this *Agreement* on the date first written above.

[Insert name of *Applicant*]

By: _____

Name:

Title:

[Insert name of *Respondent*]

By: _____

Name:

Title: