

Non Disclosure Agreement

THIS NON-DISCLOSURE AGREEMENT dated as of June ____, 2004 (“Agreement”) is by and between the Independent Electricity Market Operator (the “IMO”) and the undersigned (apart from the IMO), each a “Party”, and together “Parties”, in the context of their participation in the IMO’s Market Pricing Working Group (“MP Working Group”). In connection with the MP Working Group, the Parties may, at the sole discretion of the IMO, be granted access to Confidential Information (as defined below). In consideration for and as a condition of participating in the MP Working Group, the Parties acknowledge the confidential and proprietary nature of the Confidential Information and agree to hold and keep such information in accordance with the terms and conditions set out in this Agreement.

1. Definitions. The following definitions apply to this Agreement:

- a) “**Confidential Information**” means all information provided to the Parties in relation to the MP Working Group specifically identified in writing as confidential or highly confidential, together with all notes, analyses, studies or other documents prepared by the Parties or their Representatives, or copies thereof, which contain or otherwise reflect such Confidential Information. Confidential Information shall include any discussions between the Parties concerning the Confidential Information. However, Confidential Information shall not include information that:
- i) is already in the public domain or becomes available to the public other than through an act or omission of the Parties or its Representatives (defined below);
 - ii) is required to be disclosed pursuant to a legal compulsion;
 - iii) is acquired without obligation of confidence from a source, other than the IMO, that has a legal right to disclose such information;
 - iv) is previously known by the Parties at the time of disclosure or is independently developed by the Parties without violating the obligations of confidentiality in this Agreement; and
 - v) the IMO has consented in writing to the Parties's disclosure of such information.
- b) “**Representatives**” means directors, officers, employees, contractors, agents, lawyers, advisors and consultants of a Party to this Agreement.

2. Restricted Use of Confidential Information. Except as provided otherwise in this Agreement, the Confidential Information shall be kept confidential by the Parties and their Representatives in the same manner and to the same extent that the Parties maintain their own proprietary confidential information. A Party may discuss the Confidential Information with the IMO, any of the other Parties to this Agreement and those of the Party’s Representatives who require such information for the purposes of the MP Working Group, provided that such Representatives are informed by the Party of the confidential nature of the information and the Party causes such Representatives to comply with the obligations of confidentiality contained in this Agreement.

3. Term and Survival. This Agreement shall be effective as of the date of execution by the IMO and the Parties and shall continue for the duration of the MP Working Group. The Parties’ obligation to keep the Confidential Information confidential as described in this Agreement shall survive the completion of the MP Working Group or the termination of this Agreement.

4. Return or Destruction of Confidential Information. The Parties shall not make copies or other reproductions of the Confidential Information without the written consent of the IMO, except to the extent necessary for the purposes of the MP Working Group. The Confidential Information shall remain the property of the IMO, and the IMO may request the return of such information at any time upon giving written notice to the Parties. Upon receipt of such notice, the Parties shall promptly return all Confidential Information that was provided to the Parties or their Representatives and all copies and reproductions (both written and electronic) of such information. Alternatively, if the IMO gives prior written consent to the

Parties, the Parties shall destroy or cause the destruction of such materials and confirm such destruction in writing to the IMO.

5. Compelled Disclosure. In the event the Parties are compelled by law to disclose any Confidential Information, the Parties shall provide the IMO with prompt written notice so that the IMO may seek a protective order or other appropriate remedy. The Parties agree to co-operate in good faith with the IMO in any reasonable and lawful actions that the IMO takes to resist or limit such disclosure. If such actions are unsuccessful, the Parties shall use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information so disclosed.

6. No Representations or Warranties. The IMO makes no representations or warranties, express or implied, as to the quality, accuracy, completeness or reliability of the Confidential Information disclosed to the Parties. The IMO and its Representatives shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Information by the Parties or their Representatives.

7. No Licence. This Agreement shall not be construed as granting or conferring any rights to the Parties by license or otherwise in any Confidential Information (including any patent, patent application, trademark, copyright or trade secret) disclosed under this Agreement.

8. Remedies. The Parties acknowledge that the Confidential Information is valuable and unique, and that the IMO would be irreparably injured by a breach of this Agreement by the Parties or their Representatives and that monetary damages would not be a sufficient remedy. Therefore, if the Parties breach or threaten to breach this Agreement, the IMO shall be entitled to equitable relief, including injunctive relief and specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available to the IMO at law or equity. In the event that the Parties breach this Agreement by disclosing Confidential Information that includes third party information provided in confidence to the IMO, such third parties shall be deemed to be third party beneficiaries of this Agreement and may bring an action to enforce its terms directly against the Parties.

9. Indemnity. The Parties agree that they shall be responsible for any disclosure of Confidential Information by any of the Parties' Representatives that is not permitted by this Agreement and for any failure by any of the Parties' Representatives to comply fully with the terms of this Agreement. The Parties shall defend, indemnify and hold harmless the IMO from and against all actions, damages, claims, and costs arising out of any breach of this Agreement by the Parties or the Parties' Representatives.

10. Miscellaneous. No amendments, changes or modifications to this Agreement shall be valid unless agreed to in writing by the IMO and the Parties.

This Agreement shall not be assigned by the IMO or any Party without the prior written consent of the IMO and all other Parties. This Agreement shall be binding upon and enure to the benefit of the IMO and the Parties, and their respective successors and permitted assigns.

No failure or delay by the IMO in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof. No provision of this Agreement may be waived except by written agreement signed by the IMO and all Parties, and a waiver on any occasion shall not act as a waiver or bar to the enforcement of the rights of the IMO with respect to any other breach or the same breach on any other occasion.

If any provision of this Agreement is deemed wholly or partially invalid or unenforceable for any reason, the balance of this Agreement shall remain valid and in full force and effect to the extent permitted by law. The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada as applicable therein. The IMO and the Parties hereby irrevocably attorn to the exclusive jurisdiction of the Courts of Ontario for any legal proceedings arising out of this Agreement.

This Agreement represents the complete agreement between the Parties with respect to the disclosure of Confidential Information and supersedes all prior communications, understandings and agreements between

the parties with respect to the disclosure of Confidential Information, whether written, oral, expressed or implied.

11. Execution via Facsimile. This Agreement may be signed in counterparts and delivered via facsimile, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS THEREOF, the IMO and the Parties have caused this Agreement to be executed and delivered by their duly authorized undersigned officers or representatives, as of the day and year first above written.

Independent Electricity Market Operator

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Name: _____
Title _____
Date: _____

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