

AGREEMENT



Transitional Metering Service Provider Agreement

Between

.....
as Applicant
and

INDEPENDENT ELECTRICITY MARKET OPERATOR

(date)

Document Change History

Issue	Reason for Issue	Date
1.0	For publication	02/18/2000
2.0	Board Approved Revisions	05/05/2000
3.0	Board Approved Amendments	07/13/2000

THE AGREEMENT

THIS AGREEMENT dated this ____ day of _____, ____

BETWEEN:

_____, a duly _____

[insert form of business organization] [incorporated/formed/registered]

and organized under the laws of _____, having its registered address at

and its principal place of business at

_____ (the "MSP")

- and -

The Independent Electricity Market Operator, a corporation incorporated by the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, having its registered address at 655 Bay Street, Suite 410, P.O. Box 1, Toronto, Ontario, M5G 2K4 and its principal place of business at the same address (the "IMO")

WHEREAS:

- A. The Market Rules for the Ontario Electricity Market (the "market rules") and the policies established by the *IMO* pursuant thereto set forth the rights, obligations and qualifications of *metering service providers* associated with the registration, provision, installation, commissioning, repair, replacement, maintenance, inspection and testing of *metering installations*; the rights and obligations of the *IMO* with respect to matters relating to *metering installations, metering data* and *settlement*; and the rights and obligations of *metering service providers* and the *IMO* with respect to the collection, accuracy and security of *metering data*.
- B. The *market rules* stipulate that only persons registered by the *IMO* as *metering service providers* may perform the functions required by the *market rules* and the policies established by the *IMO* pursuant thereto to be performed by *metering service providers*.

- C. The *market rules* further stipulate that each prospective *metering service provider* execute an agreement pursuant to which the prospective *metering service provider* agrees, among others, to be bound by and comply with the *market rules* and any policies established by the *IMO* pursuant thereto.
- D. The *MSP* wishes to be registered by the *IMO* as a *metering service provider*.
- E. The *MSP* and the *IMO* wish to enter into this Agreement in order to establish certain terms and conditions to govern their relationship for a transitional period ending no later than the *market commencement date* in furtherance of the performance of their respective obligations and the exercise of their respective rights under the *market rules* and under any policies established by the *IMO* pursuant thereto.

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 unless the context otherwise requires:
- “**Agreement**” means this Agreement, including the Schedules to 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;
- “**Confidential Information**” means, in respect of a *Party*, information which is proprietary to or has been supplied by that *Party* to the other in confidence implicitly or explicitly, where disclosure could reasonably be expected to (a) prejudice significantly the competitive position of the disclosing *Party*, (b) interfere significantly with the contractual or other negotiations of the disclosing *Party* or another person; (c) result in undue loss or gain to the disclosing *Party* or to another person, (d) compromise the efficiency of the *IMO-administered markets*, or (e) result in the disclosing *Party* being in breach of a *bona fide* arm’s length confidentiality agreement to which the information is subject.
- “**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*.
- 1.4 **Headings:** The division of this *Agreement* into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this *Agreement*, nor shall they be construed as indicating that all of the provisions of this *Agreement* relating to any particular topic are to be found in any particular article, section, subsection, clause, provision, part or schedule.

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

MSP RIGHTS AND OBLIGATIONS

- 3.1 **Compliance with Market Rules:** The *MSP* hereby agrees to be bound by and to comply with all of the provisions of the *market rules* so far as they are applicable to *metering service providers* in the same manner as if such provisions formed part of this *Agreement*.
- 3.2 **Performance Standards:** The *MSP* shall meet the performance standards set forth in section 1.2.1 of Appendix 6.6 of Chapter 6 of the *market rules*.
- 3.3 **Staffing Requirements:** The *MSP* shall at all times have an adequate number of personnel having the qualifications referred to in section 3.4 such as to permit the *MSP* to perform all of its functions and obligations under this *Agreement*, to perform all of the functions and obligations of a *metering service provider* under the *market rules* and to meet the performance standards referred to in section 3.2.

- 3.4 **Personnel Qualifications:** The *MSP* shall ensure that any person that registers, installs, commissions, repairs, replaces, maintains, inspects or tests a *metering installation* in respect of which the *MSP* is the *metering service provider* and that interacts with the *IMO* with respect to such activities has:
- 3.4.1 demonstrated knowledge of the *market rules* so far as they are applicable to *metering service providers*;
 - 3.4.2 the qualifications referred to in Appendix 6.4 of Chapter 6 of the *market rules*; and
 - 3.4.3 the knowledge, experience and training necessary to perform such activities in the manner required by the *market rules* and this *Agreement*.
- 3.5 **Personnel Records:** The *MSP* shall establish and keep up to date a register of its personnel that indicates the name, training and qualifications of each member of its personnel, and shall provide such register to the *IMO* upon request.
- 3.6 **Personnel Training:** The *MSP* shall maintain such quality assurance, training, competency assessment and education programs for its personnel as may be required to ensure that its personnel:
- 3.6.1 can perform all of the functions and obligations referred to in section 3.3 and meet the performance standards referred to in section 3.2; and
 - 3.6.2 have knowledge of the *market rules* so far as they are applicable to *metering service providers*.
- 3.7 **List of Metering Installations:** The *MSP* shall, within ten *business days* of the date on which it receives a copy of this Agreement executed by the *IMO*, submit to the *IMO* a list of the locations of the *metering installations* in respect of which it anticipates acting as a *metering service provider*, shall ensure that such list is kept up to date and shall provide the *IMO* with any updates to such list.
- 3.8 **Rights Relating to Metering Installations:** The *MSP* shall, in respect of a *metering installation* with respect to which it acts as a *metering service provider* and:
- 3.8.1 for which it is or will become the *metered market participant*, procure any rights necessary for the *IMO* to access such *metering installation* and to access all *metering data* in such *metering installation* such as to enable the *IMO* to perform its obligations and exercise its rights under the *market rules* and this *Agreement* with respect to such *metering installation* and *metering data*;
 - 3.8.2 for which it is not or will not become the *metered market participant*, for such period of time during which the *MSP* does not have an agreement with the *metered market participant* for the *metering installation* pursuant to section 3.1.2.2(a) of Chapter 6 of the *market rules* use all reasonable endeavours to procure any rights necessary for the *IMO* to access such *metering installation* and to access all *metering data* in such *metering installation* such as to enable the *IMO* to perform its obligations and exercise its rights under the *market rules* and this *Agreement* with respect to such *metering installation* and *metering data*; and
 - 3.8.3 for which it is not or will not become the *metered market participant*, as of the date on which it enters into an agreement with the *metered market participant* for the *metering installation* pursuant to section 3.1.2.2(a) of Chapter 6 of the *market rules*, procure any rights necessary for the *IMO* to access such *metering installation* and to access all *metering data* in such *metering installation* such as to enable the *IMO* to perform its obligations and exercise its rights under the *market rules* and this *Agreement* with respect to such *metering installation* and *metering data*..
- 3.9 **Provision of Information:** The *MSP* shall disclose or provide to the *IMO* such information as is required to be disclosed or provided pursuant to the *market rules* and this *Agreement*. Such information shall be disclosed or provided within the time specified in, and in the form and manner required by, the relevant provisions of the *market rules* or this *Agreement*. Where no time is specified in relation to the disclosure or provision of specific information, the information shall be disclosed or provided within a reasonable time.

- 3.10 **Accuracy of Information:** Information disclosed or provided by the *MSP* pursuant to section 3.9 shall be, to the best of the *MSP's* knowledge, true, correct and complete at the time at which such disclosure or provision is made. The *MSP* shall not knowingly or recklessly disclose or provide information pursuant to section 3.9 that, at the time and in light of the circumstances in which such disclosure or provision is made, is misleading or deceptive or does not state a fact that is required to be stated or that is necessary to make the statement not misleading or deceptive.
- 3.11 **Correction of Information:** Where the *MSP* discovers that any information previously disclosed or provided by it to the *IMO* pursuant to section 3.10 was untrue, incorrect, incomplete, misleading or deceptive, the disclosing person shall immediately rectify the situation and disclose or provide the true, correct, complete, not misleading or not deceptive information to the person to whom the original untrue, incorrect, incomplete, misleading or deceptive information had been disclosed or provided.
- 3.12 **Record Retention:** The *MSP* shall retain all records required to be maintained by *metering service providers* under the *market rules* or required to be maintained by the *MSP* under this *Agreement* for a period of seven (7) years or for such other period of time as may be designated by the *IMO* in respect of any record or class of records.
- 3.13 **Permits and Licences:** The *MSP* shall at all times hold and maintain in good standing all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of a *metering service provider* as described in the *market rules* and in this *Agreement*.
- 3.14 **Notification of Significant Events:** The *MSP* shall immediately notify the *IMO* of the occurrence of, or upon becoming aware of any circumstances that may give rise to, any of the following events:
- 3.14.1 if the *MSP* ceases to satisfy any of the qualifications referred to in Appendix 6.4 of Chapter 6 of the *market rules*;
 - 3.14.2 if the *MSP* ceases to satisfy any material requirement imposed upon it as a condition of its registration as a *metering service provider*;
 - 3.14.3 if it becomes unlawful for the *MSP* to comply with any of the obligations imposed on *metering service providers* under the *market rules* or with any of the *MSP's* obligations under this *Agreement*;
 - 3.14.4 a licence, permit or other authorization referred to in section 3.13 is suspended, revoked or otherwise ceases to be in full force and effect;
 - 3.14.5 a licence, permit or other authorization that may be necessary to enable the *MSP* to carry on any principal business activity other than those referred to in section 3.13 is suspended or revoked;
 - 3.14.6 the *MSP* ceases or threatens to cease to carry on its business or a substantial part of its business as a *metering service provider*;
 - 3.14.7 the *MSP* enters into or takes any action to enter into an arrangement, composition or compromise with, or an assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
 - 3.14.8 the *MSP* states that it is unable to pay from its own money its debts when they fall due for payment;
 - 3.14.9 a receiver or receiver and manager or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of any property of the *MSP* which is used in or relevant to the performance by the *MSP* of any of the obligations imposed on *metering service providers* under the *market rules* or with any of the *MSP's* obligations under this *Agreement*;
 - 3.14.10 an administrator, liquidator, trustee in bankruptcy or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the *MSP*, or any action is taken to appoint such person;

- 3.14.11 an application is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the *MSP*;
- 3.14.12 the *MSP* is wound up or dissolved, unless the notice of winding up or dissolution is discharged;
- 3.14.13 the *MSP* is taken to be insolvent or unable to pay its debts under any applicable legislation; and
- 3.14.14 any other event that is likely to materially affect:
- (a) the performance by the *MSP* of any of the obligations imposed on *metering service providers* under the *market rules* or with any of the *MSP*'s obligations under this *Agreement*;
 - (b) the performance by the *IMO* of its obligations relating to *metering installations* or *metering data* under the *market rules* or this *Agreement*; or
 - (c) the performance, accuracy or security of any *metering installation* with respect to which it acts as a *metering service provider* or of any *metering data* contained in or being made available from such *metering installation*.
- 3.15 **Payment Obligations:** The *MSP* shall make all payments required to be made to the *IMO* or permitted to be imposed on the *MSP* by the *IMO* under the *market rules* or this *Agreement* promptly upon receiving any invoice therefor.
- 3.16 **Replacement of Other Installations:** The *MSP* shall, where it is requested by the *IMO* or the owner of a *metering installation* to replace a *metering installation* owned by a predecessor *metering service provider*, replace such *metering installation* in accordance with such procedures as may be agreed with the predecessor *metering service provider* or, where no such procedures are agreed, in accordance with any procedures established by the *IMO* for this purpose.
- 3.17 **Removal of Installations:** Where the *MSP*'s agreement with the owner of a *metering installation* is terminated or expires or where the *MSP*'s registration is revoked by the *IMO* in accordance with section 5.3 of Chapter 6 of the *market rules*, the *MSP* shall, at the request of the owner of the *metering installation* or the *IMO*, as the case may be, remove any *metering installation* or other equipment or facilities that it owns and with respect to which it acted as a *metering service provider* at the time stipulated in the request for such purpose. Provided that the request has been provided to the *MSP* no less than five (5) *business days* prior to the date scheduled for removal of the *metering installation*, the *MSP* hereby irrevocably consents to the removal of any such *metering installation* or other equipment, at the *MSP*'s sole risk, cost and expense, by the successor *metering service provider* for that *metering installation* or such other party as may be designated by the *IMO* or the owner of the *metering installation*, in the event of the failure by the *MSP* to remove the *metering installation* or other equipment in accordance with this section.
- 3.18 **Consent to Audits:** The *MSP* hereby irrevocably consents to the conduct by the *IMO* of any audits permitted by the *market rules* or this *Agreement* to be conducted by the *IMO* and shall, for the purpose of such audits and upon being provided with such notice, if any, as may be required by the *market rules*:
- 3.18.1 provide the *IMO*'s auditor with unrestricted access during normal business hours to its facilities, equipment, records and personnel;
 - 3.18.2 in respect of a *metering installation* with respect to which it acts as a *metering service provider* and for which it is or will become the *metered market participant*, provide the *IMO*'s auditor with unrestricted access during normal business hours to such *metering installation*;
 - 3.18.3 in respect of a *metering installation* with respect to which it acts as a *metering service provider* and for which it is not or will not become the *metered market participant*, for such period of time during which the *MSP* does not have an agreement with the *metered market participant* for the *metering installation* pursuant to section 3.1.2.2(a) of Chapter 6 of the *market rules* use all reasonable endeavours to provide the *IMO*'s auditor with unrestricted access during normal business hours to such *metering installation*; and

- 3.18.4 in respect of a *metering installation* with respect to which it acts as a *metering service provider* and for which it is not or will not become the *metered market participant*, as of the date on which it enters into an agreement with the *metered market participant* for the *metering installation* pursuant to section 3.1.2.2(a) of Chapter 6 of the *market rules* provide the *IMO's* auditor with unrestricted access during normal business hours to such *metering installation*.
- 3.19 **Corrective Action:** The *MSP* hereby irrevocably consents to the taking of any corrective action referred to in section 11.1.4.1 of Chapter 6 of the *market rules* with respect to any *metering installation* with respect to which it acts as a *metering service provider* and shall, for the purpose of such corrective action and upon being provided with such notice, if any, as may be required by the *market rules* and upon the expiry of such time as may be required by the *market rules*:
- 3.19.1 provide the *IMO's* auditor with unrestricted access during normal business hours to its facilities, equipment, records and personnel;
- 3.19.2 in respect of a *metering installation* for which it is or will become the *metered market participant*, provide the *IMO's* auditor with unrestricted access during normal business hours to such *metering installation*;
- 3.19.3 in respect of a *metering installation* for which it is not or will not become the *metered market participant*, for such period of time during which the *MSP* does not have an agreement with the *metered market participant* for the *metering installation* pursuant to section 3.1.2.2(a) of Chapter 6 of the *market rules* use all reasonable endeavours to provide the *IMO's* auditor with unrestricted access during normal business hours to such *metering installation*; and
- 3.19.4 in respect of a *metering installation* for which it is not or will not become the *metered market participant*, as of the date on which it enters into an agreement with the *metered market participant* for the *metering installation* pursuant to section 3.1.2.2(a) of Chapter 6 of the *market rules* provide the *IMO's* auditor with unrestricted access during normal business hours to such *metering installation*.
- 3.20 **No Adjustments to Metering Data:** Except as expressly permitted by the *market rules* or this *Agreement*, the *MSP* shall not adjust any *metering data* or other information contained in a *metering installation* with respect to which it is the *metering service provider*, in the *metering registry* or in the *metering database*.
- 3.21 **Insurance:** The *MSP* shall at all times maintain general contractual liability insurance coverage, errors and omissions insurance coverage and such other insurance coverage on such terms and in such amounts as would be maintained by a prudent person conducting business activities identical to or similar in nature to those of the *MSP*.
- 3.22 **Post-termination Assistance:** The *MSP* shall, at the request of the *IMO* and for a period of one year following termination of this *Agreement*, provide to the *IMO* such records as may reasonably be required by the *IMO* for purposes of the enforcement of the *market rules* or of a dispute resolution process that relates to activities conducted by the *MSP* during the term of this *Agreement*.

ARTICLE 4

IMO RIGHTS AND OBLIGATIONS

- 4.1 **Compliance with Market Rules:** The *IMO* hereby agrees to be bound by and to comply with all of the provisions of Chapter 6 of the *market rules* and of all policies established by the *IMO* pursuant to Chapter 6 of the *market rules* so far as they are applicable to the subject-matter of this *Agreement* in the same manner as if such provisions formed part of this *Agreement*.
- 4.2 **Revocation of MSP's Registration:** The *IMO* may revoke the registration of the *MSP* on the grounds noted and in the manner provided for in section 5.3 of Chapter 6 of the *market rules*.

- 4.3 **Provision of Information:** The *IMO* shall disclose or provide to the *MSP* such information as is required to be disclosed or provided to the *MSP* pursuant to the *market rules* and this *Agreement*. Such information shall be disclosed or provided within the time specified in, and in the form and manner required by, the relevant provisions of the *market rules* or this *Agreement*. Where no time is specified in relation to the disclosure or provision of specific information, the information shall be disclosed or provided within a reasonable time.
- 4.4 **Accuracy of Information:** Information disclosed or provided by the *IMO* pursuant to section 4.3 shall be, to the best of the *IMO's* knowledge, true, correct and complete at the time at which such disclosure or provision is made. The *IMO* shall not knowingly or recklessly disclose or provide information pursuant to section 4.3 that, at the time and in light of the circumstances in which such disclosure or provision is made, is misleading or deceptive or does not state a fact that is required to be stated or that is necessary to make the statement not misleading or deceptive.
- 4.5 **Correction of Information:** Subject to section 4.6, where the *IMO* discovers that any information previously disclosed or provided by it to the *MSP* pursuant to section 4.3 was untrue, incorrect, incomplete, misleading or deceptive, the *IMO* shall immediately rectify the situation and disclose or provide the true, correct, complete, not misleading or not deceptive information to the person to whom the original untrue, incorrect, incomplete, misleading or deceptive information had been disclosed or provided.
- 4.6 **Use of Information:** Except as otherwise prohibited by the *market rules* or this *Agreement*, the *IMO* and any panel established by the *IMO* is entitled to use any data or information obtained from the *MSP* in pursuance of the *IMO's* or the panel's powers, functions or duties under the *market rules* or under this *Agreement*. The *IMO* may use such information in connection with or to initiate processes provided for in the *market rules* including, but not limited to:
- 4.6.1 a process to *amend* the *market rules* pursuant to section 4 of Chapter 3 of the *market rules*;
 - 4.6.2 a process to resolve a dispute pursuant to section 3 of Chapter 3 of the *market rules*; or
 - 4.6.3 a process to enforce compliance with the *market rules* or with this *Agreement*.
- 4.7 **Record Retention:** The *IMO* shall retain all records required to be maintained by it under the provisions referred to in section 4.1 or required to be maintained by the *MSP* under this *Agreement* for a period of seven (7) years or for such other period of time as may be designated by the *IMO* in respect of any record or class of records.
- 4.8 **Audits:** The *IMO* shall have the right to audit, from time to time during normal business hours and upon reasonable notice, the records and procedures of the *MSP* in order to verify compliance by the *MSP* with the obligations imposed on *metering service providers* under the *market rules* and with the *MSP's* obligations under this *Agreement*.
- 4.9 **No Third Party Rights:** Nothing in this *Agreement* shall be construed as giving the *MSP* a cause of action in respect of any obligation that the *IMO* may owe to a third party under the *market rules* nor as giving rise to a right of the *IMO* to enforce the performance by the *IMO* of any such obligation.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

- 5.1 **Representations and Warranties of the IMO:** The *IMO* hereby represents and warrants that the execution, delivery and performance of this *Agreement* by it has been duly authorized by all necessary corporate and/or governmental action and that, subject to the coming into force of any relevant provision of the *market rules*, this *Agreement* constitutes a legal and binding obligation on the *IMO*, enforceable against the *IMO* in accordance with its terms.
- 5.2 **Representations and Warranties of the MSP:** The *MSP* hereby represents and warrants that:

- 5.2.1 the execution, delivery and performance of this *Agreement* by it has been duly authorized by all necessary corporate and/or governmental action and that this *Agreement* constitutes a legal and binding obligation on the *MSP*, enforceable against the *MSP* in accordance with its terms;
- 5.2.2 it holds, or will prior to commencing to act as a *metering service provider*, hold all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of a *metering service provider* as described in the *market rules* and in this *Agreement*; and
- 5.2.3 the information provided in and in support of its application for registration as an *MSP* is true, accurate and complete in all respects.

ARTICLE 6

CONFIDENTIALITY

- 6.1 **Confidentiality Obligation:** Each *Party* shall keep confidential any *confidential information* pertaining to the other *Party* that comes into its possession or control or of which it becomes aware.
- 6.2 **Non-disclosure of Confidential Information:** No *Party* shall:
 - 6.2.1 disclose *confidential information* pertaining to the other *Party* to any third party except as permitted by the *market rules* or this *Agreement*;
 - 6.2.2 permit access to *confidential information* pertaining to the other *Party* by any third party not authorized to have such access pursuant to the *market rules* or this *Agreement*; or
 - 6.2.3 use or reproduce *confidential information* for a purpose other than the purpose for which it was disclosed or another purpose contemplated by the *market rules* or this *Agreement*.
- 6.3 **Protection of Confidential Information:** Each *Party* shall:
 - 6.3.1 prevent access to *confidential information* which is in its possession or control by any third party not authorized to have such access pursuant to the *market rules* or this *Agreement*; and
 - 6.3.2 ensure that any person to whom it discloses *confidential information* observes the provisions of sections 6.1 and 6.2 in relation to that *confidential information*.
- 6.4 **Exceptions:** Unless prohibited by *applicable law*, nothing in sections 6.1 to 6.3 shall prevent:
 - 6.4.1 the disclosure, use or reproduction of *confidential information* if the *confidential information* is, at the time of disclosure, generally and publicly available other than as a result of a breach of confidence by the *Party* that wishes to disclose, use or reproduce the *confidential information* or by any person to whom the *Party* has disclosed the information;
 - 6.4.2 the disclosure of *confidential information* by a *Party* to a director, officer or employee of the *Party* or a legal or other professional advisor, auditor or other consultant of the *Party* where such persons require the information for purposes of the *market rules* or this *Agreement* or for the purpose of advising the *Party* in relation thereto;
 - 6.4.3 the disclosure, use or reproduction of *confidential information* with the consent of the *Party* that provided the *confidential information*;
 - 6.4.4 the disclosure, use or reproduction of *confidential information* to the extent required by *applicable law* or by a lawful requirement of any government or governmental body, regulatory body, authority or agency having jurisdiction over a *Party*, or by any stock exchange having jurisdiction over a *Party*;

- 6.4.5 except as provided in section 2 of Chapter 3 of the *market rules*, the disclosure, use or reproduction of *confidential information* if required in connection with legal proceedings, mediation, arbitration, expert determination or other dispute resolution mechanism relating to this *Agreement* or for the purpose of advising a person in relation thereto; or
- 6.4.6 the disclosure of *confidential information* if required to protect the health or safety of personnel, equipment or the environment, to maintain the *reliability* of the *IMO-controlled grid* or to maintain the integrity of the *IMO-administered markets*.
- 6.5 **Pre-Disclosure Obligations:** A *Party* wishing to disclose *confidential information* pursuant to section 6.4.2 shall, prior to making any disclosure:
- 6.5.1 pursuant to section 6.4.2, inform the proposed recipient of the confidential nature of the *confidential information* to be disclosed and shall use all reasonable endeavours to ensure that the recipient keeps the *confidential information* confidential in accordance with the provisions of sections 6.1 to 6.3 and does not use the *confidential information* for any purpose other than that permitted under section 6.4.2;
- 6.5.2 pursuant to section 6.4.4 or 6.4.5, advise the person affected by the request or demand as soon as reasonably practicable so as where possible to permit the affected person to challenge such request or demand or seek terms and conditions in respect of any such disclosure.
- 6.6 **Other Obligations:** In making any disclosure pursuant to section 6.4.6, the disclosing person shall advise the person affected by the disclosure as soon as is reasonably practicable and shall use all reasonable endeavours to protect the confidentiality of the *confidential information* insofar as may be reasonably practicable in the circumstances.
- 6.7 **Other MSP Confidentiality Obligation:** The *MSP* shall comply with the obligations set forth in sections 6.1 to 6.3 in respect of any information required by the *market rules* to be kept confidential and in respect of any historical *metering data* pertaining to any *metering installation* that was created or existed prior to the commencement by the *MSP* of its activities as a *metering service provider*.
- 6.8 **Other MSP Confidentiality Provision:** Nothing in this *Agreement* shall require the *MSP* to disclose information that it is prohibited by *applicable law* or its *licence* from disclosing.
- 6.9 **Other IMO Confidentiality Provisions:** Nothing in this *Agreement* shall require the *IMO* to disclose information that the *IMO* is prohibited by *applicable law*, its *licence* or the *market rules* from disclosing.

ARTICLE 7

TERM AND TERMINATION

- 7.1 **Term:** This *Agreement* shall come into force on the date first noted above and shall remain in full force and effect until terminated in accordance with section 7.2 or section 7.3.
- 7.2 **Termination Upon Revocation of Registration:** This *Agreement* shall automatically terminate upon:
- 7.2.1 the revocation by the *IMO* of the registration of the *metering service provider* in accordance with section 5.3 of Chapter 6 of the *market rules*; or
- 7.2.2 the date designated by the *IMO* referred to in section 8.2,
- whichever is the earlier.
- 7.3 **Termination by MSP:** The *MSP* may terminate this *Agreement* with or without cause upon ninety (90) days written notice to the *IMO*, without prejudice to the operation of section 5.3.7 of Chapter 6 of the *market rules*.
- 7.4 **Survival:** The provisions of sections 3.12, 3.15, 3.17 and 3.22 and of article 6 shall survive termination of this *Agreement*.

ARTICLE 8

SUBSEQUENT AGREEMENT

- 8.1 It is understood and agreed by the *Parties* that this *Agreement* is intended to govern the relationship between the *Parties* for a transitional period ending no later than the *market commencement date* and that the *Parties* shall be required to enter into a further Agreement with one another to govern their relationship following such transitional period. Accordingly, the *MSP* understands and agrees that the registration as a *metering service provider* to which this *Agreement* relates constitutes only an initial, transitional registration that will be required to be confirmed by the *IMO* prior to the *market commencement date*.
- 8.2 The *MSP* further agrees that it shall tender to the *IMO* an executed copy of the further Agreement referred to in section 8.1 no later than ten *business days* prior to the date designated by the *IMO* as the date upon which the transitional registration of the *MSP* as a *metering service provider* is anticipated to be confirmed as the final registration for the *MSP*.
- 8.3 The *MSP* further understands and agrees that the further Agreement referred to in sections 8.1 and 8.2 may contain provisions that differ from or are in addition to the provisions set forth in this *Agreement*.

ARTICLE 9

DISPUTE RESOLUTION

- 9.1 **Good Faith Negotiations:** The *Parties* shall make good faith efforts to negotiate and amicably resolve any dispute between them arising pursuant to this *Agreement*.
- 9.2 **Dispute Resolution:** In the event that a dispute referred to in section 9.1 is not settled amicably through good faith negotiations, proceedings to resolve the dispute may be initiated by either *Party* under and in accordance with section 2 of Chapter 3 of the *market rules*. For this purpose, references in section 2 of Chapter 3 of the *market rules* to a *market participant* shall be deemed to be a reference to the *MSP*.
- 9.3 **No Other Proceedings:** Subject to section 9.4, no *Party* shall commence a civil or other proceeding in relation to a dispute referred to in section 9.1 until such time as the dispute resolution process referred to in section 9.2 has been completed.
- 9.4 **Exception:** Nothing in section 9.3 shall prevent a *Party* from making application to a court of competent jurisdiction in the Province of Ontario for urgent interlocutory or interim injunctive relief.
- 9.5 **No Prejudice to Sanctions:** Nothing in this *Agreement* shall prejudice the right of the *IMO* to take the enforcement actions referred to in Chapter 3 of the *market rules*.

ARTICLE 10

MISCELLANEOUS

- 10.1 **No Prejudice to Federal Metering Requirements:** Nothing in this *Agreement* shall affect the obligation of the *MSP* to comply with all applicable *federal metering requirements* provided that, where this *Agreement* or the *market rules* applicable to *metering service providers* prescribe a higher standard than that prescribed by *federal metering requirements*, the *MSP* shall comply with such higher standard.
- 10.2 **Amendment:** No amendment of this *Agreement* shall be effective unless made in writing and signed by the *Parties*.
- 10.3 **Assignment:** This *Agreement* may not be assigned, whether absolutely, by way of security or otherwise, by the *MSP*. This *Agreement* may be assigned by the *IMO* without the prior written consent of the *MSP*.
- 10.4 **Successors and Assigns:** This *Agreement* shall ensure to the benefit of, and be binding on, the *Parties* and their respective heirs, administrators, executors, successors and permitted assigns.
- 10.5 **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*.
- 10.6 **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).
- 10.7 **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.
- 10.8 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this *Agreement* shall:
- 10.8.1 be given or made in the manner set forth in section 8.1 of Chapter 1 of the *market rules*;
- 10.8.2 be addressed to the other *Party* in accordance with the information set forth in Schedule 1; and
- 10.8.3 be treated as having been duly given or made in accordance with the provisions of section 8.2 of Chapter 1 of the *market rules*.
- Either *Party* may change its address and representative as set forth in Schedule 1 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 10.2.
- 10.9 **Governing Law:** This *Agreement* shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 10.10 **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.

10.11 **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 *MSP*.

IN WITNESS WHEREOF the *Parties* have, by their duly appointed representatives, executed this *Agreement*.

By: _____

Name: _____

Title: _____

Independent Electricity Market Operator

By: _____

Name: David Goulding

Title: President and Chief Executive Officer

SCHEDULE 1**NOMINATED REPRESENTATIVES FOR NOTIFICATIONS**

[Section 10.8]

IMO

Name of IMO Representative:	Bruce Campbell
Title:	Vice President, Legal and Regulatory Affairs
Address:	655 Bay Street, Suite 410, P.O. Box 1
City/Province/Zip Code	Toronto, Ontario M5G 2K4
Email address:	bruce.campbell@theimo.com
Phone:	(416) 506-2829
Fax:	(416) 506-2849

Metering Service Provider (MSP)

Name of MSP Representative:	
Title:	
Address:	
City/Province/Zip Code	
Email address:	
Phone:	
Fax:	

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