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Kazakhstan: Power Sector Reform

Members Agreement
Power Pool of Kazakhstan (POOL)

Prepared for

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MEMBERS AGREEMENT

Power Pool of Kazakstan (POOL)

This Agreement is made on this ____ day of ____ 199_ between the parties named in Schedule 1

This is an Agreement to participate in the Wholesale Electricity Market of Kazakstan in accordance with the rules and procedures set out in the Pool Charter, the Market Rules, and the other documents of the POOL

1 Definitions and Interpretations

1.1 Terms used in this Agreement shall have the following meaning

Accounting System	The accounting system to used by the POOL Settlements System as defined in Article 7 of this Members Agreement
Board, POOL Board	The Executive Board of the POOL, as defined in the POOL Charter
Central Dispatch	The process managed by POOL for the optimal dispatch of Member generating units and Member loads in accordance with Article 9 of the Market Rules
Default	Failure to make required payments at the prescribed time
External Suppliers	Suppliers of electricity from outside of Kazakstan
General Meetings	As defined in Article 7 of the POOL Charter
Generator	An entity who owns and/or operates an electricity generating unit that can be connected to the network

Good Industry Practice	The exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant portion of operators of facilities forming part of the system for the generation, transmission or supply of electricity under conditions comparable to those applicable to the relevant facility consistent with applicable laws, regulations, licenses, codes, reliability, safety and environmental protection
Market	Any of the markets conducted or facilitated by POOL
Market Funds	The bank or other financial organization which handles the Administrator flow of funds through the Settlements System of the Pool
Market Rules	The Market Rules of the Pool
Member	A member of the POOL
Pool Member	Any legal entity who meets the requirements of Article 3 of the Market Rules
POOL Board, Board	Executive Board of POOL, as defined in Article 7.3 of the POOL Charter
Settlement System	The procedure for determining the amounts due to and from Members because of the sale and purchase of services in the POOL, and the billing and crediting of Members for these services, at the time of settlement, as defined in Article 15 of the Market Rules
Settlement System	Department within the POOL responsible for Administrator administration of the Settlement System, as defined in Article 7 of this Members Agreement

Supplier	A Member who sells electricity to a customer or to another Supplier
Transmission Network	Those systems operating above nominal voltages of 110 KV plus any systems operating at 110 KV that operate in parallel with and provide support to the higher voltage network

2 Objectives and Members Obligations

- 2 1 This agreement confirms the responsibilities of the Pool Members and the POOL, parties to this Agreement, the General Meetings, the POOL Board, the procedures for Pool Members to join and leave this Agreement, the POOL Charter and other documents of the POOL
- 2 2 The POOL also must ratify and abide by the Market Rules for the operation of a system for the wholesale trading of electricity as specified in the POOL Charter
- 2 3 The Members of the POOL who are parties to this Agreement will exercise their authority specifically to encourage
- 2 3 1 the efficient production of electricity,
 - 2 3 2 the efficient consumption of electricity,
 - 2 3 3 the efficient transmission of electricity,
 - 2 3 4 international trade with External Suppliers, where economic and beneficial to consumers of electric energy in Kazakhstan,
 - 2 3 5 optimal investment in new plants and other assets and the refurbishment of existing plants and assets, including Transmission Networks
- 2 4 By following the procedures for amending this Agreement, as set out or referred to within it, keep under review and promote the implementation, administration, and development of the rules and agreements referred to in this Article 2, in a way that takes account of, and balances, the separate interests of actual and potential Generators and Suppliers and of final consumers of electricity

2 5 The terms of this Agreement specifically exclude the financial settlement of any contracts concluded outside of the POOL between Generators and Suppliers. Any such contracts shall not conflict with this Agreement in any way.

3 POOL Responsibilities

The objectives of POOL are set out in the POOL Charter and in Article 2 of the Market Rules.

4 POOL Membership

4 1 Conditions of POOL membership

The eligibility for POOL Membership is set out in Article 3 1 of the Market Rules.

4 2 Procedure for Admission of new Members

4 2 1 Candidates for POOL membership shall apply to the Board in a form specified by the Board. The Board may refuse membership if the applicant does not comply with the requirements of membership. The Board shall not discriminate against any candidate in considering its application to be a Member if the applicant meets all of the requirements of POOL membership as determined in Article 3 1 of the Market Rules.

4 2 2 Any candidate seeking to become a Member shall demonstrate to the Board that it is and will be able to comply with all of the relevant obligations of the Market Rules.

4 3 Rules and Procedures for Pool Member Resignation

4 3 1 Certain Members shall be entitled to resign from Pool membership by delivering a Resignation Notice to the Board and such resignation shall take effect 28 days after the receipt of the Resignation Notice by the Secretariat.

4 3 2 Only those Members who are Customers, any Supplier except those who are not also holders of distribution licenses, and generators who no longer qualify as Members according to the Market Rules, are permitted to resign.

4 3 3 A Member may not resign from Pool Membership (and any Resignation

Notice delivered pursuant to Article 4.3.1 shall be ineffective) unless as, at the date its resignation would otherwise become effective, all sums due from such Member to POOL have been paid in full, including any administrative costs incurred as a result of the withdrawal of such Member

4.3.4 Without prejudice to any other clauses in this Agreement, at the same time as a Member's resignation becomes effective under Article 4, such entity shall also be automatically released and discharged from its obligations and liabilities under this Agreement, all remaining Members shall likewise be automatically released and discharged from their obligations and liabilities to said entity under this Agreement

5 General Meetings

The General Meeting of the Shareholders is the highest decision-making body of the POOL. Rules concerning General Meetings are set out in Article 7.2 of the POOL Charter

6 The Board

The Executive Board of POOL will represent the Members in the supervision of the Pool. The constitution of the Board, the responsibilities of the Board, and other rules concerning the Board, are set out in Article 7.3 of the POOL Charter

7 The Settlement System Administrator

7.1 POOL shall undertake the function of Settlement System Administrator for the term of this Agreement

7.2 The Settlement System Administrator shall have the following general duties, responsibilities and obligations under this agreement

7.2.1 to comply with Market Rules and Settlement Procedures,

7.2.2 to provide for a reliable system back-up,

7.2.3 to provide an Accounting System which must be approved by the Members,

7.2.4 to provide budgets and reports in compliance with the Accounting System,

- 7 2 5 to provide recommendations to the Board, of changes to this Agreement, to the Market Rules, or to the Central Dispatch System,
- 7 2 6 to implement all orders by the Board and develop work programs to facilitate them,
- 7 2 7 to maintain such records, data, and other information as the Market Auditor or the Board may reasonably deem necessary,
- 7 2 8 to fulfill any other responsibilities properly designated to it pursuant to this Agreement

7 3 The Settlement System Administrator shall have the responsibility to ensure that the Central Dispatch procedure conforms to the Market Rules. The Settlement System Administrator shall be under obligation to notify the Board of any instances of an error

8 Market Funds Administrator

8 1 POOL shall undertake the function of Market Funds Administrator for the term of this Agreement

[To be determined]

9 Central Dispatch

9 1 POOL shall undertake the function of providing Central Dispatch in the management of power plants, loads and the Transmission Networks for the term of this Agreement in accordance with the provisions of Article 9 of the Market Rules

10 Market Audit and Appointment of the Market Auditor

The requirements for a market audit and the procedure for appointing the Market Auditor are set out in Article 7 4 of the POOL Charter

11 Notification of Defects

Members are responsible for reporting to the POOL any defects which occur in the system

as set out in reporting rules of the System Reliability Procedures

12 Amendments and Conflicts

The procedure for introducing changes into the POOL Charter is set out in Article 10 of the POOL Charter. The procedure for resolving conflicts is set out in Articles 15.9 and 15.10 of the Market Rules.

13 Force Majeure and Emergency Provisions

The rights and obligations of POOL to intervene in the market in the event of a force majeure or other emergency is set out in Article 14 of the Market Rules. This Article also sets out the obligations of Members to follow the directives of POOL and the rights of Members to compensation under conditions of force majeure or other emergency.

14 Default

14.1 A Pool Member shall be in default of this Agreement if

14.1.1 the relevant fee for POOL membership has not been provided, maintained and replenished as required, or

14.1.2 it has failed to pay any part of the outstanding sum determined under this Agreement within 90 business days of the due date, or

14.1.3 it has failed to comply with any other terms of this Agreement capable of remedy, which has not been remedied within a reasonable period of time to be determined by the Board, or

14.1.4 it has been declared bankrupt under Kazak Law

POOL shall have the sole responsibility for serving a Default Notice on instruction of the Board.

14.2 If POOL serves a Default Notice on a Member and the matter on which the Default Notice was served has not begun to be resolved by that Member within 90 calendar days of the issue of that notice, then the Board may order POOL to take any of the following enforcement actions:

14 2 1 to suspend sales to the defaulter, or

14 2 2 to place a block on all bank accounts of the defaulter, or

14 2 3 to disconnect the entire load of the defaulting Member if connected to the Transmission Network, or

14 2 4 to disconnect the relevant part of the load if such default relates to a specific consumer or group of consumers, or

14 2 5 to terminate the defaulter's rights under this agreement

14 3 Sharing of Risk

If the Defaulting Member has not paid his Contributory Share to the POOL as determined in Article 15 of the Market Rules, then all of the other Members shall be liable to pay all of these sums. The portion to be paid by each Member shall be in accordance with that Member's Shareholding in the POOL. The Defaulting Member shall indemnify each other Member against all sums paid by them under this Article with interest from the date of payment to the date of its reimbursement at the Default Interest Rate.

14 4 Exclusion of certain types of loss

Subject to Article 14 3 and except where any provision of this Agreement provides for an indemnity, neither the Defaulting Member nor any of its officers, employees, or agents shall in any circumstances whatsoever be liable to any of the other Members for

14 4 1 any loss of profit, loss of revenue, loss of use, loss of contract, or loss of goodwill, or

14 4 2 any indirect or consequential loss, or

14 4 3 loss resulting from the liability of any other Member to any other person, except as provided in Articles 14 1 and 14 3

14 5 The Defaulting Member shall fully indemnify the POOL and any other affected Member against all liability, loss, or damage that it may incur through disconnection

or other limitation of services

14 6 Any suspension or termination of a Member under the terms of Article 14 1 shall not remove or reduce in any way its rights or liabilities accrued under this Agreement prior to such suspension or termination

14 7 Any suspension or termination of a Member under the terms of this Article shall result in the suspension of its voting rights under Articles 5 and 6 of this Agreement

15 Limitation of Liability

15 1 Subject to Article 15 3, each Member agrees and acknowledges that no Member shall be liable to any of the other Members for loss arising from any breach of this Agreement, other than for any loss directly resulting from such breach which, at the date of this Agreement, was reasonably foreseeable as likely to occur in the ordinary course of events resulting from such a breach

15 2 Exclusion of certain types of loss

Subject to Article 15 3, and except where any provision of this Agreement provides for an indemnity, neither the liable Member nor any of its officers, employees, or agents shall in any circumstances whatsoever be liable to any of the other Members for

15 2 1 any loss of profit, loss of revenue, reduction in reliability of any part of the electric system, loss of contract, or loss of goodwill, or

15 2 2 any indirect or consequential loss, or

15 2 3 loss resulting from the liability of any other Member to any other person, except as provided for in Articles 15 1 and 15 3

15 3 Specific Limitations of Liability

15 3 1 Nothing in the Agreement shall be interpreted as meaning that POOL is in turn liable for any liabilities of any Member whatsoever

15 3 2 Subject to the provisions of Article 16 of the Market Rules, POOL shall not

be liable for any costs or losses, either actual or potential, incurred by any Member as a result of errors or omissions in the Central Dispatch if it has been demonstrated to have followed Good Industry Practice. Any Member may report any such error or omission to the Board, who may determine whether any action is required to rectify this error. In no instance will any Member be liable for the POOL's obligations in excess of their shares.

15.4 Nothing in this Agreement shall exclude or limit the liability of any Member for death or personal injury resulting from the negligence of the Member or any of its employees or agents.

15.5 Survival of the Agreement

Each of the Clauses in this Article 15 shall

15.5.1 be regarded as a separate contract term, and if one or more of such Clauses is found to be invalid, unlawful, or otherwise unenforceable, the other shall remain in effect,

15.5.2 survive termination of this Agreement.

16 Term and Termination of the Agreement

16.1 Term This Agreement shall expire at midnight, 31 December, 2000.

16.2 Suspension of Member's voting rights a Member's voting rights shall be suspended only in the circumstances and to the extent specified in Articles 4.3 and 12 of this Agreement.

16.3 Termination as a Member A Member shall cease to be a Member only in the circumstances and to the extent specified in Articles 4.3 and 12 of this Agreement.

16.4 Termination of the Agreement This Agreement may be terminated by a unanimous resolution of Members in General Meeting.

17 Notices

- 17 1 **Addresses** Any notice or other communications given by one to another, from POOL, the Board or any Member, under this Agreement shall be addressed to the recipient and sent to the address, telex number, or facsimile number of such other Member given in this Agreement for the purpose and marked for the attention of the Member's nominee as notified from time to time
- 17 2 **Deemed Receipt** Any notice or other communication to be given by any Member to any other Member shall be in writing and given by letter (delivered by hand or sent by post), or telex, or facsimile, and shall be deemed to have been received
- 17 2 1 in the case of delivery by hand, when delivered, of
- 17 2 2 in the case of telex, on the day of transmission, or
- 17 2 3 in the case of facsimile, on acknowledgment by the addressee's facsimile receiving equipment
- 17 2 4 in the case of telephone, a telephone-a-gram, on acknowledgment of receipt of the telephone-a-gram
- 18 **Assignment**
- 18 1 A Member shall not assign and/or transfer any of its rights and/or obligations as a shareholder to any other entity under this Agreement, except as approved by the other Members in accordance with the POOL Charter
- 19 **Waivers, Remedies not Cumulative**
- 19 1 **Waivers** No delay by, or omission of, any Member in exercising any right, power, privilege, or remedy under this Agreement shall impair such right, power, privilege, or remedy, nor be construed as a waiver of it
- 19 2 **Remedies not Cumulative** The rights and remedies provided by this Agreement for breach of this Agreement to the Members are exclusive and not cumulative
- 19 3 **Rights of the relevant State regulatory commission** For the avoidance of doubt or ambiguity, the Members acknowledge and agree that nothing in this Agreement shall exclude or restrict any of the rights, powers, privileges, remedies, duties and obligations of the relevant State regulatory commission under the relevant legislation

20 Severance of Terms

- 20 1 If for any reason whatever any provision of this Agreement is or becomes invalid, illegal, or unenforceable, or is declared as such by any court of Kazakstan or the Government of Kazakstan, the Members will negotiate in good faith with a view to agreeing on one or more provisions that may be substituted for the invalid, unenforceable, or illegal provisions, which provide an appropriate balance of the commercial interests of the parties
- 20 2 If for any reason whatever, any provision of this Agreement is deemed invalid, the other provisions of the Agreement shall remain in force

21 Disputes

The procedure for Resolution of Disputes is set out in Article 12 of the POOL Charter

22 Jurisdiction

- 22 1 Submission to jurisdiction Subject and without prejudice to any other Articles of this Agreement, all the Members agree that the courts of Kazakstan are to have exclusive jurisdiction to settle any disputes that may arise out of in connection with this Agreement, and that, accordingly, any suit, action, or proceeding arising out of or in connection with this Agreement may be brought into such courts
- 22 2 Waiver each Member irrevocably waives any objection which it may have to any Proceedings in any court as referred to in this Article and agrees that a judgment in any Proceedings brought in the Kazak courts shall be conclusive and binding upon each Member
- 22 3 Each Member that is not incorporated in any part of Kazakstan agrees that if it does not have, or shall cease to have, a place of business in Kazakstan, it will promptly appoint POOL (or such other person as shall be acceptable to the Board) to accept on its behalf any Proceedings in Kazakstan

23 Governing Law

- 23 1 This Agreement shall be governed by, and construed in all respects in accordance with, Kazak law

24 **Entire Agreement**

24.1 As of the date first written above, this Agreement sets for the full, complete, and entire understanding of the Members relating to the subjects addressed herein, and it supersedes any prior Agreement, whether oral or written, related to the subjects addressed in the Agreement

SCHEDULE 1

MEMBERS OF THE POWER POOL OF KAZAKSTAN

NAME

TYPE OF LICENSE