

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL
ARBITRATION RULES**

BETWEEN:

LONE PINE RESOURCES INC.

Claimant

AND

THE GOVERNMENT OF CANADA

Respondent

CONFIDENTIALITY ORDER

11 March 2015

ARBITRAL TRIBUNAL:

Mr. V.V. Veeder (President)

Professor Brigitte Stern

Mr. David Haigh

WHEREAS the *NAFTA Free Trade Commission Note of Interpretation of certain Chapter 11 Provisions* of July 31, 2001 calls for arbitrations under Chapter 11 of the North American Free Trade Agreement ("NAFTA") to be transparent to the maximum extent possible.

1. For the purposes of this Confidentiality Order:
 - (a) “disputing party” means either Lone Pine Resources Inc. (“Lone Pine”) or the Government of Canada (collectively the “disputing parties”);
 - (b) “confidential information” means information designated by a disputing party as confidential on the grounds that it is:
 - (i) business confidential information of a disputing party;
 - (ii) information otherwise protected from disclosure by legislation, including, but not limited to, and as amended, Canada’s *Access to Information Act*, the *Canada Evidence Act*, Canada’s *Privacy Act*, Québec’s *Act respecting Access to documents held by public bodies and the Protection of personal information* (CQLR, chapter A-2.1), Québec’s *Act respecting the protection of personal information in the private sector* (CQLR, chapter P-39.1), *Civil Code of Québec (Book Seven: Evidence) (CCQ-1991)* and *Québec’s Code of Civil Procedure (CQLR, chapters C-25, C-25.0.1)*; or
 - (iii) confidential information that is considered to be financial, commercial, scientific or technical information supplied by third parties that has been treated as confidential information by those third parties.
 - (c) “business confidential information” includes:
 - (i) trade secrets;
 - (ii) financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the disputing party, provincial, territorial or municipal governments or third party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed corporate, accounting or financial records not otherwise disclosed in the public domain;
 - (iii) information the disclosure of which could result in a material financial loss or gain to, or could be reasonably expected to prejudice the competitive position of the disputing party, provincial, territorial or municipal governments or third party to which it relates;

- (iv) information the disclosure of which could interfere with contractual or other negotiations of the disputing party, provincial, territorial or municipal governments or third party to which it relates; and
 - (v) other communications treated as confidential in furtherance of settlement between the disputing parties.
- 2. The disputing parties may propose, and the Tribunal may order, additional protections for confidential information as needed, including through introducing an additional category of "restricted access" confidential information.
- 3. In order to designate information in a document as confidential information, a disputing party must, at the time it produces the document or introduces it onto the record, clearly label the cover page of the submission "*Confidential Information – Unauthorized Disclosure Prohibited*", or some variation thereof. The top of each page of the document that the disputing party contends contains such information should be labeled "*Confidential*", or some variation thereof. The designated confidential information shall be enclosed in a single set of brackets (“[]”).
- 4. Except as otherwise provided herein, when a disputing party files with the Tribunal material containing confidential information it shall provide a copy of that material with the designated confidential information redacted (the "redacted version") within 10 business days of production. Equivalent measures should be used with respect to confidential information contained in material produced in electronic and similar media.
- 5. If upon receipt of a document, the receiving disputing party contends that it contains additional confidential information that has not been appropriately identified and redacted by the submitting disputing party, it shall so inform the submitting disputing party and the Tribunal within 10 business days of receipt, and within 10 business days, the receiving disputing party shall provide an electronic copy of the written submission with the additional information which it contends is confidential appropriately identified and redacted. This 20 day period may be extended by the Tribunal if necessary.
- 6. In order to designate information as confidential in a transcript, order or award, a disputing party must, within 20 business days from its receipt of the transcript, order or award, notify the other disputing party and the Tribunal of its intent to do so, and within 10 business days, provide the other disputing party and the Tribunal with an electronic copy of the transcript, order or award, with the information that it contends is confidential appropriately identified and redacted. The 30 day period may be extended by the Tribunal if necessary.
- 7. Materials already exchanged by the disputing parties before the execution of this Confidentiality Order can be designated as confidential by notifying the other

disputing party of such designation within 20 business days of the signature of this Confidentiality Order. A redacted version of the materials shall also be provided to the other disputing party at that time.

8. Where a disputing party does not agree that information designated as confidential by the other disputing party is confidential information under the terms of this Order, it shall submit the issue to the Tribunal. Following submission by the challenging disputing party, the Tribunal shall determine the procedure to be followed to address the issue. In the case of a dispute concerning the appropriateness of a designation of information as confidential, the information in question shall not be disclosed until the dispute is resolved by the Tribunal.
9. Except as required by legislation, ordered by a court or tribunal, or with the prior written consent of the disputing party that claimed confidentiality with respect to the information and, in the case of materials from third parties, the owner of such confidential information, confidential information may be used only in these proceedings and may be disclosed only for such purposes to and among:
 - (a) Arbitrators (and their assistants, if any) and officials of the Administrative Authority, court reporters and other hearing support staff, to whom disclosure is reasonably considered by at least one of the Arbitrators to be necessary;
 - (b) Counsel and legal support staff of the disputing parties, or counsel to the government of Québec and their legal support;
 - (c) Officials or employees of the disputing parties, or of the government of Québec;
 - (d) Independent experts or consultants and their support staff retained or consulted by the disputing parties or by the government of Québec in connection with these proceedings; or
 - (e) Witnesses, who in good faith are reasonably expected by a disputing party to offer evidence in these proceedings, and only to the extent that the information may be relevant to their expected testimony.
10. If a disputing party is compelled by any legal process to disclose documents containing confidential information, it may only do so after providing notice to the other disputing party and seeking direction to preserve confidentiality, consistent with the provisions of paragraph 12.
11. If the Government of Canada or Government of Quebec receives a request for the disclosure of confidential material pursuant to access to information legislation or otherwise, the Respondent agrees that it will notify the Claimant as soon as reasonably practicable before disclosing documents containing confidential

information.

12. No disputing party shall file any confidential material covered by the terms of this Confidentiality Order in any court or any other tribunal without first bringing this Confidentiality Order to the attention of the court or any other tribunal and seeking direction concerning the filing of such material in a manner that guarantees its confidentiality. A disputing party shall notify the other disputing party and any affected parties prior to requesting such a direction from the court or any other tribunal.
13. Inadvertent or inappropriate disclosure of confidential information as set forth in this Confidentiality Order does not constitute a waiver of the designation of the information as confidential.
14. All persons receiving material containing confidential information shall be bound by this Order. Each disputing party shall have the obligation of notifying all persons receiving such material of the obligations under this Order and to ensure that such person signs a Confidentiality Undertaking in form attached to this Order as Appendix A before gaining access to any such information. Each disputing party shall maintain copies of such Confidentiality Undertakings and shall make them available to the other party or Tribunal upon order of the Tribunal.
15. Where confidential information is used or discussed at any hearing, the following rules shall apply:
 - (a) The Tribunal shall restrict access to that portion of the hearing only to: (i) authorized persons in accordance with the terms of this Order, including paragraphs 9 and 18; and (ii) originators of the confidential information; and
 - (b) Transcripts of those portions of the hearing in which confidential information is used or discussed shall not be made public.
16. If a Tribunal's award discloses confidential information, the Tribunal shall issue two versions of the award as required by the terms of this Order:
 - (a) A private, confidential version of the award which shall be accessible to authorized persons in accordance with the terms of this Order, including paragraphs 9 and 18; and
 - (b) A public, non-confidential version of the award, with confidential information redacted.
17. In light of the *Note of Interpretation of the NAFTA Free Trade Commission* issued July 31, 2001, which is binding upon the Tribunal pursuant to Article 1131(2) of the NAFTA, a disputing party shall be free to disclose to the public,

the redacted and/or non-confidential versions of all pleadings of the disputing parties or of a NAFTA Party, decisions of the Tribunal, and other relevant materials, including, but not limited to, Notice of Arbitration, Memorials, witness statements, correspondence to or from the Tribunal, transcripts of hearings, procedural rulings and Orders and Awards.

18. Notwithstanding any other provision in this Confidentiality Order, any request for documents, or for the production of documents under the applicable domestic law of the disputing State party, including documents submitted or produced in these proceedings, shall be wholly governed by the applicable legislation.
19. Representatives of the disputing parties and their counsel, representatives of the government of Québec and their counsel, as well as the non-disputing NAFTA Parties, shall, at all times, have access to oral hearings in the room where the hearings are being held, and are entitled to receive, in a timely fashion, a copy of confidential versions of transcripts, written submissions and exhibits, including witness statements and expert reports.
20. The representatives of the non-disputing NAFTA Parties shall be made aware of this Order and shall treat all information received in relation to this dispute as if they were a disputing party, notably in respect of protection of confidential information.
21. This Order does not prevent a disputing party from refusing to disclose any information on the basis of a privilege, an exception to divulgation or a public interest immunity arising at common law or under Canada or Québec legislation.
22. The obligations created by this Confidentiality Order shall survive the termination of these arbitral proceedings.
23. This Confidentiality Order shall be effective and binding upon the disputing parties upon the signature of this Confidentiality Order by the Tribunal.
24. Each disputing party may apply to the Tribunal for an amendment to, or derogation from, this Confidentiality Order with good cause.

[Signed]

V.V. Veeder
On behalf of the Tribunal
Date: 11 March 2015

Signed by both disputing parties in acknowledgement of the obligation to abide by this Confidentiality Order:

On behalf of the Government of Canada

Date

Ms. Sylvie Tabet
Trade Law Bureau (JLTB)
Lester B. Pearson Building
Tower C, Fifth Floor
125 Sussex Drive
Ottawa (ON) K1A 0G2
CANADA

On behalf of Lone Pine Resources Inc.

Date

Mr. Milos Barutciski
Ms. Maureen Ward
Ms. Sabrina A Bandali
Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto (ON) M5X 1A4
CANADA

APPENDIX A

CONFIDENTIALITY UNDERTAKING

TO: The Government of Canada (and its legal counsel) and Lone Pine Resources Inc. (and its legal counsel).

FROM: _____

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between Lone Pine Resources Inc. and the Government of Canada, over which claims for confidentiality have been advanced (“confidential information”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person who has not signed a Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of this Confidentiality Order that has been agreed to by the disputing parties, a copy of which is attached to this Undertaking, and agree to be bound by it.
3. I will promptly return any confidential information received by me from the disputing party that provided me with such materials at the conclusion of my involvement in these proceedings.
4. I acknowledge and agree that either of the disputing parties to this arbitration is entitled to relief to restrain breaches of this Confidentiality Undertaking, to specifically enforce the provisions hereof in addition to any other remedy to which any disputing party to this arbitration may be entitled at law or in equity.
5. I agree to submit to the jurisdiction of the following courts to resolve any disputes under this Confidentiality Order:
 - a. For residents of Canada, the judicial tribunals of _____(Province of residence);
 - b. For residents of the United States of America, the courts of the District of Columbia; or
 - c. For residents of another country, at their choice:
 - i. The judicial tribunals of Ontario, or
 - ii. The courts of the District of Columbia.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 20__.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)