

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this

day of June, 2017.

BETWEEN: **The Independent Electricity System Operator**
 (bereinafter the “Corporation”)

OF THE FIRST PART,

**Her Majesty the Queen in Right of the Province of Ontario as Represented
by the Minister of Energy**

(hereinafter called the “Province”),

OF THE SECOND PART

WHEREAS the Corporation is required to carry out certain activities with respect to the implementation of the *Ontario Fair Hydro Plan Act* (the “Act”).

AND WHEREAS the Corporation, and its directors, officers and employees, may, as a result of the Corporation's role in the implementation of the Act, face risks of liability which extend beyond the typical operations risk of the Corporation.

NOW THEREFORE, in consideration of the sum of \$1.00 now paid by the Corporation to the Province (the receipt of which is hereby acknowledged), the Province hereby agrees:

1. to indemnify and save harmless the Corporation and each of its directors, officers, employees or agents of the Corporation or a member of a committee or panel established by the directors of the Corporation (collectively the “Protected Persons” and individually, a “Protected Person”) from and against all losses, costs, charges, expenses, claims, demands and liabilities directly or indirectly suffered, sustained or incurred by a Protected Person arising as a result of, or in connection with, the IESO’s role in carrying out activities related to the implementation of the Act (collectively, “Claims” and individually, a “Claim”), **[IESO note: we request that the indemnity not be limited to actions arising specifically as a result of a Persons’ “direct” role. We request that the indemnity be broad enough to include actions that arise due to the IESO’s role in implementing the Act. We prefer to not have to argue, if the indemnity is ever called on, whether something was “specifically” as a result of, or related to a “direct” role.]**

2. A Protected Person shall not be entitled to be indemnified in respect of a Claim, or a portion thereof:

- (a) for which coverage is provided under an insurance policy or claims fund to the extent that payment has been made thereunder to such Protected Person; or
- (b) for which other indemnities are already provided to a Protected Person to the extent that payment has been made to such Protected Person under such indemnities; or
- (c) is the result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person.
- (d) To the extent arising from any circumstances in which a Protected Person did not have reasonable grounds for believing that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

Commented [A1]: I've re-inserted this provision. This provision is part of the standard Indemnity Template that we typically use. We would like to include in order to ensure consistency with the OPG indemnity.

3. Each Protected Person shall:

- (a) upon becoming aware of a Claim for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim;
- (b) upon written request of the Province, acting reasonably, furnish to the Province copies of any document, or provide to the Province any information that relates to the Claims that is in the possession or under the control of the Protected Person;
- (c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and
- (d) promptly take all necessary reasonable steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

Commented [A2]: Change made to be consistent with OPG edits to its indemnity.

A failure on the part of a Protected Person to take any of the actions provided in this section 3 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take

any of the actions provided in this section 3 shall not affect the rights of any other Protected Person.

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), each Protected Person shall co-operate fully with the Province in connection with the same, and each Protected Person shall agree to be represented by legal counsel chosen by the Province, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing such Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.
5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation.
6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

Commented [A3]: Again – this is standard language we include in our indemnities. Please advise what the risk to IESO is with including this provision.

NOW THEREFORE, the parties have executed this indemnity as of the day and year first above written.

SIGNED, SEALED AND DELIVERED) **THE INDEPENDENT ELECTRICITY**
) **SYSTEM OPERATOR**
in the presence of)
)
)
) By: _____
Name:)

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO, AS REPRESENTED
BY THE MINISTER OF ENERGY**

By: _____

Glenn Thibeault
Minister of Energy

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