

CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT effective as of this _____ day of June, 2017.

[illegible]

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 and/or one or more of its subsidiaries may or, in certain circumstances is or will be required to, carry out certain activities with respect to (i) the *Ontario Fair Hydro Plan Act, 2017* (the “**Act**”), (ii) the regulations made pursuant to the Act, and/or (iii) the agreements (A) relating to any financing entity (as defined in the Act) and/or any debt issued by any such financing entity and/or (B) to which any such financing entity is a party (the Act, such regulations and agreements, collectively the “**Fair Hydro Plan**”).

AND WHEREAS the Corporation, its subsidiaries and each of their respective directors, officers and employees may face risk of liability due to or as a result of the Fair Hydro Plan.

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

1. To indemnify, defend and save harmless the Corporation, each of the Corporation's subsidiaries and each of their respective directors, officers, and employees (collectively the **"Protected Persons"** and individually, a **"Protected Person"**) from and against all losses, costs, damages, charges, expenses, demands, liabilities, taxes, fines, penalties, statutory payments, judgments and/or settlement amounts directly or indirectly suffered, sustained or incurred by any Protected Person, including any special, indirect, incidental, punitive, exemplary and/or consequential damages and/or loss of profits and damages in respect of economic loss and/or loss of opportunity, and all legal and other professional fees and out-of-pocket expenses (collectively, **"Losses"**), in relation to any civil, criminal, administrative, investigative and/or other claim, demand, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation (formal or informal), hearing and/or

other proceeding of any nature or kind whatsoever (any of the foregoing being a “**Claim**”) arising, directly or indirectly, as a result of the Corporation’s, any of the Corporation’s subsidiaries and/or any such other Protected Person’s activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).

2. This indemnity does not apply with respect to Losses of a Protected Person:
 - (a) for which coverage is provided under an insurance policy but only to the extent that a Protected Person is actually paid under such insurance policy for those Losses; or
 - (b) for which other indemnities are already provided to a Protected Person but only to the extent that the Protected Person is actually so indemnified for those Losses by such indemnities; or
 - (c) if and to the extent that a court of competent jurisdiction in a final, non-appealable judgment determines that the Claim associated with such Losses resulted from the gross negligence or willful misconduct of the Protected Person claiming such indemnity; for greater certainty, and notwithstanding Section 2(d), the Province agrees that it does not intend that any failure by a Protected Person to conduct such reasonable investigation as necessary to provide the Corporation, a subsidiary of the Corporation or a financing entity, as applicable, with reasonable grounds for believing any prospectus, registration statement, offering document or any other document filed by, or on behalf of, a financing entity under applicable securities laws contained no misrepresentation shall constitute “gross negligence” or “wilful misconduct” for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder; or
 - (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.
3. In order to be entitled to indemnification hereunder in respect of any Losses, the Protected Person shall:
 - (a) 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 any Claim;
 - (b) upon written request of the Province, 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 (except to the extent that provision of same would cause the Protected Party to lose its entitlement to claim privilege with respect to same);

- (c) take all reasonable steps, at the expense of the Province, necessary to secure and preserve the rights of the Protected Person in respect of the Claim; and
- (d) promptly take all reasonable steps to obtain indemnification to the fullest extent possible under insurance policies, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

A failure to give prompt notice as provided in this section 3 shall not affect the rights or obligations of any party to this indemnity unless and only to the extent that such failure to provide such prompt notice has actually prejudiced the Province.

4. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that all Losses in respect of a Claim will be fully indemnified under this indemnity agreement, assume control of the negotiation, settlement or defence of the Claim and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim without the prior written consent of the Province, such consent not to be unreasonably withheld, delayed or conditioned. If the Province elects to so participate in or assume control of the negotiation, settlement or defence of the Claim, the applicable Protected Person(s) shall co-operate fully with the Province in connection with the same, and each applicable 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 the applicable Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing a 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 Losses to which this indemnity extends. The Province shall not agree to any settlement of a Claim on behalf of a Protected Person without the Protected Person's written consent unless (i) the terms of such settlement require only the payment of money (by persons or entities other than the Protected Person) and include an unconditional, full release of the Protected Person, and do not require a Protected Person to admit any wrongdoing or take or refrain from taking any action and (ii) the Province has fully indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, all Losses incurred by or on behalf of the Protected Person in connection with the Claim.
5. The Province shall reimburse or advance the funds necessary for the payment of Losses incurred in connection with any Claim, including without limitation, the investigation, monitoring, defence and appeal thereof, in advance of the final disposition of such Claim, within thirty (30) days of any request in writing by a Protected Person to the Province for such reimbursement or advance, accompanied by reasonable details and supporting documentation with respect to the Losses in respect of which such reimbursement or advance is requested. The Protected Person shall repay forthwith any advances that are ultimately in excess of amounts necessary for payment of any such Losses or for which it is judicially determined that the Protected Person is not entitled to indemnification hereunder.

6. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such other Protected Person's activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including, without limitation, where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation).
7. The Province represents and warrants to each Protected Person as follows and acknowledges that each Protected Person is relying on the following representations and warranties in connection with any and all of its activities, acts and/or omissions in the implementation of, or otherwise relating to, the Fair Hydro Plan (including where a Protected Person is acting, at the request of the Corporation, in a different capacity than as a director, officer or employee of the Corporation or a subsidiary of the Corporation):
 - (a) the Province has all necessary power, authority and capacity to enter into this indemnity agreement and to perform its obligations hereunder;
 - (b) all necessary actions have been taken by the Province or on the Province's part to authorize its execution and delivery of this indemnity agreement and the performance of its obligations hereunder, and without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) (including approval of the Minister of Finance pursuant to Section 28 of the *Financial Administration Act* (Ontario)) and under the Act required for it to enter into this indemnity agreement and perform its obligations hereunder;
 - (c) this indemnity agreement has been duly executed and delivered by the Province and is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by the provisions of the *Proceedings Against the Crown Act* (Ontario), subject to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect relating to creditors' rights generally, to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction, to section 11.3 of the *Financial Administration Act* (Ontario) and to section 43 of the *Financial Administration Act* (Ontario).
8. It is the intention of the Province to constitute the Corporation as trustee for the Protected Parties that are not party to this indemnity agreement of the covenants, waivers, representations, warranties and obligations of the Province under this indemnity agreement and the Corporation agrees to accept such trust and to hold and enforce such covenants, representations, warranties and obligations on behalf of such Protected Parties.
9. This indemnity agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

May 18, 2017

10. The provisions of this indemnity agreement and the benefit of all covenants, waivers, representations, warranties and other obligations herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

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

ONTARIO POWER GENERATION INC.

By: _____

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

By: _____

Glenn Thibeault
Minister of Energy