

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE
MINISTER OF ENERGY AND THE MINISTER OF FINANCE¹

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR
HYDRO TRUST^{1,2}

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER
AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

¹ This Agreement and the Process Agreement will need to be effective on closing but signed and held in escrow as soon as they are settled and prior to pricing of the term deal. **Note to Torys:** Logistics of closing are under consideration.

¹ ~~Torys and Blakes to discuss signatory~~ ² **Torys Note:** Please advise if there are any further issues with the Manager signing the Protection Agreement on behalf of the Trust? If so, can you please explain the issue. The Manager is currently signing all Program Agreements on behalf of the Trust and has authority to do so. We would ~~propose to do the same on the change of law agreement~~ like the Manager to sign this Agreement on behalf of the Trust. **Note to Torys:** Manager derives authority under the Management Agreement to sign Program Agreements. Management Agreement powers determined by reference to the Program Agreements, so authority is circular. Ultimately, Province will accept the opinion of Torys on due execution point.

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the “**Province**”), Computershare Trust Company of Canada, in its capacity as trustee (the “**Financing Entity Trustee**”) of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the “**Financing Entity**”), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the “**FSM**”) and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the “**Act**”), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the “**OIC**”), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust²³ dated as of ■, 2017, the Financing Entity was established as a “financing entity” (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Primary Obligations ~~Secured~~ that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence

² ~~Torlys to confirm that Trust is a “financing entity” under OFHPA. Under definition, FSM to establish or cause to be established. DoFT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.~~³ **Torlys Note:** We are comfortable on this point because OPG has retained Computershare as issuer trustee. The recitals of the Declaration of Trust provide that Computershare has established the Trust at the request of the FSM. We can also provide you with a copy of the Computershare engagement letter upon request. **Note to Torlys:** The Province will accept authorities opinion regarding the Trust from Torlys.

Conditions at the time the Approved Obligation is incurred~~or amended~~. This Agreement sets out the terms and conditions of such protections and assurances.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;
- (b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;
- (c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;
- (d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;
- (e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;
- (f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

- (g) all references in this Agreement to designated “Articles”, “Sections”, “Subsections”, “Schedules”, “Exhibits” and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;
- (h) “including” and words of similar import will be deemed to be followed by “without limitation”; and
- (i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee, the Manager or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT [\(ONTARIO\)](#).

1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR

OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the “Change of Law Protection Agreement” referred to in the Trust Indenture.

1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party’s failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest

calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

- (a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the “**Original Currency**”) into another currency (the “**Second Currency**”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.
- (b) The term “rate of exchange” in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able

on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

- (a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a **"Payment Demand"**), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the **"Limited Guarantee"**), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Guarantee Payment Date:
- i. Not less than ~~{3}~~ Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, (a **"Guarantee Payment Date"**), the Manager shall deliver a written statement, ~~substantially in the form attached as Exhibit A.1 (a "Guarantor Settlement Statement")~~ setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of ~~the Guarantor Settlement Statement~~ such written statement, and details regarding any default in performance by any party obligated thereunder.
 - ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.
 - iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved

Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a “Beneficiary Payee”).

- iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(A) ~~(i)~~ the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) ~~(ii)~~ the Province shall be paid the ~~amount by which~~ lesser of (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to subclause 2.01(a)iv(~~i~~A), ~~exceeds~~ and (y) the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Guarantee Payment Date (such payments to the Province being “Subrogation Amounts”); and

(C) ~~(iii)~~ no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(~~ii~~B) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or

reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

- v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii.
 - vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Guarantee Payment Date under Section 2.01(a).
- (b) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)(iv)(B) and any amounts payable under clause 2.01(a)(v), be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.
 - (c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).
 - (d) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.
 - (e) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation by their terms.
 - (f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any

amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

2.04 Payment into Protection Account³ in Satisfaction

- (a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the “**Protection Account**”) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the “Protection Account” for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.
- (b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in

³ ~~Mechanics of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.~~

respect of the Approved Obligation to the extent so paid⁴. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

- (a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;
- (b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;
- (c) diligence; and
- (d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment,

⁴ ~~A corresponding provision needs to be added to the Trust Indenture and each other Funding Obligation Agreement under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.~~

decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, ~~or until the Province is no longer required to provide and perform the Limited Guarantee~~ in accordance with Section ~~6.03 or Section 8.02~~ [8.01](#).

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

- (a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;
- (b) accept partial payments on the Approved Obligations; and
- (c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

ARTICLE III THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

ARTICLE IV APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions⁵

The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation ~~other than any Funding Obligation under which not more than \$■ in the aggregate may become payable by the Financing Entity:~~

- (a) the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and
- (b) OPG, as FSM, delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG ~~(or their respective designees, provided that such designees are executive officers of OPG and, or any two Executive Officers of OPG~~ (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, one Business Day prior to the Financing Entity entering into or becoming bound by the related Funding Obligation Agreement on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation), confirming that OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, ~~(or their respective designees, provided that such designees are executive officers of OPG and, or any two Executive Officers of OPG~~ (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in

⁵ ~~Dealers to explain how the current structure requiring satisfaction of the adherence conditions in the Protection Agreement is more onerous than ordinary adherence conditions applicable to government guaranteed bonds and to estimate the quantum impact on the marketability of the transaction and explain what uncertainty an ordinary closing condition of this type poses for investors.~~

connection with the adherence of the Limited Guarantee to the Certified Primary Obligation; and

- (c) in respect of a Certified Primary Obligation other than a Refinancing of a Primary Obligation in respect of which the Adherence Conditions had been satisfied, the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

For greater certainty, (y) satisfaction of the Adherence Conditions for a ~~Funding~~Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the ~~Funding~~Certified Primary Obligation, as such ~~Funding~~Certified Primary Obligation may be amended, restated, supplemented or otherwise modified from time to time, and (z) there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02(b)~~(x)~~ in connection with an incurrence of a Certified Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. A closing certificate that purports on its face to be signed by officers specified in Section 4.02(b) may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If a closing certificate is not delivered in accordance with the timing requirements of Section 4.02(b) in respect of a Certified Primary Obligation, such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of Section 4.02(b), if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

ARTICLE V PROVINCE MATTERS

5.01 Assignment and Subrogation

- (a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests

(including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

- (b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including [Sections 7.04 through 7.11 and 8.13 (Payment Priorities), Section 7.117.12 (Payments Held in Trust), Section 8.11 (Control by Controlling Class Creditors), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse), Section 9.14 (Communications to Specified Creditors) and Section 16.01 (No Petition) thereof and (ii)]; (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection [13.13(b)] of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection [9.14(b)] of the Trust Indenture, and (iii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.028.02.⁶

5.02 **Priorities**

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in

⁶ ~~Section to be updated to conform with section in the Trust Indenture once settled-~~
23239360.1723239360.20

respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section ~~2.01~~[7.1\(d\) of the Trust Indenture](#).

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

- (a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;
- (b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and
- (c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI

~~NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED~~

~~6.01 Delivery of Assumption Notice~~

~~Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "Assumption Notice"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "Assumption Closing Date").~~

~~6.02 Cooperation to Implement the Assignment and Assumption~~

~~The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.⁷~~

~~6.03 Effect of Assumption~~

~~On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "Assumption Effective Date"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to~~

⁷ ~~Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.~~
23239360.17[23239360.20](#)

~~and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. [NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]~~

6.04 Interim Period

~~Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.~~

6.05 Rights in respect of the Assets Comprising the Collateral

~~Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.~~

~~ARTICLE VI~~ARTICLE VII INDENTURE TRUSTEE MATTERS

6.01 ~~7.01~~ Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

6.02 ~~7.02~~ Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

6.03 ~~7.03~~ Representations and Covenants of the Indenture Trustee⁴

The Indenture Trustee represents, warrants and covenants that:

- (a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada; and
- ~~(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;~~
- ~~(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and~~
- (b) ~~(d)~~ the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

ARTICLE VII~~ARTICLE VIII~~

SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 ~~8.01~~ Suspension Notice

Upon:

- (a) a Program Breach;
- (b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the adherence of the Limited Guarantee, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

⁴ Torys Note: The Indenture Trustee asked us to delete these representations. They will not provide these types of representations without attaining a legal opinion from outside counsel. To avoid delay, we would ask that the parties agree to this deletion. Note to Torys: The representations provided by the Indenture Trustee should be consistent with those in the Trust Indenture.

- (c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the adherence of the Limited Guarantee, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or
- (d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

~~The~~the Province may, ~~at any time and for any reason,~~ declare that the Limited Guarantee under this Agreement shall not apply to any ~~Obligation Secured~~Primary Obligations incurred on or after such declaration, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, by delivering a written notice in the form of Exhibit ~~CB~~ (a “**Suspension Notice**”) ~~to the Province~~ to the Indenture Trustee, the FSM and the Financing Entity.

The Limited Guarantee shall apply to any Certified Primary Obligation incurred after a Suspension Event on the basis that it is a Refinancing only if the FSM certifies to the Province in writing prior to the incurrence that the proceeds of such incurrence will be used solely for the purposes of repaying one or more Certified Primary Obligations incurred prior to the Suspension Event and to which the Limited Guarantee adhered as of the time the Suspension Event occurred, and the delivery of such written certification by the FSM to the Province shall be determinative for the purposes of concluding that such incurrence is a Refinancing for the purposes of Sections 7.01, 7.02 and 7.03.

7.02 ~~8.02~~ **Suspension**

If a Suspension Notice has been provided under Section ~~8.01~~7.01 (the provision of such notice being a “**Suspension Event**”), the Limited Guarantee shall not apply in respect of any Primary Obligation ~~Secured~~ incurred or amended on or after the time such Suspension Notice is delivered, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied. ~~For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered.~~

8.03 Termination Notice

~~On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a “**Termination Notice**”).~~

7.03 ~~8.04~~ **No Impact on Adherence**

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish

the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, ~~nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.~~

~~ARTICLE VIII~~
ARTICLE IX
MISCELLANEOUS

8.01 ~~9.01~~ **Term of Agreement**

~~This Agreement will continue until the later of:~~

- ~~(a) the This Agreement will continue until the~~ date that no amount is or may become due and payable by the Province under the Limited Guarantee; ~~and~~
- ~~(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.~~

8.02 ~~9.02~~ **Notices**

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

- (a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: ~~{■}~~ General Counsel

Fax: (416) ~~{■}~~

Email: [REDACTED] [592-4189](tel:592-4189)

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity
Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [REDACTED] [Manager, Corporate Trust](#)
Fax: (416) [REDACTED] [981-9777](tel:981-9777)
Email: [REDACTED] corporatetrust.toronto@computershare.com

[REDACTED]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [REDACTED] [General Counsel](#)
Fax: (416) [REDACTED] [592-4189](tel:592-4189)

Email: [REDACTED]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [REDACTED]
Fax: (416) [REDACTED]
Email: [REDACTED]

and

Ministry of Energy

[Address]

Attention: [REDACTED]
Fax: (416) [REDACTED]
Email: [REDACTED]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]

Fax: (416) [■]

Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section ~~9.02~~[8.02](#).

[8.03](#) ~~9.03~~ **Assignment**

- (a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.
- (b) Any purported assignment of this Agreement in violation of this Section ~~9.03~~[8.03](#) shall be null and void.

[8.04](#) ~~9.04~~ **Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

[8.05](#) ~~9.05~~ **FIPPA**

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

[8.06](#) ~~9.06~~ **No Petition**

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

[8.07](#) ~~9.07~~ **Intentionally Deleted**

[8.08](#) ~~9.08~~ **Third Party Rights**

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 ~~9.09~~ **Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS
FSM AND AS MANAGER**

By: _____
Name:
Title:

By: _____
Name:
Title:

**COMPUTERSHARE TRUST COMPANY OF
CANADA, IN ITS CAPACITY AS TRUSTEE
OF FAIR HYDRO TRUST, AS ISSUER, ~~BY~~
ONTARIO POWER GENERATION INC., NOT
IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS MANAGER⁸**

By: _____
Name:
Title:

By: _____
Name:
Title:

⁸ ~~To be discussed.~~

**BNY TRUST COMPANY OF CANADA, AS
INDENTURE TRUSTEE AND NOT IN ITS
INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

DEFINED TERMS

“**Acceleration**” has the meaning ascribed to the term “acceleration” in the General Regulation.

“**Act**” has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

“**Action**” has the meaning ascribed thereto under the Trust Indenture.

“**Adherence Conditions**”, means, in respect of a Certified Primary Obligation, ~~means~~ the conditions set out in Section 4.02.

“**Aggregate Approved Obligations Amount**” means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

“**Approved Obligation**” means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

“**Approved Obligation Amount**” means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

- (a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and
- (b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month ~~{during each Reference Period from and after May, 2021}~~⁹ is equal to the ~~{estimated finance amount}~~ Finance Amount determined in respect of such Reference Period ~~pursuant to~~ for purposes of section ~~15(1)~~ 15(1) of the ~~General Regulation (as set forth)~~ Act (in effect on

⁹ ~~What about earlier periods? Are the earlier periods covered at all, or is the intention that they would be determined without regard to the acceleration mechanics of the Regulation?~~

~~23239360.17~~ 23239360.20

the date hereof)¹⁴⁰⁵ divided by the number of months in such Reference Period.

~~“Assumption Agreement” means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the Funding Obligation Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of the form of assumption agreement set forth in Exhibit E.~~

~~“Assumption Closing Date” has the meaning ascribed thereto in Section 6.01.~~

~~“Assumption Effective Date” has the meaning ascribed thereto in Section 6.03.~~

~~“Assumption Notice” has the meaning ascribed thereto in Section 6.01.~~

~~“Available Collections” has the meaning ascribed thereto in the Trust Indenture.~~

“Beneficiaries” means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

“Beneficiary Payee” has the meaning ascribed thereto in Section 2.01(a)iii.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

“Capital Account” has the meaning ascribed to the term “capital account” in the General Regulation.

“Certified Primary Obligations” means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest,⁶ (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years’ notice or less and aggregate payments

¹⁰ ~~This needs to tie into the “estimated finance amount” determined under the General Regulation applicable during the Reference Period⁵ **Note to Province:** MOE should confirm that this captures the limitations contemplated in connection with any “acceleration” under the revised Regulation. Consider whether it is necessary to refer specifically to the Regulation to avoid any disconnect, and to tie-in specifically to the context of the acceleration scenario applicable at the time.~~

⁶ **Torys Query:** For a warehouse facility, does the Province want a Certificate for each monthly draw? **Note to Province:** Please advise. We may respond that to extent the draw is a Certified Primary Obligation, we would like to maintain the process set out in this Agreement.

by the Financing Entity thereunder during the term of such contract is in excess of C\$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).⁷

“Change of Law Protection Agreement” means this Agreement.

“Collateral” has the meaning ascribed thereto in the Trust Indenture.

“Declaration of Trust” means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

“Derivative Agreement” means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

“Eligible Deposit Account” has the meaning ascribed thereto in the Trust Indenture.

“Eligible Institution” has the meaning ascribed thereto in the Trust Indenture.

“Executive Officer” has the meaning ascribed thereto in National Instrument 51-102 – Continuous Disclosure Obligations.⁸

“Finance Amount” has the meaning ascribed to the term “finance amount” in the Act as of the date of this Agreement.

“Finance Reserve Account” has the meaning ascribed to the term “finance reserve account” in the General Regulation.

“Financing Entity” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Financing Entity Trustee” ~~means, at any time, the Person who is, in accordance with~~ has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing

⁷ **Note to Province:** Torys suggests that this concept reflects what Primary Obligations the parties agreed to be subject to the adherence conditions. Province to confirm that this is their understanding from meeting on Tuesday, November 21, particularly prongs (ii) and (iii) of the definition.

⁸ **Note to Torys:** We have used the definition from NI 51-102 as there is only a definition of “officer” (but not “executive officer”) in the OSA. **Note to Province:** Province to confirm that scope is acceptable. In NI 51-102, “Executive officer” means an individual who is (a) a chair, vice-chair or president; (a.1) a chief executive officer or chief financial officer; (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production; or (c) performing a policy-making function in respect of the issuer”. If you prefer, we may use the definition of “officer” from the Securities Act. “Officer” means (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager; (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, ~~the trustee of the and thereafter~~ “Financing Entity at Trustee” means and includes such ~~time~~ Person.

“FSM” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Funding Obligation” has the meaning ascribed to the term “funding obligation” in the Act as of the date of this Agreement.

“Funding Obligation Agreement” has the meaning ascribed thereto in the Trust Indenture.

“General Regulation” means O. Reg. 206/17 made under the Act.

“Guarantee Payment Date” has the meaning ascribed thereto in Section 2.01(a).ⁱ

~~“Guarantor Settlement Statement” has the meaning ascribed thereto in Section 2.01(a).~~

~~“General Regulation” means O. Reg. 206/17 made under the Act.~~

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“IESO” has the meaning ascribed thereto in the Act.

“Indenture Trustee” means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter “Indenture Trustee” means and includes such Person.

“Investment Interest” has the meaning ascribed to the term “investment interest” in the Act as of the date of this Agreement.

“Issuer Account” has the meaning ascribed thereto in the Trust Indenture.

“Legislature” means the Legislature of the Province of Ontario.

“Lien” has the meaning ascribed thereto in the Trust Indenture.

“Limited Guarantee” has the meaning ascribed thereto in Section 2.01(a).

“Loan Agreement” has the meaning ascribed thereto in the Trust Indenture.

“Management Agreement” means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

“**Manager**” means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

“**Master Agreement**” means an agreement in the form of an ISDA Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

“**Master Transfer and Servicing Agreement**” means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

~~“**Note**” or “**Notes**” has the meaning ascribed thereto under the Trust Indenture.~~

“**Obligations Secured**” has the meaning ascribed thereto in the Trust Indenture.

“**OIC**” has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

“**OPG**” means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

“**Original Currency**” has the meaning ascribed thereto in Section 1.19(a).

~~“**Paying Agent**” has the meaning ascribed thereto in the Trust Indenture.~~

“**Payment Demand**” has the meaning ascribed thereto in Section 2.01(a).

“**Person**” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

“**Primary Obligations**” means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, or Finance Reserve Account,~~or Supplemental Reserve Account;~~ and (ii) any ~~amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture;~~ and (iii) ~~any obligation to pay the Trust obligation to pay the Financing Entity or on the Trust Financing Entity’s direction any remaining amounts of Available Collections in the Collection Account pursuant to the Trust Indenture.~~⁹

“**Program Agreements**” has the meaning ascribed thereto in the Trust Indenture.

⁹ Torlys Note: These changes were made to conform to the most current version of the Trust Indenture, a copy of which will be circulated soon. Additionally, money in the Collection Account is required to flow through the waterfall and is not required to be held in the Collection Account otherwise. Note to Torlys: Please confirm. The Trust Indenture states that if extra cash is available in the Collections Account, it can be held until a subsequent Payment Date.

“Program Breach” means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.¹⁰

“Protection Account” has the meaning ascribed to such term in Section 2.04(a).

“Protection Event” means the occurrence of any of the following events:

- (a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;
- (ii) the Legislature enacts or amends any other statute;
- (iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or
- (iv) the Lieutenant Governor in Council, a minister of the {Crown}, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any “regulation” (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;
- (v) the implementation of a change in the organization or structure of the IESO or Ontario’s electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

- (b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

¹⁰ **Torys Note:** We deleted early amortization events because that is no longer a concept used in the Trust Indenture. **Note to Torys:** Early amortization events may be included in a supplemental indenture so we think retaining that reference makes sense.

“**Province**” has the meaning ascribed thereto in the first paragraph of this Agreement.

“**Rating Agency Condition**” has the meaning ascribed thereto in the Trust Indenture.

“**Reference Period**” has the meaning ascribed thereto in the Act.

“**Refinancing**” has the meaning ascribed to the term “refinancing” in the Act as of the date hereof, as more particularly described and given meaning in ~~in~~ the General Regulation as of the date hereof.¹¹

~~“**Repayment**” has the meaning ascribed thereto in the General Regulation.~~

“**Second Currency**” has the meaning ascribed thereto in Section 1.19(b).

“**Specified Creditors**” has the meaning ascribed thereto in the Trust Indenture.

“**Subrogation Amounts**” has the meaning ascribed thereto in subclause 2.01(a)iv(~~§~~B).

“**Supplemental Indenture**” has the meaning ascribed in the Trust Indenture.

“**Supplemental Reserve Account**” has the meaning ascribed in the Trust Indenture.

“**Suspension Event**” has the meaning ascribed thereto in Section ~~8.02~~7.02.

“**Suspension Notice**” has the meaning ascribed thereto in Section ~~8.01~~7.01.

~~“**Termination Notice**” has the meaning ascribed thereto in Section 8.03.~~

“**this Agreement**” means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

“**Trust Indenture**” means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

¹¹ Torlys Note: Refinancings can occur up to six months prior to the application of the refinancing proceeds to the existing obligation. The regulations provide that if the refinancing proceeds are not applied to repay the intended funding obligation, then it is not a Refinancing. Accordingly, we have revised the definition to ensure that Refinancings do not have to be simultaneous with repayment of the existing Approved Obligation (we understand from the dealers that in most circumstances they will not be). Note to Province: The General Regulation specifically provides that debt can be considered a “Refinancing” when incurred within the 6 months prior to the maturity date of a funding obligation. The Act/Regulation’s definition doesn’t require that “Refinancings” are simultaneous with the repayment of existing Approved Obligations. Consider if further discussion is required and MOE to specifically confirm understanding of the Regulation on this point.

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the “Province”)

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the “Financing Entity”), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the “Change of Law Protection Agreement”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By:

Name:

Title:

By:

Name:

Title:

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EXHIBIT A.1
FORM OF GUARANTOR SETTLEMENT STATEMENT

EXHIBIT B
~~ASSUMPTION~~SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the “**Financing Entity**”), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the “**Change of Law Protection Agreement**”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to “Articles” or “Sections” refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall not apply in respect of any Primary Obligation incurred or amended on or after the delivery of this Suspension Notice, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, in accordance with the terms and conditions in Article VII.

The Limited Guarantee shall hereby not apply in respect of any Primary Obligation incurred or amended on or after delivery of this Suspension Notice, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

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EXHIBIT C
SUSPENSION NOTICEDATED as of the [■] day of [■], [■].

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EXHIBIT D
TERMINATION NOTICE

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[24533583.2](#)

EXHIBIT E

FORM OF ASSUMPTION AGREEMENT

HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO, AS REPRESENTED BY THE
MINISTER OF FINANCE

By: _____

Name:

Title:

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

By: _____

Name:

Title:

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Description	TOR_2528-#23239360-v20-Change_of_Law_Protection_Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	176
Deletions	180
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	366