

CONFIDENTIAL DRAFT

INDEMNITY

THIS INDEMNITY effective as of this

day of June, 2017.

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

OF THE FIRST PART,

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

(hereinafter called the "Province").

OF THE SECOND PART

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

AND WHEREAS the Corporation, its directors, officers and employees may face risk of liability which extends beyond the typical operations risk of the Corporation and which may arise solely due to the Corporation's role in the implementation of the Act.

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

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

- (a) for which coverage is provided under an insurance policy or claims fund to the extent that a Protected Person is actually so indemnified or covered under such policy or fund; or
 - (b) for which other indemnities are already provided to a Protected Person to the extent that the Protected Person is actually so indemnified by such indemnities;
or
 - (c) brought about or contributed to by a Protected Person's dishonesty, gross negligence or willful misconduct if a judgment or other final adjudication adverse to the Protected Person establishes that there was dishonesty, gross negligence or willful misconduct on the Protected Person's part which was material to the cause of action as adjudicated; or
 - (d) 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 notice of a Claim that the Protected Person receives, the Protected Person must:
- (a) ~~immediately~~ promptly and without delay deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(s);
 - (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(s) that is in the possession or under the control of the Protected Person;
 - (c) take all reasonable steps necessary to secure and preserve the rights of the Protected Person in respect of the Claim(s); and
 - (d) promptly take all necessary steps to obtain indemnification or coverage to the fullest extent possible under insurance policies or claims funds, or under indemnities provided by the Corporation, that are referred to in subsections 2(a) or (b) above.

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, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced. [IESO note: unclear what this sentence means.]

4. The Province shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and in no event shall a Protected Person negotiate, settle, compromise or pay the Claim(s) without the prior written consent of the Province. If the Province elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s), the Protected Person shall co-operate fully with the Province in connection with the same, and the 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 Protected Person. Where it is such legal counsel's opinion that a conflict of interest prevents that legal counsel representing the Protected Person, the Protected Person will be entitled, after consultation with the Province and acting reasonably, to obtain legal counsel of the Protected Person's choice, and the fees and expenses of the Protected Person's counsel incurred in the Protected Person's representation shall be costs to which this indemnity extends.

5. For greater clarity, with respect to directors, officers and employees of the Corporation this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of the Corporation is actually a director, officer or employee (respectively) of the Corporation, and of which notice is received by the Province either during the period of time that the director, officer, or employee is a director officer, employee of the Corporation or after he or she ceases to be a director, officer, employee of the Corporation.
6. This indemnity shall be interpreted and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
7. The provisions of this agreement and the benefit of all covenants herein contained shall enure to the benefit of the Protected Persons and the Protected Persons' heirs, administrators, executors and assigns as applicable.

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

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

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

By: _____

Glenn Thibeault
Minister of Energy