CONFIDENTIAL DRAFT

INDEMNITY AGREEMENT

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

BETWEEN: **Ontario Power Generation Inc.**
(hereinafter 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 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 arising as a result of their respective activities, acts and/or omissions in the implementation of, or relating to, 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 (except for any financing entities as defined in the Act) 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, fines, penalties, 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**"), as a result of 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 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. For greater clarity, "Corporation's subsidiaries" as used in this indemnity agreement do not include any financing entities (as defined in the Act), whether such financing entities are actually a subsidiary of the Corporation or not; and the terms "Protected Persons" or "Protected Persons" under this indemnity agreement do not include any financing entities (as defined in the Act), being a subsidiary of the Corporation or otherwise, or such financing entities' respective directors, officers, and/or employees.

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

   (a) for which coverage is provided under an insurance policy or claims fund to the extent that such Protected Person is actually paid under such insurance policy or claims 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 for those Losses by such indemnities; or

   (c) that are a result of such Protected Person's dishonesty, gross negligence or willful misconduct, but only if such dishonesty, gross negligence or willful misconduct on the Protected Person's part has been established by a final and non-appealable judgment or other final adjudication adverse to the Protected Person; for greater clarity the Province acknowledges and agrees that any finding that a Protected Person failed 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 not in and of itself constitute "gross negligence" or "willful misconduct" for purposes of this Section 2(c) or otherwise disentitle a Protected Person from indemnification hereunder unless 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, and in such circumstances, the Protected Person shall be disentitled from indemnification hereunder as a result of such Protected Person's gross negligence or willful misconduct; or

   (d) in the case of a criminal or administrative action or proceeding that enforces a monetary penalty, if such action or proceeding arises from any circumstances in which a Protected Person did not have reasonable grounds for believing, and/or was reckless as to their belief, that the Protected Person's conduct was lawful in the case of a criminal or administrative action or proceeding that enforces a monetary penalty.

4. Each Protected Person shall:

(a) Upon becoming aware of a Claim(s) for which such Protected Person may seek indemnification hereunder, as soon as practicable deliver to the Province (through the Director of the Legal Services Branch of the Ministry of Energy) a notice setting forth in reasonable detail the particulars of the Claim(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 Claim(s) 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 the same);

(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 reasonable steps to obtain indemnification or coverage, to the fullest extent possible, under insurance policies and/or under indemnities provided by the Corporation, as referred to in subsections 3(a) and (b) above.

A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of such Protected Person except to the extent that, as a result of such failure, the Province was actually prejudiced. A failure on the part of a Protected Person to take any of the actions provided in this section 4 shall not affect the rights of any other Protected Person.

5. The Province shall have the right to participate in or, where the Province has confirmed in writing to the applicable Protected Person(s) that any Losses in respect of a Claim will be 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 or delayed.. 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.

6. 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 indemnified the Protected Person with respect to, and held the Protected Person harmless from and against, Losses incurred by or on behalf of the Protected Person in connection with the Claim.

7. 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 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; and with respect to directors, officers and employees of the Corporation's subsidiaries, this indemnity shall only apply to Claim(s) that are referable to the period during which a director, officer or employee of a subsidiary of the Corporation is actually a director, officer or employee of that subsidiary 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 that particular subsidiary of the Corporation or after he or she ceases to be a director, officer, employee of that subsidiary of the Corporation

8. 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 ninety (90) days of the Protected Person completing all steps outlined in section 4 of this indemnity agreement. The Protected Person shall promptly repay forthwith to the Province 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.

9. The Province hereby waives any claim it, as the shareholder of the Corporation, could otherwise make against a Protected Person, who is an individual, whether now or in the future, relating in any way to the Corporation's, any of the Corporation's subsidiaries and/or any such 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 who is an individual 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), provided that this waiver shall not apply to any claims of gross negligence, dishonesty or willful misconduct against a Protected Person who is an individual.

10. 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 this indemnity agreement:

    (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 without limiting the foregoing, the Province has received all necessary approvals under the *Financial Administration Act* (Ontario) required for it to enter into this indemnity agreement;

(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), to the application of equitable principles and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; section 11.3 of the *Financial Administration Act* (Ontario); and section 43 of the *Financial Administration Act* (Ontario).

11. It is the intention of the Province to constitute the Corporation as trustee for the Protected Persons 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 Persons.

12. 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.

13. 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 of June, 2017.

ONTARIO POWER GENERATION INC.

By: ____

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

By:____

ENERGY **Comments on OPG Draft**

Glenn Thibeault
Minister of Energy