



# AGREEMENT

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**<<Name of Project>>**  
**BES Exception Request ID XXX**

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## **BES Exception Cost Recovery Agreement**

Between  
**<<Insert Full Business Name  
of the BES Exception applicant>>**

And

**Independent Electricity System Operator**

Confidential

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**Table of Changes**

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<b>Reference (Section and Paragraph)</b>	<b>Description of Change</b>
Entire document	First version of agreement written to correspond with Ontario Bulk Electric System Exception Procedure (IESO_PRO_0844).
Throughout	Updated to meet accessibility requirements pursuant to the <i>Accessibility for Ontarians with Disabilities Act</i> .

## BES Exception Cost Recovery Agreement

**THIS AGREEMENT** is effective on the date that it is executed by the Independent Electricity System Operator, and is between:

<<*Insert BES Exception applicant's full business name and brief business description*>>, (the "*BES Exception applicant*")

- and -

**Independent Electricity System Operator**, a corporation incorporated by the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule. A, having its registered address at 655 Bay Street, Suite 410, P.O. Box 1, Toronto, Ontario M5G 2K4 and its principal place of business in Ontario (the "*IESO*").

### WHEREAS:

- A. The *BES Exception applicant* is making a request for a *Bulk Electric System Exception* (the "*BES Exception request*");
- B. The *BES Exception applicant* has complied with the requirements set forth in section 3.2B of Chapter 5 of the *market rules* and has tendered to the *IESO* the deposit; and
- C. The *BES Exception applicant* agrees, pursuant to section 3.2B of Chapter 5 of the *market rules*, to pay the costs and expenses incurred by the *IESO* in performing the assessment of the *BES Exception applicant's BES Exception request* [insert BES Exception Request Number].

**THEREFORE**, for good and valuable consideration, the *IESO* and the *BES Exception applicant* agree as follows:

### SECTION 1 INTERPRETATION

- 1.1 **Incorporation of Market Rules Definitions:** Subject to section 1.2, italicized expressions used in this agreement have the meanings ascribed thereto in Chapter 11 of the *market rules*.
- 1.2 **Supplementary Definitions:** In this agreement, the following italicized expressions shall have the meanings set out below unless the context otherwise requires:

*"BES Exception applicant"* refers to the party requesting the *BES Exception*, either the *market participant* or the *connection applicant* or the *IESO*;

*"BES Exception request"* means the *BES Exception request* that is to be assessed by the *IESO* pursuant to this agreement;

***“party”*** means a *party* to this agreement and ***“parties”*** means every *party*; and

***“procedures”*** means the *procedures* established pursuant to section 3.2B of Chapter 5 of the *market rules*.

**1.3 Interpretation:** In this agreement, unless the context otherwise requires:

- 1.3.1. words importing the singular include the plural and vice versa; and words importing a gender include any gender;
- 1.3.2. when italicized, other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- 1.3.3. the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;
- 1.3.4. a reference to a thing includes a part of that thing;
- 1.3.5. a reference to a section, provision or schedule is to a section, provision or schedule of this agreement, unless otherwise indicated;
- 1.3.6. a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, orders in council, rules and by-laws of a legislative nature issued under that statute;
- 1.3.7. a reference to a document or provision of a document, including this agreement, the *market rules* and the *procedures*, or a provision of this agreement, the *market rules* or the *procedures*, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- 1.3.8. a reference to a person includes that person’s heirs, executors, administrators, successors and permitted assigns;
- 1.3.9. the words “including” “includes” and “include” are to be read as if they were followed by the phrase “without limitation”;
- 1.3.10. a reference in this agreement to the *market rules* includes a reference to the *procedures* and to any policies, guidelines or other documents established by the *IESO* and adopted by the *IESO* Board pursuant to section 7 of Chapter 1 of the *market rules*.

## **SECTION 2**

### **MARKET RULES**

- 2.1 Market Rules Govern:** In the event of any inconsistency between this agreement and the *market rules*, the *market rules* shall prevail to the extent of the inconsistency.

- 2.2 **Compliance with Market Rules:** The parties shall be bound by and comply with all of the provisions of the *market rules* applicable to the *BES Exception applicant*.

### SECTION 3

#### SUBSTANTIVE REVIEW DEPOSIT PROCESS

##### 3.1 Deposit of Estimated Costs

In accordance with section 3.2B of Chapter 5 of the *market rules*, the *BES Exception applicant* shall provide the *IESO* a deposit in the amount of the initial cost estimate set out in Schedule A of this agreement. The deposit will be provided with this executed agreement. The *IESO* will not commence the substantive review of the *BES Exception request* until the deposit and executed agreement are provided.

##### 3.2 Notice of Cost in Excess of the Deposit

The *IESO* shall monitor expenditures against the assessment costs of the *BES Exception request* and notify the *BES Exception applicant*, prior to exceeding the initial cost estimate whether the initial cost estimate is likely to be exceeded for any reason. At this point, the *IESO* shall:

3.3.1 advise the *BES Exception applicant* of the work performed and the costs incurred to date; and

3.3.2 provide a further estimate to the *BES Exception applicant* of the further work and costs necessary to complete the assessment of the *BES Exception request*.

If the *BES Exception applicant* chooses to continue with the assessment of the *BES Exception request*, the *BES Exception applicant* shall agree to pay the further costs incurred by the *IESO* necessary to complete the assessment of the *BES Exception request* and execute an Addendum to Schedule A confirming such agreement.

##### 3.3 Withdrawal of the BES Exception request

If the *BES Exception applicant* chooses to discontinue the assessment by withdrawing the *BES Exception request*, the *IESO* shall issue an *invoice* to the *BES Exception applicant* for the reasonable costs incurred by the *IESO* to that point.

##### 3.4 Refund of Deposit for Substantive Review

Where the costs incurred by the *IESO* in assessing the *BES Exception request* are lower than the deposit paid in accordance with section 3.2 of this agreement, any unused portion of the deposit paid by the *BES Exception applicant* shall be refunded to the *BES Exception applicant*.

##### 3.6 Obligation to Pay Invoice

The *IESO* shall submit an *invoice* to the *BES Exception applicant* upon completion of the processing of the *BES Exception request* in an amount equal to all of the *IESO's* costs and expenses relating to the processing of the *BES Exception request* less the amount of any deposit paid pursuant to section 3.2 of this agreement.

In accordance with section 3.2B of Chapter 5 of the *market rules*, the *BES Exception applicant* shall, within thirty (30) days, pay the *IESO* all amounts owing under an *invoice*. Such amounts may, without prejudice to any other manner of recovery available at law, be recovered by the *IESO* in the same manner as an obligation to make payment under the *market rules*.

### 3.7 **No Stay of Payment Obligation**

Resort to the dispute resolution process set out in section 2 of Chapter 3 of the *market rules* shall not operate as a stay of the *BES Exception applicant's* obligation to pay an *invoice*.

## SECTION 4

### FURTHER INFORMATION AND DOCUMENTATION

- 4.1 **Obligation to Provide Information:** The *BES Exception applicant* shall provide the *IESO* with such information and documentation which the *IESO* considers reasonable and necessary in order to complete an assessment of the *BES Exception request*. The *IESO* shall specify a time within which the *BES Exception applicant* shall supply the requested information and documentation.
- 4.2 **Failure to Provide Information or Undue Delays in the Process:** Failure to provide requested information and documentation within the time specified by the *IESO* may result in the *IESO* issuing a notice terminating the assessment of the *BES Exception request*.
- 4.3 **Handling of Confidential Information:** Subject to section 6.11 of this agreement, information provided by the *BES Exception applicant* related to the *BES Exception request* shall be classified according to established *IESO* information protection practices as specified in the *market rules*. Only individuals within the *IESO* who are required to view the information for assessment purposes will have access to same.

## SECTION 5

### REPRESENTATIONS AND WARRANTIES

- 5.1 **Representations and Warranties:** Each of the *parties* hereby represents and warrants as follows to the other, and acknowledges and confirms that the other is relying on such representations and warranties:
- 5.1.1 that the execution, delivery and performance of this agreement by it has been duly authorized by all necessary corporate and/or governmental action; and
- 5.1.2 that this agreement constitutes a legal and binding obligation on it, enforceable against it by the other in accordance with its terms.

## SECTION 6

### MISCELLANEOUS

- 6.1 **Amendment:** No amendment of this agreement shall be effective unless made in writing and signed by the *parties*.
- 6.2 **Assignment:** Neither *party* may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this agreement without the prior written consent of the other *party*.
- 6.3 **Successors and Assigns:** This agreement benefits and binds the *parties* and their respective heirs, administrators, executors, successors and permitted assigns.

- 6.4 **Further Assurances:** Each *party* shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this agreement that the other *party* may reasonably require for the purposes of giving effect to this agreement.
- 6.5 **Waiver:** A waiver of any default, breach or non-compliance under this agreement is not effective unless in writing and signed by the *party* to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a *party* in respect of any default, breach or non-observance or by anything done or omitted to be done by the other *party*. The waiver by a *party* of any default, breach or non-compliance under this agreement shall not operate as a waiver of that *party's* rights under this agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).
- 6.6 **Severability:** Any provision of this agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this agreement, all without affecting the validity or enforceability of the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 6.7 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this agreement shall be addressed to the other party in accordance with the information set forth in Schedule B.
- 6.7.1 Either *party* may change its address and representative as set forth in Schedule B by written notice to the other *party* given as aforesaid. Such change shall not constitute an amendment to this agreement.
- 6.8 **Governing Law:** This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 6.9 **Attornment:** Subject to section 6.10, the *BES Exception applicant* hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of Ontario in any action or proceeding arising out of or relating to this agreement or for the recognition and enforcement of any judgment. A final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions in any manner permitted by law. Nothing in this agreement shall preclude the *IESO* from bringing any action or other proceeding relating to this agreement against the *BES Exception applicant* or its properties in any other jurisdiction.
- 6.10 **Dispute Resolution:** Except as may otherwise be provided in the *market rules*, any disputes arising under this agreement shall be resolved using the dispute resolution process set out in section 2 of Chapter 3 of the *market rules*.
- 6.11 **FIPPA:** The parties acknowledge that the *IESO* is subject to the Freedom of Information and Protection of Privacy Act and that said act applies to confidential information in the custody or control of the *IESO*.
- 6.12 **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving facsimile machine as original signatures of the parties; provided, however, that any *party* providing its signature in such manner shall promptly forward to the other *party* an original signed copy of this agreement which was so faxed.

6.13 **Liability:** The provisions of section 13 of Chapter 1 of the *market rules* apply to this agreement and are hereby incorporated by reference herein, with all references in such section to a *market participant* or a *connection applicant* being deemed to be references to the *BES Exception applicant*.

**IN WITNESS WHEREOF** the *parties* have, by their duly appointed and authorized representatives, executed this agreement.

<<*BES Exception applicant name*>>

**Independent Electricity System Operator**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**SCHEDULE A**  
**SCOPE OF WORK**  
**BES EXCEPTION REQUEST ID # XXX**

*The applicable Scope of Work will be inserted here.*

**SCHEDULE B****NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS****IESO**

Name of the IESO's Authorized Representative:	
Title:	
Address:	
City/Province/Postal Code:	
Email address:	
Phone:	
Fax:	

**BES Exception applicant**

Name of BES Exception applicant's Authorized Representative:	
Title:	
Address:	
City/Province/Postal Code:	
Email address:	
Phone:	
Fax:	