



Ontario Power Authority

RENEWABLE ENERGY FEED-IN TARIFF PROGRAM

FIT RULES

Version 1.0

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Draft

Bill 150, introduced in the Ontario legislature on February 23, 2009, would, if passed, enact the Green Energy and Green Economy Act, 2009. The legislation would amend the Electricity Act, 1998 to permit the Minister of Energy and Infrastructure to direct the OPA to develop a feed-in tariff program.

These draft rules are prepared to facilitate consultation to develop such a program, should Bill 150 be passed.

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SECTION 1 – INTRODUCTION

1.1 Background to the Renewable Energy Feed-In Tariff Program

The Ontario Power Authority has developed this Renewable Energy Feed-In Tariff Program for the Province to encourage and promote greater use of renewable energy sources including wind, waterpower, Renewable Biomass, Bio-gas, Bio-fuel, landfill gas and solar for electricity generating projects that can be connected to a Host Facility, a Distribution System or the IESO-Controlled Grid, in Ontario. The fundamental objective of the FIT Program, in conjunction with the *Green Energy Act* (Ontario), is to help facilitate the increased use in the Province of Renewable Generating Facilities of varying sizes, technologies and configurations via a standardized, open and fair process. **[The FIT Program is for Renewable Generating Facilities up to a maximum capacity of 10 MW for solar PV Projects, 50 MW for waterpower Projects and unlimited in capacity for Projects using other Renewable Fuels].**

Projects located on Residential Properties that are smaller than 10 kW in capacity can apply under the Home REFIT Rules and should refer to Exhibit ●, which contains the rules for this streamlined process.

This document contains the rules with respect to the FIT Program, which will be reviewed periodically and may be amended, in accordance with Section 8. As part of the OPA's commitment to transparency and stakeholder consultation in all its activities, the FIT Rules were published in draft form and comments and feedback were invited from those with an interest in the FIT Program, including Community Groups, First Nations and Métis. The comments and feedback received were reviewed and considered by the OPA. The draft FIT Rules were then revised to address, as appropriate in the circumstances, such feedback and comments.

The OPA will maintain an application package including the application forms, the forms of FIT Contract and detailed instructions on how to apply for a FIT Contract, on the Website. Any conflict or inconsistency between the FIT Contract and the FIT Rules shall be resolved in favour of the FIT Contract.

All capitalized terms in these FIT Rules are defined in the Appendix at the end of this document.

1.2 Participation in the FIT Program

To participate in the FIT Program, Applicants must be willing to make necessary investments in their facilities, in the costs of connection and metering, bear certain ongoing costs and risks of operation and maintenance, and enter into a FIT Contract with the OPA pursuant to which the OPA will pay the Supplier for Electricity delivered from their generating facility for a 20-year payment period, in accordance with the terms of the FIT Contract. Applicants must comply with Laws and Regulations, including for greater certainty the Distribution System Code, the Transmission System Code and the IESO Market Rules, as each may be applicable.

Although the FIT Program and the *Green Energy Act* are intended to promote and facilitate the connection of renewable generating facilities in an efficient manner, Applicants are cautioned that in certain areas of the Province it is not currently economically or technically feasible to connect additional generating facilities to a Distribution System or the IESO-Controlled Grid, including Projects connected directly to Host Facilities. For this reason, Projects in these areas that are not Queue Exempt Facilities that are otherwise eligible may not be able to obtain a FIT Contract immediately, and instead will be reserved until conditions change, as further set out in Section 4 these FIT Rules.

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SECTION 2 – PROJECT ELIGIBILITY REQUIREMENTS

2.1 Basic Eligibility Requirements

- (a) To be eligible to participate in the FIT Program, a proposed generating facility must:
 - (i) constitute a Renewable Generating Facility;
 - (ii) be located in the Province of Ontario;
 - (iii) **[not have a Contract Capacity of more than 10 MW in the case of PV Projects and 50 MW in the case of waterpower Projects. For greater certainty, an Incremental Project together with the Existing Generating Facility to which it is incremental may exceed these size limits so long as the increase in Gross Nameplate Capacity resulting from the Incremental Project does not exceed these size limits;]**
 - (iv) not be an Existing Generating Facility, unless it is an Incremental Project, in which case only the Contract Capacity relating to the Expansion or Upgrade is eligible; **[NTD: Consider the appropriate additional eligibility requirements for waterpower Projects that are Expansions or Upgrades.]**
 - (v) connect to a Distribution System, a Host Facility or the IESO-Controlled Grid;
 - (vi) have separate metering suitable for FIT Program data collection and settlement purposes, as described in Section 6; and
 - (vii) not have or have had a physical or financial power or capacity purchase contract relating to the generation of Electricity by such proposed facility, or other form of contract relating to Electricity or Related Products relating to such proposed facility. For greater certainty, this includes Standard Offer Contracts.
- (b) **[Although it is not an eligibility requirement for purposes of an Application, all Applicants should be aware that the FIT Contract will require that a Project be comprised of at least 0% Provincial Content as determined in accordance with Exhibit “C”.]**

2.2 Incremental Projects

- (a) An Incremental Project will be eligible for the FIT Program provided the Applicant in respect of the Incremental Project is an Applicant Related Person in respect of the owner or operator of the Existing Generating Facility to which it is incremental.
- (b) An Incremental Project will be eligible to participate in the FIT Program even where the Existing Generating Facility to which it is incremental is ineligible pursuant to Sections 2.1(a)(iv) and 2.1(a)(vii).
- (c) An Incremental Project shall make use of the Existing Generating Facility’s connection to a Distribution System, IESO-Controlled Grid or Host Facility, as applicable, subject to any upgrades or modifications that may be necessary.

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SECTION 3 – APPLICATION REQUIREMENTS

3.1 Application Materials

- (a) An Applicant must provide with its Application a certified cheque or bank draft payable to the Ontario Power Authority in an amount that is the greater of (i) 50¢ per kW of proposed Contract Capacity, subject to a maximum of \$5,000, and (ii) \$500, which fee shall be non-refundable regardless of whether the Application is accepted by the OPA (the “**Application Fee**”).
- (b) An Applicant in respect of a Project other than a Queue Exempt Facility must also provide security with its Application, payable to and in favour of the “Ontario Power Authority” in the amount of:
 - (i) For Projects other than Eligible Community Projects or Eligible Aboriginal Projects,
 - A. \$20 per kW of Contract Capacity, in respect of PV Projects, or
 - B. \$10 per kW of Contract Capacity, in respect of all other Projects, or
 - (ii) For Projects that are Eligible Community Projects or Eligible Aboriginal Projects, \$5 per kW of Contract Capacity (regardless of Renewable Fuel),

in the form of a certified cheque, bank draft or an irrevocable and unconditional standby letter of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada), or such other financial institution having a minimum credit rating of (i) A– with S&P, (ii) A3 with Moody’s, (iii) A low with DBRS, or (iv) A with Fitch IBCA, in the form attached as Exhibit “D” (the “**Application Security**”). If the Application is accepted and the Applicant is offered to enter into a FIT Contract pursuant to Section 4.6, the Application Security will be returned to the Applicant upon the OPA’s receipt of the Completion and Performance Security that is required under the FIT Contract. Any interest earned by the OPA on any Application Security provided to the OPA shall be for the sole account of the OPA and the Applicant shall not have any right to such interest.

- (c) All Applicants must provide an authorization letter in the form of Exhibit “B-1” in the case of Projects to be connected to a Distribution System or a Host Facility that is connected to a Distribution System, where neither the Project nor the Host Facility (if applicable) is a Registered Facility. All Applicants must provide an authorization letter in the form of Exhibit “B-2” for Projects to be connected to the IESO-Controlled Grid or a Host Facility that is connected to the IESO-Controlled Grid, or where either the Project or the Host Facility (if applicable) is a Registered Facility. The authorization letter must be addressed jointly to the OPA and the applicable LDC or the IESO, and signed by the Applicant and the Host Facility (if applicable), authorizing the applicable LDC or the IESO to provide to the OPA any and all information relating to the Applicant or the Project, the Host Facility and each of their connections, meters, meter and billing data and accounts as the OPA may require for the purposes of evaluating the Application and/or offering or administering a FIT Contract.
- (d) An Application shall include the following connection details regarding the Project: (i) Contract Capacity, (ii) Renewable Fuel(s), (iii) proposed Connection Point, (iv) distribution feeder designation and voltage, transmission circuit, distribution station or

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transformer station, as applicable with respect to the Connection Point, (v) length of required feeder or transmission circuit for connecting to an existing Distribution System or Transmission System, and (vi) additional breaker requirements at a distribution station or transformer station, as applicable.

- (e) An Applicant must provide the OPA with a valid email address for purposes of correspondence related to the FIT Program, which address the Applicant may amend from time to time by providing written notice to the OPA. The OPA will not be responsible for any failed transmission resulting from an Applicant's failure to comply with this provision.
- (f) Unless an Applicant applied for a Connection Impact Assessment, a System Impact Assessment or a Customer Impact Assessment in respect of the Project prior to **[March 13, 2009][NTD: FIT Rules Publication Date]**, the Applicant must not apply for a Connection Impact Assessment, a System Impact Assessment or a Customer Impact Assessment in respect of the Project, until such time as the Applicant has executed a FIT Contract.

3.2 Required Information

- (a) The following requirements must be satisfied by an Applicant, and the evidence described below must be submitted with the Application as evidence that each requirement has been satisfied:
 - (i) **[Renewable Energy Approval.][NTD: This requirement is pending finalization of the Renewable Energy Approval process by the Ministry of the Environment and/or Ministry of Natural Resources. Applicability to be determined following implementation of the REA process.]**
 - (ii) **Demonstrated Location Access.** The Applicant shall include with its Application evidence that it has the necessary Access Rights including those relating to provincial Crown lands (such as an "Applicant of Record") and federal Crown lands (such as a "Priority Permit"), and permissions from "band councils" with respect to "reserve land" or "special reserves", as set out in the *Indian Act* (Canada), where applicable.
 - (iii) **Resource Assessment / Planning**
 - A. If the Application is in respect of a wind power Project with a Gross Nameplate Capacity greater than or equal to 1 MW, the Applicant shall include evidence that (i) a meteorological tower has been erected within 5 km of the Project; (ii) wind data has been recorded by such meteorological tower for a period of at least six (6) months; and (iii) a trained meteorologist has begun analyzing, or has been retained to analyze, such data.
 - B. If the Application is in respect of a waterpower Project, the Applicant shall include evidence that the following has been obtained: (i) at least one (1) year of reliable stream flow data that supports a comprehensive hydrology assessment of the Project; and (ii) ten (10) years or more of highly correlated representative stream flow data from another facility on the same water system.

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- C. If the Application is in respect of a Project utilizing a Renewable Fuel other than wind, solar or waterpower, the Applicant must provide a written plan detailing the types, supplier(s) and thermal properties of the Renewable Fuel(s) that the Project intends to utilize (a “**Bio-resource Supply Plan**”).

3.3 Responsibility for Project Viability

Despite anything contained in these FIT Rules or in the FIT Contract, Applicants are solely responsible for ensuring the technical, regulatory and financial viability of their Projects, and the OPA shall have no responsibility whatsoever to independently assess the viability of any Application or Project nor any liability whatsoever in the event that a Project turns out not to be viable in any respect.

SECTION 4 – APPLICATION REVIEW AND ACCEPTANCE

4.1 Application

- (a) Applicants who wish to participate in the FIT Program shall submit an Application to the OPA in such form(s) and at such locations as may be designated and posted on the Website from time to time, together with all documents required to establish that the Applicant has satisfied all of the Project and Application eligibility criteria set out in Section 2 and Section 3, respectively. Applicants are required to submit Applications electronically, at which point they will be issued a Time Stamp. The Application Fee, Application Security (if applicable), additional required documents, schedules or attachments must be delivered in hard copy format to the OPA at 120 Adelaide Street West, Suite 1600, Toronto ON, M5H 1T1, Attention: Renewable Energy Feed-In Tariff Program, no later than three (3) Business Days after the electronic submission of the Application. Upon electronic submission of the Application, the Applicant will receive a reference number, which must be clearly marked on the envelope containing the hard copy materials and on all hard copy materials.
- (b) If the OPA does not receive all the required materials by 5:00 p.m. local time on the third Business Day after the day the Application was submitted electronically, any hard copy materials will be returned to the Applicant and the Time Stamp on the electronic submission of the Application will be invalid.

4.2 Review of Mandatory Requirements

- (a) Each Application will be reviewed in detail by the OPA to confirm that the overall Application is complete and that all constituent elements of such Application confirm that the Project satisfies all of the eligibility requirements set out in Section 2 and that the Application satisfies all of the eligibility requirements set out in Section 3.
- (b) The OPA reserves the right, but is not obligated, to request clarification, additional information, documentation and statements in relation to any Application at any time. Any such requested clarification, additional information, documentation or statements must be submitted to the OPA by email within ten (10) Business Days of the date of such request or such other time frame as may be reasonably requested by the OPA, failing which the Application may be rejected as being incomplete.
- (c) The OPA reserves the right to reject any incomplete Application, any Application that does not satisfy all of the eligibility requirements set out in Section 2 and Section 3 or any Application in respect of which the included information is not satisfactory to the

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OPA or its advisers in any respect. The Application Fee will not be refunded under any circumstances.

- (d) Where an Application has been accepted as having met the requirements set out in Section 2 and Section 3, the OPA will assess by order of Time Stamp whether connection resources are currently available to connect the Project, in accordance with Section 4.3.
- (e) Where an Application has been rejected, the OPA shall give reasons for rejecting the Application and shall return the Application Security within ten (10) Business Days. Rejection of an Application shall be without prejudice to submitting a revised Application to the extent that an Applicant believes an Application can be improved and thereby accepted, provided that such revised Application shall be subject to the FIT Rules and FIT Contract in effect at the time of resubmission.

4.3 Connection Availability Management

- (a) The OPA, in conjunction with the IESO, the OEB, applicable LDCs, applicable Transmitters and other agencies and stakeholders as appropriate, will identify, publish on the Website and update quarterly the Connection Resource Database. All interested Applicants are urged to consider the Connection Resource Database prior to submitting an Application to determine the likelihood and the timeline within which their Project can be connected to a Distribution System or the IESO-Controlled Grid, either directly or through a Host Facility. The OPA will provide Applicants with general assistance in using the Connection Resource Database by telephone and email, but will not provide a pre-determination of the ability to connect a specific Project. The applicable contact details will be posted on the Website.
- (b) Upon the acceptance of an Application in accordance with Section 4.2(d) where the Application is in respect of a Queue Exempt Facility, the OPA will offer a FIT Contract in accordance with Section 4.6(a).
- (c) Upon the acceptance of an Application in accordance with Section 4.2(d) where the Application is not in respect of a Queue Exempt Facility, the OPA, along with the IESO, the OEB and applicable LDCs and Transmitters, will determine whether connection capacity is available to connect the Project, taking into consideration both the connection capacity resulting from Planned In-Service Transmission Developments and all prior Applications that have been processed.
 - (i) If the OPA determines that there is connection capacity to connect the Project, the OPA will offer a FIT Contract in accordance with Section 4.6(a).
 - (ii) If the OPA determines that there is insufficient connection capacity to connect the Project, the OPA may, but is under no obligation to, propose a smaller Contract Capacity, an alternate Connection Point or an alternate connection configuration that could be connected (the “**Connection Alteration Proposal**”). For greater certainty, Connection Alteration Proposals may include changes from distribution-connected to transmission-connected, and vice versa. The OPA’s target for communicating any Connection Alteration Proposal is forty-five (45) days after receipt of the Application. The Applicant will have ten (10) Business Days from the date it receives a Connection Alteration Proposal to provide the OPA with written notice as to whether it will accept such proposed alteration (the “**Connection Alteration Response**”). If the Applicant states in its Connection Alteration Response that it accepts the Connection Alteration

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Proposal, then the OPA will offer a FIT Contract in accordance with Section 4.6(a). If the Applicant does not provide a Connection Alteration Response within ten (10) Business Days of receiving the Connection Alteration Proposal, the Applicant will be deemed to have rejected the Connection Alteration Proposal and the Application will proceed to the process described in Section 4.3(d).

- (iii) If the OPA determines that there is insufficient connection capacity to connect the Project and does not provide the Applicant with a Connection Alteration Proposal, or if the Applicant rejects a Connection Alteration Proposal provided by the OPA, the Application will be subjected to the next Economic Connection Test, together with all other Projects whose Applications are awaiting the Economic Connection Test.

The OPA's target for processing Applications in accordance with this Section 4.3(c) is sixty (60) days following the initial submission of an Application.

- (d) The Economic Connection Test will be run **[for each region of the Province]** every six (6) months **[staggered by region]**. The intent of the Economic Connection Test is to ensure that connection costs in respect of a Project that would be ultimately borne by rate-payers are reasonable in light of the best available information regarding Confirmed Transmission Developments and other proposed generating facilities. Information concerning the Economic Connection Test is available **[on the Website]**. For each Project, the Economic Connection Test will model the costs that result from the investments necessary to connect proposed new generation, to the extent that such costs will be allocated to Transmitters and LDCs, and ultimately passed on to rate-payers in accordance with the Transmission System Code and the Distribution System Code.
- (e) Upon the completion of the Economic Connection Test, all Applicants whose Applications were submitted to the test will be provided with a written notice from the OPA stating the results of the Economic Connection Test (the **"Economic Test Notice"**). The result of the Economic Connection Test for each Project submitted to the test will be one of the following:
 - (i) The OPA determines that since the completion of the previous Economic Connection Test, there is connection capacity to connect the Project as a result of new Planned In-Service Transmission Developments, or a previously allocated connection resource that has become available as a result of the cancellation of another Project or otherwise. In such case, the OPA will provide an Offer Notice in accordance with Section 4.6(a). The OPA may also issue a Connection Alteration Proposal in accordance with Section 4.3(c)(ii) to a Project at this stage. If and to the extent that multiple Projects in the Economic Connection Test require the same connection resource, such connection resources will be allocated in order of the Time Stamp.
 - (ii) There is insufficient connection capacity to connect the Project, but the Economic Connection Test has determined that the modelled cost of connecting the Project is within the economic threshold set out in the Economic Connection Test. If the Applicant has not previously entered the FIT Production Line, the Applicant will be given the option to return a signed Production Line Confirmation in the form set out in Exhibit "E" within ten (10) Business Days of receiving the Economic Test Notice, to enter into the process set out in Section 4.4 (the **"FIT Production Line"**). If the Applicant does not return a

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signed Production Line Confirmation by the end of the prescribed time period, the Applicant will be considered to have withdrawn its Application, the Time Stamp will be forfeited and the OPA will return the Application Security within ten (10) Business Days. If the Application was previously in the FIT Production Line, it will remain in the FIT Production Line in accordance with Section 4.4.

- (iii) There is insufficient connection capacity to connect the Project, and the Economic Connection Test has determined that the modelled cost of connecting the Project is not within the economic threshold set out in the Economic Connection Test. The Application will be placed in, or will remain in, as applicable, the process set out in Section 4.5 (the “**FIT Reserve**”), to be re-evaluated by the Economic Connection Test during the following iteration, in accordance with Section 4.3(d).

4.4 **FIT Production Line**

- (a) The Projects in the FIT Production Line are intended to provide input into the transmission and distribution planning processes. Once a Project is in the FIT Production Line, each time an Economic Connection Test is run, as a first step, the OPA will assess whether connection capacity has become available to connect the Project, in accordance with Section 4.3(e)(i).
- (b) Upon receipt of a Production Line Confirmation in accordance with Section 4.3(e)(ii), the OPA will place the corresponding Application into the FIT Production Line with all other Applications in the FIT Production Line, sequenced according to Time Stamp, at which point 10% of the Application Security will immediately become non-refundable, subject to Sections 4.4(d), 5.2(b) and 8.2(c). In order to ensure that Applicants with Projects in the FIT Production Line continue to be prepared to develop their Project if offered a FIT Contract, every time following the Production Line Confirmation that the Economic Connection Test is run, an additional 5% of the Application Security will become non-refundable, until the entire Application Security has become non-refundable or the Application is withdrawn in accordance with the FIT Rules.
- (c) An Applicant may withdraw an Application from the FIT Production Line at any time, by notice in writing to the OPA. In such circumstances the OPA shall draw the portion of the Application Security that has become non-refundable as a result of time spent in the FIT Production Line pursuant to Section 4.4(b), as liquidated damages and not as a penalty, and will return the remaining Application Security to the Applicant within ten (10) Business Days.
- (d) In the event that the Application has remained in the FIT Production Line or a combination of the FIT Production Line and the FIT Reserve for more than **[ten (10)]** years, then within thirty (30) days after the ten-year anniversary of the later of the Time Stamp and the date of the FIT Program launch:
 - (i) the Applicant may withdraw its Application from the FIT Production Line by providing written notice to the OPA, or
 - (ii) the OPA may remove the Application from the FIT Production Line by providing written notice to the Applicant,

and in each case the OPA will return the full amount of the Application Security to the Applicant.

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4.5 FIT Reserve

- (a) Where an Applicant has received an Economic Test Notice indicating that their Project did not pass the Economic Connection Test and their Application was placed in the FIT Reserve, that Application will retain its Time Stamp and will remain in the FIT Reserve until such time as it either passes the Economic Connection Test or receives a subsequent Economic Test Notice indicating that their Project is eligible to enter the FIT Production Line. Applicants may withdraw their Applications from the FIT Reserve at any time, forfeiting their Time Stamp, by written notice to the OPA. Within ten (10) Business Days of receiving such notice, the OPA will return the full amount of the Application Security to the Applicant.
- (b) In the event that the Application has remained in the FIT Reserve for more than **[ten (10)]** years, then within thirty (30) days after the ten-year anniversary of the later of the Time Stamp and the date of the FIT Program launch, the OPA may remove the Application from the FIT Reserve by providing written notice to the Applicant, and will return the full amount of the Application Security to the Applicant.

4.6 FIT Contract Offer & Acceptance

- (a) Where the OPA has accepted an Application and connection resources have been assigned to the Project, the OPA will provide notice by an email (the “**Offer Notice**”) in which the OPA shall offer a FIT Contract in its then standardized form to the Applicant on the basis of the information set out in the Application. The Contract Price shall be established in accordance with Section 5.1(b).
- (b) An Applicant shall have ten (10) Business Days from the issuance of the Offer Notice to accept the offered FIT Contract. An Applicant may accept and enter into the FIT Contract by printing and executing the enclosed FIT Contract documents and delivering the executed documents together with the required Completion and Performance Security to the OPA in accordance with the instructions in the Offer Notice. Where the Applicant is eligible to select a category of Terms and Conditions as set out in Section 7.1, the Applicant will be required to indicate the category of Terms and Conditions that it wishes to use.
- (c) Upon receipt of the executed FIT Contract and the Completion and Performance Security, the OPA will return the Application Security (if applicable) to the Supplier within five (5) Business Days. If the OPA does not receive the executed FIT Contract and Completion and Performance Security from the Applicant within ten (10) Business Days of the Offer Notice, the Application shall be deemed to have been withdrawn and the offer of a FIT Contract shall be revoked.
 - (i) In circumstances where the Application has not been subjected to the Economic Connection Test and where the OPA does not receive the executed FIT Contract and Completion and Performance Security from the Applicant within ten (10) Business Days of the Offer Notice, the OPA shall be entitled to draw on 25% of the Application Security as liquidated damages and not as a penalty, and will return the remaining Application Security to the Applicant within ten (10) Business Days.
 - (ii) In all other circumstances in which the OPA does not receive the executed FIT Contract and Completion and Performance Security from the Applicant within ten (10) Business Days of the Offer Notice, the OPA shall be entitled to draw

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on the full amount of the Application Security as liquidated damages and not as a penalty.

Notwithstanding the foregoing, where the Offer Notice was in respect of a Project where the Applicant accepted a Connection Alteration Proposal, the amount that the OPA shall be entitled to draw on the Application Security as liquidated damages shall correspond to the Contract Capacity of the Project as modified by the Connection Alteration Proposal, and any remaining Application Security will be returned to the Applicant.

- (d) A decision by the OPA to accept or reject an Application shall be final and binding and not subject to appeal.

SECTION 5 – CONTRACT PRICING

5.1 Price Schedule

- (a) The FIT Program establishes long-term pricing for Hourly Delivered Electricity from Projects based on Renewable Fuel, Contract Capacity and, in certain cases, category of Applicant or other Project characteristics. The prices in the Price Schedule are intended to cover development costs plus a reasonable rate of return for Projects meeting certain assumptions relating to cost and efficiency. The OPA will post the Price Schedule for the FIT Program on the Website, and will revise it in accordance with Section 8.1. Any revisions shall not affect FIT Contracts previously executed.
- (b) The price incorporated into the FIT Contract that will be offered to Applicants whose Applications have been accepted without having been in the FIT Production Line or the FIT Reserve will be the applicable price as set out in the Price Schedule at the time of the Time Stamp. The price incorporated into the FIT Contract that will be offered to Applicants whose Applications have been accepted and that were in the FIT Production Line or the FIT Reserve will be the applicable price at the time of the Offer Notice. Where an Automatic Price Adjustment has occurred in accordance with Section 5.2(a), then notwithstanding the foregoing, if an Applicant has not withdrawn its Application in accordance with Section 5.2(b), the offered Contract Price shall reflect the Automatic Price Adjustment and a failure to execute the FIT Contract will be treated in accordance with Section 4.6(c).
- (c) Projects that use Renewable Biomass, Bio-gas, Bio-fuel, landfill gas or waterpower as their Renewable Fuel will receive a time differentiated price under the FIT Contract. For all Hourly Delivered Electricity, such Suppliers will receive the price as otherwise determined in accordance with this Section 5, multiplied by the Peak Performance Factor for the corresponding hour. The application of the Peak Performance Factor will result in higher payments during On-Peak Hours and lower payments during Off-Peak Hours to encourage such Projects to schedule their production during On-Peak Hours to the extent practicable.

5.2 Automatic Price Adjustments

- (a) The Price Schedule may indicate that for certain categories of Projects, after the OPA has executed FIT Contracts for an aggregate Contract Capacity beyond a specified amount, the applicable Contract Price will automatically adjust by an amount specified in the Price Schedule (an “**Automatic Price Adjustment**”). For greater certainty, this shall not affect any executed FIT Contracts.

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- (b) Upon the occurrence of an Automatic Price Adjustment, the OPA shall provide notice by email to all Applicants who, if offered a FIT Contract, would have their Contract Price affected by such Automatic Price Adjustment and, on the same day, shall post such notice on the Website. Within ten (10) Business Days of such notice being posted, any Applicant so affected may withdraw a submitted Application from the FIT Program by providing notice in writing to the OPA, and despite anything in these FIT Rules to the contrary, the OPA will return the full Application Security to the Applicant. For greater certainty, this includes any portion of the Application Security that was previously non-refundable in accordance with Section 4.4(b)4.4(a). The OPA will refrain from sending any Offer Notices to any Applicants affected by this Automatic Price Adjustment during this ten (10) Business Day period.

5.3 Consumer Price Index

For certain Renewable Fuels, the Price Schedule includes an annual escalation of a specified percentage of the Contract Price on the basis of increases in the CPI relative to the CPI applicable at the date specified in the Price Schedule. For greater certainty, the Contract Price shall not be adjusted downwards for decreases in the CPI.

5.4 Other Factors

- (a) For the purpose of determining the Contract Price in accordance with Section 5.1 for a Project that uses more than one Renewable Fuel, the Contract Price shall be established based on the Renewable Fuel of the Project that, if used as the exclusive fuel of the Project, would yield the lowest Contract Price.
- (b) The FIT Contract provides that half of all payments received, if any, under the ecoENERGY for Renewable Power Program attributable to the Contract Facility shall be transferred from the Supplier to the OPA.
- (c) The FIT Contract provides that all Related Products otherwise applicable to the Contract Facility or available to a Supplier in respect thereof are absolutely and unconditionally assigned to the OPA, except to the extent that such Related Products are needed and consumed for the generation of Hourly Delivered Electricity.
- (d) The OPA will pay all Sales Taxes exigible on all amounts payable to a Supplier pursuant to a FIT Contract. The Supplier shall remain liable for all Taxes other than Sales Taxes in respect of the Contract Facility. For greater certainty, Applicants are solely responsible for ensuring compliance with “Debt Retirement Charge” requirements under Regulations 493/01 and 494/01 made under the Electricity Act.
- (e) Projects shall not be divided into smaller Projects for the purpose of obtaining a higher Contract Price or any other benefit under the FIT Program. If the OPA determines that a project has been divided into smaller Projects it may (i) reject all Applications in respect of such Projects, (ii) apply the Contract Price to such Projects that would have applied had all such Projects been the subject of a single Application, or (iii) take such other action as it may determine. For the purpose of determining whether a project has been divided into smaller Projects, the OPA will consider factors such as whether the Applicants in respect of such Projects are Applicant Related Persons, the relative Locations of such Projects and the Renewable Fuel(s) used by such Projects.

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SECTION 6 – METERING REQUIREMENTS AND SETTLEMENT**6.1 Metering**

- (a) All Contract Facilities must have separate meters, other than those Contract Facilities that are Incremental Projects, which shall not be metered separately from the Existing Generating Facility. The Supplier shall have sole responsibility for ensuring that the metering configuration and equipment meets the requirements of the applicable LDC or the IESO Market Rules, as applicable. Contract Facility meters must be under the control of the applicable LDC, the IESO or their designate, as applicable.
- (b) All Contract Facilities must have metering that provides hourly data, except those that satisfy all of the following criteria:
 - (i) are less than or equal to 10 kW in Gross Nameplate Capacity,
 - (ii) utilize wind, solar (PV) or solar (thermal electric) as their Renewable Fuel, and
 - (iii) have not been required by the applicable LDC or the IESO Market Rules to install such meters.
- (c) Despite Section 6.1(b), where a Contract Facility is a Behind-the-Meter Facility, the Contract Facility's meter must provide hourly data if the Host Facility pays a time-differentiated price for Electricity. Where such metering configuration results in additional metering requirements and costs to the Supplier and/or the Host Facility, the OPA shall not be responsible for any increased costs relating to the metering configuration.
- (d) In the case of a Contract Facility that has a Contract Capacity of 10 MW or greater and is connected to a Host Facility that is connected to the IESO-Controlled Grid, the Contract Facility's meter must meet all requirements under the IESO Market Rules as if the Contract Facility were itself a Registered Facility.
- (e) In the case of a Contract Facility that has a Contract Capacity less than 10 MW, and is connected to a Host Facility that is connected to the IESO-Controlled Grid, the Contract Facility's meter must be of a type that is approved by Measurement Canada for the purpose of revenue metering.
- (f) In the case of a Contract Facility that is connected to a Host Facility that is connected to a Distribution System, the Contract Facility's meter must be of a type that would be acceptable to the LDC that the Host Facility is connected to, if the Project were directly connected to such LDC's Distribution System.
- (g) The Supplier shall provide the OPA and its designated agents all rights necessary to receive, retain, audit and use the meter data for the purposes of settling the FIT Contract and any other purpose consistent with the objectives of the FIT Program, and shall also provide read only access to the Contract Facility's meter and the Host Facility's meter, as applicable.

6.2 Settlement for IESO Market Participants

- (a) In the case of a Contract Facility that:
 - (i) is connected to the IESO-Controlled Grid;

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- (ii) is a Behind-the-Meter Facility and has one or more Registered Facilities connected between it and the IESO-Controlled Grid; or
- (iii) is otherwise a Registered Facility,

the payments to the Supplier under the FIT Contract will be adjusted by subtracting the Hourly Ontario Energy Price in respect of all Hourly Delivered Electricity to account for either payments made in accordance with the IESO Market Rules or benefits conferred on the Host Facility, as applicable.

- (b) The OPA will pay the Supplier or the Supplier will pay the OPA, as applicable, any amounts owing under the FIT Contract by direct settlement.

6.3 Settlement for non-IESO Market Participants

- (a) In the case a Contract Facility that is not a Registered Facility and is connected to either a Distribution System or to a Host Facility that is also not a Registered Facility, the OPA will pay the Supplier any amounts owing under the FIT Contract through settlement between the Supplier and the applicable LDC on a periodic basis in accordance with the applicable LDC's Settlement Period.
- (b) For a Contract Facility that is not a Registered Facility and is connected directly to a Host Facility on a Distribution System that is also not a Registered Facility, the Supplier must maintain a direct settlement account with the applicable LDC, unless the Supplier and the Host Facility have both provided a written consent to the LDC to permit settlement of the FIT Contract through the account of the Host Facility, in which case such Supplier shall bear all risks associated with settlement of the FIT Contract through the account of the Host Facility, including the failure of the Host Facility to pay any amounts owing to the Supplier. In the event that there are amounts owing by the Supplier under the FIT Contract, and the FIT Contract is otherwise being settled through the account of the Host Facility, the Supplier shall remain ultimately liable for the payment of such amounts.
- (c) Where a Contract Facility that is not a Registered Facility is connected to a Host Facility on a Distribution System that is also not a Registered Facility, and such Host Facility is not an Embedded Retail Generator, Contract Payments for any hour will be reduced by the Behind-the-Meter Usage multiplied by:
 - (i) the Hourly Ontario Energy Price in the case of Host Facilities that are settled on the basis of the Hourly Ontario Energy Price,
 - (ii) the highest tiered price payable under the Tiered Regulated Price Plan in the case of Host Facilities who are settled on the basis of the Tiered Regulated Price Plan, or
 - (iii) the corresponding Time of Use Rate for such hour in the case of Host Facilities that are settled on the basis of Time of Use Rates.

Amounts owing by the Supplier to the OPA shall be settled by way of payment to or set-off by the applicable LDC in accordance with the settlement mechanisms managed by the LDC.

- (d) Where a Contract Facility that is not a Registered Facility is connected to a Host Facility on a Distribution System, and such Host Facility is an Embedded Retail Generator,

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Contract Payments for any hour will be reduced by the Hourly Delivered Electricity multiplied by the price at which energy sales from such Embedded Retail Generator are settled, in accordance with Section 3.2 of the Retail Settlement Code.

6.4 Incremental Projects

Where an Incremental Project is a Behind-the-Meter Facility, the Behind-the-Meter Usage will be the total amount of the Behind-the-Meter Usage multiplied by the Incremental Project Ratio. Contract Payments in respect of such Hourly Delivered Electricity will be reduced as otherwise set out in Section 6.2(a) or 6.3(c), as applicable.

6.5 Station Service and Alternate Settlement Arrangements

- (a) Periodic settlements, whether directly by the OPA or by the applicable LDC, will be net of Station Service, Site-Specific Losses (if applicable) and fixed monthly customer charges, in compliance with the requirements of the OEB and the IESO.
- (b) For the purpose of complying with Section 6.5(a), in addition to any applicable metering requirements set out in Section 6.1, the Contract Facility's meters must be configured to record the Delivered Electricity net of Station Service.
- (c) The OPA reserves the right at its sole discretion to make alternate settlement arrangements in respect of the entire FIT Program or in respect of one or more Projects or LDCs at any time and from time to time. Notwithstanding other parties being involved in the settlement process, the OPA shall remain liable to the Supplier for the Contract Payments, except where a Supplier with a Behind-the-Meter Facility has consented to settle through the settlement account of the Host Facility in accordance with Section 6.3(b), in which case the OPA shall remain liable only to the Host Facility.

SECTION 7 – CONTRACT FORM AND EXECUTION

7.1 Form of FIT Contract

- (a) The form of the FIT Contract will be composed of a Project-specific cover page, an appendix of standardized definitions and one of two sets of terms and conditions, the Long Form Terms and Conditions or the Short Form Terms and Conditions. The Long Form is intended to provide additional contractual features that would be of benefit mainly to larger Projects and participants in the IESO-Administered Markets, while the Short Form provides an option of a simplified contract for smaller Projects.
- (b) Applicants whose Projects are required to be Registered Facilities under the IESO Market Rules are only eligible to select the Long Form Terms and Conditions.
- (c) All Applicants other than those set out in Section 7.1(b) may select either the Short Form Terms and Conditions or the Long Form Terms and Conditions, and must indicate the preferred type of terms and conditions upon executing the FIT Contract, in accordance with instructions contained in the Offer Notice. The selection of the Short Form or the Long Form is final and cannot be changed after the execution of the FIT Contract.

7.2 Overview of Contractual Provisions

- (a) The FIT Contract requires the Supplier to own the Contract Facility (or lease the Contract Facility for the Term), and to design, build, operate and maintain the Contract

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Facility as it is outlined in the Application, using Good Engineering and Operating Practices and in compliance with Laws and Regulations, including for greater certainty the Distribution System Code, the Transmission System Code and the IESO Market Rules, as each may be applicable. The OPA's payment obligations under the FIT Contract will be to pay for Hourly Delivered Electricity at the Contract Price for a period of twenty (20) years, subject to earlier termination in accordance with the FIT Contract's terms, to commence on the Commercial Operation Date.

- (b) Prior to or commensurate with the execution of the FIT Contract, Suppliers will be required to provide the OPA with Completion and Performance Security, the amount of which may vary based on certain characteristics of the Contract Facility or the Supplier. Where the Contract Facility achieves Commercial Operation and demonstrates that the full Contract Capacity is available to Deliver Electricity prior to the specified deadline in the FIT Contract (which deadlines will also vary based on certain Project characteristics), the Completion and Performance Security will be refunded in full. The FIT Contract will require the Supplier to pay liquidated damages for delay in achieving Commercial Operation and the failure to develop the full Contract Capacity.
- (c) The FIT Contract will also contain various development milestone requirements, including a requirement to provide the OPA with proof that a Renewable Energy Approval has been issued for the Project by a specified date and a requirement to provide the OPA with evidence that agreements have been signed or purchase orders issued in respect of all of the Project's major Generating Equipment as identified in the Application, by a specified date.
- (d) The FIT Contract will also provide that where a Project requires the successful completion of Planned In-Service Transmission Developments, the Supplier will require authorization from the OPA to begin incurring major capital costs. The OPA will have an opportunity to assess the status of the required Planned In-Service Transmission Developments, and may terminate the FIT Contract with compensation to the Supplier prior to issuing such authorization.
- (e) The FIT Contract will provide that where the cost of connecting a Contract Facility that is allocated to the Transmitter (as determined by a System Impact Assessment) exceeds the economic threshold used in the Economic Connection Test by more than **[10%]**, the Supplier will have an option to pay a specified portion of such excess costs, failing which the OPA may terminate the FIT Contract and in such case will return the Completion and Performance Security.
- (f) **[The FIT Contract will also require that the Contract Facility meet a minimum level of Provincial Content, failing which the Supplier shall be required to pay liquidated damages to the OPA for a Provincial Content Shortfall, and further provides that the OPA may terminate the FIT Contract for a Provincial Content Shortfall greater than a specified threshold.]**

[NTD: As more renewable generation is developed, it is expected that management of the grid will require curtailment of generating facilities, including Projects under the FIT Program. As other agencies consider these issues in consultation with stakeholders and the OPA, the OPA will ensure that the FIT Contract contemplates these scenarios and their potential impact on Suppliers.]

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7.3 Resolving Inconsistencies

Section 7.2 is for descriptive purposes only. For greater certainty, to the extent that there is any inconsistency between Section 7.2 and the FIT Contract, the FIT Contract shall prevail to the extent of the inconsistency.

SECTION 8 – PROGRAM REVIEW AND AMENDMENTS

8.1 Program Amendments

- (a) The OPA intends to review and Amend as necessary the FIT Program, the FIT Rules, the form of FIT Contract (which, for greater certainty, shall not affect any executed FIT Contracts) and the Price Schedule at regular two-year intervals, with the first scheduled review to take place one year after the FIT Program launch (each, a “**Scheduled Program Review**”). The OPA may make an Amendment outside of a Scheduled Program Review in response to Ministerial directions, changes in Laws and Regulations, significant changes in market conditions or other circumstances as required.
- (b) Notice of any Amendment as a result of a Scheduled Program Review will be posted on the Website at least ninety (90) days prior to the effective date of such Amendment. Notice of any Amendment that is not as a result of a Scheduled Program Review will be posted by the OPA on the Website for such time period, if any, prior to the effective date of such Amendment, as circumstances may permit.
- (c) For greater certainty, an Automatic Price Adjustment is not an Amendment.

8.2 Significant Program Amendments

- (a) Where the OPA makes an Amendment it may determine that such Amendment is a “**Significant Program Amendment**”, with regard to either the FIT Program generally or a specified class of Applicants delineated by Renewable Fuel, Contract Capacity, Location or other factors. Any such determination will be posted on the Website and sent by email to all Applicants for whom it is a Significant Program Amendment. Notwithstanding the foregoing, in no circumstances will an Amendment constitute a Significant Program Amendment in relation to an Application that was submitted to the OPA after notice of the Amendment was posted on the Website.
- (b) If the OPA Amends the Price Schedule in accordance with Section 8.1 such that the Contract Price that would be applicable to an Application in the FIT Production Line is reduced by more than 5% from the price that was applicable at the time of the Time Stamp, then such Amendment shall be a “**Threshold Price Amendment**” in relation to such Application. A Threshold Price Amendment will constitute a Significant Program Amendment in relation to Applications so affected. Where an Applicant does not withdraw from the FIT Program as set out in Section 8.2(c) following a Threshold Price Amendment, the baseline used in the calculation of any subsequent Threshold Price Amendment for such Applicant shall be the new Contract Price as amended by the current Threshold Price Amendment.
- (c) Within thirty (30) days of notice of a Significant Program Amendment being posted on the Website, an Applicant for whom such Significant Program Amendment applies may:

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- (i) withdraw a submitted Application from the FIT Production Line by providing notice in writing to the OPA,
- (ii) decline to execute a FIT Contract offered, or
- (iii) otherwise withdraw an Application from the FIT Program by providing notice in writing to the OPA,

and despite anything to the contrary in these FIT Rules, the OPA will return the full Application Security to the Applicant within ten (10) Business Days. For greater certainty, this includes any portion of the Application Security that may have previously been non-refundable.

- (d) Where the OPA makes an Amendment that it has not determined to be a Significant Program Amendment in accordance with Section 8.2(a) in relation to an Applicant, such Applicant may request in writing within ten (10) Business Days of such Amendment being posted on the Website to withdraw from the FIT Program without paying liquidated damages. Such request must demonstrate to the satisfaction of the OPA, acting reasonably, that the Amendment has a Material Adverse Effect. In response to such a request, the OPA may (i) grant relief by returning the full Application Security to the Applicant and removing the Application from the FIT Program, (ii) deny the request by providing written notice to the Applicant, (iii) request further information that it reasonably requires of such Applicant, or (iv) take such other action as it sees fit.

SECTION 9 – CONFIDENTIALITY

- (a) All information provided by or obtained from the OPA in any form in connection with the FIT Program, either before or after the execution of a FIT Contract, that is not otherwise publicly available is the sole property of the OPA and must be treated as confidential, and
 - (i) is not to be used for any purpose other than applying to participate in the FIT Program and the performance by the Supplier under the FIT Contract;
 - (ii) must not be disclosed without the prior written authorization of the OPA, other than to the Applicant's or Supplier's partners, advisors, Connecting Authority, IESO, OEB, contractors, and Secured Lenders, provided the disclosing party obtains similar confidentiality commitments from such third parties; and
 - (iii) shall be returned by the Applicant, Supplier or third party (as applicable) to the OPA immediately upon request of the OPA.
- (b) Information provided by an Applicant or a Supplier is subject to, and may be released in accordance with, the provisions of the FIPPA. Notwithstanding any confidentiality statement provided by the Applicant or Supplier, the OPA may be required to disclose information which is provided to the OPA by an Applicant or Supplier and is otherwise not protected from disclosure through an exemption in FIPPA or any other applicable legislation, regulation or policy. Applicants should not assume that such an exemption is available. **[NTD: Consider any possible disclosure obligations in favour of the Renewable Energy Facilitator.]**
- (c) Applicants are advised that their Applications will, as necessary, be disclosed on a confidential basis to the OPA's counsel, consultants, the IESO, Transmitters, LDCs and other advisers retained for the purpose of the FIT Program.

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SECTION 10 – ADDITIONAL RULES**10.1 General**

- (a) Each Application will be prepared at the sole cost and expense of the Applicant.
- (b) The OPA shall not be liable to pay any Applicant's costs or expenses under any circumstances. In particular, the OPA will not reimburse the Applicant in any manner whatsoever in the event of rejection of any or all Applications or in the event of the cancellation or suspension of the FIT Program at any time. By submitting an Application, the Applicant irrevocably and unconditionally waives any claims against the OPA relating to the Applicant's costs and expenses including without limitation, costs in relation to satisfying the Project eligibility criteria described in Section 2 and the Application eligibility criteria described in Section 3, the Application Fee and any costs associated with delivering the Application Security.
- (c) Notwithstanding anything contained in these FIT Rules, the OPA reserves the right, in its sole discretion, to reject any Application in whole or part whether or not completed properly and whether or not it contains all necessary information and reserves the right to discuss different or additional proposals to those included in any Application.
- (d) The OPA reserves the right to cancel all or any part of the FIT Program at any time and for any reason or to suspend the FIT Program in whole or in part for any reason for such period of time as the OPA shall determine in its sole discretion, in each case without any obligation or any reimbursement to the Applicants. In the event that the FIT Program is cancelled, the OPA shall return the full Application Security (if applicable) to all Applicants.
- (e) Each Applicant shall be solely responsible for its own costs and expenses relating to the preparation and submission of its Application and the development of the Contract Facility, whether or not an Application is rejected or the FIT Program or FIT Contract is suspended, revoked or revised.
- (f) The OPA may verify with any Applicant or with any third party any information set out in an Application.
- (g) The OPA may at any time make changes to these FIT Rules, the form of FIT Contract, the Price Schedule or the FIT Program (including substantial changes or a suspension or termination of the FIT Program), without any liability whatsoever to Applicants or prospective Applicants, except for the return of Application Security.
- (h) The OPA reserves the right to waive any informality or irregularity at its discretion with respect to an Application or an Applicant's compliance with these FIT Rules.

10.2 Reserved Rights

- (a) The rights reserved to the OPA in these FIT Rules are in addition to any other express rights or any other rights which may be implied in the circumstances, and the OPA shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Applicant or any third party resulting from the OPA exercising any of its express or implied rights under the FIT Program.
- (b) By submitting an Application, the Applicant authorizes the collection by the OPA of the information set out in the Application and otherwise collected in accordance with the

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terms hereof, and the use of such information for the purposes set out in or incidental to these FIT Rules and the FIT Contract, and for the purpose of offering, managing and directing the FIT Program generally.

10.3 Interpretation

- (a) **Consent.** Whenever a provision requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Currency.** Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) **Discretion.** Where the OPA may take an action or make a determination under these FIT Rules, the decision to take such action or make such determination shall be at the OPA's sole and absolute discretion.
- (d) **Governing Law.** These FIT Rules are made under and shall be governed by and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (e) **Headings.** Headings of Sections are inserted for convenience of reference only and do not affect the construction or interpretation of these FIT Rules. References to Sections means Sections of these FIT Rules, unless otherwise specified.
- (f) **Including.** Where "including" is used in these FIT Rules, it means "including (or includes) without limitation".
- (g) **Liquidated Damages.** By submitting an Application, Applicants acknowledge and agree that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the OPA and the Ontario rate-payer as result of an Applicant withdrawing from the FIT Production Line or failing to execute a FIT Contract in response to an Offer Notice. Applicants submitting Applications further acknowledge and agree that the liquidated damages set forth in these FIT Rules are a fair and reasonable approximation of the amount of actual damages that would be suffered by the OPA and the Ontario rate-payer as a result of a withdrawal from the FIT Production Line or a failure to execute a FIT Contract in response to an Offer Notice.
- (h) **No Strict Construction.** Despite the fact that these FIT Rules were drafted by the OPA's legal and other professional advisors, Applicants submitting Applications acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision in these FIT Rules shall not be construed against the OPA in favour of the Applicant when interpreting such term or provision, by virtue of such fact.
- (i) **Number and Gender.** Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (j) **Severability.** If any provision of these FIT Rules or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating

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the remaining provisions of these FIT Rules and without affecting its application to the other Party or circumstances.

- (k) **Statutory References.** A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (l) **Time.** Time is of the essence in the performance of the Parties' respective obligations.
- (m) **Time Periods.** Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

SECTION 11 – PROGRAM INITIALIZATION

11.1 Procedure

- (a) Notwithstanding Section 4.1(a) and any other Section of these FIT Rules, all Applications received during the first sixty (60) days following the launch of the FIT Program **[for each region of the Province]** shall not receive a Time Stamp on a first-come-first-served basis (the “**Initial Applications**”). All Initial Applications shall be sorted into two categories:
 - (i) The first category will be Initial Applications in respect of Projects that hold a Legacy Connection Queue Position. Any such Applications that meet all of the Project and Application eligibility requirements set out in Section 2 and Section 3 shall be assigned a Time Stamp corresponding to time and date they applied for their Legacy Connection Queue Position. **[NTD: Consider restrictions on the transfer of Legacy Connection Queue Positions.]**
 - (ii) The second category will be all Initial Applications other than those for which the Applicant holds a Legacy Connection Queue Position. These Initial Applications will be subjected to a random lottery, whereby Application reference numbers will be drawn and assigned a Time Stamp relative to each other in a random order.

For greater certainty, all Time Stamps issued to Initial Applications for Projects with Legacy Connection Queue Positions shall precede in time those Time Stamps issued to Initial Applications in the random lottery.

- (b) All Initial Applications that do not meet all of the Project and Application eligibility requirements set out in Section 2 and Section 3 will be rejected in accordance with Section 4.2, and will thereafter only be eligible for a Time Stamp in accordance with Section 4.1(a). For greater certainty, any rejected Initial Application (including an Initial Application in respect of Project with a Legacy Connection Queue Position) will lose the benefit of the Time Stamp issued during the Initialization Period, but will still be permitted to reapply following the Initialization Period.
- (c) The OPA will issue Economic Test Notices simultaneously to all Applicants whose Applications were submitted to the Economic Connection Test in the Initialization Period.

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11.2 Applicable Policies

- (a) Applicants are strongly cautioned against submitting Initial Applications for Projects that they are not prepared to develop, if offered a FIT Contract. Despite Section 4.6(c)(i), and given the damage that a failure to execute a FIT Contract offered during the Initialization Period would cause the FIT Program, where Applicants receive an Offer Notice during the Initialization Period but the OPA does not receive the executed FIT Contract and Completion and Performance Security from such Applicant within ten (10) Business Days of the Offer Notice, the OPA shall be entitled to draw on the full amount of the Application Security as liquidated damages and not as a penalty.
- (b) If the OPA determines, acting reasonably, that more than one Initial Application has been submitted in respect of the same Project by Applicant Related Persons, all such Initial Applications shall be automatically rejected. Initial Applications will be deemed to be in respect of the same Project for the purpose of this Section if the Projects utilize the same Renewable Fuel and have their Generating Equipment located at substantially the same Location(s).
- (c) During the Initialization Period, Applicant Related Persons may not submit more than one Project for which the same transformer station on the IESO-Controlled Grid has the lowest cost for the radial connection to the Projects. Where more than one Initial Application has been submitted by Applicant Related Persons in respect of Projects for which the same transformer station on the IESO-Controlled Grid has the lowest cost for the radial connection to the Projects, all such Initial Applications shall be automatically rejected.
- (d) The OPA is anticipating a large number of Initial Applications. In order to ensure that each Application receives full and proper consideration, including any possible Connection Alteration Proposals, it may not be possible for the OPA to achieve its target response times. In such an event, the OPA shall, by posting notice on the Website, advise of its new target for the processing of such Initial Applications.
- (e) Following the end of the Initialization Period, this Section 11 shall no longer form part of these FIT Rules.

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APPENDIX: STANDARD DEFINITIONS

Definitions

The following terms shall have the meaning stated below when used in the FIT Rules or in the FIT Contract:

- (1) **Access Rights** means, in respect of a Project, either title to or rights of access to the Location, sufficient to build, operate and maintain the Project, enforceable by contract for the term of the FIT Contract. Such contractual rights may include a lease, option, letter of intent, memorandum of understanding or other grant conditional only on the Applicant entering into the FIT Contract, which shall in any case be satisfactory to the OPA in its sole discretion.
- (2) **Amendment** means a change, revision or addition to the FIT Program, FIT Rules, form of FIT Contract or Price Schedule and **Amend** has a corresponding meaning. For greater certainty, a suspension of the FIT Program, in whole or in part, shall constitute an Amendment.
- (3) **Ancillary Service** has the meaning given to it in the IESO Market Rules.
- (4) **Applicant** means a Person submitting an Application to participate in the FIT Program.
- (5) **Applicant Related Person** means (i) the Applicant, (ii) any Person that, individually or with any other Person(s), Controls or is Controlled by the Applicant, or (iii) any Person that, with the Applicant, is Controlled by a third Person or Persons.
- (6) **Application** means an application submitted in response to the FIT Program in respect of the construction, development and operation of a Project and all clarifications and additional information, documents and statements in respect thereof provided by an Applicant, or on behalf of an Applicant, and submitted to and accepted by the OPA.
- (7) **Application Fee** has the meaning given to it in Section 3.1(a) of the FIT Rules.
- (8) **Application Security** has the meaning given to it in Section 3.1(b) of the FIT Rules.
- (9) **Arbitration Act** means the *Arbitration Act, 1991* (Ontario).
- (10) **Automatic Price Adjustment** has the meaning given to it in Section 5.2(a) of the FIT Rules.
- (11) **Band** has the meaning given to it in the *Indian Act* (Canada).
- (12) **Behind-the-Meter Facility** means a Facility that is connected to a Host Facility.

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- (13) ***Behind-the-Meter Usage*** means the Electricity generated by a Behind-the-Meter Facility in any hour that is used by the Host Facility in such hour, and is calculated as follows:

(i) for any hour in which there is a net withdrawal from Distribution System, as measured at the Host Facility's meter:	
$\text{BMU} = A$	
(ii) for any hour in which there is a net injection into the Distribution System, as measured at the Host Facility's meter, and where the Host Facility is only connected to the Behind-the-Meter Facility and the Distribution System:	
$\text{BMU} = A - B$	
(iii) for any hour in which there is a net injection into the Distribution System, as measured at the Host Facility's meter, and where the Host Facility is connected to the Behind-the-Meter Facility, the Distribution System and one or more other generating facilities:	
$\text{BMU} = \frac{A}{Z} \times (Z - B)$	
where:	
BMU	is the Behind-the-Meter Usage (expressed in kWh) for an hour;
A	is the Electricity Delivered by the Behind-the-Meter Facility for such hour, measured at the Behind-the-Meter Facility's meter;
B	is the Electricity injected into the Distribution System for such hour, measured at the Host Facility's meter; and
Z	is the sum of the Electricity injected into the Host Facility's electrical system in such hour (expressed in kWh) by the Behind-the-Meter Facility and all other generating facilities that are connected to the Host Facility, measured at each such facilities' meter.

- (14) ***Biodiesel*** means the mono-alkyl esters of fatty acids derived from vegetable oils or animal fats.
- (15) ***Bio-fuel*** means a liquid fuel or product made solely from Renewable Biomass and includes ethanol or Biodiesel as well as the direct utilization of vegetable oils or animal fats.
- (16) ***Bio-gas*** means a gaseous fuel or product made solely from Renewable Biomass and, for greater certainty, includes gaseous output from anaerobic digestion of Source Separated Organics, livestock manure, energy crops, livestock feed ingredients, food and feed processing by-products, off-specification food and feed materials and organic by-products from Bio-fuel production.
- (17) ***Bio-resource Supply Plan*** has the meaning given to it in Section 3.2(a)(iii)C of the FIT Rules.
- (18) ***Business Day*** means any day that is not a Saturday, a Sunday, or a legal holiday in the Province of Ontario.

- (19) **Capacity Products** means any products related to the rated, continuous load-carrying capability of a Contract Facility to generate and Deliver Electricity at a given time.
- (20) **Cents** or ¢ means hundredths of a Canadian dollar.
- (21) **Commercial Operation** means the receipt by the Supplier of all Governmental Approvals required in connection with the operation of the Contract Facility, and the determination by the Supplier through testing in accordance with the Connection Agreement and the Distribution System Code or Transmission System Code, as applicable, confirmed if applicable by the Connecting Authority, that the Contract Facility is capable of Delivering Electricity through the Connection Point (and, if a Behind-the-Meter Facility, through the Host Facility) to a Distribution System or the IESO-Controlled Grid, as applicable.
- (22) **Commercial Operation Date** means a date not earlier than the day on which Commercial Operation of the Contract Facility is first attained, as determined and specified in a written notice from the Supplier to the Connecting Authority and to the OPA delivered no later than seven (7) days prior to such specified date in such form as may be prescribed by the OPA from time to time and posted on the Website.
- (23) **Commercially Reasonable Efforts** means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by the FIT Rules or the FIT Contract and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction therein contemplated.
- (24) **Community Group** means, in relation to a Project (i) any Local Municipality where Generating Equipment is to be located, (ii) any Upper-Tier Municipality (if applicable) where Generating Equipment is to be located, (iii) a renewable energy co-operative (as such term is defined in the *Co-operative Corporations Act*) or other Person, either of which is Controlled by individuals all of whom **[own or rent residential property]** in the Local Municipality(ies) where Generating Equipment is to be located or (iv) any Person that is Controlled by a Community Group.
- (25) **Completion and Performance Security** means the financial security in the specified form and amount that the Supplier is required to provide the OPA upon execution of the FIT Contract and maintain in good standing as additional assurance that the Project will achieve Commercial Operation within the time period required under the FIT Contract.
- (26) **Confirmed Transmission Developments** means those expansions, upgrades or reinforcements to the Transmission System that have received all regulatory approvals necessary to commence construction.
- (27) **Connecting Authority** means the LDC or Transmitter, as applicable.
- (28) **Connection Agreement** means the agreement or agreements required to be entered into between the Connecting Authority and the Supplier (or if the Contract Facility is a Behind-the-Meter Facility, between the Connecting Authority and the Supplier or the Host Facility) with respect to the connection of the Contract Facility (or the Host Facility, if applicable) to a Distribution System or the IESO-Controlled Grid (directly or indirectly), in accordance with the Distribution System Code or Transmission System Code, as applicable, and governing the terms and conditions of such connection.
- (29) **Connection Alteration Proposal** has the meaning given to it in Section 4.3(c)(ii) of the FIT Rules.
- (30) **Connection Alteration Response** has the meaning given to it in Section 4.3(c)(ii) of the FIT Rules.
- (31) **Connection Impact Assessment** means an assessment conducted by an LDC to determine the impact on the Distribution System of connecting the Contract Facility to its Distribution System.

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- (32) **Connection Point** means
- (a) where the Contract Facility is not a Behind-the-Meter Facility, the electrical connection point between the Contract Facility and a Distribution System or the IESO-Controlled Grid where Electricity is injected into a Distribution System or the IESO-Controlled Grid (as applicable), as more particularly described in the Connection Agreement; or
 - (b) where the Contract Facility is a Behind-the-Meter Facility, the electrical connection point between the Contract Facility and the Host Facility where Electricity is injected into the Host Facility's electrical system.
- (33) **Connection Resource Database** means the database of all transformer stations and Distribution System feeders connected to the IESO-Controlled Grid, directly or indirectly, along with any Confirmed Transmission Developments, with an indication of the connection capacity for Projects to such resources, along with the electrical parameters and the number and size of generating facilities that have completed or applied for Connection Impact Assessments or System Impact Assessments (as applicable) that will utilize such resources.
- (34) **Consumer Price Index** or **CPI** means the twelve (12) month consumer price index for "All Items" published or established by Statistics Canada (or its successor) in relation to the Province of Ontario.
- (35) **Contract Capacity** means:
- (a) for Incremental Projects, the total Gross Nameplate Capacity of the Facility, less the highest documented manufacturer's total installed rated capacity of the Existing Generating Facility to generate Electricity; and
 - (b) for all other Contract Facilities, the Gross Nameplate Capacity of the Contract Facility.
- (36) **Contract Date** means the effective date of the FIT Contract, as set out therein.
- (37) **Contract Energy** means, for any period:
- (a) for a Contract Facility which is not an Incremental Project, the entire quantity of Electricity actually generated by and Delivered from the Contract Facility during such period; and
 - (b) for an Incremental Project, the amount of Electricity calculated as the entire quantity of Electricity actually generated by and Delivered from the Facility multiplied by the Incremental Project Ratio.
- (38) **Contract Facility** means:
- (a) with respect to a Project that is not an Incremental Project, for the purpose of the FIT Rules, the Facility described in the Application, and for the purpose of the FIT Contract, the Facility described on the FIT Contract cover page; and
 - (b) with respect to a Project that is an Incremental Project, for the purpose of the FIT Rules, the additional Generating Equipment that is the subject of the Expansion or Upgrade together with all other equipment and facilities of the Existing Generating Facility which are necessary to deliver the Contract Capacity, as described in the Application, and for the purpose of the FIT Contract, the additional Generating Equipment that is the subject of the Expansion or Upgrade together with all other equipment and facilities of the Existing Generating Facility which are necessary to deliver the Contract Capacity, as described on the FIT Contract cover page.

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- (39) **Contract Payment** means all payments to a Supplier under a FIT Contract including payments on account of the Contract Price multiplied by Hourly Delivered Electricity, and Peak Performance Factor, as applicable.
- (40) **Contract Price** means the price determined by the OPA in accordance with the Price Schedule and set out in Section ● of the FIT Contract.
- (41) **Control** means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise, and **Controlled by** has a corresponding meaning.
- (42) **Cure Period** means a period of thirty (30) Business Days following delivery by the OPA to the Supplier of written notice of a failure, cessation or breach described in Section ● of the FIT Contract, or such longer period as the OPA may determine in its sole discretion.
- (43) **Customer Impact Assessment** means a study conducted by a Transmitter to assess the impact of the connection of a Project on other users of the IESO-Controlled Grid.
- (44) **Delivered** means, in relation to Electricity and certain Related Products, delivered to the Connection Point and
- (a) successfully injected into a Distribution System or the IESO-Controlled Grid, directly or through the Host Facility's electrical system (which, for greater certainty, is net of Site-Specific Losses); and/or
 - (b) successfully injected into the Host Facility's electrical system and used by the Host Facility;
- and **Delivering** has the corresponding meaning.
- (45) **Distribution System** means a system connected to the IESO-Controlled Grid for distributing Electricity at voltages of 50 kilovolts or less, and includes any structures, equipment or other things used for that purpose, provided that a Distribution System shall be deemed not to include any equipment controlled by the IESO pursuant to the Distribution System Code.
- (46) **Distribution System Code** means the "Distribution System Code" established and approved by the OEB, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems.
- (47) **ecoENERGY for Renewable Power Program** means the ecoENERGY for Renewable Power program of the Government of Canada, or any substantially equivalent program or successor that is implemented by the Government of Canada from time to time.
- (48) **Economic Connection Test** means the test [described in Section 4.3(d) of the FIT Rules].
- (49) **Economic Test Notice** has the meaning given to it in Section 4.3(e) of the FIT Rules.
- (50) **Electricity** means electric energy, measured in kWh.
- (51) **Electricity Act** means the *Electricity Act, 1998* (Ontario).

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- (52) **Eligible Community Project** means a Project for which the Applicant is a Community Group whose Project is recognized by all of the Local Municipalities where the Generating Equipment is to be located by council resolution(s) that the Project is a “worthy community endeavour”, and, where the Generating Equipment is to be located in more than one Local Municipality in the same Upper-Tier Municipality, the Project is also recognized by such Upper-Tier Municipality by a council resolution that the Project is a “worthy community endeavour”.
- (53) **Eligible Aboriginal Project** means a Project for which the Applicant is a First Nation or a Métis.
- (54) **Embedded Retail Generator** has the meaning given to it in the Retail Settlement Code.
- (55) **Emission Reduction Credits** means the credits associated with the avoidance or reduction of emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario) or such other regulations as may be promulgated under the *Environmental Protection Act* (Ontario) or any currently applicable or future Laws and Regulations.
- (56) **Environmental Attributes** means environmental attributes associated with a Contract Facility having decreased environmental impacts now or in the future, and the right to quantify and register these with competent authorities, including:
- (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Contract Facility as a result of the utilization of renewable energy technology;
 - (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Contract Facility itself, from the interaction of the Contract Facility with the IESO-Controlled Grid, a Distribution System or the Host Facility, or because of Laws and Regulations or voluntary programs established by Governmental Authorities;
 - (c) any and all rights, title and interest relating to the nature of an energy source (including a Renewable Fuel) as may be defined and awarded through Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
 - (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Contract Facility,
- but excluding:
- (e) payments under the Government of Canada’s ecoENERGY for Renewable Power Program (or any predecessor program thereto) which may be available in connection with a Renewable Generating Facility;
 - (f) any tax or other benefit under the Government of Canada’s Canadian Renewable and Conservation Expenses (CRCE) or successor program which may be available in connection with a Renewable Generating Facility; and
 - (g) such other items as the OPA may determine in its sole discretion at any time and from time to time, such excluded items to be posted on the Website and revised periodically.

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading

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system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term “Environmental Attributes” as used in the FIT Contract shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the production of Electricity or Related Products from the Contract Facility.

- (57) **Existing Generating Facility** means an Electricity generating facility, and ancillary lands required by such generating facility, that is located in Ontario and whose Generating Equipment is commercially operational and is connected to the IESO-Controlled Grid, a Distribution System or supplies Electricity to a Host Facility prior to February 23, 2009. An electricity generating facility is considered to be commercially operational if it receives market revenues and has operated for more than 500 hours per year in any of the past three (3) years.
- (58) **Expansion** means an addition of generating unit(s) to an Existing Generating Facility which (i) is not intended to replace any Generating Equipment that operates, or has operated within the past 12 months at the Existing Generating Facility; (ii) generates Electricity in addition to the Electricity of existing generating units that operate or operated at the Existing Generating Facility; and (iii) does not include any of the electricity generating capacity available from the Existing Generating Facility. For greater certainty, an Expansion shall not include an Upgrade of an Existing Generating Facility.
- (59) **Facility** means a Renewable Generating Facility constructed, developed and operated by the Supplier or by an Applicant Related Person of the Supplier, of which the Contract Facility forms all or a part of.
- (60) **Final Provincial Content Report** means ●.
- (61) **FIPPA** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (62) **First Nation** means (i) a Band, (ii) any individual who is a registered member of a Band, (iii) any Person under the Control of an individual or individuals who is/are registered member(s) of a Band or Bands or (iv) any Person under the Control of a First Nation or First Nations, provided that in respect of items (ii) and (iii) such individual or Person is reasonably considered to represent the collective interests of the Band or Bands.
- (63) **FIT Contract** means the agreement entered into between the Supplier and the OPA in accordance with the FIT Rules, and to which these Standard Definitions and the other Schedules are attached, as amended, restated or replaced from time to time.
- (64) **FIT Production Line** has the meaning given to it in Section 4.3(e)(ii) of the FIT Rules.
- (65) **FIT Program** means the Renewable Energy Feed-In Tariff Program established by the OPA pursuant to the FIT Rules and any prior or subsequent version of the FIT Rules.
- (66) **FIT Reserve** has the meaning given to it in Section 4.3(e)(iii) of the FIT Rules.
- (67) **FIT Rules** means the rules governing the FIT Program as may be amended from time to time and posted on the Website.
- (68) **Force Majeure** has the meaning given to it in Section ● of the FIT Contract.
- (69) **Full-Rate Provincial Content LDs** means ●.
- (70) **Generating Equipment** means equipment used in the generation of Electricity, such as wind turbines, hydroelectric turbines, biomass-fired boilers and generating sets for the combustion of landfill gas, but does not include transformers or other equipment used to transform or transmit such Electricity.

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- (71) **Good Engineering and Operating Practices** means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator of Electricity in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry.
- (72) **Governmental Approvals** means approvals, authorizations, consents, permits, grants, licences, privileges, rights, orders, judgments, rulings, directives, ordinances, decrees, registrations and filings issued or granted by Laws and Regulations or by any Governmental Authority.
- (73) **Governmental Authority** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the OPA.
- (74) **Gross Nameplate Capacity** means the manufacturer's total installed rated capacity of the Facility to generate Electricity.
- (75) **GST** means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada).
- (76) **Home REFIT Rules** means those rules set out in Exhibit ●.
- (77) **Host Facility** means a facility which:
- (a) is connected to the Contract Facility at the Connection Point; and
 - (b) is either (i) directly connected to a Distribution System or (ii) connected to the IESO-Controlled Grid directly or through one or more other facilities.
- (78) **Hourly Delivered Electricity** means:
- (a) in respect of Incremental Projects, the Electricity generated and Delivered by the Facility in any hour multiplied by the Incremental Project Ratio;
 - (b) for all other Contract Facilities, the Electricity generated and Delivered by the Contract Facility during any hour;
- in each case, provided such Electricity is delivered to the Connection Point and either (i) successfully injected into a Distribution System or the IESO-Controlled Grid directly or through the Host Facility's electrical system, or (ii) successfully injected into the Host Facility's electrical system.
- (79) **Hourly Ontario Energy Price** has the meaning given to it by the IESO Market Rules or shall mean any replacement thereof or successor thereto.
- (80) **IESO** means the Independent Electricity System Operator of Ontario established under Part II of the Electricity Act or its successor.
- (81) **IESO-Administered Markets** has the meaning given to it by the IESO Market Rules.

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- (82) **IESO-Controlled Grid** has the meaning given to it by the IESO Market Rules.
- (83) **IESO Market Rules** means the rules made under Section 32 of the Electricity Act, together with all market manuals, policies, and guidelines issued by the IESO.
- (84) **Incremental Project** means an Upgrade to, or an Expansion of an Existing Generating Facility, which results in an increase in the Gross Nameplate Capacity of such Existing Generating Facility, provided that:
- (a) the Renewable Fuel used by such Existing Generating Facility is the Renewable Fuel utilized by the Project; and
 - (b) the project type described in on the FIT Contract cover page is indicated as being an “Incremental Project”.
- (85) **Incremental Project Ratio** means the ratio relating to an Incremental Project that is determined by dividing the Contract Capacity by the Gross Nameplate Capacity.
- (86) **Initial Applications** has the meaning given to it in Section 11.1 of the FIT Rules.
- (87) **Initialization Period** means the time period from the launch of the FIT Program until ten (10) Business Days following the issuance of Economic Test Notices to all Applicants in respect of Initial Applications that have been subjected to the Economic Connection Test.
- (88) **Insolvency Legislation** means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) or any analogous legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law).
- (89) **ITA** means the *Income Tax Act* (Canada).
- (90) **kW** means kilowatt and **kWh** means kilowatt-hour.
- (91) **Laws and Regulations** means:
- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
 - (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
 - (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
 - (d) any requirements under or prescribed by applicable common law;
 - (e) the Retail Settlement Code, the Distribution System Code, the Transmission System Code and any other codes issued by the OEB; and
 - (f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.
- (92) **LDC** means the owner or operator of a Distribution System who is licensed by the OEB as an “electricity distributor”.

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- (93) **LDC-Connected Facility** means a Contract Facility that is connected directly to a Distribution System at the Connection Point.
- (94) **Legacy Connection Queue Position** means with respect to a Project, a Project for which an Application for a Connection Impact Assessment was submitted to the applicable LDC prior to February 23, 2009 and was completed prior to the start of the Initialization Period.
- (95) **Local Municipality** has the meaning given to it in the *Municipal Act, 2001* (Ontario), but including the City of Toronto.
- (96) **Location** means the real property on, over, in or under which the Contract Facility is, or is to be, situated, being the location identified in the Application and in the FIT Contract.
- (97) **Long Form Terms and Conditions** or **Long Form** means the terms and conditions of the FIT Contract identified as such on the Website.
- (98) **Material Adverse Effect** means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations under the FIT Contract or FIT Program.
- (99) **Métis** means (i) an individual who holds Métis citizenship issued by the Registry of the Métis Nation of Ontario and (ii) any Person under the Control of such individual or individuals.
- (100) **Milestone Date** means those dates set out in the second column of the table contained in Exhibit ● to the FIT Contract, with respect to the attainment of the corresponding Milestone Events set out in the first column of the table contained in Exhibit ● to the FIT Contract.
- (101) **Milestone Events** means those events set out in the first column of the table contained in Exhibit ● to the FIT Contract, which are considered critical by the Parties for the timely design, construction, financing, completion and operation of the Contract Facility, and which are to be completed by the corresponding Milestone Dates.
- (102) **Municipal Solid Waste** means (i) common refuse collected from the general public and generated by residential, commercial, institutional and industrial sources, consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and non-combustible materials such as metal, glass and rock, whether or not it is owned, controlled or managed by a municipality; and (ii) solid fuel, whether or not it is waste, that is derived in whole or in part from the refuse included in clause (i) of this definition, but which, for greater certainty, shall not include gaseous waste or wastes used in an incineration unit.
- (103) **MW** means megawatt and **MWh** means megawatt-hour.
- (104) **New Agreement** means a new agreement substantially in the form of the FIT Contract and for the then balance of the Term (had the FIT Contract not been terminated early), which may be entered into with a Secured Lender who is at arm's length with the Supplier or with a Person identified by such Secured Lender following an event of default under the Secured Lender's Security Agreement.
- (105) **OEB** means the Ontario Energy Board or its successor.
- (106) **Off-Peak Hour** means any hour that is not an On-Peak Hour.
- (107) **Offer Notice** has the meaning given to it in Section 4.6(a).

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- (108) **On-Peak Hour** means the hours starting at 11:00:00 and ending at 18:59:59 Eastern Standard Time and all hours in between, on Business Days.
- (109) **OPA** means the Ontario Power Authority and its successors and assigns.
- (110) **Party** means, (a) with respect to the FIT Contract, any one of the Supplier and the OPA, and the OPA and the Supplier are collectively referred to as the **Parties**; and (b) with respect to the FIT Rules, any one of the Applicant and the OPA, and the OPA and the Applicant are collectively referred to as the Parties.
- (111) **Payment Period** means the 20-year period (subject to earlier termination in accordance with the terms of the FIT Contract) commencing on the Commercial Operation Date.
- (112) **Peak Performance Factor** means 1.35 for all On-Peak Hours and 0.90 for all Off-Peak Hours.
- (113) **Person** means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.
- (114) **Planned In-Service Transmission Developments** means, with respect to a Project at a point in time, Confirmed Transmission Developments that have a **[planned in service date]** on or before the date that **[would be the Milestone Date for Commercial Operation of such Project, if a FIT Contract for such Project were executed at that time]**.
- (115) **Price Schedule** means the schedule of prices established by the OPA from time to time, in its sole discretion, that will be used to determine the Contract Price for a FIT Contract, differentiated by Renewable Fuel, Contract Capacity and other factors as determined by the OPA.
- (116) **Production Line Confirmation** means the form set out in Exhibit ● to the FIT Rules confirming an Applicant's desire to submit its Application to the FIT Production Line.
- (117) **Project** means a proposed Renewable Generating Facility described in an Application.
- (118) **Provincial Content** has the meaning given to it in Exhibit "C" of the FIT Rules.
- (119) **Provincial Content Plan** means ●.
- (120) **Provincial Content Shortfall** means ●.
- (121) **PST** means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario).
- (122) **PV** means a solar photovoltaic system.
- (123) **Queue Exempt Facility** has the meaning given to "queue exempt small embedded generation facility" in the Distribution System Code.
- (124) **Reduced-Rate Provincial Content LDs** means ●.
- (125) **Registered Facility** has the meaning given to it in the IESO Market Rules.
- (126) **Regulated Price Plan** means the electricity commodity prices for consumers designated by the OEB from time to time pursuant to the methodology described in the OEB's "Regulated Price Plan Manual".
- (127) **Related Products** means all Ancillary Services, Environmental Attributes and products related to the rated, continuous load-carrying capability of the Contract Facility to generate and Deliver Electricity at a

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given time, as well as any other products or services of value that may be provided by or attributable to the Contract Facility from time to time during the Term and that may be traded in the markets established from time to time by the IESO Market Rules or other markets, or otherwise sold or otherwise have value, and which shall be deemed to include products and services for which no market may exist, but excluding (i) steam and hot water produced by the Contract Facility and (ii) ecoENERGY for Renewable Power Program payments.

- (128) **Renewable Biomass** means organic matter that is derived from a plant and available on a renewable basis, including organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops and waste organic material from harvesting or processing agricultural products, forestry products (including spent pulping liquor) and sewage including manure, provided that:
- (a) such organic matter is not Municipal Solid Waste;
 - (b) such organic matter is not peat or a peat derivative;
 - (c) such organic matter shall not contain any treated by-products of manufacturing processes, including chipwood, plywood, painted or varnished wood, pressure treated lumber, or wood contaminated with plastics or metals;
 - (d) such organic matter shall not include hazardous waste or liquid waste, nor contain any materials that can adversely affect anaerobic processes or cause liquids or solids produced through anaerobic processes to become hazardous waste; and
 - (e) supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall be no more than ten percent (10%) of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of 500 kW or less and five percent (5%) of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of greater than 500 kW.
- (129) **Renewable Energy Approval** means [the approval issued by the Ontario Ministry of the Environment under Section 47.3 of the *Environmental Protection Act* (Ontario).]
- (130) **Renewable Fuel** means wind, solar (PV), solar (thermal electric), Renewable Biomass, Bio-gas, Bio-fuel, landfill gas or waterpower.
- (131) **Renewable Generating Facility** means an Electricity generating facility located in Ontario that is owned or leased for the Term, as well as operated by the Supplier, which generates Electricity exclusively from one or more Renewable Fuels and delivers that Electricity through a meter in accordance with all Laws and Regulations to either the IESO-Controlled Grid, a Distribution System or a Host Facility.
- (132) **Residential Property** [has the meaning given to it in the Home REFIT Program.]
- (133) **Retail Settlement Code** means the code established and approved by the OEB, governing the determination of financial settlement costs for electricity retailers, consumers, distributors and generators.
- (134) **Sales Taxes** means GST and PST.
- (135) **Scheduled Program Review** has the meaning given to it in Section 8.1(a) of the FIT Rules.
- (136) **Secured Lender** means the lender(s) under a Secured Lender's Security Agreement.

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- (137) **Secured Lender's Security Agreement** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
- (138) **Settlement Period** means the monthly, quarterly or other periodic billing cycle of the LDC or the IESO, as applicable, in effect from time to time.
- (139) **Short Form Terms and Conditions** or **Short Form** means the terms and conditions of the FIT Contract identified as such on the Website.
- (140) **Significant Program Amendment** has the meaning given to it in Section 8.2(a) of the FIT Rules.
- (141) **Site-Specific Losses** means Electricity losses due to line resistance, the operation of transformers and switches, and other associated losses of Electricity generated by the Contract Facility which may occur as a result of the difference between the location of the meter and the Connection Point, as determined pursuant to loss factors applied in accordance with the Retail Settlement Code and other applicable regulatory instruments.
- (142) **Source Separated Organics** means the organic portion of the Municipal Solid Waste collection stream which has been separated from potential contaminants such as metal, plastic and glass prior to collection and which does not contain any treated by-products of manufacturing processes or other materials that can adversely affect anaerobic processes or cause liquids and solids produced through anaerobic processes to become hazardous waste.
- (143) **Standard Definitions** means these definitions which are applicable and appended to the FIT Rules and the FIT Contract.
- (144) **Standard Offer Contract** means a contract issued in connection with a program offered by the OPA in which Electricity generating facilities that qualify under specified program rules are offered a standard form of agreement with the OPA for the development and/or operation of a generating facility, or any other program that the OPA may so designate at its sole and absolute discretion, as each such program may be amended from time to time.
- (145) **Station Service** means the Electricity used at the Contract Facility for excitation, on-site maintenance and operation of auxiliary and other facilities, essential to the operation of the Contract Facility.
- (146) **Supplier** means the Person identified as the generator in the FIT Contract, and, as applicable, its heirs, estate trustees, personal and legal representatives, successors and permitted assigns.
- (147) **Supplier Event of Default** has the meaning given to it in Section ● of the FIT Contract.
- (148) **Supplier's Interest** means the right, title and interest of the Supplier in or to the Contract Facility and the FIT Contract or any benefit or advantage of any of the foregoing.
- (149) **System Impact Assessment** means a study conducted by the IESO pursuant to Section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of a Contract Facility or of the modification of an existing connection of a Contract Facility on the performance of the IESO-Controlled Grid and the reliability of the integrated power system.
- (150) **Taxes** means all ad valorem, property, occupation, severance, production, governmental charges, utility, gross production, gross receipts, GST, PST, value-added, sales, stamp, use, excise, levies,

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countervailing, anti-dumping and special import measures, imposts, duties including customs' duties, fees, withholdings, assessments, premiums, deductions, taxes based on profits, net income or net worth and any other taxes or charges whatsoever, whether directly or indirectly imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto.

- (151) **Term** has the meaning given to it in Section ● of the FIT Contract.
- (152) **Terms and Conditions** means either the Long Form Terms and Conditions or the Short Form Terms and Conditions.
- (153) **Termination Date** means the date on which the FIT Contract terminates as a result of an early termination of the FIT Contract in accordance with its provisions.
- (154) **Threshold Price Amendment** has the meaning given to it in Section 8.2(b) of the FIT Rules.
- (155) **Tiered Regulated Price Plan** means the Regulated Price Plan as it applies to consumers who are not charged for Electricity usage at Time of Use Rates.
- (156) **Time of Use Rates** means the time-of-use commodity price for Electricity charged to consumers in accordance with Section 3.4 of the OEB's Standard Supply Service Code, as amended or replaced from time to time.
- (157) **Time Stamp** means the official record of the date and time that an Application is received as established pursuant to Sections 4.1(a) or 11.1 of the FIT Rules.
- (158) **Transmission System** means a system for conveying Electricity at voltages of more than 50 kilovolts and includes any structures, equipment or other things used for that purpose.
- (159) **Transmission System Code** means the "Transmission System Code" established and approved by the OEB, which, among other things, establishes the obligations of a Transmitter with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for the IESO-Controlled Grid.
- (160) **Transmitter** means a Person licensed as a "transmitter" by the OEB in connection with a Transmission System.
- (161) **Upgrade** means the refurbishment or replacement of Generating Equipment at an Existing Generating Facility with equipment which provides better or improved performance, but which does not constitute an Expansion.
- (162) **Upper-Tier Municipality** has the meaning given to it in the *Municipal Act, 2001* (Ontario).
- (163) **Website** means the OPA's Renewable Energy Feed-in Tariff Program website at "http://www.powerauthority.on.ca/FIT" or such other website as the OPA shall designate from time to time.

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EXHIBIT “A” – APPLICATION

The on-line application and related instructions for the Renewable Energy Feed-in Tariff Program are available on the Ontario Power Authority website:

<http://www.powerauthority.on.ca/FIT>

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EXHIBIT “B-1” – FORM OF LDC AUTHORIZATION LETTER

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EXHIBIT “B-2” – FORM OF IESO AUTHORIZATION LETTER

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EXHIBIT “C” – PROVINCIAL CONTENT

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EXHIBIT “D” – APPLICATION SECURITY (LETTER OF CREDIT FORM)

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Ontario Power Authority and its permitted assigns
AMOUNT:	[●]
EXPIRY DATE:	[●]
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the <i>Bank Act</i>]
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the “Credit”)

The Credit is issued in connection with the Renewable Energy Feed-In Tariff Program issued by the Ontario Power Authority dated ●, as amended (the “**FIT Program**”) and the Application dated **[Insert Date of Application]** submitted by the Applicant in response thereto (the “**Application**”).

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$[●] ([●] Canadian Dollars) available by the Beneficiary’s draft at sight accompanied by the Beneficiary’s signed certificate stating that:

“The Applicant, whose Application has been accepted by the Beneficiary, **[has failed to deliver the Completion and Performance Security within ten (10) Business Days of being notified by the Beneficiary that it has been selected to enter into a FIT Contract,]** or **[has failed to sign the FIT Contract within ten (10) Business Days of the date on which the Applicant was given the FIT Contract to sign,]** or **[has made a material misrepresentation in the Application,]** and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto. All capitalized terms used in this certificate that have not been defined herein have the meanings ascribed to them in the definitions appendix of the feed-in tariff program rules, effective as of the date of the Date of Issue stated above.” **[as applicable]**

Drafts drawn hereunder must bear the clause “Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by **[Issuing Bank Name]** dated **[Issue Date]**.”

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one year each (each an “**Additional Term**”), unless the undersigned provides the Beneficiary with written notice, at least 60 days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of **[Issuing Bank Name/Address]** at or before **[Expiry Time]** (EST) on **[Expiry Date]**, as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

It is a term of the Credit that the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

“We, the undersigned Beneficiary to **[Issuing Bank Name]** Letter of Credit No. [●], hereby waive all our rights under the said Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. Please forward the original amendment to the **[new Beneficiary]**, care of the Applicant to whom we have delivered the original of the Letter of Credit along with its amendment(s) (if any).”

The Beneficiary may transfer this Letter of Credit without the consent of the Applicant or the issuing financial institution provided that the transferee name is not identified on the following: the list of names subject to the Regulations Establishing a List of Entities Made Under Section 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR).

[Issuing Bank Name]

By: _____

By: _____

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EXHIBIT “E” – FORM OF PRODUCTION LINE CONFIRMATION

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