



**FIT CONTRACT**

**Pre-NTP Termination Guidelines**

**August 2018**

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## **SECTION 1: INTRODUCTION**

### **1.1 Purpose**

The purpose of this document is to provide guidance to Suppliers with respect to the forms, information and documentation to provide to the IESO in order to: (i) request a return or refund (as applicable) of Completion and Performance Security and (ii) submit Pre-Construction Development Costs, pursuant to Section 2.4 of the FIT Contract.

### **1.2 How to Use this Document**

This document should be read in conjunction with the applicable version of the FIT Contract. Should you require additional information on the FIT Program or the FIT Contract, please visit the FIT Program website, here: <http://www.ieso.ca/en/sector-participants/feed-in-tariff-program/overview>.

All capitalized terms used but not defined in this document have the meanings given to them in the applicable FIT Contract Standard Definitions.

### **1.3 Disclaimer**

These FIT Contract Pre-NTP Termination Guidelines (these “**Guidelines**”) are provided for information and guidance purposes only and do not amend the FIT Contract in any way. These Guidelines are not binding on the IESO and in no way vary or impact the interpretation of the FIT Contract or any other IESO contract. In the event of any conflict or inconsistency between anything in these Guidelines and any provision of FIT Contract, the terms of the applicable FIT Contract will govern.

The IESO may, but is not required to, change, modify, amend or update these Guidelines at any time and from time to time, without notice. While the IESO will endeavour to keep these Guidelines current, the IESO makes no guarantee, representation or warranty, express or implied, with respect to their accuracy or completeness and disclaims any and all liability in connection therewith.

### **1.4 Personal Information**

The IESO respects privacy and is committed to the protection of individuals’ personal information. To that end, the IESO requests that Supplier’s refrain from providing the IESO with any “personal information” (as such term is defined in the *Freedom of Information and Protection of Privacy Act*) in the submission of Pre-Construction Development Costs. Please ensure that any personal information of identifiable individuals is redacted from any part of your submission. The IESO will not collect any records containing personal information. Examples of personal information that must be redacted include an identifiable individual’s social insurance numbers, age, sex, family status, personal address, personal telephone number, personal email, driver’s licence, etc.

Please note that an individual's name, while not itself personal information, could be personal information where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual. More information on the IESO's privacy policy can be found at: <http://www.ieso.ca/en/Privacy>.

## **SECTION 2: PRE-NTP FIT CONTRACT TERMINATIONS**

### **2.1 Background**

The IESO received a directive from the Ministry of Energy, Northern Development and Mines issued July 13, 2018 and approved by Order in Council 1003/2018 (the "**Directive**") to take steps necessary to wind down all FIT 2, 3, 4, and 5 contracts (the "**Terminated Pre-NTP FIT Contracts**") where the IESO has not issued Notice to Proceed ("**NTP**"). Pursuant to the Directive and Section 2.4(a) of the FIT Contract, the IESO has terminated the Terminated Pre-NTP FIT Contracts. In the Notice of Termination provided to each Supplier, the IESO has also issued a Stop Work Direction (or, in respect of FIT Contract versions 4.0.2 and 5.0.2, a Stop Work Notice) in respect of each Terminated Pre-NTP FIT Contract.

### **2.2 Relevant Prescribed Forms**

The IESO has posted the following Prescribed Forms on its Website:

- 1) *Prescribed Form – Supplier Request re: Completion and Performance Security (Section 2.4(a))*
- 2) *Prescribed Form – Pre-Construction Development Costs (FIT Contract versions 2.1.1, 3.0.1 & 3.1)*
- 3) *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs (FIT Contract versions 2.1.1, 3.0.1 & 3.1)*
- 4) *Prescribed Form – Pre-Construction Development Costs (FIT Contract versions 4.0.2 & 5.0.2)*
- 5) *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs (FIT Contract versions 4.0.2 & 5.0.2)*

All Prescribed Forms are available here: <http://www.ieso.ca/en/sector-participants/feed-in-tariff-program/contract-management>.

The IESO reserves the right to reject any Prescribed Form that is unsigned or improperly signed, and any documentation submitted that is illegible, obscure, contains arithmetical errors, omissions, erasures, alterations, or irregularities of any kind, or contains misrepresentations or any other inaccurate or misleading information.

As further described below, the IESO requests that all Prescribed Forms and supporting documentation are provided electronically to the IESO. Other than as set out below, the IESO is not currently requesting hard copy submissions. The IESO reserves the right to request hard copy submissions at any time. Suppliers are required to maintain and retain records in accordance with Section 14.2 of the FIT Contract.

## **SECTION 3: COMPLETION AND PERFORMANCE SECURITY**

### **3.1 Completion and Performance Security**

Section 2.4(a)(i) of the FIT Contract provides that if the IESO terminates the FIT Contract in accordance with Section 2.4(a) all Completion and Performance Security shall be: (i) returned or refunded to the Supplier or (ii) in the case of a letter of credit, returned for cancellation, within 20 Business Days following the receipt of a written request for such return or refund (as applicable) from the Supplier.

This section of these Guidelines provides information and instructions for Suppliers with respect to the written request of Suppliers and the return or refund (as applicable) of Completion and Performance Security.

### **3.2 Prescribed Form for Completion and Performance Security Return or Refund**

In order to ensure that Completion and Performance Security is returned or refunded (as applicable) in an orderly and timely manner, the IESO has posted a Prescribed Form for Suppliers to use in submitting a written request pursuant to Section 2.4(a)(i) of the FIT Contract. The applicable Prescribed Form is:

- a) *Prescribed Form – Supplier Request re: Completion and Performance Security (Section 2.4(a))*

This Prescribed Form is available on the IESO's Website at: <http://www.ieso.ca/en/sector-participants/feed-in-tariff-program/contract-management>.

The *Prescribed Form – Supplier Request re: Completion and Performance Security (Section 2.4(a))* includes direct deposit banking authorization for the refund of Completion and Performance Security (as applicable).

### **3.3 Submission Instructions**

Please provide the IESO with a completed and signed PDF copy of the *Prescribed Form – Supplier Request re: Completion and Performance Security (Section 2.4(a))* by email to [FIT.Contract@ieso.ca](mailto:FIT.Contract@ieso.ca). Please identify the applicable FIT Contract Identification # in the subject line of the email, using the following template: "Supplier Request for Completion and Performance Security ([FIT Contract Identification #])".

In order for Completion and Performance Security that is being held by the IESO (other than a letter of credit) to be refunded to the Supplier by direct deposit, a hard copy of the completed and signed *Prescribed Form – Supplier Request re: Completion and Performance Security (Section 2.4(a))* and a void cheque must also be provided to:

Independent Electricity System Operator  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario M5H 1T1

Attn: FIT Contract Management, [**Contract Analyst**]

Re: Supplier Request for Completion and Performance Security ([**FIT Contract Identification #**])

### **3.4 Completion and Performance Security Return or Refund (as applicable)**

Within 20 Business Days from the receipt by the IESO of the completed and signed *Prescribed Form – Supplier Request re: Completion and Performance Security (Section 2.4(a))*, the IESO will return or refund (as applicable) the Completion and Performance Security.

If the Completion and Performance Security being held by the IESO is in the form of a letter of credit, the IESO will return the letter of credit to the bank for cancellation. If the Completion and Performance Security being held by the IESO is in any other form, the IESO will refund the Completion and Performance Security by direct deposit (if direct deposit information and a void cheque are provided) or by cheque (if direct deposit information and a void cheque are not provided).

## **SECTION 4: PRE-CONSTRUCTION DEVELOPMENT COSTS**

### **4.1 Pre-Construction Development Costs and Pre-Construction Liability Limit**

Section 2.4(b) of the FIT Contract provides that if the IESO terminates the FIT Contract in accordance with Section 2.4(a), the Supplier shall provide a written statement documenting the Pre-Construction Development Costs incurred prior to the Termination Date. Following receipt by the IESO of the written statement documenting the Pre-Construction Development Costs, and the IESO's confirmation of such costs, acting reasonably, the IESO will pay to the Supplier an amount equal to such confirmed Pre-Construction Development Costs, and in any case the amount shall not exceed the Pre-Construction Liability Limit.

This section of these Guidelines provides information and instructions for Suppliers with respect to the submission of Pre-Construction Development Costs by Suppliers, the submission of supporting documentation in respect of each Pre-Construction Development Cost, and the review, confirmation, and payment of Pre-Construction Development Costs by the IESO, up to the Pre-Construction Liability Limit.

## **4.2 Eligible Pre-Construction Development Costs**

### FIT Contract Versions 2.1.1, 3.0.1 and 3.1

Pre-Construction Development Costs are defined in the FIT Contract as those reasonable costs incurred for the development of the Facility, excluding (i) the costs of Generating Equipment, (ii) the Application Fee, (iii) that portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier, and (iv) profits, less any grants received pursuant to any government or IESO programs that the Supplier is not obligated to repay. Pre-Construction Development Costs may include reasonable costs incurred for feasibility studies; obtaining Access Rights; obtaining a Renewable Energy Approval (if required); development of business and financial plans; negotiation of contracts relating to equipment procurement, construction and financing; reasonable non-refundable deposits on Generating Equipment; resource assessments; obtaining permits and approvals necessary to commence construction and reasonable overhead expenses allocated to the foregoing.

Pre-Construction Development Costs do not include costs that were incurred prior to the Contract Date or after the Termination Date. Pre-Construction Development Costs also do not include costs associated with construction of the Facility. If the Supplier has commenced site preparation or other construction activities, any costs incurred in this regard are not Pre-Construction Development Costs under the FIT Contract.

### FIT Contract Versions 4.0.2 and 5.0.2

Pre-Construction Development Costs are defined in the FIT Contract as those reasonable costs incurred after the Contract Date for the development of the Facility, excluding (i) the costs of Generating Equipment, (ii) that portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier, and (iii) profits, less any grants received pursuant to any government or IESO programs that the Supplier is not obligated to repay. Pre-Construction Development Costs may include reasonable costs incurred for feasibility studies; obtaining Access Rights; obtaining a Renewable Energy Approval (if applicable); development of business and financial plans; negotiation of contracts relating to equipment procurement, construction and financing; reasonable non-refundable deposits on Generating Equipment and on transformers or other equipment used to transform or transmit Electricity; non-refundable deposits in connection with Connection Costs; resource assessments; obtaining permits and approvals necessary to commence construction and reasonable overhead expenses allocated to the foregoing.

Pre-Construction Development Costs do not include costs that were incurred prior to the Contract Date or after the Termination Date. Pre-Construction Development Costs also do not include costs associated with construction of the Facility. If the Supplier has

commenced site preparation or other construction activities, any costs incurred in this regard are not Pre-Construction Development Costs under the FIT Contract.

### **4.3 Prescribed Forms for Pre-Construction Development Costs**

In order to facilitate the IESO's review and confirmation of Pre-Construction Development Costs and to assist Suppliers, the IESO has posted Prescribed Forms for Suppliers to use in submitting Pre-Construction Development Costs to the IESO. Please note, the Prescribed Forms are specific to different FIT Contract versions.

The applicable Prescribed Forms are:

- a) *Prescribed Form – Pre-Construction Development Costs (FIT Contract versions 2.1.1, 3.0.1 & 3.1)*
- b) *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs (FIT Contract versions 2.1.1, 3.0.1 & 3.1)*
- c) *Prescribed Form – Pre-Construction Development Costs (FIT Contract versions 4.0.2 & 5.0.2)*
- d) *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs (FIT Contract versions 4.0.2 & 5.0.2)*

References to the *Prescribed Form – Pre-Construction Development Costs* throughout these Guidelines are references to the applicable version of the *Prescribed Form – Pre-Construction Development Costs* and references to the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs* are references to the applicable version of the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs*.

Schedule “A” and Schedule “B” to the *Prescribed Form – Pre-Construction Development Costs* have been provided as an Excel spreadsheet, the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs*.

These forms are available on the IESO's website at: <http://www.ieso.ca/en/sector-participants/feed-in-tariff-program/contract-management>.

### **4.4 Completing the Prescribed Forms**

Please complete and submit the Prescribed Forms for the applicable FIT Contract version only. If you have more than one Terminated Pre-NTP FIT Contract, please complete and submit a separate *Prescribed Form – Pre-Construction Development Costs* and *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs* individually for each FIT Contract.

Please complete and sign the *Prescribed Form – Pre-Construction Development Costs* and, as Schedule “A” and Schedule “B” to this Prescribed Form, complete both tabs of the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs*.



To complete Schedule “A” – Itemized List of Pre-Construction Development Costs in the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs*, please complete all columns for each Pre-Construction Development Cost that you wish to submit to the IESO. In the drop-down menu under “Pre-Construction Development Cost Type”, please select the option that best describes each Pre-Construction Development Cost. Please note that these examples in the drop-down menu under “Pre-Construction Development Cost Type” do not, and are not intended to, vary or alter in any way the definition of Pre-Construction Development Costs under the FIT Contract.

To complete Schedule “B” – Government or IESO Funding in the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs*, please identify any and all grant or other funding from government or IESO programs (including any former Ontario Power Authority programs) that the Supplier has received in respect of the Facility or the FIT Contract that the Supplier is not obligated to repay. Please complete all columns for each grant or other funding and, under “Description and Purpose of Funding”, include a detailed description of the purpose of the funding and what it was used for.

#### **4.5 Supporting Documentation**

In order to enable the IESO to confirm the Pre-Construction Development Costs, the Supplier is required to submit supporting documentation for: (i) each Pre-Construction Development Cost listed in Schedule “A” – Itemized List of Pre-Construction Development Costs of the *Prescribed Form – Excel Workbook re: Pre-Construction Development* and (ii) all grant or other funding from government or IESO programs listed in Schedule “B” – Government or IESO Funding of the *Prescribed Form – Excel Workbook re: Pre-Construction Development*, and, in each case, identify the applicable reference numbers for the supporting documentation, as provided for in the Prescribed Form.

The receipt of this supporting documentation is not an acknowledgment by the IESO that the amounts identified by the Supplier in Schedule “A” – Itemized List of Pre-Construction Development Costs of the *Prescribed Form – Excel Workbook re: Pre-Construction Development*, in Schedule “B” – Government or IESO Funding of the *Prescribed Form – Excel Workbook re: Pre-Construction Development*, or in the supporting documentation submitted in connection with these schedules, are valid or legitimate Pre-Construction Development Costs.

#### **Pre-Construction Development Costs**

The supporting documentation submitted for each Pre-Construction Development Cost submitted should include detailed invoices or bills as well as receipts or other proof of payment in respect of each Pre-Construction Development Cost, as applicable. For any portion of any costs charged by a Person who does not deal at Arm’s Length with the

Supplier, please submit additional supporting documentation demonstrating that such costs are not in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier.

### Funding

The supporting documentation submitted for all grant or other funding from government or IESO programs should enable the IESO to confirm the amount of any such funding, as well as its purpose and what it was used for.

### **4.6 Submission Instructions**

Please provide the IESO with the completed and signed *Prescribed Form – Pre-Construction Development Costs*, together with the *Prescribed Form – Excel Workbook re: Pre-Construction Development Costs* and all supporting documentation by email to [FIT.Contract@ieso.ca](mailto:FIT.Contract@ieso.ca). Please identify the applicable FIT Contract Identification # in the subject line of the email, using the following template: “Pre-Construction Development Cost Submission ([FIT Contract Identification #])”.

If you have difficulty providing the supporting documentation by email, please advise the IESO and provide the supporting documentation separately on a USB flash drive, labelled with the FIT Contract Identification #, to:

Independent Electricity System Operator  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario M5H 1T1  
Attn: FIT Contract Management, [Contract Analyst]  
Re: Pre-Construction Development Cost Submission ([FIT Contract Identification #])

### **4.7 IESO Review and Confirmation of Pre-Construction Development Costs**

By submitting the Prescribed Forms to the IESO, the Supplier provides to the IESO its consent to the disclosure of the Prescribed Forms and any supporting documentation to its Representatives, including consultants, advisors and the Government of Ontario.

The IESO may request written clarification or the submission of supplementary written information from any Supplier and may incorporate any response, or require the Supplier to incorporate any response, to that request for clarification into the Prescribed Forms submitted by the Supplier in respect of its Pre-Construction Development Costs. The IESO may also verify with any Supplier or with a third party any information set out in or provided in respect of the Prescribed Forms and may contact any party necessary to verify the information.

If the IESO determines that: (i) the Prescribed Forms or supporting documentation provided contain incorrect information, (ii) the Prescribed Forms or supporting documentation provided is unclear, or (iii) the Prescribed Forms or supporting

documentation provided is otherwise incomplete, the IESO may notify the Supplier of any such deficiencies and request that the Supplier respond and remedy any such deficiencies.

Any deficiencies identified by the IESO in respect of the Prescribed Forms or supporting documentation provided may delay or prevent the IESO’s review and confirmation of Pre-Construction Development Costs.

Once the IESO has completed its review and confirmation of the Pre-Construction Development Costs in respect of a FIT Contract, the IESO will contact the Supplier to advise the amount of Pre-Construction Development Costs the IESO has confirmed, if any, and to arrange for payment of this amount to the Supplier. As provided in Section 2.4(b) of the FIT Contract, in any case this amount will not exceed the Pre-Construction Liability Limit.

#### 4.8 Pre-Construction Liability Limit

The amount of the Pre-Construction Liability Limit is specified in Section 1.2(d) of Exhibit A to the FIT Contract for each technology type, as follows:

Biogas	Biogas (On-Farm)	Landfill Gas	Renewable Biomass	Solar (PV) Rooftop/ Rooftop Solar (not URSP)	Rooftop Solar (URSP) (n/a to version 2.1.1)	Solar (PV) Ground Mount/ Non-Rooftop Solar	Water-power	Wind (On-Shore)/On-Shore Wind
\$400,000 plus \$2.00/kW	\$400,000 plus \$2.00/kW	\$400,000 plus \$2.00/kW	\$400,000 plus \$2.00/kW	\$250,000 plus \$10.00/kW	\$250,000 plus \$10.00/kW	\$250,000 plus \$10.00/kW	\$500,000 plus \$20.00/kW	\$400,000 plus \$2.00/kW

In the event that the Supplier received an NTP Deferral Notice in respect of the FIT Contract, pursuant to Section 2.4(g)(i) of the FIT Contract, the Pre-Construction Liability Limit set out in Exhibit A to the FIT Contract will be increased by the NTP Daily Delay Amount for each day following the issuance of the NTP Deferral Notice until the Termination Date.

The NTP Daily Delay Amount is specified in Section 1.2(c) of Exhibit A to the FIT Contract for each technology type, as follows:

Biogas	Biogas (On-Farm)	Landfill Gas	Renewable Biomass	Solar (PV) Rooftop/ Rooftop Solar (not URSP)	Rooftop Solar (URSP) (n/a to version 2.1.1)	Solar (PV) Ground Mount/ Non-Rooftop Solar	Water-power	Wind (On-Shore)/On-Shore Wind
\$0.067/kW	\$0.067/kW	\$0.067/kW	\$0.067/kW	\$0.033/kW	\$0.033/kW	\$0.033/kW	\$0.067/kW	\$0.033/kW

In no event will the amount paid by the IESO to the Supplier for Pre-Construction Development Costs pursuant to Section 2.4(b) of the FIT Contract exceed the applicable Pre-Construction Liability Limit.

If you have any questions, please email the IESO at [FIT.Contract@ieso.ca](mailto:FIT.Contract@ieso.ca) or contact your IESO contract analyst.

## APPENDIX A - HELPFUL CONTACTS

### Independent Electricity System Operator

Feed-in Tariff Program	<a href="http://www.ieso.ca/en/sector-participants/feed-in-tariff-program/overview">http://www.ieso.ca/en/sector-participants/feed-in-tariff-program/overview</a>
IESO Contact information	Independent Electricity System Operator 120 Adelaide Street West, Suite 1600 Toronto, Ontario M5H 1T1 ATTN: Contract Management  <a href="http://www.ieso.ca">www.ieso.ca</a> <a href="mailto:FIT.Contract@ieso.ca">FIT.Contract@ieso.ca</a> <a href="mailto:Contract.Management@ieso.ca">Contract.Management@ieso.ca</a>